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THE COTONOU AGREEMENT: WILL IT SUCCESSFULLY IMPROVE THE SMALL ISLAND ECONOMIES OF THE CARIBBEAN?

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Abstract: On June 23, 2000, after eighteen months of negotiations, the European Union (EU) and its Member States signed a new partnership agreement with the African, Caribbean, and Pacific (ACP) states in Cotonou, Benin, called the Cotonou Agreement. This twenty-year partnership agreement with seventy-seven ACP states replaced the Lomé Convention, which had provided the structure for trade and cooperation between the ACP states and the EU since 1975. The Cotonou Agreement focuses on poverty reduction as its principal objective, which will be achieved through political dialogue, develop-ment aid, and closer economic and trade cooperation. This Note discusses the structure of the Cotonou Agreement and analyzes the various effects the Agreement will have on the ACP countries, par-ticularly, the countries of the Caribbean. It concludes that, despite its objectives, the Agreement will likely contribute to a decline in the economies of the ACP nations.

INTRODUCTION

Cooperation between the European Union (EU) and the African, Caribbean, and Pacific (ACP) countries began primarily because Britain, France, and Italy felt a responsibility to integrate their colonial enclaves into the world economy.[1] Thus, they initiated a system of trade preferences to their former colonies under the Lomé Conventions in 1975.[2] For the Caribbean countries, the most important set of trade preferences were those related to the export of agricultural products such as bananas and sugar.[3]

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[1] *See* Jessica L. Spiegel, Note, *Will the Great Banana War Ever End: Will the Tariff Only System Be the Solution?*, 24 B.C. INT'L & COMP. L. REV. 219, 221 (2001).

[2] *See id.*; EUR. CENTRE FOR DEV. POL'Y MGMT. (ECDPM), COTONOU INFOKIT: HISTORY AND EVOLUTION OF ACP-EU COOPERATION (3), *at* http://www.oneworld.org/ecdpm/en/cotonou/03_gb.htm (Jan. 2001) [hereinafter HISTORY AND EVOLUTION].

[3] *See* HISTORY AND EVOLUTION, *supra* note 2.

The Lomé Convention was replaced, however, by the Cotonou Agreement for several reasons.[4] Lomé was complicated in structure and difficult to implement.[5] More importantly, the United States claimed that preferential trade benefits to the ACP countries violated the Most Favored Nation (MFN) clause under the General Agreement on Tariffs and Trade (GATT) by discriminating against imports from Latin American banana producers.[6] The World Trade Organization (WTO), which replaced GATT in 1994 and adopted most of its rules, authorized sanctions against the EU to force it to comply with WTO rules.[7] These sanctions were in effect until the EU modified its preferential trade system with the Cotonou Agreement.[8]

The Cotonou Agreement will gradually replace the system of non-reciprocal trade preferences with a series of new economic partnerships based on a progressive and reciprocal removal of trade barriers.[9] Since almost half of the population in ACP countries lives in conditions of absolute poverty, the Cotonou Agreement focuses on poverty reduction as its principal objective.[10] With 15.2 billion euros from the European Development Fund (EDF) and 10 billion euros from outstanding funds from previous EDFs, the EU will support the ACP governments' efforts to create a balanced macroeconomic context, expand the private sector, and improve both the quality and coverage of social services.[11]

Part I of this Note explains the evolution of the ACP-EU relationship and shows how the Cotonou Agreement builds on different generations of cooperation between the ACP countries and the EU. Part II of this Note explains the structure of the Cotonou Agreement and shows how the Agreement is different from the Lomé Convention by explaining how the ACP-EU cooperation has been updated and

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[4] *See generally* Spiegel, *supra* note 1, at 229.

[5] *See* HISTORY AND EVOLUTION, *supra* note 2.

[6] *See* Spiegel, *supra* note 1, at 224.

[7] *See id.* at 228.

[8] *See id.*

[9] EUR. CENTRE FOR DEV. POL'Y MGMT. (ECDPM), COTONOU INFOKIT: REGIONAL ECONOMIC PARTNERSHIP AGREEMENTS (14), *at* http://www.oneworld.org/ecdpm/en/cotonou/14_gb.htm (Jan. 2001) [hereinafter REPAs].

