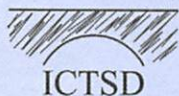


# Trade Negotiations Insights

## Contents

Bridging the divide: the SADC EPA	1
Partnership or power play? EPAs fail the development test	3
<i>In focus: Building an EPA services deal: an important tool for services development in the Comoros</i>	6
EPA stocktaking: urgency for a development contest	8
MFN in the Cariforum EPA is no threat to South-South trade	10
ECOWAS CET: the imperatives of Nigeria's fifth band	11
WTO Roundup	12
EPA Negotiations Update	14
Calendar & Resources	16



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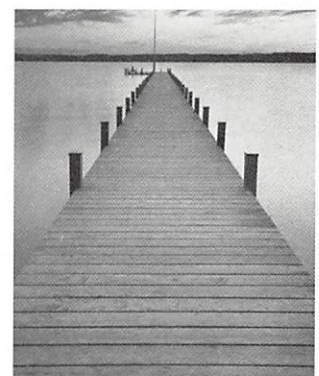
## Bridging the divide: the SADC EPA

Rob Davies<sup>1</sup>

Although the ACP has formally been engaged since 2002 in negotiating a transition from the non-reciprocal trade preferences and associated development cooperation programmes provided under Lomé Conventions and then the Cotonou Agreement, the process only began to gather considerable momentum towards the end of last year. Such movement was spurred on by the imminent expiry of the WTO waiver for the Cotonou preferences at the end of 2007, and the implicit threat that if a WTO compatible alternative did not come into force by January 1 2008, many ACP countries would find themselves trading with the EU on significantly less advantageous terms.

### Historically controversial and divisive

As we move into the second quarter of 2008, the Caribbean is the only region to have signed a full EPA, while several other regions and individual countries have initialled interim EPA's. A considerable number of ACP countries, including South Africa, have however signed neither. Some of these will now trade with the European Union under the 'Everything but Arms' (EBA) arrangement applicable to Least Developed Countries (LDCs), some under specific arrangements such as South Africa's Trade, Development and Cooperation Agreement, while yet others will be obliged to trade under the far less favourable terms provided for in the EU's General System of Preferences. It is easy to suggest that seldom before in the history of EU-ACP relations has a measure held out as a mechanism to enhance access to the EU market and strengthen development cooperation between the EU and the ACP, become so controversial and so divisive.



While some in the ACP regard the balance struck in the interim or full EPA's concluded last year as a reasonable compromise that will create conditions for enhanced trade and development cooperation, there are many others who initialled interim EPA's reluctantly under the threat of a serious disruption of trade, and there are yet others that have declined to do so. There can be no doubt that the overall picture is one of a process that has created division.

The British Overseas Development Institute argued that liberalisation schedules submitted last year were constructed in haste without considering whether or not they were in line with those submitted by their neighbours.<sup>2</sup> In Southern Africa, members of the Southern African Development Community (SADC) have found



## Editorial

Five months on from the official deadline to sign EPAs and passionate debate continues over the pluses and minuses of the agreements. Without doubt there is wider discussion and a better understanding of the content, character and implications of the interim agreements, seen by the European Commission as a necessary step on the road to the final regional agreements.

But with better understanding comes more heated debate and specific criticism. The interim EPAs are increasingly under fire from some African leaders and civil society organisations, which demand that the whole process be revisited. But EU trade commissioner Peter Mandelson has flatly quashed any calls to renegotiate the interim trade deals, claiming that to reopen them would send the wrong signal to WTO members and sacrifice the hard-won legal security they offer.

Meanwhile, ACP and EU member states face the challenge of presenting interim EPAs, which they do not necessarily support wholeheartedly, to their parliaments for approval, while at the same time informing them that full EPAs are in the process of being negotiated and should eventually replace these interim deals.

Diverse positions in the EPA negotiations are not new. However, as Rob Davies, South Africa's deputy trade minister and the author of our lead article points out: "seldom before in the history of EU-ACP relations, has a measure held out as a mechanism to enhance access to the EU market and strengthen development cooperation between the EU and the ACP, become so controversial and so divisive."

At the same time as the legal scrubbing of the interim EPAs, negotiations towards full regional deals continue. For observers, much of this process remains opaque and it is difficult to determine either the pace or the progress of negotiations. Have ACP countries been able to take ownership of the deals and can countries – rather than just regional bodies – make genuine commitments? If not, there is a real danger that regional groupings might split.

In the May edition of TNI, we have selected articles that reflect this stocktaking period. One of the major worries for the ACP has been whether or not the EPAs can deliver on development. Emily Jones from Oxfam and Karin Ulmer from APRODEV voice clear reservations, while Federico Alberto Cuello Camilo claims that for the first time in history, the comprehensive Caribbean EPA puts trade at the service of development.

It is clear that there is a greater need for exchange of ideas and analysis on how the EPAs negotiations can move forward, as well as for more transparency. One of the articles this month was submitted in response to a piece TNI ran in March, and we would like to encourage our readers to follow this example and engage in debate. As usual, all comments, questions and clarifications can be sent to [vhanson@ictsd.ch](mailto:vhanson@ictsd.ch)

We hope you enjoy the May edition of TNI

themselves divided into no less than five separate negotiating configurations. Each of these has reached agreements involving somewhat different obligations towards the EU, the implications of which SADC has yet to examine in detail. Even within the configuration, designated SADC EPA, which consists of the five members of the Southern African Customs Union (SACU) plus Mozambique and Angola, we find that three members of SACU and one other country initialled late last year, whilst one other did so later and under protest. Two have not signed on at all to an arrangement, which, it must not be forgotten, is supposed in the first instance to enhance regional integration.

### Extension outside the box

The question that obviously arises in this context is why the EPA process has become so difficult and so divisive? In the case of the SADC EPA configuration, the difficulties in the end were not fundamentally related to the core issue of moving from a system of non-reciprocal preferences in trade in goods to WTO compatible free trade agreements involving reciprocal commitments by both parties. In SADC's negotiating processes, by building on and adapting the Trade Development and Cooperation Agreement (TDCA) which South Africa had already signed with the European Union in 1999, and which through the mechanism of the South African Customs Union was extended de facto to Botswana, Lesotho, Namibia and Swaziland, the region reached substantial agreement with the EU on the substance of a schedule for reciprocal liberalisation of trade in goods. Under this, most countries would receive duty-free quota-free access into the EU market for all products except rice and sugar, while South Africa would have received some improved access for products that were not favourably treated under the TDCA. In return, SACU would have improved access for EU products in around 500 tariff lines over the arrangements agreed in the TDCA. At the same time, Mozambique, despite being an LDC, agreed also to reciprocate to the EU. These matters were substantially resolved well ahead of the deadline at the end of last year.

In the SADC region, the major problems have in fact arisen from the EU's ambition to move the EPAs beyond WTO compatible free trade agreements covering trade in goods, to agreements also embracing trade in services and new generation issues, involving serious commitments in areas such as investment, government procurement, competition policy and the like. The legal text forming the basis of the interim EPA, also saw the insertion at the last moment of a series of legal obligations that would allow the European Union to extend its influence into several other issues of economic governance in ACP countries. Apparently, technical provisions in the interim EPA legal text relating to the definition of parties, concerning protection of infant industries, export taxes, and a More Favoured Nation clause – that requires an extension on a line by line basis to the EU of any benefits given to any third party with more than 1% of world trade – have emerged as the major stumbling blocks in the quest for a consensus between all in the SADC EPA group and the European Union. A meeting between the SADC EPA Ministers and Commissioner Mandelson on March 4, agreed to a two track work process. In terms of this, those countries that have initialled will proceed to sign, ratify and implement interim EPA's and then move on to the negotiations on trade in services and investment. At the same time, a parallel stream of work will address the concerns that have been raised by the group on a number of the legal provisions in the interim EPA.

### A European offensive strategy

Apparently, the new generation issues and the questions of economic governance that have been inserted into the interim EPAs, are not merely there because of some altruistic desire to assist ACP regions to become attractive investment destinations. Rather, they are linked to global strategies to promote offensive interests of European companies across the world, by addressing behind the tariff, regulatory issues judged necessary to make market access real.

In a situation where regional groups and regional organisations have become divided, how does a country assert what it understands to be the priority for the EPA process, namely promoting development orientated regional integration?

<sup>1</sup> Dr. Rob Davies is the Deputy Minister of Trade & Industry, South Africa. This text is adapted from the speech given at the Commonwealth Secretariat - ACP Secretariat conference 'Evaluation EPAs: The way forward for the ACP', Cape Town, April 7-8 2008. Relevant documents are available at [www.acp-eu-trade.org](http://www.acp-eu-trade.org)

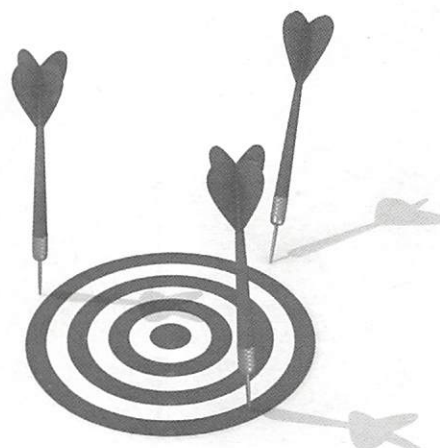
<sup>2</sup> ODI and ECDPM (2008), *The New EPAs*, study available at [www.odi.org.uk](http://www.odi.org.uk) and [www.ecdpm.org/pmr14](http://www.ecdpm.org/pmr14)



# Partnership or power play?

## EPAs fail the development tests

Emily Jones and Javier Perez<sup>1</sup>



The original aim of the trade talks between the African, Caribbean and Pacific (ACP) countries and the European Union was a good one: concluding 'Economic Partnership Agreements' (EPAs) that would promote "poverty reduction, sustainable development and the gradual integration of ACP countries into the world economy, thereby bolstering regional economic integration." Somehow, what Europe put on the table six years after beginning the talks not only fell short of this aim, but in some areas, undermined it completely.

