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Environmental provisions in Economic Partnership Agreements: Implications for developing countries

Beatrice Chaytor



Bilateral and regional trade agreements (RTAs)^[1] have proliferated over the past decade, and even as they set out the basis for their respective parties' trade relations, their provisions have increasingly included environmental provisions. This trend has grown rapidly and stems from the recognition that economic and environmental policies are interlinked and should take account of each other. The countries leading this trend are mainly OECD countries (including the United States, Canada and the European Union). The attempt to achieve mutual supportiveness of trade and environmental measures within international and regional trade agreements has therefore become more or less routine;^[2] however, the degree to which environmental issues are included in trade agreements remains controversial.

Developing countries, in particular, have been cautious about incorporating trade and environment at the multilateral level. Many are therefore wary of incorporating trade and environment in regional trade agreements for fear of prejudicing their multilateral positions. Nevertheless, the EU has incorporated environmental provisions into the agreements

it is negotiating with African, Caribbean and Pacific (ACP) countries and they reflect varying degrees of substance and ambition ranging from mere exception clauses to a full chapter on environment.¹

As the first EPA to be concluded and signed, the Agreement between the CARIFORUM

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International Centre for Trade
and Sustainable Development



Editorial

Two thousand and nine will not be remembered as a particularly auspicious year in international relations. Most famously, the UN climate change conference missed its target of achieving a binding, international agreement on climate change, with an end-of-year meeting in Copenhagen that further strained the already fragile levels of trust that exist among governments on this issue. In the field of international trade, the state of play also disappoints. At a WTO ministerial meeting, also held in December, governments largely avoided the elephant in the room: the Doha Development Round, which is lumbering into its ninth year.

Nor will 2009 be seen as a hallmark year in the ACP-EU EPA negotiations. The interim agreements of 2007-2008 have not yet been replaced by full agreements. While several interim EPAs have been signed in 2009, most have yet to be notified to the WTO and implemented. Moreover, several countries have continued to postpone the signing of their interim agreements concluded with the EU. What are the obstacles? There are many, of course, which TNI has highlighted over the years. But perhaps the most unsettling is remarked on by Darlan F. Marti, one of our guest contributors this month: there is "great convergence over the fact that there continues to be a huge trust gap in the negotiations". We would add that there is also an under appreciation of the potential development benefits of an EPA.

Does 2010 offer better prospects? There is some reason for optimism. For one, the EU's incoming trade commissioner, Karel De Gucht, says he is committed to concluding EPAs that give priority to promoting development in ACP countries. He also says he is confident that the Doha Round can be tied up in the next year or two, resulting in an agreement that fulfils its development agenda. And there is a strong hope in both the ACP regions and Europe that this year will witness the signing of some more interim EPAs and the conclusion of some new EPAs, including at the regional level. But time will tell.

As for TNI, we will continue to shine a spotlight on the Economic Partnership Agreements, the processes of regional economic integration more broadly, and the trade and development nexus.

TNI's last issue of 2009 featured a special series of articles on the links between trade and environmental policies. In this first issue of 2010, we pick up where we left off, with a guest feature on environmental provisions in EPAs, authored by Beatrice Chaytor, a Programme Officer at International Lawyers and Economists Against Poverty.

Next, we explore the issue of services liberalisation from the perspective of the Eastern and Southern Africa (ESA) region, with an essay by Narainduth Boodhoo, Chairperson of the ESA Negotiating Group on Trade in Services.

What would the WTO draft modalities mean for trade in sugar? Amani Elobeid, an international sugar and ethanol analyst with the Food and Agricultural Policy Research Institute (FAPRI) at Iowa State University, provides some answers based on her recent study on the subject.

Darlan Marti provides some much needed perspective on the EPA negotiations, by reflecting on the 17 essays authored by trade experts and senior policy-makers which are brought together in the recently published E-book, "Updating Economic Partnership Agreements to Today's Global Challenges."

Finally, the sticky issue of technical barriers to trade is given frank consideration by Achille Bassilekin, Deputy Head of the ACP Geneva Office, in an article that provides concrete proposals to overcome the challenges for ACP countries resulting from the abundance of technical rules and standards that must be followed in order to access the EU market.

As always, the editorial team at ECDPM and ICTSD welcomes feedback or offers to contribute articles. These can be directed to Damon Vis-Dunbar at dvisdunbar@ictsd.ch.

News and publications

In brief

EU and Latin America strike deal on trade in bananas

A two decade-long trade dispute of concern to a number of ACP states was resolved in December when the European Union and Latin American countries reached an agreement on the EU's tariffs on banana exports. The EU has provided preferential access to its market for banana exporters from ACP states, provoking protest from the banana exporting countries in Latin America. Under the pact, the EU will cut its MFN tariff on bananas in eight stages, from the current rate of €176/tonne to €114/tonne in 2017 at the earliest (2019 at the latest), beginning with a €28/tonne cut once the deal is signed by all parties. In turn, Latin American banana producing countries, along with the United States, agree to settle their pending legal disputes against the EU at the WTO. The WTO Dispute Settlement Body has consistently sided with the Latin American countries, which charge that the EU's tariff regime for bananas is incompatible with WTO rules. The United States has also challenged the EU's banana tariffs, since many of the largest banana producers operating in Latin America, such as Chiquita, Del Monte and Dole, are headquartered in the US. The EU will provide €200 million to support the main ACP banana-exporting countries adapt to the erosion of their preferential access to the EU market.

Incoming EU trade commissioner sets out priorities for trade policy

The European Union's trade commissioner-designate, Karel De Gucht, pledged to take an "open and flexible approach" to the EPA negotiations, and said concluding the negotiations with the ACP countries should be a top priority for the EU. The remarks came during a three-hour confirmation hearing before Members of the European Parliament. While noting that the EPAs "have come under a lot of criticism, from partner countries as well as civil society in Europe", he expressed confidence that the agreements "can foster development". De Gucht, the former Belgium foreign affairs minister, also told EU parliamentarians that he is "quite confident" that a Doha Round trade deal can be struck this year or next. De Gucht added that WTO members have agreed on "90 percent of the topics under negotiation," and blamed the United States, China and India for the most recent major setback in the talks.

ACP-EU Joint Parliament Assembly adopts resolutions

The ACP-EU Joint Parliament Assembly, meeting in Luanda from 30 November-3 December, adopted resolutions on global governance, reform of international institutions and on the impact of the financial crisis on ACP states.¹ It also adopted the "Luanda Declaration" on the Second Revision of the ACP-EU Partnership Agreement. ACP-EU Co-President Louis Michel called for additional official development aid to help developing countries combat the food crisis and climate change. Michel advocated seeking new sources of development policy funding, such as a tax on air fares, and backed the idea of a tax on financial transactions. Finally, this 18th ACP-EU JPA was an opportunity for the Commission to clarify the practical management and implementation details of the €500 million Vulnerability FLEX mechanism, which was adopted in August 2009 as a response to the economic crisis for the most affected ACP countries. Since then, the EC has approved a total of €215 million² under the mechanism.

Study examines link between EPAs and development

A study published by the German Development Institute assesses the effectiveness of the EU's effort to link trade and development policy in the context of the EPAs with the ACP countries. The author of the study, Davina Makhan, sets two goals: to analyse the relevance for development of the EU's trade policy towards the ACP countries; and second, to assess the way the EU has operated as a multilevel system (i.e., one that consists of both the European Community and the individual EU Member States) in the EPA negotiations, in order to draw conclusions on how to strengthen the EU's capacity to fulfil its international development policies. The study is part of a larger research project funded by the German government that analysis the coherence European development policies in the areas of trade and security.