[10] Press Release, European Union Institutions, The European Community and Its Member States Sign a New Partnership Agreement with the African, Caribbean and Pacific states in Cotonou, Benin, *at* http://europa.eu.int/geninfo/whatwasnew/062000.htm [hereinafter EU Institutions].

[11] EUR. CENTRE FOR DEV. POL'Y MGMT. (ECDPM), COTONOU INFOKIT: THE COTONOU AGREEMENT AT A GLANCE (2), *at* http://www.oneworld.org/ecdpm/en/cotonou/02_gb.htm (Jan. 2001) [hereinafter COTONOU AT A GLANCE].

modified to better cope with the challenges of globalization, poverty reduction, and sustainable development. In particular, Part II focuses on the new system of economic partnerships created by the Cotonou Agreement.

Part III of this Note discusses the problems faced by the Caribbean islands with implementing the Cotonou Agreement. For example, the highly profitable banana industry of the Caribbean will suffer considerably from the removal of trade preferences by the Cotonou Agreement. This Part also discusses how the Cotonou Agreement should better address the problems faced by the Caribbean countries because of the removal of trade preferences. Finally, Part III argues that the Cotonou Agreement will not be effective in improving the economies of the Caribbean islands because 1) the transition period between the removal of the trade preferences to free trade is too short, and 2) the new free trade agreements, called Economic Partnership Agreements, which require the ACP countries to negotiate in regional groupings, will cause conflict between countries within the same region and dilute the negotiating power of smaller countries in a region.

I. Background

A. *The History of the ACP-EU Cooperation*

ACP-EU cooperation dates back to the Treaty of Rome, which established the European Economic Community (EEC) in 1957.[12] In this treaty, the signatories expressed solidarity with the former overseas territories and committed themselves to contribute to their prosperity.[13] The first association of the ACP and EEC countries occurred through the Yaoundé (1963–69) and Yaoundé II (1969–75) agreements.[14] Most of the resources from these two agreements went to French-speaking Africa to build infrastructure in the wake of decolonization.[15] The United Kingdom's entrance into the EEC in 1973 led to the signing of the more comprehensive Lomé I Agreement between forty-six ACP countries and the nine EEC member states existing at that time (1975–80).[16]

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[12] History and Evolution, *supra* note 2.

[13] *Id.*

[14] *Id.*

[15] *Id.*

[16] *Id.* In 1975, the nine member states of the European Community included Germany, Belgium, Denmark, France, Ireland, Italy, Luxembourg, the Netherlands, and the United Kingdom. History and Evolution, *supra* note 2.

The Lomé I Agreement was a significant achievement for the Caribbean because the United Kingdom, recognizing the importance of the banana and sugar industry to that region, was keen to institute special trading preferences for those products under the EEC regime.[17] Moreover, the Caribbean and Pacific contingent of the ACP wanted to take advantage of the considerable bargaining power of Africa in the international arena with the ratification of Lomé I.[18] As a result, the Lomé I Agreement and its subsequent revisions has played an important role in supporting the economies of the Caribbean over the last twenty years.[19]

1. Features of the Lomé Convention

The Lomé Convention has long been considered a highly innovative model of international cooperation and has served as a platform for other forms of international cooperation.[20] The key original features of Lomé included 1) aid and trade, 2) commodities, 3) protocols, 4) equal partnership, 5) mutual obligations, and 6) joint administration.[21] Through the aid and trade feature, the Lomé cooperation provided predictable aid flows over a five-year period as well as nonreciprocal trade benefits to the ACP countries.[22] The commodities feature included the Stabilization of Export Earnings from Agricultural Commodity System (STABEX).[23] STABEX was designed to help stabilize export receipts on a wide number of agricultural products, such as cocoa, coffee, and tea.[24] It therefore compensated ACP countries for the shortfall in export earnings due to fluctuation in the prices or supply of these commodities.[25]

In the protocols feature, the EEC agreed to separate trading protocols on sugar, beef, veal, bananas, and rum.[26] The banana protocol, for instance, gave duty-free access to the EEC market for a specific

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[17] *See generally* EUROPEAN COMMISSION, DEVELOPMENT: THE COTONOU AGREEMENT: THE LOMÉ CONVENTION, *at* http://europa.eu.int/comm/development/body/cotonou/lome_history_en.htm (last visited Jan. 26, 2004).

