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**Submission to the International Development Select
Committee One Off Evidence Session into the
European Union's trade agreements with the African,
Caribbean and Pacific states**

Submitted November 12 2004

1. Summary

- 1.1 ActionAid,ⁱ ACTSA,ⁱⁱ CAFOD,ⁱⁱⁱ Christian Aid,^{iv}, One World Action,^v Oxfam GB,^{vi} and Traidcraft^{vii} welcome the opportunity to submit evidence to the International Development Select Committee's evidence hearing on the European Union's trade agreements with the African, Caribbean and Pacific (ACP) states. Together with our partner organisations in ACP countries, we have been tracking the progress of the Cotonou Agreement and Economic Partnership Agreements (EPAs) for several years.
- 1.2 We have serious concerns about EPAs and EPA negotiations, and consider them to be developmentally flawed in both content and process. We believe that, in their current form, EPAs will undermine rather than deliver their stated objective of development and poverty reduction. For this reason we have joined with counterparts in the ACP in calling to pause current negotiations until significant concerns are addressed.
- 1.3 Our serious concerns relate to several critical aspects of EPAs.
- 1.4 We believe that the demand in EPAs for reciprocal market opening, and the aggressive liberalization timetable put forward within EPA negotiations, will lead to significant detrimental impacts on ACP agricultural and industrial producers, ACP economies and poverty levels in ACP countries.
- 1.5 We are concerned by the pursuit of offensive market interests by the European Union in EPA negotiations, most notably of the 'Singapore issues', strongly opposed by ACP countries at the multilateral level. We believe that these items offer little proven benefit to ACP countries but are accompanied by high implementation costs and a growing body of evidence that suggests they would be against ACP countries' development interests.
- 1.6 We are concerned by the extent of revenue loss by ACP governments from tariff reductions and the level of adjustment costs for ACP countries as a likely consequence of EPAs. We are concerned that current levels of EU aid available to ACP countries through the Cotonou Agreement will inadequately address these financial burdens.
- 1.7 We are deeply concerned that EPAs will undermine regional integration amongst ACP countries. EPAs present serious obstacles to the encouragement of regional integration within Africa, both in splitting apart existing regional processes and in creating likely divisions between Least Developed Country (LDC) ACP countries and non-LDC ACP countries. We do not consider that either the European Commission or the UK Government has adequately addressed these concerns.
- 1.8 Finally we are seriously concerned by the EPA negotiating process. This includes the worrying behavior of the European Commission in negotiations so far, a lack of member state scrutiny, and a weak evidence base on which the development impact of EPAs is judged and incorporated into negotiation outcomes.
- 1.9 Given these substantial concerns, this submission calls upon the UK Government to put greater emphasis on the need for development concerns to be at the heart of the EPA negotiations. In particular, the UK Government should direct much greater levels of technical and political capacity into EU-ACP trade negotiations. Significantly increased levels of member state scrutiny are required over the negotiating position of the European Commission. We call upon the UK Government to work to ensure that the European Union drops both its demands for offensive issues and its demand for reciprocity in EPA negotiations.
- 1.10 This submission further calls upon the UK Government to live up to its commitment, made to the International Development Select Committee in 1998 and contained in the Cotonou Agreement, to provide alternative forms of non reciprocal market access to the European Union to those ACP countries who do not want to sign up to a free trade agreement.

1.11 Feasible alternatives to EPAs exist, and may provide a more suitable development alternative to those ACP countries that wish to make this choice. We find that the failure to provide these alternatives is the result of lack of political will on the part of the UK Government and the European Commission. We call upon the UK Government to start work on alternatives as a matter of urgency, working with ACP countries and in parallel to the EPA negotiating process to deliver these well before the end of the EPA negotiating process.

2. What options are available for ACP states under the Cotonou Agreement? Are regional Economic Partnership Agreements (EPAs) the most suitable developmental tool for all ACP states? What are the alternatives?

Concerns Regarding Economic Partnership Agreements as Development Tools

- 2.1 ActionAid, ACTSA, CAFOD, Christian Aid, One World Action, Oxfam GB and Traidcraft welcome the opportunity to submit evidence to the International Development Select Committee's one off evidence hearing on the European Union's trade agreements with the African, Caribbean and Pacific states. Together with our partner organisations in ACP countries, we have been tracking the progress of the Cotonou Agreement and EPAs for several years.
- 2.2 We have serious concerns about the EPA negotiations, and have found them to be developmentally flawed in both content and process. In the Preamble to the European Commission's mandate for negotiating EPAs, the Council of the European Union sets the tone by which we believe EPAs should be judged. It refers, as a priority, to:
"The commitment of the parties to centre their partnership on the objective of reducing and eventually eradicating, poverty consistent with the objectives of sustainable development and the gradual integration of the ACP countries into the world economy."^{viii}
- 2.3 Despite this, it is our belief that EPAs, as currently envisaged, are highly likely to be damaging to sustainable development in ACP countries and their attempts to reduce poverty. There are five fundamental problems that should be addressed if EPAs are to become 'instruments for development'.
- 2.4 **I) The development case for reciprocity is not proven:** The principal problem with EPAs is that they will involve reciprocal market opening, marking a fundamental shift in ACP-EU trade relations. The EU is pushing for ACP countries (which include some of the world's poorest) to open "substantially all trade over the course of a transitional period",^{ix} which is being interpreted by the European Commission as being "the elimination of customs duties"^x on more than 90% of ACP imports of EU goods and services within ten years. While the precise timeframe is yet to be negotiated, even the most liberal EC interpretation is setting a limit of full reciprocity within 25 years. We believe that these timings are based not on sound development understanding, nor on the needs or interests of ACP poverty reduction strategies, but on the insistence of the European Commission on standardising its preferences regime, and on outdated free-market thinking.
- 2.5 ACP countries – including LDCs (see section 4) - are being asked to open their borders to European goods, with little to gain from the EU in return. Under EPAs, ACP countries would face a dramatic reduction in their ability to protect themselves and their producers from cheap, often subsidised EU goods flooding their markets and putting local farmers and small-scale manufacturers out of business. While African markets are not, in general, a major destination for EU agricultural and value-added food product exports, since 1993 there has been an alarming increase in the exports of simple value-added food products such as cereal, poultry, prepared or preserved vegetables or fruits, dairy and sugar products, particularly to West African markets such as Senegal, Burkina Faso, Mali and Ghana, but also to other African countries such as the DRC, Cameroon, Tanzania, and Kenya. The increase has been most pronounced in cereal products, and has been mainly a result of Common Agricultural Policy (CAP) reform. To date the shift from price support to direct aid to farmers in the EU cereals sector has resulted in the expansion of EU cereals production, despite a reduction in prices of more than 50% on average. It has also prompted an expansion of cereal-based food product exports to ACP countries. This has seen the importance of the ACP market rise from 13% to 21% of total EU exports for products of the 'milling industry', and from 5% to 7% for 'preparations of cereals'.^{xi}
- 2.6 **II) The aggressive liberalization timetable could have a devastating impact on poverty and on vulnerable groups in ACP countries.** Potentially this could lead to:
• *Company closures and job losses.* As European goods begin to enter ACP countries with little to no tariffs, many local businesses will close in the face of increased competition. This would be

