

# **African preparation for trade negotiations in the context of the ACP–EU Cotonou Partnership Agreement**

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## I. Introduction

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During the period of about 25 years ending in February 2000, trade and other economic relations between the European Union (EU) and the African, Caribbean and Pacific (ACP) states were governed by a series of Lomé conventions. The Lomé trade regime provided preferential access to the EU market for ACP states, covering a wide range of export products subject to certain restrictions relating to the so-called “sensitive” products and rules of origin. EU’s future trade policy towards African members of the ACP group beyond the Lomé trade regime was articulated in various proposals leading to the ACP–EU Cotonou Partnership Agreement signed in Cotonou (Benin Republic) in June 2000. This is a 20-year agreement with a clause allowing its revision every five years. It is meant to be a comprehensive arrangement governing aid and trade relations between the EU and ACP countries. But it does not yet include trade elements. Instead, it indicates the commitment of the countries involved to negotiate, starting from September 2002, a new set of trade arrangements compatible with the World Trade Organization (WTO) that will come into force on 1 January 2008.

Although its trade elements are not yet in place, the agreement already clearly indicates that these elements will represent a major departure from those associated with the Lomé Convention. In particular, it is implied that as long as they are WTO compatible, the non-reciprocal trade preferences embedded in the Lomé Convention will be transformed by the new arrangement into a relationship based on reciprocity. The proposed transformation means that for the first time, the African countries in the ACP group are confronted with the need to negotiate their trade relations with the EU.

Before and during the projected negotiations, the affected African countries (either individually or within sub-regional groups) will have to explicitly address a number of critical issues. Some key issues among these include assessing 1) the costs and benefits of the trade arrangements specified in the agreement; 2) whether the transition period proposed will be adequate; 3) how much of the existing trade preferences can be retained, by which set of African countries, and for how long; 4) what the extent of reciprocity would be; 5) what costs would be involved in the adjustment for the obligations associated with reciprocity; and 6) whether the financial and other assistance promised by the EU would be adequate to offset the costs. Another important issue relates to the technical feasibility of the proposed negotiations, particularly whether African countries should negotiate individually or in sub-regional groups, as well as the negotiating capacity at both the national and regional levels.

Finding appropriate ways to address these issues and addressing them adequately constitute the essential focus of the preparation process envisaged in this paper. But it is also important to fully understand the context within which these issues should be addressed. Hence, the paper also explores the contextual questions. In particular, section 2 focuses on the question of whether African countries should negotiate at all. In doing this, the paper identifies the full range of available options from which the affected African countries must choose, it identifies the countries that do not need to negotiate, and discusses the negotiating modalities for those that have to. Section 3 focuses on negotiating structures and schedules, and section 4 discusses in some detail the preparations necessary for African countries that will engage in the negotiations. In particular, this section calls for attention to the need for the negotiations to go beyond market access and to address the major supply constraints facing African countries. The paper ends with some concluding comments in section 5.

## 2. Which countries should negotiate?

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**T**o negotiate or not? Which country should negotiate? why? and how? These are important questions whose exploration must precede discussion of the issue of preparing for the negotiations. Answering these questions requires identification of the options open to the African members of the ACP group.

The EU has proposed that the new arrangements between it and ACP states should be WTO compatible. There are two ways to achieve this. One way is for the EU to stop discriminating by granting the same non-reciprocal trade preferences to all developing countries with similar levels of development as the ACP states. The other way is to transform Lomé preferences into free trade agreements (FTAs) in accordance with Article XXIV of the General Agreement on Trade and Tariffs (GATT). The EU has settled for the second approach. This means that the proposed FTAs must respect the guidelines of the relevant GATT rules and, hence, liberalize “substantially all trade” among the parties over a “reasonable period of time”, which is usually taken to be about 10–12 years.

But signing FTAs with the EU is only one of the options open to African members of the ACP group. The proposals suggest that the least developed countries (LDCs) in the group have also the option of retaining their existing non-reciprocal trade preferences. Therefore, it is only the non-LDCs in the group that must confront the question of whether or not to negotiate. The non-LDCs have three options. Some of them may decide to accept the proposal to negotiate and enter into FTAs with the EU, others may choose not to negotiate and, in this case, accept to be placed under the generalized system of preferences (GSP) of the EU, and others may choose neither to negotiate FTAs nor to accept the GSP but to consult with the EU with a view to designing another type of trade arrangement.