[18] HISTORY AND EVOLUTION, *supra* note 2.

[19] *See generally* EUROPEAN COMMISSION DELEGATION TO GUYANA & SURINAME, LOMÉ CONVENTION: FIVE GENERATIONS OF ACP-EC AGREEMENTS, *at* http://www.delguy.cec.eu.int.

[20] HISTORY AND EVOLUTION, *supra* note 2.

[21] *See id.*

[22] *Id.*

[23] THE FUTURE OF EU-ACP RELATIONS, at xi (Susanna Wolf ed., 1999).

[24] HISTORY AND EVOLUTION, *supra* note 2.

[25] *See generally* THE FUTURE OF EU-ACP RELATIONS, *supra* note 23, at 21.

[26] HISTORY AND EVOLUTION, *supra* note 2.

amount of bananas each year.[27] Under the sugar protocol, the EEC bought a fixed quantity of sugar each year from ACP producers at guaranteed prices higher than world prices.[28] This preference especially helped the economic development of certain sugar rich ACP states such as Guyana and Barbados.[29]

The equal partnership feature gave the ACP countries the responsibility for their own development by entrusting them with a lead role in managing Lomé resources.[30] The mutual obligations feature incorporated the first human rights clause into an international trade cooperation agreement.[31] The clause expressed the signatories' commitment to respect and promote the enjoyment of fundamental human rights.[32] Lastly, the Lomé Convention called for joint administration, which required that there be permanent dialogue about and joint administration of the future content of the Convention.[33]

2. The Need for Change: Pressures on Lomé

The Lomé trade regime was eventually undermined due to its lack of effectiveness and political acceptability.[34] Despite the preferential access to EU markets, ACP export performance had deteriorated over the last two decades, and its diversification away from traditional products remained very limited primarily because of competition from Latin American banana exporters.[35] In addition, the Lomé trade provisions were seen as incompatible with the new international trade rules of the WTO.[36] The battles around the banana regime are a case in point.[37]

a. *Lomé and the Banana Trade Regime*

The EU's preferential trade benefits to the ACP countries limited the number of Latin American bananas that EU nations could import.[38] Multinational corporations in the United States were the pri-

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[27] *Id.*

[28] *Id.*

[29] *Id.*

[30] *Id.*

[31] HISTORY AND EVOLUTION, *supra* note 2.

[32] *See* Lomé Convention IV, Dec. 15, 1989, art. 5, 29 I.L.M. 783 (1990), http://www.oneworld.org/acpsec/gb/lome/lome4_e.htm.

[33] HISTORY AND EVOLUTION, *supra* note 2.

[34] *See id.*

[35] *Id.*

[36] *Id.*

[37] *Id.*

[38] Spiegel, *supra* note 1, at 219.

mary producers of Latin American bananas and, therefore, were especially opposed to this arrangement.[39] As a result, Latin American banana producing countries, with U.S. support, requested that a WTO panel examine the legality of the trade preferences.[40]

Principally, the Latin American countries claimed that the EU's import regime was inconsistent with the MFN clause in Article 1, paragraph 1 of the GATT.[41] According to this provision, each GATT member cannot selectively discriminate against any other member with respect to its trade laws.[42] Therefore, since both the Latin American countries and the ACP countries are contracting parties under GATT, the MFN clause requires that the EU give equal access to its markets to the ACP states and the Latin American countries.[43] Subsequently, on April 19, 1999, the WTO decided that various elements of the EU's banana trade regime were indeed inconsistent with Article 1 of GATT and it informed the United States that it was entitled to impose retaliatory tariffs on various European products until the EU modified its trade preferences for ACP nations.[44]

b. *Historical, Political, and Structural Pressures on Lomé*

Another pressure the Lomé Convention faced was the dwindling common interest between the EU and the ACP countries.[45] When the first Lomé Convention was signed, there were strong historical ties between Europe and the ACP, but eventually the ACP countries began to slide down the EU's priority list and these strong historical ties began to deteriorate.[46]

Political pressures also played a role in fraying this relationship.[47] In the first three Lomé Conventions, Europe adopted a neutral stance in the political affairs of the ACP states.[48] The democratization wave that swept across the developing world at the end of the Cold War, however, led to a growing politicization of ACP-EU cooperation.[49] The

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[39] *See id.*

[40] *Id.* at 223. The new banana regime adversely affects Columbia, Costa Rica, Guatemala, Nicaragua, Venezuela, Honduras, Panama, Mexico, and El Salvador. *Id.*

[41] *Id.* at 224.

