

Spezielle Produkte in den Agrarverhandlungen im Rahmen der
Wirtschaftspartnerschaftsabkommen (EPAs) zwischen den AKP-Staaten und der
Europäischen Union

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Vorwort

Wie kann die kleinbäuerliche Landwirtschaft vor den Folgen der Liberalisierung geschützt werden?

Um diese Frage im Kontext der EPA-Verhandlungen zu beantworten, haben EED und Brot für die Welt eine Expertise beim renommierten South Center in Genf zum Thema der Special/Sensitive Products (SP(SeP) in Auftrag gegeben.

Das Ziel der Studie bestand darin, einen direkten Beitrag für die Verhandlungen zu leisten. Insofern bezog sich der Auftrag an das South Center nicht darauf, die Probleme der kleinbäuerlichen Landwirtschaft im Allgemeinen zu beschreiben, sondern in einem Spezialgutachten Hinweise für Verhandler und andere Experten zu erarbeiten, wie ein Schutz kleinbäuerlicher Produktion (verstanden als Ausnahme von den allgemeinen Liberalisierungsverpflichtungen) und damit ein wichtiger Beitrag zur Armutsbekämpfung rechtlich umgesetzt und im spezifischen Kontext der EPA-Verträge wirksam verankert werden kann.

Stuttgart, Bonn im November 2007



**Toolkit for the negotiations on agriculture
of the Economic Partnership Agreements (EPAs)
between the ACP countries and the European Union**

Using the conceptual framework of Special Products (SPs)
for the protection of livelihoods under EPAs

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This background study was commissioned by “Bread for the World” (“Brot für die Welt”) and Church Development Service (Evangelischer Entwicklungsdienst, EED) in order to clarify the facts of the case.

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0. Introduction

The objective of this paper is to propose a set of criteria for the identification of key products from the perspective of poverty alleviation, employment, food security and disproportionate gender impact that should be subject to special treatment under EPAs. It examines the opportunities and limits of the existing demands and what additional provisions would be necessary for such bilateral contracts (in contrast to a WTO agreement) in order to allow ACP countries' governments to effectively protect livelihoods and food security as well as safeguard income opportunities under EPAs.

1. Special Products and Sensitive Products in the WTO agricultural negotiations

1.1. *The SP proposal at the WTO*

The SP proposal was articulated by the G-33, led by Indonesia. This group has insisted that the outcome of the WTO negotiations on agriculture should incorporate concrete, operational and effective provisions that would allow developing members to take into account concerns of food security, livelihood security and development more broadly.

The following 45 developing countries are part of the G-33: Antigua and Barbuda, Barbados, Bolivia, Belize, Benin, Botswana, China, Congo, Cote d'Ivoire, Cuba, Dominican Republic, El Salvador, Guatemala, Grenada, Guyana, Haiti, Honduras, India, Indonesia, Jamaica, Kenya, Republic of Korea, Madagascar, Mauritius, Mongolia, Mozambique, Nicaragua, Nigeria, Pakistan, Panama, Peru, Philippines, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Senegal, Sri Lanka, Suriname, Tanzania, Trinidad and Tobago, Turkey, Uganda, Venezuela, Zambia and Zimbabwe.

Although the G-33 has taken the lead with respect to SPs (and the Special Safeguard Mechanism – SSM), the majority of developing countries' coalitions have expressed their keen interest in addressing these two negotiating areas as a matter of priority. In May 2006 a joint statement by the G-33, the ACP Group and the LDC Group said:

“The G-33, African Group, ACP and LDCs could not be expected to join on any package on agriculture unless their food security, livelihood security and rural development needs are accommodated effectively and comprehensively through the commitments called for them in the market access pillar, in particular the tariff reductions, SPs and SSM¹”

¹ “Joint Communication from the G-33, African Group, ACP, and LDCs on Special Products and the Special Safeguard Mechanism”, 11 May 2006

In this sense, SPs are the most concrete example of Special and Differential Treatment in the current WTO negotiations. The Framework Agreement² acknowledged that the issue of Special Products was of “fundamental importance” to developing countries.

This proposal calls for special treatment in terms of market access commitments for certain products that will be set aside from the full impact of the tariff cuts. According to this proposal, developing countries will (a) undergo a tariff reduction in the vast majority of their agricultural tariff lines, (b) reduce tariffs less than would have been required under the formula for some tariff lines and (c) exempt few tariff lines from liberalization commitments. In addition, any product designated as Special Product shall neither be subject to any new tariff rate quota commitment nor to tariff capping.

According to this proposal and to existing negotiating mandates, the approach to identify SPs should be linked to three criteria (food security, livelihood security and rural development). These criteria represent a fundamental link between trade negotiation outcomes and development goals.

FAO Definitions

- **Food security:** When all people, at all times, have physical and economic access to sufficient, safe and nutritious food in order to meet their dietary needs and food preferences for an active and healthy life.
- **Livelihood security:** The adequate and sustainable access to income and other resources in order to enable households to meet their basic needs. This includes adequate access to food, potable water, health facilities, educational opportunities, housing and time for community participation and social integration.
- **Rural development:** A process that affects the well-being of rural populations, including the provision of basic needs and services, i.e. access to food, health services, water supply, basic infrastructure (roads etc.) and the development of human capital through education. It also refers to activities that reduce the vulnerability of the agricultural sector to minimize natural and socio-economic factors and other risks and strengthen self-reliance.

As these concepts are broad and complex to define and measure, a list of 12 indicators was developed in order to measure the contribution of each agricultural commodity towards achieving objectives implied by these criteria to “guide” the process of identification. The list of indicators proposed by G-33 is attached to this document (Annex 1). Indicators were meant to facilitate the decision-making process related to the identification of SPs, by allowing quantification of data.

² Annex A (Framework for Establishing Modalities in Agriculture) of the decision adopted by the General Council on 1 August 2004 on the Doha Work Programme (WT/L/579 of 2 August 2004).