To view this report in full, see "Linking EU Trade and Development Policies", available at: [http://www.die-gdi.de/CMS-Homepage/openwebcms3.nsf/\(yDK_contentByKey\)/ANES-7YUFE/\\$FILE/Studies%2050.pdf](http://www.die-gdi.de/CMS-Homepage/openwebcms3.nsf/(yDK_contentByKey)/ANES-7YUFE/$FILE/Studies%2050.pdf)

Note

- 1 ACP-EU Joint Parliamentary Assembly texts adopted. http://www.europarl.europa.eu/intcoop/acp/60_18/default_en.htm
- 2 Commission approves € 230 million to cushion the impact of the economic crisis in 13 African and Caribbean countries. 15 December 2009. http://ec.europa.eu/europeaid/documents/aap/2009/pr_aap-spe_2009_ben.pdf

Continued from front page

States and the EU (C-EPA) was always going to be the benchmark against which the other EPAs would be measured, so it is not surprising that those countries that continue to negotiate with the EU will look at the C-EPA for the environmental provisions it contains in order to learn lessons.

Sustainable development

Sustainable development is the broad remit of all the EPAs with the EU, where it is reflected in the preamble and objectives as well as in the existing environmental provisions. Thus, in the C-EPA the issue of environment is not limited to trade; instead it is part of a broad-based, cooperative approach covering a whole range of issues under the rubric of sustainable development. Under Part I, which is titled 'Trade Partnership for Sustainable Development', Article 3 recalls key aspects of the Cotonou Agreement in reaffirming the prime objective of sustainable development. This general approach is reflected in most interim EPAs, where sustainable development references are contained in the preamble (recalling the Cotonou Agreement's objectives and provisions) and objectives of the agreements. Thus, the references to environment or sustainable development in the Cotonou Agreement are more or less the minimum standards that will be applied in any EPA, and they will usually be recalled in the preamble or the 'objectives' provision in the EPA. The exception is the interim agreement between Côte d'Ivoire and the EU, which only mentions sustainable development by recalling the objectives of the Cotonou agreement; the agreement does not itself contain sustainable development as a specific objective.

Natural resources and the environment

The scope of the environment issues under the C-EPA environment chapter is rather broad and generic; pursuant to their commitment to sustainable development, the parties in the C-EPA are "resolved to conserve, protect and improve the environment".^[3] The reference to "sustainable management of natural resources and the environment" in Article 183 recalls environment and natural resources as cross-cutting and thematic issues in the Cotonou Agreement.^[4]

Also included in the scope of environmental issues under the C-EPA are: environmental technologies, renewable and energy-efficient goods and services and eco-labelled goods.^[5] The East African Community (EAC) interim

EPA does not spell out the precise scope of environmental issues; instead a marker is set down for future provisions on trade, environment and sustainable development in the *rendez-vous* clause.^[6]

Other thematic areas

Environmental standards are not only promoted in Chapter 4 of the C-EPA, but also in other chapters, such as those on agriculture and fisheries (Chapter 5 of Title I), the chapter on commercial presence (Chapter 2 of Title II) and Section 7 on tourism services (Chapter 5 of Title II). Public health issues are also covered by the commitments to environmental protection.^[7]

In the EAC interim EPA, the focus of environment issues is on fisheries, which is a key economic resource for the EAC partner states.^[8] Co-operation between the parties is to include, *inter alia*, fisheries management and conservation issues; development of fisheries and fisheries products; and marine aquaculture. Forest resources and production of forestry products are priorities for the Central African region and measures for their sustainable management are therefore reflected in the Cameroon interim EPA.² Sanitary and phytosanitary (SPS) measures are also a main thematic area in the C-EPA and the interim EPAs in so far as the protection of animal and plant health is at issue.^[9] In the EAC interim EPA, SPS measures are a topic for future negotiation.^[10]

All the EPAs contain a general exception clause exempting measures to protect or preserve human, plant, and animal health from general trade obligation. Such a clause is a minimum environmental protection provision found in all EPAs. In this respect, the provisions either repeat the language of GATT Article XX or they explicitly refer to, or incorporate it.

Environmental cooperation

In the C-EPA, the Parties agree to cooperate on a range of issues where trade and environment intersect such as *inter alia*: support for trade in environmental products and services; compliance with relevant products and other standards in the EU market, and relevant labeling and accreditation schemes. No precise procedures or a timeframe for the cooperation on environment issues is specified in the agreement. Neither does it state how the cooperation mechanisms will be developed and implemented.

The extent of reporting, the involvement of specific stakeholders, and the funds to be dedicated to such co-operation all remain undefined. In this respect, an opportunity was missed to elaborate the substance of a provision that could be used as a demonstration of positive trade instruments to support environmental protection, and to promote mutual supportiveness of trade and environment measures. Moreover, the lack of detail has implications for implementation.

International environmental agreements

Pursuant to their commitment to sustainable development, the parties in the C-EPA are resolved to protect the environment, "including through their participation in regional and international environmental agreements."^[11] The Parties "recognise the importance of establishing effective strategies and measures at the regional level," rather than commit to establishing such strategies and measures. Where there are no national or regional environmental standards, international standards are to be the benchmark for environmental protection measures.^[12] This has the effect of potentially bringing the international environmental obligations into the domestic law of CARIFORUM states.

Notably, however, the C-EPA does not specify the precise international environmental agreements in question, leaving the provision fairly general. The implication is that it refers back to Article 183 (4), so it will be the international standards contained in the international conventions to which the countries are party. Thus, two issues are of note. First, what happens when CARIFORUM states are not party to a particular international convention but the EU is? Do the international standards in that particular multilateral environment agreement (MEA) apply to the C-EPA nevertheless and therefore bind the CARIFORUM states? Second, it appears that the reference to international environmental standards came at the insistence of the CARIFORUM states, which had rejected the EU proposals to use certain EU regional standards as the benchmarks and which exceeded international standards.^[13]

Where MEAs are referred to by name, their provisions will expressly bind the parties. The Cameroon interim EPA specifically references the Convention on Trade in Endangered Species of Flora and Fauna, for example, and the EAC interim EPA mentions the UN Convention on the Law of the Sea (UNCLOS) as well as regional and sub-regional fisheries agreements.^[14]

National laws on environment

C-EPA, like most recent RTAs, provides that parties should ensure “high levels” of environmental protection under their respective domestic laws, while allowing the parties to set their own minimum standards. The interim EPAs concluded with Pacific and East, West and Central African countries do not have this provision. The phrase “high levels” is not precisely defined, nor referenced against any specific international levels of environmental protection, despite the reference in the C-EPA that international standards should be applied in the absence of national or regional standards. The inference is that with references made to regional and international environmental agreements, parties will choose to apply those same high levels of environmental protection in their domestic laws.

There is no general mechanism in EPAs to enforce these “high levels” of environmental protection. So, for instance, the C-EPA does not oblige the parties to enforce their national environmental laws, with the exception of foreign direct investment. The commitment not to lower levels of environmental protection in order to attract investment is strongly emphasised in C-EPA. Subject to their sovereign right to regulate, in Article 188, the EU and CARIFORUM Parties “agree not to encourage trade or foreign direct investment to enhance or maintain a competitive advantage by:

- (a) lowering the level of protection provided by domestic environmental and public health legislation;
- (b) derogating from, or failing to apply such legislation.”

Dispute Settlement

The general dispute settlement procedures in the C-EPA apply also to disputes on environmental issues,^[15] although the environment chapter sets out a separate consultation process for resolution of environmental disputes.^[16] The indication is that this process of consultation through the EU-CARIFORUM Consultative Committee should be exhausted first before recourse to the ordinary dispute settlement procedure in the C-EPA.^[17] The usual sanctions for the disputes are fines, and although suspension of trade concessions is possible, they are ruled out for disputes concerning environment issues.^[18] This exclusion of trade sanctions as remedies for environmental

disputes is a similar provision to that under the US-Chile Free Trade Agreement.

The separate remedy for environmental disputes, and the fact that trade sanctions are not allowed for environmental disputes, provides an insight into the lingering reservations concerning the trade and environment debate. In particular, it shows that developing countries are still uncomfortable with the idea that negative trade instruments should be used to enforce environmental obligations. The provisions on environment within EPAs still strongly favour negotiation and consultation over use of trade sanctions. The balance, therefore, remains tipped towards the use of more positive rather than negative trade instruments for environmental purposes in order to achieve the mutual supportiveness of trade and environment.