[42] *Id.*

[43] Spiegel, *supra* note 1, at 224.

[44] *Id.* at 228.

[45] HISTORY AND EVOLUTION, *supra* note 2.

[46] *Id.*

[47] *See id.*

[48] *Id.*

[49] *Id.*

EU was confronted with the need to show European taxpayers how their money was being spent, especially in light of the serious economic and social problems faced by European nations at this time.[50] Thus, the EU began to initiate partial or complete suspension of preferential treatment where ACP countries had poor records for the respect of human rights and democratic ideals.[51] Many ACP countries felt that this process eroded the principle of "equal partnership" and replaced it with conditions unrelated to the region's socio-economic development.[52]

Finally, Lomé was also undermined because it was too complex.[53] This complexity resulted in long delays, bureaucratization, and reduced economic efficiency.[54] Furthermore, these complexities hindered the developmental impact of Lomé.[55] For example, the Lomé IV Convention allocated approximately $2 billion to the ACP countries, but only $150 million actually found its way into the hands of the farmers living in these countries.[56]

II. Discussion

A. *The Cotonou Agreement: A General Overview*

1. Structure of the Agreement

The Cotonou Agreement is structured in six parts, preceded by a Preamble and followed by six Annexes, three Protocols, and a Final Act.[57] According to Article 93 of the Agreement, it will enter into force two months after the deposit of the following: 1) the ratifications of all EU Member States, 2) the ratifications of at least two-thirds of the ACP states, and 3) the instrument of approval by the Community.[58] The Agreement, effective on March 1, 2000, will cover a twenty-year period in accordance with Article 95, with financial provi-

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[50] History and Evolution, *supra* note 2.

[51] *Id.*

[52] *Id.*

[53] *Id.*

[54] *Id.*

[55] History and Evolution, *supra* note 2.

[56] Spiegel, *supra* note 1, at 229.

[57] *See* Cotonou Agreement, June 23, 2000, ACP-Eur., http://www.acpsec.org/gb/cotonou/accord1.htm.

[58] *Id.* art. 93.

sions of five years.[59] Furthermore, Article 95 allows for the possibility of reviewing the other provisions of the Agreement every five years.[60]

2. Objectives, Principles, and Elements of the Agreement

The objectives of the Cotonou Agreement, stated in Article 1, are to reduce and eventually eradicate poverty, promote sustainable development, and gradually integrate the ACP countries into the world economy.[61] The fundamental principles, stated in Article 2, include: 1) the equality of the partners, 2) definition by the ACP countries of their development strategies, and 3) participation of non-state actors.[62] The Cotonou Agreement takes some of the Lomé Convention's essential elements, including the mutual obligations feature of Lomé, which called for the respect for human rights and democratic principles.[63] A violation of these elements under Cotonou by the ACP states could trigger a consultation mechanism possibly leading to a suspension of the cooperation.[64]

B. *Lomé vs. Cotonou: A Comparison*

1. The Trade Cooperation (Articles 36–54)

The first and probably most radical change in this new Cotonou Agreement is the eventual phasing-out of the ACP's nonreciprocal trade preferences.[65] The trade preferences system will eventually be replaced by a set of Economic Partnership Agreements (EPAs) that will tie nondiscriminatory trade policies with developmental aid.[66] As a result, the EPAs are in essence Free Trade Agreements (FTAs), with regional groupings of ACP countries where each party undertakes to abolish restrictions on imports from the other party.[67] One key difference between EPAs and FTAs, however, is that the ACPs will receive funding from the EDF and the European Investment Bank (EIB) to

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[59] *Id.* art. 95.

[60] *See id.*

[61] *Id.* art. 1.

[62] Cotonou Agreement, *supra* note 57, art. 2.

[63] *Id.* art. 9(2).

[64] *Id.* art. 9(3).