particularly damaging in the agricultural sector: for example, unfair competition from European goods still heavily supported by the EU under the CAP will have a serious impact on Kenya's dairy and cereals sectors, and the poultry sector in Ghana.

- 2.7 • *The undermining of ACP industrial development.* A key development strategy in most ACP countries is to encourage small enterprises to move up the value chain and into new industries such as manufacturing or processing. Indeed this is an area which already receives donor support from EU member states. Under EPAs, European manufactured goods will be entering African countries without paying any trade taxes, making it much harder for local industry to compete. The EU's own Sustainability Impact Assessment (SIA) of EPAs identifies this as a serious problem:

"While liberalisation might encourage this [the ability of West Africans to buy products at affordable prices], it might also accelerate the collapse of modern (sic) West African manufacturing sector."

and: "The removing of protective tariffs will accelerate the decline of modern (sic) manufacturing sector..."^{xii}

Other sectors particularly at risk include the growing Ghanaian plastics and food processing industries, and the textiles and garments industries in East Africa.

- 2.8 • *Loss of vital government revenue.* Liberalization will drastically cut fiscal revenues and consequently limit ACP governments' capacity for social expenditure. For example, between 25-30% of all Namibian government revenue was derived from this type of trade tax between 1990-1996. Current estimates are that Kenyan revenues will decrease by 17%. This seems particularly illogical as a poverty reduction strategy given the emphasis on good governance and sound financial management placed on ACP countries by EU donors.

- 2.9 Although the EU does acknowledge that liberalization will have some social consequences in the ACP, the Commission's EPA negotiating mandate does not allow the necessary policy scope for an alternative approach, even though this option is provided for in the Cotonou Agreement. The furthest the EC mandate goes on this is still, we believe, insufficient:

"Where serious difficulties occur as a result of trade liberalisation, the ACP countries may, in consultation with the Community, temporarily suspend the application of the liberalisation schedule and, where necessary, re-modulate the rate of progress towards the ultimate establishment of the free trade area, in full conformity with the provisions of the WTO."^{xiii}

- 2.10 **III) The ACP is still faced with negotiations on 'Singapore issues'.** Three of the highly controversial 'Singapore issues' (investment, competition and transparency in public procurement) are included in the EU negotiating agenda of EPAs. We see no justification in including them in bilateral agreements when they have been so strongly resisted multilaterally. Indeed, in some areas the EU is pushing for EPAs to go much further on these issues than was envisaged at the WTO. For example at the WTO the EU was calling for transparency in public procurement. In EPAs the EU is calling for liberalization of public procurement on the basis of non-discrimination.

- 2.11 **IV) EPAs are already undermining regional integration.** It was the original stated intention of the Cotonou Agreement that EPAs should contribute to the process of regional integration between ACP countries. The progress of EPA negotiations thus far indicates that the opposite is happening. EPAs in particular put the poorest LDC ACP countries in an impossible dilemma: should they continue with their non-reciprocal duty-free, quota-free access into the European market and leave their regional grouping, or should they negotiate alongside their regional partners and face reciprocal market opening? While ACP LDCs have nothing to gain from EPAs, their non-LDC neighbours have a great deal to lose.

- 2.12 The East African Community (EAC) is a case in point. The EAC includes Kenya, Uganda and Tanzania, which have long been committed to closer economic collaboration and are in the process of establishing a customs union and a joint currency, having already established an East African Parliament. As LDCs, both Uganda and Tanzania already have duty-free and quota-free

access into the EU market under the Everything But Arms initiative. Consequently there is nothing for them to gain in joining an EPA. Kenya's position, as the only non-LDC in the East African Community, is now particularly isolated.

- 2.13 Largely as a result of the fear of losing existing preferences, ACP regions have begun the process of negotiating EPAs with the EU. However, the East African example illustrates how little EPAs have supported regional integration. After prolonged discussions within SADC and COMESA, the resulting 'regional grouping' of the Eastern and Southern African countries (ESA) relates little to previous African progress on regional co-operation. Tanzania, for example, chose not to negotiate an EPA with the EU as a member of SADC. There is also much concern about the quality of information flow between the COMESA secretariat, which is negotiating the ESA EPA, and the group's member governments and civil society organisations. The fact that the COMESA secretariat itself receives EU funding has not helped the process of trust. EPA negotiations are adding to the already difficult task of regional collaboration within existing regional groupings in Africa, and may therefore contribute to the derailing of existing processes of regional integration.
- 2.14 **V) The EPA negotiating process is seriously flawed.** The EPA negotiations have been characterised by a lack of transparency and a poor understanding of development. The EU is forcing the pace of negotiations, at a level which is too fast for many ACP countries, given the commitments already being sought at the WTO. For example, the ACP group was keen to negotiate key decisions as a single bloc in Phase I, before discussing regional issues. Despite the logistical and strategic sense in this, the EU refused to begin discussions until the ACP had broken down into smaller groups.
- 2.15 Member state scrutiny of the European Commission's approach to EPAs has been insufficient. In the UK, HMG engagement with NGOs is now increasing, but much more effective engagement by HMG with the EC is necessary. We feel strongly that it is the responsibility of member states to hold the European institutions to account. In oral evidence to the International Development Committee on Thursday 16 October 2003, the Secretary of State for International Development was questioned on bilateral negotiations. He answered thus:

"You mentioned the EPAs...the Commission has made it very clear that these are simply a development tool, and it is important that they are held to that, and they have to be negotiated..."^{xiv}

While we welcome this statement, we are concerned that EPA negotiations are progressing fast and the need for further and better scrutiny, from a development perspective, is now very clear.

