

Trade Negotiations Insights

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Glass half empty or half full? The move towards a comprehensive EPA

San Bilal and Victoria Hanson¹

European Union member states came together in May to agree to a series of so-called conclusions on the Economic Partnership Agreements with the ACP. During what is supposed to be the last General Affairs and External Relations Council before the interim EPAs are signed, ministers reconfirmed their desire to finalise comprehensive regional EPAs while getting the interim agreements signed and notified to the WTO as soon as possible.² EU trade Commissioner Peter Mandelson subsequently said he expects to begin this process for the seven interim agreements "after the summer," a timeframe that he deems "will stretch WTO patience."³

A target on the move

Slipping deadlines are nothing new in the EPA process, as in any trade negotiation. It reflects the difficulties, technical and administrative, in finalising the interim agreements (so-called 'legal scrubbing' in negotiators' jargon) to be signed, hurdles made all the higher given that many of the agreements were concluded in haste. It probably also reflects some uneasiness by certain African countries regarding the content of these interim agreements. The Caribbean, the only region to have concluded a full-EPA, is due to sign in July. For the rest, negotiations towards a full EPA continue at the technical level. While on the surface regions appear to be making good progress, several factors could prevent a smooth and speedy conclusion of comprehensive EPAs.



To start with, there seems to be a difference between the technical discussions, which have restarted and seem to be going in the right direction, and the political mood, which still seems to be lacking leadership and a sense of direction. As many decisions will be political in nature there is a need to avoid the pre-2008 mistake of leaving many contentious issues to the end of negotiations and to rely solely on the technical experts. African countries need ministers to make effective political decisions on what products to liberalise and by how much, as well as choosing which reforms and accompanying measures are necessary.

Another concern is the uneasiness surrounding the signing and possible ratification of interim agreements, which are by definition incomplete. These

Editorial

The global food crisis has been making international headlines in recent weeks. Since the start of this year there has been a huge increase in the price of food, hitting the pockets of millions of the world's poorest. This is particularly true in Africa where many incomes are already low. Here, sharp hikes for essential food and fuel have triggered riots and protests in countries from Kenya and Somalia to Cameroon and Senegal.

At the start of June, UN Secretary General Ban Ki-moon urged nations to seize an "historic opportunity to revitalise agriculture" as a way of tackling this food crisis. Ban told a conference in Rome that food production would have to rise by 50% by 2030 to meet demand and that export restrictions and import tariffs should be reduced to alleviate the situation.

As higher food prices may be here to stay, world leaders are trying to help countries devise solutions by identifying the policies, strategies and programmes that will secure food for the future. As such, the TNI team thought it was important to dedicate some page space this month to looking at the question of agriculture and how this links to the EPAs, Aid for Trade and the negotiations which are taking place at the multilateral level.

Corinna Braun-Munzinger and Paul Engel reflect broadly on Aid for Trade in the agricultural sector, highlighting the need for agriculture and rural development to be given a more prominent position on the international policy agenda. This article is complemented by an in-depth look at the key issues at stake for ACP-EU agricultural trade by Vincent Fautrel and Paul Goodison – two of the leading experts in this field.

What seems to emerge is that there are deep and profound concerns in some African regions over the impact that any process of tariff elimination on imports of European food and food products could have on African efforts to move up the value chain. Similarly, the fisheries sector links directly into the question of food and food security, so to address this, Liam Campling has taken a close look at the rules of origin for fish as they currently stand in the interim EPAs.

Differences of opinion over agriculture are also to blame for the slow pace at which the Doha Round has moved forward. Following the release of the latest long-awaited texts in May, there were hopes that a ministerial could take place in Geneva in June. However, as TNI was going to press it appeared that Don Stephenson, the chair of the non-agricultural market access talks, had suspended any further meetings after a week of consultations with no progress.

It remains to be seen where the progress - or lack of it - at both the bilateral and at the multilateral level will lead. As we approach the traditional summer holiday period, we will publish a double July-August issue of TNI. As such, we would like to encourage contributions and feedback to help us produce the most relevant and useful publication we can. All comments can be sent to vhanson@ictsd.ch

Enjoy the June issue of TNI.

contain provisions that still raise serious concerns, notably in Africa, making the negotiations towards a full EPA even more challenging. Difficult enough at the country level this becomes even more problematic when trying to find coordination and cohesion at the regional level. Moreover, what does this mean for the ACP as a whole? The Caribbean and the Pacific appear to have broken away while the African regions are trying to regroup.

Council conclusions: approaching the finish line?

So what did the Council conclusions reveal about the state of play for the interim EPAs? First and foremost it appears that EU member states are working hard to accommodate many of the ACP concerns in a final comprehensive EPA. The Europeans acknowledged the ACP desire for a flexible and pragmatic approach towards adjusting individual or sub-regional interim agreements, taking account of different needs and various levels of development. While this did not stretch to any specific readiness to renegotiate the interim agreements before official signature, the Council agreed that ACP countries and regions could draw, if appropriate, on provisions agreed by others in their EPA negotiations.

There was a distinct insistence that this flexible and pragmatic approach should be used to secure deals that support regional integration (the phrase was repeated no less than twelve times in the short five page document). However, this key objective does not currently seem to translate into reality. Some of the strongest ACP disquiet stems from the regional dis-integration which has accompanied the EPA process: traditional blocs have splintered turning friend into foe.

The Council also pledged to work closely with the ACP to provide specific EU regional Aid for Trade (AfT) packages. These would cover all six categories of AfT, including appropriate EPA accompanying measures, primarily designed to enhance productive capacity. The effective establishment and delivery of such AfT packages, which address both regional and national needs, will be key in helping trade, regional integration and EPAs in particular to deliver on their development promises.

Finally, EU member states stressed the importance of setting up comprehensive EPA institutions, notably to monitor the development of EPA implementation and its subsequent impact on trade. An immediate challenge facing the creation of these EPA institutions, which should reflect regional specificities, will be to design and operate them in a way that ensures synergies with the existing EU-ACP institutions established under the Cotonou Agreement.

External pressure

At the same time as technical EPA talks are taking off, momentum in the WTO has increased with the release in May of another set of blueprints for a possible Doha deal. Some ACP countries have suggested waiting to see what happens at the multilateral level before making new commitments, notably on services, in the context of a full EPA. Questions of strategy aside, this increased activity in Geneva must be putting strains on ACP resources to pick up the pace and meet the challenge of negotiating in both arenas.

Filling the glass

ACP and EU ministers are now set to meet in a joint Council meeting in Addis Ababa on June 8-13. Moreover, Nicolas Sarkozy, who takes over his six-month stint as EU Council President at the beginning of July, has assigned a member of the French Parliament, Christiane Taubira, to assess EPAs and report back to him on June 15. Whether they can hammer out concrete solutions, and whether the Commission would take any such recommendations into account on the long and winding road to signature, remains to be seen.

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² To read the full Council conclusions on EPAs see: www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/gena/100687.pdf

³ From Commissioner Peter Mandelson's address to the Committee on International Trade (INTA) of the European Parliament, focusing on Doha and EPAs, May 27 2008. www.ec.europa.eu/trade

Aid for Trade in the agricultural sector: reflections on a fruitful dialogue

Corinna Braun-Munzinger and Paul Engel¹

It has become obvious that agriculture and rural development need to be given a more prominent position on the international policy agenda. Rural development strategies should take market demands for agricultural products as well as other goods and services into account, which in most cases is a process that can be successful if led by the private sector. However, market-led development should stress the importance of local, national and regional markets, not just international ones.

In this context, 'Aid for Trade' (AfT) could act as a catalyst and support to private sector initiatives through creating a strong institutional and policy environment that will sustain domestic initiatives and attract financial support from international donors. To this end, there is a need to improve delivery mechanisms for aid and to demand assessment to effectively support private initiatives.

Some characteristics of such an AfT agenda deserve to be explored in more depth:²

An integrated approach

AfT efforts are likely to be most sustainable if they integrate social, economic, environmental, institutional, infrastructural and human resource aspects into one coherent approach. This means going beyond a narrow focus on the agricultural sector and agro-industry towards supporting rural development in a wider sense. In essence, such an approach consists of creating a healthy business environment - including rules, regulations and institutions - to enable rural entrepreneurs to explore various strategies, including non-agricultural activities, in line with changing market demands.

The concept of an integrated approach to rural development is not new. Already in the 1970s and 1980s, development cooperation endeavoured to involve stakeholders and address the various needs of rural populations, such as housing or infrastructure, in a comprehensive way. However, this approach neither addressed the regulatory policy environment nor focused decisively on opportunities outside the agricultural and agribusiness sectors. Moreover, earlier efforts often did not pay sufficient attention to market demands. In contrast, today's integrated focus which encourages rural entrepreneurship should be diverse, private sector driven and market-led.

Public support to private initiatives

Traditionally, EU development cooperation has been based on a state-by-state approach; as a result, procedures to assess demands and to deliver funds have often not taken account of private sector needs appropriately.

Flexibility and timeliness of delivery

Investment needs to be available in a flexible and timely manner to support market-oriented processes and allow emerging opportunities to be seized. Delays in planning or delivery may result in a project becoming redundant as market conditions could have changed in the meantime.

