

# Trade Negotiations Insights

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## Interim EPAs in Africa: What's in them? And what's next?

### ODI and ECDPM<sup>1</sup>

By the end of 2007, only eighteen African states (including most non-LDCs and some LDCs) had initialled interim EPAs, as had two Pacific non-LDCs (Fiji and Papua New Guinea), while Caribbean countries went further and approved full EPAs. What have they agreed to? What are the main implementation challenges, some of which will require support from Europe? And for those that remain committed to this process, what are the options for the completion of negotiations towards full EPAs?

The Overseas Development Institute (ODI) and the European Centre for Development Policy Management (ECDPM) have just concluded a study that attempts to analyse these questions as comprehensively as possible, with a focus on Africa. This article summarises some of the main findings.<sup>2</sup>

### No pattern linked to development needs

The interim EPAs were finalised in a rush to beat the end 2007 deadline - and it shows. All of the African EPAs are different and only in one region does more than a single country have the same commitments as the others: the East African Community (EAC). At the other extreme is West Africa, where the only two countries with interim EPAs have initialled significantly different texts with distinct liberalisation commitments.

There is no clear pattern that shows the poorer countries have longer to adjust than the richer ones, or that the EPAs have been tailored to development needs (however defined). Some of the richer countries on the list have to adjust quickly - but so do some of the poorest.

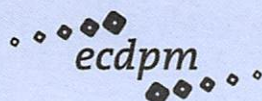
The picture that emerges is entirely consistent with the hypothesis that countries have a deal that reflects their negotiating skills: that countries able to negotiate hard with a knowledge of their interests have obtained a better deal than those lacking these characteristics. Côte d'Ivoire and Mozambique will face adjustment challenges that are among the largest and will appear the soonest. Côte d'Ivoire, for example, will have removed tariffs completely on 60% of its imports from the



*Despite single regional EPA agreements, there is considerable dissimilarity in country exclusion baskets.*



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## Editorial

European Development Commissioner Louis Michel recently faced a barrage of criticism from parliamentarians and civil society activists, who claimed that Brussels-made EPAs would not fit ACP needs. "I do not agree with you," Michel responded during an impromptu meeting in the margins of a Joint EU-ACP Parliamentary Assembly in Slovenia in mid-March. "If you want to remain poor, just be against the EPAs," he said.

It is clear that Europe remains convinced that the EPAs are the best option for ACP countries to adopt if they wish to profit from globalisation. In EU eyes, the agreements will bring about much needed development and growth in ACP regions. However, the clear articulation that ACP countries "have no choice" but to support this route, reveals that the European Commission is not ready to admit that there may be more than one avenue which could lead to development.

Once more it appears that the devil will be in the detail of what each country or region has initialled with the EU. It is simple for both parties to agree to principles such as 'EPAs are first and foremost about development', but what the agreements should entail is subsequently far from clear-cut. Indeed, recent analysis by the Overseas Development Institute and the European Centre for Development Policy Management has shown that technical aspects of the texts and liberalisation schedules are vitally important.

For this reason, the lead article this month analyses the initialled interim EPAs, in a bid to offer a better understanding of what has actually been agreed and what the real impact will be. An initial glance at the findings shows that no clear pattern emerges to demonstrate that poorer countries have longer to adjust to the radical changes than richer ones do, or that the EPAs are being tailored to development needs. Moreover, this satisfies the hypothesis that countries have managed to seal deals which reflect their negotiating acumen rather than specific needs.

But even those countries which have been deemed 'successful' in their EPA negotiation process are still voicing concern over the process. Hanno Rumpf, the Namibian Ambassador, has taken the opportunity to set out a range of practical issues and challenges currently faced by the SADC region. In the Caribbean, the one region that has signed a comprehensive EPA, an ideological fracas is unfolding over the pros and cons of the EPA. The battle lines have been drawn between those who feel the process and substance were substandard, and those who see the agreement as the best and only option to secure progress.

Leading into this, there has been much speculation over whether or not certain aspects of the EPAs are legally sound and whether there is any permissible chance of renegotiating some aspects of the deals. In our second article this month, Lorand Bartels casts a legal eye over some of these questions and proposes recourse for the ACP. One region where the flag of renegotiation has been strongly waved is the Caribbean. In this month's issue we have dedicated some page space to those who feel that while politically difficult and economically risky, renegotiation is preferable to signing the EPA in its current form.

Following a recent flurry of activity at the WTO involving the group of Least Developed Countries, Trineesh Biswas has interviewed a handful of key players to look at the significant growth of technical assistance within the cluster. If you would like to comment or question any of the topics featured in this issue, or would like to make a contribution, please do not hesitate to contact us at: [vhanson@ictsd.ch](mailto:vhanson@ictsd.ch)

*We hope you enjoy the April edition of TNI.*

EU two years before Kenya even begins to start reducing its tariffs as part of the EPA. Ghana will have liberalised 71% of its imports completely by the time Kenya is three years into this process which, after a further six years, will result in just 39% of its imports being duty-free. Table 1 summarises key features of the liberalisation schedules of interim EPAs in Africa.

### Implications for regionalism

A common perception, expressed by many countries in the independent reviews of the EPA negotiations foreseen by Article 37.4 of the Cotonou Agreement, is that there is little coherence between the EPA agenda and the regional integration processes in Africa. One particular concern has been that countries in the same economic region might liberalise different baskets of products and so create new barriers to intra-regional trade in order to avoid trade deflection.<sup>3</sup> This concern has been vindicated by those interim EPAs that have been agreed.

In the case of Central and West Africa the principal challenge for regional integration is that while most countries have not initialled an EPA, Cameroon, Côte d'Ivoire and Ghana have done so. The countries in the regions that do not currently belong to an EPA will reduce none of their tariffs towards the EU, maximising the incompatibility between their trade regimes and those of Cameroon, Côte d'Ivoire and Ghana.

Only in the case of the EAC have all members joined the EPA and accepted identical liberalisation schedules. If these are implemented fully - and in a timely way - economic integration will have been reinforced.

The Eastern and Southern Africa (ESA) and Southern African Development Community subgroup (SADC-minus) states have initialled a single agreement but there is considerable dissimilarity in the country liberalisation schedules and exclusion baskets. Of the goods being excluded by ESA, not one single item is in the basket of all five countries and over three-quarters are being excluded by a single country. Comparing Mozambique and BLNS (Botswana, Lesotho, Namibia and Swaziland), just one-fifth of the items are being excluded by both parties.

ESA faces an additional challenge. All of the ESA states have established their liberalisation schedules in relation to the common external tariff (CET) - presumably that of COMESA. But it is not only the details of their liberalisation and of their exclusion baskets that are different, their classification of goods is as well. The agreed phasing in of liberalisation has been based on the product groups established by COMESA for its CET. Although the COMESA members agreed that the CET should be fixed at different levels for these product groups, so far they have not agreed a formal definition that allocated each item in the nomenclature to one group or the other. The EPAs have required countries to make this specific link - and each country has done so differently, which will create problems for implementing any eventual COMESA CET. There are over a thousand items being liberalised by one or more of the ESA countries where there is some degree of discrepancy in the CET classification.

### Key provisions in the African EPAs

#### Border measures

Specific 'border measures', i.e. measures applied at the border of a country, are allowed under the EPAs, which may slightly alter some of the features of the liberalisation regimes. CEMAC has provision to halt tariff reduction unilaterally for a maximum period of one year, and the 'standstill clause' phrasing in the SADC EPA is less restrictive than in the others. All the African EPAs except ESA allow for the temporary introduction or increase of export duties in 'exceptional circumstances' following (a) 'joint agreement' with the European Community (for EAC and SADC) or (b) 'consultations' (for CEMAC, Ghana and Côte d'Ivoire).

A general prohibition on import barriers other than customs duties and taxes (and those stemming from anti-dumping and countervailing measures or safeguards) is subject to exemptions in all EPA texts (e.g. for infant industry protection or in case of public finance difficulties). The continuation of national subsidies that conform to WTO provisions is also allowed in all the texts. The CEMAC text refers specifically to the EU's gradual phasing out of its agricultural export subsidies, something it has already committed to do at the WTO by 2013.

The interim EPAs contain strict provisions on customs and trade facilitation, with sanctions in case of failure to provide administrative cooperation. If the Joint Council or Committee cannot come to a mutually acceptable solution within 3 months, the complaining party can suspend preferences for up to 6 months on a renewable basis.



## Areas for continued negotiation

There are big differences in the 'rendezvous clauses' in the interim EPAs, which establish the areas where negotiations must continue. However, the importance of these differences remains to be seen in practice, since the clauses are 'guidelines' for the areas to be negotiated, and additional topics might come up in the ongoing negotiations towards a full EPA depending on what the parties deem to be relevant.

## Dispute settlement

The dispute avoidance and settlement provisions are more extensive and rigid than in some previous EU FTAs, such as the TDCA with South Africa. The procedures for consultations, seeking advice from a mediator and establishing an arbitration panel are detailed and the time-frames are very strict. The procedures are largely identical except in the EAC and in ESA, where negotiations continue. The application of temporary trade remedies is envisaged in cases of non-compliance with an arbitration decision.

## Development cooperation and finance

All the EPAs, except that of the EAC, have comprehensive but wholly non-binding provisions for development cooperation. These are mentioned in each chapter as well as in a section on development cooperation (most extensively in the ESA text). The EAC text (as well as those of CEMAC and Côte d'Ivoire) also explicitly foresees continued negotiation on this.

## Aid for Trade and EPA-related development support

Given that the African EPA states will lose significant tariff revenue - in some cases very quickly - financial support is needed to offset this. The total 'theoretical revenue' that will be lost during the first tranches of liberalisation is estimated at around \$359 million per year.