In a new study, Oxfam has analysed from a development perspective the goods, services, investment, and intellectual property chapters of the 'initialled' EPA deals concluded at the end of last year.<sup>2</sup> The assessment is clear: these initialled deals fail any objective test of development. It seems that, for its trade deals with the ACP countries, Europe has chosen power politics over partnership. EU aims are closer to the 'Global Europe' strategy than to the 'Cotonou spirit'.

To date, EPAs have only been initialled: they are not legally binding agreements. Before any damaging deal is made permanent, Europe needs to rethink and agree to change course. New, fairer agreements are not only necessary but also possible.

### Current EPAs: a bad deal

A true partnership in trade could radically transform the lives of one-third of all people living in poverty. But, far from restructuring economic relationships to stimulate development, the current trade deals kick away the development ladder that countries around the globe have used to build their own economies. They risk locking ACP countries into current patterns of inequality and marginalisation and away from the increasing opportunities global trade is already offering.

Looking in detail at the initialled agreements shows how far they are from being fair deals. The current EPA texts, such as they stand:

- Create significant barriers to integration between existing regional partner countries. Only in one of the negotiating African regions, the East African Community (EAC), does more than one country have the same commitments as the others.
- Fail to support economic diversification away from low-value agricultural production by restricting the choices of ACP governments to support the development of new industries, through the inclusion of ambitious tariff liberalisation schedules, and of a standstill clause that prohibits the ACP countries to ever raise tariffs. (While the texts include 'infant industry' safeguards, these may be difficult to trigger and are ill-suited to supporting the development of new industries.)

- Threaten South-South integration through the inclusion of 'most favoured nation' (MFN) clauses, which require ACP countries to extend to Europe the benefits of any deal that they might strike in the future with other large countries or regions such as India, China or Mercosur. (Ensuring permanent, privileged access to ACP markets might be good for Europe, but it is not necessarily in the interests of ACP countries. Brazil, supported by China and India, has raised concerns about this provision at the WTO.)<sup>3</sup>
- Fail to help tackle food insecurity. The safeguards included in the texts are too weak to be effective, unnecessarily exposing small farmers to sudden surges of competition from imports. Women farmers will bear the brunt.
- Do not offer any significant new money for infrastructure development nor to compensate the tariff revenue losses and the additional compliance costs. On the contrary, the deals repackage existing aid promises and impose further costs.
- Offer the ACP products lower tariffs into the EU market, but fail to provide significant services opening. However, tariff gains are undermined by restrictive rules of origin, and they are also temporary, as Europe is set to open up to the ACP's competitors.
- Are unlikely to attract quality new investment but will tie ACP governments' hands: investors' interests are placed above those of the public. Through the EPAs, all but four of the Caribbean countries have given up their rights to regulate and limit European investment in food and beverage manufacturing.<sup>4</sup>
- Neglect to promote affordable and accessible services, prohibiting effective regulation and threatening universal access. The EU can challenge the Caribbean

*"Europe needs to rethink and agree to change course. New, fairer agreements are not only necessary but also possible."*



governments' policies - aimed at ensuring universal service provision - if it thinks that they unduly interfere with the activities of its companies.<sup>5</sup>

- Fail to support innovation, as strict intellectual property rules undermine access to knowledge. The toothless commitments the deals contain on technology transfer will not work.

### Fresh approach for a fair deal

A fair trade deal would support ACP countries to change the terms on which they are integrated into the global economy, so that value is added locally and is fairly shared to benefit workers and producers, as well as local and foreign investors. Such a deal would catalyse long-term sustainable change, helping countries to diversify and break out of commodity dependence.

Learning lessons from past and present successful experiences (such as those of Mauritius and Botswana: see boxes) it is possible to imagine what such a deal would look like. Unfortunately, this is a far cry from the texts that have been initialised.

#### *A fresh look at... Goods*

Europe would end all trade-distorting subsidies and fully open its markets to all exports from ACP countries without asking ACP countries to reciprocate. This could be done in line with WTO rules by modifying existing unilateral preferential schemes. This option would enable ACP countries to access Europe's markets while retaining autonomy over their trade policies. It would also enable them to pursue regional integration at their own pace.

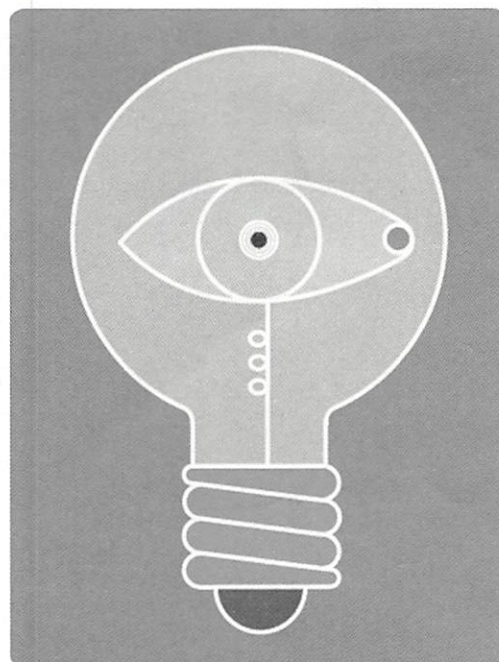
Whilst this approach would entail some preference erosion for ACP countries, in comparison with the long-

#### **Learning from success: strategic use of tariffs in Mauritius<sup>6</sup>**

Mauritius reduced tariffs on inputs that were needed for manufacturing while simultaneously levying high tariffs on finished products, to provide some protection for infant industries. Throughout the 1980s and 1990s, the country maintained tariffs of up to 80% and quotas on 60% of imports, and it changed its tariffs over time. Even in 1998, Mauritius was still rated among the most protectionist countries in the world.

To overcome an 'anti-export bias', however, it provided subsidies to firms that were contingent on exporting. This strategy was complemented by preferences, with European and US preference schemes combined covering more than 90% of exports. Firms ploughed back the profits they earned into the local economy, fuelling growth.

Favourable international trade policies were important too. Flexible treatment of developing countries in the WTO meant that Mauritius was able to use export subsidies and maintain high tariffs. Finally, the entire strategy relied on effective government institutions that provided strategic management of the economy.



term costs of free trade agreements, these costs would be minimal. For those ACP sectors more severely affected by preference erosion, mitigating steps, such as support for diversification or a temporary minimum-quota and price guarantee, would be necessary.

ACP countries would have the freedom to use trade policies strategically to stimulate value addition and economic diversification.

#### *A fresh look at... Services*

Europe would further open its markets to exports of services from ACP countries, without asking ACP countries to reciprocate. It would help to strengthen government regulatory institutions in ACP countries and facilitate learning from European experience of services regulation.

ACP countries would use their regulatory capacity to ensure affordable and efficient service provision to all, particularly rural women, who are most likely to be excluded.

#### *A fresh look at... Investment*

Europe would support ACP countries to attract quality investment to value-added sectors and ensure that it is strategically linked to the local economy in ways that generate jobs and upgrade skills.

ACP countries would uphold the rights of foreign and national investors through a just and transparent system of courts that adjudicate on the basis of public interest law. They would use the wealth generated from mineral extraction in the public interest.

#### *A fresh look at... Technology transfer and Innovation*

Europe would provide incentives for its companies to transfer technology, particularly in the IT-related



### Learning from success: strategic investment regulation in Botswana

In some countries, foreign investment has led to human rights violations and environmental degradation, and has generated very little wealth for host countries. This is particularly true in the case of mining.

Botswana is a notably different case, having managed to turn its diamond resources into development. For 30 years, it was the fastest-growing economy in the world and per capita GDP rose from US\$70 in 1966 to \$5,900 in 2007.<sup>7</sup> Although poverty and AIDS remain major challenges, Botswana is now among the most prosperous countries in sub-Saharan Africa and the first country in the world to have graduated from 'least developed' status.

Effective regulation was central to this success. In the 1970s, Botswana renegotiated contracts with foreign mining companies, contrary to the prescriptions of international institutions, which argued that this would drive away future investors. The government gained a 50% ownership in Debswana, the country's largest diamond company. It ploughed the revenues from this holding back into public investment.<sup>8</sup>

service sector. It would help education and research establishments in ACP countries to access digital and online materials. Support would be provided to upgrade innovation and research centres in ACP countries, particularly to develop new varieties of drought-resistant crops that would help tackle food security and adaptation to climate change.

ACP countries would develop and uphold intellectual property rules that are appropriate to their local context.

### *A fresh look at...Aid for trade*

Europe would deliver significant additional support for infrastructure and tackling competitiveness constraints to finance nationally owned plans. This aid would be granted independently of the concessions made by ACP countries in trade deals or other economic policy conditions. Europe would also dramatically improve the efficiency, predictability and accountability of 'aid for trade' disbursements.

