

Trade Negotiations Insights

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Commission to Authority: Shifting the African Union balance of power

Faten Aggad and Siphamandla Zondi

The long-standing debate on the creation of a Union Government in Africa, spearheaded by the Libyan leader Moammar Qaddafi, seems to have been given an impetus by the African Union (AU): the AU replaced its executing agency, the AU Commission, with an "Authority," during its latest Summit of Heads of States and Governments in Addis Ababa, Ethiopia on 4-5 February 2009.

The establishment of the AU Authority with possibly more executive powers is, for some, a step closer to a Union Government given its potential to create a pan-African body with enough executive power to accelerate continental integration. Now the question is whether the decision to transform the AU Commission into an Authority begins the process of re-aligning the balance of power between member states and the AU.

When the African Union replaced the forty-nine year-old Organisation for African Unity (OAU) in 2002 it was hoped that the then newly-established AU Commission (AUC) would be given a stronger mandate to lead on continental matters. Yet, the same vague powers and organisational inefficiencies from the OAU Secretariat plagued the AUC, leading to its call for more executive powers and resources. Challenges were further exasperated by Qaddafi's proposal, which provoked intense debates within the AU.

How the Executive Council of Ministers will define the mandate, powers, responsibilities, and size of the new AU Authority will determine how well it will function. To this end, there are a number of points to consider.

First, demonstrable, strong political commitment to empower the Authority is

required if it is to be truly stronger than the Commission. Yet, ambiguity exists over whether the recent Summit decision was the result of a 'natural convergence of ideas' on the need to move forward gradually, or a compromise to please Qaddafi as the new AU Chairman. The two are not mutually exclusive but the balance between them is crucial. If the decision is a result of Qaddafi's pressure, then the Authority is undermined.

Second, the creation of a strong Authority entails shifting power between the periphery and the centre. Ironically, the February decision deferred to the Executive Council—a crucial source of authority for member states—to decide the exact amount of power to be ceded from members. Given the reluctance to delegate control to the inter-state institutions in Africa, whether member states will relinquish some of their executive clout to the Authority is uncertain.

Third, for the Authority to function fully capacitated, delegated political powers are not sufficient; financial commitments from member states are also necessary, which raises the related issue of membership fees currently unpaid by many African states.

Fourth, a powerful executive organ at the centre of the AU is inextricably dependent on the model of integration the organisation adopts. This project must be linked to the

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Editorial

News and publications

In brief

Over the past month, EU Trade Commissioner Catherine Ashton has travelled from London to South Africa, speaking about flexibility and offering optimism for the EPA negotiations. While her rhetoric has provided hope, many negotiators are wondering how long it will take to transform discourse into reality.

On the ground, stakeholders, such as those in Central Africa where EPA talks have once again slowed, are longing for her words to turn into action. Views on why talks have winded down vary drastically between the European Commission and some Central African stakeholders; in this issue, TNI covers both perspectives.

This edition also continues the discussion provoked by TNI's February interview with Ashton. In their article, "The EU's cock-eyed approach to trade and governance," Christina Weller and Karin Ulmer challenge some of the claims and methods the European Union has made with regards to the EPA negotiations, trade, and governance.

In another case of symbolic hope, in late January, the United State's first African American president was inaugurated into office. Drawing from the outpouring of support for President Barak Obama coming from Africa, TNI set out to explore what the continent can most likely expect from an Obama administration, particularly as concerns trade and development.

Now in Africa, however, attention has shifted from Obama to the African Union's recent decision to change from a Commission to an "Authority." In our lead article for this edition, two African experts consider whether this begins the process of re-aligning the balance of power between member states and the AU, and if so, what that implies.

Continuing our African coverage, Francis Mungeni's contribution outlines how EU assistance for services in East Africa can help the region reach its Millennium Development Goals. On a more general note, Peter Lunenborg takes up the issue of General Exceptions in the EPAs and encourages developing countries to bring commodities back to the forefront in the WTO agenda.

Finally, an editorial correction: in our February issue of TNI, we went to press with a misprint in Josanne Leonard's entitled, "As EPA ink dries." In the section on "Co-production agreements" the omission in the Jamaica-UK agreement was not the audio-visuals sector as written, but multimedia platforms.

As always, comments are welcomed and can be addressed to czaino@ictsd.ch.

South-south trade to help reduce intensity of financial crisis

Considering how south-south economic co-operation can help reduce the negative impacts of the global financial crisis on developing economies was the focus of discussions among developing country financial experts and government officials during an UNCTAD organised meeting on south-south trade, held in early February 2009. While trade between developing economies has grown at an average of 13% between 1995-2007, the global financial crisis now threatens to reverse these trends. Participants to the meeting agreed that the UNCTAD-supported Global System of Trade Preferences Among Developing Countries (GSTP) is a potential mechanism that could be used to stimulate trade and demand within developing nations, though it is not sufficient alone; trade enhancements and strong commitments by countries were also deemed necessary.

Meanwhile ministers and trade experts from Brazil, India, and South Africa reportedly met to discuss growing mutual trade on the sidelines of the World Economic Forum in Davos, Switzerland on 31 January 2009. Sources report a meeting is to be scheduled between the three emerging economies for the near future where the focus of talks will be a possible trade agreement between Mercosur, the Southern Africa Customs Union, and India.

India to triple trade with Africa

India has announced a plan to triple trade with Africa over the next five years in an attempt to strengthen relations in the region where Chinese competitors have made significant inroads. India aims to reach USD 100 billion in trade through agriculture, small industry, mining, Information and Communication Technology (ICT), and chemical industry projects, among others. Despite the global financial crisis, the Indian government also plans to double credit lines to Africa over five years and to provide USD 500 million for the "Aid to Africa" initiative.

Economic Partnership Agreements and benchmarking

The South Centre has undertaken research to examine development indicators to be used as benchmarks to ACP liberalisation in the EPA. The methodology borrows liberally from the indicators the EU has used in the recent past and still uses today in its various General System of Preferences arrangements for developing countries, in 'graduating' them

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While trade between developing economies has grown at an average of 13% between 1995-2007, the global financial crisis now threatens to reverse these trends. ”

from exporting certain products to the EU market. The Economic Partnership Agreements are widely acknowledged to pose a major challenge for the ACP states, since they are essentially free trade agreements based on reciprocal market liberalisation. Actors need to stringently monitor the implementation of EPAs, where applicable, and also be able to put in place halts on the liberalisation process if the desired development goals are not being attained.

To view this note, please see "EPAs and Benchmarking Development: South Centre Analytical Note, January 2009," www.southcentre.org

World Bank global economic prospects

The volume of world trade is likely to contract for the first time since 1982, further reducing the potential for growth in developing countries according to a recent World Bank report. While commodity prices have lessened food price increases, it has also provoked new problems for commodity-dependent developing nations, like Zambia. In this 2009 released report on the economic prospects for the year ahead, the author concludes that food and oil shortages are not inevitable if careful policies are practiced. "Action is needed at the global level to discourage export bans of food grains, strengthen agencies like the World Food Programme, and improve information about and coordination of existing domestic grain reserves," said author Andrew Burns.

To view this report, please see "Global Economic Prospects 2009: Commodities at the Crossroads," Andrew Burns, World Bank, 26 January 2009, www.worldbank.org

News Sources

- 1 "UNCTAD: South-South trade could soften impact of financial crisis for vulnerable economies," pressemitteilungen.epo.de, 5 February 2009.
- 2 "The South trades closer to home," Jonathon Lynn, International Herald Tribune, 9 February 2009.
- 3 "India plans to triple trade with Africa, deepen ties," Bappa Majumdar, Reuters, 21 January 2009.

The EU's cock-eyed approach to trade and governance

Continued from front page

Christina Weller and Karin Ulmer

overhaul of the entire continental governance architecture towards a supra-national organisation with a distinct institutional mandate to act on behalf of Africa, rather than an intergovernmental institution that shares its powers with member governments. Should it not function as such, a strong Authority runs the risk of engaging in a power struggle with member governments accustomed to having excessive influence over the AUC.

Fifth, given that the AU makes decisions by consensus, a powerful Authority requires a significant meeting of the minds; consent among member states is necessary for proposals to pass. Yet, given the ambiguity over the motivation for the recent Summit decision, how much consensus there is remains unclear.

Sixth, the success of the Authority may affect other AU organs, including the New Partnership for Africa's Development (NEPAD). Similarly, the Pan-African Parliament, which brings national parliaments closer to continental structures, should be clarified. If Authority powers are not neatly carved, the effects on such initiatives may be negative. However, if this initiative generates a better resourced and more efficient centre, the impact will be positive. The challenge is to define how the Authority will enable AU organs to work coherently and effectively to achieve common goals.

