

Trade Negotiations Insights

Contents

Surveying progress: An African perspective on EPA negotiations	1
Editorial: The year ahead	3
Sub-Saharan Africa and the global financial crisis	4
Is SPS the silver lining? Economic Partnership Agreements	6
Preferential Rules of Origin in Economic Partnership Agreements: Key features and changes	8
Investing in East Africa: The role of negotiations in the EAC-EU EPA	10
Turning mode 4 commitments into business: The CARIFORUM - European Community EPA	12
Integrating into the global economy	14
WTO roundup	16
EPA update	17
Calendar and resources	20



International Centre for Trade
and Sustainable Development



Available online at:
www.ictsd.net/tni
www.acp-eu-trade.org/tni

Surveying progress: An African perspective on EPA negotiations

Her Excellency Mrs. Elisabeth Tankeu

With the Caribbean having signed an Economic Partnership Agreement (EPA) with the European Union in mid-October, all eyes are now fixed on swiftly concluding the EPA negotiations between the EU and the Pacific and African regions, respectively. As a major trading partner, Africa has a significant amount to gain from the outcome of the EPAs not only in terms of basic trade relations, but also as a vehicle to drive efforts to meet development challenges. With all that is at stake, what is Africa's perspective on how the negotiation process has been unfolding on the continent thus far? What are the outcomes and gains that African negotiators are expecting? And, what do they want to see evolve in future talks? To find out, *Trade Negotiations Insights* spoke with Elisabeth Tankeu, Commissioner for Trade and Industry at the African Union. As Mrs. Tankeu states in our interview, from the African perspective, the outcome of the EPA negotiations so far, "falls short of expectations."

TNI: How would you qualify the process leading to the initialling of several interim Agreements in the context of the EPA negotiations in Africa?

Tankeu: Europe is Africa's major traditional trading partner. Hence, within the continent, much hope and value was placed on the EPA negotiations to lead to the attainment of a new trade regime driven not just by the requirement of WTO compatibility, but also by lessons drawn from the experience of Africa-EU trade relations under the Lome Conventions thereby assisting African countries to meet the challenges of development. African countries have invested their limited human and financial resources heavily in the EPA negotiations to achieve this goal.

The initialling of interim EPAs (IEPAs) appears, on the surface, to be the outcome of several years of intensive negotiations between equal partners. In reality, they are the products of a process of unequal bargaining, in which the stronger party was able to effectively use its superior bargaining power and the "carrot and the stick" method to secure Interim Agreements in line with its negotiating objectives. The request by the African Union (AU) policy organs for the extension of the Cotonou waiver beyond the deadline of 31 December 2007 was rejected by the European Commission, thus putting many African countries under pressure to rush and initial IEPAs or risk losing access to the EU market for their exports. It needs to be stated that the deadline was set with the expectation that the WTO Doha Round negotiations would be concluded and would have produced development-friendly rules compatible with development friendly EPAs.

The process leading to the initialling of Interim Agreements was unsatisfactory. This is evident from the fact that a) some African negotiating groups and countries (e.g. the ESA group) were confronted, shortly before the deadline, with texts that

were different from those already negotiated and; b) that most of the African countries that have initialled interim EPAs had done so outside of the regional groupings within which they negotiated with the European Commission; The large number of contentious issues that have been identified in interim EPAs by the Joint Conference of AU Ministers of Trade and Finance is also a reflection of the imperfection of the process that led to the initialling of the IEPAs.

TNI: What is your assessment of the outcome of this process?

Tankeu: The outcome, so far, of the process falls short of expectation. The interim EPAs can be assessed against the objectives set for this new trade regime in the Cotonou Partnership Agreement (CPA). The ACP and EU countries had agreed that EPAs would serve primarily as instruments for the promotion of sustainable development, the eradication of poverty, the reinforcement of regional integration initiatives, and the gradual integration of ACP countries into the global economy. The interim EPAs currently on the table cannot achieve these objectives.

The emphasis in the interim EPAs has been on policy reforms, opening markets, and granting reciprocal preferences. While these may be necessary, they are not sufficient for EPAs to serve as effective instruments for the promotion of sustainable development and the eradication of poverty. For EPAs to achieve these important objectives, the issues of adjustment costs of reforms and liberalisation, building infrastructure, productive and trade capacities, and the provision of additional resources above the European Development Fund (EDF) have to be addressed. Unfortunately, these critical issues are yet to be seriously dealt with in the EPA negotiations. The request of African countries that the development dimension of EPAs be adequately considered through the inclusion of binding commitments on additional resources has been largely ignored.

A major concern with the current interim EPAs is the possible adverse implications for Africa's regional integration efforts. Instead of serving as instruments for the strengthening of existing integration initiatives as envisaged in the CPA, they are capable of undermining these initiatives. The analysis of the eighteen interim EPAs initialled by African countries indicates that they are all different and only in one region (the East African Community) does more than one country have the same trade liberalization commitments. The differences among African countries, which belong to the same Regional Economic Communities (RECs), in time schedules and baskets of products for liberalization in the Interim EPAs, are bound to complicate Africa's regional integration process. Of great concern also is the inclusion of contentious provisions in the interim EPAs that could limit development policy space for African countries and which tend to impose obligations that are higher than those required by WTO trading rules.

TNI: How do you see the EPA debate evolving in the future and what, in your view, would be best way forward for those involved?

Tankeu: Those involved in the process must show greater commitment to the development of full and comprehensive EPAs that can meet the objectives set in the CPA. Given the issue of the disruption of trade with the EU, there is a need to avoid setting another artificial deadline for the conclusion of full EPAs. What is needed are EPAs that can meet the test of time and serve as useful frameworks for the promotion of mutually beneficial trade between Africa and Europe in a dynamic and rapidly changing global economy. The

negotiations of these trading arrangements must therefore not be rushed but given adequate time for their successful conclusion. The initialled interim EPAs can serve as a basis for the negotiations of full and comprehensive EPAs. However, it must be realized that the interim EPAs were rushed to beat the December 31 2007 deadline and many of them are characterized by defects that need remediation.

There is a need to broaden the scope of participation in the negotiations of full and comprehensive EPAs, involving other major stakeholders, especially in the private sector, whose role will be critical in the implementation of EPAs.

TNI: What is needed for the successful completion of EPAs?

Tankeu: Some flexibility in the negotiating position of the European Commission is necessary for the successful completion of the EPAs. The divergence of positions between European Commission and African countries on the development dimension of EPAs, for instance, will need to be adequately addressed. Also, the contentious issues that have been identified in the interim EPAs must be satisfactorily dealt with within the context of the negotiations for full EPAs. From the African Union Commission (AUC) perspective, one of the yardsticks with which to judge the successful completion of EPAs will be the coherence of the negotiation outcomes with the African agenda for unity and solidarity, the promotion of regional integration and the establishment of the African common market. This requires that full and comprehensive EPAs are not concluded by African countries individually, as was the case with the interim EPAs, but on a regional basis that will strengthen Africa's regional integration initiatives. African countries that have concluded individual interim EPAs should continue with the negotiations and finalize comprehensive EPAs within the framework of their respective RECs and groupings.

TNI: What is the role of the African Union Commission in the context of the regional EPA negotiations?

Tankeu: A major objective set for the African Union in Article 3 of its Constitutive Act is to establish the necessary conditions that will enable Africa to play its rightful role in the global economy and international negotiations. The AUC is not a direct party in the current EPA negotiations although, in the long run, the ideal framework for the development of trade and economic cooperation between Africa and Europe should be an AU-EU EPA, in which the AUC would play a role similar to that of the European Commission. However, at the AU Maputo Summit of 2003, the AUC was mandated to coordinate and harmonize the efforts of African countries in the EPA negotiations. The AUC has been using this mandate to organize spaces for the African countries/RECs to exchange experiences, develop African common positions, and speak with one voice in the negotiations. The common positions are contained in the various decisions and declarations adopted by the African Union policy organs. The AUC has also been playing an advocacy role in supporting the interests and concerns of African countries in the trade negotiations.

TNI: What are the prospects for collaboration between Africa and the other ACP regions?

Tankeu: The prospects for collaboration between Africa and other ACP regions are good. These countries all share common interests and concerns not only in the EPA negotiations but also in the WTO Doha Round negotiations. Collaboration between the regions in both negotiations is critical to achieving development-friendly outcomes. Moreover, South-South cooperation has been accorded

high priority in Africa's strategy for meeting development challenges of the 21st century which reinforces the need for greater collaboration between Africa and the other regions of the South.

TNI: What are the linkages between Aid for Trade and EPAs?

Tankeu: As agreed during the 6th WTO Ministerial Conference, Aid for Trade should not be a substitute for market access benefits. There should therefore not be any linkages between Aid for Trade and EPAs. The Aid for Trade initiative, which constitutes one of the most important development-

related outcomes of the Doha Round to date, is meant to support developing countries in the building of trade-related infrastructure, institutional, human, production and supply capacities, and in meeting the costs of implementation and adjustment to WTO Agreements. The pledge by the EU (and its Member States) to provide 2 billion Euros annually for Aid for Trade by 2010 is highly commendable and welcome. However, the disbursement of the EU A4T resources should not be linked to the conclusion or signing of EPAs. Some other major donors, such as Japan and USA, have made A4T commitments for building trade-related capacity in African countries without concluding EPA-type agreements.

Editorial: The year ahead

The year 2008 should have been dedicated to completing the unfinished business of the Economic Partnership Agreement negotiations between the EU and the African, Caribbean, and Pacific (ACP) states, with a view to sign, notify to the WTO, and start the ratification process of all (interim) agreements. In parallel, agreements on comprehensive EPAs coherent with regional integration processes and agenda should have also been advanced. But once more, this scenario was partly derailed. Only fourteen Caribbean Forum countries signed a comprehensive EPA in October 2008 (after many difficulties with Guyana and without Haiti); the agreement was notified to the WTO the following day, and the ratification process has just begun. Though the spirit of the negotiations has improved since January 2008, key issues have yet to be resolved and much work remains. So, what can we expect for 2009?

Although the timeframe outlined in the interim EPAs for negotiations in African and Pacific regions will extend into 2009, steps are being taken by the ACP group to address outstanding issues at the highest level now. Many are looking to the new European Commissioner for Trade, Catherine Ashton, to provide the renewed political impetus needed to complete negotiations for a fair and equitable EPA. In this double year-end issue of TNI, an interview with the African Union's Commissioner of Trade and Industry, Elisabeth Tankeu reveals her belief that the process of initialing these interim EPAs has fallen "short of expectation." Throughout the interview, she outlines her thoughts on the best way forward for the ACP states and Africa in particular. This interview provides insight into the perspective of key actors about how to most effectively advance the negotiations processes to meet not only high expectations in 2009, but more importantly, development objectives in the long-term.

Among other issues to be clarified in 2009, are the expected commitments on Aid for Trade (A4T) and support for implementation of the EPAs. But additionality will be at best limited, if not absent, and expectations have been lowered. The key challenge for ACP countries now is to identify regional, comprehensive approaches for defining and implementing assistance programmes to be funded by the European Commission and EU member states.

As countries move towards implementing the interim EPAs, Aurelie Walker examines how the EPA objective of integrating into the global economy can be achieved. Walker argues that ACP states must expand trade relations with other developing and developed countries, build on their own regional integration initiatives, and continue to use the ACP group to share negotiating experiences.

As regional integration consultations and negotiation processes have intensified, the unique challenges and opportunities of each region have become clearer. In this TNI, Natallie Rochester addresses the challenges and opportunities for the CARIFORUM region following signature of a full EPA in mid-October 2008. Here, she examines how services provisions and market access commitments

found in the agreement can help expand opportunities, stimulate investments, grow export capacity, and strengthen competitiveness in the Caribbean.