[65] *See* EUR. CENTRE FOR DEV. POL'Y MGMT. (ECDPM), COTONOU INFOKIT: INNOVATIONS IN THE COTONOU AGREEMENT (4), *at* http://www.oneworld.org/ecdpm/en/cotonou/04_gb.htm (Jan. 2001) [hereinafter INNOVATIONS].

[66] *Id.*

[67] REPAs, *supra* note 9.

facilitate their implementation of the EPAs.[68] Negotiations for the EPAs started in September 2002, and these new agreements should be completed by 2008 with periodical reviews in 2004 and 2006.[69] Moreover, there is a transitional period for implementation of the EPAs, which can last up to twelve years.[70]

The primary objectives of the EPAs are: 1) to increase access for European companies to the ACP markets, and 2) to strengthen integration between the ACP and the EU.[71] According to the EU, freer trade between the EU and the ACP will strengthen ACP producers because they will experience increased competition with EU goods in ACP markets due to the reciprocity element of the EPAs.[72]

The EU also requires the ACP countries to negotiate these EPA's collectively in regional groupings.[73] To negotiate an EPA as a region will involve prior negotiation between Member States to decide on a common set of policies.[74] Also, the countries will have to agree on which country within the region will be given the power to negotiate with the EU.[75] If the countries are unable to negotiate as a region, they will be deprived of potential EPA benefits such as aid.[76]

2. Aid Entitlements (Article 3, Annex IV)

The second difference between Lomé and Cotonou relates to the role of performance in aid management.[77] Under Lomé, aid was granted to the ACP states regardless of their political and economic performance.[78] However, as of 2008, the Cotonou Agreement marks the end of the "aid entitlements," that is, fixed allocations regardless of a country's political and economic performance.[79] The EU will now give aid on the basis of two criteria: 1) level of development, and 2) re-

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[68] *Id.*

[69] STEPHEN J.H. DEARDEN & CLARA MIRA SALAMA, THE COTONOU AGREEMENT, (Manchester Metropolitan Univ., Dep't of Econ., Eur. Dev. Pol'y Study Group, Discussion Paper No. 20, 2001), *at* http://www.edpsg.org/Documents/Dp20.doc.

[70] *Id.*

[71] REPAs, *supra* note 9.

[72] *See id.*

[73] *Id.*

[74] EUR. CENTRE FOR DEV. POL'Y MGMT. (ECDPM), COTONOU INFOKIT: ACP-EU TRADE NEGOTIATIONS AFTER COTONOU (15), *at* http://www.oneworld.org/ecdpm/en/cotonou/15_gb.htm (Jan. 2001) [hereinafter ACP-EU TRADE NEGOTIATIONS].

[75] *Id.*

[76] *See id.*

[77] INNOVATIONS, *supra* note 65.

[78] *See id.*

[79] *Id.*

gional integration projects.[80] This implies that the EU can use the resources for the ACP in a more selective and flexible way.[81] In practice, it means that more money can be channeled to "good performers" and that the share for "bad performers" can be reduced.[82] The programming of aid resources, therefore, is a strategic management tool, aimed at ensuring that EU support is not wasted on a given country or region.[83]

3. Stronger Political Dialogue (Article 8)

Article 8 of the Cotonou Agreement introduces the third major contrast with the Lomé Convention: a stronger political dialogue for the ACP-EU partnership.[84] Through this dialogue, the parties will exchange information and discuss the objectives of the Agreement and any other matter of mutual or general concern.[85] Discussion will cover a broad range of political issues that fall outside traditional development cooperation.[86] These issues include peace and security, the arms trade, migration, drugs and organized crimes, and religious or racial discrimination.[87]

4. Extending the Partnership to New Actors (Article 4)

The fourth major new feature relates to the participation of non-state actors and local authorities.[88] Unlike Lomé, which focused on the participation of central governments, this new feature encourages local and regional authorities, civil society, and the private sector to participate as well.[89] Among the new actors, the most attention is given to the private sector.[90] Its role "as the engine for development" is explicitly recognized.[91] In fact, the private sector will have access to funding via the EIB without requiring a state guarantee.[92] Also, a new investment facility, created by Cotonou, aims to stimulate regional