Finding a solution faces the challenge of a trade-off between, on the one hand, the need for detailed formulation and thorough assessment of AfT demands (emphasised by many donors) and on the other, the need for flexibility and responsiveness to changing market conditions when allocating funds (stressed by those in the private sector). Finding ways to address this trade-off is likely to be essential to making the AfT initiative meaningful for private entrepreneurs.

Involving all stakeholders effectively

Public-private dialogue is crucial to a process in which private sector initiatives are supported by public funds and policies. Functional dialogue structures allow an assessment of policy instruments from a private sector perspective and can make public officials aware of the most important constraints faced by the private sector.

However, in this respect, the existence of a multi-stakeholder body is necessary but not sufficient.³ For a dialogue to produce well-founded recommendations that effectively feed into the policy-making process, respecting the bottom-up principle of development is key. This means that while discussion should take place at different levels, including the national and regional ones, it always needs to be informed by the concrete requirements of those at the local level. Without this input, a consultative body will not be able to assess which theoretically relevant measures should be adopted to respond to practical needs on the ground.

Lessons from the EU rural development policy

The EU's rural development policy (RDP) provides a good example of an integrated approach that aims at improving the competitiveness of the agricultural sector, while also foreseeing diversification into other areas. In this context, the LEADER axis of the RDP could be a useful point of reference for designing participative local governance structures that ensure ownership to public and private stakeholders.⁴ A concrete example is the Local Action Group in Nord Grande Terre, Guadeloupe, in which private actors (business and civil society) make up a share of 60% of the members.

Way forward

Market-led and private sector driven approaches to AfT are likely to gain even more importance as increasing attention is given to the wider AfT agenda, which includes productive capacity development, as well as sustainability in the face of rising food prices and climate change. Accordingly, a rethink of policy and delivery instruments and new incentives for public-private dialogue have become imperative in making AfT effective.

¹ Paul Engel is the Director of ECDPM and Corinna Braun-Munzinger is a member of ECDPM's Economic and Trade Cooperation Programme.

² On April 14 - 15 2008 a wide range of EU and ACP stakeholders accepted the invitation by the Technical Centre for Agricultural and Rural Cooperation ACP-EU (CTA) and ECDPM to reflect on an AfT agenda that supports the agricultural sector in the ACP under changing market conditions. This article builds on some key issues raised during the meeting.

³ To give a recent example, the Regional Preparatory Task Forces that were meant to identify accompanying measures to trade liberalisation in the context of EPA negotiations have not met some observers' expectations. For more details see ECDPM, 2007. Overview of Article 37(4) Reviews of the EPA Negotiations (ECDPM Discussion Paper 81). Maastricht. www.ecdpm.org/dp81

⁴ LEADER stands for Liaison Entre Actions pour le Développement de L'Economie Rurale (links between actions for the development of the rural economy). See article by Vincent Fautrel and Paul Goodison in this issue.

Aid for Trade: key issues in the ACP agricultural sector

Vincent Fautrel and Paul Goodison¹

The international community recognises that trade liberalisation *per se* does not automatically lead to economic growth and development. It is also broadly accepted that many ACP countries, especially least developed ACP countries, have not been able to fully benefit from enhanced market access opportunities because of non-competitive production capacity, lack of the necessary exporting infrastructure and an inability to meet prevailing standards in high-value export markets. These countries have also been crowded-out of some markets by the domestic support and export subsidies of developed countries. It is in this context that 'Aid for Trade' (Aft) initiatives have emerged within both WTO and EPA negotiations as a mechanism for assisting ACP governments to address supply-side constraints and effectively adjust their economies to trade liberalisation.

In the agricultural sector, these include:

- Upgrading ACP productive capacities and developing trade-related infrastructure in ways that enable ACP producers and processors to take advantage of the economic opportunities created under EPAs;
- Assisting ACP producers and processors to adjust to new market conditions that are emerging at the national and regional levels due to the restructuring and liberalisation processes;
- Supporting ACP governments in the establishment of appropriate legislative and regulatory frameworks for the implementation of new rules governing trade in food and agricultural products with the EU.

In this context, it is important to look at how Aft support can be made operational in the agricultural sector so that ACP countries can successfully undertake this process of structural economic change. Drawing lessons from the existing experience in the ACP and the EU in supporting restructuring in the agricultural and food product sector in the context of the market changes which are underway in the EU constitutes an important starting point for this process.²

This article focuses on the major challenges emerging in the ACP food and agricultural sectors and the need for a coherent and integrated response with regard to Aft deployment.

The major developments: CAP reform

The first major development impacting ACP-EU agricultural trade is the EU reform of its Common Agricultural Policy (CAP). This serves to reduce the value of traditional ACP trade preferences (market prices in the EU are allowed to fall, as farmers are increasingly supported through direct aid payments) and to enhance the price competitiveness of EU agricultural and simple value-added food product exports. One of the clearest current examples of erosion of the value of preferences is the 36% price reduction offered for ACP sugar, which is a direct consequence of administratively-determined reform measures. This process of preference erosion will be compounded by the EU's future bilateral and multilateral commitments to eliminate tariffs in the coming years.

The impact of enhanced competitiveness of EU export prices can be seen in the phenomenal growth in EU exports of food and agricultural products to ACP markets since 1999. Figures show that the value of EU exports has increased by 38.9% compared to a 1% decline in the value of ACP food and agricultural exports to the EU. The same period saw the ACP surplus in food and agricultural product trade with the EU decline by 28.2%.

Total ACP-EU agricultural and food product trade 1999 and 2006

	1999 (€ million)	2006 (€ million)	% change 1999-2006
ACP exports to EU	8,981	8,892	- 1%
EU exports to ACP	3,643	5,060	+ 38.9%
ACP surplus	+ 5,337	+ 3,832	- 28.2%

Source: Eurostat³

In many respects, CAP reform is a long-term structural adjustment programme for the EU food and agricultural sector designed to prepare it for food and agricultural trade liberalisation. Reducing the need for both export refunds and tariff protection has a strong influence on the scope for trade negotiations that the EU has undertaken in the international arena. Indeed, on July 25 2001, the then EU Agriculture Commissioner, Franz Fischler, went so far as to declare that in the future "protecting our farmers need not mean protecting our markets. We believe that preserving our agricultural system can be done without trade barriers."

There are other important dimensions to this CAP reform process, including the growing importance of food safety compliance and verification issues in ACP-EU trade. This is making it increasingly expensive for ACP suppliers to export to the EU market, in some cases leading whole sectors to discontinue exports to the EU (e.g. the Namibian game meat sector). However, there is a further dimension to this food safety issue, namely the extent to which it allows European producers to differentiate their products from imported ones in ways that carry real commercial advantages for EU producers. This development is closely linked to the evolution of food consumption patterns in the EU.

The major developments: changing EU markets

There are now two distinct components to the EU market: 'necessity purchases' and 'luxury purchases'. 'Necessity purchases' are those products where purchase decisions are made exclusively on the basis of price considerations. For 'luxury purchases', in contrast, purchase decisions are not primarily based on price, but on some perceived 'quality' attributes of the product. According to a European Commission-funded study, the EU's underlying demographic means there will be no expansion of overall demand for food and agricultural products in the coming period.⁴ Rather, as EU citizens become more affluent, patterns of food consumption will change, with consumers increasingly favouring high-quality products and convenience foods ('luxury purchase' products). In contrast, in the face of a progressive liberalisation of imports of agricultural products,

it is expected that prices of undifferentiated agricultural commodities in Europe ('necessity purchase' products) will fall in real terms in the coming years.

It is against this background that a conscious effort is being made within the CAP reform process to shift patterns of European food and agricultural production towards serving this 'luxury purchase' component of the market, not only in the EU, but also globally. EU trade policies aimed at promoting the extension of protection for geographical indications need to be seen in this context. However, critical to the broader thrust is the scheduled deployment of over €70 billion in support to enhancing the competitiveness of EU food and agricultural sector enterprises over the 2007-2013 period. This is taking place under axis 1 of the EU's programmes, with total scheduled rural development spending at €213.2 billion for this period. Measures under these axis 1 programmes are explicitly targeted at supporting a shift in production towards serving expanding 'luxury purchase' markets. Put simply, by shifting EU production towards serving these markets, EU producers will not have to compete on price with low-cost advanced developing country suppliers such as Brazil, Argentina, China and Thailand.

The opposite side of this coin will be an increased EU openness to the import of basic agricultural raw materials and food products serving the 'necessity purchase' component of the EU market. However, this openness will occur against a backdrop of declining real prices for these 'necessity purchase' products on the EU market.⁵

This provokes a dual challenge for ACP agricultural producers:

- a) Getting to grips with improving competitiveness in existing 'necessity purchase' exports or finding new markets;
- b) Getting to grips with developing production to serve 'luxury purchase' markets in the EU, which face much more favourable price trends.

The major developments: the EPA challenge

The final area of change impacting ACP-EU agricultural trade will be that resulting from the conclusion and implementation of Economic Partnership Agreements, involving the progressive elimination of import duties on substantially all imports from the EU into regional groupings of ACP countries. In a context where EU CAP reform aims at enhancing the price competitiveness of EU products on domestic and international markets, removing tariffs on EU imports constitutes a major potential threat to food and agricultural product sectors.