### The immediate way forward

It is still possible to change the course of EPAs and conclude fair deals. For this to happen, a series of essential steps have to be taken. These include:

- Thorough and comprehensive independent evaluations and impact assessments of what has been initialled, measured against the extent to which these support the original aims of the EPA, before any deal is signed and committed into law;
- Vigorous engagement by parliaments across Europe and the ACP and full scrutiny of the deals;

- The EU to offer ACP countries long-term options for trade in goods that would include:
  - (i) Adapting its unilateral preference schemes so they further open European markets and are made permanent, ensuring that no ACP country is left worse off if it does not conclude a free trade agreement;
  - (ii) Renegotiation of any aspect of the initialled EPAs and commitment to reduce the deals to the minimum needed for WTO compliance;
- ACP countries to take stock within their regional blocs and to make a strategic decision on which route they wish to pursue, fully consulting all parties involved, including workers, producers and businesses;
- The EU to agree to complete flexibility in approaching negotiations on services, investment, technology transfer, and other trade-related areas, with ACP countries taking the lead in setting the pace and content of negotiations;
- The EU to provide additional, binding, predictable and swiftly disbursed support to tackle infrastructure and competitiveness constraints in ACP countries.

### Ultimately, everybody gains

A fair deal makes sense for all parties. ACP countries would gain a larger share of the wealth generated from their interaction with the global economy. Furthermore, as Europe's importance to the ACP is waning, it is an inopportune moment for ACP countries to lock themselves into a bad deal with Europe.

But Europe would also gain for diplomatic, geopolitical and economic reasons. If Europe keeps pushing aggressively for the EPAs it risks losing its goodwill across the ACP. Moreover, as prosperous ACP countries make good trade and investment partners, Europe's trade gains with these countries could ultimately be four times higher through fair deals than through free trade agreements.<sup>9</sup>

It is time to take a fresh look at these deals. It is time for Europe to stop playing power politics and to work in partnership with ACP countries. The millions of people living in poverty across ACP countries cannot afford for politicians to get this wrong.

<sup>1</sup> Emily Jones is Trade Policy Advisor at Oxfam Great Britain and Javier Perez is Trade Researcher at Oxfam International.

<sup>2</sup> See: Oxfam International, 'Partnership or Power Play?' April 2008. [www.oxfam.org.uk/resources/policy/trade/downloads/bp110\\_epas.pdf](http://www.oxfam.org.uk/resources/policy/trade/downloads/bp110_epas.pdf)

<sup>3</sup> See MFN provisions in EPAs: a threat to South-South trade, Trade Negotiations Insights, Volume 7. Number 2, March 2008.

<sup>4</sup> 'Schedule of Commitments on Investment (Commercial Presence) of CARIFORUM States in Non-Service Sectors', Explanatory Note, December 16 2007.

<sup>5</sup> CARIFORUM EPA, article 91.

<sup>6</sup> Ibid; UNCTAD (2007) 'World Investment Report: Transnational Corporations, Extractive Industries and Development', New York and Geneva: UNCTAD, p.139.

<sup>7</sup> Estimation made in Oxfam's 'Partnership or Power Play' out of own data and estimations by IFPRI at: 'Searching for an alternative to Economic Partnership Agreements', December 2007.

<sup>8</sup> A. Subramanian and D. Roy (2001) 'Who can explain the Mauritian miracle? Meade, Romer, Sachs or Rodrik?' IMF working paper.

<sup>9</sup> World Bank (2007) Botswana Country Brief <http://go.worldbank.org/8P9IVY6270>



As a member of the Eastern and Southern Africa (ESA) regional configuration, which intends to negotiate a full Economic Partnership Agreement with the European Union, the Comoros Union (herein Comoros) initialled an interim agreement in mid-December 2007. The agreement was signed in order to prevent trade disruption.<sup>2</sup> The core areas of the interim EPA are trade in goods, fisheries, development cooperation, and areas for future negotiations including trade in services.

## Building an EPA services deal: an important tool for services development in the Comoros

Samuel Zita<sup>1</sup>

On average, between 2004 and 2006, annual exports of Comorian cash crops decreased by about 27%.<sup>3</sup> Industrial fishing activities are conducted mainly by EU vessels under the fisheries partnership agreement signed between the EU and Comoros in late 2005. Being an island located in the Indian Ocean, at the northern mouth of the Mozambique Channel, about two-thirds of the way between northern Madagascar and northern Mozambique, Comoros has unique natural landscapes and ecosystems where tourism can flourish. The development of tourism - but also trade in goods, and small, micro and medium sized enterprises (SMMEs) - in Comoros depends partly, and significantly, on the regular availability, affordability and quality of intermediary services like energy and telecoms.

Today, a small and medium sized enterprise in Comoros is faced with enormous constraints to conduct its business operations. On average, it loses three working days per week due to power outages; it pays about US\$52 to be a mobile network subscriber. In addition, at the Indian Ocean level, the same economic agent faces both the highest international call rates per minute and bank charges on international transactions.

The fact that services have a potential to thrive in Comoros suggests that the diversification of economic activities should be oriented towards trade in this area. Such a move would imply that the country needs to establish a long-term services development strategy where the appropriate sequencing and financial needs could be defined. Moreover, and not less important, an EPA deal on services could possibly be used as a complementary policy tool for domestic policies. Complementary, because nationally-owned policies should determine the future of services in Comoros, and should not be solely designed to respond to ESA regional policy stances or those emanating from its agreements with third parties. In turn, this will depend significantly on national political leadership and on long-term development issues including services development.

Since gaining independence in July 1975, Comoros has experienced a complex political history with various *coups d'états* and attempts to take power through force both at the Union and Island levels. The recent example is the political squabble between the Government of the Union and that of the Anjouan Island, which has required the intervention of the African Union force, backed by Sudan,

Libya and Tanzania. The implication of such conflicts for decision-makers is (i) the loss of valuable time and effort that could be wisely used on the conception of pro-development policies including the guidance of national experts on services development strategies or policies, and (ii) the transmission of a very weak signal to potential foreign investors.

### Diversification through services

The share of services sectors in Comoros is growing faster than those of agriculture and manufacturing. Currently, services account for almost 53% of GDP whereas agriculture and manufacturing sectors represent about 43% and 4%, respectively.<sup>4</sup> Possible reasons for the smaller share of agriculture include, among other factors, (i) the falling international prices of Comorian cash crops (vanilla, ylang-ylang and cloves), (ii) massive emigration movements that are depriving the economy of its labour force, (iii) the shortage of wood for the distillation of ylang-ylang and (iv) the fixing of the Comorian Franc to the Euro since 1999.<sup>5</sup> The Euro has experienced a real appreciation relative to the *greenback* over the past five years, and in turn, this has negatively affected exports of Comorian cash crops. Given the very small share of the international market that Comorian cash crops enjoy, the country can hardly exert an influence or control over the factor of demand. However, it can actively influence the supply-side factors through policies and strategies aimed at regaining the competitiveness of Comorian cash crops in the medium to long-term – something that will most likely take a couple of years. Under these circumstances, it would be plausible that the diversification of the Comorian economy be made on trade in services. The question is how domestic policy measures and international trade negotiations (including the EPAs) could be used to foster the development of services.

### Finding the appropriate sequencing

The short-term priority for Comoros should be given to intermediary services sectors such as telecommunications, electricity and construction because they tend to be labour-intensive, which is a relatively abundant factor in Comoros. The liberalisation and development of these sectors has the potential to create higher economy-wide and growth-enhancing linkages than liberalisation in the provision of either final services or goods. This is because



the main beneficiaries of such liberalisation are not only the users of liberalised intermediate services themselves, but most importantly, other sectors such as tourism and the manufacturing industry. This means that the most adequate liberalisation strategy should focus first on intermediary services. However, the fact that labour is an abundant factor will not necessarily guarantee a successful outcome of liberalisation *per se*. Quality of labour will certainly be crucial. Technical assistance or training activities in identified sectors, which can be provided by institutions like the UNCTAD, the WTO and ICSTD, will have to be carried out, while assuring that trained people will be posted in their relevant areas of expertise in order to maximise the benefits of training programmes.

### Towards a long-term services development strategy

There are isolated sectoral initiatives to develop services such as electricity and telecoms. Some suggest that the State wants to promote their development through liberalisation, by allowing private foreign investors to come in and provide them. However, a national long-term services development plan is yet to be established. The potential advantages of such a strategy could be three-fold. Firstly, it would define the sectors to be liberalised, their pace and modalities, and the required regulatory and administrative reforms. Secondly, it could form a basis for the definition of offensive and defensive negotiating positions of trade in services within the framework of a full and comprehensive ESA-EU Economic Partnership Agreement. Despite the fact that the ESA protocol of trade in services is yet to be finalised, the biggest challenge for Comoros will be to obtain market access and national treatment commitments without national sectoral regulatory frameworks, which would leave little room for policy space in the future. Alternatively, Comoros will either have to accede to the ESA services protocol at a later stage or be a signatory of the protocol while ensuring that further training activities, the development of specific sectoral regulatory frameworks and appropriate institutions over a transitional period, are assured and agreed. In this regard, the principle of variable geometry - which acknowledges the differences of services within the ESA region, and therefore allows commitments, requests and offers to be undertaken on an individual country basis while the services framework remains common to all ESA states - is a valuable tool to address specific needs of Comoros. Thirdly, it could possibly assist policymakers to define, *a priori*, areas where the country's future market access commitments will most likely be made during the WTO accession process.<sup>7</sup>

### Financing a services development plan

At the national level, private domestic savings, export and government revenues are not yet able to finance the demand for funds for investment purposes. The attraction of Foreign Direct Investment (FDI) seems to be a viable alternative that can be used to finance services development in the long-term. By late 2005, FDI accounted for less than 5% of GDP. However, further actions to attract FDI are needed. Overall, both the 2007 *Investment Code of Comoros* and the *Code of Commerce of 1984* do not restrict foreigners to invest in Comoros. But there is a lot more to be done in terms of specific regulatory framework and appropriate and well-equipped institutions, especially in sectors such as energy, telecommunications and maritime transport.