For several reasons, LDCs do not have to negotiate. Their existing preferences can be extended, since these are no longer unique to ACP states. For this group, reciprocity does not offer any real prospect of further access to the EU market; they obviously have no incentive to join in the negotiations of FTAs that will simply result in the opening of their markets to European products. EU’s trade policy towards all LDCs (whether or not they are members of the ACP group) recognizes the special fragility of their economies, and this is the consideration that allows them special treatment. There is some suggestion that other “vulnerable” countries, such as landlocked countries or islands, may attract the same special treatment.

ACP members of this special group may choose not to open their markets to the EU and still retain their existing non-reciprocal trade preferences, with the added assurance that whatever happens, essentially all their export products will continue to have free

access to the EU. This special treatment has evolved since the late 1990s. By January 1999, the EU had made its GSP for all LDCs equivalent to the Lomé trade preferences previously reserved for only its ACP partners. This special GSP allows up to 99% of the export products of all LDCs into the EU market free of duty. In 2000, the EU also started a process that will expand this degree of duty-free access to its market for all LDCs by 2005. Specifically, if EU's proposal on "everything but arms" is adopted, then all LDC export products, including agricultural ones, could enjoy free access to the EU.

Given the options open to them, non-LDC members of the ACP group that choose to negotiate FTAs with the EU may do so individually or through regional groups. Questions have been raised regarding whether the EU would want or be able to negotiate a series of individual economic partnership agreements with so many small African countries. But both its own proposals before the Cotonou Partnership Agreement and its recent behaviour in practice would appear to keep this option open. For example, EU's identification of UEMOA as the only regional group within West Africa with which it could sign an EPA suggests its willingness to deal with such countries as Ghana and Nigeria as potential individual EPA partners. In addition, the Euro-Mediterranean trade agreements with Morocco and Tunisia, and the even more recent FTA with South Africa suggest that the EU may not be completely averse to negotiating EPAs with individual African non-LDCs in the ACP group.

There is no doubt, however, that the EU appears to have a strong and explicit preference for negotiating EPAs with regional groupings of African countries. In addition to the other advantages associated with this option, designers of regional EPAs argue that this option would limit the number of agreements (which helps to save the negotiation resources of the EU) and contribute to sustaining intra-regional integration efforts of African and other ACP states. But whether this option helps to deepen intra-African regional integration or not, it is clearly up to individual countries to decide whether they wish to entrust their negotiating mandate to a sub-regional grouping.

In selecting this option, African countries must also consider the technical feasibility of implementing it. In other words, they must examine the pre-conditions that must be satisfied before they can negotiate and establish regional EPAs with the EU. The effectiveness with which African countries can function as regional groupings in the context of EPA negotiations depends critically on the progress of their own regional integration process.

Given the projected schedule of negotiations, considerable progress in the regional integration process in Africa is required over a very short period of time. It is not certain that such progress is achievable. For instance, a regional grouping must first be an effective free trade area or a customs union before it can negotiate and sign an EPA with the EU. It is not evident that in reality intra-African regional groups other than SACU have achieved this status. In addition, negotiating an EPA as a regional group involves prior negotiation among members of the group to decide on a common negotiating mandate and strategy. It may also require delegating the power to negotiate and reach agreement with the EU to a supranational body. These preconditions pose considerable difficulties for many potential African regional groups. Many African countries simultaneously belong to more than one sub-regional group, but each country can be involved in negotiating a

regional EPA within the framework of only one regional group. Membership overlap is a problem that has plagued regional integration efforts for a long time. The forthcoming negotiations in the context of the ACP–EU trade agreement may force African countries to make appropriate choices and thereby resolve this long-standing problem once and for all.

All intra-African regional integration schemes contain both LDCs and non-LDCs. Since these categories of countries are treated so radically differently in EU's negotiating proposals, it is difficult to see how consensus can be reached regionally on negotiating mandate and strategy. The regional groupings explicitly identified in EU's proposals include UEMOA, CEMAC, the East African Corporation (EAC) and the Southern African Development Community (SADC). Each of these features the characteristic specified above; therefore, each of them will be faced with the problem that arises from the differential treatment by EU's proposals based level of development. SADC will also face a unique problem that derives from having South Africa as a member, which has already signed a separate FTA with the EU.