The experience in west and central Africa, where the expansion of EU food and agricultural exports to ACP countries is concentrated, has raised questions elsewhere in Africa as to whether the closer economic integration between these two regions and the EU (notably via metropolitan France and the inherited currency arrangements and corporate ownership patterns) has been a critical factor in fuelling this expansion of EU exports. Such questions were raised during the elaboration of tariff offers by those African countries looking to promote increased local value-addition within agricultural and food product value chains. Indeed, there are deep and profound concerns in some African regions over the impact that any process of tariff elimination on imports of European food and agricultural products could have on African efforts to promote movement up the agricultural and food product value chain.

Key issues for AfT

In the context of AfT discussions this raises the following questions:

- How can ACP efforts to enhance competitiveness, diversify markets or make the transition to serving 'luxury purchase'

markets best be supported in the context of the planned expansion of EU AfT support?

- What lessons can be learned from the EU's own internal experience of agricultural restructuring?
- What financial instruments of support are required?
- What are the best modalities for the efficient and effective delivery of this support?
- What are the organisational prerequisites for effectively designing targeted support programmes linked to making this transition to serving increasingly differentiated EU markets?

This would appear to call for targeted programmes of AfT support to:

- Assist in production adjustments to enhance efficiency and reduce costs;
- Improve marketing to increasingly target 'luxury purchase' components of the EU market;
- Facilitate movement up the value chain;
- Assist in cost effectively meeting 'quality' standards;
- Assist in the development of public institutions for the assurance of food safety compliance;
- Assist the private sector in meeting EU food safety standards (including smallholder farmers).

The challenge of meeting the increased competitiveness of EU food and agricultural product exports first needs to be addressed through domestic and regional tariff policy. However, targeted AfT support could assist ACP producers in developing alternative products for alternative markets, where the competitive threat from EU imports is significant. This is certainly the kind of restructuring that the deployment of rural development instruments in the EU encourages.

Internal EU support to production and trade adjustment in the agricultural sector and the ACP experience to date, both demonstrate a central policy that has been internally effective but that constitutes a fundamental problem in EU relations with ACP countries: namely, how to deploy public aid in support of market-led, private sector based production and trade adjustments designed to achieve public policy objectives (e.g. the promotion of employment and income growth, structural economic change and poverty eradication) in the context of moves towards global trade liberalisation? The EU routinely resolves this question in the deployment of axis 1 rural development support, yet insists on working almost exclusively through public sector bodies when dealing with production and trade adjustments in ACP countries. Until this issue of the role of the private sector (including farmers organisations) in designing and implementing market-led production and trade adjustments in ACP countries (in pursuit of public policy objectives) is systematically resolved, the EU AfT support measures will remain partial and largely ineffective in the changed context that now conditions ACP-EU agricultural trade flows.

¹ Vincent Fautrel works for the Technical Centre for Agricultural and Rural Cooperation (CTA) and Dr. Paul Goodison is an independent analyst based in Brussels.

² It is against this background that CTA, in partnership with ECDPM, took the initiative to organise a two day dialogue meeting in order to reflect on how to assist ACP agricultural stakeholders in this process of structural change. See <https://aidfortrademeeting.pbwiki.com> for meeting report and papers.

³ For EU exports see: http://ec.europa.eu/agriculture/agrista/tradestats/2006/eur25ch/page_071.htm For EU imports see: http://ec.europa.eu/agriculture/agrista/tradestats/2006/eur25ch/page_072.htm

⁴ Scenar 2020 - Scenario study on agriculture and the rural world http://ec.europa.eu/agriculture/publi/reports/scenar2020/index_en.htm

⁵ Or if world market prices remain high and above internal EU prices, EU prices will be aligned with world market prices.

Trade and innovation in the EPAs: another step towards re-framing TRIPS

Malcolm Spence¹

CARIFORUM states are small, highly open, vulnerable, service economies with limited production capacities and high external debts. These economies have received significant support from Europe for many years—even though it is not the region's major trading partner—through preferential market access arrangements for key commodity exports. Yet, challenges to the WTO compatibility of these arrangements by non-ACP developing countries and others have hastened their erosion. As a result, it was agreed that an alternatively advantageous WTO-compatible arrangement would be negotiated between CARIFORUM and Europe.

CARIFORUM states subsequently concluded a WTO-compatible agreement that would slow the erosion of the preferential access for their goods and open up access in areas suited to their new structures as service economies.

The innovation trend

In negotiating this agreement CARIFORUM recognised that, as small economies, they suffer the disadvantage of diseconomies of scale in the global market. They therefore negotiated the inclusion of provisions that would assist in the development of innovation systems, anticipating the contribution of such systems to the differentiation of their export products.

During this negotiation process, CARIFORUM and the European Commission determined an appropriate balance between the level of development and the level of protection provided for intellectual property rights. In this respect, the discussions taking place within the World Intellectual Property Organisation concerning that organisation's Development Agenda were also considered.

In developing arguments to back up its position, CARIFORUM paid close attention to the EU's own efforts to support innovation—particularly for small and medium enterprises—in its Lisbon Agenda. The region looked to the ongoing efforts and programmes of other developed and developing countries to continually improve their level of innovation and their innovation systems as well. For example, CARIFORUM pointed to the work supported by the World Bank in the development of Mexico's innovation systems arising from that country's experience within the North American Free Trade Area. Projects carried out by the Inter-American Development Bank and the United Nations Economic Commission for Latin America and the Caribbean among others were likewise taken into account.

These programmes showed a trend recognising that without strong innovation systems in developing countries, there is likely to be little or no benefit derived from increasing protection for trade-related intellectual property rights in free trade agreements.

The challenge with technology transfer

This came as no surprise; the World Trade Organisation Trade-related Intellectual Property Rights Agreement (TRIPS) contains language recognising this relationship between innovation and protection. Article 66.2 in particular acknowledges the need for affirmative action by developed country WTO Members so that least developed country (LDC) Members might establish a viable technological base through technology transfer.

Establishing this base is not without its obstacles. In recognition of the challenges with technology transfer obligations, WTO Members established both a reporting mechanism within the TRIPS Council and a Working Group on Trade and Technology Transfer. Regrettably, neither of these has, as yet, identified appropriate measures that would enable LDCs to accrue the gains they had originally hoped for.

In light of this, when CARIFORUM countries began negotiations on these terms with the EU they pressed for a commitment to promote the use of the measures, rather than merely making them available for their firms and enterprises.

Innovation systems development

But innovation relies on much more than technology transfer. Indeed, many discussions on innovation often focus on science and technology, while excluding consideration of other industries that rely on creativity, like the entertainment industry. And yet it is in the production and provision of these less tangible products that CARIFORUM saw itself as having an already established and competitive creative advantage.

In order to develop internal innovation systems, as well as to establish partnerships with innovative EU enterprises with similar interests, it is critical that there is close coordination with the negotiations concerning market access in services and investment. Coordination with market access negotiators is also important where, for example, in the audio-visual sector the equipment can be classified as a luxury item as opposed to production equipment, increasing the cost to producers.

Lessons learned

Two principle lessons were learned that are of value to other ACP regions as they consider what elements they may wish to add to their current interim agreements on goods. The first is on the value of collaboration during the regional and extra-regional negotiations and across subject areas. The second lesson is the need to find the right synergies between the innovation objectives of the EU and those of the particular ACP region.

Recommendations

Recommendations for other ACP regions to consider are therefore as follows:

- Determine an appropriate and flexible industrial policy;
- Identify priority areas for attention in the development of national innovation systems, not limiting the focus to science and technology;
- Determine synergies that might be established through the development of regional innovation systems;
- Look for areas of collaboration in innovation that could capitalise on the interests and advantages of both the relevant region and the EU; and
- Determine the level of intellectual property protection appropriate for each priority area identified for the relevant innovations systems and link this to the level of development of such systems.²

¹ Malcolm Spence is the Senior Coordinator for Intellectual Property, Science and Technology Issues at the Caribbean Regional Negotiating Machinery.

² For further discussion on this topic, see: Innovation and Technology Transfer: Lessons from the CARIFORUM EPA Experience, Malcolm Spence, CEMAC Regional Dialogue on EPAs, IPRs, Innovation and Sustainable Development ICTSD and ADCIC April 28-29 2008. www.iprsonline.org/ictsd/Dialogues/2008-04-28/Spence_Paper2.pdf

Rules of origin for fish in interim EPAs

Liam Campling¹

The continuation of uninterrupted market access for fish and fish products (hereon 'fish') was a major motivation behind several countries' initialling interim Economic Partnership Agreements (IEPAs) at the end of 2007. For those coastal and island ACP countries that act as sites of production for the processing of marine capture fisheries, a major point of historical tension in their trade relations under Lomé/Cotonou was the onerous nature of EU rules of origin (RoO) for fish.² But how have IEPAs addressed this issue?

There are two core aspects to the European Commission's preferential RoO for fish: the definitions of 'wholly obtained' and 'sufficiently worked or processed' products. The following assesses each of these in turn, comparing their treatment under the Cotonou Partnership Agreement (CPA) and under IEPAs. While there are some important changes, the IEPA RoO for fish are very similar to those under the CPA, which explains their categorisation as 'Cotonou+'.