Much more needs to be done in sectors such as energy, telecommunication and maritime transport.

Equally important, is the need for an aggressive international marketing strategy of the country's potential business opportunities. This can be done by using the already existing diplomatic missions overseas in countries such as Tanzania, South Africa, Senegal, Belgium, France and Switzerland to establish joint business ventures and partnerships, as well as to exchange experiences.

Another possible option is to ensure that the EPA Development Cooperation chapter is translated into tangible benefits. This depends on both the ESA states as well as on the EU. Article 64 of the Interim Agreement establishes an EPA committee (made up of representatives from both signatories) that is responsible for the administration of all matters - including the provisions on development cooperation. This is likely to be maintained upon the signature of the full EPA. Hence, ESA representatives in the Committee will have to ensure an adequate prioritisation of development cooperation provisions, along the lines of long-term services development aspirations of states such as Comoros.

### What does the future hold?

A national plan of services trade development needs to be a long-term government priority with or without an ESA-EU EPA services agreement and WTO Doha Round developments on trade in services. This does not necessarily mean that regional or multilateral dynamics are not important. In fact, they can be used as a complementary tool to domestic policy measures. The establishment of that plan, and eventually of market access and national treatment commitments, should be preceded and driven by a consultative national stakeholder process through the use of the National Trade Policy and Development Forum, the structure and activities of which are currently being revitalised. This will have the advantage of raising the credibility and inclusiveness of major national policy stances.

<sup>1</sup> Samuel Zita is a Trade Policy Analyst of the Commonwealth Secretariat's *Hubs and Spokes* Project, attached to the Ministry of Economy and Trade of Comoros Union.

<sup>2</sup> According to Comorian Customs Data (2007), about 70% of cash crops are exported to France.

<sup>3</sup> Estimates based on the data from the Central Bank of Comoros, *Annual Report 2006*.

<sup>4</sup> Central Bank of Comoros, *Annual reports 2005 and 2006*.

<sup>5</sup> 1 Euro = 491.97 Comorian Francs.

<sup>6</sup> See Hodge (2002). Liberalising trade in services in developing countries, In: World Bank. *Development, Trade, and the WTO. A Handbook*. Washington D.C. USA.

<sup>7</sup> Comoros has formally requested WTO-membership in February 2007, and in October 2007 it was given observer status.



# EPA stocktaking: urgency for a development contest

Karin Ulmer<sup>1</sup>

There has been little critical debate since December 2007 on the contents of the Economic Partnership Agreements (EPA), on the consequences of different provisions or on how these differences arose.<sup>2</sup> The outcome of the negotiation process of initialled interim agreements suggests that the development agenda is only determined by the cut and thrust of the negotiations, which of course is inadequate. The African Union Ministerial Declaration of April 3 and the Commonwealth Secretariat high level technical meeting of April 7-8, called for a review of contentious clauses to ensure their consistency with national and regional ACP development.<sup>3</sup>

## Ambitious development should result in more flexible rules, not in additional issues

From the Commission's point of view, the reciprocal character of EPAs and the inclusion of binding regulations that address 'behind the border' issues - such as competition, investment and government procurement policies - render the agreements development-friendly. But the Commission's linear notion of causality, that liberalisation of services and investment will deliver on development benefits, must be challenged. The European Commission structures the



*Amazed children watching the EU institutions just like those watching the Emperor walk by.*

problem well claiming that all components are known and available as they would be in a closed system. This allows it to stipulate that it has the ultimate answer. But this approach falls short of recognising the complexities and openness of ACP economies and societies, with high levels of poverty and social insecurities. It also fails to demonstrate respect for participatory democracy's need for any consensus building to bring about ownership and change. ACP countries emphasise that development content concerns all aspects and impinges upon the ability of ACP governments to allow sovereignty in policy making and participatory democracy. Ambitious development should result in more flexible rules, not in additional issues. And asymmetry should express itself in special and differential treatment granted to ACP countries in line with their level of development. ACP countries highlight the need to link 'aid for trade' to EPAs as well as binding commitments to secure long-term financial resources for implementation. Nevertheless, 'aid for trade' cannot compensate for ill-conceived, hastily and poorly drafted EPA provisions.

## African social movements dismiss EPAs as attempts at re-colonisation<sup>4</sup>

African social groups perceive EPAs as the continuation of debt, aid and new market dependency. While there is respect for Europe and its democratic institutions, EPAs bind

the hands of African governments, depriving and discrediting African citizens and parliamentarians from engaging with their own leadership. The social and economic challenges of ACP societies are externalised by free trade agreements as social and human side effects. The destruction of African agriculture means rural depopulation through exodus and migration to the cities. It alienates more affluent African citizens who are humiliated by the sight of forced deportation of fellow citizens that are "treated like cattle" and put on regular flights.

## Reviewing contentious issues before signing on to interim EPAs

There is widespread agreement that the interim EPAs (IEPA) are WTO compatible and provide a legal alternative to full EPAs for as long as the WTO exists. Under WTO rules, there is no reason why these agreements would have to be enlarged, revised, or renegotiated and there is no legal reason for tight deadlines. However, the European Commission argues that the IEPAs must be signed urgently in order to secure notification at the WTO. Consequently, it would not be possible to engage in a long renegotiation process or revise contentious issues. Under the IEPA regulation, the Commission has the power to withdraw preferences from a country that has already initialled an EPA but that signals its intent not to ratify it. Only in ongoing negotiations towards full EPAs would the European Commission grant a country the possibility to look again, afresh, at some of the provisions. However, independent legal advice suggests that there is no need for signature prior to notification and that initialling would suffice. In turn, this would make changes easier under WTO transparency provisions of procedural rules, which explicitly provide for the re-notification of amended free trade agreements.

### Box 1 Socrates versus Sophists

There are lessons to be learnt from the European Commission's negotiation tactics: using uncertainty and double talk as they see best fit and putting substantial and controversial issues on the agenda at the last minute. This strategy shows more of Sophists than of Socrates: whereas Socrates was intent on the unvested search for truth by means of making inquiries, hypothesis and inviting opposition to define common ground, Sophists was a brilliant logical thinker, trained in using rhetoric with the single purpose of convincing others. He pretends it was in the search for truth but in reality it was for his own gain and benefit. When the quest is to substantiate your preferred truth, communication and transparency are compromised.<sup>5</sup>



## Do interim EPAs meet development needs?

The European Commission has pushed the envelope of the norm at the WTO and got 'a little extra' in the interim agreements (See Box 1). This needs to be corrected. One solution would be to refer to the basic language of the Cotonou Partnership Agreement, and to define a short and clear list of development benchmarks that define the development dimension.

## Interim EPAs are unbalanced

The Cotonou Partnership Agreement clearly stipulates that the EPA should promote, not undermine, regional integration. It also states that EPAs should help to overcome supply side constraints and support supply capacity to overcome low agricultural productivity. Moreover, it specifies that no country should be left worse off. However, interim EPAs are unbalanced and contain many sticks but few carrots. ACP countries are subject to penalties from the European Commission. At the same time there are doubts about ACP capacity to implement agreements and honour commitments. Restrictive rules are not in line with special and differential treatment, designed to take account of ACP development levels. Front-loaded liberalisation results in quick and drastic revenue losses. And although the European Commission keeps downplaying fiscal revenue losses, International Monetary Fund (IMF) figures show that low-income countries are unlikely to recover more than 30% of every US dollar lost.<sup>6</sup> With back-loading liberalisation to the end of 10 years, fiscal revenue losses could be avoided, allowing the ACP to build enough capacity to undertake reforms and reach parliamentary consent. There is no WTO requirement to restrict export taxes. And the Most Favoured Nation (MFN) clause contradicts the spirit of regional trade agreements being used as building blocks for WTO multilateral liberalisation.

## Applying the principles of the Cotonou Partnership Agreement

Following the principle of Article 35.3<sup>7</sup> of the Cotonou Partnership Agreement, the MFN clause should not only apply to customs duties as it does in the current IEPAs, but should apply to the whole of the provisions in the agreement, as suggested by the Commission at a recent meeting.<sup>8</sup> For example, the Caribbean EPA has no standstill clause and includes provisions for regional preferences. The Pacific has special infant industry safeguards and includes corrective measures. The East African Community (EAC) has six years in which to implement the Common External Tariff. And the South African Development Community (SADC) makes clear reference to GATT Art XI.2(c), allowing the application of quantitative restrictions on imports of essential food items in the case of critical shortages.