Such inflows are needed just to maintain the *status quo*: the support needed for domestic producers to adjust to increased competition from imports and new opportunities for exports as a result of duty-free, quota-free access (DFQF) is additional. DFQF will bring some immediate and valuable gains from the redistribution of the revenue that until the end of 2007 the EU accrued as import tax. But it still needs to be built on by enabling an increase in ACP supply to bring longer-term benefits. This will often require significant investment in both physical and human resources, some of which will need to come from the private sector and some from the public sector.

As the provision of aid is the centrepiece of the EU's commitment to EPAs so far, it would be sensible to ensure that there is enough to help remove blockages to increased supply. Europe has committed itself to provide more Aid for Trade (AFT) to developing countries and should ensure that part of this enhances the use of DFQF by removing obstacles to production and export, such as poor infrastructure and other physical or institutional deficiencies.

Indeed, the EU decided that EPA-related needs should be addressed through the EU's 'Aid for Trade' (AFT) Strategy

Table 1: Comparison of EPA liberalisation schedules in Africa

Duration	15 years or fewer	16-20 years	20+ years
	BLNS Comoros Côte d'Ivoire Ghana Madagascar Mauritius Mozambique Seychelles	Cameroon Zimbabwe	All EAC
Liberalisation starts for positive-tariff goods	2 years or fewer	3-5 years	6+ years
	BLNS Côte d'Ivoire Ghana Mauritius Mozambique	Cameroon	All EAC Comoros Madagascar Seychelles Zimbabwe
Impact of early tranche(s)	High	Medium	Low
Adjustment	BLNS Côte d'Ivoire Mozambique Zimbabwe Seychelles	Ghana Madagascar Mauritius	All EAC Cameroon Comoros
Revenue	30%+	10-30%	Under 10%
	Burundi Côte d'Ivoire Kenya Madagascar Mozambique Rwanda Seychelles Tanzania Uganda Zimbabwe	Cameroon Comoros Ghana Mauritius Namibia	Botswana Lesotho Swaziland
Exclusions	Under 15%	15-20%	20+%
	Lesotho Mauritius Namibia Seychelles Swaziland	Côte d'Ivoire Kenya* Uganda Comoros Madagascar	Botswana Burundi Cameroon Ghana Mozambique Rwanda Tanzania Zimbabwe

\* Mozambique and EAC countries have been italicised to emphasise that there is 'missing data' and that they have been treated differently in this table.

in favour of all developing countries, recognising that the availability of aid for trade should not be made conditional on concluding an EPA. However, there is no clarity on what resources will be available for each ACP country and by when as part of the Aft Strategy.

Improving mechanisms and procedures for delivering Aft assistance is as important as providing an appropriate level of support. Effectiveness of delivery will determine the capacity to implement EPAs and any further trade reform. Given that the Aft Strategy builds on the EU commitments for improving quality of aid in line with the Paris Declaration, there is a window of opportunity in 2008 to use aid effectiveness processes to harmonise donors' practices and align them with partner countries' own delivery instruments.<sup>4</sup>

The ACP regions and countries should proactively ensure that the EU Aft Strategy is operational and effective by identifying gaps in existing support and improvements needed in Aft delivery instruments. There is urgent need in particular to assess the added value of different mechanisms (regional funds and national-level instruments, etc.).



## The Way Forward

Provided that there is goodwill and flexibility on all sides, it ought to be possible to avoid the EPA process creating new barriers to African integration. But this requires a recognition that not all the details of the current texts are set in stone. The demands that will arise from moving towards the agreement of full EPAs will reinforce this need.

### The need for ownership

The EPA negotiation process has too often been chaotic and led by the European Commission. To reach truly development oriented outcomes, it will be necessary to allow for the adjustment of interim texts that do not fully reflect the interests of all parties. In revising an interim agreement it may be helpful to draw on texts concluded in other ACP regions, adopting some provisions from these where suitable.

The range of issues to be covered in a full EPA should reflect both national and regional ACP interests. If interests among countries within a region differ, an EPA might include varying degrees of commitment on trade in services and trade related issues. Further, signing an EPA should be a sovereign decision by each country: if a country chooses not to take part it should not be compelled to join through political pressure or through aid conditionality.

### Timing

It will be crucial to allow sufficient time to negotiate a truly development friendly, comprehensive EPA that is owned by all involved; while the momentum of the negotiations should not be lost, there is no need to rush into an agreement with ill conceived provisions. A clear agenda and calendar for negotiation that is acceptable to both partners should be defined. In particular, this should avoid leaving contentious or difficult issues until the end.

### Increasing transparency

There is a need to increase transparency in the negotiations and their outcome, in order to allow for public scrutiny by policy makers, parliamentarians, private sector and civil society representatives. This will foster a more participatory approach and contribute to increasing ownership of the agreements reached.

### Reducing negotiation asymmetries

The asymmetries in negotiating capacity (between the EU and ACP and among the ACP) that have contributed to the incoherence of the interim agreements need to be taken into account in future negotiations if the problems arising from the rushed conclusions of the interim EPAs are not to be exacerbated. This needs to be done through adapting the pace of negotiations as well as the style of interaction between the parties and through capacity building measures under the Aid for Trade initiative.

# The legal status of the initialled EPAs

Dr Lorand Bartels<sup>1</sup>

By the end of 2007, 20 countries in Africa and the Pacific had initialled interim Economic Partnership Agreements (EPAs) with the EU, covering trade in goods.<sup>2</sup> Fifteen Caribbean states initialled a 'full EPA', covering areas beyond trade in goods. What is the legal status of these initialled agreements and what are the opportunities for renegotiation, as foreshadowed by European Commission President José Manuel Barroso at the EU-Africa Summit, in Lisbon on December 8-9 2007?

## Existing obligations

First, it is important to look at the existing obligations of ACP countries that have initialled either an interim or comprehensive EPA.

Under international treaty law, initialling an agreement demonstrates that the text is authentic and definitive,<sup>3</sup> ready for signature or - although unusual - ready for provisional application.<sup>4</sup> But an initialled text does not itself impose any obligations on the parties. The parties to an agreement are only under an obligation to implement its terms once it has entered into force, which<sup>5</sup> takes place upon ratification or after ratification if this is specified in the treaty (as it is in the interim and full EPAs).<sup>6</sup> On signature (but not on initialling), a country enters into an obligation not to defeat its object and purpose prior to its entry into force.<sup>7</sup>

In addition, the parties to an agreement may decide to apply certain terms on a provisional basis, even though there is no obligation to do so under either general international law or WTO law.<sup>8</sup> Provisional application may subsequently be terminated by notifying the other party.<sup>9</sup> However, terminating the provisional application of an agreement may indicate an intention not to ratify the agreement, which could result in the EU withdrawing the preferences it had already granted (see below). Therefore, if parties have concerns about the content of the agreements it may be advisable to refrain from provisional application until the disputed clauses are first revised.

## Requirements for WTO compatibility

It is also important to look at what is required for the agreements to be WTO compatible. WTO law sets minimum requirements covering free trade in goods.<sup>10</sup> It does not require the inclusion of liberalisation 'multiplier' clauses, such as MFN or standstill clauses. It also does not require progression to full EPAs or the inclusion of other trade related issues, such as services or investment.

The WTO Transparency Decision<sup>11</sup> imposes a procedural requirement to notify the World Trade Organisation of any agreement under which preferences are granted - before

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<sup>2</sup> See ECDPM and ODI (2008), *The New EPAs: Comparative analysis of their content and the challenges for 2008*, Policy Management Report, ECDPM-ODI, [www.ecdpm.org/pmr14](http://www.ecdpm.org/pmr14) [www.odi.org.uk](http://www.odi.org.uk); this study was undertaken with the generous financial support of the Dutch Ministry of Foreign Affairs.

<sup>3</sup> Trade deflection refers to a situation where a country not in receipt of preferences essentially circumvents the MFN tariff of a preference donor by transshipping its exports through a country in receipt of preferences, adding little or no value in the recipient country.

<sup>4</sup> The Paris Declaration, endorsed on March 2 2005, is an international agreement under which over one hundred Ministers, Heads of Agencies and other Senior Officials committed their countries and organisations to continue to increase efforts to harmonise, align and manage aid with a set of monitorable actions and indicators for the results.



the agreement enters into force.<sup>12</sup> For this purpose, an initialled text should be sufficient.<sup>13</sup> This logic is reflected in the EPA Regulation under which the EU grants tariff preferences to any ACP country that has initialled an interim or full EPA.<sup>14</sup> The purpose of this Regulation is to ensure the WTO-legality of tariff preferences granted under an interim or full EPA, and to enable these agreements (once initialled) to be notified to the WTO. Given this treatment, it makes no sense for the European Commission now to claim that these agreements can only be notified to the WTO once they have been signed.

Moreover, the WTO Transparency Decision specifically provides for the possibility of renegotiating an already-notified agreement.<sup>15</sup> This has been done on five occasions to date.<sup>16</sup> The only requirements are that the renegotiated agreement be re-notified to the WTO and that it remain WTO-legal. This leaves a great deal of scope for renegotiating aspects of the agreements which are not required for WTO-legality (for example, the MFN clause and the standstill clauses could be removed without compromising WTO validity).