However, not all regions have achieved the same level of coherence that the Caribbean (mostly) had in advance of signing. The division of the EPA configurations at the end of 2007 prompted internal reflection on the existing regional integration processes. But the year ahead promises progress. For one, progress continues towards the planned harmonization between ECOWAS and the UEMOA common external tariff, while harmonization of the COMESA and EAC common external tariffs in preparation for a tripartite free trade area between COMESA, EAC, and SADC is expected to begin. In this issue, Francis Mangeni argues for the EPA negotiations to capitalize on the ongoing East African regional integration processes as part of a strategy to promote the achievement of EAC objectives in his piece on investment in the region.

There is a new sense of optimism about the prospects for economic integration on the African continent, and fears that EPAs could weaken, instead of strengthen, that process. Boosting confidence of investors at this time of uncertainty created by the global financial, food, and climate change crises is critical for the successful implementation of the EPAs. In this edition, Patrick Osakwe tackles the issue of whether and how the financial crisis will affect Africa and calls on the international community to take action to limit the severity of potential negative implications for the African region.

Also included in this TNI is a review of the changes made to the Rules of Origin requirements over the past year in the EPAs, provided by Eckart Naumann. In a separate piece, Martin Doherty offers recommendations for how the EPAs represent opportunities to overcome harmful sanitary and phytosanitary related practices by the EU.

As we head into 2009, the financial and political climate is significantly changed from just a year ago. Now, both rich and poor nations will face enormous challenges from the global recession predicted for 2009. Together, these nations are working to weather the storm, which should have provided the necessary impetus for concluding the Doha Round. If a deal had been struck before the year's end – now nothing short of an impossibility – increased confidence in the multilateral trade system could have provided policy makers with the right environment to address the outstanding EPA issues and to accelerate the EPA negotiation process in 2009. As TNI goes to press, no such prospect is in sight, however.

As always, your comments on this issue are encouraged. Please send all feedback to Caitlin Zaino at czaino@ictsd.ch.

On behalf of the whole editorial team, enjoy this issue of TNI and best wishes for the festive season!

Sub-Saharan Africa and the global financial crisis

Patrick N. Osakwe¹

The current millennium began with a new sense of optimism regarding prospects for sustained growth and poverty reduction in Sub-Saharan Africa (SSA). Better economic management, progress in governance, rising commodity prices, reduction in armed-conflicts, and increasing international support for SSA created hopes of a brighter future for the region.² There is no doubt that the recent economic performance of SSA has justified this new optimism. Evidence indicates that remarkable progress has been made since 2000: the average annual growth rate in SSA increased from 3.7% in 1996-2000 to 6.3% in 2003-2007, while inflation declined from 18.8% to 8.2% over the same period.

Impact of financial crisis on Sub-Saharan Africa

Despite this increase in optimism and the improvement in economic performance, there is concern that the recent global financial crisis may erode these gains.³ While it is too early to know the exact magnitude of the potential impact on SSA, it is important to consider the following. First, the crisis will have short as well as medium-term effects on SSA, which may differ in magnitude depending on how long the crisis lasts. Second, the impact will vary across countries depending on their production and export structure, exposure to the international financial system, as well as capacity to cushion the potential negative effects of the crisis. For example, countries with very strong fiscal positions or with high international reserves are less likely to be severely affected. Furthermore, African countries with low inflation will also have a better ability to use monetary policy to dampen the impact of the crisis on real variables since in this case monetary policy is not constrained by the need to fight inflation.



Short-term effects

In general, the short-run effects on SSA will be relatively small as most countries in the region are de-linked from the international financial system. Furthermore, the existence of varieties of exchange controls and the lack of exposure to the sub-prime market in developed countries means that banks in the region will not face any systemic risk

and so the disruption to domestic credit markets should be minimal.⁴ Of course, in larger economies where stock markets have some degree of exposure to the international financial system, the impact will be more pronounced. There is already increasing evidence that stock markets in South Africa and Nigeria, for example, are feeling the impact of the crisis.

Medium-term effects

The medium-term effects on SSA will depend on four key factors. The first is the degree to which the crisis leads to a severe and protracted recession in the US and Europe, which will certainly have a negative effect on other industrial countries given the interdependence of these economies through trade and foreign investment. This will in turn have a contagious effect on African countries through the following channels:

- *International trade* is a key source of growth in most modern economies. A slow down in economic activity in industrial countries will have a negative effect on exports of African countries and will lead to a reduction in trade credit. Since trade is an important source of foreign exchange, there will be a reduction in the ability of countries to import the capital and intermediate inputs needed by domestic industries.
- *Foreign direct investment* is likely to fall as a result of a global melt-down. Such reduction in capital flows will put pressure on the exchange rate and also reduce investment in infrastructure and the production sectors, leading to factory closures and increased unemployment.
- *Remittances* tend to be more stable than other private capital flows. However, a deep recession in industrial countries is likely to result in lay-offs and to the extent that migrants are affected, there will be a reduction in their ability to transfer money to their home countries. A reduction in remittances would mean more hardship for recipients since they have no alternative safety nets.

Although there is growing consensus that the crisis will lead to a significant slow down of the US economy in the short-run, it is not clear whether this will lead to a protracted recession. That said, recent actions and statements by the Bush administration in the US, as well as by leaders of other G8 countries, suggests that they stand ready to take any measures necessary. To the extent that they follow through on this promise and, assuming their actions have the desired result, it is unlikely that there will be a protracted recession

in the major industrial countries. Consequently, the impact of the crisis on Africa emanating from this channel may not be as severe as one would expect.

The second factor that will determine the degree of the medium-term effects on SSA is inflation-expectations in Organisation for Economic Co-operation and Development (OECD) countries. If the recent easing of monetary policy⁵ as well as implementation of proposed fiscal stimulus leads to an increase in inflation expectations, there is the possibility that monetary authorities in these countries will raise interest rates to ward-off inflation and preserve their currencies value. Such tightening will increase the cost of credit, making it even more difficult for African countries to access. Countries with high dollar denominated debt will also face an increase in the cost of servicing their debt. Furthermore, an increase in interest rates may slow down the economies of the industrial countries and reduce demand for African exports with negative consequences for growth and prospects for meeting the Millennium Development Goals (MDGs).

The third factor that will determine the medium-term effects on SSA is commodity prices. The recent boom in commodity prices played a key role in boosting growth in the region. If the current slow-down results in a decrease in the demand for primary commodities, it will have a devastating effect in the region. What happens to China and India—key players in the market for commodities—are critical in terms of the impact of the crisis on commodity prices. At the moment, there are indications that the Chinese economy is slowing down due to the crisis: forecasts for the first three quarters of 2008 suggest that the economy grew by 9%, which is below the double-digit figures observed in recent years.

In general, the short-run effects on SSA will be relatively small as most countries in the region are de-linked from the international financial system.

The final factor that will determine the medium-term effect is what happens to official development assistance (ODA) flows to SSA. If OECD countries respond to the economic slow down by reducing ODA flows, this will deepen the potential impact of the crisis on African economies: a large number of countries in the region rely on ODA to finance their budgets. Such action will further reduce the fiscal space available to African countries to cushion the impact of the crisis. In the past, ODA flows have been pro-cyclical rather than counter-cyclical giving African policymakers good reason to worry.

Policy responses

The current financial crisis calls for actions by Sub-Saharan African countries and the international community in order to limit the impact on the region. It underscores the need for better regulation and supervision of domestic financial systems in SSA. Since banks in SSA account for over 80% of the assets of the financial system, the cost of a banking crisis is high as is the need for strong oversight of the system to reduce vulnerability. Also, most countries in the region do not have the ability to

bail out institutions that fail. Governments may thus want to recapitalize domestic banks to ensure a strong capital base.

In some countries, there is scope to use foreign exchange reserves to cushion the effects of the shock and to finance any possible decline in capital flows. In countries with no reserves, international assistance may be needed.

Although there is growing consensus that the crisis will lead to a significant slow down of the US economy in the short-run, it is not clear whether this will lead to a protracted recession.

Another domestic policy response is the adoption of more flexible exchange rate regimes. This will allow the nominal exchange rate to absorb some of the impact of the external shock and reduce the real effects in the domestic economy.⁶ It will also reduce the possibility of an exchange rate crisis.⁷

Developed countries have a role to play in helping African countries respond to the crisis as well. They must resist the temptation to reduce ODA and instead meet their promise to double aid to Africa by 2010. More assistance will enable African countries to offset the impact of any reversal in private capital flows and reduce the likelihood of a sharp decline in spending on social sectors that would have dire consequences for poverty reduction.

At the international level, there is also the need for more involvement of African countries in discussions on how to improve the management of the international financial system. In particular, they should have representation in any new governance architecture that may be designed to avoid the occurrence of global financial crises. This is particularly important given that the consequences of recent financial crises go beyond national borders and most African countries have no safety nets to cushion the potential impact of such crises.

1 Chief, Financing Development, UN Economic Commission for Africa, Addis Ababa, Ethiopia.

2 Recent efforts by G8 leaders have been critical in focusing attention on Africa's development needs. For example, the G8 Africa Action Plan adopted in 2002 in Kananaskis, Canada, and the Gleneagles Summit declaration of 2005 were important steps in galvanizing international support for development in Africa.

3 The recent global financial crisis began in the US and was triggered by the collapse of the sub-prime market in August 2007.

4 Foreign ownership of banks is increasing in Africa and to the extent that multinational banks respond to the current crisis by withdrawing funds from their subsidiaries in Africa, this could represent a big source of vulnerability.

5 In October the USA Federal Reserve, in coordinated rate cutting moves with European and Asian central banks, reduced short-term interest rates.

6 Osakwe, P. N. and Schembri, L. L. (1998). Currency crises and fixed exchange rates in the 1990s: a review. Bank of Canada Review Autumn, 23-38. See also: Agbeyegbe, T. D. and Osakwe, P. N. (2005). Real exchange rate volatility and the choice of regimes in emerging markets. Journal of Asian Economics 15, 1005-1022.

7 Osakwe and Schembri, 1998.

Is SPS the silver lining? Economic Partnership Agreements

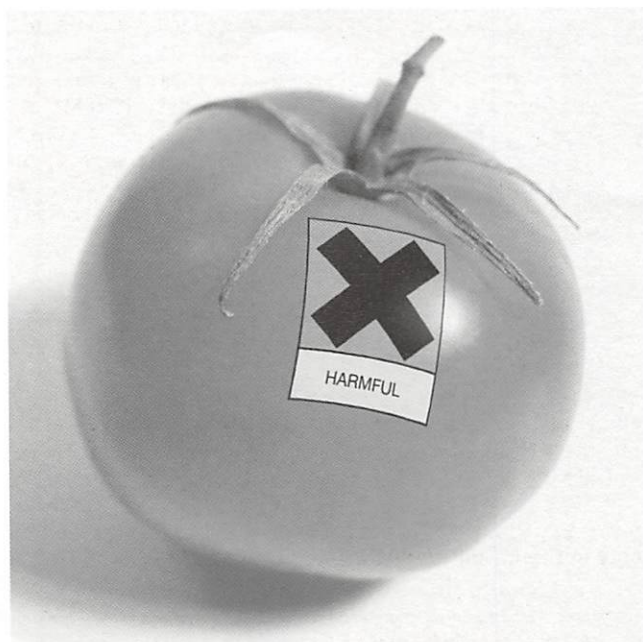
Martin Doherty¹

Sanitary or phytosanitary protection (SPS) is regarded by many as the number one non-tariff barrier in international trade today. The rise in the prominence of SPS issues has been driven by an increasing level of concern regarding food safety among European and other consumers about the presence of chemicals and various additives in their food. This worry has been exacerbated by various food alarms (e.g. mad cow disease, Avian flu, etc.) and to a certain extent by the resultant action to tighten up and harmonise an EU food safety regime that had developed in a piecemeal fashion over 40 years.

