ECONOMIC PARTNERSHIP AGREEMENTS EU-ACP: FACTS AND KEY ISSUES
UPDATED EXTENDED EDITION
SPRING 2012

OFFICE FOR PROMOTION OF PARLIAMENTARY DEMOCRACY (OPPD)
in co-operation with the Policy Department of DG EXPO
4. OVERVIEW OF THE CURRENT STATE OF NEGOTIATIONS ...................................................... 37

4.1 STATE OF PLAY - CENTRAL AFRICA REGION ................................................................. 37
  4.1.1 Countries and status .................................................................................................... 37
  4.1.2 Bilateral trade in goods ................................................................................................ 37
  4.1.3 Reduction of tariffs on trade in goods .............................................................................. 38
  4.1.4 Perspectives and sensitive issues ................................................................................... 38

4.2 STATE OF PLAY - EAST AFRICAN COMMUNITY (EAC) .................................................... 39
  4.2.1 Countries and status .................................................................................................... 40
  4.2.2 Bilateral trade in goods ................................................................................................ 40
  4.2.3 Reduction of tariffs on trade in goods .............................................................................. 40
  4.2.4 Perspectives and sensitive issues ................................................................................... 41

4.3 STATE OF PLAY - EASTERN AND SOUTHERN AFRICA REGION (ESA) ................................. 41
  4.3.1 Countries and status .................................................................................................... 41
  4.3.2 Bilateral trade in goods ................................................................................................ 42
  4.3.3 Reduction of tariffs on trade in goods .............................................................................. 43
  4.3.4 Perspectives and sensitive issues ................................................................................... 44

4.4 STATE OF PLAY - WEST AFRICA REGION ........................................................................... 44
  4.4.1 Countries and status .................................................................................................... 44
  4.4.2 Bilateral trade in goods ................................................................................................ 46
  4.4.3 Reduction of tariffs on trade in goods .............................................................................. 46
  4.4.4 Perspectives and sensitive issues ................................................................................... 46

4.5 STATE OF PLAY - PACIFIC .................................................................................................. 47
  4.5.1 Countries and status .................................................................................................... 47
  4.5.2 Bilateral trade in goods ................................................................................................ 48
  4.5.3 Reduction of tariffs on trade in goods .............................................................................. 48
  4.5.4 Perspectives and sensitive issues ................................................................................... 49

4.6 STATE OF PLAY - CARIFORUM REGION ............................................................................ 50
  4.6.1 Countries and status .................................................................................................... 50
  4.6.2 Bilateral trade in goods ................................................................................................ 50
  4.6.3 Reduction of tariffs on trade in goods .............................................................................. 52
  4.6.4 Perspectives and sensitive issues ................................................................................... 52

4.7. STATE OF PLAY - SOUTHERN AFRICAN DEVELOPMENT COMMUNITY (SADC) ....................... 53
  4.7.1 Countries and status .................................................................................................... 53
Economic Partnership Agreements (EPAs) are basically trade agreements, within a multi-layer development strategy vis-à-vis African, Caribbean and Pacific (ACP) countries which also include extensive funding (European Development Fund) and other initiatives aimed at fighting poverty and underdevelopment. They should therefore be analysed in the context of the overall EU development policy and the evolving global trade regime.

EPAs have been criticised by many stakeholders both in the EU and in the ACP countries. The agreements were often depicted as an instrument of economic penetration of the EU in Africa and the sincerity of their development goals was questioned.

It is therefore important to keep in mind that EPA negotiations were launched by the EU in agreement with the ACP governments, and for two essential reasons:

1. The trade regime adopted in the Lomé Conventions (and the subsequent Cotonou Agreement) gave non-reciprocal, preferential market access to the ACP countries but discriminated against other developing countries which did not enjoy the same preferential treatment and therefore had to pay higher customs duties for their products exported to the EU. The ACP preferential trade regime was in breach of the rules governing international trade and the World Trade Organisation (WTO) requested that it be repealed and replaced with a WTO-consistent one.

2. The extensive funding and preferential trade regime accorded by the EU was de facto a failure because it proved unable to effectively alleviate poverty or secure sustainable development in the ACP region.

The EPA process was launched in the framework of the Cotonou Agreement of 2000 and an extension (waiver) of the old regime was granted by the WTO until 31 December 2007. This period was supposed to be sufficient in order to negotiate the new bilateral agreements replacing the old trade regime.

However, negotiations proved to be longer and more difficult than expected. To cope with the deadline and to avoid trade disruption resulting from the end of the preferential trade regime, the EU pushed for Interim EPAs that only covered trade in goods. The majority of ACP countries which were not least developed (and could therefore profit from alternative privileged market access to the EU) agreed to either initial or sign such agreements. After 2007, negotiations progressed very slowly and their conclusion is still not within reach. The only “full” EPA which has so far been completed is the CARIFORUM EPA. The CARIFORUM EPA entered into force in 2008.

Since the conclusion of the Cotonou Agreement in 2000 the EU’s international trade agenda has changed dramatically. The promising perspectives of a rapid conclusion of the Doha Development Round have waned. Although the WTO negotiations are not officially terminated, it is unlikely that they will yield a positive outcome in the foreseeable future.

This is certainly not good news for the EU and other developed countries and it is terrible news for developing countries, as the Doha Round tried to secure a privileged treatment for them in an increasingly competitive world. Failure to find an agreement in Geneva may therefore prevent ACPs from profiting from a set of rules expressly tailored to their needs. A failure of the Doha talks might also weaken the role of the WTO in the long run, and while it is true that the ACP were not always able to profit fully from the WTO’s internationally-negotiated trade rules, it is also evident that a transparent system of mutually agreed rules, although somewhat incomplete, generally benefits the weaker contracting party.

The economic and political scenario has also been changed by emerging economies. China will soon be the first world economic power, while India has made huge progress in technologically advanced economic sectors. The once-poor Brazil now produces high quality aircraft and, for the first time in its history, has a strong trade surplus. Similar
success stories are shared by countries such as Malaysia, Indonesia and South Korea. Crucially, all of these countries have one thing in common: they have never benefitted from asymmetrical trade preferences. On the other hand, and despite massive financial assistance and generous tariff cuts, many ACP countries meanwhile were left behind and often became more dependent on external aid.

It is not easy to predict what will be the ultimate impact of EPAs on the economies of ACP countries. Certain corrections (sensitive product exclusions, long interim periods before full implementation, safeguard clauses) may certainly help to reduce the negative effects. Similarly, ad hoc financial assistance has been foreseen to face the loss in customs revenues. However, without real domestic reforms, the situation is not likely to change, with or without EPAs.

This reader starts by explaining the relevant WTO and Cotonou provisions that set up the legal framework of EPAs. What follows is a detailed presentation of the CARIFORUM EPA – the only one concluded so far. A short comment on impact assessments is also included in this chapter. Subsequently, Part 3 presents positions and roles of main EPA actors. Particular emphasis is given here to the role and actions of the European Commission. Part 4 summarises all the steps of the EPA negotiations and gives a detailed presentation of the economic and trade aspects in the seven EPA regions. The text then concludes with a review of possible alternatives to the EPAs in Part 5.

A selected bibliography and a glossary are included at the very end of this document. The reader has been based both on documents that are accessible to the public online and on studies previously executed by the Policy Department of the Directorate General for External Policies of the European Parliament (DG EXPO) which prepared this reader in support of a seminar organised in October 2011 by the EP’s Office for Promotion of Parliamentary Democracy (OPPD). A brief report on this seminar can be found in the annex.

On 30 September 2011 the European Commission put forward a proposal to cease by 2014 those trade preferences extended since January 2008 via the Market Access Regulation, in the continued absence of, at least, ratified interim EPAs. This initiative, intended to speed up EPA negotiations, is almost certain to rekindle interest in these agreements during 2012 and 2013. More and more parliaments in Africa and the Pacific, as well as the European Parliament, will be confronted with ratification procedures. For these reasons, upon the depletion of original stocks of this reader (originally published in September 2011), the OPPD decided not only to reprint it, but to enhance it with a new chapter (4.8) to reflect these developments and to update other parts as required.

It is hoped that the document will bring about a better understanding of the key issues at stake and enhance parliamentary scrutiny of the EPAs negotiations and implementation in the future.

Dick Toornstra
## CHRONOLOGY & REGIONS

### Global chronology

<table>
<thead>
<tr>
<th>Date</th>
<th>Event Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>June 2000</td>
<td>The Cotonou Agreement is signed in Cotonou, Benin, between the European Union and the African, Caribbean and Pacific Group of States (ACP countries). The agreement stipulates that non-reciprocal trade preferences granted by the EU will be replaced by Economic Partnership Agreements (EPAs).</td>
</tr>
<tr>
<td>September 2002</td>
<td>The first negotiation phase which takes place at an “all ACP” level is launched in Brussels. The first phase addresses horizontal issues of interest to all parties.</td>
</tr>
<tr>
<td>December 2007</td>
<td>The European Council adopts a regulation applying the arrangements for products originating in certain states which are part of the African, Caribbean and Pacific (ACP) Group of States provided for in agreements establishing, or leading to the establishment of, Economic Partnership Agreements.</td>
</tr>
<tr>
<td>November 2010</td>
<td>At the Africa-EU summit in Tripoli the parties commit to concluding EPAs that support socio-economic development, regional integration and the integration of Africa into the global economy.</td>
</tr>
</tbody>
</table>
### The Cariforum Region

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>April 2004</td>
<td>After several years of preparation, negotiations for the CARIFORUM EPA are officially launched in Kingston, Jamaica.</td>
</tr>
<tr>
<td>December 2007</td>
<td>Negotiations are concluded in Barbados: on 16 December 2007 the EPA is initialled by the principal negotiators.</td>
</tr>
<tr>
<td>October 2008</td>
<td>The EPA is signed by 14 Caribbean states - all abovementioned states except for Haiti - on 15 October 2008.</td>
</tr>
<tr>
<td>December 2008</td>
<td>The agreement has been provisionally applied since 29 December 2008.</td>
</tr>
<tr>
<td>December 2009</td>
<td>Haiti signs on to the agreement. However, it has not ratified the agreement, nor has it opted for provisional application of it.</td>
</tr>
<tr>
<td>May 2010</td>
<td>The first Joint CARIFORUM-EU EPA Council of Ministers is held in Madrid, during the EU-Latin America Caribbean (LAC) summit. Implementing rules on a variety of issues are agreed upon. For example, rules of procedure for the Joint Council itself and the CARIFORUM-EU Trade and Development Committee are laid out.</td>
</tr>
<tr>
<td>December 2011</td>
<td>CARIFORUM and EU officials meet in Santo Domingo, Dominican Republic, for the First Meeting of the Special Committee on Customs Cooperation and Trade Facilitation under the CARIFORUM EPA.</td>
</tr>
</tbody>
</table>
Eastern and Southern African (ESA) Region