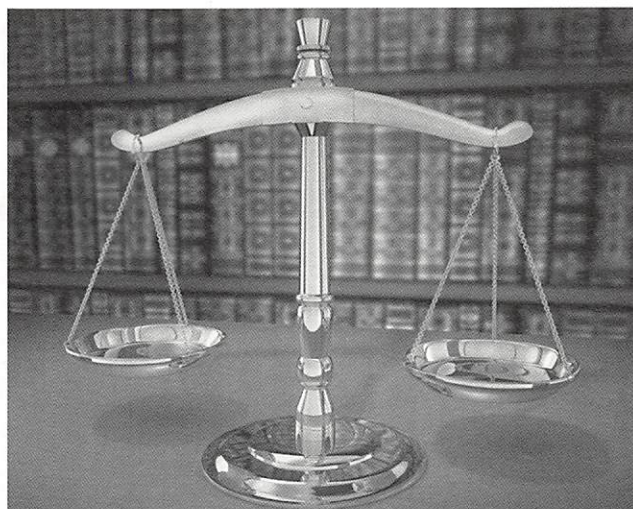
Thus, WTO law does not require signature of an interim or full EPA prior to notification, and expressly foresees the possibility of renegotiating and re-notifying an already-notified agreement, so long as the end result remains WTO-legal.

### Reasons for duty-free market access to be retracted

The EPA Regulation provides for the withdrawal of market access if (a) an ACP country signals its intention not to ratify it, (b) if ratification does not take place within a reasonable period of time, or (c) the agreement (or its substance) is terminated.<sup>17</sup>

As mentioned, the withdrawal of provisional application of an agreement may indicate an ACP country's intent not to ratify the agreement. For this reason, ACP countries should be careful about applying any aspects of an interim or full EPA on a provisional basis. On the other hand, seeking to renegotiate those aspects of an agreement that are not required for WTO-legality should not be taken as signalling an intent to sidestep ratification. The EPA Regulation could be interpreted this way. However, it can be argued that such a view wilfully overlooks the purpose of the EPA Regulation, which is to ensure the WTO compatibility of the resulting agreement, not to protect the EU's negotiating hand.

It is unclear what a 'reasonable period of time' between initialling and signing an agreement would be. In some cases ratification can take place very quickly. For example, the free trade agreement between the EU and South Africa (the TDCA) was signed on October 1 1999 and ratified by South Africa almost immediately in November 1999. On the other hand, for some countries longer ratification periods are also normal. Relevantly, this includes the EU's own member states. Thus, it took Luxembourg, France, Austria, Italy and Greece until April 27 2004 to ratify the very same TDCA. Arguably, it would be unreasonable to hold an ACP country to a standard higher than that which the EU member states apply in their own treaty practice. Consequently, there is a case that a minimum of four years between signature and ratification would be a 'reasonable period of time' for an ACP country to endorse the agreement.



### Options for the ACP

ACP countries are not obliged under treaty law or WTO law to sign any interim or full EPA that they have initialled. An initialled text is sufficient for WTO notification purposes.

ACP countries are not precluded by treaty law or WTO law from renegotiating initialled agreements, so long as the resulting agreement is still WTO-legal. They should also be able to do this without prejudicing tariff preferences granted under the EPA Regulation, given that this Regulation is designed to ensure the WTO-legality of the preferences, and not to strengthen the EU's bargaining position.

However, ACP countries should be very careful about provisional application of an initialled interim or full EPA, as the termination of such provisional application could indicate an intent not to ratify the agreement, and this could prejudice market access under the EPA Regulation.

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<sup>2</sup> Kenya, Tanzania, Uganda, Burundi and Rwanda initialled as the EAC; Botswana, Swaziland, Lesotho, Namibia and Mozambique initialled as SADC (Mozambique has a separate liberalisation schedule); Zimbabwe, the Seychelles, Comoros, Madagascar and Mauritius signed the ESA text but with separate liberalisation schedules; Ghana, Côte d'Ivoire and Cameroon initialled separate texts, as did Papua New Guinea and Fiji.

<sup>3</sup> Article 10(b) of the Vienna Convention of the Law of Treaties (VCLT).

<sup>4</sup> Provisional application usually takes place at the time of signature, but there is no reason it could not take place earlier. The granting of unilateral preferences by the EU under the EPA Regulation (Council Regulation 1528/2007 of December 20 2007 [2007] OJ L348/1, is a rare example of this situation, as it amounts to a provisional application of the initialled texts on the part of the EU.

<sup>5</sup> Article 26 of the VCLT.

<sup>6</sup> Ratification is one way in which the parties to a treaty may express their consent to be bound (Article 11 VCLT).

<sup>7</sup> Article 18 VCLT.

<sup>8</sup> Article 25 VCLT.

<sup>9</sup> Article 25(2) VCLT.

<sup>10</sup> Article XXIV GATT.

<sup>11</sup> WTO General Council, Transparency Mechanism for Regional Trade Agreements. Decision of December 14 2006, WT/L/671.

<sup>12</sup> Paragraph 3 of the WTO Transparency Decision states that '[the required notification of an RTA by Members that are party to it shall take place as early as possible. As a rule, it will occur no later than directly following the parties' ratification of the RTA or any party's decision on application of the relevant parts of an agreement, and before the application of preferential treatment between the parties.]'

<sup>13</sup> The Transparency Decision does not refer to initialled agreements. However, it requires the notification of an agreement under which preferences are granted (see example above and footnote 4). If such an agreement is merely initialled, it follows that the initialled agreement must also be notified.

<sup>14</sup> See footnote 4.

<sup>15</sup> Paragraph 14 of the Transparency Decision.

<sup>16</sup> For further examples, see: [www.wto.org/english/tratop\\_e/region\\_e/notif\\_changes\\_e.htm](http://www.wto.org/english/tratop_e/region_e/notif_changes_e.htm)

<sup>17</sup> Article 2(3) of the EPA Regulation: see footnote 4.



# Accommodating regional realities: practical issues and challenges for the SADC EPA negotiations

Hanno Rumpf<sup>1</sup>

## Understanding regional realities

There is a general understanding in Europe of the need to accommodate regional realities in the EPA negotiation process. However, what is not so generally understood is the nature of these regional realities. This should come as no surprise, since they vary greatly from region to region. In the Southern African Customs Union (SACU), for example, the dominant regional reality is the economic preponderance of South Africa. This economic giant straddles the region and casts a long shadow. It poses the challenge of how to promote regional development in the context of vast inequalities of size and economy. It is a challenge, which the smaller countries of the SACU have been deeply engaged in and grappled with since independence. South Africa's dominance has given rise to specific policy initiatives and instruments which are explicitly intended to prevent the full operation of market forces, in the interests of balanced regional development.

The principles underpinning these policies and instruments are not dissimilar to those underpinning EU regional and social policies. They are also comparable to some aspects of EU agricultural policy, which aims to address the large regional inequalities existing within Europe. However, while in the EU this has taken the form of large financial transfers to farmers, the scope for such financial measures is more limited amongst developing countries. In this context, tools which have a more direct impact on the operation of free markets need to be used. It is with regard to the use of some of these tools that Namibia has a number of concerns with the text of the existing SADC-EU interim agreement.

## Namibia's concerns

These fears were set out in the statement from the Namibian government on December 5 2007, which highlighted:

- The European Commission's insistence on a clause requiring SADC-EPA members to "immediately freeze any new measures concerning the use of export taxes and levies";
- The European Commission's insistence on a non-negotiable demand for a provision which ensures free movement of goods within the eight SADC-EPA states<sup>2</sup>;
- The implications of the Most Favoured Nation (MFN) provision which the EU has included in the interim EPA;
- The European Commission's rejection of the SADC-EPA proposal for infant industry protection, based on the current regional arrangements.

In each of these areas it is necessary to revisit the provisions already included in the SADC-EU interim EPA to ensure regional realities and needs are fully accommodated. It was following assurances from European Commission President José Manuel Barroso at the Lisbon Summit

that areas of concern would be revisited and addressed, that Namibia initialled the SADC-EU EPA agreement on December 12 2007.

In order to address Namibian concerns about this agreement there is a need for better understanding of the underlying regional realities.

## Understanding the use of export taxes

In Namibia, export taxes have been widely used to address some of the challenges facing a small economy in a region dominated by a much larger and economically powerful neighbour. The primary purpose of these duties is to encourage adding value to processing. In agricultural value chains, the use of export taxes can prove particularly worthwhile in maintaining supplies to processing industries during times of periodic drought. Failure to ensure the flow of raw materials to processing industries could discourage investment and limit 'value added' processing activities.

A concrete example is the beef sector. Prior to independence, Namibian cattle were largely exported 'on the hoof' to South Africa, where value addition and the structural development subsequently took place. Since independence however, government policies (including securing preferential access to the EU market and the use of export taxes) have encouraged the development of a slaughtering and meat processing industry, as well as a tanning and leather working industry. This has extended the beef sector value chain in Namibia and created thousands of new jobs. The Namibian government is trying to pursue a similar policy in the small-stock sector, applying a flexible export tax and linking export licenses to the level of livestock processed locally.

Looking beyond this very important 'value addition' policy, export taxes have proved a valuable tool for helping Namibian companies survive some very rough competitive practices. In the early 1990s *South African Breweries* attempted to undermine *Namib Breweries* by selling bottled beer cheaply in Namibia. Under SACU rules, Namibia could not impose an import duty, but it could impose an export tax on the empty beer bottles. Given the economics of the bottled beer trade, the threat of a prohibitively high export tax on empty beer bottles effectively halted this predatory practice by *South African Breweries* and helped *Namib Breweries* remain in operation. Fifteen years later, *Namib Breweries* has grown into an operation exporting premium brand beers to some 25 countries and competing with *South African Breweries* in the 'luxury purchase' beer market throughout southern Africa.