## Care needed in ongoing negotiations

There is a need for an assessment of the ongoing negotiations to determine if they conform to expectation. For example, service provisions in the Caribbean EPA include development friendly provisions on investment behavior (obligation not to bribe and to respect environmental and labour standards). It also contains emergency safeguard provisions and improvements in regulatory measures of service provisions (mutual recognition of qualifications). However, in service negotiations, careful attention would need to be paid to categories that reflect EU schedules but may not necessarily correspond to ACP needs. It is important to capitalise on what was acquired under the General Agreement on Trade and

### Box 2

#### The Emperor's new clothes - Hans Christian Anderson

An Emperor who cares too much about clothes hires two swindlers, who promise to bring him the finest suit made from the most beautiful cloth. This cloth, they tell him, is invisible to anyone who is either stupid or not fit for his position. The Emperor is nervous about being able to see the cloth himself so he sends his ministers to view it first. They see nothing, yet they praise the cloth. When the swindlers report a suit has been fashioned, the Emperor allows himself to be dressed in their creation for a procession through town. During the course of the procession, a small child cries out, "But he has nothing on!" The crowd realises the child is telling the truth and begins laughing. The Emperor, however, holds his head high and continues with the procession.

Services (GATS), for example, referring to "national" rather than to "legitimate policy objectives" (as the latter implies objectives that are not legitimate), and to limit the right of establishment to commercial presence, avoiding the inclusion of non-service sectors. And if a region is making concessions in Mode 3 (establishment of commercial presence) this should at least be mirrored and balanced by concessions in Mode 4 (temporary movement of workers), paying specific attention to the inclusion of recruitment and placement agencies in host countries, and WTO consensus on temporary movement of two years rather than six months only.

## Which way forward?

While the Commission makes public, but unwritten, statements that it is willing to grant best provisions to all other regions, it obviously is not willing to review the IEPA. In contrast, the Commission pushes the negotiation of full EPAs as soon as possible, arguing that only these can effectively provide the development support that EPAs are meant to provide. Yet, this seems but another strand of emperor's cloth (See Box 2). It is high time that President Barroso calls for a high-level EU-ACP ministerial to affirm the EU's willingness to revise contentious issues, in response to the child's cry that the emperor walks naked.

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<sup>2</sup> Exceptions include articles in Trade Negotiations Insights, EPA meetings by the Commonwealth Secretariat (Cape Town, April 7-8) and Aprovedev-ECDPM-ODI (Brussels, April 17), as well as ODI-ECDPM study on New EPAs; [www.ecdpm.org/trade](http://www.ecdpm.org/trade).

<sup>3</sup> See: [www.acp-eu-trade.org/library/files/AU-Ministers-of-Trade-and-Finance\\_EN\\_030408\\_AU\\_Addis-Ababa-Declaration-on-EPA-Negotiations.pdf](http://www.acp-eu-trade.org/library/files/AU-Ministers-of-Trade-and-Finance_EN_030408_AU_Addis-Ababa-Declaration-on-EPA-Negotiations.pdf) and [www.thecommonwealth.org/shared\\_asp\\_files/GFSR.asp?NodeID=177516](http://www.thecommonwealth.org/shared_asp_files/GFSR.asp?NodeID=177516)

<sup>4</sup> 'From Seattle to Brussels: Our world is not for sale', European Parliament hearing, April 9 2008, [www.s2bnetwork.org](http://www.s2bnetwork.org)

<sup>5</sup> The extraordinary meeting held in the European Parliament on April 17 is an illustration of this sophistry. The session in the EU Parliamentary International Trade Committee provided little more than EPA praise by EU trade commissioner Peter Mandelson and his two chief negotiators. This was backed by the two most developed Caribbean countries, which are the most likely to be able to take advantage of increased market access opportunities. Not one critical voice was present on the panel and with few parliamentarians in town that Thursday, the public was subjected to listening to the EU EPA fairytale.

<sup>6</sup> Baunsgaard, T. and M. Keen. 2005. *Tax Revenue and (or?) Trade Liberalization*. IMF Working Paper WP/05/112. [www.imf.org/external/pubs/ft/wp/2005/wp05112.pdf](http://www.imf.org/external/pubs/ft/wp/2005/wp05112.pdf)

<sup>7</sup> CPA Article 35.3: "Economic and trade cooperation shall take account of the different needs and levels of development of the ACP countries and regions. In this context, the Parties reaffirm their attachment to ensuring special and differential treatment for all ACP countries and to maintaining special treatment for ACP LDCs and to taking due account of the vulnerability of small, landlocked and island countries."

<sup>8</sup> EPA Stocktaking Meeting, Brussels, 17 April 2008, co-organised by APRODEV-ECDPM-ODI.



*Much criticism has been levied against the EPA initiated by the Caribbean and the European Commission last December. From some corners there have even been calls to renegotiate the Agreement.<sup>1</sup> However, there are an equal number of proponents highlighting the merits of the very same EPA. Federico Alberto Cuello Camilo, Lead Negotiator on Services and Investment for the Cariforum EPA, was moved to write to TNI in response to an article in the March edition on the MFN clause in the EPAs. He points out that its inclusion in the Caribbean deal was but one of many elements in a balanced agreement.*

## MFN in the Cariforum EPA is no threat to South-South trade

Federico Alberto Cuello Camilo<sup>2</sup>

The article "MFN provisions in EPAs: A Threat to South-South Trade?" (Trade Negotiations Insights, 7[2], March 2008) by Cheikh Tidiane Dièye and Victoria Hanson gives the impression that Brazil and its supporters are the owners of the truth about the matter. Its final paragraph states "...the experience of the Caribbean and other ACP regions, where the MFN clause was strongly resisted yet imposed by the EU, is not encouraging." This is not only unfair, but the wrong conclusion to reach without evaluating the clause in its proper context.

The Cariforum region included an MFN provision for major trading economies in its EPA with the European Commission. This was the last concession given once we had achieved everything else in the balanced package. The Cariforum EPA was concluded on December 16 2007.

'Major trading economies' are those exporting 1% or more of world merchandise trade. A few southern countries meet this criterion. They should be concerned by this only if they were to grant us better conditions than the EU in future trade negotiations. If that happened, then we would be in a position to grant such countries better treatment than we gave the EU. The EU, in turn, would then be in a position to request implementation of the MFN clause in its favour.

Cariforum (Caricom countries and the Dominican Republic) negotiated its EPA with the European Commission a landmark deal in the history of trade negotiations. For the first time ever, an international agreement puts trade at the service of development. Its many elements have been carefully crafted to achieve balance.

First, there is balance in the rules, covering the issues of interest for all parties, including provisions on market access, services, investment and trade-related issues. There is balance in the specific market access commitments, achieved with the required asymmetry in the coverage and pace of liberalisation.

Europe is granting full duty-free, quota-free market access from day one, whereas the Caribbean enjoys a three-year moratorium. Caribbean liberalisation beyond applied rates really kicks-in after year ten of the phase-out schedule. Some sensitive agricultural and industrial products were excluded altogether, while the rest will enjoy a phase-out period of up to 25 years. In the process, European export subsidies are eliminated at the same pace the Caribbean liberalises the farm products concerned.

There is balance in the specific services and investment commitments, which quota-free liberalisation for all of our offensive interests in Movement of Natural Persons (Mode 4) in Europe. These interests include all professional activities, as well as non-professional ones of commercial relevance. Our top priority, entertainment, is also covered. Bachata, merengue, reggae and soka bands will now have the right to enter the EU market.

These Mode 4 commitments are an alternative to migration that may transform our export profile by creating trading opportunities at the level of the individual person. After all, remittances are already our second largest source of export

revenue. But these depend, unfortunately, on the increasingly unlikely prospects for migration into Europe.

There is also balance in the sectoral regulatory provisions. This is the first time that a trade agreement includes provisions to counter anti-competitive practices in tourism, the one service sector in which developing countries enjoy a favourable trade balance. Another first is the cooperation protocol on culture and audiovisual services to implement in practical terms the UNESCO convention promoting and protecting cultural diversity.

Our EPA includes provisions on development, with which we have given real meaning to the so-called "development dimension" of the agreement. These cover funding for competitiveness and structural adjustment as well as targeted assistance for institutional strengthening in technical barriers to trade, sanitary and phytosanitary measures, competition policy, export diversification and promotion, fair trade and trade facilitation.

Clearly, Europe has been a more generous partner than any other developed country thus far. Equity, in our EPA, has been achieved between partners that do not enjoy similar levels of development. Are the complainants [Brazil] ready to provide a better treatment to the Caribbean (or indeed, to all ACP countries)? Can the Caribbean expect a similar or a better treatment from any other 'major trading economy'? Our region welcomes their negotiating requests as well as their liberalisation offers, which shall be evaluated according to their merits.

In the meantime, we encourage the complainants to advance their own negotiations with Europe, some of which started well before the EPAs were even conceived, upon concluding the Cotonou Agreement in 2000. That, no doubt, would do wonders to kick-start the sad prospects of the Doha round.

While these countries make up their minds, the Caribbean stands together with developing countries in all key matters that we fought so hard to include on the Doha agenda, including revising the lopsided WTO rules; strengthening the dispute-settlement mechanism; and ensuring that our sensitive agricultural products are protected while all domestic support measures are finally subjected to WTO disciplines as well as phased out.

Our EPA is a balanced set of rules, specific liberalisation commitments, sectoral regulations and development provisions. It liberalises commercially-relevant goods, services and investment. It promotes competition. And it fosters competitiveness by covering both the trade and the development dimension of our bi-regional partnership. It is the first ever development-enhancing agreement in history. It is in this context that the MFN provision has to be evaluated. Not in isolation.

<sup>1</sup> See: Renegotiate the Cariforum EPA, Havelock Brewster, Norman Girvan and Vaughan Lewis, Trade Negotiations Insights, Volume 7, Number 3, April 2008.