<table>
<thead>
<tr>
<th>Date</th>
<th>Event Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>February 2004</td>
<td>Negotiations are officially launched in Mauritius on 7 February 2004. At this point in time the ESA group also includes East African Community (EAC) members Burundi, Kenya, Rwanda and Uganda.</td>
</tr>
<tr>
<td>August 2007</td>
<td>At EAC summit in August 2007 EAC members Burundi, Kenya, Rwanda, Tanzania and Uganda decide to negotiate their own EPA with the EU.</td>
</tr>
<tr>
<td>November / December 2007</td>
<td>Six ESA states (Comoros, Madagascar, Mauritius, Seychelles, Zambia and Zimbabwe) agree an Interim EPA (IEPA) with the EU.</td>
</tr>
<tr>
<td>Beginning of 2008</td>
<td>Negotiations for a comprehensive EPA resume at the beginning of 2008 with all ESA countries including those which did not join the interim EPA (Djibouti, Ethiopia, Eritrea, Malawi and Sudan).</td>
</tr>
<tr>
<td>August 2009</td>
<td>Madagascar, Mauritius, Seychelles and Zimbabwe sign the Interim EPA in Mauritius.</td>
</tr>
<tr>
<td>May 2010</td>
<td>Seychelles finalises their ratification process for the interim EPA.</td>
</tr>
<tr>
<td>November 2011</td>
<td>EU and Eastern and Southern Africa (ESA) negotiators meet in Mauritius from to negotiate outstanding issues in relation to the comprehensive Economic Partnership Agreement (EPA). Trade in goods, sustainable development, trade in services, and trade-related rules figure among the agenda items.</td>
</tr>
</tbody>
</table>
### East African Community (EAC)

<table>
<thead>
<tr>
<th>Date</th>
<th>Event Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>February 2004</td>
<td>East African Community (EAC) members Burundi, Kenya, Rwanda and Uganda form part of the Eastern and Southern African (ESA) region when negotiations with that group are officially launched in Mauritius on 7 February 2004.</td>
</tr>
<tr>
<td>August 2007</td>
<td>At the EAC summit Burundi, Kenya, Rwanda and Uganda decide to negotiate their own EPA with the EU together with Tanzania.</td>
</tr>
<tr>
<td>November 2007</td>
<td>Burundi, Kenya, Rwanda, Tanzania and Uganda agree to an interim EPA with the EU.</td>
</tr>
<tr>
<td>June 2010</td>
<td>The EAC and EU agree to speed up the negotiations to achieve a final EPA by the end of November 2010. However this effort will prove to be difficult largely due to resource constraints to fund further EAC preparatory efforts.</td>
</tr>
<tr>
<td>February 2011</td>
<td>EAC agrees EPA negotiations roadmap which outlines priorities for negotiation.</td>
</tr>
<tr>
<td>March 2011</td>
<td>The EAC Council of Ministers states that the EPA negotiations have stalled as a result of the objection by East African Legislative Assembly (EALA) Members to using funds from Sweden to facilitate the negotiation process because, EALA argues, this would compromise the position of EAC states in the negotiations.</td>
</tr>
<tr>
<td>December 2011</td>
<td>Negotiations on 12-16 December 2011, result in progress on development co-operation and agriculture. The round is preceded by an inter-session experts’ meetings on 11-13 October on rules of origin, Agriculture and Development Cooperation in view of preparing the December round.</td>
</tr>
</tbody>
</table>

### Central African Region

<table>
<thead>
<tr>
<th>Date</th>
<th>Event Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>October 2003</td>
<td>Negotiations between the Central African region and the EU are formally launched.</td>
</tr>
<tr>
<td>July 2004</td>
<td>Countries of Central Africa and the EU agree on a joint road map.</td>
</tr>
<tr>
<td>October 2007</td>
<td>In the light of the failure of the two parties to conclude an agreement, all the governments request an extension for two additional years of the dispensation concerning the Cotonou preferences. This request is denied by the WTO.</td>
</tr>
<tr>
<td>December 2007</td>
<td>Cameroon and EU agree an IEPA (to prevent drawback in trade in certain goods).</td>
</tr>
<tr>
<td>January 2009</td>
<td>Cameroon signs the interim EPA (but ratification still pending in March 2012).</td>
</tr>
<tr>
<td>March 2010</td>
<td>The Central African region presents a revised internal roadmap. However, implementation is slow.</td>
</tr>
<tr>
<td>November 2010</td>
<td>At the Africa-EU summit in Tripoli the parties commit to concluding EPAs that support socio-economic development, regional integration and the integration of Africa into the global economy.</td>
</tr>
<tr>
<td>December 2010</td>
<td>European and Central African negotiators hold an informal meeting in Douala to take stock of negotiations and clarify respective positions on several controversial issues.</td>
</tr>
<tr>
<td>February 2011</td>
<td>Negotiations are relaunched.</td>
</tr>
<tr>
<td>September 2011</td>
<td>European and Central African negotiators meet in Bangui (Central African Republic) from 26-30 September 2011 to continue negotiations at a technical level. Negotiating groups discuss market access, services, cultural cooperation and accompanying measures.</td>
</tr>
</tbody>
</table>
### West African Region

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>December 2007</td>
<td>Ivory Coast and Ghana agree <strong>Interim EPAs</strong> (IEPAs) with the EU to prevent trade disruption after the forthcoming expiry of the WTO waiver.</td>
</tr>
<tr>
<td>November 2008</td>
<td>Ivory Coast signs the IEPA.</td>
</tr>
<tr>
<td>December 2008</td>
<td>The Economic Community of West African States (ECOWAS) Heads of State and Government Summit <em>asks the EU to take account of the development concerns of the region</em>, notably concerning capacities and market access and on the financing of the cost of fiscal and economic adjustments of the EPA.</td>
</tr>
<tr>
<td>February 2009</td>
<td>The regional validation process for the <strong>West African Community Development Programme</strong> and the region’s EPA Development Programme (EPADP) is launched.</td>
</tr>
<tr>
<td>May 2010</td>
<td>In a Council conclusion the EU Ministers of development outline their expected support to the EPADP.</td>
</tr>
<tr>
<td>March 2011</td>
<td>The West African summit expresses concern over the <strong>EPA deadlock</strong> due to persistent differences of opinion between the negotiating parties.</td>
</tr>
<tr>
<td>May 2011</td>
<td>Negotiations restart. Significant progress is made giving hope for a prompt conclusion.</td>
</tr>
<tr>
<td>November 2011</td>
<td>EU and West African negotiators meet in Accra, Ghana, at a technical level, from 15 to 18 November 2011, to discuss the way ahead. Progress is made in particular on the text of the draft agreement and the EPA Development Programme (PAPED), work continues on issues including market access offer.</td>
</tr>
</tbody>
</table>

### Southern African Development Community (SADC)

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>November 2007</td>
<td>Botswana, Lesotho, Swaziland and Mozambique agree an Interim EPA (IEPA) with the EU.</td>
</tr>
<tr>
<td>December 2007</td>
<td>Namibia agrees IEPA with the EU.</td>
</tr>
<tr>
<td>August 2008</td>
<td>The <strong>SADC Free Trade Area (FTA)</strong> is launched on 17 August 2008 at Sandton (South Africa) during the 28th Summit of SADC Heads of State and Government.</td>
</tr>
<tr>
<td>June 2009</td>
<td>Despite heavy criticism by fellow Southern African Customs Union (SACU) members, Botswana, Lesotho, Swaziland and Mozambique sign the IEPA. Namibia does not sign.</td>
</tr>
<tr>
<td>February 2010</td>
<td>Senior SADC EPA officials agree that Botswana, Lesotho, Namibia, South Africa and Swaziland will move forward as one SACU entity in the SADC EPA negotiations. They also agree not to notify the interim EPAs signed by Botswana, Lesotho and Swaziland to the WTO.</td>
</tr>
<tr>
<td>May 2010</td>
<td>SADC and EC hold first round of EPA negotiations in nearly a year.</td>
</tr>
<tr>
<td>November 2011</td>
<td>Last Technical Working Group (TWG) and Senior Official Meeting (SOM) in November 2011 in South Africa addresses, inter alia, agro-food aspects, in particular Geographical Indications.</td>
</tr>
<tr>
<td>Date</td>
<td>Event Description</td>
</tr>
<tr>
<td>--------------</td>
<td>--------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>November 2007</td>
<td>Papua New Guinea and Fiji agree Interim EPA (IEPA) with the EU.</td>
</tr>
<tr>
<td>March 2008</td>
<td>The Pacific ACP trade ministers agree to proceed as a group with negotiations of a comprehensive EPA by the end of the year.</td>
</tr>
<tr>
<td>July 2009</td>
<td>Papua New Guinea signs IEPA.</td>
</tr>
<tr>
<td>September 2009</td>
<td>Pacific ACP (PACP) and EC technical level EPA negotiators meet in Brussels. This is the first negotiation round of this year (2009).</td>
</tr>
<tr>
<td>December 2009</td>
<td>Fiji signs IEPA.</td>
</tr>
<tr>
<td>October 2010</td>
<td>Despite delays because of other negotiations (with Australia and New Zealand), the Pacific ministers informed the ACP Ministerial Trade Committee meeting that the Pacific ACP group (PACP) is continuing to prepare key issues with the aim to move forward in the PACP-EU EPA negotiations.</td>
</tr>
<tr>
<td>December 2010</td>
<td>Sam Abal, the Foreign Affairs and Trade Minister of Papua New Guinea, states in a letter to Hans Joachim Keil, the (PACP lead spokesman) that he is dissatisfied with the performance of the Pacific Islands Forum Secretariat (PIFS) with regard to the EPA talks. Abal’s criticism centred on the lack of technical competence and poor management.</td>
</tr>
<tr>
<td>January 2011</td>
<td>On 19 January the European Parliament gives its consent to the Pacific interim EPA.</td>
</tr>
<tr>
<td>February 2011</td>
<td>A Pacific ACP Trade Ministers meeting (PACPTMM) is held for the first time since June 2009. They state that the aim is to conclude the EPA by the end of the year.</td>
</tr>
<tr>
<td>November 2011</td>
<td>EU and Pacific region representatives hold talks from 22 to 24 November on a comprehensive regional Economic Partnership Agreement. The purpose of the meeting is to take stock of the situation and to agree on a way forward. Discussions are based on a revised draft text and draft market access offers, which were submitted by the region in July 2011. Discussions cover trade in goods, development cooperation, sustainable development, and fisheries (including rules of origin).</td>
</tr>
<tr>
<td>December 2011</td>
<td>During the 94th ACP Council of Ministers Pacific states reiterate commitment to negotiate a comprehensive EPA as a single region and to conclude negotiations in 2012.</td>
</tr>
</tbody>
</table>
1. LEGAL FRAMEWORK (WTO AND COTONOU)