For a little country facing a big neighbour, where small companies compete with those aggressively pursuing market domination, it makes sense to use the tools available to maintain the space for growth and job creation - particularly with such a fine product as Namibian export



lager! For Namibia, the issue of export taxes goes beyond simple public revenue considerations and is fundamentally about maintaining policy tools which can help to foster structural economic development in very difficult regional circumstances. From such a perspective, giving up these tools or accepting constraints on their use simply does not make sense.

### Qualifying free movement of goods: living with Big Brother

The European Commission's insistence on what is seen by the Namibian government as *"a non-negotiable demand for a provision to ensure free movement of goods within the eight SADC EPA states"*, is seen as highly problematical, since it ignores *"current regional trade arrangements under SACU"*. For example, in the wheat sector the provisions of the SACU agreement allow Namibia to ban imports of wheat and wheat flour during the period of the wheat harvest, until such time as a market has been found for all Namibian wheat. This applies to all wheat including that produced in South Africa. This use of internal barriers to trade within the SACU - in particular for sensitive sectors - ensures the continued existence of an irrigated wheat farming industry in Namibia. EU demands on the free movement of goods could prevent the use of such policy tools within the SACU and lead to the demise of the Namibian wheat industry.



*Given the economics of the bottled beer trade, the threat of a prohibitively high export tax on empty beer bottles effectively halted the predatory practice of South African Breweries and helped Namib Breweries remain in operation.*

The European Commission has argued that provisions in this area are essentially intended to ensure EU goods exported to the SADC EPA countries only pay customs duties once. This is not an issue for Namibia, given that this already occurs when goods leave the SACU and enter the territory of another SADC configuration member. For Namibia, the main issue is how to ensure the primacy of intra-regional trade arrangements, which have been designed to take into account local regional realities and regional policy objectives with regard to the promotion of more balanced regional development.

There are concerns in Namibia that once an EPA agreement is in place, the European Commission could use such provisions on free movement of goods to pursue its wider market-access partnership agenda. In this context, it should be

noted that South Africa is one of the target markets for the European Commission's market access partnership strategy. Thus, to address these underlying Namibian concerns it would be necessary to reformulate and formally limit the application of the current provisions. This should be done in a way which ensures full respect for the existing provisions of the SACU agreement and which allows exceptions on the free movement of goods to protect sensitive sectors.

### The Most Favoured Nation provisions

There are two dimensions to Namibia's concerns on the inclusion of an MFN clause. The first relates to the restrictions the current provisions place on the development of SACU's trade relations with other advanced developing countries, which are some of the fastest growing economies in the world. The current MFN provisions would mean that any new trade preferences extended to Brazil or India would automatically need to be extended to the EU. This places unacceptable limits on the development of South-South cooperation and would turn the purpose of the enabling clause in the WTO agreement on its head.<sup>3</sup>

The second dimension relates to the politics behind the negotiations. For example, the existing MFN clause provides a strong basis for Brazil to argue that the starting point of any SACU-Brazil Free Trade Agreement should be the existing tariff elimination offer made by the SACU to the EU, since any MFN clause should have universal applicability. This is a serious problem. It is one thing to eliminate tariffs on products containing sugar from the EU, where the sugar sector is undergoing a major down-sizing. It is quite another to offer the same to Brazil, where the sugar sector is rapidly expanding and dominating world markets. This is not a legal question but a question of the politics of negotiations, with the current provisions being distinctly unhelpful in fostering South-South economic relationships. Ironically, it can be seen as equally unhelpful for European exporters if SADC were to offer the EU's competitors the same tariff preferences which the EU has negotiated with them.

### Conclusions

Each of the three areas outlined above illustrate how regional realities and regional development integration objectives need to be accommodated in economic partnership agreements. Given the importance of regional integration to meeting the development challenges Africa faces, accommodating regional realities and concerns should be a major priority in the process of the EPA negotiations. However, in the 'rough and tumble' of trade negotiations this has not always been apparent.

For this reason, it is important to recognise the importance now being attached by the ACP to the so-called 'Barroso Initiative'. As deputy trade minister Rob Davies of South Africa has pointed out *"(President) Barroso's success in forging a compromise deal could open the way to South Africa and other ACP countries to sign economic partnership agreements with the EU"*.<sup>4</sup>

<sup>1</sup> Hanno Rumpf is the Namibian Ambassador to the European Commission.

<sup>2</sup> The eight SADC-EPA states are South Africa, Botswana, Lesotho, Namibia, Swaziland, Mozambique, Angola and Tanzania.

<sup>3</sup> See: MFN provisions in EPAs: a threat to South-south trade, Cheikh Tidiane Dièye and Victoria Hanson, TNI March 2008, Volume 7, No.2.

<sup>4</sup> See: South Africa: Country looks to Barroso to break EU trade logjam, Business Day, January 10 2008.



The following article was drawn from a memorandum submitted to the Reflections Group of the Caricom Council for Trade and Economic Development (COTED) on February 27 2008. The memorandum, listed 19 areas of concern relating to the process and content of the Caribbean EPA. The authors suggest that there may still be a 'window of opportunity' to re-negotiate the agreement, which has not yet been signed and provisionally applied, and set out a possible course of action for Caricom over the next few weeks and months.

## Renegotiate the Cariforum EPA

Havelock Brewster, Norman Girvan and Vaughan Lewis<sup>1</sup>

The EPA is a treaty that is legally binding, of indefinite duration and will be very difficult to amend once it is in force. It covers a wide range of subject areas that have hitherto been within the jurisdiction of domestic or regional policy, and which few people in the region know about or understand. Adequate time and effort must be put into public explanation, discussion and review of the provisions of the agreement before it is legally cast in stone. Here are several, non-exhaustive, concerns with the content of the EPA:



*Adequate time and effort must be put into public explanation, discussion and review of the provisions of the agreement before it is legally cast in stone.*

### Sustainable development and resources take back seat

According to the mandate in the ACP-EU Cotonou Agreement, the EPA is supposed to promote sustainable development. However, the development component of the Cariforum EPA has taken a back seat to the trade and investment liberalisation component.

In a reciprocal trade agreement between two unequally developed partners, adequate resources must be transferred to the poorer partner to help build up their productive capabilities in infrastructure, human capital and technology. Without this, the process of trade liberalisation could worsen existing disparities as the richer partners are in a better position to take advantage of the opportunities. In Europe, the transfer of resources through generous 'structural' and 'social cohesion' funds has helped countries like Ireland, Spain and Portugal to significantly accelerate their rate of development.

However, resource transfers are not legally binding obligations under the EPA. And the resources provided by the European Development Fund (EDF) are not only slow to negotiate and disburse, but woefully inadequate. They amount to €165 million under the 10th EDF. When shared between 15 countries over five years, this equals € 2.2 million per country per year.

### Resource transfers: 'eyes wide-shut'

The potential effect of tariff elimination on 82.7% of imports from Europe within 15 years needs to be carefully evaluated for each country with respect to government revenue, income, production and employment. If a negative economic effect is detected, there may be a case for (a) a longer transition period or (b) compensatory resource transfers to cushion these effects. Without this kind of information the Caribbean is entering a binding arrangement with their 'eyes wide shut'.

The Caribbean has had duty and quota-free access to EU markets for most of its exports since 1975 under the Lomé Accords. But growth of non-traditional exports to EU markets has been insignificant. 'Market access' has not automatically converted to 'market presence'. There have been major complaints from the private sector about restrictive rules of origin and onerous technical barriers to trade, including sanitary and phytosanitary standards. Apart from some reported improvements to the rules of origin, we have no information that these obstacles have not been satisfactorily addressed by the EPA. For example, the EPA rules of origin exclude a number of sugar-based products from value-added 'cumulation' until at least 2015, which will inhibit the growth of regional sugar-based industries for export to Europe.

Furthermore, the EPA does not offer Cariforum firms - especially SMEs - targeted assistance to help raise their supply capabilities, preventing them from competing with duty-free imports from Europe or taking advantage of new export opportunities. The many references to 'development cooperation' in the EPA are neither quantified nor time-bound. Thus, the European Commission can decide what to support, when and by how much. The EU Commission has already signalled that the priority for the limited the Cariforum Regional Indicative and EPA Implementation Programme EDF funds will be EPA implementation.



## Services: giving with one hand and taking with the other

Although the EU will open 29 service sectors and 11 professional sectors to Cariforum service providers and individuals working for contractual service suppliers, there are many conditions.<sup>2</sup> Service firms can only have a maximum of a one-year contract, while their employees must have been working with them for at least one year already. Professionals must have 'mutual recognition agreements' between their own country and the EU country where they wish to practice. Furthermore, entry is subject to an 'economic needs test' in the EU. If a Cariforum firm manages to overcome all these barriers their stay is limited to a cumulative 6 months in any 12 month period or to the duration of the contract - whichever is less. This is like giving with one hand and taking with the other.

Entertainers, many of whom already had access to the EU to perform, will now have to register locally. Registration systems are at best embryonic in the Caribbean and, where already established, must meet EU approval. Additionally, the EU Commission has made no commitments on visas, immigration, work permits or residency regulations for service providers. These are very tight in Europe and relatively relaxed in the Caribbean due to tourism. Hence, Caribbean nationals will find it more difficult to make casual visits to Europe to scout out business opportunities or make contacts than vice versa.

Cariforum will open 75% of its service sectors to EU service providers for More Developed Countries and 65% for Least Developed Countries. This could lead to displacement or acquisition of domestic companies by much larger and richer EU firms.

Foreign decision-making could subsequently render Caribbean firms vulnerable, while the potential development of those regionally-owned firms that are capable of going global, could be stifled.