SPS is a fundamental element of the negotiations on Economic Partnership Agreements (EPAs) under the Cotonou Agreement between the ACP regional groupings and the EU, as it directly affects ACP exporters' ability to avail themselves of any opportunities that may arise. Of particular relevance is the requirement that all trade between the EPA partners is "reciprocal" and that consequently, ACP countries will lose the ability to protect their markets through tariff levels. Unless ACP sectors are able to deliver a level of food safety equivalent to their EU competitors then they will inevitably lose market share and potentially ownership of their domestic markets.

There are considerable issues that surround both the basic concept of EPAs and the nature and coverage of their provisions. Much of this focuses on the perceived negative aspects of these agreements. But, it is possible to also view them as an opportunity to alleviate some of the SPS barriers that have proved so difficult to successfully tackle for many ACP countries over the past decade.

Although the contents of each regional EPA may vary according to the negotiators skills and local circumstance, SPS constitutes a common element: that is, a basic requirement for the ACP signatories to have SPS mechanisms that provide a level of safety equivalent to that within the EU itself. Complementing this obligation, however, is a commitment by the EU to provide assistance (financial and technical) to enable the ACP countries to meet their obligations under the EPA.



It is in this formalised obligation/commitment that an opportunity lies for developing countries both to upgrade their existing SPS arrangements and to tackle some of the less obvious, but nonetheless damaging, SPS-related practices that have emerged from the EU's (entirely legitimate) interpretation of the WTO/SPS Agreement. This article looks at some ways the EPA can be used to identify and focus capacity building that not only protects current trading patterns, but also helps to develop new opportunities for entrepreneurs hindered by a lack of SPS-related support mechanisms. It is clear that maintenance of the status quo in relation to SPS and the current trading environment runs the risk that ACP-EU trade may not be able to benefit from the potential that the originators of Cotonou intended. However it is equally clear that with proper examination, the EPAs may represent much more opportunity for development within the ACP regions than many have yet realised. SPS can be viewed as a key element in making EPAs function as they were intended.

Restraints on interpretation of the WTO/SPS Agreement

The EU cannot be challenged on its right to protect its citizens from potentially harmful food. This is irrespective of whether countries that supply the food lack the capacity to meet the standard being established.

Attention must therefore be on the mechanics of the measure being required rather than on the basic principle. The SPS Agreement contains areas of ambiguity that allow the EU to introduce measures that, whilst not at variance with the wording of the Agreement, can have a result that may arguably be viewed as contrary to the underlying intention, i.e. not to interfere unnecessarily with international trade.

Two areas where scope exists for the inclusion of clarification and assistance within EPA discussions relate to:

Ambiguity 1

According to the SPS Agreement, members may adopt temporary, precautionary bans to prevent the introduction of risks when sufficient scientific evidence is absent. The problem here does not lie with this provision, but rather with how to remove the provision once it is triggered. The SPS Agreement is silent on the steps that a member country, which has lost international market access because trading partners have invoked this provision, must take.

Greater clarification is required in the SPS Agreement on how long is 'temporary' and on the quantity and type of scientific evidence that is deemed sufficient. The EPAs represent an opportunity for the introduction of greater certainty into what constitutes 'temporary' and on the

quantity and nature of scientific evidence that is deemed 'sufficient'. Scope certainly exists for the establishment of some formalised framework where actions on such temporary bans are handled more effectively through cooperation between both parties.



Ambiguity 2

The SPS Agreement sets a regulatory floor but not a ceiling. Members are committed to both the international harmonisation of SPS measures and the mutual recognition of measures employed by other members. With respect to mutual recognition, a member is committed, in principle, to granting equivalence to the SPS measures adopted by an exporting country "if the exporting Member objectively demonstrates to the importing Member that its measure achieve the importing Member's appropriate level of sanitary or phytosanitary protection" (Article 4.1).

The problem is - provided that the national treatment provision is met - the Agreement is silent on limits for country regulations that are substantially above those of other member states.

Therefore, while there is a minimum level of SPS measures that must be met, is there a maximum defining the point that importing member countries cannot legitimately expect potential exporting members to achieve?

It is arguable that in exercising their right to require higher than international norms importing countries also incur an associated obligation to provide a higher than normal level of scientific evidence. The EPAs represent an opportunity to insert provisions that may place some degree of limitation on the rising level of protection often driven by advances in testing technology and/or media publicity alarms rather than by hard evidence of increased risk.

Using SPS to develop current and future trade potential

The terms capacity building and technical assistance are all used freely in the EPA negotiations. However, the EU is reluctant to agree support whose purpose and application may not be transparent. The EU is more likely to favourably consider specific requests. While SPS is an area highly eligible for support for trade reasons, it also represents a vehicle for making an impact on the development aims enshrined in the Cotonou Agreement. In order to bring SPS requests more in line with what the EU is likely to consider supporting, the following actions are recommended:

- a) **Identifying and costing what ACP countries need to do to comply with the EU SPS legislation.** While not all countries require the same degree of aid, this move demands turning away from broad, across the board generalisations

that obscure the real requirements. Identification and prioritisation of key areas may result in the input of relatively small but targeted assistance, which could prove highly cost effective in achieving quick SPS compliance.

- b) **Moving beyond the goal of meeting the current requirements** and considering how SPS-related assistance can be used to develop new products and assist targeted sectors to export more processed products and fewer raw materials. The current thinking that focuses on historic trade patterns must inevitably come under pressure when the reciprocity element of EPAs become effective and sectors face the inevitable consequence of changing or losing out to new European competitors.

The EU has a comprehensive framework of assistance designed to promote eligible imports. What is not so well addressed is the need for assistance for the private sector to move up the value chain through the development of processed multi products. This requires not only support in meeting SPS regulations but also the creation of a more enabling business environments where entrepreneurs can find the information and support services necessary to develop their businesses.

- c) **EPAs have regional integration at their core and a logical extension of this is the development of regional bodies.**

The EPAs represent an opportunity for the introduction of greater certainty into what constitutes 'temporary' and on the quantity and nature of scientific evidence that is deemed 'sufficient' in the SPS Agreement.

The uniform requirements of the SPS Agreement when viewed against the multiplicity of national agencies and standard setters and enforcers in APC regions, inevitably demands some regionalisation of SPS functions. Whilst the national entities would still carry out local regulatory functions, such as inspections, these regional entities could introduce more uniform management practices and also form a transparent vehicle for the deposit of EU (and other donor) funding to be used to promote regionally agreed objectives. Regional bodies might also have the capacity to be more proactive than national bodies by supporting the production of regional standards and codes of practice that are internationally benchmarked.

A final word

It is recognised that a range of differing views exist regarding the concept of EPAs. Nevertheless the issue of SPS does not impact these concerns and in fact represents an opportunity for a uniform approach across the ACP- EPA regions. Irrespective of this, however, is the fact that failure to fully utilise what is on offer in relation to SPS assistance will, in the context of the EPAs reciprocal requirements, inevitably result in ACP economies losing market share not only in the EU but their own domestic markets as well.

1 Martin Doherty is an independent consultant and Head of Research, International Trade Consultancy Cerrex Ltd UK

Preferential Rules of Origin in Economic Partnership Agreements: Key features and changes

Eckart Naumann¹

Preferential Rules of Origin (RoO) set administrative and local processing requirements that enable goods and materials to obtain preferential access to the market of a given trade partner. In the following article, a brief overview of changes to the RoO that have been negotiated in the context of EPAs is provided.

The EU Rules of Origin regime

The European Union previously offered ACP countries, excluding South Africa, duty-free and quota-free access to its market under the Cotonou Agreement. With Cotonou's trade regime having expired at the end of 2007, some ACP countries chose to sign an interim Economic Partnership Agreement (IEPA) while others continue to access the EU market under the Generalized System of Preferences (GSP). Only least developed countries (LDCs) qualify for the GSP's Everything-But-Arms (EBA) initiative, which have the same RoO as the GSP but without quotas or import duties.

Historically, the EU has developed an elaborate and complex RoO regime for setting the conditions under which origin status is allocated to products. This has been guided not only by its own strategic and protectionist prerogatives, but also the fact that no single RoO methodology provides a universally simple and equitable solution to the task of determining origin. The absence of any binding WTO standard on preferential RoO does not help to alleviate the inevitable negotiating trade-offs that take place in RoO negotiations.

Currently, EU agreements employ various methodologies in the determination of origin, which are either based on a technical or specific processing requirement; value-added thresholds; or a change in tariff heading, where origin is conferred when materials are transformed into products that can be classified under a different tariff heading. While a discussion on the merits of each methodology is beyond this article, it should be noted that each is likely to impose a completely different obligation on producers, depending on the dynamics prevailing in the sector and dependence on foreign inputs. The RoO negotiated in the context of the IEPA are based on the EU model protocol and are largely structured around the provisions previously encountered under Cotonou. However, various sector-specific changes have been implemented, some with potentially significant implications for producers and exporters in participating countries.

New rules for the ACP: What is different?

The overall architecture of the IEPA RoO remains essentially the same as under Cotonou although changes have been made mainly to requirements related to the treatment of textiles and clothing, fish, and certain agricultural products. Key provisions and changes are listed in the following table.

Component	Section	Key changes
Definition of "wholly obtained"	Article 3	- expands definition to include "products of aquaculture, including mariculture, where fish is born and raised there" - removes requirement that crew of qualifying vessels must be at least 50% local / EU nationality - removes crew requirement from conditions involving charter vessels
General basis for sufficiently processed products	Under Article 4	- maintains general 15% value tolerance provision but specifically excludes textile and clothing products of Chapters 50-63 - introduces special provisions relating to fish from Pacific countries (see sectoral issues below)
Definition of insufficient processing operations	Article 5	- expands list of insufficient operations relating to cereals and rice, sugar and fruit, nuts and vegetables - removes classification relating to mixing of certain products
Derogations	Appendix 2A	- introduces alternative / optional RoO for a range of agricultural products - alternative requirements based mainly on the CTH / VA (maximum thresholds stipulated for non-originating materials) methodologies
Textiles and clothing	Appendix 2	substantially revises Cotonou RoO, changes broad requirement from 'two-stage processing' to 'single-stage processing'
Fish	Article 3; Article 4; Appendix 2	- simplifies conditions relating to vessels (where fish is caught beyond the 12-mile territorial waters) - permits the use of non-originating fish by Pacific countries if further processed locally (for products of Chapter 16) - introduces 15% "non-originating" tolerance applicable to Chapter 3 (fish)

Component	Section	Key changes
Cumulation	Article 6; Appendix 7, 8, 9, 10 and 11	- provides for cumulation of production between EU and ACP - provides for cumulation between ACP States that have initialled EPA / IEPA and listed in Annex 1 - excludes and delays cumulation possibilities for certain products, especially with respect to cumulation with South Africa
Based on provisions contained in EC Council Regulation No 1528 / 2007 (of 20 December 2007), the legal instrument providing current EU market access for IEPA signatories		

In order to ensure a continuation of preferential market access for ACP countries, the European Commission passed a Council Regulation² on 20 December 2007 giving effect to revised RoO and duty and quota preferences. These provisions apply only to IEPA signatories; non-signatories qualify only for GSP or EBA preferences, without the changes agreed in the EPA negotiations and no cumulation. Cumulation allows countries that are party to a preferential trade agreement to share production and jointly comply with the relevant RoO.