<sup>2</sup> Prof. Dr. Federico Alberto Cuello Camilo is the Ambassador of the Dominican Republic in Brussels. He was also the Caribbean Lead Negotiator on Services and Investment for the Cariforum-European Commission EPA as well as his country's Ambassador to the UN and the WTO in Geneva.



# ECOWAS CET: the imperatives of Nigeria's fifth band

Ken Ukaoha<sup>1</sup>

The ECOWAS Common External Tariff (CET) has remained an issue of strong discourse and controversy in West Africa for many years, especially since the inception of the Economic Partnership Agreement negotiations. The ECOWAS CET is an instrument for tariff setting and liberalisation which ought to take care of a common market access within the ambit of regional trade and economic integration in the West African region.

The decision of ECOWAS Heads of State at their 2001 summit required member states to harmonise their import tariffs with the West African Economic and Monetary Union (UEMOA) CET adopted by eight mainly francophone member states in 1998. Faced with the challenges and pressure of concluding the EPA with the European Union (EU), close to five years after the 2001 summit, the Authority of Heads of State and Government of ECOWAS observed that close to nothing had been done with regard to the subject and consequently, further adopted a fast tracking of the CET harmonisation in line with the UEMOA rate.<sup>2</sup>

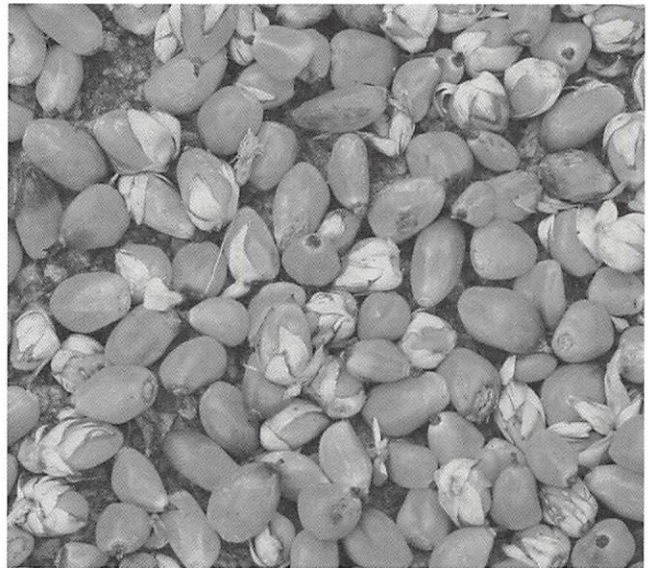
## UEMOA tariffs

Essentially, the UEMOA CET features four tariff categories with rates of 0% for essential social goods, 5% for essential/basic raw materials, capital goods and specific inputs, 10% for intermediary products, and a peak tariff rate of 20% for final consumer goods. The unweighted average tariff rate is 12.1%. The UEMOA tariffs are no doubt in line with the global trends towards lower tariff rates and fewer tariff categories, and it is also important to note that they were bound at the WTO.

Apart from the above highlighted rates, in January 2006 ECOWAS Heads of State decided to provide specific protection instruments in addition to the customs duties - such as the regressive protection tax, the special import tax and safeguard measures - to make up for the inadequate taxation of some products. The decision further made provision for a two-year transition period (January 1 2006 to December 31 2007) to enable non-UEMOA countries to adapt to the new tariff policy and to pursue the negotiations with a view to reaching agreement on the re-classification of some products as requested by the non-UEMOA countries. Entry into force was targeted for January 1 2008.

## National government

The Federal Government of Nigeria (FGN) had as far back as February 2004 announced its intention to comply with an ECOWAS CET but made provision for a 30% 'special tax' to offer temporary protection to selected domestic industry products. The special tax was to be phased out over three or four years. In addition, Nigeria's government prohibited imports of certain products. But more importantly, it must be highlighted that Nigeria demanded the creation of a fifth tariff band of 50%. This request was made when Nigeria, which had already made a political commitment to align with the UEMOA CET, realised that such a commitment was



*The additional protection may be critical for the survival of vegetable oil mills, fruit and nut processors and textile spinning mills.*

made without recourse to technical analysis in terms of research, or prior consultations with stakeholders, including relevant sectors of the economy such as the manufacturers, farmers, traders and other private sector organisations. The political statement of commitment was subsequently deemed to have been made by the then President, without consultations with relevant ministries and bodies such as the Federal Ministry of Finance, Commerce, Industry, the Nigerian Export Promotion Council (NEPC), Customs, and other trade related agencies.

It was upon the realisation that the UEMOA tariff rate does not protect Nigeria's young and aspiring economy with its prospects and plans for industrialisation, coupled with the loud cries from national stakeholders, that the Nigerian government officially applied for the creation of the fifth band. This call for a fifth band has gained the support of prominent private sectors and civil society organisations in West Africa. Unfortunately, while discussions continue, this request made in good faith by Nigeria suddenly appears to have gradually snowballed into controversy: some West African countries have continued to express silent rejection of this proposal while the region as a whole is left without a common external tariff (even after the January 1 2008 deadline) with which third party trade relations and agreements - such as the EPAs - could be mirrored and executed.



## The creation of the fifth band

Prior to the ECOWAS ministerial monitoring committee (MMC) in Nouakchott Mauritania, the West African Heads of State met in Ouagadougou on January 18 2008 to direct the Joint ECOWAS-UEMOA Committee on the CET to task themselves with "the possibility of the creation of the fifth tariff band." In Abuja in June 2007, the Joint Committee had already resolved that "on the creation of the fifth tariff band, a study will be commissioned by the ECOWAS Commission."

In truth, Nigeria's request for a fifth band is a significant matter. It is not only of potential interest to Nigeria, but to all industrially aspiring countries in West Africa. Indeed, it is in the interests of the people of West Africa. For anybody to reject or even argue against the protection of West African producers is tantamount to an economic crime against the citizens of the region. Why must Nigeria continue to import everything it needs without the possibility of self reliance? Where is our tomorrow? And, who says it shouldn't be planning for tomorrow? Shall Nigeria remain forever under the illusion of donating raw materials to others while importing finished and sometimes, 'decorated' goods? A level of protection is very necessary to ensure diversification in the region. It is also important to ensure that the country's natural resources can be translated into finished products that could create more employment opportunities for the teeming youth, thereby reducing restiveness and insecurity.

Unfortunately, in a further clear betrayal of commitment and responsibility to the people of West Africa, the Memorandum presented to the West African experts at the Nouakchott meeting tended to highlight and emphasise more of the assumed negative implications and disadvantages, or in their own words "constraints" in the creation of a fifth band. Never did it occur to these colleagues to see if any advantage was worthy of mention concerning the fifth band. To this end therefore, any decision that may have resulted from this lopsided presentation is biased rather than objective.

## A trade policy instrument?

Generally, economic observers and trade analysts have always concluded that with the exception of Nigeria's rate, the rates in the region do not provide the best conditions for such tariffs to be used as a trade policy instrument. Similarly, stakeholders in the productive sector have always made noise about the importance of tariff protection in the implementation of sectoral policies. In fact, professional producer organisations hold the strong view that trade policies, fiscal challenges and sectoral policies should be harmonised; and that an important step in this direction consists of creating a fifth band level (above 20%) of the ECOWAS CET, to facilitate the adoption of a new policy instrument as a means of facilitating some strategic community programmes.

However, one important question remains; why is the CET so essential for West Africa at this stage? At this point, it is necessary to highlight the decision of ECOWAS to negotiate the EPA with the EU as a single customs union. With the scheduled timeline for the negotiation of market access in goods fast approaching (June 2008), the adoption of a common external tariff becomes more imperative because it is on this basis that offers to the EU could be made.

## Global tariff levels

While timing is very important in the pursuit of a regional CET, it is also crucial to look at wider world events in order to help take appropriate decisions. In very clear terms, import tariff levels maintain an inverse relationship with levels of economic development. For instance, average global tariff rates (ATR) indicate that the EU, a high income region, has an ATR of 3.5%. The Mercosur, which is a middle-income region, has 11%, while SACU, another middle-income region has 11.4% and CEMAC, which is a low income bloc, has 18.4%.

From the above it can be seen that the UEMOA CET with an average tariff rate of 12.1% is, from a global perspective, out of line with the low-income status of countries in West Africa. The UEMOA tariff structure and rates are in fact similar to CETs adopted by the middle-income countries of South America.

In 2004, most low-income countries in Africa and South Asia still imposed higher tariff rates than the UEMOA rates. These include countries in Central, East, and Southern Africa. Bangladesh and Sri Lanka, and the East African community members of Kenya Uganda and Tanzania have from 2004 settled for three tariff categories of 0%, 10% and 25%. India still had a tariff peak of 30% in 2003, while Pakistan and Nepal had 25% tariff peaks. The UEMOA CET with a 20% tariff peak appears as the exception among the low-income groupings of Africa and South Asia. By most indices of economic development, UEMOA member-states as a group are not better developed than the other low income economies highlighted above; in fact, the reverse is the case for several of the UEMOA countries.

Africa currently has three major Regional Economic Groups with Common External Tariffs as follows:

- UEMOA (8 West African Countries) 0, 5, 10, 20%;
- CEMAC (6 Central Africa countries) 5, 10, 20, 30%;
- COMESA (20 East and Southern African countries) 0, 5, 15, 30%.