## WTO compatibility

The inclusion of 'WTO-plus' commitments in the EPA on services, intellectual property, competition, public procurement, investment and e-commerce are not necessary for WTO compatibility. Although the European Commission promises development support for these obligations, these promises are not quantified and time-bound, while the obligations will require Cariforum states to adopt legislation, practices and policies that will be financially onerous and a drain on scarce technical manpower.

The 'WTO-plus' commitments pre-empt and proscribe Cariforum governments in key areas of development policy as well as the pending Caricom Single Market and Economy (CSME) in these areas. It would be more desirable to craft CSME regimes that reflect Caricom's own circumstances, priorities and development objectives before making commitments to Europe.

Moreover, it is important to evaluate 'national treatment' requirements in the EPA, which forbid governments from discriminating in favour of local and regional firms. Such requirements may prejudice the ability of Cariforum

governments to foster the development of local and regional firms capable of competing globally.

Under the EPA, where the whole dynamic is integration with the EU economy in goods, services, capital and economic policies, the CSME will be effectively sidelined.<sup>3</sup> The CSME, which is not an alternative to integration into the world economy, was being developed as a platform for more efficient regional production and global export, and for pooled bargaining power.

## Regional disintegration

The major institutional requirements for EPA implementation and governance will consume the limited money and manpower of Cariforum states. They will also give so-called 'Joint Committees' with the Europeans and the Dominican Republic, power to make legally binding decisions. Cariforum states will retain veto powers but the European Commission will take the upper hand with the leverage of market access and development 'assistance'. There is a chance these powers may supersede Caricom's own organs of governance.

The parties to the EPA are the European Commission and 15 Cariforum states 'acting collectively'. Caricom as such is not a Party to the EPA. At the same time, in many instances in the text of the Agreement, the rights and obligations are those of the 'Signatory Cariforum states'. This carries implications for the integrity of Caricom integration. It is not clear whether the Caribbean Community, under its present governance arrangements, has the legal power to act collectively like the European Commission does.<sup>4</sup> Hence, where Cariforum states agree to act collectively, Caricom will need to make arrangements to establish joint positions among their membership, and also with the Dominican Republic. As such, they may be represented by a single representative on key EPA implementation bodies such as the Joint Council and the Trade and Development Committee. Where States have individual rights and obligations, or where joint Caricom or Cariforum positions do not yet exist, bargaining power will be tilted more heavily in favour of the European Commission and Cariforum states will be placed in competition with one another. This could widen intra-regional inequalities, as some countries are less well endowed than others to take advantage of the EPA, causing regional disintegration rather than integration.

## Danger ahead

There are several other questionable and disadvantageous provisions in the EPA that will doubtless become evident as the details of the agreement are examined. These are rendered all the more dangerous given that the EPA provisions establish a precedent for up-coming trade agreements to be negotiated with the US and Canada.

*"The major institutional requirements for EPA implementation and governance will consume the limited money and manpower of Cariforum states."*



It might have been better for Cariforum, or at least Caricom, to have negotiated an EPA limited to what was necessary for 'WTO compatibility'. It could have incorporated carefully calibrated import liberalisation attuned to the development of local production capacities, specific commitments for assistance targeted at key infrastructure inputs and firm-level technical support, as well as establishing a presence in EU markets. The inclusion of 'WTO-plus' commitments in services, competition, public procurement, and investment could be deferred pending WTO agreement in these areas, or at least pending completion of the relevant CSME regimes.

### Which options remain open?

It will be politically difficult and economically risky to adopt a change in approach to the EPA at this stage. Nevertheless, there may still be a 'window of opportunity' to try. The agreement, although initialled, has not yet been signed by national ministers or given provisional application (scheduled for no later than June 30) nor has the European Commission formally notified the WTO. To date, the European Parliament has not yet given its assent for signature at the European Commission level. Once all these procedures have been completed and the formal ratification processes begin, it will be virtually impossible to change what has been agreed. At the very least, revision - with the agreement of all the parties - would be a difficult and time-consuming process.

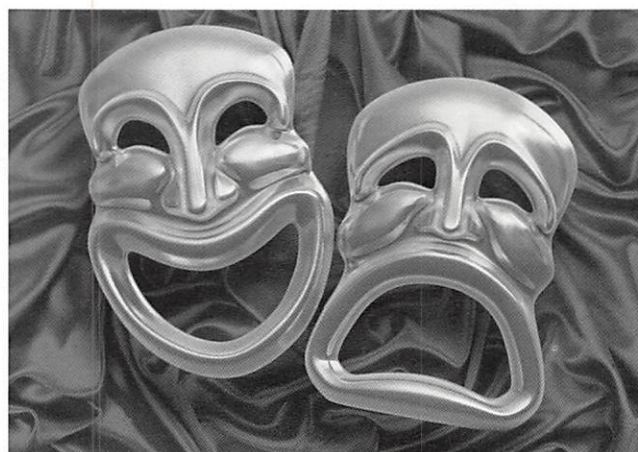
Caricom should therefore weigh the political costs and economic risks of seeking to change the EPA now; against the still unquantified longer-term political and economic costs of adopting the EPA in its present form. As such, it is important to remember that African countries that only initialled 'interim' EPAs in December 2007, have been given until the end of 2008 to complete their EPA negotiations

An ideological battle is currently unfolding in the Caribbean over the merits and demerits of the EPA negotiated between Cariforum and the EU. The conflict springs from two main elements: the process used to negotiate the EPA and the substance of what was won or lost at the negotiation table. For those who negotiated the Agreement it was the best and only option to secure Caribbean development.

In response to the above Memorandum, the CRNM issued a written rebuttal:

"The Memorandum clearly does not represent the text of the EPA and the issues contained within it; is replete with errors and innuendos; dismisses the hard work of regional officials and stakeholders through the intense coordination process and well targeted analysis of relevant issues; and makes little or no contribution to the intended consideration of the regional negotiating process and recommendations for its improvement."

To read the full text of this refutation see: [www.normangirvan.info/wp-content/uploads/2008/03/rnm\\_response\\_to\\_memorandum\\_rev.doc](http://www.normangirvan.info/wp-content/uploads/2008/03/rnm_response_to_memorandum_rev.doc)



*Entertainers, many of whom already had access to the EU to perform, will now have to register locally.*

and that there is considerable pressure for the terms of these provisional agreements to be re-negotiated.

### A possible course of action for Caricom

Caricom could signal to the European Commission that it has every intention of concluding an agreement that meets existing WTO rules and obligations, but that it cannot proceed to the signing and provisional application of the initialled EPA as there has been inadequate time for public consultation and official evaluation of its developmental impact and the implications for its own regional integration process.

Caricom could also point out that, in concluding a WTO-compatible agreement, it is not prepared to include any 'WTO-plus' provisions at this time, or until either (i) agreement is reached in the WTO on these subjects, or (ii) the relevant Caricom regimes are completed; whichever is earlier. Under these conditions, a review clause that triggers negotiations on these subjects may be included in the agreement.

With respect to the trade in goods, Caricom could request additional time to review the market access commitments under the initialled EPA until the end of 2008. This assessment could look at their likely fiscal and employment impact and propose amendments, targeted infrastructure and company-level support for the development of supply and marketing capabilities. This would need to be supported by appropriate diplomatic and political action aimed at mobilising support from (i) the Caribbean public, (ii) other ACP countries (around a collective position on the issues) including the important support of the Dominican Republic (iii) EU member states, the EU Parliament and European Civil Society and (iv) The Caribbean Diaspora; in order to bring pressure on the European Commission Trade Directorate and its Commissioner.

<sup>1</sup> Havelock Brewster and Norman Girvan are Senior Associates with the Caribbean Regional Negotiating Machinery (CRNM). Vaughan Lewis is Professor of International Relations of the Caribbean at the Institute of International Relations, UWI.

<sup>2</sup> See: The EPA: a critical evaluation, Norman Girvan, PowerPoint presentation March 23 08 [www.normangirvan.info](http://www.normangirvan.info)

<sup>3</sup> Plus integration with the Dominican Republic.

<sup>4</sup> This matter is among the subjects addressed by the Report of the Technical Working Group on Governance appointed by Caricom Heads of Government, Managing Mature Regionalism (2006).



# LDCs rising: the growth of technical capacity

Trineesh Biswas<sup>1</sup>

'Technical assistance' and 'capacity building' are phrases often bandied about in trade policy circles - generally, how poor countries need more of both.

Depending on who is talking, technical assistance and capacity building mean different things. To name just a few: better equipping government officials to identify their countries' interests and pursue them in trade negotiations, helping nations build regulatory frameworks and implement trade liberalisation obligations, or even aid for countries to build the industries, roads, and ports they need to participate in the global economy.

Not surprisingly, the need for all of the above is most pressing in the world's poorest countries.

Calls for technical assistance and capacity building - especially for least-developed countries - have become a hallmark of international economic summits. They have given rise to a wide range of initiatives run by an alphabet soup of institutions, from the International Trade Centre (ITC) and the United Nations Industrial Development Organisation (UNIDO), to the more simply named World Bank.

## The gradual acquisition of capacity

While the needs remain great - the WTO's own 'Aid for Trade' initiative is being set up for this very reason - there is now heartening evidence that the world's poorest governments are increasingly well-equipped to identify and articulate their interests in global trade negotiations. In other words, capacity - at least in this realm - is being acquired.