Lessons from the C-EPA and the interim EPAs

Environmental issues are firmly established in the EPAs and despite the lack of substantive provisions in the interim EPAs, more detail will come in the full Agreements to be concluded with Pacific and East, West and Central African countries. The Cotonou Agreement which already has significant references to sustainable development and environmental issues reflects the minimum standard which these EPAs will maintain. It is likely that their environmental provisions will go further, but the degree to which they will seek to have a balance in the mutual supportiveness goal will differ from region to region. There is already a clear delineation among the interim EPAs where certain economic issues are prevalent, and competitiveness issues are paramount. For instance, the Pacific interim EPA has the bare minimum environmental provisions referencing Cotonou, whilst EAC and Central African interim EPAs build on Cotonou’s standard with more substantive provisions on natural resources and an indication of more detailed provisions to follow in the full EPAs.

C-EPA clearly improves upon Cotonou and its hybrid of binding and non-binding measures may also be a benchmark for some environmental provisions in EPAs. International standards are clearly embraced, however, where enforcement of those standards are concerned, there is a hesitation in using traditional trade sanctions; instead, political dialogue and consultation are preferred, possibly as a recognition that non-compliance with environmental

standards is due to lack of capacity or understanding of the obligations, rather than a deliberate neglect of responsibilities on environmental protection. Thus, the mutual supportiveness objective is present but cautiously approached.

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The author based this article on on her research paper “Environmental provisions in economic partnership agreements: Implications for developing countries”, available at <http://ictsd.org/Inews/bioresreview/48798/>

Notes

- 1 See also Peter Thompson, EPAs and natural resources, Trade Negotiations Insights, 8(4), April 2009
- 2 See endnote [1] and for a critic Hall, R., Undercutting Africa: Why EPAs threaten the world’s forests and forest peoples, Trade Negotiations Insights, 8(1), February 2009.

Endnotes

- [1] In this article, RTAs refers in a generic sense to bilateral, and regional trade agreements.
- [2] This objective is contained in numerous political statements including the 1992 Rio Declaration.
- [3] C-EPA, Article 183 (3).
- [4] This is placed in the context of broader sustainable development principles by Article 183.1.
- [5] See Article 183.5. The Parties are resolved to make efforts to promote such trade.
- [6] See EAC interim EPA, Article 37(Areas for future negotiations). The EAC partner states and the EC have agreed to conclude a comprehensive EPA by 31st July 2009.
- [7] Article 184 refers to “domestic environmental and public health protection and ...sustainable development priorities” in the same context, thereby linking them to each other.
- [8] A whole chapter (III) is dedicated to fisheries, and includes marine and inland fisheries and aquaculture development.
- [9]E.g., C-EPA, chapter 7 (Articles 52-59) ; Cote d'Ivoire interim EPA, Title III, chapter 4 (Articles 36-43); Cameroun interim EPA, Chapter 4 (Articles 40-47); Pacific interim EPA, chapter 5 (Articles 33-41).
- [10]EAC interim EPA, Article 37 (c).
- [11]C-EPA, Article 183.3.
- [12]Article 185.2.
- [13]This assertion comes from Audel Cunningham, Legal Advisor to the Caribbean Regional Negotiating Machinery, in Philipp Schukat, CARIFORUM EPA and Beyond: Recommendations for Negotiations on Services and Trade Related Issues in EPAs, GTZ Study on Social Aspects and Environment, BMZ Working Paper, 2008.
- [14]EAC interim EPA, Articles 28, 31 (1) (d);
- [15]See C-EPA, Article 203.1: “This part shall apply to any dispute concerning the interpretation and application of this Agreement.”
- [16]See C-EPA Article 189.
- [17]Ibid, Article 204.
- [18]Ibid, Article 213.2: “...In cases involving a dispute under Chapter 4...of Title IV, appropriate measures shall not include the suspension of trade concessions under this Agreement...”

EPA services negotiations: An ESA perspective¹

Narainduth Boodhoo

Trade in services is bound to play a more prominent role in the economic development of the Eastern and Southern Africa (ESA) group of countries in the coming years. Unfortunately, however, not all countries in the region have so far realized the importance of services trade and its nexus with trade in goods. Special attention must also be given to strengthening capacity and improving competitiveness in African countries and providing appropriate flexibility in the sequencing of liberalisation commitments.

While services account for over 60% of GDP for some African countries, for most, the share varies between 30 and 50%. Those countries with a more developed services sector have tended to adopt an offensive stance in trade negotiations with the EU, while the majority of states have favoured a defensive posture. This latter group argues that liberalisation of services trade should be preceded by capacity building to develop the necessary regulatory framework, which is sorely lacking in many African countries, in addition to assisting them in developing supply capacity. Trade liberalisation is not, in their view, a magic wand that will automatically lead to the development of their nascent services sector, nor will it help increase exports of services in the future.

Services Negotiations in the EPA: Cotonou Agreement as a basis

This argument is substantiated by the provisions of Art 41(5) of Title II of the Cotonou Partnership Agreement, which stipulates that "the Community shall support the ACP states efforts to strengthen their capacity in the services sector. Particular attention shall be paid to services related to labour, business, distribution, finance, tourism, culture and construction and related engineering services with a view to enhancing their competitiveness and thereby increasing the value and the volume of their trade in goods and services."

Paragraph 4 of the same Article provides that the Parties (EU-ACP) "agree on the objective of extending under the Economic Partnership Agreements, and after they have acquired some experience in applying the Most Favoured Nation (MFN) treatment under GATS, their partnership to encompass the liberalisation of services in accordance with the provisions of GATS and particularly those relating to the participation of developing countries in liberalisation agreements".

However, the point that has been emphasized by many is that strengthening capacity in the supply of services and enhancing competitiveness are prerequisites to be met before the ACP states actually engage in negotiations with the EU to progressively liberalise services trade.

Paragraph 3 of this same Article obligates the EU to "give sympathetic consideration to ACP States priorities for improvement in the EU Schedule with a view to meeting their specific interests". This could be interpreted as an obligation on the EU to open up its market to the ACP countries without the latter having to reciprocate until such time that their capacity in the supply of services has been strengthened.

One of the many problems encountered in the negotiations so far is that the EU is not giving the required importance to the issue of strengthening capacity and improving competitiveness in ACP states. A commitment on the EU's part to specify the amount of resources to be made available would therefore help unlock the current impasse in the negotiations. So far, however, there is a tendency on the part of the EU to focus only on trade liberalisation, while the development aspect has been sidetracked. This is the wrong approach. Market opening, however generous, will never deliver in the absence of the capacity to produce. It is a fact that the services sector is still at an infancy stage in many ESA countries. A binding commitment on the part of the EU to provide genuine support to develop the sector will send a strong signal that it is serious about encouraging a robust services sector in the ESA region. Unfortunately, this has yet to happen.

The ESA approach to the negotiations

The ESA approach to the negotiations is one based on the GATS architecture. Any attempt to adopt a different architecture based on a "modal approach" may lead to protracted negotiations. While the ESA proposal sets out common obligations and disciplines for the four modes of supply of services, the EU one establishes separate disciplines for each mode of supply and therefore departs from the GATS approach. So far both parties have agreed to work on a merged EC-ESA text, but unfortunately divergence on certain key elements like mutual recognition of qualifications and domestic regulations on the MFN clause continue to persist.

On mutual recognition, the ESA wants a binding commitment from the EU to recognise professional qualifications on the basis of an objective set of criteria. The EU, in contrast, is proposing a best endeavour clause that calls on the parties to encourage professional bodies to provide recommendations on mutual recognition. Regarding domestic regulations, the ESA wants a firm guarantee that measures relating to qualification requirements and procedures do not constitute disguised restrictions to trade. It further proposes that the two parties consult before the adoption of any new regulation on trade in services, amongst others.