- 2.16 We are also concerned at the poor evidence base of the impact that EPAs will have on poverty in the ACP countries. The EU itself is conducting its own SIA of EPAs, but we feel that this process is marred by inadequate terms of reference and poor consultation with civil society in the EU or the ACP. Moreover, the SIA is not linked in any meaningful way to the negotiating timetable, rendering it potentially meaningless. This needs to be dealt with as a matter of urgency.

Alternatives Available to ACP States

- 2.17 The UK Government has strongly committed itself to offering ACP countries (and in particularly non-LDC ACP countries) an alternative to EPAs.

This commitment was underlined in the strongest terms in the Government's response to the International Development Committee's report on the renegotiation of the Lomé Convention. The Government made the following commitments to provide alternatives to ACP countries to the IDC: *"... the Government certainly agrees that they [EPAs] are not a universal solution. ... That is why we have worked to ensure that attractive alternatives will be available, both for LDC and non-LDC countries."*

And *"... there should be a reasonable alternatives [to free trade areas] available to Lomé partners, without reduction in their market access to the EU."*^{xv}

And “*The Government shares some of these doubts about the FTA option – hence our determination to ensure that it should not be the only option.*”

And “*Thanks to the agreement the Government obtained in the Council...non-LDC ACPs unable to join FTAs should be offered a new trade framework equivalent to their existing situation under the Lomé Convention.*”

As well as “*The Government agrees that it would be wrong to impose unfavourable terms on ACPs. Given the alternatives which are to be made available, the risk of this is much reduced.*”

- 2.18 The UK also took the lead on this issue during the Cotonou negotiating process, fighting for, and winning, the commitment in the Cotonou Agreement that the EU will: “*examine all alternative possibilities, in order to provide ... [ACP] countries with a new framework for trade which is equivalent to their existing situation and in conformity with WTO rules.*”^{xvi}
- 2.19 However, since then, the Government appears to have put minimal effort into realising these commitments. The only official document on EPA alternatives to date has been a rather negative, one-and-a-half page ‘non-paper’ from the DTI.^{xvii} Having been so instrumental in securing these commitments in the first instance, we would strongly urge the UK Government to continue to show the same level of political will on EPA alternatives.
- 2.20 This submission argues that there are a range of feasible alternatives to EPAs and that there is no reason why the UK Government should not take action to deliver these alternatives, both in their own trade work and through engagement with the European Commission, in order to fulfil the commitments made through the Cotonou Agreement and to the International Development Select Committee. As Institute of Development Studies economist Christopher Stevens says: “*...alternatives [to EPAs] do exist...they are developmentally more coherent, and ...they could provide a better basis for achieving a compromise between ACP and non-ACP developing countries in the WTO.*”^{xviii}
- 2.21 We consider it vital that ACP countries be strongly involved in the shaping of EPA alternatives from the outset and that they be given time to engage with the various options during the EPA negotiating process, rather than being presented with an EPA as a finished product at the last possible moment (albeit with a poor alternative also offered) at the end of 2007. That means starting work in consultation with ACP countries as soon as possible.
- 2.22 Two alternatives will need to be offered, one for LDC ACPs, and one for non-LDC ACPs. We address LDC alternatives under section 4 of this submission, for non-LDC ACP countries we consider the following as a potential, but not exhaustive, number of alternatives.
- 2.23 **Generalised System of Preferences (GSP).** Currently the GSP, the system by which the EU offers unilateral trade preferences to other countries, appears to be the most viable non-LDC alternative to EPAs. Significantly, one of its prime purposes is to emphasise sustainable economic and social development.^{xix} However, as noted below, significant changes would be needed if it were to achieve the poverty reduction focus specified in Cotonou.
- 2.24 The GSP is non-reciprocal and WTO-compliant (although a reformed GSP could be subject to a dispute settlement^{xx}). However, the terms are negotiated unilaterally in a non-transparent process, meaning it is extremely difficult for ACP countries to influence its form. It is also non-contractual, which is concerning, as it would offer insufficient certainty to ACP countries.^{xxi} It may be possible to bind it at the WTO, however,^{xxii} and despite these limitations, the GSP, with suitable modifications, could be a better option for ACP countries.
- 2.25 A new GSP is currently being negotiated, in advance of the expiry of the current agreement on December 31 2005. The review is likely to be completed by the Commission in the first half of 2005, with a year-three review scheduled for 2007, although the GSP can also be amended at any time in the interim period.

