

Trade Negotiations Insights

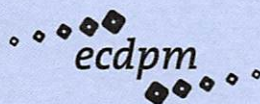
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Getting over those Doha blues

Simon J Evenett¹

The breakdown of the Doha Round at the end of July makes a deal implausible for another year or two. This article argues that this is an opportunity for world trade powers to identify ways to adapt the WTO to the needs of the 21st century. Although difficult, the outcome of such talks could hardly be worse than the fear-driven, adrenalin rush that the WTO membership embarked upon seven years ago in Doha.

But what are we supposed to do with the Doha Round now that WTO members have failed to agree on modalities for reforming several key elements of world trade?

Hibernate or deliberate?

A recent Financial Times editorial argues that the Round is over, but many senior trade diplomats have refused to go that far.² For sure, the political timetable in the US, India and the European Union will make it almost impossible to continue serious negotiations over the next 18 months. So what should trade ministers, interested analysts and business do in the interim? Hibernate...or deliberate?



No progress until 2009 or 2010

Deliberation is the right option. A constructive, confidence-building, and potentially ground-clearing process could serve the WTO membership well in the years to come. But for it to deliver it must be initiated and supported by senior political leaders. An independent or Geneva-led initiative could help, but its potential upside is less. Whether we like it or not there is no time left for "just one more push" before the pressures of the American and Indian elections tighten.

That does not mean the Doha Round negotiations have to be declared officially dead. Nor does it mean abandoning pro-development objectives at the centre of this Round. It will, however, mean a searching examination of the different means to reach common ends. The Doha Round should inform that examination and stop crowding out more systemic thinking by senior policy-makers and trade diplomats, as it has done for the past few years. Moreover, with the challenges associated with climate change, growing trade restrictions associated with border security and the use - and misuse - of state and private standards to

Editorial

For the third successive summer in a row, the annual meeting of WTO members in Geneva has ended in collapse. Hopes of capitalising on the all too familiar window of opportunity to secure a Doha Round deal were dashed when a disagreement over safeguards proved insurmountable. After the inevitable finger pointing and disappointment, editorial columns are filling with hypotheses on where global trade can go from here. In our lead article, Simon Evenett argues that the time has come to reflect and reformulate Doha thinking.

On a very tangible note, the reoccurring question of bananas was at the forefront of the nine day 'mini-ministerial' talks in Geneva. In keeping with tradition, Latin America was pitted against the ACP for coveted access to the EU market. For the first time, it appeared peace had been made in the so-called "banana wars," but a brief deal fell apart as the wider talks collapsed. In this month's TNI, Alistair Smith and Gordon Myers look at what was put on the table in July and help to set the scene for new attempts to find compromise in September and October.

As trade experts return after the traditional summer holidays, attention will also turn towards finalising the Economic Partnership Agreements. While negotiators continue to fine-tune the existing texts, heated debate continues over whether or not countries will sign what has been agreed. Europe is pressing hard for immediate signature to render the EPAs WTO — compatible, but as yet, no ACP country has endorsed the deals. Even the Caribbean, which was proudly the first ACP region to initial a comprehensive EPA, has seen the date for signature slip from one month the next.

Leading experts from several international institutes are currently in the process of preparing studies on the EPAs. Over the course of the next few months, TNI will publish a series of short articles based on their findings. The studies were commissioned by the Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) and the German Federal Ministry for Economic Cooperation and Development (BMZ). We would like to take this opportunity to reiterate that we welcome contributions from all those who wish to share their views and academic findings with a wider audience.

Each study is based on the comprehensive CARIFORUM EPA, in a bid to draw recommendations for the ongoing negotiations - particularly in Africa. Eckhard Volkmann and Silke Trumm open the series with an overview of the key objectives and findings of the studies. Kamala Dawar then takes over the baton with an article assessing public procurement, while Birgit Hofmann looks at the key question of Aid for Trade.

ICTSD has recently given its website a complete facelift, creating a far more user-friendly interface. You should now be able to search for articles with ease, linking through to the issues which are of most relevance to you. The website is also far more interactive, allowing comments, feedback and questions to be posted for individual articles. The TNI team would like to encourage our readers to make use of this new space to help us provide you with the most relevant news and analysis we can.

We hope you enjoy the September issue of TNI!

regulate trade, now is the time to break free from the Doha straight-jacket, as the closing verse of the late singer-songwriter Laura Branigan's hit suggests:

*Oh it's been hard enough getting over you
You know you kept me holdin' on til the end
Oh it's been hard enough getting over you
I don't think that I could say goodbye
I know that I can't say goodbye
I don't think I could say goodbye again*

— Laura Branigan - It's been hard enough getting over you

Time for innovative thinking

The breakdown of talks in Geneva at the end of July revealed some stark political constraints on agricultural and goods trade liberalisation and those limits will not go away soon. But this is not the end of the matter. The WTO can contribute much more to global well-being than to lowering trade barriers. Now is the time to figure out what balance is needed between the WTO's rule-making, liberalisation, juridical and deliberation functions, in light of the commercial, developmental and political realities of the 21st century.

The forward-looking, deliberative initiative on the WTO that is needed should address:

- The subjects that fall within the WTO's remit (the "what?" question);
- The contribution of the various WTO functions to different ends (the "how?" question);
- The need to demonstrate the relevance to a broader set of stakeholders (the "for whom?" question).

These three matters are linked.

To take just one example that is growing in importance to both developing and industrialised countries: the tightening of security checks on containers. These checks directly affect manufacturing exporters, who may have taken a lower profile in the Doha Round, thinking that prevailing near-zero tariffs limited their stake in WTO negotiations. Given the sensitivities associated with national security matters, the WTO's transparency and deliberation functions might provide a more effective way to prod countries to adopt less trade-restrictive security measures.

Identifying such potential future initiatives is important. They would deepen the WTO's relevance to existing stakeholders, widen the set of stakeholders with a positive interest in the conclusion of WTO accords and are consistent with the broadly agreed goals of the WTO. This is exactly how we should use the year or so ahead. This is not just about expanding the remit of the WTO — surely the experience with the Doha Round raises some hard questions as to whether the WTO has a significant role to play in the regulation of agricultural policies and various service sectors? A cold, hard look at where the comparative advantage of the WTO lies in each major area of commerce and current and future regulation is long overdue.

The Single Undertaking approach

During the Doha Round, WTO members strived to combine a series of disparate accounts into one package that all members would sign up to: the "Single Undertaking." In some respects this has been unfortunate: it has ignored the other - and often more flexible - WTO agreements that can advance common goals. So-called critical mass agreements and plurilateral accords could be viable alternatives to those that require every WTO member to sign on to binding disciplines. We urgently need a better understanding of the government policies and circumstances in which such agreements and accords are more suitable than a Single Undertaking. This is not an easy task, but multilateral accords riddled with exceptions for different classes of WTO members, typical of the Doha Round, are not that appealing either. Part of the deliberation exercise could be to determine

*"Now is the time
to break free
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a formula from which a multi-track, yet coherent WTO could emerge.

Trade policy reform: unilateral, regional and multilateral

Governments can reform their commercial policies unilaterally, in the context of free trade agreements, and in plurilateral and multilateral WTO accords. Many developing countries have independently cut their tariff barriers a lot. Service sector reform tends to take place outside of trade agreements too. Plus, dozens of regional deals have been negotiated over the last decade. The relevance of the WTO to these significant reform dynamics needs fresh thought. Until now most ink has been spilt on the relationship between multilateralism and regionalism. Experience would seem to suggest that there is little willingness on the part of the WTO membership to accept constraints on the free trade agreements they negotiate. But that need not be the end of the matter.

The WTO's transparency and deliberation functions could be used to identify free trade agreement provisions that limit discrimination in world trade, that involve less paperwork for traders and other better practices. Indeed, the deliberation initiative could draw on the growing body of knowledge on multilateralising regionalism, as the associated body of literature is known.³ With respect to unilateral trade reform, further thought could be given to devising incentives for WTO members to bind these. In the past some have proposed giving "credit" to countries that bind unilateral reforms. These ideas - and others with a similar objective - should be dusted off and developed further.

Dealing with the political realities head on

The reciprocal nature of WTO accords means that certain other practicalities should be met head on. For example, development campaigners may want to see WTO initiatives that reform certain industrialised country policies, such as agricultural support schemes. But that will not happen unless there are more Western firms willing to lobby for WTO accords. Likewise, commercial interests with stakes in the WTO must appreciate that the development concerns and multi-polar nature of the global trading system are not going away.

This reality check may be hard for some to stomach initially, but the WTO has evolved into a system where many more parties can effectively veto progress. Reciprocity may create strange bedfellows and those partners may well vary markedly with national circumstances. Ultimately the reflection exercise that is needed should lay the foundations for a broader constituency in favour of multilateral trade accords.

Last year I argued that a number of inter-related factors have frustrated progress in the Doha Round.⁴ The deterioration in the world economy after the first quarter of 2007 and the uncertainties created by the coming US presidential election have probably sharpened minds, but ultimately they have not relaxed these four constraints.