The MFN clause remains one of the most contested proposals. According to this clause, any more favourable treatment on trade in services provided to a third party by either the EU or the ESA should automatically be extended to the other party. A similar proposal in the trade in goods chapter had given rise to severe criticism on account of its adverse impact on South-South cooperation, given that the ESA countries would have to automatically extend to the EU any more preferential treatment granted to countries like China, India or Brazil. The MFN clause remains highly controversial and any attempt to impose this clause may result into a stalemate.

The ESA is also expecting an ambitious commitment on the movement of natural persons with few strings attached. The EU has to recognise that so far the only sector where

the ESA might have a comparative advantage is on mode four (movement of natural persons). Importantly, this is not in the narrow sense, as defined in the GATS, of the temporary movement of professionals in a clearly defined context, but rather in terms of skilled, semi skilled and unskilled workers which we have termed "enhanced mode four". The ESA position is for the EC to agree to the movement of natural persons in this broader category of labour to work in the EU temporarily.

As the ESA group consists predominately of Least Developed Countries (LDCs), it is crucial that they are provided with the necessary flexibility to sequence liberalisation in line with their national development plans and priorities. Indeed, some ESA countries may not be able to make any commitments on services liberalisation in the short term. All these concerns will have to be accommodated to ensure that the process is inclusive and preserves the unity of the group.

Furthermore, it is important to note that all ESA countries are also COMESA member states. COMESA has also launched its services negotiations and intends to liberalise the intra-COMESA services sector. The agenda is very ambitious, given the recognized importance of the services sector for the region. A framework agreement has already been agreed and key services sectors have also been identified. Sector specific negotiations are expected to begin this year. It is therefore believed by many that there must be an appropriate sequencing between the regional process and liberalisation with third countries if COMESA wants to develop an efficient and ambitious services market. While some tend to believe that any more ambitious agreement with the EC will undermine the regional integration process, those that have an offensive agenda argue that the EPA process and the regional initiative can be largely complementary and that the EPA process can be used as a strategic leverage to further develop the regional market and attract much needed investment to the region.

Notwithstanding the above, it is crucial that the ESA group concludes a full and comprehensive EPA that encapsulates services. The services sector can play a major role in unlocking the development potential of the ESA countries by supporting virtually all other sectors of the economy, be it agriculture, industry or the mining sector. Without adequate banking, transport or communication services, for instance, it is impossible to trade efficiently in agriculture or industrial goods. Therefore, an agreement to liberalise trade in services with the EU on a progressive basis coupled with financial assistance to develop the sector can only be a win-win situation. Hopefully, with some flexibility in the negotiations, we can achieve this.

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Notes

See also Fabien Gehl, Services and EPA: A difficult but vital relationship, Trade Negotiations Insights, 8(8), October 2009

How would a trade deal on sugar affect exporting and importing Countries?

Amani Elobeid

Sugar markets are highly distorted with even the most efficient producers providing a myriad of policy interventions that protect domestic sugar production. This is especially the case in developed countries, like the EU, Japan and the US. Conversely, many of these developed nations also offer market access to developing countries through preferential trade agreements at much higher sugar prices than those in the world market. Thus, a significant amount of sugar trade occurs under these preferential trade agreements, and non-competitive preference-receiving countries end up producing and exporting sugar at the expense of competitive low-cost sugar-producing countries.¹



Given this environment, what would be the impact of trade liberalisation of sugar on both developed and developing economies? In particular, how would the WTO draft modalities, proposed in July 2008 (and revised in December 2008), impact sugar, especially based on its treatment as a sensitive product, a tropical product or a preference erosion product?

This article examines the implications of the draft modalities for sugar exporting and importing countries, in terms of the proposed reductions in tariffs, lower domestic support, expansions in tariff rate quotas (TRQs), and elimination of export subsidies, as well as the treatment of sugar as a sensitive, preference erosion or tropical product. An international sugar model is used to analyse the impact of the more liberal trade on major sugar producing and consuming WTO member countries, and the results are compared to a baseline without the proposed trade concessions.

Generally, the existence of trade barriers leads to a lower world sugar price relative to a liberalized market, since restricted imports result in higher domestic prices in the protected market, and hence higher domestic production and lower domestic consumption of sugar (although, it is important to note that demand for sugar is somewhat price inelastic: as a necessity good in mostly developing countries, it is less responsive to changes in prices relative to most goods). Increased market access through the reductions on bound tariffs called for under the draft modalities would require only a limited number of WTO members to cut their tariffs, as many countries have applied tariffs well below the reduced bound rates.

Of the countries required to make tariff reductions, the EU, Japan and the US would experience the most significant tariff cuts lowering their tariffs by 70%. Most developing countries would have to reduce their bound rates by 36%. Under this scenario, the increased market access would result in a higher world price for sugar as countries lower their trade barriers, thus reducing their domestic sugar price, decreasing domestic production and increasing domestic consumption. This would lead to higher imports and allows competitive sugar-exporting countries like Brazil to increase their market share. However, the higher world price would also reduce sugar demand in sugar-importing countries responding to the more expensive sugar.

“Overall, the preference erosion that occurs with trade liberalisation adversely affects preference-receiving countries that are not competitive in the world market, while benefitting low-cost producers.”

Since cuts on bound tariffs only impact countries where the applied rates are large enough to require reductions in their applied tariffs to the lower bound levels, the impact of tariff reduction is small. Imports increase in countries where tariffs are cut and the world sugar price increases by an average of only 1% when compared to the baseline. Countries where no tariff cuts occur respond to the higher world price by reducing their imports. Overall the impact on trade is also small, about 0.7% on average relative to the baseline.

Increased market access is also achieved through an expansion in TRQ. This expansion occurs only in countries that are at or below their TRQ commitments. Just as in the case of cuts in bound tariffs, only a limited number of countries are affected by the proposed TRQ expansions, as less than 50% of WTO members have TRQ commitments and most of these countries already import above their commitment levels.

Even if sugar is treated as a sensitive product, triggering lower tariff cuts but larger TRQ expansions, the expanded TRQs would represent only 3% of world trade. Furthermore, the modalities offer accelerated liberalisation if sugar is treated as a tropical product. If the first of the two options is considered, the EU, Japan and the US would reduce their bound tariff rates by 85%, which would result in higher imports and an increase in the world price by 1.2% on average. In this case, exporting countries increase their supply of sugar while importing countries reduce their demand.

On the other hand, treating sugar as a preference erosion product implies slowing its liberalisation to allow more time for preference-receiving countries to adjust to the eroding preferences. Some of the ACP countries, like Mauritius and Guyana, would be able to reduce costs by investing in restructuring and modernizing their sugar industry. Overall, however, the preference erosion that occurs with trade liberalisation adversely affects preference-receiving countries that are not competitive in the world market, while benefitting low-cost producers. Case in point is the 15 December 2009 agreement between the EU and Latin American countries to phase-in reductions in tariffs for bananas. This agreement provides a guideline for dealing with the conflicting goals of tropical versus preference erosion products. In this case, the tariff reductions would increase EU imports from Latin American exporters while exports from ACP countries would decline. As a result, the EU has agreed to compensate ACP countries for the anticipated reduction in their market share. Overall, the extent of the negative impact will be determined by how dependent the preference-receiving country is on the preferential access, as well as how important the product is to its economy.

Under the proposed modalities, the EU, Japan and the US would face the largest reductions in support as their sugar markets are highly protected. Reducing support lowers domestic prices and production and increases consumption. With increased imports, world prices increase and low-cost producers respond by increasing production and exports. Table 1 presents the reductions in domestic support for the EU, Japan, and the US as well as for other developed and developing countries. In addition to the reductions in Overall Trade Distorting Support (OTDS), the EU, Japan and the US have an initial cut of 33.3% (25% for other developed countries). Reductions in Total Aggregate Measure of Support (AMS) also include an initial cut of 25% for the three countries. No initial cuts are required for other developed countries, which have Total AMS under US\$15 billion.