- 2.26 In the past, the UK Government has sought an assurance that particular attention would be paid to the interests of non-LDC ACPs, not in a position to sign an EPA, during the review of the Community's GSP in 2004.^{xxiii} However, the current Commission proposal for a revised GSP still falls short of what would be required if the GSP were to be a serious alternative to EPAs.
- 2.27 Rules of Origin (RoOs) as applied to the GSP are too onerous, and are more restrictive than the RoOs under Lomé. Regional cumulation, cross regional cumulation, and cumulation of raw material, are extremely important to development as many ACP countries lack access to raw materials or simple processed inputs from within their own borders. The UK government has already admitted – in a wider context – that there is a clear need to reform the rules of origin.^{xxiv} This reform should focus on those areas and products that matter most to ACP countries, such as a single-stage processing requirement on textiles and improvement of agricultural RoOs. An EPA-alternative GSP would need to offer full cumulation.
- 2.28 The GSP's graduation mechanism would also need to be reformed as the current system, as well as the proposed one, mean that countries risk graduating from preferences before they are genuinely competitive in that sector. In particular, the element that a country should become ineligible for GSP preferences when it accounts for 15% of developing world (rather than total) exports to the EU will increase the probability that countries will be graduated out of preferences too soon. A recent study by researchers at Sussex University shows that, for instance, this would deprive Thailand of preferences for vehicle exports, despite the fact that Thailand accounts for less than 2% of total vehicle exports to the EU.^{xxv}
- 2.29 Preferences offered under a GSP also need to be enhanced. Additional differentiated criteria would need to be added to the GSP to enhance preferences to ACP countries. We suggest that additional development criteria, such as commodity dependence, landlocked economies, vulnerable island economies, size of informal sector, priorities cited in ACP national development strategies, poverty or Human Development Index levels, could be added that would address some of the particular development challenges faced by ACP states. This could amount to giving effective EBA access for ACP countries.
- 2.30 Market access preferences alone will not secure the reduction in poverty envisaged in the Cotonou Agreement. We believe strongly that if the GSP really is to be an EPA alternative, it must address some of the developmental elements promised by Cotonou. This should include aid as well as technical capacity building to address supply-side constraints and negotiating capacity. It should also allow for adjustment costs. We also stress the problems of sanitary and phytosanitary measures (SPS) and other standards acting as non-trade barriers to ACP countries seeking market access to the EU. Work on alternatives should also address these issues as part of the wider Cotonou agreement and DFID's trade policy work in general.
- 2.31 Several other market access ideas for Africa are currently being discussed in the Africa Commission.
- 2.32 Further research is needed to identify which alternative would be preferable. We are calling on the Government to fulfil its commitments and work alongside ACP countries, in parallel with the EPA process, to ensure that any alternative provided is developmentally beneficial.

- What work is the UK Government undertaking to ensure that ACP countries are offered a credible alternative to EPAs?
- Government departments have told NGOs that there is no urgency in engaging with EPAs. What timetable of work does the UK Government have to ensure that these alternatives are offered to ACP countries before the current deadline of 2006?

- What is the UK government doing to ensure that EPAs would enhance rather than constrain ACP countries chances of achieving the internationally agreed Millennium Development Goals?

3. What are the implications for the ACP states of including the ‘new issues’ of investment, competition, government procurement and trade facilitation in the EPAs?

ACP States and New Issues

- 3.1 For ACP states there are several reasons to be cautious of the European Commission’s proposals to negotiate the ‘Singapore issues’ in EPAs.
- 3.2 The most important is that ACP countries have long and strongly opposed negotiating in these areas. At the WTO, the ACP and the Africa Union opposed the inclusion of the ‘Singapore Issues’ in the Doha Agenda.^{xxvi} Along with other developing countries, they succeeded in forcing all but one of these issues (trade facilitation) out of the Doha round.
- 3.3 Inclusion of these issues was not agreed in the Cotonou Agreement. Although Cotonou refers to competition policy, trade facilitation and investment it does so in the context of regional economic development and development co-operation rather than as a subject for trade negotiation on a non-discriminatory basis.^{xxvii}
- 3.4 The ACP has also collectively stated that it does not want to negotiate the ‘Singapore Issues’ in EPAs, saying that this area of disagreement with the EU was of a “fundamental nature”.^{xxviii} Despite this long-standing opposition, the EU is currently pushing for all four issues to be included in EPAs, on a non-discriminatory basis.
- 3.5 Secondly, these issues have vitally important economic and social development implications. The EU’s EPA negotiating mandate pushes for liberalisation that benefits European firms disproportionately, at the expense of ACP country governments’ abilities to use government procurement or investment as an element in development policies based on their own national priorities and capacities. Joseph Stiglitz has said that the imposition of the ‘Singapore Issues’ on developing countries would “almost surely impede development”.^{xxix}
- 3.6 Thirdly, were they to be agreed on, there would be substantial costs to implementing policies on these issues, often without any clear developmental benefits. Moreover the costs of implementation are prohibitively expensive for cash-strapped governments. In 8 of the 12 developing countries studied by World Bank economist Michael Finger, for instance, the cost of implementing the six Uruguay Round agreements that required regulatory change was larger than their entire annual development budgets.^{xxx}
- 3.7 In addition, these issues cut to the heart of sovereignty, and including them in a bilateral agreement is an invasion of developing countries’ policy space. Cotonou contains a strong commitment to ‘ownership’ of local policies:
“...cooperation framework and orientations shall be tailored to the individual circumstances of each ACP country, shall promote local ownership of economic and social reforms and the integration of the private sector and civil society actors into the development process.”^{xxxi}
- 3.8 Finally, developing countries often have a limited capacity to analyse and negotiate on these issues. We now turn to particular concerns about each issue in turn.

Investment

- 3.9 Evidence suggests that non-discrimination – the idea that a country cannot or should not systematically discriminate between domestic and foreign investors – is not a successful development strategy. During the early stages of their development, many of the now developed countries did not adhere to this principle. They used a range of instruments, including limits on foreign ownership, insistence on joint ventures between foreign and local firms, local employment and performance requirements on exports to build up their national industries.^{xxxii}