The Economic Partnership Agreements (EPA) between the EU and the African, Caribbean and Pacific (ACP) countries are based on the principles of trade for development (market access and Aid for Trade). In practice, they replace the EU preferences (which had failed to deliver on trade growth and poverty reduction) while ensuring that the EU-ACP trade relationship is compatible with WTO obligations. The legal framework of EPAs is thus defined by World Trade Organisation (WTO) rules, in particular Article XXIV of the General Agreement on Tariffs and Trade (GATT) pertaining to Regional Trade Agreements, and the Cotonou Agreement which governs the EU-ACP relationship.

1.1 Article XXIV of the GATT and the Regional Trade Agreements (RTA)

In the world trading system, Regional Trade Agreements (RTAs) have become a central tool of trade policy, having grown rapidly in number and complexity. In this context, WTO rules and in particular Article XXIV of GATT 1994 (see Annex 4) play a crucial role in ensuring coherence between multilateral and regional trade policy.

One of the WTO’s fundamental principles is non discrimination among Members. Based on the so-called ‘most-favoured-nation’ (MFN) treatment, WTO Members are called to guarantee identical trade concessions to all of their (WTO members) trading partners. However, some exceptions are allowed. Article XXIV of GATT 1947 enables the conclusion of RTAs provided that some basic conditions are met.

According to Article XXIV of GATT, free trade agreements (FTAs) and customs unions enable closer economic integration and may facilitate trade between contracting parties. As a rule, regulations applicable to a new FTA entity should not be more restrictive and duties should not be higher than any of those existing before its creation. Furthermore, interim agreements must be transformed into fully-fledged FTAs (or customs unions) within a reasonable period of time.

Although not modified at the Uruguay Round, some important provisions were clarified by the 1994 “Understanding” since several points in the text of Article XXIV have been subject to diverging interpretations.

Another requirement for an FTA within the scope of and consistent with Article XXIV is that duties and other restrictions are eliminated on “substantially all the trade” between the FTA parties. In the Turkey – Textiles case, the WTO’s Appellate Body noted that “neither the GATT Contracting Parties nor the WTO Members have ever reached an agreement on the interpretation of the term “substantially” in this provision. It is clear, though, that ‘substantially all the trade’ is not the same as all the trade, and also that ‘substantially all the trade’ is something considerably more than merely some of the trade”.

Not all WTO members have interpreted this requirement in the same manner. The United States had, in the past, supported the reading according to which all economic sectors have to be covered by an RTA and that exclusions must be sub-sectoral, while the EU has always considered that the requirement of “substantially all” is met when around 90% of trade in goods is liberalised. In this reading, the remaining 10% can also include whole economic sectors such as agriculture.

Since Article XXIV and the Understanding remain silent on the means of quantifying the “substantially all trade” requirement, two alternative methods are theoretically possible: (1) a quantitative approach which makes direct reference to the amount of trade liberalised or (2) a more qualitative view, based on the percentage of tariff lines (i.e. traded commodities) which are included in the RTA.

The Understanding also clarifies that while RTAs can profit from some flexibility, this also implies reciprocity: thus all negotiating parties must make reciprocal trade concessions before entering an RTA.

Article XXIV recognises that WTO Members wishing to enter into an RTA may not be able to achieve the required level of economic integration immediately. It therefore grants a “reasonable period of time” to transform interim agreements into fully-fledged RTAs, which is ten years as a general rule. When dealing with developing countries, longer periods can be granted provided that the contracting parties explain the reasons in detail.

---

1. The surge in RTAs started in the early 1990s and was triggered by the protracted stalemate in the Doha Development Agenda negotiations. As of 15 May 2011, some 489 RTAs, counting goods and services notifications separately, have been notified to the GATT/WTO. Of these, 358 RTAs were notified under Article XXIV of the GATT 1947 or GATT 1994, 36 under the Enabling Clause, and 95 under Article V of the GATS. At that same date, 297 agreements were in force.
2. GATT 1947, Article 1 (General Most-Favoured-Nation Treatment).
4. See also Guide to the Uruguay Round Agreements (WTO Secretariat), 1999 pp. 43-46.
8. Ibid. In this case, the level of development of that party might be an exceptional circumstance justifying an extended period of time for formation of an RTA.
KEY POINTS:

• If a Regional Trade Agreement (RTA) is created, duties and other trade barriers should be reduced or removed on “substantially all” sectors of trade within the group;

• While Regional Trade Agreements can profit from some flexibility, they imply reciprocity. All negotiating parties must make reciprocal trade concessions before entering an RTA.

1.2 The 1979 Enabling Clause

When the GATT was established in 1947, the majority of developing countries were still under the colonial rule of European powers. At that time, almost half of the original contracting parties (11 out of 23) could have been classified as “developing countries”. Still, the Agreement did not include any special provisions or exceptions in their favour.9

The decolonisation process and the gradual accession of developing countries to the GATT increased the focus on development matters and resulted in a limited, though important, revision of the original 1947 rules:10 In 1968, developing countries succeeded in establishing a Generalised System of Preferences (GSP) under the good offices of the United Nations Conference on Trade and Development (UNCTAD). They also benefited from the general reduction in customs tariffs as a result of the application of the Most-Favoured-Nation Clause.

The growing role of developing countries, combined with the increased attention to the problems of poor countries, resulted in significant progress in the 1970s. The main outcome of the discussions within the Kennedy and Tokyo rounds was the introduction of the so-called “Enabling Clause” in 1979.11 The Enabling Clause provided the legal basis for the following modifications to the original GATT rules.

The clause:

• guarantees preferential access to developed country markets on a non-reciprocal, non-discriminatory basis;

• offers more favourable treatment for developing countries in other GATT rules dealing with non-tariff trade barriers;

• introduces preferential trade regimes between developing countries; and

• allows special treatment of least developed countries.

The Enabling Clause gave a stronger legal basis for special and differential treatment for developing countries within the rules of the GATT, but remained a “discretionary and permissive” exception to general rules rather than a legally binding provision.

In more concrete terms, under the Enabling Clause developed countries can legally provide generalised non-reciprocal preferences to all developing countries or to all Least Developed Countries (LDCs). The Everything But Arms (EBA) preference programme provided to LDCs by the EU falls under the Enabling Clause.12

Alternatively, the preferences must apply to all developing countries that meet certain criteria. The classic example is the EU’s Special Incentive Arrangement for Sustainable Development and Good Governance (also known as the GSP+), which offers additional preferences to support vulnerable developing countries in their ratification and implementation of relevant international conventions protecting core human and labour rights, as well as good governance standards.

In addition, under the Enabling Clause, developing countries can also freely and without constraint provide each other with preferential market access. That is, the Enabling Clause gives cover to South-South free trade agreements and customs unions. Many of the regional customs unions and trade agreements, such as Mercosur (in South America) or the Economic Community of West African States (ECOWAS), have been constructed under the Enabling Clause.13

KEY POINTS:

• Under the Enabling Clause, preferences must apply to all developing countries, to Least Developed Countries or to all developing countries that meet certain criteria.

• Developing countries can freely and without constraint provide each other with preferential market access.

1.3 WTO Waivers

exceptions (waivers) to the Most-Favoured-Nation rule are possible, but difficult to obtain. The WTO defines a waiver as "the permission granted by WTO Members allowing a WTO Member not to comply with normal commitments. Waivers have time limits and extensions have to be justified." 14

In accordance with the Uruguay Round's Understanding in Respect of Waivers of Obligations under the GATT 1994 15 and Article IX: 3-4 of the Marrakesh Agreement, members requesting a waiver must justify it with sound economic analysis and arguments, 16 undergo a complex process of requesting WTO authorisation, and abide by stringent conditions for maintaining the waiver if it stretches over several years, including annual reviews by the WTO.

In 1990 a GATT panel ruling made clear that waivers must be interpreted narrowly, and that WTO Agreement Article IX and the 1994 Waiver Understanding stress the "exceptional nature" of waivers, and that they are subject to "strict disciplines." 17

For a long time, no objections were raised in GATT to specific preferential schemes in favour of developing countries, and it was not completely clear whether they were (implicitly) considered to be legal. However, over the years, as the EU become an ever more important market, the Lomé Convention's preferences applied by the EU to the African, Caribbean and Pacific (ACP) group of countries have been brought into question by other GATT and now WTO Members.

KEY POINTS:

• Exceptions (waivers) to the Most-Favoured-Nation rule within GATT are possible, but difficult to obtain.
• The last waiver under the Lomé Convention was extended to 31 December 2007. This was to be replaced by WTO-consistent RTAs between the EU and ACP countries.

EU import regime for bananas

The first case of WTO Dispute Settlement occurred in 1993, when a GATT Panel was formed to consider the EU import regime for bananas. 18 The Panel ruled that the EU's preferences for banana imports from the ACP countries were inconsistent with GATT Article I, and also with the GATT rules on free trade areas, stating that Part IV of the GATT did not provide a justification for non-reciprocity in free trade areas involving developing countries.