However, in accordance with existing negotiating mandates³, developing countries will have the flexibility to self-designate an appropriate number of SPs. From the G-33's point of view, self-designation entails the possibility of choosing the way in which the indicators will be operationalized, for example by not being constrained by the requirement to comply with all three criteria at the same time or with a specific combination of indicators.

The self-designation, as interpreted by G-33, is well-founded. Although some indicators can be linked to more than one criterion⁴, the necessity to comply with more than one criterion might not capture the strategic importance of a product. This assertion is supported by analyses conducted by FAO⁵, which carried out case studies in developing countries. According to these studies, national decisions to define a list of special products entail a quantitative analysis of the indicators *and* a qualitative analysis, taking into account policy objectives and development plans. This qualitative analysis permits the measurement of development needs related to the criteria.

It is important to note that the way in which criteria and indicators should be used in order to identify SPs is currently subject to WTO negotiations.

1.2. Rationale for SPs in the WTO: exploring the linkage between agricultural trade liberalization and development

In the ongoing WTO negotiations on agriculture, the majority of developing countries is seeking increased flexibility to achieve development goals related to food and livelihood security as well as rural development through the SP proposal⁶. The rationale behind this proposal is rooted in the belief that adequate tariff protection in agriculture is justified for developing countries.

Adequate tariff protection (in the agricultural sector) is justified for developing countries to partially insulate domestic production and farmers from low world prices, given the way in which agricultural production is related to poverty reduction.

³ Hong Kong Ministerial Declaration, adopted on 18 December 2005. WT/MIN(05)/DEC, 22 December 2005

⁴ Example: indicator 2 (a significant proportion of the domestic consumption of the product in its natural, unprocessed or processed form, in a particular region or at national level, is met through domestic production in the developing country member concerned) can be linked to food security and livelihood security at the same time.

⁵ Ford, Deep; Koroma, Suffyan, Yanoma, Yukigsugu and Khaira, Hansdeep. "Special Products: a comprehensive approach to identification and treatment for development", in *WTO rules for agriculture compatible with development*. FAO. 2007.

⁶ "G-33 Proposal on the Modalities for the Designation and treatment of any Agricultural Product as a Special Product by any Developing Country Member", WTO document N° JOB(05)/304, dated 22 November 2005. Complemented by: Document N° JOB(06)/189 dated 16 June 2006: "G-33 contribution on the proposed Modalities for the Designation and treatment of any Agricultural Product as a Special Product by any Developing Country Member", and document JOB(07)/35 dated 28 March 2007: "G-33 contribution on the indicators guiding the designation of any agricultural product as a Special Product by any developing country member".

Agriculture plays a central role in the well-being of developing countries' economies and their people. In the developing world, an average of 50 per cent of the population make their living from farming and agriculture, and in some countries, this figure rises to over 80 per cent.

There is an intimate relationship between poverty and agriculture. Three-quarters of the 1.2 billion people who live on less than one US dollar a day work and live in rural areas. A number of studies have shown that agriculture plays a key role in the struggle against poverty and must therefore play a central role in achieving the Millennium Development Goals.

Agriculture is key to future poverty reduction. Growth in the agricultural sector has a more powerful impact on poverty reduction than any other economic sector⁷. A one per cent growth in agricultural productivity reduces the number of people living on less than one US dollar a day by up to 1.2 per cent⁸.

However, according to a study by the Carnegie Endowment for International Peace⁹, liberalization of agricultural sectors will not benefit the majority of developing countries. This is due to several reasons, for instance:

- Many developing countries are net food importers;
- Some developing countries may lose relative advantages they now enjoy under special preference programs;
- Many developing countries have widespread small-scale farming schemes, which are often not competitive and suffer from low productivity. As, in these cases, unskilled rural labor cannot be easily and quickly absorbed by other sectors, liberalization will cause higher adjustment costs.

In this sense, liberalization of these countries' agricultural sectors can lead to significant net losses – with the burden falling heaviest on the poorest parts of the populations.

Developing countries should be given the flexibility to maintain appropriate bound tariffs in the WTO in order to ensure that they can – at least partially – insulate domestic production from low and volatile global prices.

⁷ See for example: Lucia Hanmer, David Booth (2001) "Pro poor growth: why do we need it, what does it mean and what does it imply for policy?", Second Draft August 2001, London; and ODI and Timmer, C.P. (1997) "How well do the poor connect to the growth process?" Cambridge, Mass: Harvard Institute for International Development.

⁸ Robert Eastwood and Michael Lipton (2001) "Pro Poor Growth and Pro growth poverty reduction: what do they mean? What does the evidence mean? What can policymakers do?". Paper delivered at the Asia and Pacific Forum on Poverty: Reforming Policies and Institutions for Poverty Reduction, held at the Asian Development Bank, Manila, 5-9 February 2001.

⁹ Polaski, Sandra. "Winners and Losers: impact of the Doha Round on Developing Countries". Carnegie Endowment for International Peace, 2006. Available at: <http://www.carnegieendowment.org/files/BWfinal.pdf>

Price instability is a common feature of agricultural markets and a political and social concern for all WTO members. Whereas all WTO members share this feature and its effect on farmers, the means and capacity to deal with these issues are grossly inadequate in developing countries.

The vast majority of these countries does not have access to market-based, sophisticated mechanisms to deal with risks associated with agricultural production, in particular with price volatility. Neither do they have the financial means to provide direct assistance to farmers (i.e. in some cases 80 per cent of their population) to guarantee subsistence income, nor do they have the capacities and appropriate institutions to carry out reliable market surveillance.

Therefore, whereas developed countries make use of domestic support programs and border measures to protect domestic production and farmers (around two per cent of total population in OECD countries), developing countries rely substantially more on border measures. Any revised agreement on agriculture should take this difference into account, rather than further restricting developing country options.

Other border measures (excepting tariffs) were not widely available for developing countries in the context of the WTO Agreement on Agriculture (AoA). For instance, tariff-rate quotas (TRQs) and the Special Safeguard Provision¹⁰ (SSG) were denied to most of them by linking access to those instruments to the tariffication process. Although developing countries bound their tariffs at generally high levels during the Uruguay Round, actual trade in many developing countries takes place at low tariffs. Even considering a 100 percent tariff, one could ask if such a level would be appropriate to insulate the domestic markets and protect farmers from the vagaries of world prices.