- 3.10 The European Commission argues that an investment agreement would attract much-needed FDI into these countries. However, the literature suggests that FDI does not necessarily follow the conclusion of investment protection treaties or free market policies - nor does it necessarily precede economic growth.^{xxxiii}
- 3.11 Since the mid 1980s, nearly all African countries have taken steps to reform and liberalise their investment regimes through a combination of policy, legal and institutional changes. Consequently, the continent has one of the most liberal (investor-friendly) investment regimes in the world. Currently, there are 35 Investment Promotion Agencies (IPAs) in Africa and African countries have concluded 428 Bilateral Investment Treaties (BITs), mostly with European countries.^{xxxiv} This constitutes about a quarter of all BITs in the world.^{xxxv}
- 3.12 Despite the high number of Bilateral Investment Treaties (BITs) concluded by African countries and the extensive rights given to foreign investors, Africa continues to lag behind the rest of the world in attracting FDI. During the 1990s the share of Africa in total world FDI and in total developing country FDI dropped by 1% and 3% respectively.^{xxxvi} A recent World Bank survey on FDI flows from industrial countries to 31 developing countries found that *“countries that had concluded a BIT were no more likely to receive additional FDI than were countries without such a pact.”*^{xxxvii}
- 3.13 In fact, countries such as China and Malaysia, with comparatively discriminatory investment regimes have been among the largest recipients of FDI during the last decade. This suggests that the level of a country’s per capita income, its rate of growth and its physical and human capital infrastructure are more critical determinants of FDI than free markets or legal and regulatory frameworks.^{xxxviii} There is therefore no compelling reason why investment agreements under EPAs will lead to increased FDI flows to Africa. On the contrary, such agreements, including increased rights for European corporations to extract African resources and repatriate profits abroad, could increase ‘capital flight’ from the continent.^{xxxix}

Competition

- 3.14 It would be very expensive for developing countries to implement new laws on competition. The decision to establish competition regimes should be based on their own cost/benefit analysis, depending on the nature and composition of their private sector, and integration into international markets. Many also lack capacity in this area.^{xl} It is also questionable to what extent African countries would be able to enforce such a policy. As Cambridge economist Ajit Singh observes, countries such as Ghana or Tanzania would find it very difficult to prove – let alone take action against – MNCs that were using predatory pricing.^{xli}

Government Procurement

- 3.15 At least 60 non-OECD countries have procurement outlays of less than \$1bn each, meaning it is questionable, for them, whether it is worth the costs of implementing wide-scale reform.^{xlii} In addition, Joseph Stiglitz argues that a government’s ability to procure from firms of its own choice is a major macroeconomic instrument for developing countries.^{xliii} And again, genuine reciprocity is unlikely – there is little chance that African companies are able to make inroads into EU government procurement.

Trade Facilitation

- 3.16 While speeding the transit of goods through customs and cutting red tape is a good thing in terms of border efficiencies, the reforms required under trade facilitation are likely to be extremely costly, and the implications for poverty reduction are not yet well researched or understood. It would be a huge financial burden for countries with such small trading levels to implement trade facilitation regimes more suitable for France or Switzerland. Developing countries are still struggling to implement the GATT rules on trade facilitation, which are punishingly expensive. By one estimate the 16 areas of customs reforms alone cost \$2.5m each to implement.^{xliiv} A new trade facilitation agreement is now also under negotiation at the WTO, potentially making regional agreements redundant.

- In the 2004 DTI White Paper on Trade and Investment the UK Government stated: “The EU as a whole has made clear that we do not have ‘offensive’ market access interests, and the UK will seek to hold our EU partners to this.”^{xiv} What steps has the UK Government taken to ensure that the European Commission drops its offensive interests in the ‘Singapore issues’ in EPA negotiations?

4. The extent to which rules of origin discourage some LDCs from using the Everything But Arms agreement and membership of an EPA will compel them to open their markets to the EU, what options are available to such states?

LDCs and the Obstacles to the Uptake of Everything But Arms (EBA)

- 4.1 The EU is the single most important market for LDC exports. It had been predicted that the introduction of EBA would result in a positive but modest increase in ACP LDC exports. However, while the EBA tariff concessions are superior to those offered to LDCs under Cotonou, in reality, take-up has been disappointing. Non-tariff barriers have made it hard for LDCs to exploit EBA's preferences.
- 4.2 This is illustrated by figures provided by the DTI,^{xlvi} which show that total imports from LDCs into the EU actually fell by around 2% between 2001 - when EBA was introduced^{xlvii} - and 2003.^{xlviii}
- 4.3 The principal non-tariff barrier is the overly onerous RoO, which is significantly less favourable under the EBA/GSP than under Lomé. Lesotho's experience highlights this dramatically. In 2003, Lesotho exported \$418.99 million of clothing to the USA, \$6.39 million to Canada, and just \$1.18 million to the EU. The primary reason for this startling difference is that the US African Growth and Opportunity Act and the Canadian Market Access Initiative for LDCs have considerably more flexible RoOs than the EU's EBA/GSP.^{xlix}
- 4.4 The specific elements of RoOs that have undermined EBA preferences are the value-addition requirement and the need for dual transformation in textiles/clothing (yarns to fabrics, fabrics to clothing). The absence of a regional cumulation block for African countries under GSP has also been detrimental. Finally, many LDCs have simply found the costs and difficulties of providing the necessary paperwork too high.
- 4.5 However, there are also other factors to blame for the poor effectiveness of the EBA. These include the EU's rapidly changing sanitary and phytosanitary (SPS) standards, and the failure of EBA to address other supply-side constraints.

Economic Partnership Agreements (EPAs) and LDCs

- 4.6 Although the EBA will continue to exist, LDC countries, which, as part of a regional negotiating bloc, sign up to an EPA, may be compelled to open their markets to the EU.
- 4.7 Under EPAs, the EU appears to be pursuing the same level of reciprocal market access from LDCs as from non-LDC ACP countries. Should LDC countries choose to sign up to an EPA, this effectively overrides EBA's unilateralism, as EPAs demand reciprocal market opening.
- 4.8 Although special treatment for LDCs has been a core principle of the multilateral trading system,ⁱ the rules governing bilateral free trade areas (FTAs) do not contain such forms of special and differential treatment for LDCs, who must be treated in the same way as developed and developing countries. As proposed EPAs are free trade areas they are bound by the constraints of WTO rules on FTAs.ⁱⁱ
- 4.9 In short, EPAs erode LDC countries' defensive interests but fail to offer other, commensurate benefits. For this reason, it is not clear why LDCs would want to join an EPA. It is not even clear to UK Government officials.ⁱⁱⁱ Given that LDCs account for 32 of the 46 African countries, and 46 out of 77 ACP countries, negotiating EPAs this casts further doubt on the viability of the EU's approach. For example in the ECOWAS EPA negotiating region in West Africa, 13 out of 16 countries are LDCs, which could leave a regional EU trade agreement with only three countries.