Seventh, participatory governance must be enhanced by involving civil society in the creation, transition, and functioning of the Authority. The transition envisaged provides an opportunity for Africa to improve the legitimacy and credibility of continental governance systems.

Finally, the ultimate utility of the Authority will be in how it generates better delivery on poverty reduction, free movement of people and goods, regional and continental infrastructure development, climate change, AIDS, research, centres of excellence, international trade negotiations, and peace and security.

Authors

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Notes

- 1 See page 7 of the Strategic Plan for 2004-2007 of the Commission of the AU, www.african-union.org.

The European Union is keen for ACP countries to improve their governance. It has extended the limited co-operation under the Cotonou Partnership Agreement to cover an ambitious agenda including human rights, democracy, and public financial management.¹ There is even evidence that progress towards "good governance" will be a condition for accessing financial support for EPA implementation.² But what if EPAs make it harder for ACP governments to achieve these governance ambitions? How can the EU adopt a coherent approach to trade and governance with regards to the ACP?

Former EU Trade Commissioner Peter Mandelson had no doubt that EPAs – particularly those with a broad agenda – are themselves instruments of good governance. And Mandelson's view is widely shared: trade agreements are supposed to be good for governance. The World Bank even rates countries' governance performance against the kind of reforms that trade agreements engender, such as investor protection.

But for developing countries, these claims are not supported by the evidence or their experience. According to a recent Aprovev study, EPAs may even pose significant governance challenges for ACP countries.³ Below are some key findings from this report.

The EPA negotiating process itself is the first hurdle to overcome in achieving positive outcomes for governance. Key groups, especially poor producers, workers, and small scale farmers continue to face marginalisation from trade talks whilst the EU uses its more dominant position to garner its desired results. In turn, the ability and incentives of ACP governments to ensure accountability to their citizens is reduced. Furthermore, while export-orientated sectors are traditionally well-represented in trade talks and will receive a boost from liberalisation, import-competing sectors tend to be less present. Small and informal enterprises particularly suffer from this exclusion and will face shrinking market shares and tougher competition. This situation may hamper the effective implementation of any trade agreements should citizens resist reforms and if governments are not fully committed to the concessions leveraged.

Trade agreements do not necessarily put in place the right reforms for improved governance. Reducing border tariffs and procurement reforms are usually presented as the prime examples of "good governance" reforms in trade deals; both increase transparency and decrease the scope for governments to take arbitrary actions, including corrupt ones. However, the evidence is considerably more mixed than the arguments suggest. In several countries, the experience has been increased corruption following liberalisation where trade reforms were not accompanied by a focus on state capacity and on tackling private sector corruption.

Trade deals can skew accountability in favour of foreign investors and governments. By definition,

they reduce the scope for governments to act by locking them into timetables for reform and giving rights for redress to foreign governments and investors should they default on commitments. This need not be problematic if the trade deal is largely in the public interest and there are rights to flexibility for governments in certain circumstances. However if this is not the case, governments may find they are unable to respond to citizens' concerns, which can then generate conflicts. For example, a government's right to select measures to combat environmental damage or promote public health objectives have all been challenged under trade deals. Human rights can also be threatened if extensive liberalisation occurs without the implementation of safety nets to protect the right to adequate food, for example.

Finally, EPAs can have ambiguous impacts on the institutional effectiveness of ACP governments. New regulatory responsibilities, such as those introduced by intellectual property commitments, can strain and divert limited state capacity. Trade deals can also introduce inappropriate external models, such as reforming government procurement to promote efficiency over other development goals.⁴

When the relationship between governance and trade agreements is more ambiguous than supposed, a new approach is needed. Trade agreements cannot promote better governance simply by locking in a set of "good governance" reforms, such as liberalisation. Instead, they must become a coherent part of the quest for improved governance. This means assessing commitments objectively against their impacts on governance and improving the process of negotiations so that governments can pursue the broader interests of their citizens. Finally, it means introducing more flexibility so that governments are better able to respond to citizens' rights and needs in the face of unanticipated outcomes or shifting circumstances. While there are several approaches to this dilemma advocated by NGOs and governments alike—for instance, Aprovev proposes benchmarking development goals to support inclusive and evidence-based policy-making—above all, if the EU is serious about governance, it must be reflected in its approach to trade agreements and development. It is hoped that the new Trade Commissioner will exercise flexibility and make bold changes to the EU's negotiating practices.

Authors

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Notes

- 1 See ECDPM work on governance for example, www.ecdpm.org/governance.
- 2 ICCO (2008) Dialogue of the Deaf, www.icco.nl/delivery/icco/en/doc.html?p=publications&action=details&index=106.
- 3 APRODEV (2008) Trade and Governance, www.aprodev.net/main/documents/Trade%20&%20Governance.pdf.
- 4 See Olivia McDonald, Government procurement, development and World Bank conditionalities, G24 Policy Brief No 20, www.g24.org/gpbno20.pdf.

Predicting Obama's Africa policy: The proof of the pudding is in the eating

Nikki Duncan

'History in the making': a phrase billowed throughout the streets of Washington, DC as two million visitors descended on the US capitol on 20 January 2009 for the Presidential inauguration of Barack Obama. As the first African-American elected into the nation's highest office, President Obama has inspired many, though particularly those within the greater African Diaspora, whose realities are often shadowed by a history of social injustice coupled with lingering political and economic disenfranchisement. Moreover, President Obama's African heritage naturally invokes the expectation that an Obama Administration will bring a certain cultural sensitivity and understanding of the challenges that face the African continent, and thus will be likely to address these challenges in a more pro-active manner.



Photograph courtesy of daylife.com

Needless to say, the 'audacity of hope' has turned into 'the pragmatism of governance'. The Obama Administration is now faced with the enormous task of service delivery amidst a deepening domestic and global economic recession. The priorities in the short term are evident: creating new jobs, stabilising credit and housing markets, and building a foundation for renewed economic growth in America. With domestic issues at the forefront, how will this impact President Obama's foreign policy objectives? Will 'Africa's son'—an endearing pet-name donned by several African journalists—be forced to do more of the same when it comes to African policy?

Historically, the US policy towards Africa has been reactive at best. But in more recent administrations, starting with former President Clinton who was the first US President to visit the continent, US-Africa relations have changed in nature though not in structure. While the second Bush Administration is rightly lauded for pouring unprecedented amounts of aid into Africa, the nature of US-foreign assistance to Africa has largely been structured in a way that is more palliative than prophylactic.

Now more than ever, African nations are looking to President Obama, as one who understands the continent in a way that no other prior US President has, for a change in US-Africa relations. What will be the outcome? Before predicting the future, let us take a look at President Obama's past pronouncements and actions with regard to his priorities for US-Africa relations.

As a legislator

As a former member and chairman of the Senate Foreign Relations Committee, then Senator Barack Obama worked to focus America's attention on Africa's challenges.

His main concerns as a legislator included:

1. Ending the genocide in Darfur;
2. Passing legislation to promote stability and support peaceful elections in the Democratic Republic of the Congo;
3. Bringing war criminals in Liberia to justice;
4. Developing a coherent strategy for stabilising Somalia; and
5. Fighting HIV/AIDS in South Africa.¹

As a political candidate

Based on Obama's personal and professional credentials, Africa played a key role in his campaign's foreign policy stance. According to Whitney Schneidmann, Co-Chair of then-Senator Obama's Africa Advisory Committee, the Obama-Biden Campaign pledged to pursue three fundamental objectives on the continent: 1) accelerate Africa's integration into the global economy; 2) enhance peace and security of African states; and 3) strengthen relationships with governments, institutions, and civil society organisations committed to deepening democracy, accountability, and reducing poverty in Africa.²

From these objectives, it appears that the Obama Campaign was indeed on the track of 'change' with regard to US-Africa policy in that the first objective would imply more of an emphasis on increasing trade and investment rather than relying on traditional aid mechanisms, which underpin present US-Africa relations.

To accomplish this objective, the new administration hopes to focus on increasing food security and promoting competitiveness within the agriculture industry—an industry

that many African economies rely on heavily in terms of job creation and overall well-being. The Campaign website speaks of establishing an Add Value to Agriculture Initiative (AVTA) that is expected to encourage research and innovation to promote higher-yield seeds, better irrigation methods, and safe fertilizers. This initiative also seeks to address and reduce the cost of food in several African countries.