Finally, adequate tariff protection is justified in developing countries in order to achieve food security. According to the FAO, a situation where per capita food availability is decreasing because of falling domestic production, or even where it is increasing but only because per capita food imports are growing even more rapidly, may be unsustainable in the longer term without a concomitant rise in export earnings.

It has been well documented that, because of the implementation of the AoA, developing country imports have increased faster than their exports. Moreover, developing country exports continue to be concentrated in products of low added value and to be subject to large price volatility, which undermines their capacity to generate stable export earnings.

Therefore, it is important for developing countries to increase domestic production and productivity in their agricultural sectors, in order to be able to feed their own populations and generate a more stable string of export earnings to complement their food bills. To meet these legitimate objectives they would require – more often than not – tariff protection.

¹⁰ Article 5 of the Agreement on Agriculture

1.3. The difference between Special Products and Sensitive Products in the WTO negotiations on agriculture

SPs are not to be confused with Sensitive Products (SePs) in the WTO. The rationale for the designation of products under each of these categories is completely different and there is no conceptual relationship between SPs and SePs.

Provisions on Sensitive Products were established in the Framework Agreement as a means to address considerations of sensitivities of a commercial nature raised primarily by developed members. Based on the provisions on sSpecial and dDifferential tTreatment of paragraph 39 of the Framework Agreement, developing countries are entitled to a larger number of sensitive products and more flexible treatment for such products.

SPs, on the other hand, are justified and supported by specific developmental criteria linked to food security and rural development needs of developing countries. The SPs constitute a fundamental provision for developing countries only, in the context of further liberalization of agricultural markets, in order to take into account their structural disadvantages, the conditions of vulnerable sectors and populations and to avoid significant disruptions in the rural areas that could compromise the development prospects of agrarian populations for years to come.

The Framework Agreement also establishes a clear distinction between the treatment of SPs and SePs:

- Paragraph 32 indicates that substantial improvement in market access will be provided for SePs, while
- Paragraph 41 indicates that SPs will be eligible for more flexible treatment, in view of their fundamental importance for developing countries.

1.4. Reaction of other members to the G-33 proposal

Developed countries have responded to this proposal by arguing that the process of designation of SPs lacks transparency and predictability. For this reason, they have proposed negotiating multilaterally a list of indicators on SPs, including thresholds to be applied to all developing countries (e.g. a fixed percentage of the agricultural population involved with a particular product). They have also argued for the following prerequisites for designation (a) compliance with all three criteria, (b) providing supportive data and explanations and (c) “verifiability” of the data.

Another area of divergence between the proponents and the opponents to this proposal relates to the specific number or proportion of tariff lines that would be available to be designated as SPs. Positions range from five individual tariff lines (US) to 20 percent of all agricultural tariff lines (G-33). In his communication dated 30 April 2007, the Chairman of

the WTO Committee on Agriculture suggested that an appropriate number of SP tariff lines would be between 5 and 8 percent of agricultural tariff lines.

2. Sensitive Products in EPA negotiations

2.1. Framing the current scope of Sensitive Products in EPAs

The EU is currently negotiating Economic Partnership Agreements (EPAs) with 75 of its former colonies in Africa, the Caribbean and the Pacific (ACP countries). EPAs are essentially free trade agreements (FTA) that envisage the creation of a free trade area between the EU and ACP countries in which there are no duties on goods imported and exported between these countries.

The stated aim of the EU-ACP trade relations is to “foster the smooth and gradual integration of the ACP states into the world economy ... promoting their sustainable development and contributing to poverty eradication”¹¹. However, the structure and content of the EPA negotiations have raised concerns about the impact these agreements will have on ACP countries and their efforts towards poverty eradication, regional integration and economic growth.

In the EPA negotiations, ACP countries are split into six regional groups. These groups are West Africa, Eastern and Southern Africa (ESA), Southern Africa Development Community (SADC), Central Africa, the Caribbean (CARIFORUM) and the Pacific.

EPA negotiations were launched in September 2002 and are set to conclude by the end of 2007. There are several stages involved in the EPA negotiations: (a) negotiations to address the horizontal issues of interest across all regions, (b) establishment of a framework of the agreement, (c) negotiations to agree on the substantive content of each EPA and (d) text-based negotiations on a draft agreement.

Even though the process is in its final phase, EPA texts at this stage remain incomplete, and they are still subject to negotiations. Their current structure appears heavily unbalanced towards rules elements. They consist almost exclusively of provisions concerning trade-related rules and their enforcement, but do not contain provisions regarding the sequencing, pacing and extent of tariff and non-tariff liberalization, and the relevant annexes are yet to be completed.

In the current context, the extent to which certain products will be subject to special treatment in EPAs will depend on the interpretation given to the amount of trade that needs to be liberalized for the agreements to be in compliance with WTO rules. According to Article XXIV of GATT, restrictions should be lifted on “substantially all trade”. However, this expression is subject to different interpretations.

¹¹ Cotonou Agreement. Available at http://ec.europa.eu/development/Geographical/CotonouIntro_en.cfm

In the EPA negotiations, it is generally understood that the EU is seeking the liberalization of 90 per cent of the total value of trade between the EU and ACP. Under this interpretation, if the EU liberalizes 100 per cent of its trade, ACP countries would have to liberalize 80 per cent of their trade. This would leave ACP countries with the possibility of protecting only 20 per cent of their trade with the EU.

It is generally accepted that, in the context of EPAs, this special treatment will take the form of an exemption from tariff liberalization, that these products will be called “Sensitive Products,” and that they will have to be selected on a regional basis, as opposed to the WTO approach where each developing country will designate its SPs.

2.2. The SADC and ECOWAS draft texts

The case of the SADC and ECOWAS draft EPA texts will be analyzed in this section to illustrate the scope of ongoing discussions on Sensitive Products in the context of EPAs. These regions were chosen because the most recent negotiating texts were available for them¹².