In February 1994, a second GATT Panel 19 concluded that, although the EU's preferential tariff was covered by the Lomé Convention between the EU and the ACP countries, this did not give the EU the right to apply preferential tariff rates on bananas. The adoption of both Panel rulings was blocked by the EU under the more lenient GATT rules (which required unanimity for their adoption).

The scenario resulted in efforts to negotiate a waiver in order to secure the preferential trade relations between the EU and the ACP countries. After a first waiver was granted in 1994 and extended in 1996, WTO members authorised the EU on 14 November 2001 to give preferential market access to ACP countries. This last waiver, 20 obtained under the Lomé Convention, was then supposed to be replaced by WTO-consistent RTAs between the EU and ACP countries in the framework of the Cotonou Agreement. 21

In order to ensure that the waiver was granted, ACP countries paid a high price by acceding to demands of other WTO members at the Doha Ministerial Conference. The EU also had to give some market access to certain non-ACP countries (e.g. regarding the trade in tuna products) before the waiver was granted.

1.4 The Cotonou Agreement

In 1996, the European Commission published a “Green paper” on the future of relations with ACP countries. The assessment of 30 years of trade preferences to the ACP countries was rather negative.

“There is a general understanding that “the shift from Lomé to Cotonou was more than a change of names. It was the intention of the new partnership agreement to mark a clear break with the past and to modernise the overall approach to ACP-EU cooperation”.”

Five pillars of the 2000 Cotonou Agreement

1. The reinforcement of the political dimension of relations between ACP countries and the European Union;
2. The involvement of civil society, the private sector and other non-State players;
3. Poverty reduction, confirmed as a key objective within the context of the objectives and targets agreed at the international level (in particular the Millennium Development Goals);
4. An innovative economic and trade cooperation framework;
5. The rationalisation of financial instruments and a system of flexible programming.

The Agreement was established for a period of twenty years with a clause allowing for revision every five years and a financial protocol for each five-year period.

There is a general understanding that “the shift from Lomé to Cotonou was more than a change of names. It was the intention of the new partnership agreement to mark a clear break with the past and to modernise the overall approach to ACP-EU cooperation”.

Essentially, the ACP countries’ economies did not visibly profit from preferential access to European markets and over the years even lost significant market positions (the ACP share in European imports fell from nearly 8% in 1975 to 2.8% in 2000). In 2000, half of all ACP exports to the EU were still concentrated in just eight products. In the meantime, non-ACP developing countries that did not benefit from the Lomé trade preferences outpaced the ACP countries in their exports to the EU.

The Commission also considered that three (at that time) new factors were to be taken into consideration in designing a new and more modern trade regime:

- legitimacy of schemes for differentiated, non-reciprocal preferences were questioned by the WTO;
- the speeding-up of liberalisation at multilateral and inter-regional levels;
- the growing importance (in international trade negotiations) of new issues, such as the environment, competition policies, investments, technical and health standards and compliance with basic social rights.

Negotiations for a new agreement between the EU and the ACP countries started in 1998 and were concluded two years later. The Cotonou Agreement was signed on 23 June 2000 and entered into force three years later after having been ratified by all EU Member States and by two thirds of ACP countries.

Negotiations for the new “Economic Partnership Agreements” (EPAs) were deemed to start in 2002 and conclude by 31 December 2007, at the latest.

The Cotonou Agreement marked the end of the preferential commercial regime existing under the Lomé conventions. The contracting parties in particular agreed to conclude new WTO-compatible trading arrangements, progressively removing barriers to trade between them and enhancing cooperation in all areas relevant to trade. Negotiations for the new “Economic Partnership Agreements” (EPAs) were deemed to start in 2002 and conclude by 31 December 2007, at the latest.

Principles governing trade and economic relations between the EU and the ACP countries were also revised. Article 34 of the Agreement set the objectives and the principles of the new economic partnership. It stressed that “the ultimate objective of economic and trade cooperation is to enable the ACP States to play a full part in international trade”. The agreement also insisted that economic and trade cooperation had to comply with WTO rules and was supposed to “aim at enhancing the production, supply and trading capacity of the ACP countries as well as their capacity to attract investment”.

---

25. Ibid.
26. Article 36, paragraph 1.
27. Article 37, paragraph 1.
Article 35 finally listed principles inspiring the new economic and trade cooperation between the EU and the ACP countries:

1. a renewed “true, strengthened and strategic partnership”;

2. an emphasis on the regional dimension;

3. special attention to the Least Developed Countries.

The revised Cotonou Agreement

The first revision of the Cotonou Agreement in 2005 did not substantially modify the chapters on trade and economic relations. More substantial were the changes introduced by the second revision of 2010.28

The revised Agreement highlights the challenges ACP countries are facing to integrate better into the world economy, in particular the effects of preference erosion. It therefore underlines the importance of trade adaptation strategies and tailored Aid for Trade measures.29

The EU and the ACP countries also agreed to address the trend towards regionalisation through increased differentiation within the ACP group, while strengthening the unity of the group.

To support ACP integration into world economy, the EU-ACP cooperation is to support capacity-building during the negotiations and accompany the transition phase and the implementation of the EPAs.30

At the multilateral level, cooperation shall inter alia support ACP efforts to liberalise trade regimes (Art.22) and to diversify their economies (Art.28), also in order to integrate progressively into the world economy.

Under the revised Cotonou Agreement, close attention has been paid to the vulnerability of the ACP States’ economies resulting from their dependency on commodities and the effects of preference erosion, in particular when negotiating and implementing trading agreements leading to further trade liberalisation.

KEY POINTS:

- The decision to revise a system of trade preferences that had lasted for 35 years was not an EU initiative but a clear and binding ruling by the WTO. Given that the WTO waiver from which the EU-ACP relationship benefited was to expire by the end of 2007, a new solution had to be found.

- In the Cotonou Agreement, the EU and ACP group committed themselves to conclude new WTO-compatible regional trade agreements.

- Moreover, the unsatisfactory conclusions drawn from three decades of trade preferences called for a change.

- Finally, the new relationship was to take into account the growing importance of new trade issues such as environment, competition, investments, health and social aspects.

---


2.1.1 Development issues and basic principles

The first part of the agreement is dedicated to development. The objectives of the EPA are in line with those listed in the Cotonou Agreement and in particular:

a) Contributing to the reduction and eventual eradication of poverty;

b) Promoting regional integration between the parties and in the CARIFORUM region;

c) Promoting the gradual integration of the CARIFORUM states into the world economy, in accordance with their political choices and development priorities;

d) Improving the CARIFORUM States’ capacity in trade policy and trade related issues;

e) Supporting the conditions for increasing investment and private sector initiative and enhancing supply capacity, competitiveness and economic growth in the CARIFORUM region;

f) Strengthening the relations between the Parties, inter alia by enhancing commercial and economic relations (…) by means of the progressive, asymmetrical liberalisation of trade.

Further emphasis is given to development cooperation (Article 7) and each sectoral chapter contains specific provisions outlining cooperation priorities which should facilitate the effective and timely implementation of the commitments included therein.

31. CARIFORUM, a subgroup of the ACP Group of Countries, consists of the 15 Member States of the Caribbean Community (CARICOM) plus the Dominican Republic.


37. Article 7.1: “The Parties recognise that development cooperation is a crucial element of their Partnership and an essential factor in the realisation of the objectives of this Agreement as laid down in Article 1. This cooperation can take financial and non-financial forms.”
2.1.2 Trade in goods

The CARIFORUM EPA, while complying with WTO rules, provides asymmetric and progressive opening of trade in goods between parties.

After its initialisation in 2007, the EU removed all remaining customs duties and quotas on CARIFORUM exports as of 1 January 2008 with the exception of rice and sugar, for which special transitory provisions apply.38

In return, CARIFORUM countries committed themselves to open their markets gradually (61% of EU exports in 10 years, 83% in 15 years and 87% in 25 years). Tariffs are not to be reduced on a number of sensitive products identified by means of stakeholder consultations in each CARIFORUM country.39

The loss of customs revenues by ACP countries was one of the most feared side-effects of EPAs. According to the Commission, “lower duties and enhanced growth fuelled by the EPA can increase government revenues” while the EPA includes some provisions to minimise any negative revenue impact from trade opening.

**Safeguard clause:** The CARIFORUM EPA includes a safeguard clause similar to those already applied in other FTAs negotiated by the EU. Safeguards are, in principle, supposed to protect countries entering a trade agreement (multilateral or bilateral) from unforeseen and sudden increases of foreign imports. WTO standards have been softened and measures can be imposed when imports have caused “serious disturbances” to the other party’s domestic industry.40

**Most-Favoured-Nation (MFN) clause:** Another sensitive issue was the MFN clause. The CARIFORUM EPA contains an asymmetric MFN clause. The clause applies automatically to the EU while for CARIFORUM it can only be invoked for a limited number of major trading partners and not when better treatment is the result of a regional integration process.

**Rules of origin:** Finally, rules of origin under the CARIFORUM EPA are made significantly more flexible for textiles and clothing than those previously applied under the Cotonou Agreement41 and improved to a lesser extent for agricultural products and fisheries.

2.1.3 Trade in services

As seen above, the Regional Trade Agreement provisions (of the WTO) substantially involve trade in goods. The inclusion of services in the EPAs is in line with the new EU trade strategy which tends to privilege trade in services over promotion of its manufactured goods exported abroad. Some analysts have criticised the EU decision to include trade in services and other trade related issues in the EPA package because they considered that this corresponded to a precise offensive interest of the EU which was not matched by any real benefit for the ACP countries.

The opening of trade in services however is partial and only involves sectors which have been positively identified by the parties. There are also some special conditions applying to services. CARIFORUM countries have in particular maintained reservations for small and medium sized enterprises in key sectors.42 Trade in service liberalisation is also asymmetrical. The EU made commitments covering 94% of sectors while CARIFORUM countries coverage is 65% (90% for the Dominican Republic).43

As to least developed countries, WTO rules provide for “special priority”.44 Within the ongoing WTO negotiations on services WTO Members have taken the view that in large part this priority could be assured through a waiver that would allow WTO members to deviate from the MFN obligation by granting preferential treatment to service suppliers from LDCs. A proposal for such a waiver is currently under discussion.