If anything, recent events have laid bare the shadow of domestic politics in Beijing and New Delhi over the WTO, adding to the trade policy gridlock in Washington and a perennially defensive EU. The Doha prize is now beyond



The Doha prize is now beyond reach

reach, making one more negotiating push futile. As Elvis put it, the fair is moving on - but where?

*All the rides are over and done
It's late and no prizes are left to be won
The rides are closed, it's the end of the day
The horses are moving away
Yes the fair's moving on*

— Elvis Presley - The Fair's Moving On

Acrimony and discord - the likely result of some very sensitive cases being brought to WTO dispute settlement - with the consequent risk of an ever greater political backlash, must not be allowed to fill the vacuum created by the recent collapse in negotiations. Instead, now is the time for those governments that are seriously committed to the world trading system to initiate a comprehensive, pragmatic and open reflection exercise on the future of the WTO.

Conclusion

A deliberative process that identifies a work programme for the WTO that meets the many needs of the 21st century could hardly do worse than the fear-driven, adrenalin rush that the WTO membership embarked upon in the Qatari capital in 2001.

¹ Simon J. Evenett is Professor of International Trade and Economic Development at the University of St. Gallen, Switzerland, and Co-Director of the CEPR Programme in International Trade and Regional Economics. The Warwick Commission Report, published in December 2007, is a recent example of one such independent initiative. The Report included a proposal for a period of reflection on the future of the WTO, and this piece builds on some of the ideas presented in that Report.

This article was originally published at www.voxeu.org

The arguments were developed subsequently in a paper titled "Reciprocity and the Doha Round Impasse: Lessons for the near term and after." More recently, these arguments have been updated with a video presentation. Both are available at www.evenett.com

² See: Multilateralism not as dead as Doha, Financial Times, Editorial comment, July 30 2008.

³ See: Background on WTO conference "multilateralising regionalism" Sponsored and organized by WTO - HEI, Co-organized by the Centre for Economic Policy Research (CEPR) September 10-12 2007. www.wto.org/english/tratop_e/region_e/conference_sept07_e.htm

⁴ See: Doha's near death experience at Potsdam: why is reciprocal tariff cutting so hard? Simon Evenett June 24 2007 <http://www.voxeu.org/index.php?q=node/317>

Banana peace slips through fingers

Alistair Smith¹

Just in the nick of time, it seemed, all the warring parties - with the exception of a minority of European governments led by Spain - accepted the banana agreement brokered at the world trade talks in Geneva in late July. The WTO General Council of July 30 was set to enshrine an agreement to reduce EU banana import tariffs for so-called 'third country' (non African, non-Caribbean) fruit by 35% over the next seven years.

The *Geneva Agreement on Trade in Bananas*, dated July 27 2008, represents an historic breakthrough for this controversial commodity sector, after more than 15 years of challenges to the European Union's import policy in the GATT and the WTO.² The signatories to the Geneva Agreement, which includes a clause settling all existing disputes in the WTO, are the European Communities, Colombia, Panama, Ecuador, Costa Rica, Honduras, Guatemala, Peru, the United States, Brazil, Mexico, Nicaragua and Venezuela.

On the eve of the agreement, Cameroon led an ACP group counter-proposal, seeking a grace-period before cuts were implemented. However, at the eleventh hour they accepted that, provided the African and Caribbean exporting governments could negotiate a satisfactory aid package to restructure their industries, they would accept the agreement - albeit grudgingly.

There would be no problem finding the funds: the European Commission alone has earned well over €400 million in banana tariff income since the last major reform of January 2006, whilst the EU member states where bananas are landed have reaped a handsome €1.2 billion over the same period. The key would be to ensure that this money goes to those involved in the banana chain who need the support most.

Spain's Rural Environment Secretary, Josep Puxeu, signalled his opposition to the deal, noting that any agreement had to be ratified by the EU Council of Ministers: "Spain wants to maintain high tariff protection for bananas for as long as possible," he told Spanish language news agency EFE on July 28. However, the Council of Ministers had already approved a marginally different European Commission negotiating mandate for a 34% cut in the €176 per tonne tariff over six years on July 18, so it was highly improbable that more than a handful of banana producing governments would vote against the agreement in Brussels.³ These countries would be unable to block ratification by the EU's top decision-making body, even if the current EU President, Nicolas Sarkozy, who has recently entered into an angry war of words with European Trade Commissioner Peter Mandelson, would choose to throw his country's weight behind the Spanish rejection.

Then came the words that broke one of the shortest peace agreements in history: just hours after 15 years of banana trade wars appeared to be over, on the evening of July 29, the EU Trade Commissioner told the press that in light of the general failure to advance on other agriculture topics in Geneva, the banana peace deal would have to be renegotiated from scratch. Banana peace and progress in the Doha Round were inextricably linked, it was claimed. But the July 27 text of the agreement, however, does not say any such thing. Paragraph 4 states: "The other WTO Members signatory to this Agreement agree that this Agreement shall constitute the EC's final market access commitments for bananas for inclusion in the final results of the next multilateral market access negotiation for agriculture products successfully concluded in the WTO (including the Doha Round)."

So, it seems that Mandelson's rejection of the deal can only be explained by other factors, beyond the world of trade arrangements in the multi-billion euro banana business. Lamy, who had spent so long setting the stage behind the scenes for a breakthrough in the months leading up to the Geneva talks, has not yet stated the WTO Secretariat's position on whether the deal has to be renegotiated. The Latin American producers are angry that the EU is using the Geneva 'break-down' to scotch the deal, and are exerting as much diplomatic pressure as they can muster during the European summer recess. Outside the EU itself, only the small vulnerable Caribbean island states like St. Vincent & The Grenadines, which really do stand to lose under the agreement, have spoken out against the agreed tariff reductions.

For the current and future African exporting countries, the duty-free quota-free treatment under the EPAs - and the bilateral interim agreements scrambled together with Brussels before the December 31 2007 deadline - will enshrine the preferences that have been under attack for so long.⁴ The multinationals that control the trade from there into the EU can in fact live with a tariff of €114 per tonne.

However, on August 26, the African, European and Dominican Republic producers issued the 'Yaoundé Appeal', calling on the European Commission to go to an appeal in the WTO rather than resurrect the deal they were rather happy to see sink four weeks before.⁵ On August 29, the Commission announced it would indeed be appealing the Ecuador and USA panel rulings, claiming they were "outdated."

In all this fighting over tariffs (which are, after all, paid by traders not governments) it is important to remember what is really at stake. The 'breaking out' of banana peace would actually give all the players along the chain - from plantation and packhouse workers to global retailers - the chance to put into practice all the fine declarations of recent years in favour of a transition to a genuinely sustainable banana economy.⁶

If, on the other hand, it should turn out that a deal on bananas has been sacrificed on the altar of cotton and other fights over Northern agricultural subsidies and free access for Northern service corporations in the South, then this unsavoury story will have to be told one day soon.

Long live the banana peace!

¹ Alistair Smith is the International Coordinator of Banana Link, a small co-operative that campaigns for a fair and sustainable banana trade. www.bananalink.org.uk

² To read the full document see: www.iatp.org/tradeobservatory/library.cfm?refID=103211

³ The handful of countries would be Spain, France, Portugal, Greece and Cyprus.

⁴ Cameroon, Ivory Coast and Ghana currently; Angola and Mozambique by 2010.

⁵ Appel de Yaoundé des producteurs de bananes d'Afrique, des Caraïbes et du Pacifique et de l'Union Européenne, August 26 2008.

⁶ See the "Declaration of Participants" from the second International Banana Conference in 2005 at www.ibc2.org

Bananas in the Doha Round

Gordon Myers¹

The treatment of bananas in the margins of the Doha negotiations in Geneva this summer demonstrated just how WTO processes can coerce and alienate smaller or less influential developing countries. ACP banana exporting countries were confronted with a deal, 'facilitated' by the WTO Director General Pascal Lamy, between the EU and 11 Latin American exporting countries that jeopardised their long-standing banana export trade and effectively negated the benefits of the EPAs, introduced only a few months previously.

In an attempt finally to settle the long series of disputes on bananas between the EU and a number of Latin American countries, the WTO Director General had accepted an invitation from Colombia to use his "good offices" under article 5 of the Dispute Settlement Understanding. Following discussions with the EU and those Latin American countries concerned, Pascal Lamy made proposals in July that would allow the rebinding of the EU tariff and its subsequent reduction over 7 years to a final level around 34% lower than the current rate. The proposals reflected the expectation of a Doha settlement involving commitments by all WTO members to prescribed tariff reductions over a specified period.