In addition to AVTA, Whitney Schneidmann has spoken about initiatives to strengthen AGOA—a preferential trade policy established as a result of a strong bipartisan effort to improve market access for African producers to the US market. Obama's willingness to strengthen AGOA sends a clear message to African countries that the US is to be considered a reliable trade partner. In addition to increasing the impact of AGOA, the Obama campaign also pledged to make the Millennium Development Goals 'America's' Goals by doubling US foreign assistance to African from USD 25 million in 2008 to USD 50 million by 2012 in order to help countries accelerate progress towards achieving Millennium Development Goals and thereby cut poverty in half by 2015. Finally, during the campaign, Obama expressed intentions to work with the US Overseas Private Investment Corporation to further develop lending facilities to small and medium businesses.

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African nations are looking to President Obama, as one who understands the continent in a way that no other prior US President has, for a change in US-Africa relations.”

As President

Less than a month into his new job, the burden of the global economy and rising US unemployment is on President Obama's shoulders. With Congress having recently passed a USD 787 billion stimulus package, the new administration has its hands full. The bill features a "Buy American" provision, which effectively subsidises American business by narrowing the competition field for American input providers, particularly those within the steel and iron industries, who are competing for government-funded construction and infrastructure projects. The administration predicts that this provision alone will help to create up to 1000 jobs.

Surely, however, this feature of the stimulus package has raised concerns across the globe. Liberal economists warn that this signals 'protectionist' measures by the US. President Obama has assured the international community that his intentions are not to ignite any trade wars, but rather to effectively and swiftly stabilise the economic situation in the United States. In addition, the bill stipulates the Buy American provision be "applied in a manner consistent with United States obligations under international agreements." Furthermore, the trade pact commitment clause says that products from least-developing countries be treated in the same manner as countries with which the US has formal trade commitments.³ Trade compliance clauses also give members of the World Trade Organization (WTO)'s government pact such as the European Union, Japan, Canada, South Korea, and Taiwan some consolations as they are eligible to provide materials for public works projects funded by the bill. However, countries such as Brazil, Russia, India, and China (also referred to as the "BRIC countries") are not protected by this clause as they have not signed the 1995 government procurement accord, nor do they have free trade agreements with the United States. Trade expert and economist Jagdish Baghwati charges that Obama will be "mute" on multilateral trade issues, while embracing more bilateral agreements, which would make it easier for his administration to appease 'free but fair trade lobbies' in the form of domestic labour unions.⁴

President Obama's "Africa" advisory team

Despite a gloomy economic outlook and the pressures toward protectionism that accompany it, President Obama has signaled to Africa that the intentions he outlined in his campaign are indeed bold and genuine. Thus far, President Obama has mobilised the 'best and brightest' to help him formulate and implement an invigorating Africa policy.

First, Susan Rice was appointed the US Ambassador to the United Nations, making her the first African-American female to hold this position. Prior to being confirmed by the US Senate, Ms Rice served as Assistant Secretary of State for African Affairs during the Clinton Administration where she formulated and implemented overall US policy towards forty-eight countries in Sub-Saharan Africa. Subsequently she became a senior fellow at the Brookings Institute, a US foreign policy think tank, where she wrote and lobbied for "drastic action" in Darfur.

In addition to Rice, a known Africanist, Michelle Gavin has joined the administration as the Assistant Director for African Affairs for the National Security Council (NSC). Prior to her position at NSC, Ms Gavin was a fellow at the prestigious Council on Foreign Relations—Washington's premier think tank and membership organisation—where she has written extensively about Zimbabwe. She also served as a US Senate Senior Staff member, with expertise in Sub-Saharan Africa.

Other key advisors that make up Obama's team with noteworthy resumes and experience in Africa range from Tony Lake—President Clinton's special envoy for negotiations that ended the war between Eritrea and Ethiopia—to Aaron Williams, who served as the USAID Mission Director in South Africa during the era of Nelson Mandela. These are just a few among several distinguished actors that have been brought on to Obama's team to help carve out the administration's policies and stances on Africa and related issues.

Looking ahead...

So what is President Obama's Africa policy starting to look like? On 9 February 2009, Acting Assistant Secretary for African Affairs, Phil Carter, revealed the framework of US policy towards Africa.⁵ The policy framework features four priorities that include:

1. **Providing security assistance programs** that are critical to securing the objective of a peaceful African continent. This includes working with African partners to build capacity at regional (African Union), sub-regional, and state-levels.
2. **Promoting democratic systems and practices** on the continent. As Phil Carter has stated, "It is not enough to just end wars, but we must move beyond post-conflict transformation to consolidate democracies."
3. **Promoting sustainable and broad-based, market-led growth.** Using the Millennium Challenge Account as a foreign aid vehicle, the US hopes to continue to reduce poverty by facilitating sustainable economic growth through sizeable grants—not loans—to countries that practice good governance, seek responsibility in their own development, and are committed to achieving results.
4. **Promoting health and social development.**

Based on these priorities, it appears that the Obama Administration's policy toward Africa will have similar elements to previous administrations, in particular, evidence of pragmatic leadership. But as they say, "the proof of the pudding is in the eating." In other words, while the elements of Obama's Africa policy look familiar, the mechanisms and manner of implementation will determine the actual impact.

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Notes

- 1 www.barackobama.com/issues/foreign_policy/index.php#onafrica.
- 2 "Africa: Obama's Three Objectives for the Continent," by Whitney W. Schneidmann, 8 September 2008, AllAfrica.com.
- 3 uk.reuters.com/article/economyNews/idUKTRE51C4RG20090213.
- 4 Ibid.
- 5 www.state.gov/pla/rls/rm/2009/117326.htm.

Why EPA negotiations have slowed: The Central African perspective

Platform of Central African Non-State Actors (PANEAC)

A negotiating session on the Economic Partnership Agreements between the European Union and Central Africa has been underway in Libreville, Gabon since 2 February 2009. This meeting has provided both parties the opportunity to resolve points of disagreement that are delaying the signing of an EPA. To reiterate, the negotiating parties have always expressed their intention to make the EPA an instrument for development and strengthening of regional integration. In light of this, the agreement must be balanced so as to include both commercial and development aspects. On the commercial side, there are disagreements over the degree of liberalisation and the transition period for trade in both goods and services. In terms of development issues, disagreements remain on all the points under negotiation.

After four days of work in Libreville, negotiations have once again stalled for two main reasons:

First: the EU's lack of flexibility on all issues under discussion. Despite calls for flexibility from current European Trade Commissioner Ashton, the European negotiators have not moved from their initial positions on any issues, whereas Central Africa has made numerous concessions.

The degree of liberalisation in trade in goods exemplifies this point; since March 2008 Central Africa, following a study carried out in all countries of the region, has moved from a position of market access liberalisation of 60% over a twenty year period to one of 71% liberalisation over twenty years, whereas the European Union has persisted with its unreasonable demand for 80% of trade in goods liberalisation within fifteen years. We should note that the European Union's demand is not based on any WTO stipulations, as was confirmed by Pascal Lamy, WTO Director General.

Faced with continuing requests for flexibility from Central Africa's negotiators, the European experts remain fixed in their position and are currently taking refuge in calls for a political solution to this issue. We consider it deplorable to rely on politicians to deal with what are essentially technical problems that need to be addressed using objective, coherent, and logical arguments.

Second: the European party has retreated on several points concerning development aspects of the EPA.

According to a top official leading the European delegation at the Libreville meeting, "The European Commission's mandate is to negotiate a trade agreement, not a co-operation for development agreement." This statement is in flagrant contradiction to all statements made by both politicians and negotiators since the beginning of the negotiations and marks a reversal that will have a negative impact on any future EPA agreement.

Some further examples help to illustrate this situation. Since 2007, the two parties have been in agreement on a roadmap for strengthening capacities and developing Central African economies. This document, outlining the priority areas to be addressed in terms of capacity building, has been subject to a number of jointly agreed amendments but has been ignored by the European party; it has not been signed by European Commissioners and Ministers.

In addition, the two parties have adopted the principle that there should be compensation for the loss of tax revenue following the dismantling of tariff barriers as part of the EPA. However, we have observed a lack of willingness by the European party to consider the specific situation of each country within the region, whether least-developed (five), landlocked, in post-conflict situations, or without reliable data and statistics for calculating such losses, even though Central Africa has provided a simplified method to account for country specifics that covers the whole region.

Moreover, there has been a lack of coherence in statements by the European Commission's Directorate General Trade and Directorate General Development regarding the budget for EPA financing. The promise to devote 75% of the European Development Fund to setting up the EPA has been dropped in the current planning of the Regional Indicative Programme now being negotiated.