But for many ACP countries (and IEPA signatories), the revised RoO represent little improvement to their EU market access. In fact, cumulation possibilities are now limited to other IEPA signatories, representing a step backward from the Cotonou provisions that included all ACP countries. Already some producers, for example in East Africa, are severely disadvantaged by no longer being able to procure materials from other ACP countries in the region that have not initialled an IEPA.

For some, however, the sector-specific changes represent a significant departure from the earlier status quo. This applies in particular to the textile and clothing sector, where revised EU-ACP RoO are now compatible with the realities prevailing in the sector, namely that access to competitively priced materials is essential to be competitive in the (EU) export market. Under Cotonou (and the present-day GSP/EBA RoO), clothing producers were required to only use fabric made locally or in ACP countries, which represented a significant disadvantage considering the lack of availability of competitively priced inputs in most ACP states. These RoO changes now also align EU RoO more closely with other regimes, such as the United States African Growth and Opportunity Act (AGOA), which has played a key role in reviving Africa's garment export sector in recent years.

For fish, the benefit of the revised RoO provisions is less clear cut. Changes have been made to the definition of "wholly obtained" fish, which is based mainly on the ownership of the fishing fleet conducting this activity rather than the location of the fish. But current rules continue to discriminate between fish caught within a country's territorial waters and its exclusive economic zone (EEZ): the 200-mile area that is, in any case, an exclusive economic area of the adjoining country. In the EU-ACP RoO, fish caught within the EEZ and beyond are allocated their nationality based on requirements evolving around vessel ownership, vessel flag, and other considerations.

Some countries, notably Namibia, continue to push for a full recognition in the RoO of the economic rights associated with the EEZ. For countries without a domestic commercial fleet, vessel chartering options remain highly restricted in practice, requiring *de facto* approval by EU authorities in accordance to a set of qualifying criteria. The Pacific ACP configuration has nevertheless been granted special privileges relating to the use of non-originating fish, though this too remains conditional upon a number of onerous requirements, such as where the fish is landed and processed, and other measures.

Moreover, a 15% value tolerance is applicable to products not subject to a specific value-added threshold, with the exception of some textiles and clothing chapters. A specific 15% tolerance also applies to certain processed fish (for example, *filleted* fish), but the benefit of this provision to exporters is questionable considering that the general tolerance has never excluded fish previously and therefore was available to exporters under Cotonou.

When it comes to some agricultural products, special derogations - in the form of optional alternative rules - apply. These products are listed in a dedicated Appendix (2A) and go some way in reducing the local processing burden required under the primary rules. However, in many instances, the derogation is very specific in providing alternative rules to only a small range of product sub-categories, such as those containing low levels of non-originating sugar.

Where to from here?

While the changes to the EU-ACP RoO are somewhat effective in alleviating the restrictiveness of the previous regime, particularly for textiles and clothing, they do not represent a major regime change. This is attributed to various factors, not least the inherent challenges associated with renegotiating a RoO Protocol given the limited technical resources available in the ACP. A further complicating factor is the EU's stated intention to revise its preferential RoO regime, with provisions referring to an overhaul of the EPA RoO contained in various IEPAs. This may have led to some EU resistance to make further concessions at this stage, considering its desire to maintain a level of uniformity between its various preferential RoO Protocols.

It must therefore be emphasized that the 'issue' of preferential EU-ACP RoO has not been fully resolved. The European Commission has indicated a preference for a VA test in the future that with some possible exceptions, would encompass all sectors. But this methodology is associated with considerable administrative burden and subject to an unpredictable impact on exporters. A prudent approach for both the ACP and EU will be to carefully consider the impacts of such a development by undertaking rigorous analysis of the associated costs and benefits. This should be guided by the fact that declining tariff-related preference margins globally provide scope for significant further relaxation of the RoO requirements currently in place.

Sources

- 1 European Commission 2007. Council Regulation (EC) No. 1528/2007 of 20 December 2007
- 2 European Commission 2008. Protocol 1 concerning the definition of "originating products" and methods of administrative cooperation. COM(2008) 562 final - volume 3
- 3 E. Naumann, "Rules of Origin and EPAs: What has been agreed? What does it mean? What next?," tralac, March 2008.
- 1 Associate, Trade Law Centre for Southern Africa (tralac), email: eckart@naumann.co.za
- 2 No. 1528/2007

Investing in East Africa: The role of negotiations in the EAC-EU EPA

Francis Mangeni¹

Promotion of international and regional trade, as well as foreign and local investment is at the core of the very rationale of the East African Community. In response to limited market size, opportunities and clout faced by the individual partner states in a rapidly globalising and competitive world, East Africa is pursuing a strategy of economic and political integration through building a strong community.

The Treaty establishing the EAC sets the objectives of this community as: "to develop policies and programmes aimed at widening and deepening cooperation among the Partner States in political, economic, social and cultural fields, research and technology, defence, security and legal and judicial affairs, for their mutual benefit."² The broad stages of the gradual and deeper integration of the East African Community are the formation of a customs union (formed on 1 January 1995), a common market (to be formed on 1 January 2010), a monetary union (to be formed by 2012), and political federation (proposed shortly thereafter). Negotiations for the common market have commenced in earnest on the basis of a draft protocol commissioned by the secretariat, which is expected to be completed by June 2009. According to the Treaty and the draft protocol, the common market will be characterised by free movement of goods, services, labour, and capital, and the recognition of the right of establishment and residence.³

Against this backdrop, the continuing EPA negotiations should fully take the ongoing regional integration processes into account and promote the rapid achievement of the objectives of the East African Community. A key priority now is the successful negotiation and launching of the common market where there will be free movement of services, labour and capital, the recognition of the right of establishment and residence, and the consolidation of the customs union through the elimination of residual non-tariff barriers. EPA negotiations, including in the areas of development, services, and investment, should primarily aim to support the ongoing integration process, rather than act as a competing processes. In practical terms, this requires that important development and trade partners, such as the EU, give due priority to supporting the consolidation of the customs union

and the successful launching and operation of the common market in all key areas including services and investment.

Like most countries, EAC nations have the primary offensive interest of attracting appropriate foreign direct investment (FDI) that will support rapid social economic development. Initiatives to attract FDI take various forms. At the national level, they include publicity of location advantages and the promotion of a good image for the country. They also include participation in trade fairs and business forums, and offensive missions by government officials at the highest political level to key countries that represent potential sources of FDI. In addition, it entails the establishment of investment liaison offices in countries that are possible sources of FDI. These initiatives are replicated at the regional level in the EAC, which is internationally marketed as a common investment area. In EPA negotiations, a primary offensive interest will be to attract EU investors into the EAC countries. EPA provisions on investment should therefore adopt a broad approach that goes beyond rules, to mechanisms that promote EAC countries as attractive investment destinations.

Development cooperation in investment is another major offensive interest. The main objectives and areas of development cooperation in investment include the following:

- Building of requisite modern physical and social infrastructure in order to remove or reduce high production costs, inaccessibility, and the poor image associated with infrastructure bottlenecks;
- Establishment and strengthening of national and regional investment regulatory and promotion authorities that can effectively assist in FDI inflows;
- Support the enhancement of the international competitiveness of the regional and national economies and particular industries so that products can be produced in sustainable quantities that meet growing demand and sold at competitive prices, while also being of a strong quality that meets applicable health and technical standards;
- Supporting small and medium size enterprises (SMEs), which constitute the backbone of manufacturing industries in EAC countries, through programmes that address their specific constraints such as access to credit, market information, and exportation and retailing facilities;
- Modernisation of commercial laws and regulations through the enactment of new laws and amendment of existing ones, as appropriate, as well as the establishment and strengthening of judicial mechanisms for protection of property and speedy dispute resolution;



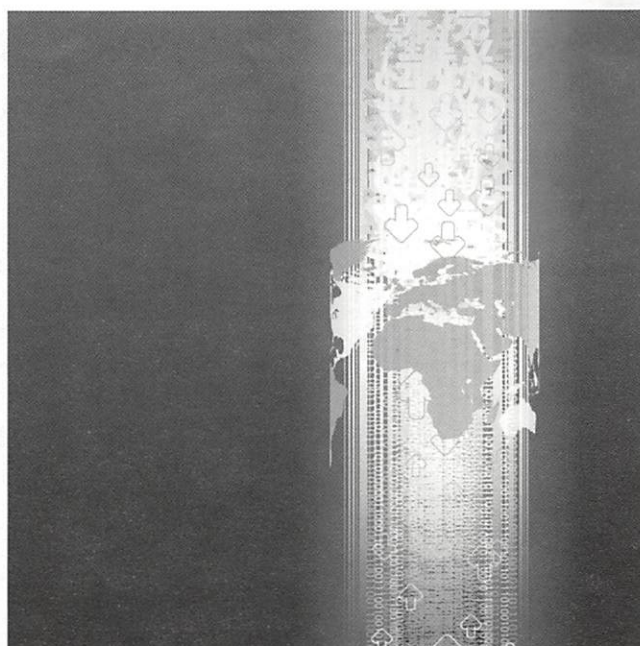
- Promotion of technology and skills transfer and sharing, through effective mechanisms such as active information and dissemination programmes, licensing, training, attachments, partnerships, and strengthening and modernising EAC engineering and technology institutions;
- Accumulation of business, management and legal skills in order to address capacity constraints in the private sector and in government relating to successful running of investments and utilisation of available flexibility in agreements, as well as successful enforcement of rights and obligations in dispute settlement.

Like most countries, EAC nations have the primary offensive interest of attracting appropriate foreign direct investment (FDI) that will support rapid social economic development.

It is well to recall that the interim ESA-EU EPA has an extensive chapter on development where provisions on investment and private sector development are included as areas of cooperation. The agreement of the European Commission negotiators to these provisions in the ESA-EU EPA provides a strong starting point for negotiation in the EAC-EU EPA as areas of cooperation. It also gives this approach appropriate prioritisation over investment rules. Therefore, prioritising development cooperation in the area of investment over investment rules should remain an important offensive interest of EAC countries.

In terms of the rules themselves, on market access, EAC countries could be expected to pursue the following offensive interests:

- Use of a positive-list or list-in approach on the basis of the WTO General Agreement on Trade in Services (GATS) model, as agreed by the EU in the CARIFORUM-EU EPA;
- A narrow rather than expansive definition of "investment" in order to assist clarity of scope and obligations and to cover only genuine investment;
- Definition of "investment" to require substantial business activity in the country, in order to avoid fraudulent shells also qualifying as investments;
- Refusal of the Most Favoured Nation (MFN) clause requiring preferential treatment extending from the EU to other countries; preference instead could be made for limiting the MFN clause to major economies. If this approach is taken, there should be an additional clause requiring the EU to always match the better treatment offered to the EAC countries by any major economy and appropriate exceptions;
- Clear definition of "like circumstances" in order to clarify the scope and meaning of the MFN treatment and national treatment obligations;
- Appropriate limitations on national treatment in liberalised sectors;



- Restriction of a fair and equitable treatment obligation to the customary international law standard for non-nationals;
- Insistence on allowing a reasonable degree of performance requirements in order to promote linkages into the economy and generate multiplier benefits;
- Imposition of clear and appropriate obligations on investors in order to promote a good international image, which should also prove beneficial for the region;
- Provisions on security and general exceptions, as well as specific exceptions for balance of payment difficulties and the promotion of infant industries and SMEs. The right of government to regulate investment for achievement of important development and public policy objectives in accordance with national and regional laws should be preserved as well;
- Ensuring simple and flexible dispute settlement procedures;
- Attracting long-term and sustainable investors, rather than footloose or even speculative investors, which assists in retention and accumulation of national and regional investible capital stocks that promote social economic development;
- The right to prioritise and direct FDI into key growth sectors and industries, such as the pharmaceutical, agro-processing and extractive industries as well as energy, livestock, edible oil, foods and beverages, leather, dairy products, packaging, iron and steel, metal and metal products, building and construction, and storage;
- Taking a common approach to attracting FDI, and avoiding a race to the bottom in competing for FDI by generous incentives given by individual partner states under their investment laws.