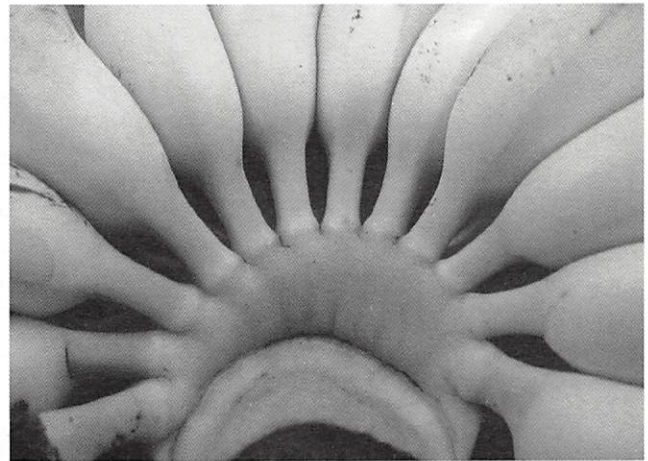
An unpalatable choice

The EU accepted this proposal, the Latin Americans rejected it. So did the ACP, who had been excluded from the main negotiations. They realised the disastrous impact of the massive tariff cuts proposed and the short period for their implementation on the viability of their export trade. But the ACP were put under great pressure to give way. It was suggested that without such a deal, bananas, as a tropical product, could be exposed to much steeper cuts in the Doha Round negotiations, notwithstanding the strong ACP case for special provision for bananas on grounds of serious preference erosion. The ACP governments were faced with an unpalatable choice between an unacceptable deal on bananas or being accused of blocking a Doha deal, with all the odium and penalties that could entail.

Intricate negotiations

It was against this background that negotiations were held for the first time directly between the ACP and the relevant Latin American countries concerned. The ACP offered an initial tariff cut of €26 provided there could then be a standstill of five years before the further agreed tariff cuts in order to allow necessary time to adapt. But these talks broke down. Then, on July 27, the EU reached a formal agreement with the Latin American countries to cut the tariff by €28 on January 1 2009, with annual reductions thereafter to a final tariff of €114.

ACP appeals to EU Trade Commissioner Peter Mandelson proved of no avail. It became clear that the only option remaining was for the painful tariff cuts, to which the EU had agreed, to be soothed by the balm of additional aid to enable the ACP to adjust to the adverse consequences. Under great pressure, the ACP made a final offer of a lower initial tariff cut of €26, followed by a one year standstill in



return for a lower final level of €109 in 2017 - the whole package linked to a firm commitment on specific and focused development aid.

Doha failure scuppers deal

The failure of the WTO ministerial negotiations brought these discussions to an end, and in the view of the EU, rendered null and void their Agreement of July 27 with Latin American countries. The latter dispute this, notwithstanding that many had not signed the Agreement. The question is how to move forward from here?

The EU has still to rebind its tariff following the switch in 2006 to a single tariff regime. The tariff of €176 has manifestly enabled Latin American banana exports to increase their dominance of the EU market. Tariff concessions under the Free Trade Area Agreements currently being negotiated between the EU and Central American and Andean Pact countries would increase this dominance still further. Therefore, there is no reason why this rebinding should entail unilateral tariff reductions in anticipation of a future Doha settlement that is neither certain nor immediate.

The Caribbean looks to the EU to honour its political and moral obligations under the EPA with CARIFORUM countries. The EPA serves no useful purpose for the ACP banana trade unless it provides the preferential access necessary to permit this trade to continue. The EPA created the expectation that for this reason the existing tariff would be maintained for as long as possible and that any "unavoidable reduction" would be phased in over as long a period as possible.

Trade rather than aid

The ACP wants trade rather than aid. But if WTO requirements now render the EPA commitment untenable, then additional development aid to cater for the consequences of any reduction from €176 might offer a solution, provided that payments are timely and effective. It must provide both the necessary investment to enable the more competitive to realise their full potential and address the problem of those forced out of business by the tariff cuts. There must also be a sufficient period of grace to allow the necessary adjustments to take effect.

¹ Gordon Myers is the Secretary of the Caribbean Banana Exporters Association www.cbea.org

The EU's General System of Preferences – (to be) continued

Ingrid Kersjes and Yee Man Yu¹

On July 22 the new regulation applying the Generalised System of Preferences (GSP) for the period from January 1 2009 until the end of 2011 was officially adopted by the EU member states.² This decision allows the EU to continue granting preferential market access to 176 developing countries for another three years.³ The EU's GSP is the most generous of all GSPs, but to stimulate exports from developing countries further, the rules of origin need to be improved.

The GSP is an important instrument in the EU's development policy. It aims to contribute to poverty reduction and the promotion of sustainable development and good governance by facilitating the integration of developing countries in the world market through granting tariff preferences.⁴ With €57 billion worth of trade under the scheme in 2007, it is the most widely applied preferential system in the world.⁵

GSP reforms: the story so far

In 2004, the European Commission took the step of reforming its GSP, setting guidelines for the years 2006-2015 aimed at better serving the system's objectives. In 2005, the first GSP scheme was introduced under these guidelines, encompassing three separate preferential regimes: a) the general arrangement, which provides preferential access for all 176 beneficiary countries and territories; b) the GSP+, which provides duty-free access for countries that implement 27 international conventions in human and labour rights, environmental protection and good governance; and c) 'Everything But Arms' (EBA), which offers least developed countries (LDCs) 'duty-free and quota-free' access to the EU's market for all products except arms. A large number of tariff lines were also added to the scheme, including sensitive items such as fishery products. Since the reforms, imports from developing countries under the scheme have increased by 12%.⁶

GSP regulation 2009 - 2012: a mini reform

The new regulation largely maintains the current structure, thereby ensuring the stability and predictability of the GSP scheme, but also boasts some technical innovations. It follows the Netherlands' initiative by introducing an additional opportunity to apply for GSP+ in mid-2010. This will increase the incentive under the arrangement, especially given the fact that from 2009, applicants are required to have fully ratified and implemented the 27 conventions and are no longer permitted a transitional period as under the current GSP regulation. What is more, sectoral competition from beneficiary countries has led to some changes in the application of preferences: footwear from Vietnam is no longer eligible for preferences, for example, as the sector has grown strong enough to compete on the European market. Preferences have been reintroduced for products from Algeria, India, Russia, Indonesia, South Africa and Thailand.⁷ And in order to ensure coherence with the outcome of recent Economic Partnership Agreement negotiations with ACP countries, full liberalisation of sugar imports from LDCs will now take place from October 1 2009 instead of July 1 2009.

Rules of origin: room for improvement

Countries' use of the EU's GSP has risen steadily over the years (imports under the scheme totalled €57 billion in 2007, an increase of 12% over 2006), but has not yet reached full capacity. One important factor is supply-side capacity, but so

too are rules of origin (RoO), which under the EU's GSP are widely held to be relatively stringent.⁸

Reforms to the preferential RoO finally began last year, when the Commission presented its first proposal to simplify the rules in order to make them more transparent and user friendly. Discussions are under way to determine sufficient working or processing levels (such as value added to third country material, change of tariff heading or product specific requirements), as these must be low enough to trigger further exports from developing countries and high enough to prevent circumvention. But the discussion really needs to centre on the key purpose of the reforms: development impact. The Netherlands, along with other like-minded EU member states, advocates both the simplification and relaxation of the RoO to maximise the GSP's development potential. The reforms can be considered successful if the use of GSP genuinely increases and improvements are made across the board, especially in the sectors that are most important for developing countries. The relaxed RoO (notably in textiles and fisheries) under the Economic Partnership Agreements (interim or otherwise) demonstrate that it can be done.

The EU's GSP is the most generous of all comparable systems, and the new regulation does not alter that fact. It has the broadest product coverage, offers preferences to the largest number of developing countries and has a higher volume of imports from developing countries to the EU than the volume of imports under the US, Canadian and Japanese GSP systems combined.⁹ An improved scheme for rules of origin would further add to the system's credentials.

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² Council Regulation (EC) No 732/2008 of 22 July 2008 applying a scheme of generalised tariff preferences for the period from 1 January 2009 to 31 December 2011 and amending Regulations (EC) No 552/97, (EC) No 1933/2006 and Commission Regulations (EC) No 1100/2006 and (EC) No 964/2007, was published in the Official Journal of the European Union on August 6 2008 (OJ L211, 6.8.2008, p. 1).

³ The number of beneficiaries was 178 until preferences were withdrawn for Belarus and Myanmar on the basis of Council Regulations (EC) No 552/97 and No 1933/2006 respectively.

⁴ European Commission trade document 139988 on GSP, July 2008; http://trade.ec.europa.eu/doclib/docs/2008/july/tradoc_139988.pdf

⁵ European Commission trade document 139872 on GSP, July 2008; http://trade.ec.europa.eu/doclib/docs/2008/july/tradoc_139872.pdf

⁶ Commission report pursuant to Article 28 (3) of Council Regulation (EC) No 980/2005 of 27 June 2005 applying a scheme of generalised tariff preferences (OJ C66, 11.3.2008, p. 1).

⁷ Mineral products from Algeria, jewellery from India, chemical products, wood pulp or paper products and base materials from Russia, wooden articles from Indonesia, and transport equipment from South Africa and Thailand. This followed a comparison of the current GSP regulation (no 980/2005) with the new GSP regulation (no. 732/2008) for the period 2009-2012.

⁸ See also Paul Collier's 'Preferential Trade for Africa, making preferences work', January 2007.