Faced with this situation, the Platform of Central African Non-State Actors (PANEAC) feels it must express its grave concerns over the already fragile negotiating process, since the tendency towards regional integration

has already been affected by Cameroon's signing of a bilateral EPA. The methods used by the European party, including intimidation and recourse to political pressure, cast serious doubt on its desire to "re-establish trust" with Central Africa, and prejudice the possibility of a lasting agreement.



“Despite calls for flexibility from current European Trade Commissioner Ashton, the European negotiators have not moved from their initial positions on any issues, whereas Central Africa has made numerous concessions.”

Notes

- 1 The above article is a press statement released by PANEAC on 5 February 2009 from Libreville, Gabon. It has been translated from French into English; otherwise it is published here with minimal modifications.

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EPA negotiations with Central Africa:

The state of play

Claude Maerten and Elisabeth Tison

The global context of the Economic Partnership Agreement (EPA) negotiations between the European Union (EU) and the five regions involved has changed in unforeseen ways over the last few months. Now, the economic crisis threatens to jeopardise world trade, particularly in the temptation to seek refuge in protectionism. As such, ACP countries are facing a number of threats, notably decreased global demand and declining investments.

We need to work together on adequate responses to mitigate these negative effects. We must also prepare to improve supply capacity for the future through balanced growth that benefits the population at large, so as to be posed to capitalise on the eventual upturn. The EPAs are part of this response.

Although progress on the EPAs is necessary, it should not be rushed. There are strategic issues at stake for the ACP and it is important to match the content of the partnerships under negotiation to the specific needs of each region. This takes time, particularly because the regional negotiation format requires substantial co-ordination efforts on the ACP side. But there are still common objectives, whatever the pace of negotiations, which are to: (i) help meet Cotonou Agreement goals, particularly sustainable development and support for regional integration; (ii) strengthen supply capacity and diversification within economies and hence promote greater integration into the global economy; and (iii) ensure WTO-compatibility, particularly in relation to the degree of liberalisation necessary to comply with the definition of "substantially all trade" in GATT article XXIV.

The EU has no wish to exercise pressure at the risk of obtaining agreements that might not meet the specific needs of each region. But its position should be understood in the light of another EPA goal: strengthening regional integration. The complete regional agreement being negotiated with Central Africa is intended to replace the interim agreement signed with Cameroon, which will begin to take effect in 2010. The initial effects will be limited however as the liberalisation envisaged in the case of Cameroon will be very gradual, unlike that of the EU, which opened its markets almost completely as from January 2008.

And so while it is certainly important to understand what EPAs are, it also important

to understand what they are not. EPAs are not intended to cover every aspect of our relations with ACP countries. This is not what either we or the ACP countries would want. There is an existing agreement to this effect, namely the Cotonou Agreement, which has political and co-operation aspects. The negotiation of an EPA, it should be recalled, covers only the trade aspect of the Cotonou Agreement. While it also has development goals, the framework of co-operation between the EU and Central Africa, and other regions, is and remains the Cotonou Agreement.

Nevertheless, the European Union is well aware of its partners' major needs in terms of EPA support measures. Substantial funds are being allocated for these needs within both the pluri-annual programmes between the European Community and countries of the region (which amount to around one and a half billion Euros over the 2009-2013 period for the eight Central African countries) and the regional pluri-annual programme (whose allocated total is 150 million Euros for 2009-2013). A substantial portion of this will be dedicated to EPA support following a joint decision by both parties. Moreover, these figures cover the period up until 2013; the 10th EDF and future programmes will cover the later stages of liberalisation (liberalisation will continue over a much longer period).



Finally, EU Member States aim to offer additional help in the form of aid for trade based on needs identified within the region; this exercise is currently taking place. Hence it is clear that large amounts of funding have been allocated for EPA support that should make it possible for Central African countries to reap the greatest possible benefits from liberalisation and the strengthening of regional integration it brings with it.

The negotiation meetings that took place in Libreville from 3—10 February 2009 saw useful exchanges on the majority of important issues. In particular, the region wished to take stock of the progress made during 2008; there has undoubtedly been advancements. The negotiations have made major strides on the issue of market access in goods possible, for one, although they also revealed the inevitable differences in these kinds of talks. And though discussions on market access in services have not yet been finalised, negotiations have been fruitful and the remaining points of disagreement should be resolved without significant problems.

In terms of the rules of origin contained in the future EPA—a potentially highly significant issue for regional development, particularly industrial development—initial meetings have confirmed the overall convergence of viewpoints between the EU and Central Africa, taking as a basis the EU proposal to retain the advances made in the Cotonou Agreement on this issue, while implementing certain improvements. In relation to support measures, discussions have reached the phase where the region is clarifying priorities—a necessary step for enabling mobilisation of the support promised by EU Member States and other stakeholders. In addition, given that studies carried out thus far have used different methodologies, a jointly-agreed methodology will be established for evaluating the net fiscal impact of the future Agreement on countries in the region.

Again, while the pace of negotiations may seem slow to some observers, this should not mislead them as to the two parties' intentions: to devote as much time as is necessary to the negotiations in order to reach a complete and balanced agreement that accounts for the specific needs and ambitions of the Central African region.

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EPA General Exceptions undermine WTO negotiations on commodities

Peter Lunenborg

The General Exceptions of the EPAs do not preserve the achievements made by African and other developing countries in the WTO on commodities, they contravene the G-77 position, and they serve to undermine the December 2008 modalities. As such, ACP states are advised to demand modification of the EPA General Exceptions in the negotiations towards full EPAs with the European Commission, at the same time as developing countries should bring commodities back to the forefront in the WTO agenda.



Agricultural commodities: Volatility and adverse terms of trade

The financial and economic crises that the world economy is currently facing have busted the commodity boom, resulting in depressed prices for agricultural goods and adverse terms of trade for commodity-dependent developing countries. According to the World Bank Global Economic Prospects 2009, agricultural prices relative to manufactures are likely to drop over the long-term through the end of 2030, continuing the trend of decline of the past 100 years.¹ Ensuring "stable, equitable and remunerative prices" for exports of primary agricultural commodities has therefore been a recurrent theme. The final act of UNCTAD I, after having established fifteen 'trade and development' principles, dedicated its second session to this pressing issue.²

The spirit of UNCTAD I (from June 2005) intended to promote and improve production and trade of primary products of vital interest to developing countries.³ Five months later, the Arusha Declaration of November 2005 by the African Union recognised that the consistent decline and volatility of commodity prices is one of the most challenging tasks faced by the international community in the commodity sector and stressed the need to address this problem in the Doha Development Round.⁴

Commodities part of WTO agenda

Consequently, the African Group submitted a proposal for concrete modalities to the Committee on Agriculture at 7 June 2006,⁵ supported by the G90, Bolivia, Venezuela,⁶ and a wide range of NGOs worldwide.⁷ The lion's share of the proposal is devoted to the adoption of an appropriate legal instrument clarifying WTO rules to authorise joint actions by producing countries, alone or with

consuming countries, with a view to attaining stable, fair, and remunerative prices. One remarkable difference between this proposal and the December 2008 modalities on commodities text is the abolition of the prospective role of UNCTAD concerning international commodity agreement negotiations and technical assistance for such supply management systems. Besides that, the December 2008 agriculture text mimics the African Group's proposal under the heading "commodities" (paragraph 91 to 102).⁸ The modalities build upon the existing WTO framework, on governmental assistance to economic development and on the commodity agreement exception.

General Exceptions in FTAs

Art. XX GATT is the General Exceptions article that provides possibilities to impose trade-restrictive measures for internationally recognised, important policy objectives, such as the protection of public health or the environment. It provides a general exception to all GATT 1994 obligations. As a result, they offer policy space; however, the exceptions should not be abused to protect national producers under the guise of lofty principles or constitute a disguised restriction on international trade, according to the chapeau of article XX. For instance, the Gasoline Case as one of the first WTO cases, ruled that the United States could not justify its Gasoline Rule benefiting domestic refiners under the exceptions contained in GATT article XX (b), (d) and (g).⁹ For trade in services, art. XIV GATS fulfils an analogous role.

The same legitimate governance priorities agreed upon at multilateral level are also recognised at the regional level: free trade agreements enclose sections on general exceptions. As a rule, parties opt to copy the General Exception articles verbatim into their

FTAs or simply incorporate art. XX GATT in their goods regime and art. XIV GATS in their services regime. This approach is followed by the bulk of FTAs, both North-North as well as North-South. Examples include the New Zealand-Thailand Closer Economic Partnership (art. 15), the Chile-EFTA FTA (art. 21 and 44, respectively), Australia-United States FTA (art. 22.1) and NAFTA (art. 2101).