The CARIFORUM EPA (Article 60) stresses that:

- Nothing requires the privatisation of any public undertaking or imposes any obligation on government procurement;
- The right to regulate economic activities (foreign service providers) is untouched, including the right to introduce new regulations to meet legitimate policy objectives;
- The Parties to the EPA commit to maintaining standards and not to engage in a race to the bottom in an attempt to attract investors;
- The rules regarding the behaviour of investors, which require high standards of commercial and ethical conduct, fully apply to investments in services.

The coverage of sectors is rather broad. It encompasses all service sectors with the exclusion of some aspects of transport and audiovisual services. Services supplied by governmental bodies are also excluded.

The CARIFORUM EPA also includes an asymmetrical MFN clause for trade in services similar to the one applica-

---

38. The EU also granted extra quotas and minimum price guarantees for sugar.
39. A list of exempted products can be found at the CRNM site, http://www.crnm.org/.
40. For further clarification on this issue please refer to the Policy Department briefing note entitled Proposals for a regulation of the European Parliament and of the Council implementing the bilateral safeguard clause of the EU-Korea free trade agreement (2010/0032 (COD)), March 2010.
41. Under the Cotonou Agreement garments had to undergo double transformation (i.e. from yarn to cloth and from cloth to garments) to get preferential access. The EPA allows single-step transformation meaning CARIFORUM countries can import cloth from world suppliers to manufacture garments and export them duty free to Europe.
43. Many CARIFORUM service commitments consist of restating (or “binding”) existing commitments where sectors are already open to foreign service providers.
44. GATS Article IV.3 requires WTO members to give special priority to LDCs in facilitating the strengthening of domestic services capacity, the improvement of access to distribution channels, and liberalisation of access in sectors of export interest. See http://www.wto.org/english/tratop_e/serv_e/loc_mods_negs_e.htm.
bile to trade in goods (Article 70). It also deals with regula-
tory principles in certain sensitive sectors such as computer
services, courier services, telecommunications, financial
services, maritime transport and tourism services.

The assessment of the services chapter in the CARI-
FORUM EPA is rather positive. The European Centre for
International Political Economy (ECIPE) concludes that
“the EPA can be described as a successful attempt to
give operational meaning to the principles and objectives of
GATS art. IV (increasing Participation of Developing
countries). As the EU has made evident efforts to respond
to demands to open sectors and modes of supply of rel-
vance to CARIFORUM states”.

The authors, however, warn about the implementation phase which may prove
difficult to achieve.

2.1.4 Innovation and Intellectual
Property Rights (IPRs)

Article 131 of the Agreement stresses that “fostering in-
novation and creativity improves competitiveness and is a
crucial element in their economic partnership” in achieving
sustainable development and gradual integration of CARI-
FORUM States into the world economy.46

At the same time, “the protection and enforcement of
intellectual property plays a key role in fostering creativity,
innovation and competitiveness, and are determined to
ensure increasing levels of protection appropriate to their
levels of development”.47

Intellectual Property Rights (IPR) protection rules take
into consideration the development needs of CARIFORUM
countries. Particular attention is given to access to medi-
cines which should not be impaired by the treaty (Article
139.2).48 Other provisions also deal with the protection of
traditional knowledge and biodiversity (Article 150), the
transfer of technology (Article 142) and the protection of
plant varieties (Article 149.2).49

CARIFORUM countries’ commitments on IPR are sub-
stantially in line with applicable international conventions.
Specific provisions are instead foreseen for (protection of)
Geographical Indications (GIs) and design (Article 145).50

Finally, the CARIFORUM EPA contains procedures on
the enforcement of IPRs, partly informed by the ACTA (anti-
counterfeiting trade agreement) negotiations.

2.1.5 Foreign Direct Investments (FDIs)

Foreign direct investment (FDI) had been an EU Member
State competence or mixed (Member State and EU ) com-
petence for years. Individual EU Member States negotiated
their own bilateral investment agreements to provide pro-
tection for fund repatriation and against expropriation.
The Commission also negotiated agreements covering invest-
ment in services. Recently, the EU’s Lisbon Treaty brought
FDIs under the umbrella of the EU’s “Common Commercial
Policy”. FDI is now a full competence of the EU and the
related Bilateral Investment Treaties (BITs) will sooner or later
be renegotiated at EU level. The CARIFORUM EPA chapter
on investments is rather ambitious and already contains
provisions which are likely to be replicated in other EPAs as
well as in ordinary FTAs.

The investment provisions of the EPA are intended to facili-
tate the reciprocal flow of investment, reduce the incidence
of discriminatory treatment of foreign investors and increase
predictability and transparency to the investment regime.

The liberalisation of foreign direct investment also is
asymmetric. The EU opens up to investment to a much
wider extent than CARIFORUM countries do towards the
EU. Further, CARIFORUM countries will apply many more
conditions and sectoral limitations.51

The EU and CARIFORUM are committed to granting
each other’s investors more access to their markets, in the
sectors listed in Annex IV to the Agreement.52 Liberalisation
is not complete since limitations apply:

– on the number of investors;
– on the total value of transactions or assets;
– on the total number of operations or on the total quan-
tity of output;
– on the participation of foreign capital in terms of maxi-
mum percentage limit on foreign share holding;

45. Pierre Sauvé and Natasha Ward (ECIPE), The EC-CARIFORUM Economic Partnership Agreement: assessing the outcome
on services and investment, January 2009 at http://www.ecipe.org/publications/ecipe-working-papers/the-ec-cariform-economic-partnership-
agreement-assessing-the-outcome-on-services-and-investment/PDF.
46. European Commission, CARIFORUM-EC EPA: innovation and intellectual property at http://trade.ec.europa.eu/doclib/docs/2008/october/tra-
doc_140978.pdf.
47. Direct reference is made to the Doha Declaration on TRIPs Agreement and Public Health and the 2003 WTO decision on compulsory licensing
(Article 147.2).
48. The agreement contains a provision that leaves the signatories the freedom to provide exemptions to so-called “plant breeders’ rights” that will
allow farmers to save, use and exchange farm-saved seed (Article 148.2). This “farmers’ exemption” allows farmers to re-use IP protected seed
saved from their harvest, rather than having to buy them again each year. It is a unique feature which is found in no other agreement between
developed and developing countries. Long implementation periods are foreseen (2014), and several provisions are couched in “best endeavour”
terms, allowing CARIFORUM states to implement them only if and when they feel ready to do so. The LDC member of CARIFORUM (i.e. Haiti) will
not have to implement the IPR chapter until 2021 at the very earliest.
49. With respect to Geographical indications (art.145), in the absence of a regulatory framework in the CARIFORUM countries, the EPA provides for a rendez-vous clause according to which no later than 1 January 2014 the CARIFORUM countries will establish a system of protection for
GIs. On that date, the EU and CARIFORUM will enter into negotiation for a fully-fledged agreement on GIs. The current GI provisions also aim at
fostering cooperation to identify and promote GIs in CARIFORUM countries via the active involvement of the Trade and Development Committee
established by the EPA.
51. Annex IV - Lists of commitments on investment and trade in services.
2.1.6 Public procurement

A separate chapter of the Treaty is dedicated to Public Procurement. Article 165 stresses the role of “transparent competitive tendering for economic development with due regard being given to the special situation of the economies of the CARIFORUM States”.

The procurement chapter sets out some basic principles and minimum transparency rules that procuring entities should respect when tendering. These, however, only apply to the relatively few large contracts (those in excess of USD 200,000) tendered by central authorities (art. 167 and Annex VI).

The Treaty foresees the gradual creation of a regional procurement framework in the Caribbean region. (Article 167 A.1).

2.1.7 Competition

The CARIFORUM EPA also includes a chapter on competition. In this chapter, parties agree on a number of common principles aiming at ensuring that markets are not distorted by anticompetitive practices by companies.52

2.2 Sustainability Impact Assessments (SIA)

At various occasions the sustainability of EPAs was put in doubt due to the expected negative impacts on ACP states. The parties, especially the EU side, were criticised for not taking due account of the findings or else for starting the process before such assessments were made.53 In addition, the European Parliament regretted that Sustainability Impact Assessments (SIAs) have failed to have a meaningful impact on negotiations.54

Impact assessments were also carried out at the request of the European Commission services as well as at regional level, by interest groups and academia.55

Regarding impact on trade, one assessment (prepared by CEPII-CIREM at the request of the European Commission)56 forecasted a 10% increase in ACP exports towards the EU comparing it to a situation where EU-ACP trade would work on the basis of General System of Preferences/Everything but Arms rather than EPAs. On the import side, a 7% average increase overall was forecasted for ACP countries in 2015 as against 17.7% in 2022. On tariff revenues, under the main scenario ACP countries were forecast to lose 70% on EU imports in the long run. However, imports from other regions of the world would continue to provide tariff revenues. On total ACP imports, losses would be 15% or 26% on average depending on the scenario in the long run. The study concluded that the final impact on the economy would depend on the importance of tariffs in government revenue and on potential compensatory effects. Positive outcome could be expected from EPAs, whenever a budget reform with an enlargement of the fiscal basis is achieved.

The PricewaterhouseCoopers Sustainability Impact Assessment57 put forward the following recommendations to

---

53. Partnership Under Pressure: an assessment of the European Commission’s conduct in the EPA negotiations (May 2007), by Mari Griffith (Tearfund) and Sophie Powell (Traidcraft), Tim Rice (Action Aid), Tzvetelina Arsova (Christian Aid), Paul Cook (Tearfund), Mike Gidney (Traidcraft) and Paul Goodison (European Research Office).
help EPAs to achieve their aim, i.e. promote sustainable development and poverty alleviation:

- ensure coherence between EPA negotiating configurations;
- retain duty free and quota free access to the EU market for products of ACP countries; improve access to the EU market for the few products not yet fully liberalised;
- classify some products as “sensitive” and ensure that there is a safeguard provision to mitigate negative impacts of reciprocity;
- explore options to simplify and relax Rules of Origin (RoO) that will encourage increased trade in transformed products;
- increase commitments in all categories of services to improve certainty and transparency, and encourage trade;
- EPAs should contribute to a stable climate for FDI and encourage investment that supports sustainability through, inter alia, cooperation for compliance with environmental and social regulations;
- cooperation on standards should address obstacles to trade, assist ACP countries to develop their own national and regional approaches to sanitary and phytosanitary measures (SPS) and technical barriers to trade (TBT);
- EU: to engage in cooperation in several trade facilitation areas (inter alia, customs, transportation, technology, business information and human resources);
- Finally, there were recommendations as to development cooperation which should focus on needs for production diversification, exports towards higher value-added products, technical assistance to collect trade information, emphasis on training, R&D, sound regulatory framework;
- develop a permanent institutional mechanism to monitor the implementation of the EPAs from the perspective of economic, environmental and social sustainability.