⁹ Based on statistics from 2005, see press release of the European Commission of December 21 2005 <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/05/1678&format=PDF&aged=1&language=EN&guiLanguage=en>

The CARIFORUM EPA and beyond: recommendations for negotiations on services and trade related issues

Eckhard Volkmann and Silke Trumm¹

The German Federal Ministry for Economic Cooperation and Development (BMZ) has commissioned a series of studies on the so-called Cotonou Issues (services trade and trade related issues - TRIs) in the Economic Partnership Agreements (EPAs) as they currently stand.² These studies analyse the comprehensive CARIFORUM EPA text in order to derive conclusions for the ongoing negotiations, specifically for the African regions.³ The analysis focuses on the following areas:

- trade in services
- investment
- competition and public procurement
- innovation and intellectual property
- social and environment issues
- cross-cutting to all above topics: lessons learnt from the negotiation process as experienced by the Caribbean Regional Negotiating Machinery (CRNM).

All studies depart from the analysis of the relevant chapters in the CARIFORUM-EPA, in order to assess potential development related impacts of these texts on the Caribbean economy and society. Building on this, the second part of the analysis discusses opportunities and risks for the development of the African ACP countries in a bid to strengthen knowledge on EPA topics beyond market access in trade in goods, deepening discussions within African ACP countries and thus contributing to ongoing negotiations.

Services and investment

The authors stress that development-friendly implications of services and investment liberalisation depend on the competitiveness and the regulatory environment of these sectors in the regions. For finance, tourism and telecommunication services, the authors depict the situation of the sector at selected national levels in more depth, looking at the corresponding status in terms of regional integration as well as the resulting implications for the EPA negotiations.

All authors emphasise that the right sequencing is of utmost importance to the development impact of liberalisation in services and investment in EPAs. Regional integration (and sectoral regulation) should be implemented first. Regional liberalisation should be introduced afterwards, before finally opening up towards the EU in a third stage.

Several authors spotlight the new hybrid negotiation format for services and investment introduced by the EU Commission. It deviates from the General Agreement on Trade in Services (GATS) format (e.g. differing in modes, positive and negative list approaches). CARIFORUM insisted on using the GATS format for its own services commitments. Still, the newly structured offers are more difficult to compare to existing EU liberalisation schedules. Negotiations thus become less transparent and more intricate.

Many authors mention that in the case of services negotiations, the EU could offer more market opening in favour of the ACP services exporters (mode 4).

Intellectual property and innovation

At times, the intellectual property rights (IPR) and innovation regulation seems to go beyond the multilateral framework of the WTO Trade Related Intellectual Property Agreement (TRIPS). Enforcement obligations, as well as mandatory accession requirements to international treaties in the area of intellectual

property rights protection, create significant implementation costs. Moreover, it was found that defensive instruments for protection of intellectual property rights were of more relevance to EU commercial interests than to the ACP's own economic development. Therefore, the authors recommend critically assessing costs and benefits of IPR and innovation regulation in the EPAs - more than for any other trade related issue.

Public procurement and competition

The authors stress the importance of public procurement and competition for the development impact of EPAs on ACP citizens. Anti-competitive practices may lead to excessive prices for goods and services, whilst sound public procurement regulation will increase efficiency of state purchases and reduce corruption. In both areas, there has been a missed opportunity to improve regulation. Governments should be obliged to be fully transparent in their procurement procedures. Competition laws should avoid anti-competitive practices and commit institutions to cooperate in cases of criminal investigation. As with services and investment, regional regulation should precede regional liberalisation and be a prerequisite for any market opening towards the EU.

Ecological and social standards

Provisions for the protection of the environment and labour rights are a valuable novelty in these trade and development agreements. The dedicated chapter in the EPA shows clear endeavours to respect (multilateral) core labour standards without burdening ACP countries with the same reform pressure as for the provisions on IPR and innovation. Here, the author recommends introducing compulsory indicators for observing social standards as well as the integration of social and environment standards into public procurement regulation in the final EPAs.

Aid for Trade

Aid for Trade was highlighted as imperative during the negotiations as well as for EPA-implementation at national, regional, and international levels. Areas requiring such assistance are manifold, ranging from development of negotiation, regulatory and implementation capacity to strengthening of productive capacity.

BMZ intends to facilitate further dissemination of the studies through print, internet and CD-Rom⁴. The studies are meant to enrich and deepen the debate on trade in services and TRIs in the ongoing EPA negotiations. They could thus serve as further technical input at national, regional and international levels in government institutions, civil society and the business community - particularly in the ACP regions. Discussion involving all these players at different levels may contribute to the definition of ACP negotiation positions in the ongoing EPA talks.

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² Studies are available at www.gtz.de/en/themen/laendliche-entwicklung/24564.htm

³ Nine studies, including case studies from EAC and SADC for services and investment.

⁴ Please contact the authors to request copies of the analysis.

Policy space vs. policy lock-in: public procurement in the CARIFORUM EPA

Kamala Dawar¹

The CARIFORUM EPA initialled in December 2007 regulates several behind-the-border areas, including public procurement. The provisions of the agreement recognise that transparent competitive tendering is important for economic development and the special economic situation of the CARIFORUM countries. While these special circumstances are not defined, the text points to the CARIFORUM members' entitlement to Special and Differential Treatment (S&D).

These dual objectives present particular reform challenges for government purchasing because it is a fertile environment for vested political, industrial and bureaucratic interests; all essential - but instinctively hostile - to reform. Thus, reform of public purchasing, either internally or externally, is difficult. Yet, state activities in developing countries tend to cover sectors as wide as education, commerce, health, infrastructure and defence. The price and quality of state purchases significantly effect economic development and social welfare.

This assessment of the public procurement provisions in the CARIFORUM EPA is therefore based on the conviction that preferential procurement policies are only justifiable if: (i) they effectively meet explicit and sustainable development policies; (ii) the benefits of the preferential policy outweigh its costs; (iii) there is no reasonably available alternative measure with lower social costs; and (iv) that the preferential policy is implemented no longer than necessary to attain the development goals. As such, this analysis is more concerned with the need to create 'policy lock-in' rather than 'policy space'.

The CARIFORUM EPA public procurement provisions

The scope of the public procurement provisions in the CARIFORUM EPA is relatively narrow, only obliging the parties to ensure that government procurement activities are transparent. There are no substantive provisions regulating how a government determines the eligibility requirement for public procurement contracts. The provisions do not seek to limit discrimination against or towards domestic or foreign bidders. Rather, they are concerned with preserving policy space and decision making flexibility at the national level. This outcome is in stark contrast to the WTO's plurilateral Agreement on Government Procurement (GPA), which includes guarantees of national treatment and non-discrimination and to which the European Community is a party. The general exceptions to the EPA public procurement



obligations are also broad when compared with those in the WTO GPA.

Nevertheless, the CARIFORUM EPA text states that parties will 'endeavour' to apply non-discrimination principles, indicating that the negotiators agreed that non-discrimination could have positive effects. Additionally, the EPA commits signatories to avoid discrimination against foreign companies that have a commercial presence in a CARIFORUM state and as such qualify as a domestic company for public procurement bids.

The transparency provisions obligate the parties to publish and disseminate any relevant law, information, decision or modification regarding procurement in a prompt and effective manner. These conditions are the same as those negotiated for the Caricom Single Market Economy (CSME) public procurement regime and are tied to international standards and best practices. In principle, the CSME regime should already be established by the time the EPA transition periods of up to five years expire. Thus, while it is undeniably onerous for countries to meet the CARIFORUM transparency requirements, most are already obligated to reach them through existing regional arrangements anyway. The EPA provisions complement - but do not go beyond - these existing regional arrangements.

The section of the EPA covering challenges to bids also obliges the parties to provide transparent, timely, impartial and effective procedures, which enable suppliers to challenge domestic procurement measures. However, unlike many Regional Trade Agreements (RTAs), it stops short of setting out measures to correct infringements in the accord or the amount of compensation available to the aggrieved parties. Nevertheless, the 'bid challenge' procedures are open to injured private parties that participated in bidding for a state contract. Bidders do not first have to go to their respective governments to initiate formal dispute settlement procedures.

Very few RTAs provide specific dispute settlement systems for discord between parties arising from public procurement. But the general CARIFORUM EPA dispute settlement mechanism also covers public procurement and includes consultation, mediation and dispute settlement panel procedures. If a CARIFORUM country fails to comply with EPA obligations, the European Community is entitled to retaliate - but only against the non-compliant country itself.

Not uncommonly, the CARIFORUM EPA does not establish specific institutional machinery for public procurement. However, the CARIFORUM-European Community Trade and Development Committee must review the operation of this Chapter every three years. This allows for a built-in agenda to be established and for new procurement provisions of mutual interest to be negotiated.

Public procurement and development

Given the adverse consequences of inefficient public procurement regimes on development, it is important that new initiatives are taken to improve government spending. Trade agreements can be a useful platform for such commitments as they can side-step the many domestic vested interests that lobby within the negotiation processes. Trade agreements can boost national institutions, industrial policy processes and procedures. These are often lacking at the domestic level where a lack of transparency potentially veils persistent corrupt and unbalanced practices.