EPAs: Enlarged scope of General Exceptions

EPAs take a slightly different approach to General Exception provisions. All exceptions, art. XX GATT as well as art. XIV GATS exceptions are simply lumped up together in one article covering the whole agreement. The majority of the EPAs are 'goods only' agreements, but through this technique they also contain General Exceptions for trade in services like those related to privacy protection, protection of public security, and safety. In fact, in all EPAs, including the signed Cariforum EPA, services exceptions are also applied to goods while goods exceptions are also applied to services.

Additional choice in exceptions provide either party more flexibility to deviate from the EPA, e.g. suspending preferential treatment, raising export taxes, or instituting import bans for goods. A small country could be less inclined to utilise general exceptions due to fear of backlash, but it is difficult to predict which party is likely to gain from this enlarged policy space.

“the consistent decline and volatility of commodity prices is one of the most challenging tasks faced by the international community”

Inclusion of WTO General Exceptions into the EPAs

General Exceptions	Articles	EPA Goods regime	EPA Services regime
Services Exceptions	XIV GATS	✓	✓
Goods Exceptions	XX GATT(a) – (g) ¹⁰	✓	✓
	XX GATT (h) – (j) (h): undertaken in pursuance of obligations under any intergovernmental commodity agreement (...) (i): Restrictions on exports of domestic materials (...) as part of a governmental stabilisation plan (j): Measures essential to the acquisition of distribution of products in general or short supply (...) ¹¹	X	X

Source: The (interim) EPAs as presented at www.acp-eu-trade.org/epalagreements.php

EPAs expunge vital WTO General Exceptions

The main problem at hand, however, is not what has been added, but what has been forfeited.

Three important GATT XX General Exceptions relevant to (commodity-dependent) developing countries are not included in the EPAs (see table).

A General Exception expresses an internationally recognised policy objective, which under certain conditions, is more important than GATT-compliance. Art. XX (i) allows for restrictions on exports when the government is trying to keep domestic prices down as part of a stabilisation plan, whereas XX (j) - the Short Supply Exception – encompasses measures affecting exports as well as imports.

The principal omission in light of its relevance, former declarations, and efforts made at the WTO is the omission of art. XX (h) on commodity agreements. As it currently stands, the EU does not recognise this measure as a legitimate policy aim, which clashes with every effort made in this area, ranging from UNCTAD I to the present WTO modalities. In this respect, the removal of the commodity agreements exception means the formal demise of any type of International Commodity Agreement affecting EU trade. All ACP States have conceded to the EU's view on commodity agreements as revealed by non-inclusion into all EPAs.

The topic of commodity agreements has been out of grace since the 90s when the hegemony of markets seemed to be established. While we have not touch upon the substance of commodity agreements, it suffices to say that they have been a viable

tool to provide more stable, equitable, and remunerative prices. No system will be perfect in its design, whereas the main challenge is political will between producing countries and/or between producing and consuming countries.¹²

According to Pascal Lamy, commodity agreements are acceptable in the multilateral context, but countries may make a sovereign choice to sign bilaterals with provisions going far beyond WTO requirements taking precedence over multilateral agreements.¹³ The correctness of his statement concerning the legal status of bilateral agreements is debatable, but mainstream legal thinking suggests bilateral agreements supersede multilateral ones as *lex specialis*. This implies that whatever package in the Doha Round is reached on commodities and thereby on art. XX(h), the EPAs provisions, rather than the Doha package, will be in effect.

If the African Group and other developing countries are serious about their declarations and efforts made at the WTO, they should address the issue of commodities in the next (mini-)ministerial as it became part of the modalities after the Hong Kong ministerial.

Regardless of the outcomes of the legal discussion or the Doha Round negotiations, these bilateral omissions threaten viable policy options considered by all ACP states as part of their development toolbox, and viewed as legitimate means to reduce poverty. No justifiable reason exists for omitting three art. XX GATT exceptions including the one related to commodity agreements. This WTO-deficiency of the EPAs should therefore be corrected through modification of the General Exceptions clause in the EPA.



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Notes

- 1 Global Economic Prospects 2009, Commodities at the Crossroads, p. 85.
- 2 Final Act of UNCTAD I adopted 15 June 1964, p. 12.
- 3 G-77/SS/2005/2 par. 19. Re-iterated in "Global Initiative On Commodities," May 2007.
- 4 Arusha Declaration and Plan of Action on African Commodities.
- 5 WTO document TN/AG/GEN/18.
- 6 Declaration on 'Development concerns and issues in the current WTO negotiations', 21 June 2007.
- 7 "Call for Action on the Crisis in Agricultural Commodities."
- 8 WTO document TN/AG/MI/4/Rev.4.
- 9 www.wto.org/english/tratop_e/envir_e/edis07_e.htm.
- 10 The interim SADC EPA does omit XX GATT(b) related to protection of human, animal or plant life or health.
- 11 The interim ESA, EAC, and Pacific EPAs do include this exception.
- 12 See also the first and only FAO Commodity Market Brief, issued in 2006.
- 13 Statement made at the conference "Confronting the Global Food Challenge" in a plenary session, 25 November 2008.

Building bridges: Supporting services negotiations in the East African EPA

Francis Mangeni

In the East African Community (EAC) countries (Burundi, Kenya, Rwanda, Tanzania and Uganda), the services sector has become an increasingly important contribution to economic growth and, specifically, to poverty eradication programmes through employment generation, remittances from abroad, and internal linkages with other sectors. In Kenya, the tourist sector contributes more than 64% of the GDP, subject to occasional fluctuations caused by security alerts and the recent political instability.



In Uganda, the services sector makes up just over 42% of the GDP and has been growing at an estimated rate of 6.8% ahead of the agriculture sector, which still employs over 80% of the population. Tourism is not only a leading destination of foreign direct investment (FDI), but also as the largest sub-sector, it contributes over 60% annually to services. Estimates are that about 90% of jobs advertised are in the services sector. The major sub-sectors are tourism and related services, education, information and telecommunications, financial services, health, energy, and construction.¹

The services sector has high potential for growth in the region. In the tourism sub-sector, there are key investment opportunities for accommodation and construction, conferences, catering and entertainment, tour operators, water sports, eco-tourism facilities, privatisation, and joint ventures. While the coastal regions provide warm sunny beaches for holiday, the hinterlands have national parks, unique people and culture, lakes and rivers, flora and fauna, bird life, and the Lake Victoria islands.

On the potential for growth, a supportive view was provided by the WTO Secretariat in its report for the Trade Policy Review of the EAC countries, which found that:

The potential of the services sector remains largely unexploited in the EAC. In tourism, for example, where the EAC's attractions are among the best in Africa, inadequacies in infrastructure and marketing/promotion, financial constraints, security issues, and lack of skilled labour have limited its development. Further liberalisation and commitments under the [General Agreement on Trade in Services (GATS)]

should contribute to attracting investment in services, in general, and should improve the efficiency of other economic activities and the competitiveness of EAC's exports, especially by reducing costs related to, inter alia, telecommunications, transport, and energy.²

The EAC countries consider tourism to be important and their GATS schedules include liberalisation commitments in this sub-sector. However, the tourism sub-sector has attracted concern globally, particularly arising from package holidays given through operators based in origin countries, the result being that destination countries reap unsatisfactory gains from tourism. In the case of Uganda, for instance, notwithstanding the phenomenal increase in tourist arrivals in the countries assessed at about 123% since 1992, estimates are that expenditures to Ugandan tourism service providers have increased only by 16%.³ There are other concerns as well, such as the effect on the environment and local communities.

The Cape Town Declaration on Responsible Tourism of August 2002 is an attempt to address some of these concerns and it provides a good indication of issues that could be addressed in EPA negotiations. In particular, it is encouraged that tourists should spend sufficiently in destination countries and there should be significant economic gains for local communities. In the context of the EPAs, a practical implementation of this would include commitments for destination tour operators to establish commercial presence in the EU, joint ventures, and guidelines on equitable sharing of incomes from tourism. EAC countries could adopt policies that closely involve local communities in tourist activities. In Uganda, for example, there is a deliberate

policy to mainly employ wild life guides and workers in the hospitality industry from the local communities inhabiting the tourist areas. Physical needs in the sector include decent and affordable accommodation, particularly outside the urban areas. Another important need is frequent international air travel to the countries from major origin countries including the EU. Currently, Nairobi is the regional hub and fares between Nairobi and cities within the region are exorbitant on Kenya Airways, which is widely considered to monopolise many routes. Ugandan operators have therefore expressed concerns that this high fare discourages tourists in Kenya from proceeding to Uganda as well. Moreover, key upcountry airports are in a state of disrepair or are totally dysfunctional. Road, railway, and water transport needs improvement as well. The railway network in the EAC region is hardly modern, which is why most travel is via poorly maintained roads. Water transport, including on Lake Victoria, is, at best, considered scarce.

