



**TERMS OF REFERENCE**

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## 1. BACKGROUND

### 1.1 Beneficiaries

The beneficiaries are all ACP States, Regional Integration Organizations, Government Ministries and departments responsible for trade matters, civil society organizations, private sector organizations, research centres and universities and other stakeholders that could play an active role in achieving the objectives of the Programme.

### 1.2 Contracting Authority

The General Secretariat of the ACP Group is the contracting authority of the Programme. The Secretary General of the ACP Group is the Regional Authorising Officer.

### 1.3 Relevant Background

ACP countries increasingly face a slate of daunting challenges in the multilateral, regional and bilateral fora of trade negotiations. In the multilateral sphere, the DDA has not been concluded, thereby rendering elusive the promise of a global trading system recalibrated to support developing countries' developmental aspirations. In spite of its lofty mandate and moniker, the DDA's pursuit of development therefore remains incomplete. ACP countries – the poorest and most vulnerable economies within the MTS, have secured only modest gains in the DDA for which a high price has been extracted. This has been the case in a slate of issues, particularly those constituting core LDC interests, namely, cotton, DFQF, services waiver, cotton, rules of origin. The current attempts to operationalize the Monitoring Mechanism are illustrative of the challenges faced by ACP countries in the WTO. In July 2002, WTO Members agreed to the establishment of a Monitoring Mechanism. More than a decade later, Members are immersed in negotiations on operationalizing this decision. Complementing the failure to deliver an earlier agreement is that the negotiations on the Monitoring Mechanism see attempts by some developed WTO Members to weaken the original agreement. Furthermore, developing countries are being asked to “pay” in additional concessions to implement a measure already agreed!

The failure to advance the DDA has been accompanied (or resulted in) a wave of bilateral RTAs. In terms of both architecture and span of disciplines, these new RTAs vary considerably. On the one hand, there are the mega-RTAs such as the Trans-Pacific Partnership (TPP), the Trans-Atlantic Trade and Investment Partnership (TTIP) and the Canada - EU Comprehensive Economic and Trade Agreement (CETA). These RTAs have attracted the moniker “mega-RTAs” primarily due to their total share of global trade. These mega-RTAs also entail ultra-modern trade provisions in seeking to address the increased complexity of global trade. For example, the TPP aims to be “a landmark, 21st-century trade agreement, setting a new standard for global trade and incorporating next-generation issues that will boost the competitiveness of TPP countries in the global economy.”

All three mega-RTAs seek to instil commitments on regulatory convergence aimed at making trade among participating Members more seamless and efficient. The accent on non-tariff issues is hardly surprising given the low effective tariff rates faced on most products, with the notable exception of agriculture and textiles. The welfare gains from reducing the costs of compliance with administrative procedures and establishing harmonized regulations are deemed to be the primary motivation for the TTIP. Such a thrust makes eminent economic sense in the context of the rise of global value chains that also reinforces the increased accent on regulatory convergence.



The emergence of these mega-RTAs poses a number of issues of deep concern to the ACP. For example, what is the degree of preference erosion that these new RTAs portend, especially given the role played by traditional ACP partners such as Australia, Canada, EU and US? Second, what does regulatory convergence signal with respect to impact on third countries? Will this result in a universal upward scaling of international standards or a two-step approach where only stronger economies will be in a position to apply international standards thereby regulating non-compliant countries to low-value production and exports? Third, will the new RTAs with their ultra-modern disciplines and approaches constitute the new architecture for RTAs including those negotiated with ACP countries? And if yes, what are the ramifications for ACP countries in their current or contemplated RTA negotiations? Fourth, what are the implications of regulatory convergence for the architecture of special and differential treatment of ACP countries?

Beyond these mega-RTAs, ACP countries are also engaged in FTA negotiations. Perhaps the most renown of the new wave of ACP RTAs are Economic Partnership Agreements (EPAs). EPAs constitute a radical overhaul of the Lome/Cotonou trade arrangements in a number respects. Most notably, they are based on reciprocal trade liberalization, contain disciplines beyond the narrow confines of goods and are negotiated with ACP regional configurations. While EPAs are the most renown and controversial, they are not the only RTAs being negotiated and implemented by ACP States. For instance, the Dominican Republic has completed negotiations of the US-CAFTA while CARICOM is currently negotiating an FTA with Canada. Equally, ACP Pacific members are currently locked in talks with Australia and New Zealand on a Pacific Agreement on Closer Economic Relations (PACER Plus).