Finally, one must note that trade negotiating capacity is not particularly strong in African countries, and is virtually non-existent in regional groups. This capacity must be strengthened considerably if really meaningful negotiations with the EU are to take place. Developing this capacity is not necessarily impossible, but it is considerably constrained by two key factors. First, the time available to prepare for the negotiations is very short. Second, there are other negotiations (such as those in WTO) that will take place simultaneously with the EU ones. The combined effect of these factors could be to worsen the situation for many African countries and regional groups by overstressing what, to begin with, is a limited and inadequate negotiation capacity.

African non-LDC members of the ACP group that choose not to negotiate EPAs with the EU either individually or as part of a regional group have two choices: they could accept to revert to the GSP or seek an alternative trade arrangement with the EU. Reverting to the GSP appears to be virtually the automatic choice for this group; the second option would require further study and review by the EU.

The GSP has several defects that may discourage countries from choosing it. It is unilateral and is offered at the discretion of the EU, which also may choose to withdraw it at will. In addition, it is not as beneficial as the trade preferences provided by the Lomé Convention. In particular, African non-LDCs that move from the Lomé Convention trade regime to the GSP arrangement are likely to suffer a significant loss of preferences. The African countries that would be most negatively affected include Cameroon, Côte d'Ivoire, Ghana, Kenya, Mauritius, Nigeria, Senegal and Zimbabwe. One study estimates that if the European Union's normal GSP were applied to all non-LDC ACP countries, these countries would suffer a total loss of ECU 767 million per year. Much of this loss (over 65%) would occur in sugar. Other vulnerable products include tuna, bananas and beef. This list of products suggests that much of the loss arises because the GSP does not cover the commodity protocols associated with the Lomé Convention.

In comparison with Lomé preferences, the GSP option has other disadvantages: its tariffs and non-tariff reductions and exemptions are less generous than those offered by the Lomé Convention; the rules of origin applicable to it are stricter; and it covers fewer

products, i.e. 45% of the tariff lines against as much as 95% for the Lomé Convention.

Non-LDC ACP states that choose not to negotiate EPAs with the EU and do not wish to revert to the GSP may eventually benefit from EU's preferences that become effect in 2004. According to Article 37.6 of the Cotonou Partnership Agreement, in 2004, the EU will "examine all alternative possibilities, in order to provide these countries with a new framework for trade which is equivalent to their existing situation and in conformity with WTO rules". However, this presents a problem at the technical level: it is difficult to design an arrangement for the non-LDCs that both maintains the Lomé preferences and is at the same time WTO compatible.



### **3. Negotiating modalities, structures and schedules**

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Article 36 of the Cotonou Partnership Agreement states that “the Parties agree to conclude new WTO-compatible trading arrangements” whose primary objective would be “removing progressively barriers to trade between them”. However, it is suggested that the negotiations be as flexible as possible so as to take account of the level of development and the socioeconomic impact of the trade measures on ACP countries and their capacity to adapt and adjust their economies to the liberalization process. Particular areas where “flexibility” will be exercised in the negotiation process include in the provision of a “sufficient” transitional period, in the degree of asymmetry in the timetable for tariff dismantlement, and in product coverage. But, in the end, the extent of flexibility will be disciplined by the requirements for WTO compatibility.

The Cotonou Partnership Agreement explicitly recognizes the need for and provides a preparatory period before negotiations of the new trade agreement can start. This is specified as the period between the signing of the Cotonou agreement (June 2000) and the start of formal negotiations (September 2002), slightly more than two years. Article 37 provides that this period will be used for actively:

- making initial preparations for the negotiations
- implementing measures for capacity-building in the public and private sectors of ACP countries
- implementing measures to enhance competitiveness, strengthen regional organizations and support regional integration initiatives
- implementing measures for upgrading infrastructure and for promoting investment

The agreement specifies two critical assessment milestones for evaluating the negotiation process. The first assessment will occur in 2004, i.e. two years into the negotiation. At that point “the Community will assess the situation of non-LDCs which, after consultation with the Community, decide that they are not in a position to enter into EPAs and will examine all alternative possibilities in order to provide these countries with a new framework for trade ...”. For this milestone, the EU is firmly in the “driver’s seat”. The second evaluation, which will be in 2006 — two more years into the negotiations — will be an assessment involving both the negotiating ACP states and the EU. The relevant section of Article 37 states that “the Parties will in 2006 carry out a formal and comprehensive review of the arrangements planned for all countries to ensure that no further time is needed for preparations or negotiations”.