Table 1. Reductions in Domestic Support

	Reductions in Overall Trade Distorting Support (OTDS)	Reductions in Total Aggregate Measure of Support (AMS)
EU	80%	70%
Japan	70%	70%
US	70%	60%
Other Developed Countries	55%	45%
Developing Countries	37%	30%

The elimination of export subsidies also reduces sugar production and exports, thus increasing the world price. Few countries would be affected by the removal of export subsidies as a limited number of countries use export subsidies for sugar. One such country is the EU, although in this case the impact of eliminating the export subsidy would be mitigated by the implementation of the EU Common Market Organisation (CMO) sugar reforms, which reduced sugar production drastically. However, to meet its commitment to eliminate export subsidies while fulfilling its commitment to preferential sugar imports from developing countries, the EU may be compelled to further reduce domestic sugar prices and production.

In conclusion, lowering trade barriers, reducing domestic support and removing export subsidies result in lower domestic production in countries providing support. Since these countries tend to be high-cost producers, the result is a diversion of trade to low-cost more efficient producers. Hence, despite the fact that consumers will face a higher world price for sugar, they benefit from the reduction in the cost of supporting the domestic sugar industry. However, the main message is that the overall impact of increased market access is not large as not all countries are required to reduce their trade barriers, either because they already have low applied tariffs or because of their classification as Least Developed Countries (LDCs) or recently acceded WTO members. Additionally, because of provisions for special products, developing countries may still be able to continue trade-distorting policies.

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The main message is that the overall impact of increased market access is not large.

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Author

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Notes

- 1 In 2008, world production of sugar reached 162.5 million tonnes. Trade in sugar was 48.3 million tonnes, representing 30% of production worldwide. The ISO 2009 Sugar Yearbook states that 38.3 million tonnes of sugar were traded on the free market, which means that 21% of trade fell under preferential trade agreements.

Updating the Economic Partnership Agreements to match today's global challenges

Darlan F. Martí

Sub-Saharan Africa has been hit hard, first by the food crisis and more recently by the financial and economic crises, and the continent is grappling with the challenges of adapting to climate change. In this fast evolving context, African countries continue to negotiate the challenging Economic Partnership Agreements (EPAs) with the European Union. Would the EPAs - the reforms they may require and the mechanisms they may create - have made any difference in the ability of ACP governments and producers to respond to these crises? In other words, had these agreements been implemented and enforced, would they provide useful policy instruments? The recently published electronic book "Updating EPAs to today's global challenges" strives to respond to this question¹.



The objective which drove the preparation of "Updating the EPAs", a collection of seventeen essays authored by recognised trade experts and senior policy-makers, was indeed the desire to assess the EPAs in light of the concurrent food, climatic, economic and financial crises, in order to ascertain whether or not these agreements were likely to constitute relevant instruments of trade and development policies over the years. The response which resulted from the expert opinions and analyses constitute a mix of positive and negative elements. This is not entirely surprising since the EPAs are not black or white. They are complex processes and instruments, necessarily containing a variety of both positive and negative elements, the identification of which depends on the points of view being taken.

The depressing message is that EPAs are not useful or, at least, that these agreements are not necessarily relevant in light of the challenges faced by poor and vulnerable states, such as the ACP countries. The heart lifting message is that all stakeholders continue to strongly believe that the EPAs should and can make a positive difference and that it is therefore possible to shape them for a truly positive outcome.

On the negative side, the views expressed in "Updating the EPAs" reflect great convergence over the fact that there continues to be a huge trust gap in the negotiations. Whether perceived or observed, there is a persistent impression among ACP negotiators that EPAs are about European interests. Or at the very least that they are

about promoting a European perspective of regional integration and trade and development issues. While this is not a new observation and may even sound common place, it is all the same a noteworthy point, especially at this late stage of the negotiating process. Without trust among negotiating parties, there can only be scant chances that negotiations actually lead to a "partnership" as the name of the EPAs would prescribe.

“ Whether perceived or observed, there is a persistent impression among ACP negotiators that EPAs are about European interests. ”

Another area of convergence among authors is that EPAs create incentives and constraints in respect of elements which are not relevant for development policies. In other words, there seems to be a mismatch between the objectives of the EPAs² and what they are actually able to deliver. For instance, after analysing Africa's agricultural or industrial sector, some authors wondered whether the problems which could be identified in these sectors could be matched in a relevant manner against the EPAs. What change would the EPAs produce to improve Africa's

agricultural productivity? Will the EPAs contribute to the emergence of non-traditional economic and productive sectors? Several authors in the book contend that the link between these problems and the responses brought by the EPAs is, at best, tenuous. At worse, there are fears that the EPAs will actually aggravate some of these problems.

In addition, an important negative result of the EPAs is that they undisputedly hinder regional integration in Africa and among ACP countries. This derives not only from the well-known confusing configuration of the EPA country groups, but also from the structure of these agreements. EPAs, as free trade agreements, operate in a manner that will result in trade diversion in favour of EU exporters and to the detriment of third country exporters (including other ACP countries in other EPA regions) and to the detriment of neighbouring ACP countries within a single regional EPA configuration. As such, EPAs may in practice hinder regional trade among the signatories and fail to increase the share of intra and inter regional trade in Africa.

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EPAs are not a panacea and cannot be expected to contribute to solving all poverty problems in ACP countries.

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In sum, EPAs are considered to not address the real or most pressing problems that ACP countries face. Perhaps, at best, being part of an EPA will matter little because ACP governments will simply not fully implement or enforce its provisions. And if they do, EPAs will not assist governments in the areas they need most. At worst, the implementation of EPAs will be a complex and costly process which can create inappropriate constraints for the formulation of developmental policies. Even worse, the implementation of the EPAs might directly aggravate some developmental problems.

Against that backdrop, a legitimate question is whether the trouble of designing and negotiating the EPAs is worthwhile. This is all the more pertinent a question as one could argue that the EPAs as they stand - even full EPAs - would still not be entirely compatible with non-discrimination requirements of the rules of the World Trade Organization (WTO). In fact, the original motivation of EPAs was to replace the Lomé-Cotonou conventions, which discriminated against developing countries in favour of the ACP countries, and had, as a result, come under increased pressure at the WTO to be replaced with new, legally sound regional trade agreements. However, considering the current structure of the agreements (i.e. the lack of full reciprocity in commitments and sometimes only partial liberalisation of trade by ACP countries), that legal certainty cannot be taken for granted.

Despite these difficulties, “Updating the EPAs” also reveals some very positive messages. First, there seems to be a strong convergence of views that a new framework for EU-ACP trade relations is badly needed. The Lomé-Cotonou non-reciprocal preferential system clearly did not deliver its trade and development promises and all sides agree that the persistent poverty emergency in ACP countries calls for real change. Whether the current approach to EPAs represents the best alternative is a separate question. The good news in this respect is that there is a wealth of analyses, lessons learnt and creative ideas about positive contributions on, for instance, investment in trade-related infrastructure, development corridors, strengthened agricultural production, stimulation of innovation and technology leapfrogging.

The second message – and this is an essential element – is that all EPA stakeholders remain convinced that these agreements contain an enormously positive potential and hence wish to remain engaged in the negotiating process. This is in spite of a conspicuous negotiating fatigue affecting negotiators from both the EU and the ACP. In fact, all authors agree that Europe and ACP policy makers are bound to deliver a successful EPA. That is the only possible conclusion of the EPA process.

Finally, the rhetoric according to which EPAs are an instrument for poverty reduction is not very helpful as it raises unreasonable expectations about what these agreements should or could deliver. EPAs can be understood in light of two main frameworks.

- First, EPAs can be seen as a classic regional or free trade agreement: that is, an instrument for creating and securing market access mainly through obligations for the elimination of trade barriers among participants.
- Alternatively, EPAs can constitute a milestone in EU-ACP relations, not strictly limited to trade but also encompassing financial, economic and infrastructural cooperation.

Of course, both frameworks do not entirely exclude each other and it is likely that the negotiated EPA outcome will contain elements of both without, however, fully embracing one or the other option.