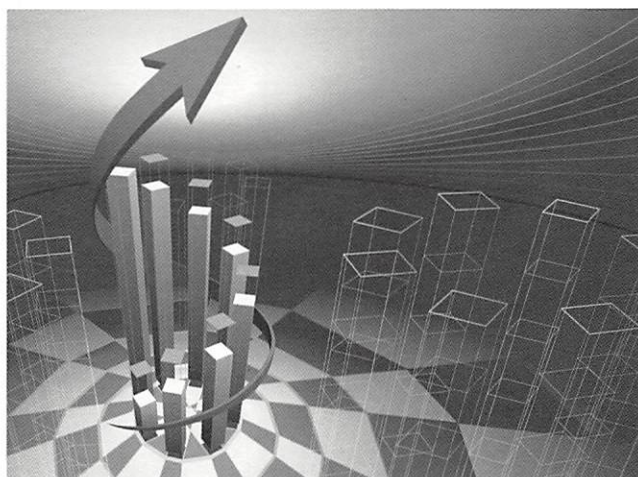
WTO Director-General Pascal Lamy paid heed to this when addressing a summit of LDC trade ministers in Maseru, Lesotho in February.<sup>2</sup> "The presence, the strength, the technical capacity of the LDC group has tremendously increased in recent years," he said. "LDC-specific priorities are now well known to everybody."

This had meant increased leverage for the group in multilateral trade negotiations, he said: if WTO Members manage to conclude the struggling Doha Round trade talks, duty and quota-free market access for LDC exports - one of the group's key demands - would have to be part of any accord.

The attendance list for the Maseru meeting provided elegant proof that other countries were responding, said David Luke, a senior trade advisor to the United Nations Development Programme. "A few years ago, you would not have seen China, Brazil, the EU, and India show up at an LDC meeting to explain their positions." Several long-time observers of trade negotiations had noted the "increasing sophistication" with which the LDC group was making specific demands.

## Improvement dates back to 2005

Mark Pearson, Programme Director of the Regional Trade Facilitation Programme, a Pretoria-based DfID-funded initiative that works with several African economic blocs and



the LDC group, traced the marked increase in negotiating capacity to the group's preparations for the WTO's Hong Kong Ministerial Conference in 2005.

That year, he said, Zambia became the coordinator of the LDC group, and made a strong effort to promote cooperation among members aimed at developing consensus on different negotiating positions - notably, requests for duty and quota-free market access accompanied by simplified rules of origin, and concessions on services trade. Achieving solidly-backed common positions on certain issues was a significant achievement in itself, given countries' varied commercial interests.

Credit was also due to Zambia's trade minister at the time, Dipak Patel, who "was a dynamic character who had a personal interest in making something happen at the WTO."

Donor funding, notably from the United Kingdom's Department for International Development, helped underwrite the creation of a technical team that backed LDCs' efforts to develop joint positions. The LDCs also received support from inter-governmental organisations and civil society groups such as the Advisory Centre on WTO Law, the International Centre for Trade and Sustainable Development, and the South Centre.<sup>3</sup>

These positions were then presented to other countries. Pearson said that Zambia was able to mobilise wider support for the LDCs' objectives, with representatives from the LDC group meeting formally and informally with the influential G-20 bloc of developing countries, for example. This meant that "when we went to Hong Kong [in December 2005], we were not starting from scratch."

## LDCs now need less external assistance

In June 2005, LDC trade ministers met in Livingstone, Zambia to iron out a common position before the Hong Kong meeting. The recent gathering in Lesotho was similar, but the process leading up to the Maseru summit demonstrated how LDCs' negotiating capacity had improved in the interim.



"The LDC group needed much less external assistance" than before, Panitchpakdi Supachai, the former WTO chief who now heads the UN Conference on Trade and Development (UNCTAD), said in Maseru.

As is typical for such summits, trade ministers only put the finishing touches on the declaration adopted there. Much of the drafting was done well before the meeting by officials in Geneva, culminating in draft declarations that were put first to top officials and then to the ministers.

What was different this time, explained the Regional Trade Facilitation Programme's Pearson, was that while in the past, groups like UNCTAD, the South Centre, and others directly influenced the declarations' content, this time, the LDCs themselves prepared the declaration "and no one [else] had any input" (which is different from providing background support). The declaration had been drafted by LDC delegates in Geneva, and had "buy-in" from their respective capitals.

### Proactive engagement vital

The LDCs' reliance on any single organisation has indeed decreased, according to Tlohelang Aumane, a trade official with the Lesotho mission in Geneva who is currently coordinating the LDC group at the WTO. Instead, the LDCs now go to different institutions depending on the specific matter at hand - for instance, the Advisory Centre on WTO Law on some issues, ICTSD on others, and so forth.

UNDP's David Luke attributed the "upward trend" in LDC capacity to proactive action on the part of the countries themselves - such as Lesotho's continuation of Zambia's "exemplary" leadership - coupled with the fact that "previous technical assistance has worked."

Balla Moussa Keita, an affable former football player who heads the WTO division at Mali's commerce ministry, is an enthusiastic supporter of one such technical assistance programme - the courses for developing country trade officials offered by the WTO's Institute for Training and Technical Cooperation (ITTC). Funded by the Dutch government, the "terrific" ten-month course in Geneva enabled him to participate in "all activities" of the WTO, he told TNI in Maseru.

Since his return to Mali, Keita said that the course had helped him improve the implementation of national-level technical assistance and capacity building projects under the multi-agency Integrated Framework and Joint Integrated Technical Assistance Programme.

### WTO participation better, but more support required

Not all is rosy for participation at the WTO by the world's poorest countries. Several LDCs do not even have representation in Geneva. Those that do are notoriously understaffed - with a handful of trade officials scrambling to cover the large number of meetings at the WTO, not to mention other fora like UNCTAD or the International Telecommunications Union.

That said, since 2005, LDCs have helped mitigate their individual limitations by enhancing cooperative procedures for work at the WTO in Geneva. Countries serve as 'focal points' covering each of the different issues in the negotiations, and then report back to regular meetings of the full LDC group for further instructions.

In Mark Pearson's view, this system is "quite sustainable - except when experts leave."

While it is not uncommon for experienced trade delegates to leave government service, the losses are felt most acutely by LDCs, for whom expertise is hardest to replace.

"The main problem [LDCs] face is institutional memory and continuity, as well as the time they can commit" to WTO issues, said Pearson.

Another challenge facing the LDCs, according to Geneva-based sources, is to get better at translating their clearly-articulated political demands - say on rules of origin or exemptions for LDCs from anti-dumping duties - into detailed legal text that could be part of future WTO agreements. In the ongoing Doha Round negotiations, 'text-based' negotiating proposals, in which countries submit legal language for what they want a future accord to look like, are one of the principal vehicles for influencing the content of the draft deals assembled by the chairs of the various negotiating committees.

Part of the reason for this shortcoming, Pearson suggested, was that LDCs had insufficient "technical backup" to respond to changing situations in negotiations. LDCs are "willing to go to battle, but often don't have... the 'in situ' backup they need." Capital-based officials might have the expertise, but limited budgets meant that they could not always be on hand in Geneva when needed.

### LDC Secretariat could bridge gaps

In an attempt to address such concerns, several LDCs have broached the possibility of creating an 'LDC secretariat' in Geneva, to support the group's work in negotiations at the WTO. A permanent secretariat, funded by multiple donors, could provide continuous logistical and technical support to the group's rotating leadership.

Lesotho delegate Aumane said that the creation of a secretariat could significantly ease the burden of coordinating the LDC group, noting that the group of African, Caribbean, and Pacific (ACP) countries already had a secretariat in Geneva.

LDC missions remained seriously overstretched, he noted, observing that many of them relied on the WTO's mission internship programme just to be able to attend committee meetings.

Aumane, who is normally based with the trade ministry in Maseru, said that his own presence in Geneva for the duration of Lesotho's coordinatorship of the group was supported by the useful programme, which allows participants to work with their countries' missions in Geneva.

"Capacity has increased," he said, speaking of the LDC group as a whole. "I cannot say that capacity now is enough," he added, however. "We are still least-developed countries, with low levels of development and scarce resources to allocate. The gap we are trying to close is great. But things are evolving."

<sup>1</sup> Trineesh Biswas is the editor of Bridges Weekly Trade News Digest at ICTSD. For the latest edition see: [www.ictsd.org/weekly/index.htm](http://www.ictsd.org/weekly/index.htm)

<sup>2</sup> The LDC ministerial meeting in Maseru, Lesotho, February 27-29. For more details see: [www.ldcgroups.org/?lang=en](http://www.ldcgroups.org/?lang=en)

<sup>3</sup> For further reading see documents: Doha Development Round: LDCs in the End Game, an ICTSD dialogue with the African Economic Research Consortium and the Centre for Policy Dialogue, Bangladesh, Montreux, March 15-16 2008. [www.ictsd.org/dlogue/2008-03-15/2008-03-15-desc.htm](http://www.ictsd.org/dlogue/2008-03-15/2008-03-15-desc.htm)



# WTO Roundup

## Rare movement in NAMA talks, but Doha deal still uncertain

Victoria Hanson and Jean Boyle, ICTSD

After months of virtual deadlock, some hints of flexibility have emerged in the Doha Round talks on trade in industrial goods, officials in Geneva said. Although it remains unclear whether governments will be able to bridge their differences, many countries are now reportedly willing to consider some potential ideas circulated by the chair of the WTO negotiating committee Don Stephenson in March.

According to one delegate, countries showed an "increased level of engagement," following a session of the non-agricultural market access (NAMA) negotiating committee on March 14. According to another, Stephenson sounded less frustrated than he had in recent meetings.

For the past few weeks, members have been negotiating on the basis of draft texts circulated on February 8 by the chairs of the negotiating committees on NAMA and agriculture.<sup>1</sup> In theory, discussions on the two texts are supposed to lead to a 'horizontal' process during which senior officials will thrash out cross-sectoral tradeoffs between NAMA and agriculture, ultimately culminating in a ministerial-level meeting to hammer out an accord on a limited number of high-profile issues.