Concepts such as 'value-for-money' are now becoming common currency with policymakers desiring to stretch more from insufficient budgets. Recent research on improving the transparency of state procurement processes suggests that transparency tends to reduce the average size of firms bidding for state contracts. This is of particular interest to those policymakers trying to use procurement to promote industrial policy and to protect their small nascent firms.

There is often a presumption that provisions to improve transparency in the EPAs automatically increases imports and are therefore condemned as back-door tactics for developed countries to increase their market access to developing countries. However, the impact of increased imports shows mixed results, because more domestic firms also bid for state contracts and some will win them.

Improvements in transparency can discourage bribes or payments to state officials and also result in a shift in state spending, eliminating previous policies based on non-economic or non-welfare criteria, such as corruption and favouritism. Generally, increasing transparency can improve many economic and social conditions. The extra cost of resources needed to publish all the relevant information should be weighed against an acknowledgement of these potential gains.

Overall, existing research suggests that procurement provisions in trade agreements, which result in attracting a greater number of bidders for government contracts, will drive down the average price paid. Measures to improve both transparency and access to national procurement markets will increase the number of bidders for state contracts. Small and medium sized enterprises appear to be particularly open to improvements in the transparency of national procurement regimes.

Policy lock-in vs. policy space

The CARIFORUM EPA is unique in having a public procurement chapter that excludes market access commitments. Furthermore, the public procurement thresholds are not only the highest in existing bilateral trade agreements but are also limited to Central Government procurement only, which is less than the European Community's coverage. The EPA does not establish a regional public procurement regime beyond transparency requirements: the use of 'best

endeavour' language for non-discrimination is as strong as the provisions get.

As such, the negotiators have preserved domestic 'policy space' to determine purchasing policies as they see fit. The provisions only remove discrimination against the subsidiaries of foreign firms who have established a commercial presence in the country of a member to the agreement. The EPA public procurement agreement therefore does relatively little to open market access for the European Community when compared to either the WTO's GPA or other trade agreements.

Any serious attempt to use a trade agreement to strengthen existing reform efforts in the area of government purchasing needs to go beyond this. Removing arbitrary preferences in public procurement requires much more than improvements in the transparency of processes and effective rights of redress for private and state sector participants.

Special and Differential Treatment has been written into the EPA public procurement chapter. This includes giving due and effective attention to building and strengthening national capacities in state purchasing through both technical assistance and realistically sequenced implementation periods. Capacity building activities that have been identified at national and regional levels include a financing proposal for approximately US\$10 million in support. These activities should be used constructively to allay concerns about the capacity of local enterprises to withstand competition from European firms for state contracts. They can also be improved by obliging the parties to eliminate discrimination against the developing country signatories to the agreement. In this way, S&DT can be used to promote the EPA's ability to lock-in policies that have the long-term objective of reforming public procurement, rather than to preserve 'policy space' and typically the status quo.

Conclusions

This assessment suggests that policymakers and EPA negotiators in developing countries must highlight the positive consequences for development of successful procurement reform and ignore the mercantilist instincts that underpin most industrial policy. Protecting local industry through public procurement has costs for welfare and competition.

The CARIFORUM EPA public procurement provisions preserve policy space and sidestep an opportunity to lock-in comprehensive reform, leading to more variety and choice for state purchasers and ultimately better 'value-for-money'. It is therefore hoped that cooperation, technical assistance and the review mechanisms are used not only to implement these existing provisions properly, but to progressively strengthen them.

"Increasing transparency can improve many economic and social conditions."

¹ This article is based on a report written by Kamala Dawar, University of Amsterdam Law School and Simon J. Evenett, University of St Gallen. It was commissioned by Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) and the German Federal Ministry for Economic Cooperation and Development, available at www.gtz.de/trade

AfT: supporting ACP efforts in regional economic integration and EPA implementation

Birgit Hofmann¹

In its Conclusions on Economic Partnership Agreements of May 2008, the EU's General Affairs and External Relations Council reinforced the EU commitment to increase Aid for Trade (AfT), in particular vis-à-vis the ACP partners. The aid is to support trade and regional integration as well as adjustment needs that result from the implementation of Economic Partnership Agreements (EPA) or interim agreements. Despite repeating this commitment several times, translating it into concrete and effective action proves to be a continuous challenge.

Where does the process stand?

Besides the pro-developmental design of the agreements themselves, EPA accompanying measures constitute the second development-friendly pillar of the EPAs. In 2008, the EU Commission revitalised regional programming of the 10th European Development Fund (EDF), which focuses on regional integration and trade - including EPA support. This process should be finalised by the end of 2008 with the signature of regional strategy papers and indicative programmes for each of the six ACP regions cooperating with the European Community.

The ACP and the EU have jointly started to identify priority areas to support EPA negotiations and implementation since 2005, during various Regional Preparatory Task Force (RPTF) meetings. The needs identified in these meetings will create the basis for the response strategy of the EU (Commission and member states) and possibly other donors.

Good progress has been made in each of the regions, yet the process revealed challenges. Assuring adequate participation of experts who understand both the EPA process and the national dimension was difficult for ACP and EU member states, resulting in a weak link between the two. Another challenge was to address and synchronise EPA accompanying measures within the wider context of support for regional economic communities - without creating tensions. Delays in negotiations and a final outcome in December 2007 made the process even more complex, as whole regional groupings signed a single agreement and some countries changed configurations at the very last minute.

In order to streamline this process, the EU Commission suggested so-called regional Aid for Trade (AfT) packages. These AfT packages do not form another financial commitment by the EU at the regional level, but are intended as tools to better align the process of regional integration and EPA support on one hand, and donor coordination on the other. In its May 2008 Conclusions, the Council welcomed the Commission's initiative on regional AfT packages as a means to provide "an effective, coherent and concrete EU response to needs and priorities expressed by the ACP countries and regions, including in national and regional development plans, and to foster coordination among all donors and recipients."²

Yet the experience from RPTF and other programming meetings showed that there is still a great deal of work ahead before these regional AfT packages are ready to roll out.

What is needed next?

The elaboration of regional AfT packages, based on the 10th EDF programming, offers an excellent opportunity to apply the principles of the Paris Declaration and the EU Code of Conduct on Complementarity and Division of Labour. To structure the process, the EU Commission and its member states have drafted provisional working arrangements, according to which the next logical steps should be:

■ Moving the process to the regions:

This is the only way to achieve true ownership of the agreements and donor alignment with the ACP partner processes. Getting the right people to the right meetings has to be improved in this regard.

■ Applying of the ownership principle:

Ownership should be taken by regional partners in more specific ways than through the general integration objectives on hand in most regional economic communities, 10th EDF regional programming documents or RPTF results. Regional communities need to formulate their medium-term operational strategies and corresponding work programmes containing clearly defined priorities on regional integration and EPA support. In those areas where such strategies do not (yet) exist, support should be given to the partners drafting them.

■ Implementation of the alignment principle:

In cases where there are planning documents from the regional organisations (strategies, corresponding operational plans or procedures) these should consistently be adapted and strengthened. Under certain circumstances this may mean that donors have to adapt their respective planning cycles to those of the partners. By no means should the initialling of interim agreements with sub-regions or even with single countries result in new intra-regional tensions.

■ Enhanced coordination:

Finally, intensive coordination between donors (involving ACP partners) to define who will engage in which sector is essential to make the process run effectively. In this regard, the EU Commission should play an important and prominent role, as it is present and active in relevant development areas in all ACP regions. The Commission's coordination should include (a) steering the process in a spirit of cooperation based on mutual trust; (b) specifying schedules with milestones leading to the completion of AfT packages in each region; and (c) elaborating an on-site moderation and information policy.

Experience to date has shown that the process of coordination between donors and partners - and among donors themselves - requires a great deal of time and effort. Nonetheless, the EU must stick to this path to make aid more effective. The process design outlined above is intended to drive this forward.

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² Doc 9629/08 - paragraph 9 of the EU Council Conclusions of May 27 2008.

WTO Roundup

Victoria Hanson, ICTSD

Doha Round on ice as mini-ministerial ends in collapse

International trade ministers and negotiators were unable to broker a Doha Round deal to cut tariffs and farm subsidies, despite major progress towards an accord at a high-profile summit in Geneva at the end of July. WTO negotiations collapsed on the evening of July 29, after the world's biggest economies proved unable to resolve a dispute over agricultural safeguards. The failure to reach a compromise agreement after nine days of intensive talks has left global trade liberalisation prospects facing an uncertain and frosty future.