Wholly obtained fish under IEPAs

The definition of wholly obtained marine-capture fish is identical in the RoO protocols in the signed Caribbean (CARIFORUM) EPA and in several interim EPAs, including those initialled by the East African Community (EAC), Eastern and Southern Africa (ESA), the Pacific states (PACP) and the South African Development Community (SADC). Like the CPA, in these agreements, classification is still dependent upon 50% ownership by nationals or companies of the parties to the agreement—i.e., owners must hold EU or ACP country passports—and vessels must still be flagged and registered by one of the parties.

There are four areas of difference, however, between CPA and IEPA definitions of 'wholly obtained' fish. First, the IEPAs have deleted the CPA requirement that 50% of the crew of vessels be nationals of the ACP, EU or Overseas Countries and Territories of the European Communities (OCTs). This change was requested by the EU distant water fleet in order to enhance commercial flexibility in the employment of crew, and by some ACP negotiators, (although not by all given that an estimated 2,000 ACP nationals serve as crew in EU vessels). Nonetheless, for those ACP countries with Fisheries Partnership Agreements (FPAs) with the European Commission, requirements on the use of nationals as EU distant water fleet crew can be (and are) written in here.

The second change is a very slight simplification of the criteria on vessel ownership by companies. A company now only has to have "its head office and ... main place of business" in a party to the agreement, rather than the additional component under the CPA that the Chairperson and board members must all be nationals. Regardless, 50% of ownership must still be held by an entity based in one of the parties to the agreement.

Third, the conditions under which an ACP party is able to lease or charter vessels have changed: now EU fishing interests must have been offered—and refused—the opportunity to *lease or charter* vessels before an ACP party is able to do so itself. However, there is a contradiction between IEPA texts and that of the European Council Regulation applying IEPA RoO³. Here, the condition for ACP leasing or chartering is



identical to the original clause under the CPA: the given state must first offer the European Commission the opportunity "to negotiate a *fisheries agreement* and the Community did not accept this offer." This difference is important as the European Commission already has FPAs with several ACP states that might wish to lease or charter vessels, making the clause irrelevant in cases of existing European Commission access agreements. Clearly this difference between texts needs to be clarified, but it is assumed that the IEPA texts would hold legal sway given that they were initialled. In the case of industrial fisheries, the potential for the leasing or chartering of vessels is an important element of IEPA RoO because there is a general lack of domestic capital in ACP states to buy industrial vessels outright. However, the extent to which the new conditions are workable (and which rules apply!) remains to be seen.

The final change to the definition of wholly obtained fish appears to be an anomaly. Unlike in the CPA, Overseas Countries and Territories are not included in the text on qualifying vessels; this effectively excludes OCT vessels from being able to supply wholly obtained fish to IEPA countries. In operational terms, this unexpected flaw in IEPA texts is problematic as some EU-owned vessels are registered in OCTs thereby limiting the overall potential supply of originating fish to processors based in EPA states. For both the ACP and the European Commission, this issue is unlikely to be in their interests and, as such, should be easily ironed-out in the negotiations for comprehensive EPAs.

It is also worth noting that both Namibia (in the SADC IEPA) and CARIFORUM made unilateral declarations attached to their respective EPAs on the need for the extension of 'wholly obtained' to automatically confer origin onto fish that is caught *within* their Exclusive Economic Zones and landed locally, regardless of vessel registration or ownership. This is a long-running demand, but one that the European Commission continues to oppose.

Sufficiently worked or processed fish under IEPAs

There are two major changes to RoO on the definition of 'sufficiently worked or processed products' for fish. The first is a new value tolerance (or *de minimis*) provision of 15%. In cases where insufficient wholly obtained fish is available, *all* IEPA texts to date provide a concession of up to 15% value tolerance for non-originating inputs of fresh or frozen fish in the manufacture of fish products.⁴ This is broader and less administratively complex than the 'value tolerance' provision under the CPA, which allowed the use of up to 15% of non-originating fish in the product price, but required the exporter to do so on a single species, single consignment and

single consignee basis (a very tricky organisational demand). Only one customs authority in the EU accepted imports under this CPA rule and only two canneries managed to actually utilise it. Yet, despite the minor improvements under IEPAs here, the practical value of the 'concession' is actually very limited. It still requires 85% of the value of fish to emanate from originating sources and it remains unclear whether the change offers any operational significance to exporters.

The second—and far more important change—is the European Commission's offer of global sourcing RoO to the PACP. The new rule here is that, regardless of where the fish is caught or the status of a vessel's flag, registration or ownership, the fish is deemed originating as long as it is transformed from being fresh or frozen (and thus categorised under HS chapter 3) into being a pre-cooked, packaged or canned product (categorised under HS 1604 and 1605). This is known as the change in tariff heading method and was a core demand of the PACP in their negotiations with the European Commission. In principle these new RoO are a huge step forward for PACP-based processors (mainly of canned tuna and tuna loins), but in practice the ability of processors to maximise the benefit remains to be seen. The most important limitation is the fact that fish still needs to meet mandatory EU Sanitary and Phytosanitary measures (vessels must be registered and approved by the local Competent Authority, which is in turn regulated by the Health and Consumer Protection Directorate, better known as DG SANCO). The supply of fish meeting such criteria is very tight.

Finally, under the CPA the only automatic derogation for fish was a total annual quota for canned tuna and tuna loins. This was distributed among the 77 countries of the ACP group and was fixed at 8000 and 2000 metric tonnes, respectively. A major gain in IEPA negotiations was made by the ESA grouping as it received the same volume of automatic derogation for canned tuna (8000 mt) and tuna loins (2000 mt) as that awarded under the CPA, but to be distributed among the ESA signatories only. Similarly, the EAC IEPA contains an automatic derogation for 2000 mt of tuna loins.⁵

Implications for comprehensive EPA negotiations

The following table briefly summarises the status of RoO reform in each of the IEPAs initialled to date. There are two scenarios here based upon whether or not a RoO protocol has already been agreed to and the status of the RoO review clause: 1) for those EPA regions that have yet to negotiate a protocol on RoO (CEMAC-Cameroon, Côte d'Ivoire, Ghana) or those that have agreed to renegotiate RoO as part of comprehensive EPA negotiations (EAC and ESA), the opportunity to develop relevant improvements in RoO is open to discussion with the European Commission; and 2) for those EPA regions that have initialled a RoO protocol and which is not up for renegotiation until triggered by the relevant review clause (i.e. CARIFORUM within five years, PACP after five years, SADC after three years), the options may prove to be more limited. This last point is made because the European Commission has ruled out renegotiations in several formal communications in recent months, but the extent to which this is true is very much open to question on both legal and political grounds.

The obvious question for those EPA groupings that are endeavouring to renegotiate RoO is what rules might be best? This article does not attempt to answer that question, but instead offers a few comments based upon RoO for fish negotiated to date.

- At a minimum, automatic derogations to the value of the ESA IEPA should be demanded, for example by Côte d'Ivoire and Ghana.

Summary of RoO provisions in IEPA/EPA chapters on goods

IEPA/EPA	Protocol on RoO agreed?	Review Process
CARIFORUM - EPA initialled	Yes, Protocol 1	To be reviewed within 5 years
CEMAC (Cameroon) - IEPA initialled	No	Cotonou provisions apply; new RoO shall be negotiated until 31/03/08 and reviewed within 3 years
Côte d'Ivoire - IEPA initialled	No	Cotonou provisions apply; new RoO shall be negotiated until 31/07/08 and reviewed within 3 years
EAC - IEPA initialled	Yes, Protocol 1	To be reviewed and redefined with the negotiation of the comprehensive EPA
ESA - IEPA initialled	Yes, Protocol 1	To be reviewed and redefined with the negotiation of the comprehensive EPA
Ghana	No	Cotonou provisions apply; new RoO shall be negotiated until 31/03/08 and reviewed within 3 years.
PACP (Fiji and PNG) - IEPA initialled	Yes, Protocol 1	To be reviewed after 5 years.
SADC-minus - IEPA initialled	Yes, Protocol 1	To be reviewed after 3 years

Source: Adapted from Stevens et al (2008: 130 and 140).⁶

- Governments need to consult with exporters to carefully assess the practical workability and commercial relevance of the new 15% value tolerance provision. If it is found to be wanting (which is likely), evidence-based negotiation positions should be developed for more generous alternatives.
- On the prospects for the extension of PACP global sourcing RoO to other EPAs, the European Commission has painstakingly made it clear that this rule was specific to the Pacific islands because of their unique geographical and economic disadvantages. It is also worth reiterating the structural constraint of the supply of fish compliant with sanitary and phytosanitary measures. Nonetheless, if an EPA grouping felt that such RoO were practicable and necessary, there is little reason not to push for them.
- Finally, even if the European Commission accepted demands that fish caught in an EPA country's Exclusive Economic Zone were automatically wholly originating, vessels would only be able to target stocks within this sovereign area, thus limiting the ability to follow commercially valuable, highly migratory and straddling species.

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² These sites of production predominantly deal with canned tuna and tuna loins.

³ See: EC No 1528/2007. Published in the *Official Journal* (L 348/1) on December 31 2007.

⁴ The fresh and frozen fish are grouped under HS Chapter 3.

⁵ For the quantities concerned, the rule is equivalent to global sourcing which aims to fill the gap in supplies of originating fish due to low seasonal catches. This ensures a continuous production and export activity for the beneficiary countries. A global sourcing for unlimited quantities - as is the case in the PACP - could undermine existing local fishing capacities supplying originating fish during high season (PACP have no or very few fishing vessels).