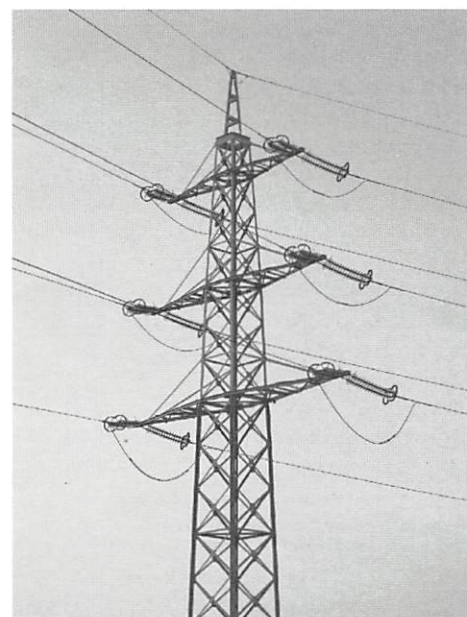
There are training needs as well. The quality of hospitality and professionalism varies among the countries. There are many accounts that claim Kenya and Tanzania have an edge over their neighbours. Yet, there seems to be a feeling in Tanzania that the comparably poor quality of English spoken in the hotel and catering industry puts Kenyans at an advantage, which results in Tanzanians preferring to employ Kenyans.

The liberalisation of the telecommunications sector has had considerable results. In Uganda for instance, according to the Uganda Communications Commission, mobile telephone lines increased from 3,000 in 1996 to 5,163,414 by December 2007; the number of fixed telephone lines rose from 45,145 in 1996 to 165,788 by December 2007.

Mobile phone operators have grown from just one in 1996 to four in 2007. There are over ten internet service providers, and 130 FM radio stations. Foreign exchange inflows from the Information and Communication Technology (ICT) sector as a whole have risen from practically no exports in 2001 to over USD 10 million annually. Moreover, a regulatory authority is in place with licensing and intervention powers demonstrating greater possibilities for electronic commerce and market information.

Challenges remain, however. Rural areas have not benefited as much from the telecommunications revolution in the region. Limited internet bandwidth results in inefficiency. The private sector seems to be leaps and bounds ahead of governmental measures to promote sharing of networks, interconnectivity, and a single market in telecommunications services, which, though admirable, could have adverse implications for consumer protection. While Kenya and Uganda have subscribed to the GATS reference paper on telecommunications, which deals with anti-competitive practices, other East African countries have not.

The liberalisation so far attained, particularly on an autonomous basis, should be safeguarded, together with flexibility and policy space. While EPA commitments would assist in ensuring the credibility and non-reversal of the progress made, this should not be at the expense of adjustment and corrective mechanisms for addressing adverse developments.



In the context of the economic integration processes, the liberalisation of services will be based on a negative-list approach in order to rapidly establish a single market in services. EPA negotiations should support this process through development co-operation and by assisting a harmonised approach for all EAC countries in their external trade relations on the basis of a shared platform provided by the common market.

In the context of public utilities and social infrastructure, a key defensive interest is to protect the public from inefficiency and market failure, anti-competitive practices, and abuse of a dominant position, as well as shortages and social dislocation from unscrupulous dealings and fraud. The privatisation experience has demonstrated the possibility of some serious adverse consequences for the public. Privatisation of electricity and water distribution in Uganda resulted in shortages and dramatic hikes of tariffs. Various banks collapsed with dire consequences for depositors, before new laws and tougher regulation were introduced. In Tanzania, unscrupulous dealings were discovered in the provision of electricity and water by foreign companies that were either "brief-case" companies or that had charged exorbitant and unjustified fees and fines from a developing country government.

Infrastructural services should benefit society as a whole and assist in social economic development to ensure social justice and sustainable development. Due to higher poverty levels in rural communities, some commercial key services are less available; poverty eradication initiatives must squarely target these areas. Information and telecommunications (to assist e-commerce for instance), financial services (to provide reasonably priced and adequate credit), transportation (to assist national and regional trade and interconnectivity), and energy (to assist efficiency and modernisation), must equally benefit rural areas as well.

In terms of regulation and sequencing, effective regulatory authorities should be in place before liberalisation of the sub-sectors. Various sub-sectors have regulatory authorities (education, communications, financial services, and most professional services for instance), but there are no authorities in a large number. In terms of pace, the liberalisation should be gradual and have appropriate safeguards so that adverse consequences can be addressed through adjustment and corrective measures.

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Infrastructural services should benefit society as a whole and assist in social economic development to ensure social justice and sustainable development.

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Identification of offensive interests should be based on past experience with liberalisation, export performance and returns, credible positive impact and inflows, and the likelihood of promotion of regional development objectives.

The main trade objective of EAC countries has been to secure enhanced access to the EU market for natural persons (mode 4 in GATS), covering both professional and non-professional persons. In this regard, an appropriate relaxation of the extensive restrictions in the EU has been sought. Proposals have included the establishment of predictable and substantial quotas and a special user-friendly business visa system. Other modes of interest include the establishment of commercial presence (mode 3) particularly in the tourism sub-sector for operators and agents, as well as cross border supply (mode 1) in the information and telecommunications and business services sub-sectors. Priority sub-sectors for exportation to the EU include tourism, information and telecommunications, professional services, construction, and health-related and social services.

Overall, the main objective in importation of services from the EU is assistance in building physical and social infrastructure, increasing development financing, promoting health, eradicating poverty, and addressing key constraints to achievement of the Millennium Development Goals.

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Notes

- 1 Private Sector Foundation of Uganda, Sectoral and Analytical Studies to Guide Uganda in EPA Negotiations, Uganda Programme on Trade Opportunities.
- 2 WTO document WT/TPR/S/171 dated 20 September 2006, paragraph 24.
- 3 Private Sector Foundation of Uganda, op cit.

WTO

Roundup

WTO seeks to limit protectionism during economic downturn

The WTO is set to begin monitoring trade policies introduced by governments struggling to cope with the worldwide economic crisis, amidst growing concern that tit-for-tat protectionism could deepen what is already the worst downturn in decades.

WTO Members largely welcomed a recent report describing a wide range of trade-related policies governments have adopted since last September, ranging from tariff increases and licensing requirements to financial and auto sector bailouts, various kinds of export support, and moves to ease the effects of the credit crunch on trade finance.

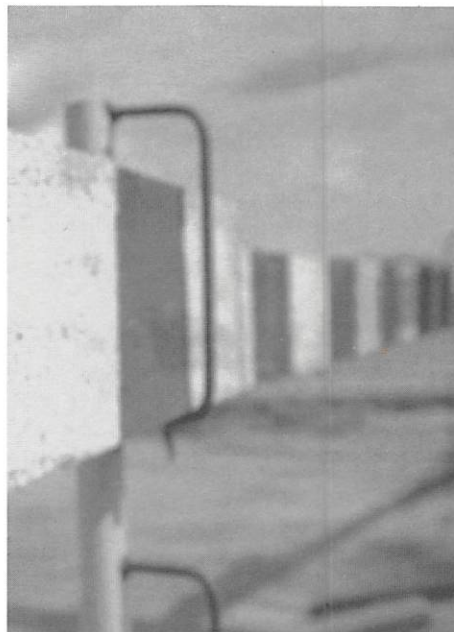
The secretariat of the Geneva-based global trade body appears set to issue similar reports every two or three months, with the next one expected in mid-March, just ahead of a major summit of the Group of 20 leading industrialised and developing nations.

The 26 January 2009 report, prepared by the office of Director General Pascal Lamy, said that there had been only "limited evidence" of increased trade barriers thus far, though it warned of protectionist risks. Nevertheless, diminished demand around the world has led the International Monetary Fund to project that global trade volume will shrink by 2.8% this year – the deepest decline in over twenty-five years.

Lamy presented the report to a 9 February 2009 meeting of the Trade Policy Review Body, a WTO committee charged with examining Member governments' trade policies. He called for vigilance with regard to trade-distorting policies, saying that the world was only at "an early stage in the policy response" to the recession.