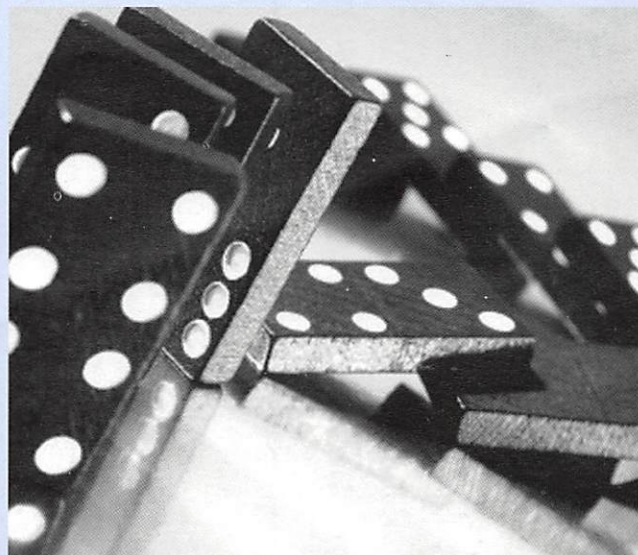
"We were very close to finalising modalities in agriculture and [non-agricultural market access]," WTO Director General Pascal Lamy told the Trade Negotiations Committee on July 30, in a reference to the framework deals that governments had hoped to strike. He acknowledged that "a huge amount of problems which had remained intractable for years have found solutions," even though the talks ultimately ran aground on when and to what extent developing countries would be able to protect farmers from import surges under a 'special safeguard mechanism' (SSM).¹

The collapse, which boiled down to a stand-off between the US on one hand and India and China on the other, was followed by shock and dismay. Lamy announced his own disappointment that "members have simply not been able to bridge their differences." He said that failure would not strengthen the multilateral trading system, which he hoped would be resilient and would be able to resist the bumpy road ahead. "We will need to let the dust settle. It is probably difficult to look too far into the future at this point. WTO members will need to have a sober look at if and how they bring the pieces back together."²

SSM fight causes collapse

If any topic had been likely to bring the Doha Round crashing down it was supposed to have been differences over cuts to farm subsidies and industrial tariffs. However, in the event, the main culprit turned out to be deadlock over the issue of the special safeguard mechanism at the so called G7 level (Australia, Brazil, China, EU, India, Japan and the US). The issue neatly splits the interests of import-sensitive developing countries and competitive farm exporters: the former want to have recourse to protection, the latter want predictable access to overseas markets.

The SSM is intended to allow developing countries to protect their farmers against import surges or price declines by allowing them to raise tariffs beyond bound levels, in principle to stall inflows of cheap imports. Throughout the negotiations, the main bone of contention has been whether, and by how much, countries should be allowed to use SSM to impose safeguard duties in excess of current (i.e. pre-Doha) tariff ceilings. The G33 block (which includes



China and India) has always insisted this may be necessary for safeguard measures to actually protect farmers. Other exporters (including the US) believe that allowing tariffs to breach current levels would upset "the balance of rights and obligations" agreed under the previous Uruguay Round. They fear the SSM could be triggered by normal trade growth, inviting potential safeguard duties that would reduce agriculture exports important to their own economic growth and development.

The road to break down

Lamy said that despite "more than 60 hours" spent trying to resolve differences, the divide over how high import surges needed to be in order to justify the highest safeguard measures proved irreconcilable.³ "Those who feared that the safeguard would lead to a disruption of normal trade wanted this safeguard as high as possible. Those who feared that the safeguard would not be operational if it was too burdensome wanted a lower trigger," he said.

The US was prepared to accept an SSM along the lines of Lamy's own compromise proposal, which would allow SSM remedies to surpass pre-Doha tariff levels by up to 15%, when import volumes rose by 40% over a three year average. The number of tariff lines that could be used was limited to 2.5%. US trade negotiator Susan Schwab said she would not accept a 'trigger' lower than 40% because it could interrupt normal trade flows and would guarantee a new de facto tariff on US exports like soy and cotton.

However, India and China supported the G33's more beefed-up proposal. The G33 said the 'trigger' in Lamy's proposal was too high to ensure that farmers would not be hurt by surges of "subsidised" agricultural imports from developed countries. They wanted SSM remedies to be able to surpass pre-Doha levels by up to 30%, with the highest levels triggered by import volume increases of 10% which would be applicable for up to 7% of tariff lines. Indian negotiator Kamal Nath warned repeatedly that he would not negotiate livelihoods. "I am not willing to negotiate livelihood security, I am not willing to negotiate subsistence, I am not willing to negotiate poverty," he said.⁴

Underlying concerns and unresolved issues

While the EU, Brazil, Australia and Japan all pronounced a willingness to accept various SSM combinations, the talks broke down over this technical operation of a single safeguard. But the SSM debate revealed other underlying concerns. At the forefront were developing country concerns with the level of cuts to US subsidies, which even after a 70% reduction, were still viewed as a big threat. Overall, the SSM debate exposed the philosophical divide between reaching a 'development' outcome and achieving global liberalisation.

The SSM snag prevented the G7 from resolving the other controversial issues that were of particular interest to the African WTO members, including cotton, preference erosion, bananas and tropical products. Uhuru Kenyatta, Kenya's deputy prime minister, told journalists after the breakdown that "most of the key issues of interest to the African continent were not even discussed," at the summit, especially cotton, which is slated to receive deeper-than-normal subsidy cuts. "Africa critically needs to realise development and get itself out of poverty through the establishment of fair trade rather than aid," he said. "Africa's opportunity to achieve fair trade has therefore been gravely undermined by the lack of progress in these negotiations."⁵

Cotton talks remain at impasse

Cotton specific subsidy and tariff cut talks remained at stalemate, as the US refused to put forward a specific offer before it knew what it stood to gain in terms of market access from broader agreements. Mali, Benin, Burkina and Chad, the so-called Cotton 4, have long been calling for cuts to developed country cotton subsidies, which they say undermine otherwise competitive small-scale producers in Africa.

The tricky issue of preference erosion – the phasing out of ACP preferential access to the EU market – was reportedly close to resolution but not yet finalised. Sources claim a ten-year timetable remained the most likely framework. Crawford Falconer, Chair of the agriculture talks, also said on July 28 that there was "emerging consensus" on the treatment of tropical products. The most recent proposal would see tropical products with tariffs less than 20% reduced to zero. Those with tariffs over 20% would be cut by 80% over five years. It is understood that ACP countries could retain zero-duty EU market preference for key products like sugar, in compensation for loss of banana market share to Latin producers.

In a banana trade 'deal' struck between a group of 11 Latin American countries and the EU, the latter agreed to slash tariffs by €62 over seven years. ACP acceptance of the pact is thought to have been contingent on new EU aid commitments. However, the EU subsequently claimed that the accord was tied to an overall Doha deal and that the overall collapse of talks rendered the understanding null and void (see the two articles on bananas in this issue of TNI for further details and analysis).

The single undertaking

Over the nine days, negotiators managed to produce an impressive list of points for which there was provisional agreement in agriculture and NAMA. This included Overall Trade Distorting Domestic Support, where the EU had agreed to an 80% cut and the US to a 70% cut, bringing the US ceiling

down to around \$14.5 billion. Percentages were essentially agreed for tariff cuts and caps, sensitive and special products. There was also considerable progress on the coefficients and flexibilities for tariff cuts on industrial goods. The problem of the anti-concentration clause, a provision that would restrain developing countries from clustering their tariff-reduction 'flexibilities' on a limited number of industrial sectors, also seemed to be settled.⁶

According to EU Trade Commissioner Peter Mandelson, total progress represented 90-95% of an overall deal. However, given that under the WTO's single undertaking principle, "nothing is agreed until everything is agreed," this progress was not enough.

Salvage or sink; a future for Doha?

Following the breakdown in Geneva, there were immediate calls to try to steer the Doha Round negotiations back on track. Lamy urged members to preserve the progress made: "This represents thousands of hours of negotiation and serious political investment by all members of the WTO," he said. "This should not be wasted." But it remains uncertain whether what was put on the table during the talks would be placed back again if negotiations recommenced. Lamy almost immediately embarked on personal visits to both India and the US in the second half of August, in a bid to broker a new compromise on the SSM. Here, the Indian government told the WTO Director General it would return to global trade talks if the US signals it believes the deadlock can be broken. Schwab subsequently said she had "encouraged" Lamy "to convene senior officials sooner rather than later" in Geneva, mentioning a possible meeting in September.⁷

But the abrupt end to the mini-ministerial was the third such collapse over the past three summers. With the approaching US elections, many believe Doha will stay in the deep freeze for some time to come. Brazil's foreign minister Celso Amorim claims this will lead to "a real fragmentation of world trade," with more bilateral agreements and dispute settlement procedures at the WTO.⁸ Indeed, Brazil has already threatened that in the absence of a deal, it will challenge US farm subsidies at the WTO. "We will see them in court," Amorim told the Financial Times.⁹

While some remain hopeful that one more *window of opportunity* can be found, others are more stoical. In the words of the Indonesian Trade Minister Mari Pangestu: "Multilateral talks never fail, they just continue."¹⁰

¹ To read complete daily accounts of the Geneva mini-ministerial July 2008, see www.ictsd.net

² See: Day 9: Talks collapse despite progress on a list of issues, WTO News, DDA July 2008 package, Summary July 29, www.wto.org

³ Tariffs: WTO talks collapse after India and China clash with America over farm products, Heather Stewart, The Guardian, July 30 2008, www.guardian.co.uk

⁴ Perpetuating Poverty by Protecting Livelihoods, Ronald Bailey, Reason Magazine, August 5 2008.