⁶ See also Mangeni, 2008: 42.

It is tempting to dismiss the violence that engulfed Kenya in the months of January and February 2008 as an unfortunate, though not totally unexpected, resurgence of African atavistic ontological disposition. Indeed, this is what the Western media and analysts did with relish. Many argued that even though the mayhem was triggered by electoral fraud, the violence that followed was unrelated. This could be true, but only partially. The stark reality is that the crisis in Kenya has exposed the class tensions that have been papered-over for more than 100 years. Moreover, it has exposed the depth of vulnerability in Eastern - and to some extent Southern - Africa, and has had noticeable impact on the trade negotiations for Economic Partnership Agreements between the region and the European Union.

Understanding Kenya: post-election crisis, land and the interim EPA

Oduor Ong'wen¹

The importance of land

Western media has a tendency to simplify complex African issues. In January 2008, *The Economist* newsmagazine, for instance, claimed that Kenya represented hope for Africa. Sadly, this optimism was equated with a vibrant Stock Exchange, fast food outlets, thriving casinos, manicured golf courses and a booming tourism industry. The article completely ignored that 60% of Nairobi residents occupy only 18% of the city's land; that more than 63% of Kenya's urban population has no access to clean water; that two out of every three Kenyans survive on less than a dollar a day; and that only a few own huge tracts of idle land amid large armies of squatters.

While many living in industrialised countries are often affluent, most of the African people are impoverished, under-nourished and illiterate. In contrast to the economies of industrialised Northern countries that are strong and resilient, offering hope and security to the populations of these nations, African economies are mainly weak and vulnerable. Moreover, while the developed countries of the North are typically more in control of their resources and destinies, those of Africa are susceptible to external factors and often lack functional independence and sovereignty. This is the context in which we should understand the attachment to land in many African countries like Kenya and Zimbabwe. Ownership of land, however small, gives a sense of security and independence.

We cannot therefore contextualise the mayhem in Kenya and the subsequent disruption to the EPA negotiations without appreciating the 'Kenyan national question'. Kenyans are not polarised because they belong to different sub-nationalities, but rather because they relate differently to the country's resources and productive forces—land in particular. Here, it is useful to observe that the agriculturally-rich Rift Valley region was the epicentre of the recent clashes. This was no accident. Rift Valley is the most settled region of Kenya. Yet, it is also in the Rift Valley that communities like the Maasai, the Pokot, the Nandi and the Sabaot have unresolved grievances over land ownership centred on historical injustices traceable to the colonial occupation.²

Wider implications

The area has since been a ticking time bomb; the recent violence is not the first incident where the region has exploded over land issues. In the early 1960s Jean Marie Seroney, a former legislator, shook the country with the 'Nandi Declaration', which called for the region's autonomy and the expulsion of 'foreigners'. Other major clashes over

land occurred throughout the 1990s in response to demands for the re-introduction of pluralist politics and all along the Kenyan Coast there have been similar land-related skirmishes. Therefore, when it seemed as though the presidential vote had been stolen, it is easy to see why Kenyans- especially those in the Rift Valley- resorted to violent protests.

However, it was not only Kenya that was uprooted during the fighting: neighbouring countries like Uganda, Rwanda and Burundi, as well as Congo and Southern Sudan, were subjected to hardships as protestors ripped up railway lines and long-distance commercial vehicles stayed off the roads for fear of attack. To date, the prices of petroleum products in Uganda have yet to stabilise, leading to unprecedented inflation. Moreover, as one of the stronger economies in the region, the electoral matters in Kenya also noticeably impacted trade negotiations, especially between the EAC and the EU.

The interim EPA

On November 27 2007 an interim Economic Partnership Agreement (IEPA) was initialled between the European Commission and the partner states of the East African Community (EAC) comprising Burundi, Kenya, Rwanda, Tanzania and Uganda. The agreement was signed in an attempt to provide a legal framework for the continuation of European trade preferences for EAC and other ACP exports despite the end-2007 expiry of the WTO waiver.

In late 2007, as the deadline for signing an EPA drew nearer, the European Commission chose not to pursue alternatives or answer calls for more negotiating time. Instead, it threatened to raise tariffs on January 1 2008 on exports from any ACP country that did not sign an IEPA. As a result, the EAC countries were forced to lower their expectations regarding what EPAs could deliver as they were pressed to secure any agreement that would provide continued market access. Kenya, once a strong voice against EPAs in their current form, capitulated. Gripped with elections that preoccupied the country's political leadership, the negotiations and considerations of the deal were left to bureaucrats 'trained' by the European Commission under the Kenya European Union Post-Lomé Trade Negotiations (known as KEPLOTRADE).

A topsy-turvy situation

The KEPLOTRADE initiative was established by the European Commission in 2001 to provide a national structure to facilitate Kenya's EPA negotiations. Comprised of government ministries, public institutions, private sector and civil society groups,

KELOPTRADE was set up within the realms of the Commissions' Trade.com project. The idea behind this project was to provide trade-related assistance to ACP countries through capacity building, negotiations training and related projects focused on institutional and supply-side constraints.

While such technical assistance for trade negotiating is desperately needed in Kenya, the ultimate efficacy of the project has been called into question. Concerns have been voiced—albeit in muted tones—that the Trade.com project undermines national policy autonomy. Many fear that the national negotiating position may be decided for its acceptability to the EU, rather than the economic development interests of Kenya and the ACP. In recent weeks this concern has been raised by MPs from Kenya, Uganda, Tanzania and the East African Legislative Assembly. Could this be a situation of a horse negotiating with its rider?

A broad and stringent agreement

While the European Commission has portrayed the IEPA as a soft and flexible agreement, the detailed provisions create several binding obligations and require a number of reforms. The implementation of these reforms or disciplines is tied to specific deadlines and non-compliance with the terms could be sanctioned through a dispute settlement mechanism.

In a bid to entice ACP countries to negotiate, the European Commission initially proposed a 25-year transition period for liberalisation, but later required at least 80% tariff liberalisation from ACP countries over a period of 15 years. However, in some interim agreements - although not in the EAC IEPA - tariff elimination starts from entry into force of the agreement in 2008 and the elimination of other barriers (such as export taxes) is not always gradual. Only a marginal share of trade volume is subject to long implementation periods for tariff elimination. Even for least developed countries the pace of liberalisation is faster than some stakeholders would have hoped for.

Several contentious elements

The European Commission has insisted on the inclusion of a standstill clause (Article 13 of the IEPA), which is not required under WTO rules. This freezes tariffs on all trade between parties, regardless of whether these products are subject to liberalisation. As a result, even if a product is on the 'exclusion list' and therefore privy to liberalisation, the tariff cannot be raised after entry into force of the agreement.

The removal of export taxes was another request made by the European Commission. Export taxes have been used for raising revenue in some developing countries, accounting for more than 20% of government income in places like Burundi, Ethiopia and Guinea. Yet, the IEPA forbids the introduction of new taxes—including export taxes—with only limited carve outs.

Additionally, while the interim EPA addresses the need to review the rules of origin (RoO), in terms of actual commitments, the EU only agreed to consider the possibility of offering more 'development-friendly' rules in the future. This is unfair on several counts. First, without a binding agreement on RoOs, it is difficult for the ACP regions to accurately assess the value of the EU's market access offer. Second, ACP countries contend that RoOs should recognise the increasingly global nature of input procurement and the need for the ACP to base their initial industrial development on the final stage of processing of foreign inputs. If ACP countries cannot secure a political commitment from the EU on this matter, then many opportunities for the development of value-added processing activities in countries like Kenya will be held back by the arcane minutia of rules of origin and the lengthy and obscure workings of derogation provisions.

No rosy future

Since the initialling of the IEPA, Kenyan civil society organisations have entertained a certain degree of scepticism, if not outright pessimism, about the content of the deal. They claim that the Cotonou Agreement, under which the EPA is being negotiated, proposes to remove the principle of non-reciprocity, which has been the linchpin of the preceding Lomé Conventions. This means that whatever concessions the EU grants to the ACP, there is an obligation under the EPA to reciprocate. While the principle of reciprocity is acceptable—indeed encouraged—in an economic relationship between parties of equal strengths and means, it is an aberration in a partnership among unequals. It is a well established maxim that equal treatment of unequal parties amounts to injustice.

Furthermore, they claim that EPA configurations undermine efforts at regional integration within East Africa. The EAC initialled a coherent regional IEPA on its own, with a single undertaking and liberalisation schedule. Five other Eastern and Southern African (ESA) countries initialled their own individual IEPA-specific liberalisation schedules, while the remaining six countries in the region did not conclude any interim agreements at all. This status quo prevents the formation of a COMESA customs union and significantly challenges one of the fundamental principles of the agreement: that is, to build on continuing efforts at regional integration.

Civil society also claims that the EPA negotiations left Kenya (and Zimbabwe) defencelessly exposed within the ESA region. Of the sixteen nations that make up the configuration, an impressive twelve are categorised as LDCs and as such are not under great pressure to negotiate—especially if no additional resources can be accrued—as they already benefit from the EU's Everything But Arms (EBA) initiative.