### Sliding scale gets the thumbs up

Members have long been divided on two crucial issues in the NAMA talks: the 'formula' that will determine the future tariff levels of developed and many developing countries and the 'flexibilities' that will determine the extent to which the latter will be able to shield some products from the full force of global competition. Progress on these two issues is deemed necessary for any compromise deal in the coming weeks.

Of all the options set out in Stephenson's February text, Members seemed most willing to discuss a limited 'sliding scale'. Under this option, developing countries willing to accept a lower formula coefficient (which become future tariff ceilings) will be accorded higher flexibilities to protect sensitive sectors from those very tariff obligations - and vice versa. Stephenson gave Members three separate options which 'pivoted' on a range of coefficients around 8 or 9 for developed countries and 19-24 for developing countries.<sup>2</sup>

Sources said that the increased willingness among Members to discuss the sliding scale might have been facilitated by NAMA talks in London among officials from the EU, the US, and Brazil in early March. However, India, Argentina and South Africa have expressed their opposition to the sliding scale option, arguing that it goes against the central principle of less-than-full reciprocity.<sup>3</sup>

### Sensitive product data thwarts agriculture talks

Progress in the Doha Round agricultural talks is continuing to be bogged down by technical details affecting 'sensitive' farm products which will be eligible for gentler tariff cuts. According to Chair Ambassador Crawford Falconer, a logjam has occurred over how to estimate so-called domestic consumption data. This is important because the expansion of tariff quotas for 'sensitive' products will be set as a percentage of domestic consumption.

As part of a potential Doha round deal, all WTO Members will be allowed to make smaller-than-normal tariff cuts on some 'sensitive' products, in exchange for expanded import quotas.

WTO Director General Pascal Lamy said that the issue of sensitive farm products was one of the key questions that must be solved in order to move to the 'horizontal' negotiating process. Falconer urged a handful of competitive farms exporters (Argentina, Australia, Brazil, New Zealand and Uruguay) to reach a compromise with a similar number of importing countries (Canada, the EU, Japan, Norway, Switzerland and the US) during a negotiating committee meeting in Geneva on March 14.

### 'Green room' meetings tackle problems

As the agriculture and NAMA negotiating committees work towards producing new texts - possibly to be issued by the chairs in the first week of April, or even the last week of March - Lamy has been holding a series of invitation-only 'green room' meetings with some 30-odd delegations in an attempt to determine the scope of a potential ministerial decision to be taken in April or May.

The first 'green room' meeting, on March 13, agreed that new texts would be necessary on both agriculture and NAMA before 'horizontal' negotiations could begin.

The second, on March 18, looked at how a 'signalling' conference on services trade might function. Such a conference, where major target markets would indicate how much they were willing to open up their services sectors to foreign competition, has been a major demand of the US and the EU. Sources suggest that such a conference could be chaired by Lamy, held back-to-back with a ministerial-level meeting, and that the outcome should be communicated to all Members. The LDC group is also reportedly pushing for a 'signalling' conference to address its own priorities, including a collective request for allowing LDC service-sector workers to go to other countries on temporary work visas (Mode 4).

During these 'green room' meetings sources said that Lamy warned once more that overloading the agenda for a ministerial-level meeting could lead to a "train wreck."

### WTO ministerial still on the cards

For a third year in a row, WTO Members have aimed to strike a framework deal on agriculture and NAMA by spring. For the third year in a row they are in serious danger of failing to do so. Although Members are now better equipped to agree subsidy and tariff cuts than they were two years ago, unresolved issues remain numerous and it is unclear whether the much-awaited ministerial will take place in the near future.

Following bilateral talks in London in early March, Indian Commerce Minister Kamal Nath and EU Trade Commissioner Peter Mandelson both expressed hope that ministers could strike a modalities deal in April. Nath cautioned that the number of unresolved issues must be "brought down to 15 or so [from 130] for ministers to sit down and take a decision." Mandelson said that making the "progress required in Geneva for a ministerial meeting to take place" was "doable."<sup>4</sup>

For more details on the state of play in the Doha Round, see Bridges Weekly at [www.ictsd.org](http://www.ictsd.org)

<sup>1</sup> For fuller details of the texts see WTO Roundup, Trade Negotiations Insights, March 2008, Volume 7, No.2.

<sup>2</sup> For a detailed discussion of coefficients and flexibilities, see: NAMA talks budge slightly, as WTO members look forward, Bridges Weekly Trade Digest, Volume 12, Number 10, March 19 2008.

<sup>3</sup> India against Doha chair's offer on market access, Business Standard, March 16 2008.

<sup>4</sup> EU and India hope for key trade meeting soon, Reuters, March 8 2008.



# EPA Negotiations Update

Victoria Hanson and Melissa Julian

## EPAs dominate EU-ACP Parliament talks

The controversial nature of the EPAs dominated the agenda of the EU-ACP Joint Parliamentary Assembly (JPA) held in Ljubljana, Slovenia on March 17-20. MEPs and ACP Parliamentarians voiced discontent over the last-minute nature of the deals and the subsequent impact on regional integration and development.

"Conflict and contention has mired the whole EPA process", MEP Glenys Kinnock, co-President of the ACP-EU JPA, said in her opening speech. "With the exception of the Caribbean, the agreements were scaled back, and WTO-compatible interim deals were made, mainly on trade in goods, and signed in haste," she said.<sup>1</sup> "Regionalism is a key component of a progressive development strategy, and yet the Commission's policy of concluding separate deals with individual states, or groups of countries, has splintered ACP regions," she added.<sup>2</sup> Wilkie Rasmussen, JPA co-President representing the Cook Islands, noted that some ACP countries were "unsure" about the EPA negotiating process, and felt that it might have implications for the flow of EU development funding. Rasmussen highlighted the difficulties of negotiating EPAs with the Commission, pointing out its lack of regard for cultural sensitivities.<sup>3</sup>

EU Development Commissioner Louis Michel rebuffed the criticism and despite a generous welcome from the JPA assembly, refused to budge on the EU Council's position that the initialled EPA's must be concluded by the end of 2008. "I do not accept these excuses," he said. "If [ACP Countries] really want to profit from globalisation, they have no choice."<sup>4</sup> The JPA's next meeting will be held in Port Moresby, Papua New Guinea from November 22-28, not long before the new December deadline for EPA signatures.

## European Commission to examine regional integration

The European Commission launched a public consultation in March, for the preparation of a Communication on Regional Integration for Development in ACP Countries, due to be published in September.<sup>5</sup> Development Director General, Stefano Manservigi, said that the purpose of the Communication was to reach a common understanding on the controversial issue and formulate a strategy. Speaking at the European Parliament Development Committee on March 3, Manservigi said there was a need to look at the role EPAs could play in this plan. The EPA may provide commercial or development benefits, he said, but would not bring about regional integration. Instead, the EPA must become part of the regional integration process already underway.

Manservigi claimed that under this new scheme, the European Commission is aiming to establish joint strategies with EU member states - including joint funding and programming - for the first time. Funding would preferably be provided through regional level budget support via EPA funds (to which the European Commission, member states and other donors could contribute). According to several sources, many believe that DG Development should focus on implementation of the EPAs and speeding up the 10th EDF programming before turning its attention to the Regional Integration Communication.

## Central Africa finalises interim EPA text

Central Africa put the finishing touches to its interim EPA with the European Commission, during meetings between the two parties in Brussels from March 10-12. Following an examination of the December 2007 text and substantial subsequent corrections, the

Commission claims that "this text is now final and will be used by both parties in the process leading to signature and ratification."<sup>6</sup> The document sets out objectives and a 'way forward' for a development partnership, a trade regime for goods, services and trade related rules. However, there is disagreement within the region on whether to negotiate services as to date, there has been no regional impact study in this area.

Sources indicate that despite the Commission billing the meeting as 'full' Central African reunion, not all member states were either invited or attended. Moreover, discontent was also voiced that the meeting completely bypassed the formal negotiation committee that existed until last year.

## ECOWAS sets June deadline for CET

The urgency for West Africa to agree an EPA with the European Commission has forced ECOWAS to try to set its Common External Tariff (CET) by June 30. ECOWAS, which claims it is politically committed to negotiating a full EPA by mid-2009 or earlier, will base the CET on that of UEMOA - the West African Economic and Monetary Union. However, the issue remains controversial. The UEMOA CET contains four tariff bands: 0%, 5%, 10% and 20%, while Nigeria is pushing for an additional fifth band of 50% largely to help protect its pharmaceutical industry.

According to the National Association of Nigerian Traders (NANTS), the UEMOA tariff rates would not protect Nigeria's "young and aspiring economy with her prospects and plans for industrialisation."<sup>7</sup> This call for a fifth band has gained support of the private sector and civil society organisations in West Africa.

Meanwhile, the European Commission and West African negotiators (ECOWAS and UEMOA Commissions) established the working calendar of regional EPA negotiations for 2008, during a meeting in Ouagadougou on March 3-6. The two sides will meet again in April and June 2008 to make progress ahead of the ECOWAS Heads of States summit on June 16. West Africa is developing a regional market access offer which it aims to finish in May. It is also working on a draft EPA text with a view to negotiate some chapters in April.