## An African perspective

These facts raise fundamental questions: why have other ECOWAS countries - and Nigeria in particular - committed themselves to harmonisation with the low CET? Some commentators have suggested that most ECOWAS countries are resource poor, with low populations and unviable markets that cannot support competitive production bases and therefore have no need for protective tariffs. Is this description true for Nigeria? Absolutely not! With regard to the fact that tariffs set too low in developing economies will encourage imports and become a disincentive to domestic production and investments, should Nigeria accept wholesale the adoption of the UEMOA CET or seek to modify it? Wouldn't any country in the shoes of Nigeria (with about 150 million people, and many unemployed) seek to toe the same line of request that Nigeria has done? As such, it would therefore make sense for well-meaning sister countries in West Africa to align themselves with the position of Nigeria.

<sup>1</sup> Ken Ukaoha is the President the National Association of Nigerian Traders (NANTS). He also represents Nigerian civil society in the EPA negotiations.

<sup>2</sup> This took place during their 30th session held in Niamey in January 2006.



# WTO Roundup

## Doha deadline shifts again as key text is delayed

Victoria Hanson, ICTSD

The release of a key negotiating text in the Doha round of agriculture talks has been postponed until mid-May, after delegates requested more time to try to resolve technical issues relating to tropical products and preference erosion, as well as sensitive farm products. Chair Ambassador Crawford Falconer told an April 30 meeting of WTO members in Geneva that his updated text would not be released before the week of May 12 to allow members more time to bridge gaps. The delayed text, which had been expected at the end of April, seriously throws into question the possibility of reaching a framework deal on agriculture and industrial goods by the end of May.

### Sensitive products remain thorny

One of the toughest issues for countries to resolve in the agriculture negotiations is the question of sensitive farm products, those goods which all members will be allowed to subject to gentler tariff cuts in exchange for expanding access through import quotas. At the heart of the disagreement, is the inability of farm exporters and importers to come to a consensus on how to measure domestic consumption, needed to calculate the size of tariff quotas. Early in April, six major importers and exporters - Australia, Brazil, Canada, Japan, the EU and the US - reached an outline compromise on the matter, which they presented in a revised form during the meeting. However, the compromise paper remains controversial and even the six sponsors continue to haggle over whether to apply the quota at the level of the basic product (e.g. wheat) or at the more processed level (e.g. pasta).

Sources suggest that there has been agreement to remove bananas from a list of potential products eligible for designation as sensitive.

### Tropical products versus preference erosion

The other major sticking point involves those countries seeking liberalisation in tropical products (mostly Latin American countries for which tariffs are to be reduced at a faster rate than would otherwise be the case in the round) and the products of the traditionally preference receiving members of the ACP group. The ACP wants their key export markets to designate products as 'sensitive' to reduce the depth of tariff cuts and minimise the extent to which their margin of preferential access would be eroded. However, some products fall under both 'lists' causing a conflict in how they are treated. Sources suggest that there has been some good progress, but more time is needed to wrap up a compromise.

### Doha round success could alleviate food crisis

Meanwhile, Lamy has urged members to conclude the Doha round in order to help alleviate the global crisis over food prices. Speaking at a special task force meeting of international agencies in Bern on April 29, Lamy said that in order for supply to increase it was necessary to "make sure trade works," stressing that a successful conclusion to the

Doha round could help achieve this. "I believe that today's call for action...can help WTO members gather the necessary political energy in order to help developing countries to increase their food production capacity," he said.<sup>1</sup>

Sharp hikes in the price of a wide range of staple foods have sparked unrest in a number of poor developing countries in recent months, causing food riots in Haiti, Côte d'Ivoire and Senegal in recent months. The price increase has been driven by a variety of factors, including poor harvests and policies encouraging the use of food crops for biofuels. UN Secretary General Ban Ki-moon, who organised the special task force meeting, urged countries not to exacerbate the problems by applying export restrictions on key food crops - such as wheat and rice - as many countries have done. World Bank president Robert Zoellick repeated this plea, claiming "these controls encourage hoarding, drive up prices and hurt the poorest people around the world."<sup>2</sup>

### Small-scale fishing proposal causes controversy

WTO members have crossed swords over the extent to which future multilateral rules on fishing subsidies should include exceptions for payments to the small-scale fishing sector. Canada was at the centre of the disagreement after it launched a new proposal to allow all WTO members - developed and developing alike - to support small-scale fishing. The paper, presented during the April 24-25 session on rules, called for a departure from the narrowly defined exemptions in the text released by the chair of the rules negotiations, Guillermo Valles Games in November 2007.

Canada proposed that the rules should apply only to a country's domestic waters (not to distant-water fleets) and would enable governments to use exceptions to make ordinarily banned payments, such as those to fuel or operating costs. Canada claimed that discussions for small-scale fishing should not be limited to developing countries. While Japan, Korea, the EU and Taiwan supported the "easily workable" proposal, Australia likened the possible exceptions to "using a sledgehammer to kill a mouse."<sup>3</sup> Developing countries, including South Africa, also opposed the plan, saying that special treatment in small-scale fisheries should be for developing countries alone.

The rules group's next meeting on fisheries subsidies is set for the week of May 13.

### The goalposts move once more

Sources close to the agriculture negotiations believe that Falconer is now likely to release the long-awaited farm text outlining the elements of a potential Doha deal on May 16. His counterpart in the industrial talks, Chair Ambassador Don Stephenson, is also thought to be on standby to release the NAMA text around the same time. The 'horizontal process' of cross-sectoral trade-offs to finalise a framework deal would then follow. Although delegates are not ruling out the possibility that this might happen at the end of May, some concede that a 'mini-ministerial' meeting might be more probable in July.

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> See: Poorer farmers not benefiting from food price rise, Reuters, April 29 2008.

<sup>2</sup> See: Zoellick says food export bans exacerbate problem, Reuters, April 29 2008.

<sup>3</sup> See: Calls for exempting small-scale fishing from subsidy rules divide WTO members, Bridges weekly, volume 12, Number 15, April 30 2008.



# EPA Negotiations Update

Victoria Hanson and Melissa Julian<sup>1</sup>

## EU Commission refuses to renegotiate interim EPAs

Any renegotiation of the EPAs initialled with ACP countries would be a disaster, EU Trade Commissioner Peter Mandelson told members of the European Parliament on April 17. Mandelson rejected recent criticism of the deals, stating he had "made clear that in the context of the negotiations for a full EPA any issue can be discussed," but ruled out "any suggestion of renegotiating the [interim] agreements."<sup>2</sup> Any fresh concessions would constitute "a new threat of legal uncertainty and risk unravelling everything we have achieved," Mandelson underlined, restating his goal of concluding "full EPAs with comprehensive regional coverage" in all ACP regions.

However, a confidential opinion by the European Parliament's legal service has recently claimed that the EPAs "may be revised" and that the ACP has the right to renegotiate interim EPAs. It also makes clear that there is no legal reason why the Commission should refuse, noting that "nothing in those agreements prohibits the parties from renegotiating certain elements already agreed to in the interim agreement during the on-going negotiations for a final EPA."<sup>3</sup> However, the European Commission is apparently concerned that renegotiation of initialled agreements could be a dragging process, potentially negating results achieved at the end of 2007.

Mandelson also made clear for the first time that he would propose to EU member states that "all the agreements, whether full or interim, will be presented to Parliament under the assent procedure." He said that the text of the Caribbean EPA should be submitted to MEPs in "late June, early July" and that the other interim agreements should follow shortly after the summer break in August.

## Renegotiate contentious issues, African ministers say

African ministers of trade and of finance have in April called for a renegotiation of contentious issues in the interim EPAs within the context of a move towards a comprehensive and full agreement. The declaration to this effect, adopted at a conference of African Union ministers on April 3 in Addis Ababa, provides a tentative list of such contentious issues, which includes the definition of substantially all trade, transitional periods, export taxes, free circulation of goods, national treatment, bilateral safeguards, infant industry, non-execution clause and the MFN clause.<sup>4</sup> Ministers also called for the coordination and harmonisation of all African EPA negotiations.

EU member states are currently discussing with ACP representatives draft EPA conclusions for the General Affairs and External Relations Council (GAERC) on May 27. This will be - in principle - the last GAERC before the signing of the interim EPAs.

## EU banana tariffs breach WTO rules

The EU's banana tariff regime breaches global trade rules, a WTO panel ruled on April 7. The ruling shows EU rules block access to the world's biggest banana market to fruit from Ecuador, the world's biggest exporter, despite attempts by Brussels to reform them. However, the EU Commission said it may appeal the conclusion, highlighting that the preferences for ACP bananas examined by the panel no longer exists since the introduction of the EPA at the beginning of the year.

The Caribbean Regional Negotiating Machinery argues that the WTO Banana ruling illustrates the importance of overall ACP preference erosion, claiming it may be inevitable that Europe will gradually reduce its current MFN duty of €176 per tonne. Thus, even after signing EPAs, progressive liberalisation at the WTO will eventually erode the margin of EPA preference, CRNM said.

## Central Africa to sign regional integration treaty

Central Africa is elaborating a new treaty aimed at accelerating the process of regional integration, according to the President of the CEMAC Commission Antoine Ntsimi. The treaty aims to "reinforce the power and competence of community law courts as well as improve the participation of civil society and the general public in the process of regional integration," Ntsimi said.<sup>5</sup> It would also transfer some national decision making power to the regional level and make the process more efficient. It is expected that the treaty, which was discussed by CEMAC experts in Douala in April, will be signed during the next CEMAC summit, most likely in Yaoundé in May.