1 Dr Francis Mangeni is a Legal Consultant with Lex Uganda Advocates and Solicitors
 2 Article 5.1
 3 Article 104

Turning mode 4 commitments into business: The CARIFORUM – European Community EPA

Natallie Rochester¹

Following years of negotiations, the Caribbean Forum of ACP States (CARIFORUM) signed the Economic Partnership Agreement with the European Community in Barbados on 15 October 2008, after concluding talks in December 2007. The EPA services provisions and market access commitments have the potential to transform the current CARIFORUM-European Community relationship by expanding market opportunities, stimulating investment for increased services, and growing export capacity and competitiveness.

What's new?

There are a number of changes that will accompany the implementation of the full EPA. For one, the EPA has clearer rules for the temporary movement of natural persons (mode 4) than the General Agreement on Trade in Services (GATS): it categorizes services providers accessing the other party's market by length of stay allowed, skill levels, and according to their link to a legal entity or self-employment (See Table 1). Moreover, because European Union EPA commitments on mode 4 go significantly beyond the EU GATS commitments and conditional services offers, better treatment is granted to CARIFORUM than to other WTO Members. Cross-border and mode 4 commitments in the Agreement will also help to increase prospects for supplying services cross-border. This growth is augmented by greater access to technological advances and services providers need to enter Europe for marketing and contract negotiation.

In addition, the European Commission made WTO-plus market access commitments on contractual service suppliers (CSS) in twenty-nine services sub-sectors and on Independent Professionals (IP) in eleven services sub-sectors (See Table 2). In many of these sectors, the European Commission indicated that any future offers made in the WTO would be subject to numerical ceilings or quotas. As it stands, European commitments in the EPA are not limited by quotas but some are subject to economic needs tests (ENTs), mainly

in new EU members. Of the twenty-nine commitments for CSS, twenty-two activities have no restriction on market access, national treatment, or ENTs; between nine and sixteen European Commission states have made commitments for CSS in the different sub-sectors with no limitations.

With respect to commercial presence, the European Community has generally exercised a liberal approach. This is unchanged in the full EPA where there is a mode 4 link to commercial presence (mode 3) via an automatic commitment to key personnel, graduate trainees, and business services suppliers, where the European Community grants mode 3 access. This makes it easier for CARIFORUM firms that establish in the EU to relocate personnel that possess particular, needed skills. Importantly, commitments in non-traditional services activities, such as entertainment, directly respond to CARIFORUM's stated interests.

Finally, EPA mode 4 commitments are strengthened by rules, cooperation, and dialogue on tourism, 'infrastructural' services, such as telecommunications and maritime transport, and e-commerce. Within the Agreement, provisions³ on intellectual property and innovation set a foundation for movement into knowledge-based, value-added services like research and development. Investment provisions also create a region-to-region framework that improves predictability for investors.

Table 1:
EPA categories of temporary presence of natural persons for business purposes

Category	Criteria	Stay allowed in a year
(i) Key personnel, which includes:		
Business visitors	Persons responsible for setting up a commercial presence and paid by a source outside of the host territory.	90 days per calendar year
Intra-corporate transfers • Managers • Specialists	Persons employed by a company in the sending country at least a year before entry to the host country to work within a partner company there.	Up to 3 years
(ii) Graduate trainees	University graduates, employed by a company for at least a year and entering the EU for career development or training in a branch or parent company.	Up to 1 year
(iii) Business services sellers	Persons entering to negotiate a sale or enter an agreement but who receive remuneration from a source outside of the EU and do not make direct sales.	90 days per calendar year
(iv) Contractual Services Suppliers (CSS).	University graduates (except fashion models, chefs and entertainers) with 3 years experience, employed by a company in the sending country, which does not have a presence in the other party but has a services contract with a client in the other party.	Up to 6 months cumulatively per calendar year
(v) Independent Professionals (IP)	Self-employed persons with a university degree or professional qualification and 6 years experience	Up to 6 months cumulatively per calendar year
(vi) Short Term Visitors for Business Purpose	Persons that are not selling services can enter either party to perform a range of activities such as: Research and design, marketing research, training, trade fairs and exhibitions, sales, purchasing, and tourism	Up to 90 days per calendar year

Table 2:
Services liberalized by the European Commission for CSS and Independent Professionals

Sectors liberalized by the European Commission for CSS		Sectors liberalized for IP
1. Legal advisory services in respect of international public law and foreign law	16. Management consulting services	1. Legal advisory services in respect of international public law and foreign law (i.e. non-EU law)
2. Accounting and bookkeeping services	17. Services related to management consulting	2. Architectural services
3. Taxation advisory services	18. Technical testing and analysis services	3. Urban planning and landscape architecture services
4. Architectural services	19. Related scientific and technical consulting services	4. Engineering services
5. Urban planning and landscape architecture services	20. Maintenance and repair of equipment, including transportation equipment	5. Integrated Engineering services
6. Engineering services	21. Chef de cuisine services	6. Computer and related services
7. Integrated Engineering services	22. Fashion model services	7. Research and development services
8. Medical and dental services	23. Translation and interpretation services	8. Market Research and Opinion Polling
9. Veterinary services	24. Site investigation work	9. Management consulting services
10. Midwives services	25. Higher education services (only privately-funded services)	10. Services related to management consulting
11. Services provided by nurses, physiotherapists and paramedical personnel	26. Environmental services	11. Translation and interpretation services
12. Computer and related services	27. Travel agencies and tour operators' services	
13. Research and development services	28. Tourist guides services	
14. Advertising services	29. Entertainment services other than audiovisual services	
15. Market Research and Opinion Polling		

Targeting and entering the EU market

The EU is the largest importer and exporter of services, accounting for about 25% of world trade in services. Its market of 490 million people with relatively high incomes provides prime opportunities for CARIFORUM beyond the sizeable Caribbean Diaspora in Belgium, France, Germany, the Netherlands, Spain, and the UK. However, Caribbean firms first have to establish their credibility with European firms and standards.

To prepare to capitalize on opportunities in Europe, CARIFORUM organized a mission to Europe in September 2008 where small Caribbean firms met European institutions and industry associations to establish business contacts focused on Information and Communications Technology and creative industry sectors. A follow-up to this meeting is scheduled during the launch of a CARIFORUM-EU Business Forum⁴ in November 2008. Other similar initiatives, supported by European Commission programmes, are scheduled to follow next year for different services sectors with the intent of stimulating interest in the skills offered by CARIFORUM professionals while also exposing these individuals to different EU markets. The new 'short term visitor' category in the EPA should facilitate easier access of business persons seeking to research the EU market and to increase linkages with European firms.

At the same time, professional services sectors are expediting the regional accreditation process in the CARICOM Single Market and have begun to prepare for mutual recognition discussions with their European counterparts. The harmonized or equivalent definition of occupations sets a standard that the European Commission will use to compare against their own qualification and licensing systems. The EPA provides for negotiations on mutual recognition of qualifications in some priority sectors within three years. To effectively carry out such negotiations, CARIFORUM service providers must organize under representative bodies and develop relationships with their European counterparts. In anticipation of this, the Caribbean Institute of Certified Management Consultants (CICMC) has organized its first conference for late November with the aim of establishing region-wide standards based on international criteria. At the same time, the CRNM is commissioning studies on the regulatory regimes of certain professions in selected European countries to provide strategic information for Caribbean services professionals.

Even still, CARIFORUM services providers may face challenges when they test the EU market because of competition from recently acceded EU states. CARIFORUM firms will therefore need to provide specialized services and initially focus on networking with contacts and associates in Europe. Since most services contracts are granted on the basis of relationships and trust, it is important for Caribbean professionals to utilize EPA provisions regarding temporary entry to develop business relationships.

Next steps for CARIFORUM

It is accepted that the real work for creating a successful new trading relationship with Europe starts after signature of the EPA. While governments in the region implement the relevant legislative instruments, businesses must increase export capabilities and ensure that services suppliers are eligible for entry under the EPA. The region has to increase its efficiency through affordable technologies for increased cross-border services exports, regional integration, policy harmonization, and enhanced regulatory frameworks for new business models (e.g., e-commerce). Active investment promotion is also required to increase Foreign Direct Investment flows to its territories and to encourage partnership with small Caribbean firms.

- 1 Natallie Rochester is Services Analyst at the Caribbean Regional Negotiating Machinery (CRNM), the entity responsible for coordinating external trade negotiations for the Caribbean region. The views expressed are those of the author and do not necessarily reflect the views of the CRNM.
- 2 All CARIFORUM states, except Guyana and Haiti, signed the EPA in Barbados on 15 October 2008. Guyana signed on 21 October 2008; Haiti has indicated that it is not in a position to sign at this time.
- 3 The Protocol on Cultural Cooperation provides for temporary movement of persons from CARIFORUM for co-production activities, and allows co-produced audiovisual content to be considered European works and satisfy cultural content rules across the EU.
- 4 Issues raised at the Business Forum may be sent to the Joint CARIFORUM-European Community Council, which was established by the EPA to implement the Agreement through the CARIFORUM-European Community Trade and Development Committee or the Consultative Committee once they are constituted.

Integrating into the global economy

Aurelie Walker¹

Facilitating the smooth and gradual integration of the ACP countries into the global economy is one major objective of the EPA. But trade with the EU alone will not achieve this goal; coherent external trade strategies need to accompany the structural reforms initiated by the EPA to ensure that all development objectives are met.

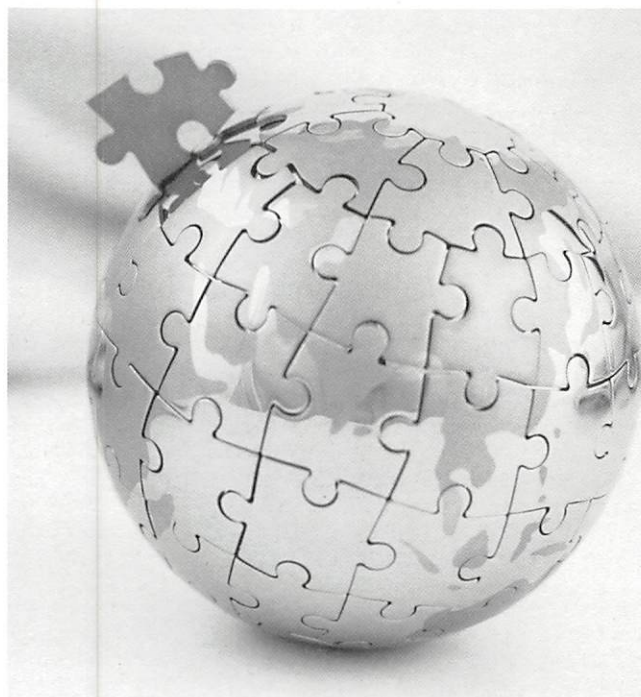
By concluding EPAs, the benchmark for future free trade agreements (FTAs) that ACP countries and regions will negotiate has been set. Now, third countries, whether developed or developing, will be less likely to accept treatment less favourable than the ACP offers the EU. As trade preferences are eroded multilaterally and competitive advantage overrides traditional export partners, ACP states have an opportunity to learn from each other's new trading arrangements as they extend preferential market access beyond the EU. While international attention has focused mainly on ACP-EU relations, ACP aid and trade relations with China, India, Japan, Turkey, Latin America, US, Canada, the Arab countries, Australia, and New Zealand are also evolving and demand attention.