## EU refuses to renegotiate ESAs interim EPA

The European Commission has this month stoutly refused to renegotiate some clauses of the EPA agreed with the ESA, despite calls from the latter to do so. According to sources present at an ESA-EU trade ministerial in Lusaka on March 3, ESA asked to revisit the 'Standstill clause' and look at the issue of export taxes. ESA also wanted a flexible definition of 'substantially all trade' for LDCs' and an identical MFN clause to that which was agreed with Cariforum. The 'Standstill clause' (Article 13) is particularly strict for ESA and EAC countries as it freezes tariffs on all trade between the two parties, whether or not products are subject to liberalisation. Thus, even if a product is on the 'exclusion list', the tariff cannot be raised after the EPA enters into force.

"The process leading to the interim EPA has not been easy for anyone," EU Trade Commissioner Peter Mandelson told journalists after the Lusaka meeting. "It has required courage and leadership from those countries to have tabled market access offers compatible with multilateral trade rules. We designed and agreed the EPA together. We now need to move quickly to sign implement and defend this agreement together," he said.

Belonging to more than one trade block is acceptable and workable, according to the director for investment promotion and private sector development at the Common Market for Eastern and Southern Africa (COMESA) Chungu Mwila on March 12. Acknowledging the conflict between regional trading blocks in Eastern and Southern Africa, Mwila said the next logical step was a COMESA Customs Union and CET. "I can confirm that, already there is a tripartite taskforce of the EAC, SADC and COMESA working on how best to harmonise the three trade regimes," he said. "We are also mindful of a bigger vision of an African Common Market. Although we would like to strengthen the regional trading blocs, the broader vision is that they should fit into the grand plan of an African common market", Mwila added.<sup>8</sup>



The ESA negotiating structure has recently changed, with the work programme now being negotiated by 16 ESA countries (including the EAC). The Regional Negotiating Forum is being replaced by ESA senior officials, while lead ambassadors will be replaced by an ESA negotiating team which will report to ESA ministers.

### Commission urges SADC to conclude EPA

EU Trade Commissioner Peter Mandelson urged SADC to conclude a full EPA by the end of 2008, during a SADC-European Commission ministerial in Gaborone in the first week of March. Despite calls from some in the region to look at the MFN clause and the right to impose export taxes, Mandelson ruled out any re-negotiation of the agreement and said implementation would go ahead. "I am prepared to be flexible, on the basis that we move forwards and not backwards," Mandelson insisted. "There is no way of reopening the process that has already been negotiated," he said.<sup>9</sup>

Angola underlined the importance of remaining a part of the EPA process, claiming it intended to accede to the full EPA once the agreement has been concluded. SADC EPA countries agreed to work towards applying the interim agreement from July 2008 and the conclusion of a full EPA by the end of December.

The Southern African region faces a complex process of transformation, Botswana trade minister Neo Moroka claimed in March. Speaking at the ministerial in Gaborone, Moroka said the changes could rival anything Europe had ever experienced. Moroka added that trade remained a key factor for integration and poverty eradication in the region and central to this was the setting up of a SADC free trade area in 2008, a Customs Union by 2010 and a SADC Common Market by 2015. This timeframe is seen by many as overambitious.

### Caribbean to complete EPA legal review by June

Caribbean heads of government committed to complete their internal review process in a timely manner so that the comprehensive EPA can be signed and provisionally applied by June 30 2008. It is hoped that this decision, taken in Nassau on March 7-8, will limit the delay in signing the EPA - originally scheduled for April - and avoid the risk of major economic dislocation within Cariforum.

Heads of government also decided during the meeting to form a committee, led by Jamaica and including Trinidad, Barbados, Guyana, Antigua, Grenada and the CRNM to look at the question of governance during trade negotiations and see where improvements could be made. Topics for consideration will include whether the CRNM should be under the control of Caricom and how it can relate to trade ministers given that it is a non-treaty based institution.

### Pacific trade ministers join forces on EPA

Pacific ACP trade ministers have agreed to proceed as a group with negotiations of a comprehensive EPA by the end of the year. The commitment for the region to proceed collectively was reached after the two-day meeting in Nadi on March 26-28. However, Fiji and Papua New Guinea are still finalising the legal texts of the interim EPAs and the process to ratify the agreements remains unclear. Many are demanding a parliamentary process that would allow for substantial public scrutiny.

During the Nadi meeting, ministers considered the Pacific Island Countries Trade Agreement (PICTA), services, negotiations and issues relevant to the possible deepening of trade and economic co-operation between Forum Island countries and big brothers Australia and New Zealand. These two countries have been arguing for some time that the Pacific's EPA negotiations have 'pulled the PACER trigger', i.e. that the region should now also begin negotiations with them. New Zealand's trade minister Phil Goff scheduled an informal meeting of senior officials from PICs on the Pacific Agreement on Closer Economic Relations in Rotorua on April 7-11. However, there are indications this meeting might be delayed for several months due to packed agendas and a desire by Australia and New Zealand not to start talks off on the wrong foot by pressing for a meeting too soon.

For more EPA news please visit:  
[www.acp-eu-trade.org/epa](http://www.acp-eu-trade.org/epa) and [www.ecdpm.org/epa](http://www.ecdpm.org/epa)

<sup>1</sup> See: Economic Partnerships remain contested at ACP-EU talks, EUX.TV, March 18 2008. [www.eux.tv/article.aspx?articleId=19955](http://www.eux.tv/article.aspx?articleId=19955)

<sup>2</sup> Text of Kinnock's address, [www.europarl.europa.eu/intcoop/acp/60\\_15/pdf/kinnock\\_en.pdf](http://www.europarl.europa.eu/intcoop/acp/60_15/pdf/kinnock_en.pdf)

<sup>3</sup> Text of Rasmussen's address, [www.europarl.europa.eu/intcoop/acp/60\\_15/pdf/rasmussen\\_en.pdf](http://www.europarl.europa.eu/intcoop/acp/60_15/pdf/rasmussen_en.pdf)

<sup>4</sup> See: Michel on EPAs: 'I do not accept these excuses' EUX.TV, March 18, 2008. [www.eux.tv/Article.aspx?articleId=19956](http://www.eux.tv/Article.aspx?articleId=19956)

<sup>5</sup> To contribute to the consultation, see European Commission Development website: [www.ec.europa.eu/development/index\\_en.cfm](http://www.ec.europa.eu/development/index_en.cfm)

<sup>6</sup> For access to the documents, see: Accord d'Etape vers un APE entre l'UE et la partie Afrique Centrale, March 12 2008. [www.ec.europa.eu/trade/issues/bilateral/regions/acp/epa\\_centafr\\_en.htm](http://www.ec.europa.eu/trade/issues/bilateral/regions/acp/epa_centafr_en.htm)

<sup>7</sup> See: ECOWAS CET: The imperatives of Nigeria's fifth band, Ken Ukaoha, NANTS, March 10 2008. [www.dgroups.org](http://www.dgroups.org)

<sup>8</sup> See: Uganda: aim to harmonise trade regimes, Peter Kauju, March 14 2008. [www.tralac.org](http://www.tralac.org)

<sup>9</sup> See: Mandelson urges SADC to conclude EPA, Botswana Sunday Standard, March 30 2008.

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# Trade Negotiations Insights

## Calendar and resources

### ACP-EU EVENTS

#### APRIL

- 1-2 ESA-European Commission negotiations, technical and senior official levels.
- 4 SACU Council Meeting.
- 4-5 "Where research meets policy", Launch meeting of North-South Network on Trade and Development, Addis Ababa.
- 7-8 EPA Assessment Conference, organised by the Commonwealth Secretariat, Cape Town.
- 7-11 Meeting of senior officials from the Pacific Island Countries on PACER, Rotorua, New Zealand.
- 14-15 Technical meeting on "Challenges of Changing Agricultural Markets in the context of ACP-EU Trade: Identifying an Aid for Trade Agenda", organised by CTA and ECDPM, Brussels.
- 15-16 Meeting of the ACP Chief Negotiators to address the state of play of EPA negotiations, Brussels.
- 17 ECDPM-APRODEV-ODI meeting on the content of the EPAs and way forward, Brussels.
- 17-18 OECS Member States EPA Sensitisation Seminar, Antigua and Barbuda.
- 18-20 Pacific-European Commission EPA negotiations, Papua New Guinea.
- 20-25 UNCTAD XII, "Addressing the Opportunities and Challenges of Globalisation for Development", Accra, Ghana.
- 21-24 Joint technical meeting West Africa - European Commission, Brussels.
- 21-25 Meeting on the regional list of sensitive products for West Africa, Abuja.
- 22-25 ESA: meeting on trade in services, Harare.
- 25 Meeting of the Regional Preparatory Task Force (RPTF) for West Africa, Brussels.
- 27-30 ESA: meeting on trade related issues, Harare.
- 28 EU-AU Ministerial Troika.
- 28-30 First Regional Assembly of the ACP-EU Joint Parliamentary Assembly, Windhoek, Namibia.

### WTO EVENTS

#### APRIL

- 2+4 Trade Policy Review Body, Madagascar.
- 2 Working Party on the Accession of Iraq.
- 2-3 Committee on Sanitary and Phytosanitary Measures.
- 4 Working Party on the Accession of Ethiopia.
- 9-10 Panel DS294 (Zeroing) Public Viewing.
- 18 Dispute Settlement Body.
- 21-22 Committee on Regional Trade Agreements.
- 22-23 Panel DS350 (Zeroing) Public Viewing.
- 23+25 Trade Policy Review Body, Mauritius.
- 24 Committee on Rules of Origin.
- 28 Committee on Import Licensing.

#### MAY

- 1 Ascension Day (WTO non-working day).
- 6 Committee on Customs Valuation.
- 7-8 General Council.
- 12 Whit Monday (WTO non-working day).
- 20 Dispute Settlement Body.
- 21+23 Trade Policy Review Body, China.
- 22 Council for Trade in Goods.

### RESOURCES

All references are available at:  
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