These draft texts do not suggest specific criteria for the selection of Sensitive Products, in spite of the fact that they do recognize the social and economic importance of agriculture for the African countries and the food security and livelihood security needs of these regions.

This contrasts with the approach taken in the WTO agricultural negotiations, where a direct link between tariffs and livelihood and food security concerns was established. The importance of tariffs as an instrument to promote these objectives has been underscored by the majority of developing countries that consider tariff protection to be justified because of the economic and social importance of agriculture, and because it is the only means available for developing countries to protect their farmers.

In the specific case of the ECOWAS region, the draft text circulated in June 2007 did not include a specific reference to Sensitive Products. A document presented at a later stage¹³ contained, under the section related to trade in goods, a reference to “*sensitive and strategic products*” which would be subject to asymmetrical liberalization vis-à-vis the EU. It also included an annex entitled “*Protocol on Sensitive Products to be excluded from trade liberalization*” which will contain, at a later stage, a list of products.

In addition, Article 7 of the ECOWAS draft text dated June 2007 provides for a more flexible treatment of certain products. This treatment consists of modifying the time schedule for reduction or elimination of customs duties, in the event of serious difficulties

¹² The draft texts used are the following: EC consolidated proposal dated 05 June 2007 (SADC) and EC Working Document dated 31 July 2007 (ECOWAS).

¹³ Projet d’architecture pour un Accord de Partenariat Economique entre les Etats de l’Afrique de l’Ouest, la CEDEAO et l’UEMOA et la Communauté Européenne et ses Etats membres

due to imports of a given product. Although the “serious difficulties” are not specifically explained, the text does refer to:

- problems of availability of, or access to, foodstuffs or other products essential to ensure food security (article 4) ;
- the need to avoid disruptions of agricultural markets as (a) ensuring food security and (b) enhancing livelihoods of rural communities are critical for the eradication of poverty and sustainable development (article 1).

This language is not present in the SADC EPA draft text.

The SADC EPA draft text is more complex than the ECOWAS one as its scope is broader. It also contains provisions for a special regime for South Africa and another one for Angola, Mozambique and Tanzania. In contrast to the ECOWAS text, this text differentiates between commitments related to agricultural goods and those related to agro-processed goods. It suggests a schedule for tariff elimination – although reduction percentages per year remain in blank. As the ECOWAS text, it refers to a list of exclusions that is yet to be drafted, and no reference is made to the specific percentage of tariff lines that will be covered by this list nor to the criteria on the basis of which such products would be eligible to be included in the list.

It has been suggested that in discussions related to the designation of these products, the EU privileges an approach based on economic criteria such as amount traded and economic importance, and that the participation of the African representatives on this subject matter has been limited. None of these two regions has developed its list of Sensitive Products.

3. Identifying products that require special treatment in EPAs

As explained before, criteria to identify key agricultural products subject to special protection have not been defined in the EPA draft texts. The proposal of the G-33 in the WTO negotiations on agriculture offers an interesting conceptual approach that could be used in the EPAs to identify Sensitive Products.

The G-33 proposal has the merit of linking development concerns to trade negotiations, thereby including several measurement indexes to assess the vulnerability of certain sectors. In addition, the approach suggested has already been tested in several case studies conducted by FAO and ICTSD. These organizations have developed a methodology that includes a qualitative analysis based on stakeholder consultations, national development plans and policy objectives.

3.1. Why should sensitive products be designated in EPAs?

The importance of agriculture in the ECOWAS region is illustrated by the contribution of the sector to the regional GDP¹⁴, its contribution to employment¹⁵, its contribution to fiscal revenue and increased import dependence to source food needs in light of increased proportions of the population who are undernourished¹⁶.

The importance of agriculture in the SADC region¹⁷ can be illustrated by the sector's contribution to economic growth and employment. 21 per cent of the total exports of the region for the period 2001/2003 were agricultural exports and 68 per cent of the total population of the SADC region lives in rural areas, most of which is involved in subsistence farming. From a food security standpoint, it is important to note that the SADC region has witnessed a dramatic increase (100 per cent) in the number of undernourished people in 2000-2002, in comparison with the period 1990-1992.

Supply-side constraints faced by most African countries impede them from reaping development benefits from increased trade flows. Such supply-side constraints include, for instance, the inability to exploit economies of scale, lack of access to advanced technologies, deficiencies in infrastructure and a weak private sector. In this context, agricultural trade liberalization in the context of EPAs would expose domestic producers to increased competition from the EU and could lead to increased cheap and subsidized imports, thereby affecting the livelihoods of producers who compete with imports and creating mass unemployment.

Given the importance of agricultural production and trade for the ACP countries, the socio-economic impact of EPAs will depend on the capacity of these countries to adjust to trade liberalization. Key challenges ahead include: improving competitiveness of the sector and resisting European competition in the national and regional markets.

Identifying key agricultural products subject to special support will be a key instrument for protecting sensitive sectors from import competition and allowing for effective protection of food security, livelihood security and rural development as well as incomes of women. The use of criteria to guide the selection of such products could facilitate this process. Such an approach would be coherent with the one being used in the WTO negotiations.

¹⁴ 33 per cent in 2005

¹⁵ In 2002-2004, 92-93 per cent of the persons employed in Burkina Faso worked in this sector.

¹⁶ Increased food bill and, at the same time, 24.7 per cent of undernourished people for the period 2001-2003 in the ECOWAS region, with a maximum of 50 per cent for Sierra Leone.

¹⁷ The figures quoted exclude South Africa.

3.2. Which products should be designated as Sensitive Products in the EPAs?

Sensitive products are products that are vulnerable in view of liberalization in the context of EPAs and that concomitantly have strategic importance for the country or region concerned.

The sensitivity of products can be identified on the basis of their relative importance for the livelihood security of disadvantaged producers, food security and rural development. These three criteria were considered, in the proposals on Special Products discussed in the WTO by organizations such as FAO, to be relevant development criteria related to agricultural production and trade in developing countries.