New trade arrangements are emerging not based solely on reciprocal trade liberalization. Unilateral preferential schemes such as the EU's Everything But Arms (EBA) and US' African Growth Opportunity Act (AGOA) remain in place and undoubtedly redound to the benefit of many ACP countries. In fact, under the DDA mandate, these schemes should be expanded in terms of both coverage of products and the number of WTO Members offering them. Emerging economies of Brazil, China and India have recently bolstered their respective GSP schemes. One consequence has been China now being WTO Member importing the most from LDCs under preferential terms. However, the limits of unilateral trade schemes are clear, *viz.*: (a) their unilateral status means that trade concessions can be summarily withdrawn thereby dampening investor interest in beneficiary developing countries; (b) the coverage is limited to goods (although the LDC services waiver should redress this glaring anomaly); (c) the threshold for triggering safeguard clauses tends to be low; and (d) the range of disciplines is limited to goods whereas modern trade requires an expansive range of commitments.

ACP regional integration processes were generally conceived as the platform on which to navigate globalisation. The rationale was based on the recognition that most ACP economies are too small to generate competitive production of goods and services. For a host of reasons, ACP regional economic blocs are yet to deliver their intended benefits. There are two interlinked factors at work here. One is design, with overlapping membership integration being the primary challenge. It is inconceivable that one country can be a member of two distinct customs unions. Another manifestation of the design deficit facing most ACP regional blocs is the absence of legal sanctions for Members failure to uphold their obligations. This segues into the second factor, i.e. an implementation deficit whereby commitments are not upheld. For instance, the Revised Treaty of Chaguaramas that governs CARICOM provides for the implementation of a built-in agenda. None of the four issues cited in Article 238 of that Treaty has advanced.



Beyond internal dynamics, ACP regional integration efforts are further constrained by divergent external trade arrangements. For example, of the six members in CEMAC, only Cameroun has an interim EPA with the EU. Similarly, only two ACP Pacific States - Fiji and Papua New Guinea, have concluded an interim EPA. The same applies to ECOWAS where only Ghana and Cote d'Ivoire have post-Cotonou preferential access to the EU market. ACP regional integration is not promoted by its Members maintaining divergent regimes with major external trade partners. In fairness, the challenge of divergent external trade regimes within an ACP REC cannot be attributed to major developed countries. Differentiated trade access is also a function of the varied treatment offered to LDCs and non-LDCs under the WTO. For example, operationalization of the LDC services waiver will result in ACP non-LDCs being compelled to forge RTAs to secure preferential access to large services markets.

The aforementioned implementation deficit cannot be fully attributed to waning political will of ACP States. The establishment of a comprehensive regional trade governance infrastructure is also a costly proposition. AfT disbursements have risen according to recent OECD/WTO statistics but the actual flow varies considerably across the span of ACP countries. Furthermore, the increasing accent is being placed on administering aid to LDCs – and rightly so. However, this policy shift has been to the detriment of Small, Vulnerable Economies (SVEs). A recent IDB study concluded that only one SVE - a non-ACP State, featured among the top 25 recipients of AfT. Worse, the process of differentiation (and graduation) is being increasingly applied by major donors, including the EU. Small economies are thereby exposed to IFI's conditionalities coupled with access to international capital only at non-concessionary rates.

The current wave of globalisation has resulted in the fragmentation of production. Indeed, trade scholars have concluded that modern trade flows are based not on trade in products but rather in tasks. Global Value Chains (GVCs) have emerged as the methodology to capture this fragmentation of global trade. The term might be new but the challenge facing the ACP countries remains the same. That is, climbing up the value chain in order to capture greater economic benefits. Sustained economic development comes not only from exporting greater volume but rather from exporting greater value. In this context, the requisite policy interventions supportive of ACP economic development aspirations need further understanding. Nevertheless, there are some clear needs that are known, e.g. improving productive capacity, bolstering regulatory capacity, increasing trade development measures, and managing the adjustment exercise as countries migrate from being exporters of low-value commodities to higher value goods and services.

The slate of ACP trade challenges is not limited to the direct field of trade. Instead, there are additional developments that are also negatively impinging on ACP trade performance. For example, climate change threatens to destroy one of the ACP core industries, i.e. tourism and further erode the competitiveness of ACP agriculture. Mitigation efforts therefore need to be accelerated in ACP countries and this remains one of the Group's core objectives in the UN Framework Convention on Climate Change (UNFCCC). In these negotiations, other issues of deep interest include the transfer of technology, treatment of traditional knowledge and covering Members' adjustment costs. This narrow batch of climate change issue underscore the link with the multilateral trading system. The link assumes even greater importance given the increasing weight attached to non-tariff measures and the real threat that climate change concerns could be used to legitimise developed countries' trade defensive objectives.