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[80] REPAs, *supra* note 9.
[81] *See* INNOVATIONS, *supra* note 65.
[82] *Id.*
[83] *See id.*
[84] *Id.*
[85] *Id.*
[86] INNOVATIONS, *supra* note 65.
[87] *Id.*
[88] *Id.*
[89] *Id.*
[90] *Id.*
[91] INNOVATIONS, *supra* note 65.
[92] *Id.*

and international investment while strengthening the capacity of local financial institutions.[93]

III. Analysis

A. *Problems with the Cotonou Agreement*

1. The Effects of the Agreement on the Small Island Economies of the Caribbean

a. *Lomé and Bananas*

The Lomé Convention conceded certain trade preferences to the fifteen ACP members located in the Caribbean, many of which are small island nations that rely on banana production for their economic growth.[94] Lomé essentially guaranteed these countries a certain percentage of the EU banana market.[95]

Certain ACP members especially benefited from this feature of Lomé. The Windward Islands (Dominica, St. Lucia, Grenada, and St. Vincent), former colonies of the United Kingdom, represent four small Caribbean nations that survive, in large part, by exporting bananas to the EU under the auspices of the Lomé Convention.[96] In fact, some have argued that bananas are the "only legitimate year-round crop that can viably be cultivated in the Caribbean to provide a regular weekly income to small farmers" because over one-third of the population in the Windward Islands depends on the banana industry for support.[97] For example, thirty-three percent of Dominica's labor force and seventy percent of St. Vincent's population are directly or indirectly involved in the production and marketing of bananas.[98]

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[93] *See id.*

[94] Hale Sheppard, Note, *The Lomé Convention in the Next Millennium: Modification of the Trade/Aid Package for Regional Integration*, 7 KAN. J.L. & PUB. POL'Y 84, 85 (1998). The Caribbean Islands that are part of the Cotonou Agreement include Antigua & Barbuda, Bahamas, Barbados, Belize, Cuba, Dominica, Dominican Republic, Grenada, Guyana, Jamaica, St. Vincent & the Grenadines, St. Kitts-Nevis, Suriname, Trinidad & Tobago, and Haiti. EUR. CENTRE FOR DEV. POL'Y MGMT. (ECDPM), COTONOU INFOKIT: SOME BASIC FACTS (5), *at* http://www.oneworld.org/ecdpm/en/cotonou/05_gb.htm (Jan. 2001) [hereinafter SOME BASIC FACTS].

[95] *See* Sheppard, *supra* note 94, at 86.

[96] *Id.* at 85.

[97] *Id.*; CLAIRE GODFREY, OXFAM GB, A FUTURE FOR CARIBBEAN BANANAS: THE IMPORTANCE OF EUROPE'S BANANA MARKET TO THE CARIBBEAN, *at* http://www.oxfam.org.uk/what_we_do/issues/trade/wto_bananas.htm (Mar. 1998).

[98] *Id.*

b. *Cotonou and Bananas*

Specific negative ramifications for the region in the event of the eradication of the Lomé banana trade preferences could include: 1) unemployment, generating social and political unrest, 2) a rise in drug trade, 3) increased illicit emigration to the United States, and 4) an inability to service foreign debts.[99] For example, the World Bank claims that any adverse change in the trading environment would have a "major impact" on Dominica, an island in which thirty percent of the total population already lives below the poverty line.[100] Similarly, in reference to the island of St. Vincent, the World Bank has predicted that a change in the banana industry would cause unemployment, reduced foreign investment, and other major "devastating effects."[101]

Removing the trade preferences may condemn thousands of people to poverty and hardship because many farmers rely on the weekly income from bananas to pay their household costs.[102] This change will therefore contradict the goals of the Cotonou Agreement, since it seeks to reduce and eventually eradicate poverty.[103] Moreover, higher levels of unemployment will increase the crime rates in these Caribbean countries because people will probably resort to crime to support themselves.[104] As a result, the significant achievements of these islands' governments in pursuing democracy will be severely threatened as they will struggle to cope with rising economic deprivation and social unrest.[105]

There is also a very real danger that the banana farmers will resort to the production of illegal drugs as a viable economic alternative.[106] For example, a few dozen marijuana plants on a small plot of land will be sold for up to thirty times more per kilo than a farmer's banana crop.[107] Furthermore, it is claimed that St. Vincent can now count marijuana as its principal export crop, and there is an increase in the production of the crop in Grenada and Dominica.[108]

