

FINAL

EU Agriculture Council

Meeting with the ACP Ministers Responsible for Sugar

24 January 2005-

Justus Lipsius Building, Brussels

Legal Aspects

With regard to the Legal Aspects of the ACP EU Sugar Protocol and its direct link with the EC Common Market Organisation for the sugar sector, we would like to make the following preliminary observations:

- The ACP EU Sugar Protocol is a legally binding Inter Governmental contractual agreement between the EC and individual ACP States from the three regions of the ACP.
- Article 1 provides that the Community undertakes for an indefinite period to purchase and import, at guaranteed prices, specific quantities of cane sugar, raw or white, which originate in the ACP States and which these States undertake to deliver to it.
- The Sugar Protocol has been signed separately by ACP States who have individually undertaken the obligation to supply “agreed quantities” of sugar as indicated in Article 1 of the Protocol.
- The implementation of the Protocol is carried out within the framework of the management of the common organization of the sugar market which, however, shall in no way prejudice the commitment of the Community. This means that the Sugar Regime is the vehicle whereby the Community has to discharge its legal obligations vis a vis the ACP Sugar Supplying States.

- In this regard, the Sugar Protocol has precedence over the EC Sugar Regime and any reform of the Sugar Regime cannot diminish the rights and obligations of the Contracting Parties. Moreover any modification to this Agreement can only be through mutual agreement and not unilaterally imposed.
- The Sugar Protocol is a special legal status and it has been attached to the successive Lomé Conventions and the Cotonou Agreement for purely administrative purposes. It has been concluded for an indefinite duration and has a life independent of the Cotonou Agreement.
- The Commission's Communication suggests the abolition of the intervention mechanism. The Intervention Agency is provided for in the Article 6 of the ACP EU Sugar Protocol. Without the Intervention Agency, it will be difficult to ensure a guaranteed price whose annual negotiations are compulsory under Article 5(4) of the protocol. There is no clear indication of the mechanism to replace intervention and how this will address the ACP concerns. The proposal to abolish intervention takes away the provision of the buyer of last resort. This is not in conformity with Article 6 of the Protocol.
- In Article 36(4) of the Cotonou Agreement, the Parties reaffirm the importance of commodity protocols and the need to review them in the context of the new trading arrangements, in particular as regards their compatibility with WTO rules, with a view to safeguarding the benefits derived therefrom, bearing in mind the special legal status of the Sugar Protocol.
- The importance of longstanding preferences for Developing Countries has been fully recognised by the entire WTO membership in the WTO July Framework Agreement. The EC has bound the Protocol quantities in its schedules of commitments on market access as a tariff rate quota. The WTO July Framework Agreement also provides that

modalities be developed to enable Developing Countries in particular to fully benefit from market access opportunities under tariff rate quotas.

- This aspect must be fully taken into account in the context of the negotiations of Economic Partnership Agreements. Moreover, as regards the EPAs themselves, the issue of parties to the EPAs is still nebulous and ambiguous. Any reference to the Sugar Protocol in the context of the EPAs is therefore premature and out of order.
- As the ACP Ministerial Spokesperson said earlier, the ACP is appreciative of the various statements made at different levels, both at the levels of the Commission and Ministers that the EU will stand by its political and legal commitments. We therefore urge the Commission and the EU to take on board the observations we have just made
- We hope that while preparing the legislative text on the future of the sugar regime, the Commission will be mindful of the EU commitments and will respect the sanctity of the ACP EU Sugar Protocol.