The period of negotiation spans these two assessment milestones. Formal negotiations of the new trade arrangements are scheduled to begin in September 2002 and end by 31 September 2007, so that the new arrangements can enter into force on 1 January 2008.

## 4. Preparations for negotiations

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In deciding whether or not to negotiate an EPA with the EU, it is necessary for African non-LDCs to carefully consider the implications on their economies of negotiating and implementing the FTA. This consideration could suggest that, for various reasons, it might not be feasible for many of them to enter into a meaningful FTA with the EU in the time frame proposed. For instance, it is not self-evident that most African economies are sufficiently competitive to withstand the premature and large-scale introduction of duty-free imports from the EU; and if this is allowed, the associated adjustment costs might be quite heavy. FTAs with the EU based on intra-African regional groups would face similar costs, with the added problem associated with the fact that the integration process within these groups is quite limited. In these circumstances, reciprocal access is likely to immediately be most beneficial to the EU, but to carry the very realistic threat of considerable loss of import revenues for many African non-LDCs, which are known to be heavily dependent on import duties for their fiscal revenue.

These likely negative effects of entering into EPAs with the EU as proposed in the Cotonou Partnership Agreement can no longer be regarded as mere speculation. In 1998, the European Commission requested a number of independent consultants to assess the feasibility of the proposed WTO-compatible EPAs and the economic impact that they would have on ACP economies if established. The results of these studies broadly confirm the following conclusions:

- There would be a negative impact on customs revenues. While the magnitude of the impact would vary across countries and regions, it could be quite substantial for some countries. Diversification of fiscal revenues/receipts would not compensate for this in the medium term.
- For some countries, the trade-diversion costs associated with the establishment of EPAs would exceed the benefits from the trade created; thus, diversification of African trade with non-EU trade partners would be hindered.
- While the impact (positive or negative) on the process of intra-African regional integration is still to be determined, it seems certain that by treating different countries belonging to the same regional grouping differently (in terms of market access to the EU), the EPAs are likely to further complicate the problems associated with intra-African regional integration.
- For many intra-African regional groups, the feasibility of negotiating EPAs is quite doubtful, for reasons relating to lack of technical capacity and common interest.
- EPAs with the EU could end up pushing African countries to liberalize their trade

regimes at a sub-optimal level compared with what they would do either unilaterally or in the context of multilateral trade negotiations.

It is important to bear in mind, however, that the research results underpinning these broad conclusions were generated by studies that suffered several limitations. The studies were mainly desk-based and often lacked quality data. Their calculations rested on a series of rather strong assumptions, and the use of different methodologies renders the results difficult to compare.

These defects heighten the need for further research on the future trade relations between African countries and the EU. In any case, such research is an important part of the preparations that should take place before any African country decides to participate and before the actual participation in the negotiations aimed at establishing the EPAs. The new studies should take into account the global environment, including such developments as the ongoing reviews and negotiations at the WTO and the possibility of a new round of multilateral negotiations where the proposals relating to zero trade barriers for all LDCs might be discussed and approved. In addition, the studies should take account of the unfolding events and developments relating to the trade policy of the EU, including its current GSPs for LDCs, the review of the standard GSPs in 2004, and the enlargement of the EU and the resulting deeper integration with east European countries. It would also be useful for the studies to assess the comparative experiences of the Euro-Mediterranean FTAs (particularly with respect to Morocco and Tunisia) and the recent EU-South Africa FTA.