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[99] Sheppard, *supra* note 94, at 94.
[100] *Id.* at 85
[101] *Id.*
[102] GODFREY, *supra* note 97.
[103] Cotonou Agreement, *supra* note 57, art. 1.
[104] *See generally* GODFREY, *supra* note 97.
[105] *Id.*
[106] *Id.*
[107] *Id.*
[108] *Id.*

The Cotonou Agreement will also severely affect the Caribbean's heavy reliance on foreign trade in paying public debt.[109] When the banana preferences are removed, these small island economies will have great difficulty in repaying public debts because of the lack of foreign exchange earnings from the banana trade.[110] This inability to repay public debts will also cause foreign investors to hesitate before investing in these debt-ridden economies.[111]

2 The Effects of the EPAs on the Caribbean

The ACP states see the EPAs as problematic.[112] For instance, whereas countries not wishing to sign an EPA will lose the benefit of their present preferences, they would presumably benefit from the EU's Generalized System of Preferences (GSP).[113] However, there is very limited benefit to being a part of the GSP for the Caribbean nations because the GSP covers fewer products than Lomé and excludes agricultural products.[114]

Moreover, the GSP tariff and nontariff reductions and exemptions are less generous than those provided by Lomé; likewise, the preferences are not negotiated, but are unilaterally offered by the EU, implying that they can be unilaterally revoked.[115] Thus, if a Caribbean country decides not to sign an EPA, it will not only lose its preferences for bananas, but it will also risk losing whatever few preferences that are granted by the GSP.[116] As a result, it seems that countries have no real choice but to join the EPAs or suffer the consequences.[117]

The ACP states also see the EPAs as a complication to regional integration because countries are being asked to negotiate EPAs together as one region; however, some countries that belong to this regional grouping are being treated differently.[118] For instance, according to Article 37(9) of the Agreement, the thirty-nine Least Developed Countries (LDCs) of the ACP, most of which are not Car-

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[109] Hon. Ignatius Jean, *Ensuring a Fair and Equitable Trading System: The Vulnerability of Small Countries*, 5–6, (22nd Conference of Members from Small Countries, 2001), *at* http://www.cpahq.org.

[110] *See id.*

[111] *See id.*

[112] *See* REPAs, *supra* note 9.

[113] *See* ACP-EU TRADE NEGOTIATIONS, *supra* note 74.

[114] REPAs, *supra* note 9.

[115] *Id.*

[116] *See generally id.*

[117] *See generally id.*

[118] *Id.*

ibbean countries, are not obliged to sign an EPA in order to retain their present level of access to the EU.[119] In view of the special fragility of their economies, these countries can choose to keep the existing nonreciprocal trade preferences and are assured that they will continue to have free access to the EU market for essentially all products until 2005 at the latest.[120]

The non-LDC APC states see this policy as the EU playing countries within the same region against each other, hence, destroying the harmonious intra-ACP collaboration that presently exists.[121] Moreover, smaller Caribbean countries argue that this framework will lessen their bargaining power in comparison to the bigger countries within their region because bigger countries will use their power to pursue their own interests, causing the opinions of the island nations to be either lost or forgotten.[122]

Finally, several preconditions exist to enable the negotiation and the establishment of EPAs.[123] For example, to sign an EPA with the EU, a regional grouping must be an effective free trade zone or a customs union; however, very few ACP regions have reached this stage.[124] Furthermore, the trade negotiation abilities of ACP countries are very weak and those of the regions as a whole are almost nonexistent.[125] Also, the EU's negotiation capacity is insufficient to conduct several negotiations simultaneously with the ACP, especially considering its other bilateral and multilateral negotiations.[126]

B. *Potential Cotonou Reforms*

The Cotonou Agreement should be reformed in two ways. First, it must give the ACP states more time to adjust to the changes from Lomé, especially with respect to the removal of trade preferences.[127] Also, since the Caribbean countries will eventually have to compete with the bananas produced by U.S. owned multinational corporations in Latin America, the Cotonou Agreement should focus on ways in

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[119] Cotonou Agreement, *supra* note 57, art. 37(9). The thirty-nine least developed ACP countries are most of the African countries, a few Pacific countries, and one Caribbean country, Haiti. *See* SOME BASIC FACTS, *supra* note 94.