The issue of Sanitary and Phytosanitary Standards (SPS) has also been seen as a cardinal concern for the region. One of the ACP proposals is for a standstill on EU measures on SPS for five to ten years, coupled with the establishment of dialogues on how EU health concerns can be addressed without imposing excessive burdens on ACP suppliers that make it impossible or uneconomical to take advantage of market opportunities within Europe. The EU has rejected this proposal as wholly impractical. Failure to get to grips with the challenges that accompany increasingly strict SPS measures is likely to progressively undermine the value of ACP trade preferences.

Kenya's position damaged by stand-off

All the issues outlined above were vociferously expressed by Kenya's former trade minister. But as the country approached general elections at the end of last year, such fears slowly but steadily disappeared from the radar of national discourse. The situation was made worse by the stand-off that followed the flawed elections when the country had to function without a trade minister for four months. In the interim, the European Commission-trained bureaucrats served to further entrench the EU's own interest in Kenya's negotiations.

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² It was in the Rift Valley that British settlers alienated huge tracts of land from indigenous Kenyans. It was here that the Maasai community were duped into signing a 100-year agreement with the British in 1904 and denied a hearing by the Kibaki government in 2004 when the agreement elapsed. The Rift Valley was also where the Pokot were forcefully pushed out of their communal land. During the struggle for independence, a new ruling class interested in land property was quickly recruited. With aid from the colonial state, the gentry swiftly began occupying land belonging to entire communities and they were awarded titles by the colonial authorities, while the displaced were herded into detention camps and concentration villages. However, once Kenya gained independence, the new rulers could not relinquish their claim to these lands. Instead, they created a scheme for settling the new landless in former settler areas. As a result, large Kikuyu populations from Central Kenya settled—though they were not necessarily accepted—among the Nandi, Maasai, Pokot and other communities in the Rift Valley.

Monitoring and evaluating the EPA in Mauritius: setting up mechanisms

Emmanuel Chesami Mbah¹

As the majority of African, Caribbean and Pacific states did not meet the December 31 2007 deadline to sign a full Economic Partnership Agreement (EPA) with the European Union, several individual countries have provisionally signed interim agreements - one such being the developing country of Mauritius. Many developing and least-developed countries in Africa—like Mauritius—need access to European markets in order to stay afloat; the EPA is thus a necessary way forward for governments to achieve their development objectives.

Necessary monitoring

Many African policy makers feel that the interim agreement needs to be monitored in order to evaluate any achievements accruing from the initiative. But this cannot be the responsibility of an ACP government alone: economic operators, civil society and business communities all contributed toward the attainment of the agreement, initialled with the European Union in a bid to bolster trade. As with all intercontinental initiatives of this magnitude, proper checks and balances are needed to measure the implementation and impact of the agreement on the economies and standard of living of those involved.

To further buttress the point, Mauritius, which fares well in international trade and economic programmes, must begin to count its successes in order to know what steps need to be taken to correct areas where there has been little progress. Monitoring is useful as a guide for good policy formulation, as well as for ensuring accountability and implementation. This sort of self-reflection and evaluation can help a country continue on the path of economic growth and sustain general regional and international trade participation in the long-term.

Quantifying gains by diversifying production

Economic stakeholders are key actors in this bid to evaluate interim gains accruing from the endorsement of the EPA. Proper control mechanisms would inform the government of any deviations, derogations or difficulties encountered in the discharge of their activities. But—perhaps more importantly—they would also serve as a guide when considering the option to initial a full EPA in the future as per EU wishes. Various control mechanisms thus need to be implemented in order to effectively monitor and analyse the agreement.

Mauritius needs to quantify its gains in terms of what can be achieved from the EPA. Diversifying production of sensitive products would be one way Mauritius could measure its gains from the agreement. Yet, expanding this production would mean exposing vulnerable economies to stiff competition which could result in devastating economic hardship, specifically for the Mauritian sugar and textiles industries.

Problems with expansion

For Mauritius, development cannot be overlooked given that previous strides to bail most developing economies out of poverty have not yielded the desired fruits. Mauritius is one of the highest rated developing economies in Africa, and as such, needs to clearly identify the sectors that would benefit

from a full EPA. Stakeholders are very useful in this sense, and can contribute enormously towards the achievement of these objectives. Involving—and educating—the private sector and civil society on key issues of the EPA negotiations is essential.

Building capacity is just as important as the economic gains that accrue from trading with the EU under the terms of the EPA. In the case of Mauritius, the country benefits from an already well structured private sector that can involve and educate a large audience on the complexities of the EPA, thereby improving the implementation of a final agreement (See Box). Waiting until a final EPA is signed for such mechanisms to be put into place is dangerous, as it may become cumbersome for some stakeholders to catch up with the partnership. Yet, despite the fact that Mauritius may be properly informed about international trade operations, problems with implementation may not have been fully accounted for in the negotiations. To better maximise the benefits, all these measures need to be considered within the framework of the current negotiations, taking careful note of sustainable development concerns.

Sustainable development?

The emphasis on monitoring gains from the interim agreements is applicable not only to Mauritius, but to other ACP countries involved in the EPA negotiations as well. Early stages of EPA implementation show some positive involvement at local levels which, if sustained, may be beneficial to the entire country. There may also be further benefits for ACP countries considering Mauritius' role and contribution to the regional frameworks to which it belongs: SADC and COMESA.

While this is a summary of what can be done to achieve greater results from the EPA, the key elements that must not escape reflection should encompass all sectors of national, political, economic and social life in the country.

Mauritius has a very structured private sector with strong economic operators and guilds that coordinate economic activities. These bodies work in collaboration and coordination with the International Trade Division of the Ministry of Foreign Affairs, which negotiates international trade and other economic agreements touching on the economic life of the country.

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WTO Roundup

Victoria Hanson, ICTSD

WTO talks intensify as new texts tabled

WTO Members engaged in intense discussions at the end of May in a bid to consolidate the progress outlined in the release of the long-awaited negotiating texts on agriculture and industrial goods trade. Chair Ambassador Crawford Falconer and his counterpart Don Stephenson, released the new proposals on agriculture and non-agricultural market access (NAMA) respectively on May 19. Both papers, which were originally expected at the end of April, were designed to clear the way for a meeting of ministers to clinch a final deal in the weeks that follow.

Farm text offers some progress on sensitive products

The much heralded farm text— seen as a vital stepping-stone towards the launch of the ‘horizontal-process’ in which senior officials begin making tradeoffs between different sectors—incorporated some gradual progress in areas such as sensitive products, but delegates cautioned that it still contains numerous unresolved issues.

The key progress was the incorporation of the complex methodology for designation of ‘sensitive products’ - goods that developed and developing countries will be able to slate for smaller tariff cuts in exchange for expanded market access through quotas.¹ The draft text also dramatically reduced the number of square brackets (short-hand for issues that do not yet command consensus) from 235 to 32.

However, the text left most of the controversial headline numbers (such as the percentage cuts for overall trade-distorting subsidies) untouched, while in other areas simply restructured or clarified negotiating options. Of the few ‘hot spots’ that remain, Falconer identified the discussions on ‘special products’ and the ‘special safeguard mechanism’ - both designed to help shield developing countries from the full force of import tariff reduction - as the most divergent.

Yet, speaking to journalists immediately after the release of the text, Falconer said that Members were “getting pretty close to the last Russian doll” - a reference to the successive drafts which have been necessary to narrow down negotiating options.

Proposals greeted with mixed reaction

Many WTO Members extended a cautious welcome to the latest texts, while some criticised parts they felt were unbalanced, calling for a further revision of the drafts. Several developing countries (including the ACP group) are insistent that substance must take precedence over arbitrary deadlines before the farm text can be combined with other subjects. The ACP is backed in its view by the G-33 group, composed of some 42 developing countries that favour flexibilities to protect small farmers and rural communities. Critics claim that while recent intensive informal consultations at the WTO have focused on accommodating developed country sensitivities, many issues of concern to developing countries have yet to be discussed in comparable detail.



Pascal Lamy has expressed hope that a ministerial gathering could be held in June to finalise modalities in agriculture and industrial goods.

Other Members, notably the EU, are insistent that if steps are not taken to reach a deal on modalities this summer and to wrap-up the Round by the end of the year, the talks will collapse.

The G-20—a coalition of developing countries that favour reform of developed world agriculture—welcomed the text as “a good basis to build on,” saying that the group, which includes Brazil, India and China, was “prepared to work hard this week to improve it and narrow the differences.” The bloc told Falconer that new elements resulting from this process could then “be incorporated in your document.”

NAMA text grants developing countries more leeway

Developing countries would be able to shield a higher share of industrial imports from the full force of tariff reduction if they agree to relatively steep overall cuts, according to Stephenson’s latest draft proposals on NAMA.

In its most commercially significant advance, the text includes the potential for developing countries to shield up to one-fifth of industrial imports from the full force of tariff reduction if they agreed to cap most manufacturing duties between 19% and 21%. These so-called ‘coefficients’ would be linked to different levels of flexibility based on a ‘sliding-scale’ option that has been relatively acceptable to Members during recent talks.²

The new text also provides multiple potential options for dealing with the central issues of ‘formula’ that will determine countries’ future tariff levels; ‘flexibilities’ for developing nations to shield some products from duty cuts; and treatment of ‘unbound’ tariff lines not currently subject to binding caps at the WTO. By providing more possibilities, Stephenson told journalists on May 20 that “this text provides lots of room to negotiate...if that’s what Members wish to do finally.”