In addition, given the extent of the tariff liberalization expected from ACP countries in the EPAs, other relevant criteria to gauge the vulnerability of particular sectors in the EPAs could include commercial sensitivity, strategic importance from the perspective of diversification and regional complementarities.

In order to give ACP governments the possibility to protect local markets effectively, the following criteria should be used for the definition of sensitive products in EPAs:

3.2.1. Livelihood security

The sensitivity of the main sectors can be identified on the basis of the contribution of a particular product to employment. Given the incidence of poverty in rural areas and the structure of production, indexes aimed at capturing the share of production by disadvantaged producers would be desirable. Such disadvantaged producers could include production from subsistence farming, small scale farming, low income-resource poor farmers and women producers.

Although few assessment studies on the impact of free trade areas on women have been conducted, it has been suggested¹⁸ that the introduction of reciprocity in the context of EPAs will have trickle-down effects that will affect women and men differently. In many ACP countries, women remain the main producers of those agricultural commodities that the ACP export to the EU. Women producers are more often part of the informal economy, lack access to and ownership of resources. In rural areas there is a greater incidence of poverty among women.

3.2.2. Food security

The potential vulnerability of a product to tariff liberalization can also be measured in terms of the importance of certain products towards achieving food security. In order to achieve national food security, the accessibility, availability and stability of food have to be ensured. This criterion should capture staple foods that are essential for the local and

¹⁸ Makwavara, Tenday and Deve, Thomas: "Making Economic Partnership Agreements (EPAs) developmental", May 2005.

regional diet, policy priorities according to national food policy and national food programs, and the extent to which a particular country or region is self-sufficient or dependent on imports for its food security.

3.2.3. Rural development

Rural development is a key policy objective to fight against the vicious cycle of underdevelopment and poverty because agriculture still accounts for a large share of developing countries' GDP and because rural areas are home to a large proportion of the poorest groups of the population in developing countries.

The way in which production of a particular product contributes to growth in rural areas could be a relevant index in the process of identification of sensitive products within EPAs.

3.2.4. Commercial sensitivity

The sensitivity of certain products could also be measured in terms of a greater exposure risk to import competition and import surges. This greater exposure could be derived from the fact that their production is particularly fragile and not competitive, or from the fact that they might be exposed to direct competition with products receiving subsidies from the EU. These products could be more vulnerable to import surges.

The list of highly subsidized products is long and covers many developing countries' staple foods such as rice and corn. This problem is compounded by the fact that the Doha Round is unlikely to change the situation significantly. When choosing sensitive products, policy makers would have to keep in mind whether the product (or substitute products) is vulnerable to such distortions.

Analyzing situations where local production could be displaced by imports of substitutes that are not locally produced will also be relevant. Recent examples of such displacements have included imports of wheat to Africa, displacing the consumption of cassava or millet in the region and imports of powdered milk in the Caribbean, displacing the local production of fresh milk as an input to the local dairy industry¹⁹.

To capture competition from substitute products, ICTSD suggests conducting an analysis in two stages. First, examining the extent to which potentially designated products might be exposed to the problem of substitutes and second, examining the import penetration of directly competing products.

In addition, FAO suggested considering product categories in the process of designation, i.e. allowing a series or package of different HS codes and lines to define a particular product for the purpose of more flexible treatment.

¹⁹ ICTSD: "Special Products and the Special Safeguard Mechanism. Strategic options for Developing Countries", Issue Paper 6. 2005.

3.2.5. Regional importance of products

As one of the most prominent stated objectives of EPAs is to assist the creation of strong and well-integrated regional markets, products that can play a strategic role in (a) establishing or consolidating regional value chains and (b) promoting regional value added of products for export should be captured in the selection process of sensitive products under EPAs. Identification of products for which increased intra-regional trade can address the food security concerns could also be relevant.

Such products indirectly contribute towards the goal of diversification of production and exports, thereby reducing the dependence on declining primary commodity markets as well as promoting regional processing and utilizing intermediate products that are produced within the region.

3.3. How should products be designated as Sensitive Products within the EPAs?

A methodological approach has been developed by ICTSD and FAO to identify products that could potentially be designated as Special Products in the WTO, using the indicators proposed in the context of the WTO and contained in Annex 1 of this study. This methodology was developed on the basis of several case studies conducted with developing countries.

The approach used contains several stages. In the first stage and prior to using the list of indicators, the development criteria underlying the SP proposal²⁰ are analyzed in consultations at the national level with national stakeholders. The aim of this stage is to frame the analysis for the identification of SPs within the broader national strategy for sustainable agricultural development and poverty alleviation, going beyond commercial considerations.

In a second stage, the qualitative information (related to development plans and broad policy objectives) obtained during the first stage is to be complemented with quantitative information obtained through the indicators. In this stage, indicators are used to assess the importance of products for food and livelihood security and rural development. For example, in this stage, indicators are specifically used to:

- Identify the intended beneficiaries, for instance through their income level, their geographical context/location and their production capacity;
- Identify the products which the livelihoods of these beneficiaries depend on (through their contribution to the economy, contribution to consumption).

During the third stage, the list of products obtained is subject to prioritization and ranking, analyzing the direct or indirect impact of liberalization and issues such as substitute products and vulnerability to imports. The prioritization of products could be carried out

²⁰ Food security, livelihood security and rural development.

using a methodology to rank the products on the basis of the score accorded to these indicators²¹. However, the assessment of the “special-ness” of potential SPs is likely to vary from country to country depending on the priority assigned to each criterion under the policy framework and objectives. Hence, a ‘one size fits all’ methodology might not be appropriate.

The three-stage methodology described above could be used for the identification of potential Sensitive Products in EPAs, using the measurement indexes contained in Annex 2 of this study. In summary, in a first stage the criteria would be used to identify relevant regional and national policy objectives and frameworks; in a second stage, the most vulnerable producers would be identified, and in a third stage, a prioritization would rank the products in view of their sensitivity.