The outcomes of the European Commission studies also reflect the more fundamental problems overlooked in previous international trade negotiations in which African countries have been involved, including the ACP-EU ones. These negotiations all centered on market access, focusing primarily on terms and conditions under which participating countries agreed to exchange market access. This objective is relevant for countries with the capacity to produce sufficiently and to export. In sub-Saharan Africa (SSA), unless fundamental reorientation is made, we cannot take it for granted that the negotiations will promote development. Weaknesses in human resources, physical infrastructure and institutions related to international trade have been identified as key impediments. In particular, the adequacy and effectiveness of technical and other assistance relative to the needs of developing and least developed countries are questionable. It is important that the negotiating countries aim at integrating a development agenda. This, therefore, may be viewed in terms of expanding the focus of market access to accommodate concerns for human and institutional capacity and other supply-side issues. The trade regime arising from the new framework should complement the focus on enhanced market access with sufficient flexibility in the use of policy instruments to properly address the lingering supply constraints and create the type of environment required for long-term investment in which reciprocity, with mutually beneficial outcomes, could be an attainable long-term objective.

African regional integration schemes suffer another major deficiency that needs to be addressed before market access can lead to trade and export expansion. This relates to the absence of a policy lock-in mechanism that can compel participating countries to

enforce mutually agreed commitments. By raising competitiveness, information technology, transportation and other communication cost-reducing policies will significantly reduce the scope for an uneven pattern of benefits. Furthermore, benefits are more likely to be evenly spread if the countries engage in deep integration through policy coordination in several areas. Policy coordination will facilitate the implementation of regional projects, which reduces transactions and eases integration in dynamic production and distribution networks, which, in turn, foster investments.

The proposed research should, obviously, include regional studies on the impact of EPAs, focusing on the sub-regions that African countries consider appropriate, and paying particular attention to such issues as:

- inclusion of LDCs and non-LDCs in each region
- membership overlap across African sub-regional integration schemes
- current levels of regional integration processes
- distinction between African sub-regional units and those identified by the EU as likely regional EPA partners
- views of key regional actors and stakeholders (in the private and public sectors, as well as the civil society), with particular reference to commonality of interest
- existence (or otherwise) of regional negotiating mandate, authority and structure
- level of harmonization and coordination of regional trade policy and institutions
- policy lock-in mechanisms to sustain African regional integration initiatives
- cross-border issues for reducing transactions costs and raising the level of competitiveness
- regional capacity to negotiate and implement FTA obligations.

In addition, the studies should include complementary country case studies on the impact of EPAs, focusing on issues such as:

- effects on revenue, industrial output and export performance, as well as their implications for investment and employment
- trade creation and trade diversion effects, including the consequences for trade diversification with non-EU partners
- effects on the balance of payments of relative import surges and export growth
- robustness of human and institutional capacity to negotiate and implement FTAs with the EU
- supply and export constraints
- comparative analysis of the impact of FTAs with the EU vis-à-vis that of a multilateral option that allows each country to implement its own trade liberalization strategy, at its own pace and on a most-favoured-nation basis
- assessment of modalities for making reciprocity a positive sum game for Africa and the EU
- overall evaluation of the country's trade regime
- expansion of the agenda to include, for example, services and the General Agreement on Trade in Services (GATS) negotiations, as well as other WTO agreements (TRIMS, TRIPS, etc.)
- identification and analysis of the country's key import and export products, their

current trends, and how these trends are likely to be influenced by an EPA with the EU

The first step in preparing for future negotiations on the trade elements of the ACP–EU Cotonou Partnership Agreement is essentially a domestic measure. It requires each country or region to identify long-term trade interests within the framework of sustainable overall development strategies. An important aspect would be development of modalities for eliminating a range of supply constraints to enable African countries to more effectively reap the benefits of their fuller integration into the global economy and that foster joint action through regional and sub-regional cooperation to facilitate the process. It is around these that appropriate negotiating strategies should be developed. One framework for such studies is the research and dissemination programme of the African Economic Research Consortium (see Box 1).

## 5. Concluding remarks

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It is clear that it is not necessarily all African members of the ACP group that should participate in negotiating the proposed EPAs with the EU. As Table 1 shows, as many as 34 of the 48 African countries in the ACP group are classified as LDCs. These do not have to negotiate EPAs with the EU, since they still can retain their non-reciprocal benefits without doing this. Of the remaining 14, one, South Africa, has already signed a separate FTA with the EU. Therefore, only 13 African countries must decide whether or not they will participate in the negotiations. The need for studies and other pre-negotiation preparation also applies to only these countries, except in cases where the aim is for regional EPAs that combine these with other countries.