As could be seen above, a number of provisions of the CARIFORUM EPA are in line with these recommendations, even if the extent and the concrete choice can be discussed (e.g. regional integration as an objective, market access for goods, “sensitive” products with liberalisation schedules up to 25 years, simplification of Rules of Origin and derogations from them, provisions on cooperation on sanitary and phytosanitary measures and technical barriers to trade).

A number of suggestions were not followed either because of reluctance or because practical solutions were not found (see also chapter on the key actors and section on contentious issues). To take the example of “coherence of regional configurations”: EPA texts, to a large extent, focus on regional integration, recognise it as one of the objectives and include provisions to achieve them. At the same time, the signing of individual interim EPAs (IEPA) can be seen as going in the opposite direction of that principle.

Other studies may confirm or oppose the assessments of the two mentioned studies. However, any results should be interpreted with utmost caution, which is not always the case when findings are used to support an argument. For example, one finds that often potential impacts are extrapolated, such as a loss of “70% of tariff revenues on EU imports”. Moreover, it is not always taken into account that EPAs form a body of related measures and that impact assessments should provide information on what potential conditions and trends should be taken into consideration.

In addition, models are usually subject to limitations such as the lack of data or use of a static framework and often authors may only use data which is publicly available. According to an overview of impact assessments on EPAs by the UK’s think-tank Overseas Development Institute (ODI), all existing models used at that time (2006) lacked important details in their trade scenarios and tended not to include an option whereby sensitive products can be excluded from trade liberalisation.58

---

3. POSITIONS AND ROLES OF KEY ACTORS

Besides the negotiating parties, the EU and its Member States on the one part, and the ACP states on the other, the negotiations involve a remarkable number of non-State actors. A strong emphasis on their participation is one of the major innovations of the Cotonou Agreement which stipulates that the parties “recognise the complementary role of and potential for contributions by non State actors, ACP national parliaments and local decentralised authorities to the development process [...]”.

The actors of cooperation are (1) State actors (local, regional and national), including ACP national parliaments, and (2) Non-State actors: private sector; economic and social partners, including trade union organisations; civil society in all its forms according to national characteristics.

3.1 Main differences in positions

Compatibility of EPAs with WTO rules being the major issue, most differences between the EU and ACP side arose where the former was arguing in favour of arrangements not required by the WTO, or where there was room for interpretation. The underlying difficulty, however, were the differences in understanding of the key principles of EPAs according to the Cotonou Agreement such as development, reciprocity or regionalism.

From the beginning of negotiations, the European Commission and ACP countries did not share the same vision of what future EPAs may contain, especially in the areas of trade liberalisation, the so-called “Singapore issues” and development. The ACP have consistently raised concerns about these fundamental differences and tried to resist pressure from the European Commission to conclude EPAs before the end of the WTO waiver (31 December 2007). NGOs accused the Commission of increasingly using its economic and political power to force its own vision of EPAs onto the ACP.

3.2 Key actors: roles, motives and positions

3.2.1 The European Commission

The European Commission undoubtedly has been playing a central role in the definition of EPA objectives and in the negotiations with ACP countries.

The European Union (and its predecessor, the European Community) has an “exclusive competence” on the so-called Common Commercial Policy which is a corollary of both the Customs Union and the EU’s Single Market. This means in practical terms that the European Commission, acting on behalf of the European Union, has exclusive authority during international trade negotiations and responds only to the Council of the EU and, since the entry into force of the Lisbon Treaty, to the European Parliament.

The Commission has the right of initiative and receives its negotiating mandate from the Council for all agreements falling within the remit of the European Union. Fundamental international trade decisions are taken jointly with the European Parliament under the ordinary legislative procedure, while international treaties are submitted to the Parliament under the consent procedure (a procedure which requires Parliament’s agreement on the final international accord but which does not enable Parliament to modify the content of a treaty under consideration).

Member States’ role is in principle limited to that exercised within the Council and there is no obligation for the Commission to consult national parliaments nor for them to ratify international agreements in this area of exclusive EU competence.

The responsibility of EPA negotiations was attributed, inside the European Commission, to the Directorate-General (DG) for Trade. DG Trade has always shown a different approach to relations with ACP countries than that of DG Development, which was in charge of negotiating the Lomé and Cotonou Conventions. While the Commission’s final decisions are adopted jointly by the Collège of Commissioners, there is no doubt that the line followed by DG Trade in negotiating EPAs diverged from the traditional development strategy pursued for many years by the development DG.

The EU Development policy and international trade issues

Before analysing the objectives of the European Commission in the redefinition of its trade relations with ACP countries, it is worth recalling the principles which inform EU development policy. Documents such as the joint statement (Parliament, Council and Commission) on the “European Consensus on Development” help to illustrate the line of action pursued.

The single most important objective of the European Union’s development policy is to combat poverty in the developing countries. This priority was set by the Council and the Commission in their joint statement on develop-
ment policy issued on 10 November 2000. This objective was reaffirmed on 22 November 2005 in the European Consensus on Development. It reiterates its support for a rapid, ambitious and pro-poor completion of the Doha Development Round and EU-ACP Economic Partnership Agreements (EPAs) and recognises that “developing countries should decide and reform trade policy in line with their broader national development plans”.

The EU committed itself to provide “additional assistance to help poor countries build the capacity to trade. Particular attention will be paid to the least advanced and most vulnerable countries”. In this respect the EU recognised the need for a “properly sequenced market opening, especially on products of export interest for developing countries, underpinned by an open, fair, equitable, rules-based multilateral trading system that takes into account the interests and concerns of the weaker nations”. These commitments are largely in line with those negotiated in the Cotonou Agreement.

International trade plays a central role among the instruments which may help achieve the goal of eradicating poverty. However, foreign trade is governed by a set of rules which may directly or indirectly conflict with ACP interests and the EU development policy. This was the case of the Lomé conventions which provided asymmetrical trade benefits to ACP countries while negatively discriminating against other developing countries and breaching WTO standards.

The Commission undertook an extensive rethink of its development policy, partly triggered by the need for putting its trade relations with the ACP countries in line with WTO rules. In a 1996 Green Paper on relations with ACP countries, the Commission noted:

“In most ACP countries the economic and institutional environment has not usually been propitious to the development of a competitive private sector, the growth of investment or diversification of production, and so they have not been able to take advantage of all the opportunities offered by the special preferences granted under the Lomé Convention. ACP exports to the EU have been no exception to those countries’ generally poor trade performance and their share of the EU market has declined appreciably, dropping from 6.7% in 1976 to 2.8% in 1994. Although the situation varies markedly from one country or region to another, the European market still accounts on average for more than 40% of ACP sales.”

---

**WHO’S WHO IN THE EPA NEGOTIATIONS**

**The European Commission** (EC) has the right of initiative as well as the negotiating mandate received from the Council of the EU. It leads the trade talks on behalf of the EU and responds to the Council and the European Parliament. The Council of the EU mandates the European Commission to negotiate and adopts international agreements after the consent of the European Parliament.

**The European Parliament** gives its consent to the agreements. This procedure allows it to accept or reject the text, but not to amend it. Since the entry into force of the Lisbon Treaty, the Parliament has to be informed at the different stages of the process related to international agreements.

The **African, Caribbean and Pacific Group of States (ACP)** is composed of states that are the signatories to the Cotonou Agreement. The group represents the ACP side in negotiations of cooperation agreements with the EU.

- **The ACP Council of Ministers** is the Group’s main decision-making body. It comprises a representative from each ACP state and is responsible for conducting negotiations on behalf of the Group.
- **The Ministerial Trade Committee** is a task force of Trade Ministers (a total of 18, three per region) responsible for conducting, coordinating and monitoring trade negotiations.
- **The Committee of Ambassadors** deals with the day-to-day negotiations.
- **The ACP secretariat** is responsible for the technical preparations and coordination.

**ACP regional groups:** It is up to each region to indicate how they see the task division between their ministers, ambassadors and regional groupings or Regional Economic Communities.

**ACP-EU Joint Parliamentary Assembly (JPA)** is a consultative body consisting of an equal number of Members of the European Parliament and ACP parliamentarians. It adopts resolutions and makes recommendations to the ACP Council of Ministers.

**Non-state actors** comprise members of civil society, farmers, private sector, trade unions.
Putting trade relations with the ACP in line with global rules was therefore only one among other reasons which prompted the European Commission to launch the negotiations on Economic Partnership Agreements (EPAs). The Commission was also rather clear in defining the objectives which, besides the fundamental obligation to comply with the WTO, the new EPAs were supposed to pursue:

- Integrate ACP countries into the world economy and make them more able to face globalisation;
- Generally improve governance;
- Improve ACP competitiveness and economic attractiveness;
- Promote economic and trade diversification;
- Guarantee more, better and cheaper goods and services.

EPAs from the Commission’s perspective can be defined as “Free Trade Agreements with a strong development component”. The Commission has always stressed that it has no “offensive interest” in ACP markets.

The new EU Trade Agenda

The EU trade agenda for the beginning of the 21st century was set by two distinct communications: Global Europe: Competing in the world and Trade growth and world affairs.

Global Europe was published in November 2006 and represented a major change in the EU trade policy. While defending its choice to support Doha and the multilateral talks in Geneva, the Commission acknowledged that the conclusion of the new round may not be within reach and redefined its external trade priorities. These include the launch of negotiations for a new generation of FTAs with stronger chapters on trade in services, investments, competition and the protection of the intellectual property rights (IPRs).

The Commission’s Communication was accused of being a manifesto of “neo-liberalism” and, in fact, it defends an offensive approach to international trade based on tariff and non-tariff barriers elimination. Securing access to raw materials and enhancing the EU’s competitiveness abroad are also important elements of the Communication. In fact, Global Europe was supposed to cover the external arm of the “Lisbon Strategy”, launched in 2000 and revised in 2005.