The dilemma facing the Pacific: To negotiate or not to negotiate?

The Pacific Agreement for Closer Economic Relations (PACER) is the framework deal signed by all Pacific Island Countries² (PICs), Australia, and New Zealand to guide trade relations. Article 6 states that if any PIC "commences formal negotiations for free trade arrangements" with another developed country, then they must commence similar FTA negotiations with Australia and New Zealand.

But PICs are concerned that extending market access to the EU and then to larger neighbours will lead to fiscal revenue loss, disruption of local markets, and an undermining of regional integration. This grouping is still debating whether the initialling of the interim EPA by Fiji and Papua New Guinea actually triggered PACER FTA negotiations. Whilst this legal and political analysis is being made, countries must also consider the economic consequences of not pursuing FTA negotiations. Small island states in particular have more to gain from FTAs in terms of services commitments and accompanying development assistance, rather than market access for trade in goods alone. For instance, negotiations on the temporary movement of workers (mode 4) have been ongoing and schemes such as the 2007 New Zealand Recognised Seasonal Employer Work Visa have already been established. Yet further mode 4 commitments are not likely—except in the context of an FTA.

The New Zealand-China Trade Agreement that came into force 1 October 2008 illustrates this point. Several new immigration policies were agreed as part of the FTA negotiations, including a Chinese Skilled Workers policy. This policy allows Chinese nationals to enter New Zealand for temporary employment as traditional Chinese medicine practitioners, Chinese chefs, Mandarin teaching aides, martial arts coaches, and Chinese tour guides. In these positions under the new provisions, a labour market test is not necessary. In addition, up to one thousand skilled Chinese workers at any time can be employed for up to three years in specific skilled shortage occupations in New Zealand. Although entry will be limited to one hundred workers for each occupation at the same time, the list of occupations ranges from skilled to unskilled sectors.



Whilst China has more to offer New Zealand in terms of market access than the PICs, FTAs provide the necessary framework within which to negotiate concessions beyond market access for goods. As PICs prepare for negotiations with Australia and New Zealand, trade and development cooperation frameworks are also being considered with China, Japan, and the US. Here, for instance, small and vulnerable PICs risk being absorbed into wider trade agreements that they have not negotiated³ if their interests are not clearly articulated from the outset. But bilateral FTAs could provide the foundations that will protect the PICs from aggressive and powerful trading blocs in the future if they are successfully negotiated along with appropriate development assistance. While the ACP states were not able to develop common positions in the EPA negotiations, sharing negotiating experiences and analysis remains necessary and relevant as the PICs work to integrate into the global economy.

Fostering new relations in Africa

Because of the plethora of preferential trading schemes available to Sub-Saharan Africa, African exports do not require FTAs to gain preferential market access. However, unilateral schemes can be withdrawn at any time and trade rules can be changed without consultation and negotiation. Preferential market access is not safe from challenges in the WTO either. Here lies the advantage of securing preferences through a negotiated bilateral agreement.

With the US, for instance, unilateral preferences are offered through the African Growth and Opportunity Act (AGOA).

This does not mean that the US does not have offensive interests in the African market. Trade and Investment Framework Agreements (TIFA) have been signed with Common Market for Eastern and Southern Africa⁴ (COMESA), West African Economic and Monetary Union⁵ (UEMOA), and the East African Community⁶ (EAC), which provide a base for deepening trade and investment relations.

Negotiations for free trade areas are not being ruled out by the US and African regions need to be prepared. For instance, the US launched negotiations on a free trade agreement with the Southern Africa Customs Union⁷ (SACU) in 2003, but talks were suspended in 2006 due to differences over how much to lower trade barriers and other provisions in the proposed agreement. The result was the Trade, Investment, and Development Cooperation Agreement signed in July 2008 that establishes a 'consultative group' on trade and investment with best endeavour objectives only. This outcome may be an opportunity gained if SACU can cooperate with CARICOM states on negotiations with the US in the future.

Among the African states, SACU is leading the way in South-South cooperation. SACU concluded a preferential trade agreement with MERCOSUR⁸ in July 2008 and a framework agreement with India is expected to be concluded in December 2009. Moreover, a trilateral FTA between MERCOSUR-India-SACU has even been proposed. SACU is also considering entering into negotiations with China. While South Africa appears to be driving the agenda and may have the greatest offensive and defensive interests in negotiations, other African regions can learn from the group's trade strategy as they deepen trade relations with third countries.

The prospect of FTAs between Gulf and African countries is not far off either. Discussions around this possibility will feature prominently at a major conference in Bahrain in December 2008. Among the topics on the agenda include cooperation in the areas of tourism, natural resources, mining, oil and gas, renewable energy, transport, financial services, housing, and telecommunications. This is the first such event that will serve to bring together Gulf and African countries in an effort to strengthen South-South cooperation.

Among the African states, SACU is leading the way in South-South cooperation. SACU concluded a preferential trade agreement with MERCOSUR in July 2008 and a framework agreement with India is expected to be concluded in December 2009.

The proposed trilateral FTA between COMESA-EAC-SADC shows that African regions have understood the bargaining power of integrated markets and the appeal for investors. If the EPA process advances regional integration agendas, the possibility of favourable outcomes to future trade negotiations with third countries increases. Regional integration should thus be an immediate objective as countries move to negotiate FTAs and integrate deeper into the global economy.

The Caribbean: Turning attention to traditional trade partners

Following the signing of a full EPA by the Caribbean grouping of states in mid-October 2008, resources once tied up in the EPA negotiations are now freed for other trade agreements in the region. One such example is the CARICOM-Canada Trade and Development Agreement. Initiated in 2001, the text is now back on the negotiating agenda. Interest has also been expressed by CARICOM in negotiating an FTA with the US, Mercosur, and the wider Free Trade Area of the Americas. Currently, the US offers unilateral preferences to seven CARICOM states through the Caribbean Basin Trade Partnership Act, and Canada grants duty-free access to the vast majority of goods that Commonwealth Caribbean countries export to Canada.

For CARICOM countries, regional integration has been identified as a main tool for managing exogenous shocks—the effects of which are amplified on the small and vulnerable island states. It is also a means to bolster bargaining power in trade negotiations. As the Americas are the traditional trade partners of the Caribbean countries, these negotiations will differ markedly from the EPA negotiations with the EU with which there is significantly less trade. Increasing the weight of the bloc in the forthcoming negotiations is imperative: lessons learned from the EPA negotiations show that harmonizing national positions should be made a priority.

Standing in the spotlight on the global economic stage

EPAs have set a precedent for developed countries to replace their unilateral preferences with ACP countries with reciprocal trade agreements. Simultaneously, global preferences are being eroded through the web of trade deals that are being concluded inside and outside of the multilateral trade framework. ACP countries are facing imminent aggressive competition from non-ACP countries for goods and services exports. By implementing the legal and economic reforms resulting from the EPA, actively pursuing the regional integration agendas, and successfully concluding the impending FTA negotiations with appropriate development assistance, countries will have a better chance of economic survival. There is a need for the ACP to make a concerted effort to respond collectively to these challenges in order to achieve the objective of integrating into the global economy.

- 1 Aurelie Walker is Programme Officer, Economic and Trade Cooperation Programme for the European Centre for Development Policy Management (ECDPM).
- 2 The Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Nauru, Niue, Palau, Papua New Guinea, Republic of Marshall Islands, Samoa, Solomon Islands, Tonga, Tuvalu, Vanuatu.
- 3 Trans-Pacific Strategic and Economic Partnership between Brunei, Chile, New Zealand and Singapore is set to expand to include Australia, Peru, and US. This could lay the foundation for the long-term goal of a Free Trade Area of the Asia Pacific (FTAAP).
- 4 COMESA countries are: Burundi, Comoros, Democratic Republic of Congo, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Swaziland, Uganda, Zambia, Zimbabwe.
- 5 UEMOA countries are Benin, Burkina Faso, Côte d'Ivoire, Guinea-Bissau, Mali, Niger, Senegal and Togo.
- 6 EAC countries are Burundi, Kenya, Rwanda, Tanzania and Uganda.
- 7 SACU countries are Botswana, Namibia, Lesotho, Swaziland and South Africa.
- 8 MERCOSUR countries are Argentina, Brazil, Paraguay, Uruguay.

WTO roundup

Caitlin Zaino, ICTSD

Prospects for a late year mini-ministerial disintegrate

The WTO's struggling Doha Round of trade talks recently took another blow after a mini-ministerial meeting that Director General Pascal Lamy had tentatively planned for 13-15 December was called off. The decision to cancel came after major trading powers signalled uncertainty that a deal could be struck.

Trade ministers initially came together for the year's first mini-ministerial in late July at the WTO headquarters in Geneva in an attempt to conclude the ailing Round. And though negotiators were close to a breakthrough on agricultural and manufacturing issues—the two main areas that have long blocked a deal—the meeting collapsed following strong disagreement between the US, India, and China over provisions of a "safeguard" mechanism intended to protect developing country farmers from a surge in imports.

Since the failed end-July gathering, Lamy has actively worked to bring ministers back to the negotiating table before the year's end. But in recent weeks and days, any hope of a meeting has disintegrated as intense discussions have failed to narrow gaps on the most contentious issues.

Play it again: NAMA and Ag continue to plague advancements

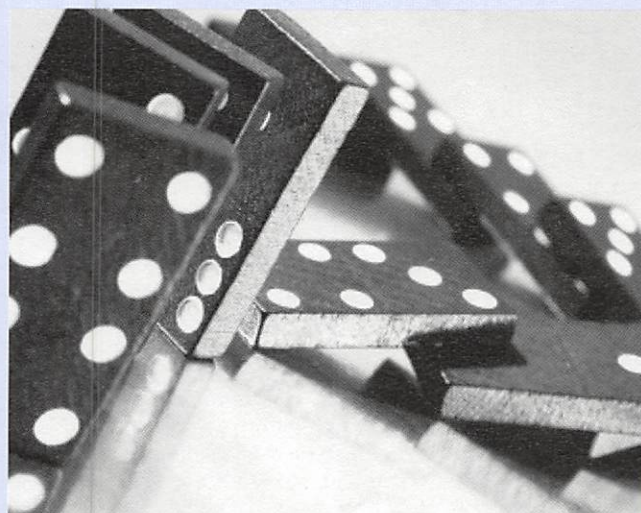
New draft texts from the chair's of agriculture and non-agricultural market access (NAMA) negotiations—the two issues that have thus far prevented the conclusion of Doha—were circulated on 6 December 2008 and were intended to serve as the basis for further talks.

The agricultural text, and accompanying working documents, reflects progress in a number of areas since the last such draft in July. In particular, it incorporates concessions made on the controversial cuts to subsidies and top-level tariffs that negotiators discussed at a ministerial meeting at that time.

A working document on the special safeguard mechanism—a key component for any eventual Doha deal—contains reflections from the chairman on agriculture, Crawford Falconer, on the ways forward. It also illustrates the progress that has been made in the informal consultations Falconer has held with negotiators since September. The most recent text includes new options that might allow exporters and developing country importers to move towards agreement: while the former oppose a far-reaching safeguard mechanism, the latter insist it is a vital component of an eventual Doha deal.

As for industrial goods, or NAMA, the most recent draft text includes specific formulae and figures for determining countries' future tariff levels. Swiss Ambassador Luzius Wastescha said that convergence on several issues enabled him "to present a text which is almost complete." But he stressed that the entire text remained subject to negotiation.