These countries and their regional integration schemes need to recognize the associated constraints if they choose to negotiate EPAs with the EU. First, they will be negotiating not necessarily to gain new concessions from the EU but primarily to prevent the loss of what they already have. Second, their room for manoeuvre will be strictly limited partly by WTO rules relating to FTAs and partly by the options established by the EU. Third, the negotiations will be carried out in the context of considerable uncertainty, given that so many other developments will be unfolding simultaneously at both the global level and in the EU itself. These factors together will pose a difficult challenge for African countries that decide to negotiate.

**Box 1: Enhancing the capacity of African countries for trade policy and negotiations: the African Economic Research Consortium (AERC) approach**

The programme of the African Economic Research Consortium (AERC) consists of research and dissemination activities that contribute to the enhancement of the capacity of African countries to articulate and implement good trade policies and to participate effectively in trade negotiations. These aims are, in turn, directed at smoothly integrating African economics into the global trading system under terms and conditions that are not only beneficial to them but also enable them to pursue their specific development goals and aspirations.

In articulating and implementing its trade programme, AERC collaborates closely with several institutions that are also actively engaged in the process of building the capacity of African countries in this area. Such institutions include the Organization of African Unity (OAU), the United Nations Conference on Trade and Development (UNCTAD), the United Nations Economic Commission for Africa, the United Nations Department for Economic and Social Affairs (UNDESA) and the World Bank.

Current AERC research and dissemination activities focus on helping to prepare African countries for the trade negotiations in which they are or will be engaged over the next five years or so, and to review the implementation experiences of a range of Uruguay Round Agreements (URA), mandated WTO negotiations in agriculture and services, issues associated with a possible new round, trade elements of the ACP–EU Cotonou Partnership Agreement, and the Africa–United States free trade agreements offer in the context of the Africa Growth and Opportunity Act (AGOA).

AERC research will explore market access opportunities that these negotiations may provide to African countries and examine the commitments that they may need to make in return. The research will also analyse a range of constraints that currently limit Africa's supply response and suggest how these may be relaxed to enable African countries to maximize their external market access opportunities. Finally, the research will examine how African countries can enhance their trade negotiation capacity through the use of regional groupings and modalities.

An important dimension of the AERC programme is the creation of a network of trade policy researchers based in Africa, with effective linkages with capital-based, as well as Brussels- or Geneva-based trade negotiators. To that effect, the plan is to continue the organization of dissemination activities targeting relevant stakeholders (civil servants, private sector operators, parliamentarians, and the civil society at large).

**Table 1. African countries in the ACP group**

Least Developed Countries (LDCs) (34)		Non-LDCs (14)
Angola	Liberia <sup>*</sup>	Botswana
Benin	Madagascar	Cameroon
Burkina Faso	Malawi	Congo-Brazzaville
Burundi	Mali	Cote d'Ivoire
Cape Verde <sup>*</sup>	Mauritania	Gabon
Central African Republic	Mozambique	Ghana
Chad	Niger	Kenya
Comoros <sup>*</sup>	Rwanda	Mauritius
Democratic Republic of Congo	Sao Tome and Principe	Namibia
Djibouti	Senegal	Nigeria
Equatorial Guinea <sup>*</sup>	Sierra Leone	Seychelles <sup>**</sup>
Eritrea <sup>*</sup>	Somalia <sup>*</sup>	South Africa <sup>***</sup>
Ethiopia <sup>**</sup>	Sudan <sup>**</sup>	Swaziland
Gambia	Tanzania	Zimbabwe
Guinea	Togo	
Guinea Bissau	Uganda	
Lesotho		
Zambia		

<sup>\*</sup> Not a WTO member

<sup>\*\*</sup> Observer status at WTO; observers must start accession negotiations within five years of becoming observers.

<sup>\*\*\*</sup> South Africa formally joined the ACP group in April 1998. It does not benefit from the Lomé trade preferences. It has concluded a separate FTA with the EU. Under WTO, South Africa is considered a developed country.



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