However, the Communication is rather silent on develop-

---

69. See Powerpoint presentation by Director Peter Thomson entitled “EPAs and development” (2008).
70. Ibid.
72. Roughly corresponding to the Singapore Issues unsuccessfully defended by the EU in the Doha negotiations.
The Communication “Trade, Growth and World Affairs”\(^\text{73}\) was launched in 2010 and does not replicate the shortcomings of its predecessor and pays more attention to development issues. A more differentiated approach in relation to Free Trade Agreements is defined and development objectives (such as poverty eradication) are more in evidence: “EU trade policy is helping the poorest economies by also providing generous unilateral trade preferences.”\(^\text{74}\) More generally, we are employing a carefully differentiated approach depending on the level of development of our partners. We are paying systematic attention to coherence with development policies, such as poverty eradication.” In short, the 2010 Communication acknowledges the need to take into consideration the real level of development of potential trading partners and reaffirms the link between trade policies and development.

### 3.2.1.1 Commission’s responses to criticisms

The Commission’s responses: A list of alleged Commission misconducts and its responses:

**The EC has its own Agenda**

The Commission was accused of failing to listen to ACP institutions, governments and other stakeholders such as the African Union, United Nations and civil society or worse, that had submitted its policy to the will of big companies and multinationals without caring for the destiny of millions of poor people in the south of the world.

There is no doubt that the Commission often refused to take into consideration suggestions and requests from ACP countries and NGOs. This was particularly the case with proposals for discussing alternatives to EPAs for non-LDCs. But this is not the same as saying that the Commission was pursuing a hidden agenda intentionally aimed at disrupting the economies of developing countries.

- When looking at the multilateral WTO negotiations, it is evident that among industrialised and emerging countries, the trading block which made the largest concessions was the European Union. A large portion of export subsidies on agriculture has been removed by the reform of the Common Agricultural Policy (CAP) while other trade distortions were consistently reduced. The EU offer was so good that no country attributed the responsibility of the collapse of the Doha talks in Geneva in 2008 to the EU.

- The European Union is the world’s largest donor. Together with its Member States, the EU accounts for more than half of all development assistance worldwide.

- The reform of the Cotonou preferences was not unilaterally decided by the EU but resulted from the outcome of a negative ruling which found the EU trade regime in breach of WTO rules. Moreover, despite considerable amounts provided by the EU for development, the results achieved were not always satisfactory and required a thorough revision of aid and trade schemes.

In light of the above considerations, it is difficult to conclude that EPAs “are essentially neo-liberal-inspired free market agreements that prolong imperialist domination and a neo-colonial vision.”\(^\text{76}\)

**The Commission did not integrate recommendations from Sustainability Impact Assessments in the negotiations**

For this point please refer to the section on Impact Assessment and SIA (Sustainability Impact Assessment) page 22.

**EPAs are not a development tool**

The end of the privileged system of preferences under Cotonou did not please all ACP countries. Many representatives and stakeholders questioned the fundamental role of EPAs and argued that, rather than being a development tool, they were an effective instrument aimed at securing access of EU products into ACP markets.

Ato Girma Birru, Minister of Trade and Industry of Ethiopia, affirmed in 2006 that “this type of trade liberalisation between unequal partners has historically proven to be an ineffective development tool and even counterproductive. Such a policy of trade liberalisation could inhibit our countries’ ability to reduce poverty and ensure sustainable development.”\(^\text{77}\)

The rationale behind the decision of putting forward EPAs is explained in a Commission document\(^\text{78}\) emphasising the need for a meaningful liberalisation of ACP economies as a precondition for generating economic growth and securing poverty reduction. Trade (in goods) liberalisation by ACP countries will be gradual (stretched over a period of 15 years or longer if deemed necessary) and conditioned to the fulfilment of development objectives.

---


74. Via GSP plus and EBA.


76. Declaration of the Haitian Block the EPA coalition, October 2007 www.deiberthaiti.blogspot.com

77. Ibid.

78. European Commission, Economic Partnership Agreements (EPAs) Frequently asked questions.
Moreover, ACP countries will maintain the right to protect up to 20% of their trade. Agricultural products considered key to food security and the income of rural communities are also supposed to be excluded from the scope of the deal. Similarly, ad hoc provisions will protect nascent industries which are considered vulnerable.

Some opponents argued that, given the poor conditions of ACP economies, this asymmetry still does not level the playing field. However, according to the Commission, “in order to spur growth, trade opening needs to go far enough to have a meaningful impact on price and revenue levels in ACP countries. There is a price to pay for doing too little: too modest a reduction may simply give no impulse to economic expansion thus failing to generate new wealth and a broader base for government revenue. In such a case, the risk to obtain an unsatisfactory overall result increases”.

**The EC’s stubborn insistence on Singapore and other WTO plus issues**

Global Europe placed the “Singapore issues” very high in the EU’s foreign trade priorities for the beginning of the 21st century. Recent FTA negotiations demonstrated that the EC was ready to trade off concessions on trade in goods for a more structured set of rules on trade in services and specific attention to the Singapore issues.

Supporting investment in the ACP was considered a key towards progress in the achievement of sound development objectives. The Commission also insisted on the undeniable fact that one of the reasons for Africa’s underdevelopment was the lack of Foreign Direct Investment.

This line of action was already enshrined in the Cotonou Agreement which included provisions covering trade in services, investments, protection of intellectual property rights, public procurement and competition “to promote the progressive integration of the ACP countries into the global economy, by enhancing production and the capacity to attract investment, (…)”. A chapter on investments was included in the CARIFORUM EPA.

These arguments did not convince several NGOs and ACP governments. The Commission was accused of hiding highly sensitive and potentially dangerous trade liberalisation under the pretence of development rhetoric. The NGO ActionAid for example stated that “the ‘Singapore Issues’ (…) seek to enshrine greater rights for European corporations and further impede the ability of ACP governments to regulate them effectively”.

The Commission responded to criticisms by denying its intention to impose Singapore and other WTO plus issues: “the EU has never said that it would insist on these issues being covered by EPAs. But it has said that it believes that there are good development reasons why they should be. […] Every ACP investment report published says that breaking the dependence on basic commodity exports requires a transparent, secure, rules-based investment climate. EPAs can help establish this and many ACP countries agree: as an example, both the full Caribbean EPA and the interim EPA with Pacific countries already include services chapters.”

**The EC went too far in pushing for a quick conclusion of (interim) EPAs**

The Commission was criticised because it refused to take into consideration any extension to the end of the 2007 deadline for the signature of interim EPAs.

In October 2007, Pierre Magne, President of the African Industrial Association stressed: “We feel that it is deeply unjust for the EU to oblige the world’s poorest countries to choose between liberalising their domestic markets under pressure – with the risks that this may entail to national and regional economies – or risking livelihoods in export sectors as tariffs are raised on exports to the EU.”

The deadline of 31 December 2007 was already foreseen in the Cotonou Agreement to avoid trade disruption for non-LDCs countries resulting from the expiry of the WTO waiver.

The Commission was also criticised because it did not ask for a further extension of the WTO waiver, notwithstanding the discussions in Doha in 2001 and further WTO talks, which made it evident that there was no room for maintaining discriminatory trade preferences for the ACP. It is also true that negotiations did not progress at the expected pace and that at the end of 2007, only a handful of interim EPAs had been initialled or signed. This, according to NGOs, was in direct contravention of the EU’s obligations under the Cotonou Agreement to provide at least equivalent market access to the ACP on 1 January 2008.

As an alternative, some analysts suggested to simply disregard the commitments agreed by the EU and the ACP and face the inevitable WTO dispute which would have been opened by the other developing countries. This option was considered unacceptable by the Commission and therefore dismissed. It should also be mentioned that, after the Bananas and Hormones cases, the Commission was reluctant to start a new dispute which manifestly had no chance of success.

**The EC refused to consider any alternatives to EPAs**

See point on “Alternatives to EPAs” page 58.

**EPAs undermine ACPs’ regional integration**

The challenge for the Economic Partnership Agreements is to add a third dimension: fostering regional integration and helping to create the conditions for attracting vital investment.


---

81. Article 27.1, Procedures.
82. Ibid. footnote 36.
83. European Commission, Responding to EPA myths.
The EU has always favoured a regional approach in its foreign relations and strongly supported regional economic integration as a viable engine for growth and development. The regional approach in trade negotiations was seen as the second best option by the Commission when unable to find a multilateral and plurilateral deal.

Consistent with the Cotonou Agreement, the establishment of subsequent regional and sub-regional groupings of ACP countries was mandated to the ACP countries themselves. Article 37 of the Agreement states “negotiations of the economic partnership agreements will be undertaken with ACP countries which consider themselves in a position to do so, at the level they consider appropriate and in accordance with the procedures agreed by the ACP Group, taking into account regional integration process within the ACP”.

**EPAs in the African region:**

**African EPA configuration (2007)**

In certain cases, ACP countries decided to participate in negotiations under more than one regional group. This widespread overlapping membership of agreements resulted in a dilution of already-scarce human and technical resources, high administrative costs and inconsistent obligations.

The approaching deadline of 31 December 2007 prompted the Commission to revise its previous strategy by putting forward Interim EPAs which were supposed to avoid trade disruption resulting from the end of the special preferences accorded under the Cotonou Agreement. This of course applied only to non-LDCs (which were already benefitting from the Everything But Arms initiative) and did not involve countries like South Africa which had signed a Trade, Development and Cooperation Agreement (TDCA) with the EU in 2000.

This resulted in a fragmentation of positions inside the 6 regional EPA groups, a fact which was criticised by NGOs and often depicted as a real danger for the already slow and difficult process of regional integration in Africa.