Yet another challenge stems from the radically altered geography of trade. This is best embodied by the meteoric rise of China as the world's leading exporter. That country's voracious appetite for raw materials has made it a leading trade partner for a number of ACP countries. As mentioned earlier, China is now the leading importer of LDCs' exports. China's ascent to leading trade partner status signals a realignment of ACP traditional trade and investment flows. Most noticeably, this shift has occurred without the ACP benefitting from negotiated preferential trade access. This could be one of the factors behind the ACP exports to China being dominated by oil and natural gas. China's economic rise, together with other emerging economies such as Brazil, India and South Africa, has also altered the power dynamics within the WTO. Indeed, the increased political weight of the emerging economies can be cited as one of the determinants for the current mood of stasis engulfing the DDA.

## **1.4 ACP Trade Challenges**

The economic profile of ACP countries varies considerably, yet another of common characteristics can be distilled. First, the ACP countries are all trade-dependent, i.e. total exports and imports constitute a major share of GDP. In that context, trade acts as a transmission mechanism for economic growth and development in ACP economies. Second, ACP economies tend to be preference-dependent, particularly, in agriculture. In effect, the ability of ACP countries to contest global markets has been as a result of traditional preferences such as Lome/Cotonou and AGOA or CBERA. However, in an era of preference erosion and the parallel rise in NTBs, ACP competitiveness has also sharply declined. Third, the small size of domestic markets blights the competitiveness of ACP products and renders infrastructure and trading costs high. Fourth, most ACP countries lack the regulatory capacity and trade support infrastructure required to effectively compete in global markets. This deficiency assumes even greater importance in light of the increasing presence of global value chains and attendant advance of regulatory convergence. Fifthly, the absence of domestic innovation systems and sub-optimal capital markets limits the capacity of ACP domestic firms to translate market opportunities into actual turnover. This deficiency is worsened by the fact that most ACP firms face severe information asymmetry in grasping market opportunities in developed or emerging economies.

Finally, most ACP countries struggle with acute financial, institutional and human capacity constraints. As trade grows in complexity and linkages with non-trade issues are made, most ACP countries are severely challenged in formulating appropriate policy responses. Beyond crafting policy, national coordination, especially at both inter-Ministerial and private-public partnerships levels, becomes paramount. With most ACP countries pursuing regional integration, the capacity to coordinate at national and regional levels becomes even more important. Finally, the increased complexity of modern trade practices requires sustained investment in national human capacity – an intervention that drains national coffers.

WTO Members, including those from the ACP, will meet in December 2013 in Bali for the organisation's Ninth Ministerial Conference (MC9). In spite of hectic negotiations in Geneva over the last months, MC9's scale of ambition has been severely reduced. The contemplated MC9 DDA agenda is limited to modest outcomes in three areas, namely, agriculture, development and trade facilitation. In Agriculture, the current talks focus only on TRQ administration, food security and export subsidies. Discussions on development issues are narrowed to the Monitoring Mechanism and 28 Agreement-specific proposals. It is also conceivable that a full Trade Facilitation agreement could emerge at Bali.



In the absence of any clarity on the success of the Bali Ministerial to conclude on this limited slate of DDA issues, the question remains how to proceed in completing the full round of trade issues. For example, it is widely believed that the US will not invest any additional capital in the DDA in case a TF agreement is concluded. An alternative view suggests that that major WTO Member will effectively re-engage in the DDA only on conclusion of the TTP and TTIP. Irrespective of the veracity of these claims, it is also patently clear that the ACP needs to collectively reflect on establishing a post-Bali DDA Work Programme. In fact such reflection has already begun among WTO Members with the African Group's decision to shift fulsome treatment of the Monitoring Mechanism to the immediate post-Bali period. Beyond tactical considerations re posture at MC9, ACP countries are deeply interested in recalibrating the MTS by making development its core pursuit. Securing this overarching objective in a post-Bali environment remains pivotal.

In addition, establishing synergies between the respective multilateral trade and climate change negotiations remains a major ACP pursuit. However, the need for the ACP to deploy a holistic approach also extends to issues such regulatory convergence, intellectual property, food security, a contemporary articulation of development and governance of international economic organisations.