Sources say that many delegations pledged to improve how they provide the WTO with information about their trade policies. Governments are notoriously unreliable about notifying their own farm subsidy and tariff policies to the WTO, routinely flouting various transparency requirements.

Several developing countries called attention to the crisis' origins in the West, particularly the US, and called for the next report to have a special focus on how low- and middle-income countries are faring. Bolivia



questioned whether the Director General had overstepped his mandated annual review of the trading environment, saying that there had been inadequate multilateral discussion about the report's purpose. The Bolivian ambassador also said that monitoring activities should explore the trade distortions resulting from financial bailout, and should clarify whether developing country trade measures are motivated by the crisis or by other domestic challenges. She noted that developing countries often do not have money to provide industrial aid, and thus have to resort to tariffs.

The outgoing chair of the Trade Policy Review Body, Nigerian Ambassador Yonov Frederick Agah, promised that his successor, as well as the new chair of the General Council, would hold consultations with Members about the monitoring process.

Ag talks resume minus new US trade rep

In the meantime, the chair of the WTO agriculture negotiations announced plans to continue his recent series of consultations with negotiating groups, in a bid to restart the faltering Doha farm trade talks. But Members remain cautious about how much progress can be achieved in the absence of a new US Trade Representative, whose nomination has still to be confirmed by Congress.

The chair, Ambassador Crawford Falconer, told a 12 February 2009 meeting open to all Members that he planned to convene 'carousel' meetings to explore perceptions of the overall "balance" in his draft text, released in December 2008. Falconer expressed hope that, after two 'rounds' of such consultations perhaps lasting about a month, a set of issues would then emerge that Members could discuss in small invitation-only meetings involving a cross-section of interests. These would be interspersed by 'transparency' meetings to which all Members would be invited.

Trade sources acknowledged, however, that the talks could amount to 'treading water' until a new US Trade Representative is in post, briefed, and willing and ready to engage in trade negotiations. Some delegates suggested that it could take much of March for Obama's nominee, Dallas mayor Ron Kirk, to be briefed on trade policy issues after being confirmed by Congress.

If this were to be the case, delegates said, it would be difficult for Members to reach agreement on more 'political' issues until at least April, when twenty major trading powers are due to meet in London for the G-20 meetings. Other negotiators suggested that little might be achieved in the negotiations until after the Indian elections in May.

However, others expressed cautious optimism that progress on technical issues could be achieved through the process outlined by the chair, as groups clarified their positions on complex questions such as the 'special safeguard mechanism' that developing countries will be able to use to raise tariffs temporarily in the event of an import surge or price depression. Falconer himself indicated that the consultations could allow Members to discuss differences of opinion concerning his December text, as well as misunderstandings.

Parts of this article originally featured in

Bridges Weekly Trade News (see below). They appear here in a modified form.

Sourced from:

- 1 "WTO Farm Talks Restart As Members Await New US Trade Rep," Bridges Weekly Trade News Digest, Volume 13, Number 6, 18 February 2009.
- 2 "WTO Warns against Protectionism, Promises Increased Monitoring," Bridges Weekly Trade News Digest, Volume 13, Number 5, 12 February 2009.

EPA Update

Melissa Julian

ACP-EU Joint Parliamentary Assembly debates draft report on EPAs

Debate over a draft report on Economic Partnership Agreements (EPAs) and their potential impact on the African, Caribbean and Pacific (ACP) states¹ ensued at the ACP-European Union (EU) Joint Parliamentary Assembly's (JPA) Economic Development, Finance and Trade Committee meeting on 11 February 2009.² Disparagement of the report came from several Members of the European Parliament (MEPs) who claimed it is identical to the resolution on the development impact of the EPAs, adopted by the European Parliament (EP) on 5 February 2009. That resolution came following fundamental differences in approaches between the Parliament's International Trade and Development Committees, an alliance of Christian Democrats and Liberals supporting the resolution, and political parties of the left that voted against the initial text. The left accused the right in the EP of "ganging up on the poorest countries," pushing them to conclude dubious trade agreements that would open up their economies to EU exports.³ This division does not augur well for those MEPs that want to delay the European Parliament's assent—required for the EPAs to enter into force—until after ACP parliaments have ratified the EPAs.

European Trade Commissioner holds informal EPA discussions with key ACP Ministers

Ministers representing ACP regions outlined their positions on the contentious issues that need to be effectively addressed in the EPA negotiations to realise the agreements' development dimensions (in relation to scope, sequencing, policy space, and financial support), in an informal meeting with EU Trade Commissioner, Catherine Ashton on 27 January 2009. The Commissioner stressed the need for maximum flexibility to find sustainable solutions to problems encountered in the negotiations. She indicated that the European Commission would re-examine its proposed Most Favoured Nation (MFN) clause in the EPA. ACP Ministers stressed that the Commissioner's political will must to be translated into action in EPA technical level negotiations. All participants agreed on the need to monitor EPA implementation.

African Union calls for regional stakeholder involvement in implementation and monitoring⁴

Increased involvement of Regional Economic Communities and other stakeholders in the

implementation and monitoring processes of the African-EU dialogue was called for during the African Union Summit on 26 January—3 February 2009. Heads of state further requested the AU Commission to submit a special report to each Session of the Executive Council on the progress made in the implementation of the African Union's partnership with the European Union elaborated in the Joint Africa-EU Strategy.



Central Africa and European Commission resume EPA negotiations

Persistent, fundamental divergences on how to deal with key development, trade liberalisation and trade-related issues (TRI) may have to be resolved at the political level following the European Commission and Central African technical and senior officials EPA negotiating round on 2-10 February 2009. For more information on these issues, please see the separate articles on this meeting in this edition of TNI.

West Africa finalising regional and EPA Development Programmes

The regional validation process for the West African Community Development Programme and the EPA Development Programme⁵ was launched at a regional workshop on 2-4 February 2009. Participants agreed on a road map to elaborate the programmes in line with strategic national and regional frameworks. The plan focusses on food security, agri-food, textiles, tourism, private sector development, research, technological innovation, and natural resources.

Participants felt the EPA Development Programme's estimated 9.5 billion Euro was insufficient as it does not represent the total cost of all EPA measures necessary and it focusses only on the priorities of the first five years of the EPA. Officials also re-affirmed the necessity to include precise commitments in the EPA on the implementation of the EPA Development Programme. It was agreed that governments must contribute to financing the programmes with support of international donors.

At a meeting of the West Africa Common External Tariff (CET) Management Committee, officials called on the regional commissions to find a way to maintain WTO-compatible tariff liberalisation exclusions that will allow sources of finance to be maintained in the CET and EPA. They also raised concerns, inter alia, with regard to the European Commission's EPA proposals for MFN, non-execution clause, export subsidies, rules of origin, and technical barriers to trade. The meeting was held from 2-6 February 2009.

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The left accused the right in the EP of "ganging up on the poorest countries," pushing them to conclude dubious trade agreements that would open up their economies to EU exports.

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ESA Ministers prepare for talks with the European Commission on contentious issues

Eastern and Southern Africa (ESA) Trade Ministers considered possible options to advance EPA negotiations on contentious issues presented in a report prepared by the 20 January 2009 ESA Ministerial Task Force⁶ during a meeting on 9 February 2009.¹ The Ministers maintained that special and differential treatment to allow least-developed countries (LDCs) to offer less than the European Commission's proposed 80% trade liberalisation and longer than fifteen years transition to protect tariff revenues and prepare for increased competition is WTO-compatible based on past precedent. This would enable all ESA states to submit market access offers acceptable to both parties and enable all LDCs to be part of a regional EPA that supports regional integration processes.

(Continued on page 14)

Continued from page 13

Ministers also maintained that the region's ability to introduce new export taxes or quantitative restrictions provides critical policy space to pursue development objectives. They argued that the European Commission's proposal to prohibit the use of new taxes and restrictions after the EPA is signed should be dropped since it is not required for WTO-compatibility.

Ministers continued to object to the European Commission's proposed MFN clause that would limit the scope of any ESA country to sign an ambitious trade agreement with its major trading partners where the margin of preference that ESA countries are likely to obtain is higher than what they have obtained under the EPA. They also maintained that there is a necessity for flexibility in modifying tariffs in line with the evolution of the regional integration programme; this too, they noted, is WTO-compatible. Furthermore, improved asymmetrical rules of origin must allow unconditional cumulation with all ACP, and outermost regions, and neighbouring countries, according to the Ministers.