For a product to be considered in the initial list, it would have to fulfill one measurement index and be linked with a vulnerable producer group. The prioritization can be conducted using multi-stakeholder consultations, assessing the sensitivity on the basis of policy objectives and priorities. A scoring methodology can facilitate this process by using policy objectives and priorities to assign indicator-specific scores to products, which allows quantitative comparisons among products and ranking in order of priority.

3.3.1. Which stakeholders should be involved in the consultation process?

While government officials and policy makers are responsible for the final selection of products to be designated on the basis of specific criteria, the decisions will also need to factor in inputs provided by stakeholder groups such as farmers’ associations, consumers, industry and exporters’ representatives as well as civil society, with customs, agricultural and central bank officials and trade negotiators. These were the stakeholders involved in the multi-stakeholder consultation processes for the case studies carried out by FAO and ICTSD mentioned in the section above.

3.3.2. The regional complexity of Sensitive Products in the EPAs

The impacts of trade liberalization on sensitive products will depend on each country’s level of EU imports, the degree of trade creation and trade diversion, the structure of domestic production and the competitiveness of the domestic industry. Current levels of regional exports are also contributing factors.

In contrast with the WTO framework, sensitive products in the context of the EPAs will be identified at the regional level. This element adds some complexity to the exercise. It may be desirable to have a small number of products that represent key interests of the entire region. The use of a uniform methodology and comparable data within the region will facilitate the exercise. But the most important recommendation for the identification of

²¹ WTO: “Modalities for the selection and treatment of SPs by developing countries: communication from the delegation of Pakistan”, Document No. JOB(07)/46 dated 11 April 2007.

sensitive products is to involve stakeholders in this regional exercise. This approach has recently been followed within the ECOWAS region²².

3.3.3. Additional considerations related to the identification of Sensitive Products in the context of EPAs

As EPA draft texts do not specifically refer to Sensitive Products (beyond the reference to the exclusion list), it is advisable to mention that developing partners in an EPA shall have the right to designate at least 20 per cent of tariff lines for exclusion from tariff liberalization commitments.

Some studies related to the identification of Sensitive Products and Special Products²³ have pointed to the fact that designation should comprise not only present (static) considerations (e.g. tariff revenue generated through particular lines) but also a dynamic assessment (for instance incorporating promising areas for consolidating a strong and diversified regional market).

Along the same lines, a product that might be of paramount importance today might not be important in the future and hence methodologies or procedures aimed at identifying sensitive products should incorporate flexibility features to reflect future changes to local consumption patterns. The wording used in article 7 of the ECOWAS text is appropriate in this respect.

Other studies²⁴ have suggested that tariff liberalization in certain sectors or products should be completed only when certain basic development thresholds are met, for instance once a sector is competitive or ready to compete.

An appropriate agricultural safeguard in EPAs will be an important complementary instrument to safeguard food and livelihood security and rural development. This instrument will be particularly important for those products where the incidence of surges and displacement by imports is high.

It is important to note that exempting products from tariff liberalization is not enough to overcome supply-side constraints, to be able to compete and to guarantee benefits from increased trade flows. External financing for trade capacity and sector development will be key to build competitiveness and increase productive capacity.

²² ICTSD: “Contribution à l’identification des critères pertinents pour une meilleure protection des produits agricoles vulnérable dans l’Afrique de l’Ouest”. 2007.

²³ Comité National de Suivi des Négociations Commerciales Internationales: “Détermination des produits spéciaux: l’exemple du Sénégal”. Janvier 2007

²⁴ Chiwandamira, D.P: “A review of the Negotiation of EPAs between the European Union and SADC: implications for Small Scale Farmers”, November 2006

4. Conclusions

The Special Products proposal in the WTO offers interesting insights into the need to mainstream development concerns in trade negotiations. This proposal suggested subjecting a number of tariff lines to a special tariff treatment in view of their importance for food security, livelihood security and rural development. The proposal contains criteria and indicators that are relevant in terms of approaching the selection of such products.

Given the extent of tariff liberalization in EPAs and the supply-side constraints faced by African countries, the identification of agricultural products that require special support will be key in effectively protecting food security, livelihood security and rural development. Current EPA draft texts lack specific language on the scope of the Sensitive Product lists.

The criteria and indicators suggested in the context of the WTO negotiations could be useful for the identification of Sensitive Products in an EPA context. In addition, elements related to (a) increased exposure to import displacement and import surges and (b) the promotion of regional complementarities could become relevant in this analysis.

The methodology developed by ICTSD and FAO to identify Special Products in the context of case studies involving several developing countries could be useful for the process of identification of Sensitive Products in EPAs. It is important to note that, given the fact that the exercise is aimed at the preparation of a regional list, the involvement of stakeholders representing the whole region will be essential.

The most challenging aspect of the methodology is to incorporate dynamic considerations into the analysis. It is important to note that the treatment of Sensitive Products has to be addressed in tandem with accompanying measures to build competitiveness and with an appropriate safeguard mechanism.

Annex 1

G-33 Proposal on indicators for the designation of Special Products²⁵

1. The product is a staple food, or is a part of the basic food basket of the developing country Member through, *inter alia*, laws and regulations, including administrative guidelines or national development plan or policy or historical usage, or the product contributes significantly to the nutritional or caloric intake of the population.
2. A significant proportion of the domestic consumption of the product in its natural, unprocessed or processed form, in a particular region or at a national level, is met through domestic production in the developing country Member concerned.
3. Domestic consumption of the product in the developing country Member is significant in relation to total world exports of that product; or a significant proportion of total world exports of the product are accounted for by the largest exporting country.
4. A significant proportion of the total domestic production of the product in a particular region or at the national level is produced on farms or operational land holdings of up to and including 10 hectares, or is produced on farm or operational land holdings which are of a size equal to or less than the average farm size of the developing country Member concerned, or a significant proportion of the farms or operational land holdings producing the product are up to and including 10 hectares in size or of the average farm size or less of the developing country Member concerned.
5. A significant proportion of the total agricultural population or rural labour force, in a particular region or at the national level, is employed in the production of the product.
6. A significant proportion of the producers of the product, in a particular region or at the national level, are low income, resource poor, or subsistence farmers, including disadvantaged or vulnerable communities and women or a significant proportion of the domestic production of the product is produced in disadvantaged regions and areas including, *inter alia*, drought-prone or hilly or mountainous regions.
7. A significant proportion of the total value of agricultural production or agricultural income of households, in a particular region or at the national level, is derived from the production of the product.