Wide range of options remain in brackets

The NAMA paper reflects several recent proposals, including a number seeking special treatment for individual countries. One bracketed provision, for instance, would allow South Africa to shield an extra number of products from standard tariff cuts, so that the Southern African Customs Union (SACU) does not have to choose between preserving its longstanding common external tariff and exposing countries like Lesotho and Namibia to international competition.

Another potential option in the new text is a relatively recent EU-US proposal to constrain the ability of developing countries to choose which products to shield from tariff cuts. Responding to fears that entire industrial sectors could be blocked off, the proposal - hotly opposed by countries including China and Brazil - would prevent large swaths of a particular industrial sector from being shielded from standard liberalisation obligations.³ Stephenson said that there was "no consensus" on the issue.

Changes for small and vulnerable economies

Stephenson's text introduced a new potential provision for many of the 'small and vulnerable economies' (SVEs) that account for less than 0.1% of world NAMA trade. Instead of applying the agreed formula, countries would be allowed to make an average cut based on their existing tariff levels, if that proves less burdensome.

A new option was also provided for the developing countries that currently have binding caps on fewer than 35% of their tariff lines. These states, including Nigeria, Cameroon, Sri Lanka and Mauritius, would be divided into three tiers based on the proportion of tariff lines currently bound. All would have to bind the majority of their tariff lines at an average of 28.5%, but the tier with the lowest binding coverage would be able to leave the highest proportion of lines unbound.

Development verses access - again

The release of the NAMA draft incited fervent reaction from both rich and poor countries over whether it did enough to open markets or help developing countries. Brazil and India stressed that developing countries should have to make smaller contributions than rich ones under the principle of "less than full reciprocity." India's commerce minister Kamal Nath said the text would need to be "completely revised and significant convergence achieved" before taking talks to the ministerial level.⁴ Industry groups also expressed disappointment that the current figures would mean greater tariff cuts for developing countries than for developed economies such as the US and the EU. "This would be in complete disregard of the Doha mandate," said the Federation of Indian Chambers of Commerce and Industry.

Meanwhile, the US and EU echoed concerns also raised by their business lobbies that the new proposals did not go far enough to prise open developing country markets, and could allow entire sectors to be excluded from tariff cuts.⁵ The US-based Association of Manufacturers called the new text "disappointing and...a step backward from the liberalisation the world needs."

Services text receives lukewarm welcome

Following the release of the revised agriculture and NAMA texts, WTO Chair Ambassador Fernando de Mateo y Venturini, released new proposals on the services sector on May 26. The text, which sets out suggestions for freeing up trade in services such as banking and telecoms as part of a global deal, immediately met with criticism from a coalition of service industry groups.

"At this point in the negotiations, a text is needed that provides political guidance on the level of ambition in the Doha round services negotiations," members of the Global Services Coalition said in a statement.⁶ "This

version illustrates that members are still 'consulting' and demonstrates how little progress has been made in the services negotiations," they added.

The coalition members, which include groups from Australia, Brazil, Canada, the EU, Hong Kong, Japan, Taiwan, the US and other countries complained that negotiations on services still lag badly behind those on agriculture and industrial goods, even though the nearly 7-year-old talks are supposed to open markets in all three areas.

EU urges action and concessions

Following the release of the NAMA, agriculture and services texts, the EU was immediately in favour of pushing forward, warning countries against delay. "Those pushing for slippage are pushing for failure," one EU source said. Indeed, EU Trade Commissioner Peter Mandelson urged developing countries to yield ground in the negotiations, during the European Parliament's foreign trade panel on May 27.

"The emerging economies must now engage in a serious negotiation," Mandelson said.⁷ "The excuse from the emerging economies that we cannot negotiate on NAMA because we need clarity on agriculture no longer holds water," he added. "There are no more excuses." Mandelson said that any developed or emerging economy that thinks it can come to the Doha table empty-handed on industrial goods will go home the same way. "On that basis I could not sell a political deal in Europe and I would not try," he emphasised.

"The window of opportunity to close out the bulk of this negotiation is there," Mandelson said. "I do not pretend that it will be easy or that success is guaranteed. I think we face a desperately complex and difficult phase."

Towards an end-June ministerial?

Delegates speculate that trade ministers could be brought to Geneva around the end of June if sufficient advances can be achieved in the talks in the days and weeks ahead. However, it appears there is some division over the extent to which a ministerial meeting is needed soon. While the EU has been vocal in insisting that ministers be called to Geneva as soon as possible (potentially by June 23), many developing countries have emphasised instead the need to first put real substance into the process.

According to sources close to the discussions, WTO Director-General Pascal Lamy is keen to ensure that the ministerial takes place soon and he put pressure on Falconer to issue his latest farm draft at the time he did. However, only the immediate horizon is clear, with tentative senior official meetings penned as early as June 9. Whether or not the Chairs will then issue further revised draft texts remains to be seen.

¹ This methodology was first put forward by Australia, Brazil, Canada, Japan, the EU and the US - informally dubbed the G6. (See Bridges weekly, April 11 2008 www.ictsd.org/weekly)

² See: WTO Roundup, TNI Volume 7, Number 3, April 2008.

³ See: Bridges Weekly, December 12 2007.

⁴ See: India wants new WTO industrial text completely revised, Reuters, May 23 2008.

⁵ See: WTO members tussle over industry proposals, Reuters, May 27 2008.

⁶ See: WTO services text disappointing - global coalition, Reuters, May 27 2008.

⁷ To read Mandelson's full speech see: www.ec.europa.eu/trade

EPA Negotiations Update

Melissa Julian, ECDPM

EU Council requests flexibility to address ACP-EPA concerns

EU member states adopted conclusions on the EPAs during the EU External Relations Council in Brussels on May 27. These conclusions state that the main objective remains to achieve regional EPAs covering a wide scope of issues, which take into account the political choices, development priorities and administrative capacities of the ACP in order to release development potential. The conclusions acknowledge "concerns expressed by ACP partners" and "problematic issues still outstanding." They underlined "the need for a flexible approach while ensuring adequate progress" and called on the Commission to use all WTO-compatible flexibility and asymmetry. Moreover, "ACP countries and regions who so wish could draw, if appropriate, on provisions agreed by others in their EPA negotiation." The Council also said that in "moving from interim agreements towards regional EPAs [...] ACP requests for adjustments will be taken into account where appropriate, to the benefit of regional integration" and underlined "the need for an early notification at WTO of the interim agreements, after signature."¹

It was agreed that EU development assistance will support regional integration, EPA adjustments and reforms including through i) the 'EU strategy on Aid for Trade', approved in 2007, and ii) through regionally-owned funds, where appropriate. Support will not be conditional on signing an EPA. The ACP will no doubt continue to work towards clarifying needs and establishing regional funds and look forward to EU member states communicating specific commitments on AfT. The Council also reaffirmed that an appropriate monitoring system, assessing development and trade impacts, as well as progress in implementation, will be a key aspect of EPA implementation.

Central Africa faces negotiation challenges

Central Africa's EU market access offer is almost completed, but needs to be consolidated as a regional offer. Several countries did not work on the same basis or criteria (transition periods or schedules) and need more time to harmonise these. Some observers say the delay is also mainly due to capacity constraints and divergent views within the region on national exclusion lists for sensitive products and dismantling tariff schedules. The missed deadline comes as little surprise given that the region had set itself a hugely ambitious timetable. Central African countries oppose the European Commission's inclusion of a Most Favoured Nation (MFN) clause, which requires that market access offered to non-EU trading partners be extended to the EU as well. There is also disagreement on the link between capacity building support and trade liberalisation commitments in the EPA. Other contentious issues include financial support, delivery means and accompanying measures to address the impact of EPAs and build productive and competitive capacity. Central Africa is trying to accelerate its own regional integration process. It is unlikely that overall agreement will be reached during regional consultations or negotiations with the European Commission in Brussels on May 26-30, but talks should help to narrow differences. The two parties are expected to meet in Central Africa in July, where they are confident progress will be made towards a comprehensive regional agreement.

Cameroon has not yet signed its interim agreement, despite being in the final stages of the process.

West African EPA deadline slips a second time

West Africa is unlikely to agree its EPA market access offer by the end of June, despite intense efforts to meet this deadline. As is the case in many African and Pacific regions, the delay is primarily due to capacity constraints and disagreements on national exclusion lists and dismantling tariff schedules. West African officials pushed for a definition of sensitive products as well as an extension of the deadline to complete national sensitive product lists and the regional market access offer, during a dedicated workshop in April. Sources indicate that the deadline for national lists was May 21, but several countries were unable to meet this. A regional offer will be difficult to secure and will not now be considered until the region's ministerial 'EPA Follow-Up' committee in July. West Africa is keen to agree its regional EPA by June 30 2009, otherwise the Côte d'Ivoire and Ghana interim agreements will enter into force and threaten regional integration.

Work on the EPA text is reportedly proceeding well and should be ready for negotiations in June. West Africa also produced a draft 'EPA for Development' programme, which it intends to present to the European Commission. Sources indicate this document sets out EPA accompanying measures, an estimation of needs and costs for AfT and regional integration, and a 15-year calendar for EPA implementation. The struggle to finalise West Africa's Common External Tariff (CET) advances, but a political decision to continue efforts beyond the end of June deadline is expected.