Options Available to LDCs – EPAs or Alternatives

- 4.10 LDCs therefore face two options. They can either sign an EPA and be required to open their markets to EU trade at the same rate as other non LDC countries, but potentially benefit from marginally superior RoOs (although this is not a guaranteed outcome of EPA negotiations).

- 4.11 The other option is for LDCs to decide not to sign up to an EPA, and the reciprocal market opening that this entails, yet maintain market access into the EU through EBA.
- 4.12 However this second option presents two important difficulties. The first is that the current limitations that prevent LDC uptake of EBA, outlined above, would have to be addressed to make this a satisfactory alternative to LDCs.
- 4.13 It is vital that the EBA RoOs are modified to address their current flaws. This should take into account production constraints faced by most LDCs. For instance, LDCs must be allowed to use intermediate and packaging materials without being penalised. Quick and simple derogations where LDCs are seeking to establish new export-oriented industries are also desirable.
- 4.14 A further problem created by EPAs is that were LDCs to opt out of an EPA and remain with the EBA, EPAs would place a substantial obstacle to attempts for these countries to pursue regional integration, independent of the EU's EPA process, with their neighbours.
- 4.15 Any LDC that wished to join a regional trade agreement with their richer non-LDC neighbour who was part of an EPA would face the problem of trade diversion from European exports. In order to avoid becoming part of a de-facto free trade area with the EU, LDCs would have to implement substantial border measures to be able to screen out European exports. This would act as a harmful and costly disincentive to locally owned regional trade integration.

- Why are LDCs being asked to open their markets to the EU without getting any substantial welfare gains in return?
- What is the UK Government doing to address the problems contributing to the lack of uptake of LDCs of Everything But Arms?
- Is the UK Government considering offering an enhanced Everything But Arms as an alternative to those LDCs who do not wish to join an EPA?

5. After the WTO ruling against the EU sugar regime what can be done to help those ACP states heavily dependent on preferential access to the EU market?

- 5.1 The October 2004 WTO panel ruling on EU sugar export subsidies does not directly threaten the EU's preferential import arrangements for sugar from ACP states.
- 5.2 The WTO dispute panel ruled illegal the export of around 2.7m tonnes of surplus EU production - so-called 'C' sugar - which was found to be cross-subsidised. The panel found that the EU is only able to export non-quota 'C' sugar at prices below the average total costs of production because the support prices for quota sugar are sufficient to cover the fixed costs of production, while world prices cover only their marginal costs.
- 5.3 The panel also ruled that the subsidised export of 1.6m tonnes of sugar, equivalent to total imports of sugar from the ACP countries and India, has to be included when calculating the total allowable quantity of EU subsidised sugar exports under WTO rules. The EU has disingenuously claimed that this ruling represents a threat to its preferential sugar import regime. This is not true. The WTO ruling does not affect the EU's right to import sugar on preferential terms; it only affects their right to export on subsidised terms an amount equivalent to the value of its preferential imports, in excess of its WTO reduction commitments. The sugar panel ruling specifically states that the EU should implement reforms in a way that protects the interests of those countries already benefiting from preferential access.
- 5.4 However, any reform of the EU sugar regime, scheduled for 2005 and further precipitated by the WTO ruling,ⁱⁱⁱ that affects the price received by or quota allocated to ACP sugar-exporting countries, will have a significant impact on those countries.
- 5.5 The extent to which ACP countries will be affected by EU sugar reform depends on the extent to which their sugar industries have the potential to survive in a more competitive environment as well as the specifics of the reform proposals. The European Commission's current reform proposals involve cutting the internal support price for sugar by one-third over three years, and reducing domestic production quotas by 2.8 million tonnes over four years.
- 5.6 We are concerned that these proposals fail adequately to take account of the interests of ACP countries, and the wider concerns of developing countries. The steep and rapid price cuts and limited quota reductions that have been proposed will both undermine the value of preferential access for the poorest countries, and fail to end over-production and export dumping. The reform proposals also fail to incorporate either an adequate transition period for ACP countries to adjust to the new EU policy environment, or concrete plans to support ACP countries in making that transition.
- 5.7 EC reform proposals to cut prices by one-third would have a very detrimental impact on some ACP sugar industries. Direct job losses could be as high as 32,000 in Jamaica and 20,000 in Trinidad, while Jamaica would lose €73m a year in foreign exchange earnings, Belize €36m, and Trinidad €30m.^{iv} While these countries are not among the poorest in the world, some of them do have large numbers of very poor people. In Guyana, 35% of the population lives below the national poverty line, and Swaziland is ranked only one place above Bangladesh - an LDC - in the UN's Human Development Index of 2003. Yet, in contrast to clear plans to compensate EU sugar producers for lower prices, the EU has been very vague about how ACP countries will be helped to adjust to the new regime.
- 5.6 Nor does the proposed timetable for reform include an adequate transition period for ACP countries to utilise proposed EU adjustment assistance to improve the efficiency of their sugar industries before the EU policy changes are implemented. The EU should engage in a structured dialogue with the ACP countries now, to agree how to address these concerns and to develop a package of country-specific trade and aid measures. Country-level analyses should be undertaken in association with local sugar associations and national governments, with the aim of identifying

specific adverse effects and effective remedial measures that could be supported by the EU. Possibilities for exploration include