Sources have stressed that resolving differences over sectorals would be critical to bettering the odds of striking a deal. Initial reactions by Lamy were that the texts were "generally well received," and that they served to effectively "consolidate the very real progress that has been made in the last few months." But recent discussions between the US and China seemed to suggest that both parties are entrenched in their positions.



Waiting on change

In addition to persistent divergences among major actors in the negotiations, domestic politics in the US has also contributed to the failure to strike a final deal. The short time that the Bush administration has left in office complicates the US's position, even if they could have successfully cut a deal.

"It's always the case at the end of a negotiation that you have to decide whether there's enough on the table to justify making a deal even if it's not perfect, and then trust your ability to sell it afterward," an analyst reported to Reuters. "The trouble here is the team that's cutting the deal isn't going to be around to sell it afterward," he added.

Failure to conclude a deal adds to economic crisis woes

Adding to the woes of trade ministers, economists are warning that failure to produce a global trade deal could have far-reaching and strongly negative effects, particularly given the ongoing economic crisis. A Doha agreement would have prevented countries from further closing their borders to trade in the midst of the financial turmoil. Historically, protectionist policies typically rise during times of economic instability, serving to exacerbate the downturn.

Whether trade ministers will be able to act collectively to reach a final deal and restore confidence in the global economy now remains to be seen in the year ahead.

Sources

- "Planned WTO Mini-Ministerial Postponed as Prospects for Doha Deal Diminish," Bridges Weekly Trade Digest, Volume 12, number 42, 10 December 2008.
- "New NAMA Text Released Amidst Doha Gloom," Bridges Weekly Trade Digest, Volume 12, number 42, 10 December 2008.
- "Revised Ag Text Reflects Progress, But Final Deal Still Elusive," Bridges Weekly Trade Digest, Volume 12, number 42, 10 December 2008.
- "Doha trade deal unlikely despite leaders' call," Reuters, 11 December 2008.
- "Schwab sees progress in WTO talks, hurdles remain," REUTERS, 4 December 2008.
- "Differences in revised WTO texts will lead to Doha Round failure," THE FINANCIAL EXPRESS, 8 December 2008.

EPA negotiations update

Melissa Julian, ECDPM

EU Member States and Commissioner Ashton committed to flexibility

Positive feedback has characterized the first meeting between African, Caribbean, and Pacific (ACP) Ambassadors and the recently appointed European Commissioner for Trade, Catherine Ashton, on 4 December 2008. The ACP representatives expressed appreciation for Ashton's willingness and availability to listen to their views on the Economic Partnership Agreements (EPAs) and welcomed her commitment to flexibility in the negotiations. During the meeting, several Ambassadors requested the Commission react positively to specific contentious issues, such as the removal of commitments in the interim EPAs (IEPAs) that are not required for WTO compatibility.

On a less positive note, the ACP Ambassadors learned that their collective request for a high-level meeting between a representative group for the ACP and several EU Member States will not be held. The meeting, which was intended to be organized in the margins of the next EU Summit scheduled for 11-12 December 2008, has been called off on account of the unavailability of the European Commission President, Jose Manuel Barroso. This decision came despite EU Member States request that the European Commission respond positively to the meeting.

European Union Member States also appealed to Commissioner Ashton to account for the ACP's political decisions, development priorities, and administrative capacities in the context of EPA negotiations. Members encouraged Ashton to show all possible WTO-compatible flexibility and pragmatism in order to swiftly sign IEPAs that serve the development needs of ACP countries. They have also requested that the EU exercise flexibility with implementing changes from the interim into full EPAs that could prompt other regions to enter into the agreement, thereby strengthening regional integration.

EU Ministers also called for the enhancement of dialogues on regional ACP Aid for Trade (AFT) packages and for the European Commission and EU Member States to present the overall framework for their initiatives in early 2009. Commissioner Ashton reportedly informed EU Development Council Ministers that the European Commission will examine any issues in IEPAs that partners want to re-consider as full EPAs discussions advance. ACP regions should also be provided more time as needed. It remains to be seen whether these commitments will trickle down to technical level negotiations.

Central Africa postpones negotiations to continue technical preparations

Central African EPA negotiations with the European Commission initially scheduled for end October and mid-December 2008, have been postponed to January 2009. The delay is reportedly to allow Central Africa time for further internal coordination.

The Cameroon IEPA signing was also postponed from 27 November 2008 to a yet to be determined date. There is speculation that Cameroon is re-thinking signature following the European Commission's decision to negotiate a free trade agreement (FTA) with Central American countries that the ACP group believes poses a serious threat to their banana preferences. The ACP has argued that this contradicts the objectives of the

EPAs.¹ The EU's decision to advance the FTA follows a recent WTO ruling that determined the EU tariffs on imported bananas was discriminating Latin American producers.²

Côte d'Ivoire signs IEPA; West Africa advances EPA and internal CET negotiations

Representing the first interim agreement between the EU and an African trade partner, an IEPA between the EU and Côte d'Ivoire was signed on 26 November 2008.³ The agreement is now being notified to the WTO. Ghana is also scheduled to sign an IEPA with the EU in the coming weeks. The objective for both sides remains to conclude a comprehensive, regional EPA with all members of West Africa. The EU-Côte d'Ivoire and Ghana IEPAs appears, however, to be causing some fears of disintegration in West Africa.

West African Ministers continued to work towards an early 2009 goal for tabling a regional list of sensitive products and a market access offer in goods to the EU in the ECOWAS Council of Ministers meeting in Ouagadougou on 27 November 2008.⁴ Ministers encouraged negotiators to continue their efforts in order to secure beneficial EPAs and to bring issues that cannot be resolved at a technical level to their attention.

Ministers also focused on agreeing on a common structure for the ECOWAS Common External Tariff (CET), which includes the creation of a fifth tariff band at a 35% rate for certain products from the region. This is in addition to the existing four bands of 0%, 5%, 10% and 20%. Nigeria, with 70% of its workforce engaged in the agricultural sector, proposed the fifth higher band of tariffs to protect infant productive industries with prospects for industrialization. It is intended that, in the case of Nigeria, this will help promote the diversification of economies.

During the meeting, Ministers also requested the ECOWAS and UEMOA Commissions accelerate the process of re-classifying products into tariff band categories and on safeguard measures to complement the CET. In addition, they have asked that member states validate the regional list of sensitive products. Ministers noted that the CET will be an absolute priority for the region and a prerequisite for the finalization of any market access offer to the European Commission.

European and West African negotiators made progress on a number of issues in joint EPA texts during technical and senior official level meetings in late October 2008.⁵ Specifically, advancements were made to a near completion of joint EPA texts on trade in goods, sanitary and phytosanitary rules, technical barriers to trade, and trade facilitation. The meetings also focused on finding solutions to the remaining divergences in the joint agreement. The European Commission put forward new proposals with regard to transitional periods and fiscal reform for regional levies and standstill, and MFN treatment on export taxes. No progress was made, however, on deadlock issues such as West Africa's request for commitments in the EPA texts by the European Commission to remove trade distorting agricultural subsidies and to pledge continued EPA-related assistance beyond the 2020 expiry of the Cotonou Agreement.

West Africa also tabled texts in relation to trade-related issues and they requested capacity building support, but no legal commitments were made. The European Commission reportedly requested that the region legally commit to these issues and to services as well.

SADC Member States seek common positions ahead of negotiations with the EU

Continuing discussions within the region on how to move forward both in the negotiations and with the European Commission on outstanding market access offers have postponed the signing of an IEPA between the Southern African Development Community (SADC) and the EU. Initially scheduled for 31 December 2008, the signing has now been moved to early 2009. Negotiations on a comprehensive EPA were also postponed to January 2009. Southern Africa Customs Union (SACU) Ministers are meeting as TNI goes to press to try to reach a consensus on the EPA in the face of huge tensions within the bloc.

Botswana, Lesotho, Swaziland (BLS), and the European Commission, are pressing to sign the IEPA now so that it can be notified to the WTO and negotiations towards a comprehensive, regional EPA can advance. South Africa (and Angola and Namibia), however, maintain that changes are still needed to ensure policy space is maintained. If BLS signs against the wishes of other members, this will result in two trade regimes operating within SACU. Many argue that regional integration could be thwarted with serious implications for development, integration, trade arrangements, political stability, and, ultimately, integration into the global economy.

SADC and EU negotiators, meeting in November 2008, agreed to exchange improved market access offers by mid-December. During these discussions, Rules of Origin, services and investments, sustainable development, and SADC's concerns with the IEPA text were also raised. Southern Africa sources indicate that negotiations are far from concluded and that divergence in services, investment, and market access issues persist. With regard to market access issues, no conclusions were reached with the European Commission, which indicated that, with the removal of South Africa from the text, cumulation with them would not be possible.

East and Southern Africa and the European Commission discuss way forward

The end-December 2008 East and Southern Africa (ESA)-EC EPA negotiating meetings have been postponed to January 2009. ESA senior officials and the ESA Council were being held as TNI goes to press. The launch of the COMESA Customs Union will take place during the first half of 2009, according to the COMESA Secretary General.⁶

European and ESA negotiators met in November 2008 to discuss the way forward on comprehensive, regional EPAs. The EU encouraged the region to adopt a regional preference provision for market access offers in the EPA so as to boost regional integration. ESA sources indicate that with regard to the definition of 'Substantially all Trade,' both sides have agreed to work on the basis of specific liberalization scenarios that consider liberalization of the ESA market in terms of potential revenue losses, sectoral sensitivities, infant industries, capacity building, and provisional support that will enable the ESA States to undertake reforms where applicable. ESA has called for developing countries to be excluded from the coverage of the European Commission's proposed MFN clause in the EPA. Here, the European Commission committed to providing a new draft text on the issue, which could serve as a basis for more productive political discussions. Both parties agreed that there is still substantial work to be done, which cannot be resolved before the December 2008 deadline. It was agreed that a roadmap would be established as a guide for continuing negotiations in 2009.

Progress among East African and European Commission experts

EU and East African Community (EAC) technical negotiators meetings in November 2008⁷ agreed to all technical and clerical errors and omissions to the initialled IEPA text. This will accompany the revised EAC market access offer for eventual final signature. EAC also put forward proposals to amend the IEPA text in the negotiations towards a full EPA. Whether the European Commission will honour these requests or maintain their positions taken throughout the IEPA negotiations remains to be seen.

Two issues remain outstanding in relation to the full EPA: EAC's proposal to allow for imposition of a duty or export tax in emergency cases; and the EAC's call to raise the threshold for the definition of a major trading economy in the MFN clause exports in order to promote South-South trade. The European Commission maintains that the current exclusion of ACP and African countries and regions from the MFN clause is sufficient for the regional integration needs. They argue that increasing the percentage would allow European Commission competitors to benefit from better trading conditions than the EU in the region.

While discussions on customs and trade facilitation, and sanitary and phytosanitary measures, were finalized, no agreement was reached on development issues. This includes the EAC's proposal for a European Commission commitment to provide additional financial support, the establishment of an EPA fund, and the text on EPA adjustment cost cooperation needs. The EAC will submit a draft text on an EAC-European Commission development cooperation strategy by the end of January 2009.

Caribbean focuses on EPA implementation

EPA implementation was the focus of the CARIFORUM Council of Ministers that took place in November just ahead of the agreement's imminent provisional application.⁸ CARIFORUM Secretary General, Edwin Carrington, said during the meeting that leadership was necessary to guide the enormous amount of work to be done. Carrington noted the need for more regional integration and cooperation aimed at enhancing the region's productivity and competitiveness at the government, private sector, and civil society levels.⁹

Caribbean sources indicate that the CARICOM Secretariat is seeking to become a recognised actor responsible for coordinating regional implementation efforts and provision of EPA development funds. But there are concerns that there is a lack of capacity in the Secretariat. As such, CARIFORUM countries are considering alternatives. The regional coordinating mandate could be granted to a reinforced Caribbean Regional Negotiating Machinery (CRNM), to a new Caribbean Regional Implementation Machinery (CRIM), or to the existing Caribbean Export Development Agency (CEDA). The Council of Ministers will meet no later than January 2009 to consider this issue.