ESA ministers are also seeking a clear, joint understanding and legal commitment on more development resources for specific development assistance, along with support for EPA adjustment costs and implementation. ESA insists on using the COMESA Fund for financing. It was argued that a costed and prioritised development matrix to support EPA implementation should be included in the EPA and trade liberalisation should be linked to reaching some development benchmarks.

EAC increases efforts for effective regional integration

Recommendations to move beyond purely national interests and build on the demonstrated strengths of established institutions were adopted at a high level retreat of EAC institutions, the Secretariat, the East African Legislative Assembly and the East African Court of Justice on 9-10 February 2009.⁸ Civil society and private sector representatives also participated in the meeting. The recommendations also call for prioritisation of the regional integration agenda within national agendas for enhanced integration, removal of barriers to trade, increased investment promotion, movement of people, goods and labour, and to bolster employment opportunities. The proposals adopted would require deliberate efforts by EAC Member States, institutions,

civil society, and the private sector.

In other regional news, an East African Joint Trade Commission will be established to harmonise trade policies, develop an East African Trade Regime, and conduct trade negotiations on behalf of the EAC Member States as agreed at the end of January.⁹



Photograph courtesy of Reuters

“
Commissioner Ashton emphasised that the process cannot drag on much longer as the current status quo is unsustainable
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European Commission showing flexibility in SADC EPA negotiations

European Trade Commissioner Catherine Ashton agreed to put the imminent signature of the Southern African Development Community (SADC) interim EPA on hold pending the outcome of a Joint European Commission-SADC senior official two-day meeting scheduled for the week of 9 March 2009. This followed her bi-lateral meetings with South African and Botswana Foreign and Trade Ministers and a joint meeting with Angolan, Namibian, and South African (ANSA) Ministers on 9-10 February 2009. During these meetings, discussions focussed on ANSA concerns,¹⁰ outstanding tariff negotiations, and how to reach a harmonised

relationship between SADC and the EU so as not to undermine regional integration. Commissioner Ashton also acknowledged concerns related not only to regional integration, but developmental policy space as well. She stressed the importance of finding ways to keep everyone on-board in the SADC IEPA process.

Now, European Commission technical officials must translate political statements of goodwill into concrete compromises and resolutions on contentious issues at the March 2009 meeting. The ANSA has argued that technical solutions are available to help solve the contentious issues since these issues do not relate to an area essential for WTO-compliance.

There remains, however, scepticism in the region based on a 21 January 2009 European Commission 'non-paper', which claimed that adjustments can only take place in the context of the negotiations for a full EPA and that reopening the negotiations for the IEPA is not a practicable approach.

Commissioner Ashton emphasised that the process cannot drag on much longer as the current status quo is unsustainable because it is subject to WTO challenge and also because some SADC EPA countries are eager to sign the EPA. If negotiators cannot agree, discussions will have to be pursued at the political level.

Caribbean divisions hindering EPA implementation

Divisions over the process of regional integration resulted in the postponement of the January 2009 meetings of the Caribbean Community and Common Market (CARICOM) Single Market and Economy (CSME) Prime Ministerial Sub-Committee. The meeting was set to discuss the faltering single market and a Special Committee of CARICOM Heads of State and Government was scheduled to evaluate the management and governance of the Caribbean Regional Negotiating Machinery (CRNM).¹¹ "The question is whether [the postponements] will provide the opportunity for more sober reflections or, as feared by some, whether it will deepen divisions and sour relations that could prove quite harmful to the future of CARICOM," said regional analyst Rickey Singh.¹²

Progress in establishing a window within the Caribbean Development Fund (CDF) to

“

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channel and mobilise development support resources from Europe to CARIFORUM member states in accordance with the CARIFORUM-EC EPA was the focus of discussion during the Caribbean Council for Finance and Planning (COFAP) Meeting of Officials on 27-29 January 2009.¹³ Disbursement flows from EPA-related financial instruments will be kept separate from other instruments of the CDF intended to specifically assist the development of CARICOM.¹⁴

In related news, European Commission Development and Trade officials meeting with CARIFORUM Secretary General, Edwin Carrington, on 13 February 2009 made it clear that funding for an EPA implementation unit would be forthcoming only if it included all CARIFORUM Member States.

The European Commission also undertook a mission in January 2009 to Haiti with a view to facilitating Haiti's accession to the Cariforum-European Commission EPA.

Pacific awaits European response to EPA proposals

Pacific ACP (PACPs) countries sent the European Commission detailed proposals in a number of areas following on from the September 2008 technical level discussions. The European Commission has relayed some responses, including a proposal for PACPs to assume detailed obligations in Intellectual Property Rights and Government Procurement, which the PACPs have thus far declined to consider for the foreseeable future. The PACPs seek to agree an EPA as the basis on which a long-term partnership can be developed, with deepening legal obligations assumed by the PACPs over time as their capacities increase.

For a longer version of the EPA update, please see:
www.acp-eu-trade.org/newsletter/tni.php

Notes

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- 6 ESA EPA core group of Ministers discussed contentious issues 20.01.09 about.comesa.int/attachments/080_e-COMESA_newsletter_188.pdf.
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- 13 The Caribbean Council for Finance and Planning Meeting of Officials. Results. 27-29.01.09 www.dgroups.org/groups/CoOL/index.cfm?op=dsp_resource_details&resource_id=52276&cat_id=6364.
- 14 COFAP also discussed progress attained in devising a window within the Caribbean Development Fund (CDF) to channel and mobilise development support resources from Europe to CARIFORUM member states in accordance with the CARIFORUM-EC Economic Partnership Agreement (EPA). See: new.cnm.org/index.php?option=com_content&view=article&id=366:rnm-update-0901&catid=59:rnmupdates&Itemid=128.

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Calendar and resources

ACP-EU Events

- March**
- 2 CARICOM Council of Ministers of trade and economic development (COTED) special meeting, Guyana.
- 6 West Africa Ministerial EPA Follow up Committee, Abuja.
- 9-10 West Africa meeting with civil society and private sector on EPAs, Abuja.
- 11 Inter-sessional meeting of the CARICOM Heads of State and Government on the governance of the CRNM, Belize.
- 9-13 SADC-European Commission EPA technical and senior officials' negotiations, Botswana.
- 10-12 EAC-European Commission EPA technical negotiations, Mombasa.
- 11 10th Meeting of the Caribbean Regional Preparatory Task Force, Guyana.
- 12 CARIFORUM-European Commission meeting on 10th EDF Programming, Guyana.
- 12-13 20th Inter-sessional CARICOM Conference of Heads of Government meeting, Belize
- 13 WTO Information Session on EU-ACP EPAs, Geneva.
- 16-18 5th Ordinary Session of the African Union Ministers of Trade and senior officials meeting, Addis Ababa.
- 23-27 COMESA meeting on tariff alignment schedules: review of progress on sensitive products and national alignment schedules, Lusaka.
- 23-27 CEMAC-EC meeting at technical and senior officials level (venue TBC).
- 29 European Parliament vote on entry into force of CARIFORUM-European Commissions EPA and Cote d'Ivoire-European Commission IEPA.
- 27-29 SADC-European Commission EPA high-level workshop
- on trade in services and investment in EPA negotiations, Swaziland.
- 30-02 ESA technical meeting on trade in services, Lilongwe.
- 30-03 SACU customs Commission meeting and SACU Council, Maseru.
- 30-03 Joint West Africa-European Commission EPA technical negotiations, Brussels.
- 31-01 Task Force workshop on trade and investment for FCORs and OCTs in the CARIFORUM-European Commission EPA, Martinique.

- April**
- 6-9 17th Session of the Joint ACP-EU Parliamentary Assembly, Prague.
- 14-16 West Africa RPTF and donors' meeting on EPA development programme (PAPED) financing, Abuja.

WTO Events

- March**
- 3-4 Council for Trade-Related Aspects of Intellectual Property Rights.
- 4 Committee on Regional Trade Agreements.
- 9 WTO Introduction Day.
- 13 Committee on Trade and Development.
- 16-17 Technical Barriers to Trade Committee Workshop on the Role of International Standards in Economic Development.
- 18-19 Committee on Technical Barriers to Trade.
- 24 Council for Trade in Goods.
- 25+27 Trade Policy Review Body – Fiji.
- 30 Committee on Trade and Development – Special Session.
- 30 Working Party on GATS Rules.
- 31 Committee on Trade in Financial Services.
- April**
- 2 Committee on Trade and Development - Session on Aid for Trade.
- 6+8 Trade Policy Review Body – European Communities.
- 8 Council for Trade in Services - Special Session.

Resources All references are available at: www.acp-eu-trade.org/library

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