⁵ WTO mini-ministerial: The day after, ICTSD, July 31 2008 www.ictsd.net

⁶ India firm over sectoral tariffs, Rituparna Bhuyan, Business Standard, August 25 2008.

⁷ WTO, US trade chiefs in bid to revive Doha Round, AFP, August 22 2008.

⁸ Bleak outlook after the collapse of Doha, Jonathon Wheatley, the Financial Times, August 3 2008.

⁹ Brazilian minister threatens court action on US subsidies, AFP, August 4 2008.

¹⁰ Multilateral talks never fail, Pradeep S Mehta, The Economic Times, India Times, August 9 2008.

EPA Negotiations Update

Melissa Julian, Corinna Braun-Munzinger,
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To sign or not to sign, that is the question

ACP and European Commission EPA negotiators return from their summer holidays in the wake of the collapse of WTO negotiations and a continuing global economic crisis. Military and political conflicts are also affecting several ACP countries. With the price of everyday living accelerating beyond control, many ACP governments are finding it difficult to provide the social provisions that electorates expect. They also fear it will be difficult to increase competitiveness in order to benefit from greater trade liberalisation. As a result, there appears to be a shift in the political mood with many ACP governments re-evaluating trade negotiations and relationships to avoid economic and political instability.

European Trade Commissioner Peter Mandelson maintains that trade liberalisation can facilitate development in ACP countries and that EPAs (and interim agreements) must be signed without delay to ensure WTO compatibility of ACP-EU trade relations. But tensions witnessed between the Commissioner and the French Presidency of the EU Council during the WTO negotiations could spill over into the EPAs.

No ACP sub-region has yet endorsed an EPA or an interim agreement. For some countries, this is simply because legal texts are not yet ready for signature. For others, the belief that agreements were initialled in haste has led them to request reassessment and possible revision. This is to ensure that there is no loss of policy space, that effective support will be delivered and that ACP countries can benefit from the foreseen EPA development objectives. As such, countries need to identify specific, quantifiable areas where commercial and development goals collide and ascertain how much flexibility the European Commission might agree to.

Technical problems are preventing signature of the interim agreements on the European side. Only the Caribbean EPA has been translated into all EU languages and received the green light from the EU Council on July 15. The European Commission informed its member states in mid-July of delays with translation and legal verification and that it could be mid-April 2009 before the process is completed. The Commission argues the hold-up will have repercussions on WTO notification, legal security and might even encourage some countries not to sign at all. In a bid to combat this, the Commission proposes that EU member states authorise signature immediately and agree to adopt the legal texts later. However, sources indicate that several EU governments oppose this.

Duty-free, quota-free access to EU markets for non-LDC ACP countries is currently based on the EU Regulation agreed last December.¹ This states that a country can only be removed from the list of beneficiaries by a Council decision under qualified majority voting, particularly where "the region or state indicates that it intends not to ratify an agreement which has permitted it to be included in Annex I." It is therefore argued that ACP countries could continue to negotiate improved initialled agreements before signing, since EU member states are unlikely to remove a country that is negotiating in good faith. However, a non-ACP country could challenge the legality of the EU regulation at the WTO - an unlikely move during EPA negotiations. As soon as an EPA or interim agreement is signed and provisionally applied

it will replace the EU Regulation. Provisions in the interim agreement would allow the European Commission to unilaterally withdraw preferences at any time, lessening the ACP's leverage towards an improved or full EPA.

Central Africa presents market access offer

Central African EPA negotiators presented their long-awaited market access offer for goods during a meeting with the EU Commission in Brazzaville from July 9-17. The offer, which is linked to the ongoing process of harmonising a Central African Common External Tariff (CET), would abolish tariffs on 71% of imports over 20 years including a five year preparatory period. Central Africa considered several criteria for their offer including local production, consumer welfare, LDC members and fiscal revenues. During the meeting, the EU reiterated that 80% of products should be liberalised over 15 years, although agreed that a transitory preparatory period might be possible.

The Commission stressed the importance for Central Africa to establish priorities in its requests on services. Central Africa argued that the requests it submitted in May represent its major needs in this area. Central Africa has only presented a provisional services offer so far: it has not yet integrated lists from Equatorial Guinea or São Tomé and Príncipe and needs member states to validate it.

While progress was made on consolidating the EPA text (on market access for goods and on general articles), further negotiation is needed on export duties, the Most Favoured Nation (MFN) clause and some provisions on safeguard and antidumping measures. Dispute settlement and development issues have not yet been discussed either. However, Central Africa stated its understanding of the EPA's development dimension: compensation for revenue losses, strengthening economic capacities and financing adjustment costs linked to EPA implementation. Central Africa also presented a text on strengthening capacity building with the objective of transforming elements of the Joint Orientation Document (JOD) into binding commitments. The Commission reportedly said that these elements are already in the JOD, but that it will examine them nonetheless.

West Africa makes progress on sensitive products

A draft regional list of sensitive products was discussed at a workshop organised by ECOWAS and UEMOA on August 4-5 in Dakar. As participants were unable to finalise the list, a revised draft will be prepared by the two regional organisations and circulated to member states for comments before September 4. This will be followed by another regional workshop in September to give the list the green light and finalise the region's market access offer. Several factors must be taken into account before ECOWAS and UEMOA can make their official-market access offer to the EU: the creation of a list on the basis of the HS10 tariff heading (the first lists were made under the HSH6 heading as requested by the EU); the incorporation of fisheries products; the inclusion of national lists from those countries yet to submit them (Cape Verde and Liberia); an assessment of the failure of the Doha Round; and the need to incorporate the details on safeguard measures, rules of origin, trade defence mechanisms and the Common External Tariff into the overall market access offer.

A regional workshop on the draft EPA text and rules of origin in the EPA took place on July 8-11 in Cotonou. On the basis of the draft EPA text of July 2007, participants considered amendments proposed by West Africa in its negotiations with the European Commission. The meeting considered an EU draft protocol on rules of origin, in a bid to formulate a regional proposal. Both sides already decided in April to use the same rules of origin for the interim agreements as for the planned regional agreement. The region is also advancing in defining its Aid for Trade and

development programmes under the EPAs, due to be finalised by December. These should be integrated into the broader ECOWAS regional development programme. National studies are currently being carried out to take stock of existing projects and assess future needs.

Programming for the 10th EDF was addressed by ECOWAS, UEMOA and the European Commission on July 28-31 in Brussels. West African sources indicate that more discussion is required to determine how infrastructure needs will be financed.

ESA-IO address regional integration

EDF programming to support regional integration efforts was put under the spotlight during a high-level meeting in Dar es Salaam on July 17. The meeting, which brought together ministers from the Eastern and Southern Africa and Indian Ocean (ESA-IO) region, further addressed EPAs, food security and climate change. Participants - which included chief executives of regional organisations, EU representatives including Commissioner Louis Michel and representatives of multilateral development organisations - recognised the supply-side challenges the region faces and endorsed the basic elements of the 10th EDF ESA-IO Regional Strategy Paper and Regional Indicative Programme. This still awaits formal approval by both parties. Participants also recognised the important role EPAs could play in the overall regional integration process and underlined the need for coherence and convergence between the African Union and individual African Regional Economic Communities.²

COMESA continued to work towards finalising its CET by the end of 2008, during a meeting on sensitive products and harmonisation of tariff rates on July 14-16 in Lusaka. COMESA countries expect to complete their tariff alignment schedules by the end of October.³

Internal technical and senior official level meetings are being held on August 21-26 to prepare ESA for negotiations with the European Commission. Discussions will cover market access and agriculture, services, trade related issues and development, as well as dispute settlement, institutional and financial provisions.

EAC plans its EPA negotiation position

Members of the East African Community (EAC) worked hard to prepare their EPA negotiation stance during a four day meeting at the end of July. The meeting paved the way for the next round of technical level talks with the European Commission,⁴ scheduled for September 16-18 in Bujumbura.⁵ The EAC has also commissioned a study to feed into discussions on the establishment of an East African Monetary Union. Consultations began in August in EAC countries to assess how prepared each of the five member states is for the monetary union, developing suggestions for the institutional framework and structure and designing a model protocol. An interim report presenting results and recommendations is expected to be finalised in December.⁶ The EAC is also in the process of installing a common regional quality standard. The newly adopted Standards, Measurement and Testing Act came into effect on July 1. The EAC Council has set up a committee to coordinate putting the law into practice in a bid to overcome implementation challenges.⁷

SADC launches free-trade zone

Twelve out of the fifteen SADC countries launched a free trade area on August 17, during the annual SADC summit in Johannesburg. The aim was to eliminate all import tariffs by 2012 and establish a common currency by 2018. "While 85% of all intra-SADC trade is duty-free in 2008, we must acknowledge that the work is not yet complete," South African President Thabo Mbeki said at the launch.⁸ "The remaining 15% of trade is still to be liberalised by 2012 and we need to ensure that all members

are able jointly to meet that milestone," he added. Angola, the Democratic Republic of Congo and Malawi plan to join at a later date.