[120] Dearden & Salama, *supra* note 69.

[121] *See* REPAs, *supra* note 9.

[122] Sheppard, *supra* note 94, at 97.

[123] REPAs, *supra* note 9.

[124] *Id.*

[125] *Id.*

[126] *Id.*

[127] *See generally* Cotonou Agreement, *supra* note 57.

which the banana producers in the Caribbean could improve the competitiveness of their banana market, instead of focusing on ways in which the Caribbean could diversify its exports.[128]

Though it can be argued that the ACP should have realized that the removal of the trade preferences was inevitable, it was also very sudden.[129] Even though the Cotonou Agreement will not remove the trade preferences for five more years, and although there is a possible twelve-year transitional period, it seems impossible that the countries that have relied on these preferences for the past three decades can simply diversify into other industries besides bananas.[130] The other alternatives, which could provide comparable employment or income, are nonexistent for various reasons.[131] First, any alternative crop would confront the disadvantages of terrain, climate, and size of plantations.[132] Second, in order to be profitable, any alternative product would require access to major markets, the majority of which are already "entrenched in competition."[133] Third, other products will incur higher per unit shipping costs because they will not be able to take advantage of the large shipping discounts that the banana industry enjoys with its high export volumes.[134]

Competition with Latin American banana corporations, such as Dole, Chiquita, and Del Monte, also appears inevitable to the banana producers in the Caribbean; therefore, their hope is to improve the quality and productivity of their banana production.[135] Few banana producers, however, have the resources to do so.[136] Currently, the administration of EU funding initiatives to these producers is cumbersome and inflexible, which means that funds are often not deployed and do not reach intended beneficiaries.[137] Although the Cotonou Agreement includes reform mechanisms that hope to dramatically improve the efficiency of EU aid, appropriate knowledge and capacity may not be readily available in these relatively new policy areas.[138]

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[128] *See generally* GODFREY, *supra* note 97; Sheppard, *supra* note 94, at 98.
[129] *See generally* Cotonou Agreement, *supra* note 57.
[130] *See generally id.*
[131] Sheppard, *supra* note 94, at 95.
[132] *Id.*
[133] *Id.*
[134] *Id.*
[135] *See* GODFREY, *supra* note 97; Sheppard, *supra* note 94, at 98.
[136] *See* GODFREY, *supra* note 97.
[137] *Id.*
[138] *See* INNOVATIONS, *supra* note 65.

CONCLUSION

The Caribbean islands have complied with every aspect of this long-standing regime of trade preferences set up by Lomé. They are staunch allies of the United States and politically stable, with literacy rates in the ninetieth percentile, and little or no human rights abuses.[139] Yet, the trade preferences were called into question and deemed as illegal because U.S. companies in Latin America objected to them. By complying with WTO rules, the EU will have to open its market to U.S. owned companies such as Chiquita, Dole, and Del Monte, and it is hard to imagine that the Caribbean countries will be able to compete with these multinational corporations that already dominate the world market.[140]

Admittedly, in an age of global market liberalization, economic dependency on one commodity is a serious problem for small island economies. Thus, it is understandable that the EU is pushing the Caribbean Islands towards diversification of their markets. However, the transition period between the Lomé system to the new system under Cotonou is too short. While it is acknowledged that "it is better to teach a man how to fish that to give him the fish . . . he must be given a fish while he is being taught to fish."[141] In other words, the EU must continue to give the Caribbean countries trade preferences while they are taking the time to develop successful alternatives to bananas. Twelve years is not enough time for these countries to move from an economic system that fostered dependence to a new system that argues for interdependence.

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[139] Sheppard, *supra* note 94, at 98.

[140] *Id.* at 95.

[141] Michael B. Joseph, *Post Lomé IV Arrangements Must Mirror the Principles and Instruments of Lomé: A Perspective from the Banana Sectors of the Windward Islands* (ECDPM Working Paper No. 18, Apr. 1997), *at* http://www.ecdpm.org/pubs/wp18_gb.htm.