²⁵ World Trade Organization (WTO), Document N°JOB(07)/35 “G-33 contribution on the indicators guiding the designation of any agricultural product as a special product (SP) by any developing country member”, Annex: Illustrative list of indicators for designation of Special Products, 28 March 2007

8. A relatively low proportion of the product is processed in the developing country Member as compared to the world average; or the product contributes a relatively high proportion to value addition in the rural areas, in a particular region or at the national level, through its linkages to non-farm rural economic activities, including handicrafts and cottage industries or any other form of rural value addition.
9. A significant proportion of the agricultural customs tariff revenue is derived from the product in a developing country Member.
10. A significant proportion of the total food expenditure, or of the total income, of households in a particular region or at the national level in the developing country Member concerned, is spent on the product
11. The product in respect of which product specific AMS or blue box support has been notified by any WTO Member and which has been exported by that notifying Member during any year from 1995 to the starting date of the implementation of Doha round.
12. The productivity per worker or per hectare of the product in the developing country Member, in a particular region or at the national level, is relatively low as compared to the average productivity in the world.

Annex 2

Proposed indicators and measurement indexes for the selection of Sensitive Products in EPAs

Criterion	Measurement indexes
Livelihood security	<ul style="list-style-type: none"> ▫ Level of employment in product/sector ▫ Income generated from the product ▫ Percentage of farmers with product as sole source of earnings ▫ Percentage of labor force employed in production of a particular product ▫ Percentage of land under cultivation of the product ▫ Product share in total agricultural production ▫ Disadvantaged and vulnerable communities: percentage of producers that are low-income, small, resource-poor, subsistence farmers, or women
Food security	<ul style="list-style-type: none"> ▫ Contribution of product to nutrition: ▫ Contribution to caloric intake ▫ Products identified in the national food security basket ▫ Self-sufficiency ratio of the product or import dependency: Percentage of consumption of the product sourced from imports ▫ Product food expenditures ▫ Stability of access of the product ▫ Contribution to consumption ▫ Expenditure shares and products produced by disadvantaged and vulnerable communities
Rural development	<ul style="list-style-type: none"> ▫ Importance of the product in national rural agricultural economy, ▫ Domestic value-added potential of product ▫ Link between production of the product and rural area growth ▫ Production system profile of the product
Commercial sensitivity	<ul style="list-style-type: none"> ▫ Greatest reductions in tariff/tax revenue from imports/exports ▫ Vulnerability to import displacement ▫ Incidence of import surges in the sector ▫ Extent to which potential SePs might be exposed to the problem of substitutes ▫ Import penetration of directly competing products

Regional complementarities	<ul style="list-style-type: none">▫ Regional production capacity: most heavily traded agricultural goods in the region▫ Regional complementarities: products identified as having large potential in regional value chains or products derived from regional value added processing activities▫ Products that have been identified for promotion under existing regional development plans▫ Product for which increased intra-regional trade can address the food security concerns
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Forderungskatalog

zu „Speziellen Produkten“ (SP) / „Sensiblen Produkten“ (SeP)

Einführung zu „Speziellen Produkten“

Eine der Säulen für „Sonder- und Vorzugsbehandlung“ für Entwicklungsländer, die in der Doha-Entwicklungsrunde der WTO eine wichtige Rolle spielt, ist die zu „Speziellen Produkten“ für Entwicklungsländer. Hinweise dazu gibt die Schlusserklärung der WTO-Ministerkonferenz von Hongkong Aufschluss. Die dort mit Blick auf Spezielle Produkte festgehaltenen Prinzipien müssen auch die Basis für bilaterale Handelsabkommen darstellen, besonders wenn es dabei um Agrarhandelsbeziehungen zwischen entwickelten Ländern und Entwicklungsländern geht.

„Spezielle Produkte“ sind „speziell“, weil sie in Entwicklungsländern eine besondere Rolle spielen, 1.) für die Ernährungssicherheit, 2.) zur Absicherung des Lebensunterhalts für einen großen Teil der ländlichen Bevölkerung, 3.) für die ländliche Entwicklung. Sie haben ihre Begründung in der Tatsache, dass zwei Drittel der Hungernden und Armen auf der Welt auf dem Lande in Entwicklungsländern leben. Für sie ist Landwirtschaft keine rein kommerzielle Tätigkeit, sondern eine Grundvoraussetzung zum Überleben. SP erkennen auch den besonderen Status an, der „ressourcenarmen, einkommensschwachen Bauern“ im Agrarabkommen der WTO zukommt (Artikel 6, 2), weil sie vermutlich niemals international wettbewerbsfähig sein werden.

Zu den obigen drei WTO-Kriterien fordern wir ein weiteres: Produkte, die eine besondere Bedeutung für den Lebensunterhalt und die Beschäftigung von Frauen haben, sollen sich ebenfalls als „Spezielle Produkte“ qualifizieren. Der Grund liegt in der besonderen Bedeutung von Frauen für die Ernährungssicherheit der Familie. Das gilt insbesondere für Afrika.

Den strukturellen Schwächen und der sozialen Verwundbarkeit der Menschen soll Rechnung getragen werden, indem Entwicklungsländer bestimmte Erzeugnisse, auf die die Produzenten angewiesen sind, von den Regeln der Liberalisierung teilweise oder vollständig ausnehmen können. Man geht davon aus, dass sie vor Billigkonkurrenz aus dem Ausland geschützt werden müssen. Da Entwicklungsländer es sich nicht leisten können, diesen Bauern eine Grundabsicherung durch direkte Einkommenstransfers zu gewähren, kommen zollpolitische Maßnahmen zur Förderung in Frage.