Some are concerned that EPAs might limit the benefits of a SADC free trade area. However, a joint statement issued during the first ever EU-South Africa summit in Bordeaux on July 25 tried to calm these fears.⁹ According to the statement, an EU-SADC EPA should promote development and regional integration in Africa, specifically in the Southern African Development Community and the Southern Africa Customs Union (SACU).¹⁰

Meanwhile, the European Commission presented a draft text of the EPA services and investment chapters to SADC technical and senior officials in Gaborone from June 30 to July 4. SADC continues to prepare for negotiations in this area and is working towards prioritising and selecting one service sector to undergo liberalisation per SADC country. During the meeting, officials agreed to include a review clause and provisions on safeguards for balance of payments difficulties. SADC also requested inclusion of an emergency safeguard mechanism and voiced concerns in relation to MFN and standstill clauses.

Officials also reached agreement on most of the outstanding issues related to the SACU market access offer, although sources claim some problems remain in agriculture, where the European Commission is not offering as much as the region would like. Talks on market access moved both sides closer to a deal on fisheries. More discussion is needed on some clothing lines that fall under non-agricultural market access. The Commission requested that South Africa gives concessions to basic and processed EU agricultural products that are currently excluded from liberalisation under the Trade Development and Cooperation Agreement and that also benefit SACU member states.

Some progress in resolving the list of concerns presented by Angola, Namibia and South Africa on the interim EPA was made although sources claim further analysis and national consultations are needed to agree to a common approach. SACU must agree to a common position in order to be able to implement an interim agreement: either, Botswana, Lesotho, Namibia and Swaziland (BLNS) must find a way to implement an interim EPA without South Africa or South Africa must become a party to the EPA and all five countries sign and ratify a single agreement together. SADC sources say that signature should take place on completion of the full EPA to allow time to deal with these concerns and avoid two separate ratification processes. However, the Commission believes an interim EPA could be signed by October (although not by all SADC member states). It also claims that most SADC countries are calling for a comprehensive EPA, with ambitious commitments on services and investment.¹¹

SADC sources report that the negotiating climate between the SADC EPA members and the European Commission has improved and that the Commission now appears to have a better understanding of the concerns of Angola, Namibia and South Africa.

Caribbean EPA signature remains in doubt

The signing of the Caribbean-EU EPA may be postponed once again, after delays in Guyana's EPA consultations. The date, which was set for September 2 in Barbados, assumed that Guyana's national process would have been completed in July. However, this has now been postponed until September 5-6. Grenada is also undertaking a review of the EPA, as is St Lucia, which according to press reports has indicated that it will postpone its signature.¹² Barbados, on the other hand, has signalled it is ready to sign the EPA.¹³ For its part, the EU Council authorised the signing and provisional application of the EPA on July 15.¹⁴

Several Caribbean leaders expressed their readiness to sign the EPA during a Heads of Government meeting in Antigua and

Barbuda on July 1-4. However, others noted that national consultations would be held in Guyana before any decision to sign is made. Guyana's President, Bharrat Jagdeo, explained that his country is not yet prepared to sign the EPA because of concerns with the MFN clause and the potential negative impact of the EPA on regional integration.¹⁵ But Regional Negotiating Machinery Director, Henry Gill, is confident that all Caribbean countries will sign the EPA in September.¹⁶ He warned that if any of the CARICOM leaders refused to sign the EPA in September, it would cause problems for trade with Europe.¹⁷

During the meeting there was also much debate on implications for LDC CARICOM countries and on the lack of a real regional integration movement. Some observers warn of a possible collapse of CARICOM if regional leaders fail to put in place integrated mechanisms to enforce decisions.¹⁸ The CARICOM Development Fund - designed to provide financial and technical assistance to disadvantaged countries, regions and sectors - was also launched at this time.

Pacific considering way forward on EPAs

The contents of letters exchanged between the lead spokesman of PACP trade ministers, Hans Joachim Keil, and the European Trade Commissioner in mid-July were discussed in the margins of the Pacific Forum Trade Ministers Meeting in Rarotonga on July 22.

As reported, the PACP had requested to focus on finalising outstanding EPA issues including trade in goods, dispute settlement, fisheries and development. They also wanted suspend negotiations on trade in services and insert a rendezvous clause in the EPA that would commit both parties to revisit services in the future.¹⁹ EU sources indicate that Mandelson continues to stress the importance of the inclusion of services and investment in a comprehensive Pacific EPA. However, the EU is aware that some PACP countries may not be able to make commitments in these areas. Mandelson, therefore, offered continuing negotiations with all PACP countries on jointly agreed issues, allowing those that desired to make commitments on services and trade related issues.

Given that not all PACP ministers were present at the meeting (some, including Papua New Guinea's minister, were participating in the WTO negotiations) no official decisions were taken. However, sources indicate that Hans Joachim Keil is set to launch a regional consultation to try to formulate a position ahead of the scheduled EPA technical talks in Brussels in mid-September.

Just before the Pacific Forum meeting, leaders "reiterated the region's commitment to the conclusion of a comprehensive EPA with the European Union by the end of 2008 and agreed that the EPA should reflect the differing circumstances and economic interests of all the PACPS and deliver significant benefits to all of them," as stated in a press released, issued during an August 19 meeting.²⁰

For more EPA news please visit: www.acp-eu-trade.org/epa

¹ To read the full text: www.delnam.ec.europa.eu/pdf/trade/Market_access_Regulation.pdf

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²⁰ PACP leaders committed to an EPA that will benefit members, press release, Pacific Islands Forum Secretariat, August 20 2008 www.forumsec.org.fj

After completing thirteen successful issues of TNI and Eclairage, Victoria has decided to move into complementary and exciting areas in her brilliant communications career. At ICTSD we will much miss her very fine and entrepreneurial skills and wish her all the best in her new endeavours. As a result, we are now looking for someone to take over the reins, to manage and foster this integral publication, maintaining the quality and insight that our readers have come to enjoy.

Ricardo Meléndez-Ortiz,
Founding Editor and Chief Executive,
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Calendar and resources

ACP-EU EVENTS

SEPTEMBER

- EU-CARIFORUM EPA signing ceremony scheduled, Barbados.
- 2-5 ACP meeting of experts on rules of origin and ACP technical follow-up group on EPA negotiations, Brussels.
- 4-6 Meeting of ACP chief negotiators, Brussels.
- 5-6 EPA consultations in Guyana.
- 8 Meeting of Caribbean heads of government to discuss EPA (tbc).
- 8-9 AU coordination workshop on EPAs, Lusaka.
- 8-11 Thirteenth Session of the ACP Parliamentary Assembly, Brussels.
- 8-12 Internal SADC EPA meetings on market access in goods and services.
- 9-10 Fostering Trade through Public-Private Dialogue - Business Implications of WTO and EPA Negotiations for ESA, organised by ITC, Addis Ababa.
- 10 Adoption of the European Commission Communication on regional integration.
- 10-11 Meeting of the ACP-EU JPA Standing Committee on Economic Development, Finance and Trade, Brussels.
- 11 Joint meeting of the Bureau and the three Standing Committees of the ACP-EU JPA with the European Parliament ad hoc Delegation for relations with the Pan-African Parliament (PAP) and the PAP ad hoc Committee for relations with the EP, Brussels.
- 15-26 EU-Pacific technical negotiations, Brussels (tbc).
- 16 EU-Pacific Islands Forum Secretariat Ministerial Troika Meeting, Brussels.
- 16-18 EU-EAC technical negotiations, Bujumbura (tbc).
- 23 Stop EPAs Action by NGOs, Strasbourg.
- 29 EU-Central Africa technical and senior official negotiations, Brussels (tbc).
- 7 Oct. ACP Council of Ministers, Accra.
- 30

OCTOBER

- 1 Joint Meeting of ACP Council of Ministers and ACP Ministers of Foreign Affairs, Accra.
- 2-3 Sixth Summit of ACP Heads of State and Government, Accra.
- 6-10 EU-SADC technical and senior official negotiations, Brussels.
- 20-24 EU-West Africa technical and senior official negotiations, Ouagadougou.
- 27 EU-Central Africa technical and senior official negotiations.
- 1 Nov.

WTO EVENTS

SEPTEMBER

- 11 - 12 Jeune Genevois (WTO non-working days).
- 17 - 18 Committee on Agriculture.
- 17-19 Trade Policy Review Body, Barbados.
- 18 - 19 Committee on Regional Trade Agreements.
- 22 Symposium on movement of Natural Persons (Mode 4).
- 23 Dispute Settlement Body.
- 24-25 WTO Public Forum 2008: "Trading into the future", Geneva.
- 30 EID AL-FITR (WTO non-working day).

OCTOBER

- 3 Working Party on State Trading Enterprises.
- 8-9 Committee on Sanitary and Phytosanitary Measures.
- 8-10 Trade Policy Review Body, Republic of Korea.
- 9 Committee on rules of origin.
- 14-15 General Council.
- 21 Dispute Settlement Body.
- 22-24 Trade Policy Review Body, Norway.
- 28-29 Council for Trade-Related Aspects of Intellectual Property Rights.

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