EPA preparations in Central Africa continued: experts debated the creation of a regional EPA fund with the Central African Development Bank, programming the 10th EDF, changes to the community integration taxes and the harmonisation of CEMAC's trade policy with that of the Democratic Republic of Congo and Sao Tomé and Principe. There was a request that national liberalisation and exclusion lists should be finalised by mid-May to allow for consolidation into a regional list soon thereafter. Experts will aim to finalise a regional services proposal by mid-May after the EU was requested to submit an improved offer. Regional experts have requested that negotiations on trade-related issues (TRIs) should focus on reinforcing regional integration and the necessary corresponding EU support.

## West Africa tackles sensitive products

West African trade officials engaged in a series of long and difficult meetings in April, in a bid to define national sensitive products lists. Each country reported progress during a stock taking meeting in Bamako on April 28-30. It is hoped that these lists can be combined into one acceptable regional list by June. This list will be a key component of the market access offer the region intends to submit to the European Commission in July.

Meanwhile, Ghana submitted in February a completely revised implementation schedule for its interim agreement with the EU.

West Africa is the first EPA region to take ownership of its regional programme elaborated by the United Nations Industrial Development Organisation (UNIDO). The plan, known as the regional programme for competitiveness, modernisation and upgrading of enterprises, was validated by ECOWAS with small modifications during a workshop in Ouagadougou in Mid-March. The programme's funding through the 10th EDF was discussed in Brussels on April 25 and is set to be agreed in October. During the same meeting, West Africa claimed it would have a regional EPA fund finalised in June.

West Africa's proposal for an EPA development programme was discussed at the technical level in Brussels from April 21-25. Officials hammered out questions including adjustment costs, competitiveness, capacity production, inter regional trade development and improving infrastructure to reduce costs and rules for commercial policies.

## Kenya to resume EPA discussions

Kenya can resume EPA negotiations with the EU, after talks halted during the disputed December 2007 presidential elections. According to Kenya's former trade minister Mukhisa Kituyi, negotiations stalled after the country was plunged into political uncertainty and violence. "Some of the trade negotiations have been held in abeyance for failure by Kenya to give active leadership during the two months of political madness," Kituyi said on April 15.<sup>6</sup>

ESA tried to find common ground on TRIs, services and market access issues during technical meetings in Malawi on April 14-21. All agreed there was a lack of competition laws and enforcement institutions in the region and that as such, ESA should embark on capacity building before implementing an agreement in TRIs. Experts recommended that COMESA should give priority to the regional services framework and should expedite its completion, while ESA should ensure that this is consistent with the EPA negotiations. There were calls to improve the market access texts and to increase the focus on agricultural issues.

The Protocol for the COMESA Fund is now in force and the European Commission has contributed €78 million to its adjustment facility. A COMESA infrastructure company to attract private sector funds is also in the process of being set up.



## EU will discuss EAC standstill clause

The European Commission has said that it will remain open to discussion on the EAC's standstill clause, but only in the process towards reaching a full EPA. The admission was voiced during technical level negotiations in Brussels on April 7-11. It was also agreed that the EAC needs time to prepare its position in consultation with SADC and ESA to ensure similarity in rules of origin and cumulation criteria. There was also a first discussion on customs and trade facilitation, where a consolidated draft joint text was agreed. The EAC pledged to beat the January 2010 launch deadline for a common market, by concluding a deal before December 2008.

## SACU makes 'good progress'

The South African Customs Union (SACU) has achieved impressive results since the establishment of its secretariat, the executive secretary Tswelelopele Moremi said during a meeting of finance and trade ministers this month. Speaking at the conclusion of the 14th SACU council of ministers meeting in Gaborone, Botswana on April 4, Moremi said that SACU had made great strides in the development of various instruments like tariff boards, national bodies, mutual administration documents and capacity building. "Establishment of a permanent institution, which in this case is the secretariat, mobilisation of technical liaison committees and the commission and the common external tariff have been achieved to date," she said.<sup>7</sup> Following the initialling of an EPA by four out of its five member states last year, SACU is looking to agree a common position for the second stage of the negotiations towards a full EPA, and decide how to ensure the integrity of the Customs Union.

## OECS launches talks on economic union

The Organisation of Eastern Caribbean States (OECS) has taken a big step towards deepening its integration with the formal launch of a public dialogue on an OECS Economic Union. The public consultations, to be held throughout the nine OECS member states over the next year, will give nationals the opportunity to help shape the future union and draft treaty. EU and Caribbean governments continue to consider the region's EPA in view of the planned signing in June or early July.

The Caribbean Regional Preparatory Task Force is currently translating development needs (enumerated in each chapter of the EPA text under 'development cooperation') into operational programmes. To do this, it is conducting feasibility studies to identify needs, coordinate funding and quantify costs.

## Pacific ministers slam Mandelson over EPA

Wilkie Rasmussen, co-president of the ACP-EU Joint Parliamentary Assembly, has this month stood by his comments that European Trade Commissioner Peter Mandelson took a harsh and unnecessarily domineering approach to the EPA talks. "We came out of there feeling like we had been totally run over by his team," Rasmussen told a Pacific Radio programme on April 24, claiming that the tactics had driven a wedge between the Pacific Islands sense of working together.<sup>8</sup>

The comments came in response to an exchange of letters between Mandelson and Rasmussen made public earlier in the month, in which Mandelson demanded that his colleague withdraw comments that he had been insensitive towards Pacific negotiators. "You are perfectly entitled to take a different view from me about the conduct and content of these negotiations. But personal and public attacks on your negotiating partner are unlikely to do much to improve the prospects of strengthening our relations looking forward," Mandelson wrote on March 27. In his reply, dated April 11, Rasmussen reiterated that earlier comments made at the ACP-EU Joint Parliamentary Assembly "reflected the general feeling of the Pacific region that has dealt with you." He added that "the common impression you left on all of the Pacific Island Trade Ministers...was that you were insensitive to our protocols and issues, and the result was that division occurred between the Pacific Island Countries."<sup>9</sup>

Meanwhile, services negotiations remain deadlocked between Pacific ACP states (PACPS) and the EU. Following a technical meeting in Port Moresby on April 24-25, the two sides clashed over the issue of temporary movement of natural persons, which PACPS considers the most important issue in the negotiations. In light of the lack of progress on this specific issue, PACPS informed the EU Commission they had no mandate to discuss services in any further detail.

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> Victoria Hanson, ICTSD and Melissa Julian, ECDPM.

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<sup>9</sup> The Pacific Network on Globalisation (PANG) has made both letters available at: [www.pang.org.fj/doc/Mandelson\\_and\\_Rasmussen\\_Letters.pdf](http://www.pang.org.fj/doc/Mandelson_and_Rasmussen_Letters.pdf)

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# Trade Negotiations Insights

## Calendar and resources

### ACP-EU EVENTS

#### MAY

- 3-4 Retreat of AU Ambassadors based in Brussels, Ardennes.
- 4-5 ESA Senior Officials meeting, Lusaka.
- 5-6 European Parliament International Trade Committee Meeting on EPAs.
- 6-8 ESA-EC Technical Negotiations, Lusaka.
- 10 26th Special Meeting of the Council for Trade and Economic Development (Trade), Antigua and Barbuda (tbc).
- 15 Extraordinary Meeting of ECOWAS Ministers of Commerce, Abuja.
- 17 Summit EU-CARIFORUM, Peru.
- 19-23 Third Conference of African Ministers for Integration, Abidjan.
- 19-23 SADC-European Commission negotiations at senior officials level, Brussels.
- 22-23 26th Meeting of the Council for Trade and Economic Development, Guyana.
- 23 27th Special Meeting of the Council for Trade and Economic Development (Agriculture), Guyana.
- 26-27 EU GAERC with development ministers, Brussels.
- 26-30 Central Africa - European Commission technical negotiations.

#### JUNE

- 3 South Africa - EU Troika meeting, Brdo.
- 4-6 World Economic Forum on Africa, Cape Town.
- 8-13 87th Session of the ACP Council of Ministers, Addis Ababa and 33rd Session of the ACP-European Commission Council of Ministers, Addis Ababa.
- 11-12 OECD Regional Forum on Trade Facilitation, Cape Town.
- 16-19 West Africa - European Commission technical negotiations, Abuja.
- 23 34th ECOWAS summit of Heads of State and Government, Abuja.
- 24-26 West African Ministerial Monitoring Committee meeting, Abuja.
- 25-27 3rd ACP Civil Society Forum, Brussels.

### WTO EVENTS

#### MAY

- 1 Ascension Day (WTO non-working day).
- 5 Committee on Trade and Development.
- 6 Committee on Customs Valuation.
- 6 Working Party on the Accession of Azerbaijan.
- 7 - 8 General Council.
- 8 Working Party on the Accession of Serbia.
- 12 Whit Monday (WTO non-working day).
- 20 Dispute Settlement Body.
- 21 + 23 Trade Policy Review Body, China.
- 22 Council for Trade in Goods.

#### JUNE

- 5 World Environment Day, New Zealand.
- 9 + 11 Trade Policy Review Body, United States of America.
- 17 - 18 Council for Trade-Related Aspects of Intellectual Property Rights.
- 24 Dispute Settlement Body.
- 25 + 27 Trade Policy Review Body, Oman.
- 25 - 26 Committee on Sanitary and Phytosanitary Measures.
- 29 - XVIII World Congress on Safety and Health at Work, South Korea.
- 2 July Korea.
- 30 + Geneva Week (Non-resident Members and Observers).
- 1 - 4 July

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