ESA outline areas for renegotiation of interim EPA

The Eastern and Southern Africa (ESA) region identified interim agreement provisions that it wishes to re-open in the move towards a full EPA, during a technical meeting in Lusaka from May 7-8. These include more flexibility regarding timing and coverage of trade liberalisation for LDCs; a revision of the MFN clause to exclude developing countries; enabling the use of export taxes; revision of the standstill clause and safeguards and improvements in rules of origin. The European Commission reportedly indicated it was open to discuss such issues in the EPA or WTO negotiations. It was agreed that the development strategy, matrix and benchmarks will be refined to serve as a basis for joint mobilisation of additional resources. In addition to agriculture, new issues such as services, investment, intellectual property, competition rules, public procurement, sustainable development and environment were discussed for the first time in Lusaka. ESA's next meeting is scheduled for the end of June.

Meanwhile, ministers from the Common Market for Eastern and Southern Africa (COMESA) requested backing for a Customs Union during a Council meeting in Nairobi on May 15.² Most COMESA countries have aligned their tariff structures and schedules, but lists of sensitive products and trade liberalisation coverage remain thorny issues. In a bid to broaden markets and boost trade, ministers called for COMESA to join free-trade areas with the East African Community (EAC) and the Southern Africa Development Community (SADC). These three groups will meet to discuss later this year.³

EAC makes good progress towards a common market

Negotiations for an EAC Common Market were launched during a high level task force meeting in Kigali from April 14-22. Sources claim that good progress was made and that the taskforce is expected to finish its work by end 2008.⁴ According to Eriya Kategaya, chairman of the EAC Council of Ministers, the establishment of a Common Market will turn the EAC into a "sizeable economy with great potential for joint development and robust participation in the global economy."⁵ Rwanda's East African Affairs minister, Monique Mukaruliza, said member states "must act resolutely in pooling the entire region's resources as well as enhance the private sector competitiveness regionally and in the international markets to uplift the standard of living in the region."

South Africa could sign regional SADC EPA this year

South Africa could sign a regional SADC EPA this year it emerged ahead of a meeting between European Commission and SADC officials in Brussels on May 19-23. Sources indicate that the European Commission is ready to discuss all regional concerns. This includes looking at certain trade policy issues but also at the EU and SACU tariff liberalisation schedules, with a view to ensuring that the whole group - including Angola and South Africa which have not initialled the interim agreement - could sign the full EPA later this year. However, South Africa would still not need to make any commitments to negotiate TRIs or services.

In addition to the launch of negotiations on a services and investment agreement, officials looked at the roadmap towards signature, ratification and notification of the interim EPAs to the WTO and discussed which issues in the interim agreements need to be examined in the negotiations for the final EPA. Preliminary feedback indicates that both sides moved closer to resolving some contentious issues. SADC is now consolidating its position ahead of the next negotiating round. Sources indicate that the latest initiative within SACU is a proposal to establish a common EPA negotiating mechanism. This was, however, not agreed, reportedly splitting SACU into two camps: Namibia residing with South Africa and Botswana, Lesotho and Swaziland in the other camp.

Caribbean concentrates on EPA implementation

Resolving what needs to be in place for EPA implementation was the focus of discussions at the Caribbean Council for Foreign and Community Relations in Antigua and Barbuda on May 7-9. Ministers emphasised that full implementation was critical to the achievement of EPA objectives. The Caricom Secretariat produced an extensive draft implementation plan outlining what steps are needed. Ministers agreed they must first identify national coordinators to move the process forward.

Meanwhile, EU and Caribbean Heads of Government decided that the focus of cooperation under the 10th EDF Caribbean Regional Indicative Programme of €165 million (2006-13) should support EPA implementation and regional integration.⁶ Ministers also called for the immediate establishment of the Caribbean's Regional Development Fund as an effective channel for aid disbursement.

The Caribbean EPA should not be renegotiated but its development thrust appears too low, according to a recently leaked report commissioned by Caribbean trade ministers. The report, which reviews CARIFORUM-EU EPA negotiations, claims this is because national and regional development plans have not been integrated into the deal either because of unavailability or late submission. The report claims that the almost exclusive reliance on reciprocal elimination of customs duties on trade in goods and the liberalisation of the services sectors in the EPA is flawed. Moreover, references to transition, adjustment, asymmetry and development cooperation are insufficiently binding to provide the short-to-medium term fiscal compensatory and structural mechanisms needed to offset increased poverty or enhance productivity.

Pacific may have to offer Australia and New Zealand EPA concessions

Australia and New Zealand have been arguing for some time that the Pacific's EPA talks have pulled the PACER 'trigger'.⁷ But Pacific governments maintain that PACER could only be triggered if the Pacific negotiates a Free Trade Agreement with the EU (or another party). Only Papua New Guinea and Fiji have initialled a Goods Agreement with the EU. By implication, Fiji and PNG would be the two countries to negotiate with Australia and New Zealand, at least in the short term. At this juncture, most of the Pacific can only consult with Australia and New Zealand. The Pacific have also generally been reluctant to begin negotiations, knowing that if EU market access was extended to its larger neighbours too soon, fiscal revenues and local markets could be disrupted. As TNI goes to print, there is an informal meeting of PACER trade officials in Auckland on May 26-28. This meeting was a compromise agreed to by trade ministers in mid-2007 and endorsed by the Forum leaders last year. Its informal nature will allow Pacific trade officials to avoid the 'trigger' question. The Pacific has requested a legal opinion on the trigger mechanism in PACER although that opinion has not yet been completed.

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

¹ To read the full Council conclusions on EPAs see: www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/gena/100687.pdf

² See official COMESA press release and ministerial declaration from Nairobi, May 15 2008. www.comesa.int

³ See: Africa: Trade blocs to harmonise trade policies, Africa news, May 16 2008.

⁴ See: East African Community closer to community protocol, The Citizen (Dar es Salaam), April 28 2008, www.thecommonwealth.org

⁵ See: Negotiations for EAC Common Market begin, the East Africa (Nationmedia.com) April 24 2008. www.tralac.org

⁶ To read the joint communiqué on the CARIFORUM-EU Troika summit see: www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/er/100455.pdf

⁷ PACER is the Pacific Agreement for Closer Economic Relations - including Pacific Island Countries, Australia and New Zealand.

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Calendar and resources

ACP-EU EVENTS

JUNE

- 2 EU Development Commissioner meeting with ACP Committee of Ambassadors.
- 2-3 European Commission-EU Member States meeting on EPAs and RSPs/RIPs/10th EDF for SADC, Pacific, Caribbean.
- 2-6 EAC-European Commission EPA Coordination Committee meeting, followed by an experts meeting in the second half of June.
- 3 South Africa-EU Troika meeting, Brdo.
- 4-6 World Economic Forum on Africa, Cape Town.
- 8-13 87th Session of the ACP Council of Ministers, Addis Ababa and 33rd Session of the ACP-EC Council of Ministers, Addis Ababa.
- 11-12 OECD Regional Forum on Trade Facilitation, Cape Town.
- 16-17 OAS / ICTSD Symposium on Aid for Trade for the Caribbean, Kingston.
- 16-19 West Africa - European Commission technical EPA negotiations, Abuja.
- 17 AU-EU Troika meeting, Luxembourg.
- 23 34th ECOWAS summit of Heads of State and Government, Abuja.
- 24-26 ESA-European Commission EPA negotiations at technical and senior officials level, Brussels.
- 24-26 West African Ministerial Monitoring Committee meeting, Abuja.
- 25-27 3rd ACP Civil Society Forum, Brussels.
- 30 SADC-European Commission EPA negotiations at technical and senior officials level.
- 4 July

JULY

- 7-11 EAC-European Commission experts meeting.
- Week CEMAC-European Commission ministerial EPA negotiation of 21 meeting.
- 25 EU-South Africa Summit, Nantes.
- 28-31 West Africa-European Commission EPA negotiations at the technical level, Brussels.

WTO EVENTS

JUNE

- 2 Dispute Settlement Body.
- 3 Committee on Trade in Financial Services.
- 3 Committee on Specific Commitments.
- 3-4 Working Party on GATS Rules.
- 5 World Environment Day 2008, UNEP, Wellington, New Zealand.
- 9 + 11 Trade Policy Review Body, United States.
- 13 WTO Introduction Day.
- 16 Council for Trade in Services.
- 17-18 Council for Trade-Related Aspects of Intellectual Rights.
- 24 Dispute Settlement Body.
- 25 + 27 Trade Policy Review Body, Oman.
- 25-26 Committee on Sanitary and Phytosanitary Measures.
- 29 June XVIII World Congress on Safety and Health at Work, ILO, Seoul, Republic of Korea.
- 2 July
- 30 + Geneva Week (Non-resident Members and Observers).
- 1-4 July

JULY

- 1 Council for Trade in Goods.
- 1-2 Committee on Technical Barriers to Trade.
- 1-3 Workshop -WTO Agreement - Government Procurement.
- 14 + 16 WTO: Trade Policy Review Body, Singapore.
- 15 Round of Consultation on the Development Assistance Aspects of Cotton.
- 17-18 Committee on Regional Trade Agreements.
- 22 Dispute Settlement Body.
- 23-25 Trade Policy Review Body, Barbados.
- 29-30 General Council.

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