- 5.6.1 Using the Cotonou Agreement Investment Facility risk capital loans at concessional rates to reduce the debt service burden for smallholder sugar producers, since they will face a loss of earnings per tonne on sugar produced, and to finance capital investments in upstream value-added processing of sugar.
- 5.6.2 Extending EU support to ensure the continuation of social service provisions, formerly financed by sugar companies, from the additional revenues resulting from the EU sugar access arrangements for ACP countries.
- 5.6.3 Supporting the establishment of a special unit in the local sugar association or government, as appropriate, dedicated to helping to identify and address the adverse consequences of EU sugar reform.
- 5.6.4 Extending budgetary support to ACP governments, linked to the decline in taxation revenue resulting from revenue losses on exports of sugar after EU reform.
- 5.6.5 Providing compensation in the form of a quota buy-back scheme for any ACP country wishing to transfer its quota back to the EU in return for a guaranteed flow of development financing. This option may be attractive to very high-cost producers where lower EU prices may compromise the viability of their sugar industries.
- 5.8.7 Helping the industry to invest in better environmental practices to ensure that it implements existing environmental legislation and addresses the range of environmental impacts from growing and processing sugar.
- 5.9 Some of the above measures could be supported using existing instruments of the European Development Fund. Others will require the creation of new instruments to overcome the shortcomings of EDF procedures. Crucially, the EU must make a political commitment to ensure the timely disbursement of funds, since delays have seriously undermined previous efforts to extend adjustment assistance to ACP producers of rum and bananas.

ⁱ ActionAid International UK is a unique partnership of people who are fighting for a better world – a world without poverty.

ⁱⁱ Action for Southern Africa (ACTSA) is the successor to the Anti-Apartheid Movement and campaigns in support of peace, democracy and development in Southern Africa.

ⁱⁱⁱ CAFOD is the official development agency of the Catholic Church in England and Wales, working in partnership with over 1,000 programmes worldwide.

^{iv} Christian Aid links directly, through local organisations, with people living in poverty in more than 60 countries worldwide, working where the need is greatest regardless of race or religion. It supports programmes with the aim of strengthening the poor towards self-sufficiency. Christian Aid is the official relief and development agency of 40 British and Irish church denominations

^v One World Action works with partners in Africa, Asia and Central America to create the power and opportunity for the poorest communities to transform their own lives. Founded in 1989, it now works in more than 20 countries. Trade justice is a core area of work, and it has a major project in Southern Africa building civil society capacity to engage in current trade negotiations between African countries and the EU.

^{vi} Oxfam is a development, relief and campaigning organisation dedicated to finding lasting solutions to poverty and suffering around the world. Oxfam GB is a member of Oxfam International, a Confederation of 12 development agencies that work in 120 countries throughout the developing world.

^{vii} Traidcraft is the UK's leading fair trade organisation. It works to break down the barriers which prevent most producers from accessing markets, by working with in-country partners to develop producers' business skills and capacity and to create the environment needed to help poor producers engage in sustainable trade.

^{viii} "Recommendation authorising the Commission to negotiate Economic Partnership Agreements with the ACP countries and regions", 9798/02 ACP 84 WTO 59 + ADD 1

^{ix} Ibid

^x Ibid

^{xi} Christian Aid EPA Research Update, 'The Interests of EU Agri-Business in Better Access to African Markets', October 2004

^{xii} Sustainability Impact Assessments (SIA) of Trade Negotiations of the EU-ACP Economic Partnership Agreements, Mid Term Report Working Draft, 1 October 2003 http://www.sia-gcc.org/acp/download/summarized_mid-term_report_final_doc_light.pdf, accessed Autumn 2003.

^{xiii} "Recommendation authorising the Commission to negotiate Economic Partnership Agreements with the ACP countries and regions", 9798/02 ACP 84 WTO 59 + ADD 1

^{xiv} Question 17, <http://www.publications.parliament.uk/pa/cm200203/cmselect/cmintdev/uc1183-i/uc118302.htm>

^{xv} This and the next four quotations come from the UK Government's response to the International Development Committee's report on the renegotiation of the Lomé Convention <http://www.publications.parliament.uk/pa/cm199798/cmselect/cmintdev/1068/106804.htm>, accessed on October 8, 2004

^{xvi} Cotonou Agreement, Article 37.6

^{xvii} 'Alternative to EPAs non-paper', EWT, DTI, July 2004

^{xviii} Stevens, C and Kennan, J (2000) 'Post-Lomé WTO-Compatible Trading Arrangements', London: Commonwealth Secretariat

^{xix} <http://europa.eu.int/comm/trade/issues/global/gsp/gspguide.htm>, accessed on 8 October, 2004

^{xx} Stevens, C and Kennan, J, op cit

^{xxi} Stevens, C and Kennan, J, op cit

^{xxii} Stevens, C and Kennan, J, op cit

^{xxiii} Directives for the negotiation of a new development partnership agreement (draft document), agreed at the General Affairs Council, 29 June 1998. In addition, paragraph 58 of the Report on the Commission communication on the guidelines for the negotiation of new cooperation agreements with the African, Caribbean and Pacific Countries, by the Committee on Development and Cooperation, 4 March 1998 (COM(97)0537 – C4 – 0581/97) calls on the "...European Member States to ensure that the level of the GSP is improved substantially in the course of the upcoming review".

^{xxiv} In the UK Government's response to the European Commission's green paper on the future of the rules of origin, it stated: "The UK's view is that there is a clear need for urgent and comprehensive review to ensure consistency between the current policy objectives and the effects of PRO [preferential rules of origin]." Commission Green Paper on the Future of Rules of Origin in Preferential Trade Arrangements, United Kingdom Response, DTI and HM Customs and Excise

^{xxv} Stevens, C and Kennan, J (2004) 'Implications of European Commission Proposals for Reform of the Generalised System of Preferences', Brighton: Institute of Development Studies

^{xxvi} ACP Declaration on the Fifth Ministerial Conference of the WTO, Brussels, 1 August 2003. Africa trade ministers' meeting, Grand Baie, Mauritius, 19-20 June 2003

^{xxvii} To give two examples: for investment, the Cotonou Agreement went no further than calling for cooperation "aimed at creating a favourable environment for private investment" (Cotonou Agreement, Article 21.1), and "taking measures and actions which help to create and maintain a predictable and secure investment climate" (Cotonou Agreement, Article 75). The EU Negotiating Mandate goes much further asking for: "a regulatory framework... based on principles of *non-discrimination*, openness, transparency and stability." For government procurement, Cotonou does not make any reference to public procurement. The EU Negotiating Mandate asks for "progressive liberalisation of ... procurement markets on the basis of the principle of *non discrimination*" ("Recommendations authorising the Commission to negotiate Economic Partnership Agreements with the ACP countries and regions". Agreed by the EU General Affairs Council 17/06/02.)