The European Commission notified the WTO of the CARIFORUM-EU EPA on 22 October 2008.¹⁰

Pacific stress need for genuine EU flexibility to conclude EPAs

The Pacific ACP grouping (PACP) once again stressed that the EPA must reflect the unique circumstances of the region in order for negotiations to move forward. This sentiment was reiterated by the Papua New Guinea Deputy

Prime Minister during a bi-annual meeting of the ACP-EU Joint Parliamentary Assembly held in Papua New Guinea in November 2008. As argued by PACPs negotiators, despite exhaustive efforts on their part over the past several years, there has been no agreement with the European Commission on a trade in services regime that would enable the PACPs to be genuine service providers in the EU market in line with their capacities and levels of development. The PACPs are hopeful trade in services will form an important part of the EPA in the years to come. In order to retain the option for inclusion of services in an EPA, the PACPs have proposed inserting a rendezvous clause for services negotiations that would see the two sides return to detailed trade in services negotiations in a few years. Because of the constraints faced by the region, they are proposing that the comprehensive PACP-European Commission EPA focus on trade in goods, fisheries, development cooperation, and dispute settlement at this stage.

The Deputy Prime Minister further stated that while his country and Fiji both initialled interim EPAs in late 2007 to protect market access for exports of tuna and sugar to Europe, the countries are unhappy with the terms of the agreements. Pacific Trade Ministers informed the European Commission that rules on export taxes, infant industry and the most favoured nation clause contained in the interim EPAs should be changed.

Glyn Ford, the European Parliament Member responsible for reporting on the Fiji and Papua New Guinea IEPAs, said if the European Commission cannot accept the Pacific's basis for further negotiation, he would recommend the European Parliament vote "no" to the interim agreement. In a written reply, the European Commission recognised the uniqueness of the Pacific region and reiterated that the EU's aim is to agree a comprehensive EPA. The Commission believes that services play an important role in the development of Pacific countries and that discussion should continue on these important issues in the framework of the EPA.¹³

Other key development issues raised by Mr. Ford included allowing export taxes, protecting infant industries, safeguarding traditional knowledge, increasing the transparency of government procurement, and extending length of stay for working visas. For the Pacific—and other negotiating regions—it is encouraging that these development-oriented issues are being discussed at the highest-levels in Europe. Any solutions that are reached will set a precedent on which to base future negotiations on development matters in other ACP regions.

Directly questioning the European Development Commissioner Louis Michel on his position, Mr Ford asked: "Does the Commissioner agree...that allowing for the size and remoteness of the region's Members...that the Commission's approach must include accessible, viable alternatives that guarantee market access for those countries not wishing to commit to the final EPA?" The Commissioner replied with a simple "Yes."

According to regional sources it is unlikely negotiations will conclude in 2008.

For a longer version of this update see: www.acp-eu-trade.org/newsletter/tni.phpin

- 1 ACP Banana Group Press Release www.acp.int/en/coa/bananaconcern.suriname08.html
- 2 Report on WTO banana ruling www.javno.com/en/economy/clanak.php?id=208045
- 3 European Commission press release on EU-Côte d'Ivoire IEPA on 26 November www.trade.ec.europa.eu/doclib/docs/2008/november/tradoc_141437.pdf
Background Note www.trade.ec.europa.eu/doclib/docs/2008/november/tradoc_141434.pdf and
Guardian Press Report www.guardian.co.uk/business/feedarticle/8085968
- 5 European Commission Press release on EU-West Africa EPA negotiations 20-24 October 2008
www.acp-eu-trade.org/library/library_detail.php?doc_language=en&library_detail_id=4746
- 6 EPA Flash News, European Commission, 17 November 2008
www.acp-eu-trade.org/library/library_detail.php?doc_language=en&library_detail_id=4761
- 8 Press release from CARIFORUM Council of Ministers, 26 November 2008
www.caricom.org/jsp/pressreleases/pres360_08.jsp
- 9 CARIFORUM SG to CARIFORUM Council of Ministers on EPAs. 26.11.08
www.caricom.org/jsp/pressreleases/pres361_08.jsp
- 11 Papua New Guinea Prime Minister to the ACP EU Joint Parliamentary Assembly 25 November 2008
www.europarl.europa.eu/intcoop/acp/60_16/pdf/temu_speech.pdf
- 12 ACP-EU Joint Parliamentary Assembly (Papua New Guinea 24-28 November 2008) Website
www.europarl.europa.eu/intcoop/acp/60_16/default_en.htm
- 13 Written reply from the EC to question from Mr. Ford on EPAs
www.europarl.europa.eu/intcoop/acp/60_16/pdf/rqo_com_en.pdf

Trade Negotiations Insights

Published by:

The International Centre for Trade
and Sustainable Development

Chief Executive: Ricardo Meléndez-Ortiz
Editor: Caitlin Zaino
Address: 7 Chemin de Ballexert
1219 Geneva, Switzerland
Tel: (41-22) 917-8492
Fax: (41-22) 917-8093
Email: czaino@ictsd.ch
Web: www.ictsd.net

European Centre for Development
Policy Management

Director: Paul Engel
Editor: Sanoussi Bilal
Address: Onze Lieve Vrouweplein 21
6211 HE Maastricht,
The Netherlands
Tel: (31-43) 3502 900
Fax: (31-43) 3502 902
Email: tni@ecdpm.org
Web: www.ecdpm.org

Editorial team: Aurélie Walker
Stephanie Colin

This monthly publication is made possible through the financial contribution of the Government of the United Kingdom (DFID) and the Dutch Ministry of Foreign Affairs (DGIS).

The opinions expressed in the signed contributions to TNI are the authors' and do not necessarily reflect the views of ICTSD or ECDPM. Manuscripts offered for publication are expected to respect good journalistic practice and be compatible with our mission. Guidelines for contributors are available on request.

Material from TNI can be used in other publications with full academic citation.

Trade Negotiations Insights ©
ISSN 1682-6744

Trade Negotiations Insights

Calendar and resources

ACP-EU EVENTS

DECEMBER

- 2-4 WTO Regional Workshop on Regional Trade Agreements for Caribbean Countries, Bridgetown
- 3-4 Caribbean Regional Negotiating Machinery (CRNM) Workshop on Services in the EPA, Belize City
- 4-5 ECOWAS Validation Meeting of the Diagnostic Study on Regional Integration, Ouagadougou
- 4-5 Conference "Living Beyond its Resources: Impacts of 'Global Europe' on Sustainable Development," Friends of the Earth-Globalisation Intergroup of the European Parliament, Brussels
- 5-6 COMESA-EAC-SADC Tripartite Meeting, Lusaka
- 5-14 PROMOTE 2008, Salon International de l'Entreprise, ProInvest, Yaoundé
- 9-10 CRNM/CARICOM Dissemination Session on the CARIFORUM EPA, Paramaribo
- 10 European Commission Civil Society Dialogue on EPAs and Gender, Brussels
- 12 23rd Meeting of the CARICOM Council of Ministers, Guyana
- 14-16 88th Session of the ACP Council of Ministers: Review and Agreement on ACP mandate for negotiations of ACP-EU Cotonou Partnership Agreement, Brussels
- 18-19 ECOWAS Summit of Heads of State and Government, Abuja

JANUARY

- 8 Committee on International Trade Meeting, European Parliament, Brussels
- 26-30 ECOWAS Technical Negotiation Round, and Senior Officials RPTF Meeting, Dakar

TO BE CONFIRMED:

- West Africa EPA Ministerial Monitoring Committee session, Abuja
- Central Africa-European Commission EPA negotiations (venue tbc)
- SADC-European Commission Senior Officials and Ministerial Meeting, Brussels
- ESA-EC EPA Senior Officials negotiating meeting (venue tbc)
- Launch of COMESA Customs Union (between January and June)

WTO EVENTS

DECEMBER

- 22 Dispute Settlement Body

JANUARY

The 2009 WTO events calendar has not been released at the time of press.

RESOURCES

The Aid for Trade Agenda and accompanying measures for EPAs - Current state of affairs Dan Lui, ECDPM Discussion Paper 86, November 2008, www.ecdpm.org

EPA negotiations and Regional Integration in Africa: Building or stumbling blocs, San Bilal and Corinna Braun-Munzinger, ECDPM Paper, prepared for Trade Policy Centre in Africa 3rd Annual Conference, November 2008, www.ecdpm.org

Economic Partnership Agreement between the CARIFORUM States and the European Community and its Member States, Official Journal of the European Union, October 30 2008, www.eur-lex.europa.eu

The EU and Cote d'Ivoire sign stepping stone trade deal, Press release, European Commission, November 26 2008, www.ec.europa.eu/trade

Council decision on the signature and provisional application of the stepping stone Economic Partnership Agreement between the European Community and Central Africa, Council of the European Union, October 31 2008, www.register.consilium.europa.eu

Council decision on the signature and provisional application of the stepping stone Economic Partnership Agreement between Ghana and the European Community, Council of the European Union, November 10 2008, www.register.consilium.europa.eu

Conclusions on regional integration and the Economic Partnership Agreements for development in the ACP countries, Council of the European Union, November 11 2008, www.register.consilium.europa.eu

Communiqué of the EU-SADC Double Troika Ministerial Meeting, November 11 2008, www.register.consilium.europa.eu

Final Joint Communiqué of the ECCAS-EU Meeting at Ministerial Troika level, November 10 2008, www.register.consilium.europa.eu

Final Communiqué of the 14th ECOWAS-EU Ministerial Troika Meeting, October 23 2008, Ouagadougou, www.register.consilium.europa.eu

Joint Conclusions from EAC Chief Executives and SACU Officials Meeting, November 11-13 2008, Arusha, www.sacu.int

European Commission Replies to ACP-EU Joint Parliamentary Assembly Questions, November 25 2008, www.europarl.europa.eu

Contentious issues in IEPA negotiations: implications and questions in the agricultural sector, Special Report, Agritrade, CTA, October 2008, www.agritrade.cta.int

Towards the African Template for Economic Partnership Agreements, Africa Trade Policy Centre (UNECA), October 8 2008, www.uneca.org

Undercutting Africa-Economic Partnership Agreements, forests and the European Union's quest for Africa's raw materials, Ronnie Hall, Friends of the Earth, October 2008, www.foe.co.uk

Trade and Governance-Does governance matter for trade? Christina Weller and Karin Ulmer, Background Paper, APRODEV, November 2008, www.acp-eu-trade.org

Interim Economic Partnership Agreements - West Africa: Ivory Coast and Ghana, Memo, European Commission, November 26 2008, www.ec.europa.eu/trade

The significance of the mandatory review of the Cariforum EPA provided in the Joint Declaration, Summary, Norman Girvan, October 26 2008, www.normangirvan.info

Les accords de partenariat économique : un chemin critique vers l'intégration régionale et la libéralisation des échanges, Jean-François Sempéré, Note de l'IFRI, Novembre 2008, www.ifri.org

Impact Assessments of Changing Agricultural Trade Agreements and Tariff Barriers between South Africa and the EU, Fenyes et al., Bulletin of the Szent István University, October 2008, www.ageconsearch.umn.edu

Fisheries market access; tariff and non-tariff aspects, Executive brief, Agritrade, CTA, October 2008, www.agritrade.cta.int/en