In either case, however, EPAs are not a panacea and cannot be expected to contribute to solving all poverty problems in ACP countries. A clearer communication about the objectives of these negotiations and agreements would enormously contribute to creating a healthier negotiating ground on which negotiators can bounce to finalise negotiations.

Author

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The author based this article on his presentation of the eBook “Updating the Economic Partnership Agreements to today’s global challenges” at the GMF launch event in Brussels on 19 November 2009. You can listen to the presentations made during the eBook’s launch at: http://web.gmfus.org/Imp3s/Ebook_Nov19.mp3

The views expressed in this article are the personal views of the authors and should not be attributed to the German Marshall Fund of the United States or any other institution

Notes

- 1 The book was made possible through the support of the German Marshall Fund of the United States. The following authors have contributed to the publication: Emily Jones (Oxford University) and Darlan F. Marti (UNCTAD), Katrin A. Kuhlmann (GMF), Patrick Messerlin (GEM, Sciences Po Paris), Christian Haerberli (WTI), Sanoussi Bilal (ECDPM), Bert Koenders (Government of the Kingdom of the Netherlands), Joao Aguiar Machado (European Commission, DG TRADE), Xavier Carim (Government of the Republic of South Africa), Jean Noel Francois (African Union Commission), Ablasse Ouedraogo (WAEMU Commission for EPA negotiations), Christopher Stevens (ODI), David Laborde Debucquet (IFPRI), Pierre Sauvé (WTI) and Denis Audet, Stephen Karekezi, John Kimani and Oscar Onguru (all AFREPREN), Ruth L. Okediji (University of Minnesota), Xavier Cirera (University of Sussex), and Eckart Naumann (TRALAC). The book is available at: http://www.gmfus.org/publications/article.cfm?parent_type=P&id=706
- 2 The objectives of economic and trade cooperation as defined in Article 34 of the Cotonou Agreement are to foster “the smooth and gradual integration of the ACP countries into the world economy... thereby promoting their sustainable development and contributing to poverty eradication”.

Facing European Community technical barriers to trade: What options for ACP countries?

Achille Bassilekin

If there is one area where the European Community shows real dynamism, both at the level of Community bodies and the bodies of the Member States, it is in drafting standards aimed at strengthening the domestic market and protecting EU consumers. Too often, however, the process of preparing, adopting and applying technical rules or standards – which are applied to products sold on the EU market – are so complex that they may become technical barriers to trade.



The complexity results in part from the fact that European Community rules (directives and regulations) coexist with those enacted by the six supranational institutions recognized by the European Commission¹, the 27 EU Member States' normalisation bodies, and also by various intra-state (regional, local, private) normalisation bodies. Depending on the area, some national or local standards appear to be stricter than European Community rules. To illustrate this proliferation of European Community standards, the 2005 World Trade Report of the WTO indicated that while the International Organization for Standardization (ISO) had published 15,000 standards, at the same time PERINORM – the European consortium of normalisation organisations – had a database containing 650,000 standards (local, regional, national and supranational).

This dynamism by the European Community to produce technical regulations, standards and conformity assessment procedures has become an impregnable fortress for many of Europe's trading partners, turning measures aimed at better protecting health, safety and the environment into traps for non-experienced exporters to the EU market.

The central challenge for countries with limited capacities (institutional, infrastructural, financial, technological, expertise, etc.) and undiversified exports, such as the ACP countries, is to digest the plethora of standards that establish the rigid criteria for

accessing the European market. Furthermore, the efforts made by these countries to adapt to European regulations can prove vain overnight since they are regularly amended. Some economic operators claim that the adaptation costs far outweigh those generated by the conformity assessment. They also have to factor in the costs related to acquiring information, which is not always readily available to ACP economic operators.

Ultimately, this situation cripples the ability of large production sectors of the ACP countries to access the EU market, which greatly reduces the appeal of the duty- and quota-free access offer made by the EU to the ACP countries under the Economic Partnership Agreement (EPA). Moreover, the "European conformity" label² remains inaccessible to most ACP exporters. This is due, on the one hand, to their lack of knowledge regarding technical requirements, and, on the other hand, the lack of agreement between the ACP countries and the EU on the mutual recognition of their conformity assessment procedures.

As a result, the ACP countries are often excluded from many of Europe's importing sectors and above all from the production of high value-added products, except for some specific sectors where transnational companies have brought sufficient resources to the local level to make their production compliant with European importation requirements. This problem is exacerbated by higher tariffs applied on finished and

semi-finished products than for raw goods, combined with the substantial preferential margins given by the EU for some unprocessed products.

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The efforts made by these countries to adapt to European regulations can prove vain overnight since they are regularly amended.

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It is critically important that the ACP countries, which export 60% of their goods to the EU, cope with European Community norms and standards; this is a prerequisite for better integration of the ACP countries into the multilateral trading system, as well as for ACP exporters to benefit from the EPAs. Improving ACP countries' ability to comply with European standards would undoubtedly lead to the diversification of their export opportunities, including towards new rapidly growing markets.

What can ACP countries do to face the challenge of the EU's technical regulations, standards and conformity assessment procedures? Principally, it is necessary to implement a set of measures in the context of the fruitful dialogue between the ACP countries and the EU, including:

- The institutionalisation of an ACP-EU *early warning mechanism on technical barriers to trade* to exchange information beforehand on projects of technical requirements regarding trade and to prepare ACP exporters to face standards so that these do not ruin their possibilities to access the European market;
- The establishment of *expertise centres for the assessment of goods* in ACP regions in order to guarantee their conformity prior to shipment to Europe. This would restore some symmetry in the treatment of products from the EU entering the ACP markets and products from the ACP countries entering the EU market;
- Increased European Community support for the creation of national or regional standardisation and conformity assessment bodies in the ACP countries and the sharing of experiences with Community normalisation bodies;
- The European Community's support for implementing metrology infrastructure projects (both legal metrology and facilities aimed to calibrate laboratory equipment that can be used to ensure traceability) so that products can be tested with equipment that is technically up-to-date;
- The European Community's support for training and redeployment of the ACP staff in the standardisation and conformity assessment bodies;
- The European Community's support for technical assistance and capacity-building for the ACP countries' economic stakeholders to help them adapt to European standards and technical regulations.

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The ACP countries are often excluded from many of Europe's importing sectors and above all from the production of high value-added products.

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The most decisive contribution the EC could bring to the ACP countries under the EPA is a partnership which truly strengthens the ACP countries' capacities regarding standards to enable them to face present trade challenges and to prepare for future competition. It is public knowledge that to increase their EU market shares, emerging countries have paid much attention to standards in order to comply with the technical requirements in the EU market, while strengthening their competitiveness.

The WTO Agreement on Technical Barriers to Trade recommends that WTO Members, in the preparation and application of technical regulations, standards and conformity assessment procedures, take into account the specific needs of developing countries, with a view to ensuring that such standards and procedures do not create unnecessary obstacles to exports from developing country members (art. 12.3). Furthermore, the text specifies that these standards should not create unnecessary obstacles to the expansion and diversification of exports from developing country members (art. 12.7). Standards thus represent a test for the will of European partners to support efforts for the ACP countries' harmonious integration into the multilateral trading system.

Increasing the opportunities for ACP exports to the European market implies on the one hand that the European Community fully implements its above mentioned international commitments and on the other hand that EPAs facilitate the smooth integration of the ACP countries into global trade networks. In both respects, the EU and ACP must put the issue of technical barriers to trade in the centre of their dialogue.

Author

Achille Bassilekin is Deputy Head of the ACP Geneva Office. This contribution is an abridged version of a longer article entitled "The Normative Dynamism of the European Community Regarding Technical Barriers to Trade and its Impact on the WTO and EPAs", available at: [http://www.acpsec.org/geneva/Geneva%20-%20Technical%20barriers%20to%20Trade%20-%20Aug%2009%20\(EN\).pdf](http://www.acpsec.org/geneva/Geneva%20-%20Technical%20barriers%20to%20Trade%20-%20Aug%2009%20(EN).pdf)

The original version of this contribution was made available in French.