Die soziale Begründung unterscheidet SP von einer anderen besonderen Kategorie von Produkten in der Handelsdiskussion, den so genannten „Sensiblen Produkten“ (SeP). Sie sind „sensibel“ aufgrund ihres kommerziellen Charakters für ein Land. Darum sind SeP in der Regel die Waren, die bisher den höchsten Zollschatz genossen. Für diese Waren gilt

die Liberalisierung zwar auch, aber es gibt gewisse Ausnahmeregelungen. Die Regeln zu „Sensiblen Produkten“ sind besonders für die entwickelten Länder wichtig, weil bei Ihnen bestimmte Agrarprodukte besonders hohe Spitzenzölle aufweisen.

Im Gegensatz zu WTO-Texten tauchen SP in den EPA-Vertragsentwürfen nicht auf. Es wird stillschweigend davon ausgegangen, dass die Regierungen der AKP-Länder die Anliegen der ländlichen Armutsbekämpfung im Rahmen der asymmetrischen Marktöffnung regeln, die der Artikel XIV GATT zulässt.

Die Produkte, die von der Liberalisierungsverpflichtung der EPA-Verträge ausgenommen sein sollen, werden in den EPA-Vertragsentwürfen als „Sensible Produkte“ bezeichnet. Kriterien für die Auswahl dieser Produkte gibt es nicht. Wir befürchten, dass bei der Bestimmung, welche Produkte zu „Sensiblen Produkten“ werden, die sozialpolitischen Kriterien der „Speziellen Produkte“ unter den Tisch fallen.

Unsere Forderungen im Einzelnen

Spezielle Produkte (SP)

- EPAs müssen in Anlehnung an die Diskussion in der WTO besondere Bestimmungen für „Spezielle Produkte“ enthalten. Die Vorschläge der G-33 im Rahmen der WTO-Verhandlungen werden den sozialpolitischen Begründungen der Armutsbekämpfung und Gender-Gerechtigkeit auf dem Lande gerecht. Die Regelungen müssen sicherstellen, dass bestimmte Produkte aufgrund ihrer Bedeutung für arme Produzenten von Marktöffnungsverpflichtungen ganz oder teilweise ausgenommen werden können.
- In den EPA-Verträgen müssen SP und SeP getrennt voneinander behandelt werden. Mindestens acht Prozent des Handelsvolumens, das von den Marktöffnungsverpflichtungen des Freihandelsvertrags ausgenommen werden kann, müssen „Spezielle Produkte“ sein.
- Sollte der Ausnahmereich von „Sensiblen Produkten“ (in Anlehnung an Art. XXIV GATT) in den endgültigen EPA-Verträgen unter zwanzig Prozent des Handelsvolumens betragen, kommen die acht Prozent SP zusätzlich zu den SeP hinzu.
- Die Ausnahmen für die SP unterliegen keinen Bedingungen oder Gegenleistungen durch die EU.
- SP gewähren Schutz gegenüber Importen jeglicher Herkunft, soweit das den multilateralen Regelungen nicht widerspricht.
- Im Prinzip stehen alle Agrarprodukte für SP zur Verfügung. Eine globale Liste von Produkten, die SP-fähig sein sollen und solchen, die es nicht sein sollen, darf es nicht geben.
- Die Auswahl der SP für jede einzelne EPA-Region muss in der Region selbstbestimmt erfolgen, d.h. der Zusammenschluss der jeweiligen Region wählt die SP aus und legt eine Liste vor.
- Die Regionen können ihre Liste mit SP von Zeit zu Zeit den veränderten Bedingungen anpassen.

- Die Auswahl der Produkte soll bestimmten Kriterien folgen, die den Armutsbezug der Produkte offen legen, ohne dass dieser Zusammenhang einer empirischen Verifizierung durch die EU bedarf.
- Um ein Produkt als SP einer EPA-Region zu deklarieren, reicht es aus, dass wenigstens eines der Kriterien erfüllt ist.
- Die Zusammenstellung der Liste von SP innerhalb einer EPA-Region muss unter Beteiligung möglichst vieler Interessensgruppen dieser Region stattfinden.
- SP können von Liberalisierungsschritten ganz ausgenommen werden. In Regionen, die sehr niedrige MFN-Zölle für SP notifiziert haben, können die Zölle auch angehoben werden.
- Die folgenden Kriterien könnten bei der Auswahl von SP eine wichtige Rolle spielen:
 - 1) Sicherung von Existenzgrundlagen (*Beitrag eines bestimmten Produkts zur Beschäftigung oder zur Einkommenssicherung*);
 - 2) Ernährungssicherheit (*Bedeutung eines bestimmten Produkts als Nahrungsmittel der Bevölkerung*);
 - 3) Bedeutung für ländliche Entwicklung (*Beitrag eines Produkts für ressourcenarme, einkommensschwache Bauern; Bedeutung für eine besondere Region*);
 - 4) Genderrelevanz (*Rolle eines Produkts zur Sicherung von Einkommen von Frauen, dazu gehört u.a. landwirtschaftliche Produktion, Handel und Weiterverarbeitung; Rolle eines bestimmten Produkts, das von Frauen für die Versorgung der Familie produziert wird*).

Sensible Produkte (SeP)

- Sensible Produkte werden auf Grundlage ihrer volkswirtschaftlichen Bedeutung für die Agrarentwicklung einer EPA-Region notifiziert.
- SeP erhalten ihre Begründung aus der Tatsache, dass es in Entwicklungsländern grundlegende Angebots- und Wettbewerbsschwächen gibt, die bei der Liberalisierung zu berücksichtigen sind. SeP sollen die Folgen einer zu schnellen Liberalisierung abmildern und die Abbauschritte hinauszögern, damit die einheimischen Erzeuger zusätzliche Zeit, haben sich an die geänderten Zollbestimmungen anzupassen.
- Agrarerzeugnisse der AKP-Länder, die mit jenen Importprodukten der EU konkurrieren (einschließlich ihrer Substitutprodukte), welche eine produktspezifische Unterstützung (AMS) oder Blaue-Box-Unterstützung in der EU erfahren, qualifizieren sich automatisch als SeP.