^{xxviii} ACP press release accompanying the Joint Report on the all-ACP – EC phase of EPA negotiations held in October 2003. Joint Report on the all-ACP – EC phase of EPA negotiations, October 2003, Para 25 says: "For the ACP side, the rules aspects of the trade-related areas should not be the subject of EPA negotiations before agreement is reached on how to treat these issues at a multilateral level, particularly in the WTO."

^{xxix} Stiglitz, J (2004) 'An Agenda for the Development Round of Trade Negotiations in the Aftermath of Cancún', London: Commonwealth Secretariat

^{xxx} Finger, M and Schuler, P (1999) 'Implementation of Uruguay Round Commitments: the development challenge', *World Economy* 23, Washington DC: World Bank

^{xxxi} Cotonou Agreement, Article 19.1

^{xxxii} Chang, H-J, (2002) 'Kicking Away the Ladder', London: Anthem Press; Ranis, G. (2003) 'Symposium on Infant Industries: A Comment', *Oxford Development Studies*; Tribe, M. (Jan-Feb 2003), 'Manufacturing, Development and De-industrialisation: Rethinking the Infant Industry Concept', the Courier, ACP-EU,

^{xxxiii} African Development Bank, 'International Investment in Africa: Trends and Opportunities', 2001; Chang, H.J, 'Foreign Investment Regulation in Historical Perspective – Lessons for the Proposed WTO Agreement on Investment', University of Cambridge, Faculty of Economics and Politics Working Paper, March 2003; Chang, H.J, 'Kicking Away the Ladder', op cit; Singh, A, 'Foreign Direct Investment and International Agreements: A South Perspective', The South Centre, 2001; UNCTAD (2000) 'A Positive Agenda for Developing Countries: Issues for Future Trade Negotiations'; World Bank (2003) 'Global Economic Prospects and the Developing Countries 2003: Investing to Unlock Global Opportunities', Washington DC: World Bank

^{xxxiv} African Development Bank, 'International Investment in Africa: Trends and Opportunities', 2001

^{xxxv} At least 42 African countries have both joined the Convention for the Settlement of Investment Disputes Between States and Other States (administered by the International Centre for the Settlement of Investment Disputes - ICSID) and the Multilateral Investment Guarantee Agency (MIGA – administered by the World Bank), which offer non-commercial risk coverage for foreign investment.

^{xxxvi} African Development Bank, 'International Investment in Africa: Trends and Opportunities', 2001.

^{xxxvii} World Bank, 'Global Economic Prospects and the Developing Countries 2003: Investing to Unlock Global Opportunities', 2003

^{xxxviii} Bhinda, et al (1999) 'Private Capital Flows to Africa: Perception and Reality', The Hague: FONDAD

^{xxxix} Africa already has a higher proportion of wealth held overseas by residents than any other region of the world: 39% as opposed to East Asia's 6% before the financial crisis of 1997. Capital flight amounts to a significant economic loss for Africa. It constitutes a diversion of domestic savings from investment, a loss of fiscal revenue (through loss of taxation), and sustains the adverse psychological perception that Africa is not conducive to FDI

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- ^{xi} Stiglitz, J (2004) 'An Agenda for the Development Round of Trade Negotiations in the Aftermath of Cancún', London: Commonwealth Secretariat
- ^{xii} Singh, A (1999) 'Competition Policy and Development and Developing Countries', South Centre Working Paper no 7, November 1999, Geneva: South Centre
- ^{xiii} Evenett, S (2002) 'Is there a case for new multilateral rules on transparency in government procurement?' Bern: World Trade Institute
- ^{xiii} Stiglitz, J (2004) 'An Agenda for the Development Round of Trade Negotiations in the Aftermath of Cancún', London: Commonwealth Secretariat
- ^{xliv} Finger, M and Schuler, P (1999) 'Implementation of Uruguay Round Commitments: the development challenge', *World Economy* 23, Washington DC: World Bank
- ^{xlv} DTI (2004) 'Trade and Investment White Paper - Making Globalisation a Force for Good', London: DTI
- ^{xlvi} Response to private letter to DTI requesting data on EU imports from LDCs on a yearly basis between 2000 and 2003
- ^{xlvii} The EBA came into effect on 5 March, 2001
- ^{xlviii} This does not include imports of rice, bananas and sugar into the EU as the tariffs on these products are being phased out over a longer time period under EBA (2007 for bananas, and 2009 for rice and sugar).
- ^{xlix} World Trade Organization, "Background Statistical Information with Respect to Trade in Textiles and Clothing", 20 September 2004. G/L/692.
- ⁱ GATT, Part IV (1947 and 1994)
- ⁱⁱ Understanding of interpretation of Article XXIV of GATT
- ⁱⁱⁱ At a recent NGO consultation a senior UK civil servant asked another senior UK civil servant "what's in EPAs for LDCs?" to which the other senior civil servant replied "to be honest not very much that I can think of".
- ⁱⁱⁱⁱ The EU is likely to appeal the ruling, which could delay the final outcome until early in 2005. Assuming that the ruling is not overturned on appeal, the EU will have to change its sugar policies to reflect the findings of the WTO panel, or face potential trade sanctions by Brazil, Thailand, and Australia. Current EC reform proposals singularly fail to address the central finding against 'C' sugar exports, and this adds considerably to existing pressure for EU sugar reform.
- ^{liv} LMC International and Oxford Policy Management (2003)