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Notes

- 1 See Directive 98/34; regarding normalisation, the European Committee for Standardization (CEN) and the European Committee for Electrotechnical Standardization (CENELEC); regarding standardization, the European Telecommunications Standards Institute (ETSI) and the ECMA (Association of information manufacturers and publishers producing in Europe); and regarding logistics, the European Article Numbering-Uniform Code Council (EAN, UPC, GS1).
- 2 The 'European Conformity label' which certifies that manufacturers selling their products on the EU market comply with the requirements imposed by the EU harmonisation legislation.

WTO

Roundup

New proposal seeks deal on tropical farm products

Alongside December's landmark deal on banana tariffs (See page 2), a new proposal put forward in the WTO's agriculture talks offers a potential resolution of long-standing differences among exporters of tropical farm products.

The new proposal, which was submitted by the ACP, EU and Latin American countries on 15 December, lists the goods that the members of the group have agreed should benefit from gentler and slower tariff cuts under the proposed 'preference erosion' treatment, as well as which goods should be slated for faster and deeper liberalisation as 'tropical products'. The proposal would take effect under a WTO Doha Round agreement. The proposal comes on the heels of the December banana deal, officially known as the Geneva Agreement on Trade in Bananas (GATB).

Products such as flowers, sugar, fruits and their juices, arrowroot, peanut oil and tobacco appear on the list of products that the parties to the deal have agreed should receive preferential treatment in the EU and US. The tariffs for these goods would be cut in a manner similar to other developed country imports but would be phased in over a period of ten years rather than five.

Products that meet two criteria — they are "sensitive" and they accounted for more than 10% of domestic consumption on a given tariff line between 2003 and 2005 — would qualify for preference erosion treatment. Quotas for such products would be expanded in equal annual installments over a period of seven years.

Trade sources told ICTSD's Bridges that this provision is meant to refer specifically to sugar; however, the language leaves open the possibility that other products, such as beef, could qualify as well. Specifically, if members use a complex methodology called "partial designation" to select very specific products, then it is possible that those goods, which would not otherwise receive preference erosion treatment, might also qualify.

Countries such as Brazil, India, Australia and China did not voice objections to the

proposal when it seemed that only sugar would be covered by the sensitive product treatment, according to a delegate. However, those countries are expected to raise objections if additional products of export interest might also be affected by the new language.

Unlike previous versions of the draft text, the new language describes the US and the EU as "preference granting country Members." This could pose a problem for ACP exporters, sources said, which would thus be left with preferential access to only the EU and US markets. The possibility that some products, such as sugar and beef, could be declared "tropical" in non-EU and US markets would liberalize trade elsewhere and leave ACP producers with only two markets.

Incoming EU Ag Commissioner Fields Questions on Doha

In a hearing on 15 January, Dacian Ciolos, the EU Agriculture Commissioner-designate, outlined his agenda on agriculture trade and subsidy reform in front of the European Parliament.

Responding to an MEP's question on the WTO's Doha Round of world trade talks, Ciolos told the European Parliament that the EU "cannot go further" in its offers. He added that he would be tough on trade negotiations and that Europe should not engage in trade agreements "to the detriment of our agriculture."

Ciolos further argued that "a global [trade] agreement is needed," but that the EU should "wait for our partners' proposals." Valentin Zahrnt of the European Centre for International Political Economy (ECIPE) told Bridges that officials in Brussels will "carry out domestic reforms without worrying about Geneva," where the WTO is headquartered. Such an attitude would no doubt do little to mollify those who want to see more progress in the Doha talks.

Perhaps acknowledging those fears, in his written statement to the European Parliament, Ciolos said that he intended to "continue working hard in order to conclude a balanced agreement on the 'arrangements' for agriculture under the Doha Development Agenda."

Trade Facilitation Draft Text Holds Promise for Developing Countries

In December the WTO announced that the Negotiating Group on Trade Facilitation - the committee charged with hammering out regulations to facilitate the movement of goods across national borders - had agreed upon a 'draft consolidated text' to guide the group's negotiations in 2010.

Broadly speaking, the trade facilitation committee has been tasked with slicing through the red tape that causes the movement of goods to slow at international borders. In WTO terms, the group has been mandated to "review and as appropriate, clarify and improve" relevant sections of three articles of the General Agreement on Tariffs and Trade (1994): Article V (facilitating transit and trade), Article VII (limiting border fees and formalities), and Article X (making trade regulations transparent).

Proponents of the trade facilitation talks say that new global trade rules to regulate government policies at the border would make developing countries more attractive to investors and could go a long way toward helping poorer nations play a more active role in the global economy.

The 'draft consolidated text' (WTO document TN/TF/W/165) that was released in December reflects all of the proposals that delegations have put forward to date. Now, it only remains for negotiators to bring those elements into focus.

When the trade facilitation negotiations resume during the second week of February, negotiators will have their work cut out for them. While many of the bracketed sections "can probably be resolved pretty easily," according to a WTO official, some issues could be more difficult to crack. The negotiations on Special and Differential Treatment for developing and least developed countries will also need particular attention in order to ensure that this area of the talks does not "lag behind," the official added.

This information has been summarised from ICTSD's Bridges Weekly Trade News Digest

EPA Update

Melissa Julian

West African EPA negotiations to continue in February

The scheduled 21 December ECOWAS summit, initially postponed to 18 January due to the illness of the current Chairman of the Economic Community of West African States (ECOWAS), the Nigerian President Umaru Yar'Adua, has been rescheduled for the 16th of February, in Abuja, Nigeria. Heads of state are expected to consider the performance of West Africa's economy and the 2009 ECOWAS work programme, the priorities of which include completing work on the creation of a customs union, the EPA negotiations and the development of agricultural policy.

The December West Africa-EC EPA negotiating rounds have also been postponed until February, as ECOWAS needs more time to prepare for the negotiations. A number of objectives have been set for the forthcoming talks, including to jointly examine the new West African market access offer (which is now supposed to have reached 70% product coverage) and to carry out the reconciliation of the statistical base. A range of outstanding issues are also on the agenda, such as rules of origin, regional levies, the MFN clause, the non-execution clause and agricultural subsidies. No new deadline has been set for completion of the EPA negotiations, but the EC reported to the European Parliament in December that it hoped to keep up the negotiating momentum and finalise the EPA in early 2010.

The EU continues to work on its response to the West Africa EPA Development Programme, and the region's request for €9.5 billion in support. The EU's response may be ready in time for the February round of EPA negotiations.

Ghana has still not signed its interim EPA

An ECOWAS meeting to discuss Aid for Trade is scheduled to be held from 27-28 January. The meeting will provide an overview of recent developments in the Aid for Trade agenda and highlight future challenges. A number of multilateral and bilateral development partners will also present their views on Aid for Trade policy and implementation experiences, with illustrations

on their contribution towards facilitating Aid for Trade within the region. Participants will also examine how the ECOWAS and UEMOA Commissions and their Members States have mainstreamed Aid for Trade into their development strategies, as well as review the role played by the Integrated Framework Initiative. New cross-sectoral initiatives and programmes and how the private sector can get more involved in policy making will also be discussed. Finally, indicators developed to evaluate the impact and effectiveness of Aid for Trade will be reviewed.

There may be a high-level political meeting between the EU and West Africa on the EPA negotiations with the new EC Trade Commissioner and Spanish EU Presidency in the first half of 2010 to discuss outstanding issues.

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The CEMAC Council Ministers called for an impact study on the implementation of the Cameroon EU interim EPA on CEMAC economies to be undertaken as soon as possible.

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Central African calls for EPA impact study

Negotiations continue on Cameroon's request to the EC to delay the entry into force of their signed interim EPA with the EU until the broader regional agreement is signed and rules of origin defined.¹ However, if the delay is granted, Cameroon may have to revert to the EU's Generalised System of Preferences trade regime and, as a result, lose trade preferences on some of the country's exports to the EU.