## **2. Concrete Nature of the Activity**

### **2.1 Scope of work**

This project aims at convening a meeting on January 22-24, 2014 in Geneva. The primary purposes of the meeting are to (a) facilitate an ACP Group reflection on the results of MC9; review global trends impinging on ACP trade interests;(b) develop a post-Bali Work Programme for articulation in various multilateral, regional and bilateral negotiations; and (c) craft an ACP policy response to salient global economic trends. The meeting will attract the participation from ACP Ambassadors responsible for WTO issues, leading ACP diplomats based in Brussels and ACP Senior Officials, ACP Secretariat, ACP regional organisations, private sector groupings, academics and trade experts. It is contemplated that the varied professional background will yield a rich exchange of views. The meeting will also build on the results of the ACP High Level Forum on Emerging Issues and Challenges in the Multilateral Trading System, held in September 2012 in Nairobi.

Discussions at the meeting will build on reflection papers previously commissioned by the Programme. These papers cover four main issues, i.e. Global Value Chains, Mega-RTAs, New Issues in Services, and the Green Economy. In addition, the WTO Director-General, UNCTAD Secretary-General, Head of EU Delegation in Geneva and ACP Convenor would be invited to speak during the opening session. During the final session it is anticipated that an outline of an ACP strategic response to identified issues should emerge. One additional dimension is to arrange a dinner on January 22, 2014 where Mr. Pascal Lamy, the former EU Trade Commissioner and WTO Director-General would address participants. The invitation to Mr. Lamy reflects his deep understanding of both ACP trade concerns and the EU trade policy thinking along with the deep respect he generates among ACP diplomats and policymakers.

### **2.2 Tasks**

The Programme will commission the services of a Project Coordinator to act as Rapporteur at the meeting. This task primarily entails organising resource persons to present thematic persons facilitating the various discussions. S/he will be responsible



for crafting a report of the meeting and assisting the meeting's Chairman in summarising the results of each session. The Expert will eventually prepare a report on the meeting with all presentations and reference materials attached to be distributed to all the participants and major ACP stakeholders. Finally, a logistics expert will be contracted to support the PMU to reserve and issue flights, pay per diem and assist in the smooth running of the meeting.

## **2.3 Main Issues to be addressed**

The meeting will organise discussions based on an agenda with the following main issues.

1. Enumeration of the most salient global policy developments currently impinging on ACP trade interests;
2. Can the ACP pursue a positive trade development agenda based on special and differential treatment in light of global trade being increasingly characterised by ultra-modern RTAs, global value chains and regulatory convergence, and what would be the elements of that ACP trade development architecture?
3. What are the specific trade policy interventions required for ACP countries to climb the value chain by capturing greater value in their exports?
4. To what extent do mega-RTAs constitute a threat to ACP trade interests, e.g. via preference erosion, establishment of higher international standards and offering new architecture for RTAs currently under negotiation or under contemplation? Also, does the "New Regionalism" constitute an alternative to multilateral trade liberalization and how will issues such as domestic support that negatively impacts on ACP countries be addressed?
5. What is the impact of recent plurilateral, multilateral and bilateral negotiations of trade in services (e.g. TISA, LDC services waiver and TTIP/TPP) injure ACP core interests in services, and how can such economic threats be mitigated?
6. What are the ramifications of recent global trade trends on ACP regional integration processes, and what policy interventions are needed to advance ACP regional integration efforts?
7. In light of the emergence of environmental standards, what lessons can they offer to the ACP in addressing NTBs and also in relation to the Group's engagement in various international standardssetting bodies?
8. What are the opportunities available to the ACP for promoting green economies and the policy interventions required to transform such opportunities into concrete economic benefits?
9. In case MC9 successfully agrees on all elements of the Bali deliverables (i.e. Food Security, Export Subsidies, TRQ Administration, Trade Facilitation, Monitoring Mechanism and 28 Agreement-specific Proposals), what are the prospects of advancing the other elements of the DDA, and what options would be available to the ACP to recalibrate the MTS so that development of its poor and vulnerable Members becomes its core objective?
10. How can the ACP leverage the increased weight of South-South trade and the concomitant political rise of emerging economies to incubate novel approaches to the articulation of development in trade, and ultimately harness the developmental impact of trade?



It is anticipated that discussion on these core issues will result in the articulation of an ACP post-Bali Work Programme. The results of such an ACP Work Programme would then be articulated in all pertinent negotiation fora, i.e. multilateral (DDA, UNFCCC, etc.); bilateral (e.g. EPAs, PACER, etc.); and regional (SACU, UEMOA, CARICOM, AU, etc.).

## **2.4 Budget**

The proposed budget for the activity amounts to EUR 217,240.00. It is anticipated that the ACP MTS Programme will contract the selected experts on a fee-based contract of values less than EUR 20,000.