The Communauté Economique et Monétaire de l'Afrique Centrale (CEMAC) Council of Ministers meeting on 11 December focused on the region's economic integration and the effects of the financial crisis on CEMAC

economies.² With regard to EPAs, Ministers called for an impact study on the implementation of the Cameroon EU interim EPA on CEMAC economies to be undertaken as soon as possible.

The regional committee in charge of EPAs met in the margins of the Council meeting to prepare for a ministerial level regional EPA meeting to be held in February. National Authorising Officers for the European Development Fund will also attend the February meeting, which will discuss outstanding EPA issues and determine the way forward in negotiations with the EC. The committee reiterated the outstanding issues (market access, services, fiscal impact of the EPA, non-execution clause, import taxes, development finance, and rules of origin) which need ministerial guidance and called for the EPA Regional Fund (FORAPE) to be validated at the February meeting. They also call for a ministerial committee to be established to follow the EPA negotiations.

The CEMAC summit scheduled for 14 December was postponed again, and will now take place on 15 January in Bangui. The focus will be on regional integration and EPAs.

The next round of Central Africa-EC technical level EPA negotiations is not likely to be held before mid-February. A new joint calendar of meetings will be agreed at the next meeting. No joint negotiating meetings have been held since February 2009.

East and Southern African Ministers agree to continue EPA negotiations with a development focus

Eastern and Southern African EPA Ministers met on 7 December and agreed to propose to their heads of government that negotiations continue towards a regional EPA agreement with the EU. The ministers stressed that development and regional integration need to be at the core of the agreement. In this regard, the ESA Ministers renewed their call for greater EC flexibility, particularly by allowing for 70% trade liberalisation coverage and transition periods beyond 15 years; permitting the use of export taxes as a tool for development; excluding

developing countries from the application of the MFN provision; retaining cumulation provisions for rules of origin; and prioritising the development agenda, in particular for additional resources for EPA implementation and sustainable development policies. The ministers also want to monitor the impact of the EPA on the basis of an agreed set of development benchmarks and for the review process to be linked to implementation of the provisions of the EPA.

It was agreed that the ESA Group should continue to harmonise its positions with EAC and SADC EPA groups, other ACP regions, and the all-ACP level where possible. Accordingly, a joint ministerial meeting on EPAs with the EAC and SADC may be envisaged.

An ESA heads of government stock-taking meeting will be held in early February with an emphasis on development issues and financing. Subsequently, joint technical and political level meetings may be planned to set new, realistic deadlines for the completion of full and inclusive EPA negotiations.

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An EC press release stated that failure to finalise the EPA process could lead to putting non-Least Developed Countries such as Kenya on the EU's Generalised System of Preferences trade regime, resulting in increased tariffs on some of Kenya's key export products.

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East Africa Community and EC negotiations fail to bridge differences

The 1st January marked the entry into force of a fully fledged EAC Customs Union and there is a commitment to launch the implementation of the Common Market in the second half of this year. The Director General of the EAC Trade Directorate, Peter Kigutu, set out the next steps and challenges at a press conference on 13 January.³

East African Community and EC technical and senior officials met from 8-11 December, but failed to bridge diverging positions on outstanding issues in the negotiations towards signing the Framework EPA initialled in November 2007 (including on market access coverage and liberalisation timetables, the use of safeguards and export taxes and the MFN clause provisions). The officials also discussed eventually broadening the EPA to include areas such as services, investment and intellectual property rights. With regard to development, the EAC maintained its position in favour of a development matrix appended to the FEPA prior to its signing. However, the EC maintains that the EAC's needs on development are addressed under the European Development Fund.

At a meeting with the EC held prior to the negotiations, EAC private sector representatives voiced their concerns over the stalled negotiating process. The East African Business Council, supported by the EC, asked to participate in EPA negotiations.⁴ A press release issued by the EC after the meeting stated that failing to sign the framework EPA and to bring the broader EPA process to a successful conclusion can hamper trade and development prospects for the region.⁵ It stated specifically that failure to finalise the EPA process could lead to putting non-Least Developed Countries such as Kenya on the EU's Generalised System of Preferences trade regime, resulting in increased tariffs on some of Kenya's key export products.

Negotiators will meet during the third week of February to try again to narrow the gaps separating them in the EPA negotiations with a view to finalise the FEPA.

SADC to continue EPA discussions in February

No SADC EPA meetings were held in December. Senior SADC EPA officials will be meeting again in February to try and find solutions to the underlying problems in the region, after which a formal meeting with the EC can be held.

The head of the EC Delegation in Botswana, Paul Malin, said he is confident the region will stay intact after the EU agreed to apply a common tariff to its exports to the region, but that other issues in the EPA negotiations, such as the Rules of Origin and the MFN clause, might need more time to solve. His view was echoed by Botswana's chief trade negotiator, James Masisi.⁶

COMESA, EAC and SADC's first One-Stop Border Post opens

To scale down the long delays of clearing goods at the Zambia-Zimbabwe border post, the Common Market for Eastern and Southern Africa (COMESA), East African Community (EAC) and Southern Africa Development Community (SADC), together with governments of Zambia and Zimbabwe opened the first ever One-Stop Border Post at Chirundu.⁷ The facility is intended to increase the region's trade and reduce cross-border delays by up to 50%.

Still no agreement on Caribbean EPA Coordination Mechanism

The Caribbean Community and Common Market (CARICOM) and the Dominican Republic have yet to resolve their differences over setting up an EPA coordination mechanism. The Dominican Republic is a member of CARIFORUM (Caribbean Forum of African, Caribbean and Pacific States) which officially signed the EPA with the EU, but is not yet a member of CARICOM. By now the Caribbean had hoped to establish a six-member agency for coordinating and implementing the agreement.

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The Pacific Islands Forum Secretariat has been forced to revise two of its projects submitted to the European Union for funding under the 10th European Development Fund, following the decision by the EU not to fund them.

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The Caribbean-EU EPA council meeting is now scheduled to be held in Barbados during the last week of February. The EC expressed concern in December to the European Parliament that the joint institutions had not yet met.

Pacific still working on EPA negotiating positions

No Pacific EPA meetings were held in December. The Pacific Islands Forum Secretariat advertised for consultants to assist in the formulation of EPA negotiating positions on customs-related provisions, goods market access offers and on the other remaining outstanding issues in the negotiations with the EU.

Joint Pacific-EU technical working groups are scheduled to be held on 27-28 January in Nadi.

The Pacific Islands Forum Secretariat has been forced to revise two of its projects submitted to the European Union for funding under the 10th European Development Fund,⁸ following the decision by the EU not to fund them. One of the rejected projects is the controversial Office of the Chief Trade Adviser for PACER Plus Related Activities.

Author

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Notes

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Calendar and resources

ACP-EU Events

1-3	February COMESA Post Copenhagen Climate Change Conference, Lusaka, Zambia	TBC	CEMAC ministerial meeting on EPA (place TBC)
9	29th meeting of CARICOM's Council for Trade and Economic Development (COTED), Guyana	TBC	1st EU-Caribbean Joint Ministerial Council Ministerial, Barbados
9-10	ICTSD-KMFRI dialogue on "Fisheries in ACP-EU Negotiations on Economic Partnership Agreements", Mombasa, Kenya	TBC	EPA information seminar in the Caribbean region, Barbados
16	ECOWAS Heads of State and Government Summit, Abuja, Nigeria	TBC	EU – Southern Africa (SADC) information seminar, Maputo, Mozambique
15-19	World Bank Institute - Trapca course on Agricultural Trade and Export Development in Africa, Arusha, Tanzania	TBC	EAC-EC technical and senior officials negotiation meeting on the FEPA (place TBC)
TBC	ESA Heads of Government meeting on the EPA (place TBC)	TBC	SADC Senior officials meeting on EPA (place TBC)

WTO Events

25-27	January Trade Policy Review Body — Malaysia
10-12	February Trade Policy Review Body — El Salvador
22-23	WTO General Council
24-26	March Trade Policy Review Body — Croatia

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