At an initial stage the EU supported the creation of new EPA regional entities shaped around specific regional economic groupings in existence at the time, i.e., the African Customs Unions (WAEMU, CEMAC, SACU and the EAC). In the end, the ACP decided to negotiate EPAs under 6 distinct regional groupings: East South Africa (ESA-EPA), Southern Africa (SADC-EPA), East Africa (ECOWAS-EPA), Central Africa (CEMAC-EPA), the Caribbean region (CARIFORUM-EPA) and the Pacific region (Pacific-EPA).
Apart from the obvious distinction between developing countries (which would have lost their preferential access to the EU) and LDCs, it is true that for a variety of reasons certain ACP countries refused to enter into interim EPAs with the EU. This was the case with countries like Gabon, Nigeria (due to the fact that its economy essentially rests on oil exports which are not subject to customs duties in the EU) and South Africa (already profiling from the TDCA). Namibia’s refusal was dictated by political considerations since it sided with South Africa in its ideological crusade against EPAs.

The Commission responded to the criticisms by recalling that EPAs should not be seen in isolation. They are instead the trade pillar of a broader strategy to support regional integration in ACP countries and intended to consolidate ongoing, ACP-owned integration processes. In fact, since the domestic markets in ACP countries are, on their own, relatively small and in many instances internationally uncompetitive, the current regional integration initiatives in the ACP regions are a key component in the development of more integrated and competitive markets. The double approach (negotiating at both regional and national levels) was necessary to secure market access that is compatible with WTO standards. Interim agreements, however, provided only a temporary solution and were supposed to be replaced by fully-fledged EPAs negotiated on a regional scale (as happened for CARIFORUM).

**EPAs hamper the development of stronger South-South trade integration**

The European Commission included in the EPA package two specific clauses guaranteeing that no tariff increases were to be adopted by the ACP countries after the entry into force of the Agreement (the so-called “standstill” clause) and that trade concessions granted to third countries were automatically recognised by the EU (the Most-Favoured-Nation clause).

The Most-Favoured-Nation (MFN) clause has been included in certain interim EPAs (e.g. with Ivory Coast) and full EPAs (CARIFORUM).

**Ivory Coast (Article 17.2)**

“For the fields covered by this Chapter, the Ivorian Party shall grant the EC Party any more favourable treatment applicable as a result of Côte d’Ivoire entering into a free trade agreement with a major trade partner after signing this Agreement.”

**CARIFORUM (Article 19.2)**

“With respect to matters covered by this Chapter, the CARIFORUM States or any Signatory CARIFORUM State shall accord to the EC Party any more favourable treatment applicable as a result of the CARIFORUM States or any Signatory CARIFORUM State becoming party to a free trade agreement with any major trading economy after the signature of this Agreement.”

The Commission considered “major trading economies” those countries which were either developed or “represented more than one percent of world trade in the year before the EPA with the EU would take effect” (for a group of countries, the proposed threshold would be a market share of more than 1.5 percent). According to EU calculations, 22 countries meet these criteria, including China, India, Brazil, Indonesia, and Thailand for example.

This has prompted vigorous reactions by many interested parties. ACP representatives insisted on restricting the scope of application of the MFN clause to developed countries while emerging countries like Brazil stressed that this clause could discourage ACP countries, “among the world’s poorest, from pursuing deeper trade integration with other developing nations.” Several other countries echoed Brazil’s concerns in the WTO, including China, Pakistan, Paraguay, India and Argentina.

Obviously all these countries have either a potential or present interest in liberalising trade with ACP countries. On the other hand, Brazil and other WTO Members claimed that the MFN clause in EPAs would undermine “South-South” trade integration and breaches the Enabling Clause.

The EC responded to these allegations by stating that the MFN clause does not cover ACP regional integration. It also stressed that “the MFN clause does not contradict the Enabling Clause in any legal aspect. The Enabling Clause permits trade preferences among developing countries, but it contains nothing that prohibits the extension of such preferences to other WTO Members”.

### 3.2.2 ACP regions and countries

As the negotiations evolved, the issues highlighted in the common positions adopted by the ACP side (at ministerial or heads of state/government level) varied. However, regardless of the various stages in the talks the ACP declarations reflected their demands for more flexibility and for appropriate financial sources that would address the adjustment needs.

**ACP positions at the start of the negotiations**

**General approach:** The ACP negotiation guidelines for EPAs adopted in 2002 reaffirmed that the Cotonou agreement sets the basis for the EU-ACP partnership. At the centre of this partnership are “[…] economic development, the reduction and eventual eradication of poverty, and the smooth and gradual integration of ACP States into the
world economy” (Paragraph 2). The position also highlights the need for non-reciprocity in trade: “In view of the differences in the level of development between the ACP States and the EU, the ACP cannot be required to make the same level of commitments under EPAs as the EU, particularly as regards market access.” (Paragraph 21).

Adjustment costs: The Guidelines state that trade liberalisation will imply a loss in revenue and an increase in competition, which may adversely affect ACP domestic industries. Therefore “[…] there should be a special package of measures in terms of, inter alia, […] additional resources over and above those available under the EDF”. (Paragraphs 33, 35).

Trade issues: The aim of the negotiations is to secure a customs and quota free access to the EU market. However, this should be achieved by taking into account the existing Commodity protocols which should be reviewed in the context of new trade arrangements, especially with regard to WTO rules. As for the rules of origin (RoO), the negotiations should aim to develop an improved and simplified system. Appropriate safeguard measures should be negotiated for cases of increased imports from the EU (Paragraph 35.a).

Trade related issues: “Any commitment made by the ACP in respect of trade-related issues shall take account of the outcome of the discussions or negotiations in the WTO on those issues.” Negotiators should also “[…] seek the strengthening of ACP countries’ capacity to handle all areas related to trade.” (Paragraph 35.b).

Positions in the course of the negotiations

As the end of the negotiation period approached (September 2002 to 31 December 2007), and talks on a number of issues seemed deadlocked, the ACP governments issued a number of declarations highlighting their common concerns. Meeting in Addis Ababa on 16 January 2007, ACP Trade Ministers called all parties to seek alternatives, including the option of extending the period of negotiations, and re-iterated the call for a broad EPA “adjustment facility”, in addition to the European Development Fund (EDF) to cover adjustment costs.92 The Ministers also stressed that Article XXIV of GATT as interpreted by the EU “is unsuitable for pro-developement Economic Partnership Agreements”.

The declaration of the ACP Council of Ministers adopted in Brussels on 20 December 200791 expressed serious concern over the impending deadline of 31 December 2007 for the expiry of the trade provisions of the Cotonou Agreement.94 Where for some ACP countries the EU’s interpretation of “Substantially all trade” and the WTO waiver allowing them. While noting the EU steps towards interim solutions (e.g., reassurances from the Commission President on the continuation of negotiations, and the adoption of an Market Access Regulation by the EU on 20 December 200791), the Ministers re-emphasised the need to prioritise the regional integration processes within the ACP over free trade with the EU. The countries in a position to sign the interim-EPAs called on the European Commission to “provide […] a framework for trade which is at least equivalent to their existing situations.”

December 2007 was one of the most strained periods in the negotiations. The Brussels declaration of the ACP group of states includes a strong criticism of the Commission:

“Ministers observed that the recent statements and pronouncements made by [the] European Commission to the media and other fora, are at variance with the demands being made to the ACP negotiating regions and States. Ministers observed that European Union’s mercantilist interests have taken precedence over the ACP’s developmental and regional integration interests.”92

Recent positions

More recently, at the meeting of 29 October to 2 November 2010 in Kigali, African Union Trade Ministers once again urged the EU to “dedicate additional, predictable and sustainable resources to specifically address EPA-related adjustment costs and build productive capacities” and to extend the application of the Market Access Regulation. At this stage, the Ministers also expressed “concern about the pressure exerted by the European Commission on some countries and regions to sign the interim EPAs.”93

Contentious issues

Given the heterogeneity of the ACP regions and countries, the understanding of what is a controversial issue and positions on them varies. However, as the declarations by ACP bodies indicate, a number of concerns were common to all or some ACP countries.

“Substantially all trade” and liberalisation agenda

Regarding the interpretation of “Substantially all trade” in Article XXIV of GATT, the ACP Ministers in charge of EPA negotiations in November 2007 agreed on a common approach. They requested an “approach provided in GATS Article V which recognizes the need for differentiated treatment of market opening between developed and developing countries” as well as the provisions of Cotonou Agreement.94

Whereas for some ACP countries the EU’s interpretation of “substantially all trade” and the proposed liberalisation time frame did not pose a major problem, a number of them, particularly LDCs, felt that the conditions set by the EU did not provide sufficient flexibility regarding their specific development needs. The level of tariff liberalisation was the key reason for the majority of African and Pacific countries

---

not to sign the agreement despite their regional integration engagements.\textsuperscript{25}

Export Taxes

Even if under the WTO rules there is no explicit prohibition of export taxes,\textsuperscript{96} in the context of EPA negotiations the Commission called for their elimination and future prohibition. A number of ACP countries applying export taxes, in particular producers and exporters of primary products, have argued against the request by the EU. For these countries the provision would mean renouncing measures that allow them to respond to particular economic development challenges, such as creating added value, developing new industries or promoting industrialisation.

Bilateral safeguards

“With a view to enabling ACP countries to protect their domestic industries in case of increased imports from the EU cause or threaten to cause injury to their domestic industry, appropriate safeguard measures should be negotiated. The provisions on safeguard should provide for special and differential treatment for ACP countries.”\textsuperscript{97}

The aim of the negotiations, inter alia, is “to develop effective trade defence instruments that would protect against possible surges of imports from the EU, and to protect infant industries.”\textsuperscript{98} From the outset of the negotiations the EU side argued that the need to shield infant industries was well reflected in the existing bilateral safeguard clause and that a separate clause was therefore not necessary. However, African and Pacific regions have called for a stand-alone provision, which would allow them to provide temporary support to their nascent industries, by taking a trade defence measure with respect to EU imports. Finally, the EU agreed to the proposals regarding the stand-alone infant industry clause in addition to the safeguard clause. In the current texts or proposals the use of a bilateral safeguard in EPAs is allowed in the case of surges in imports. Nevertheless, most developing countries, and in particular LDCs, would prefer to be able to protect infant industries independently of imports, in particular to provide them with some time to become competitive.\textsuperscript{29} Some regions have proposed a provision which would have no sunset clause and which would be easier to apply than the wider bilateral safeguard measures.\textsuperscript{100}

Treatment of Agricultural safeguards and food security

Issues such as export subsidies and agricultural safeguards are dealt with in the context of the WTO Doha Development Agenda, and were not included in the scope of EPAs. Taking into account the insistence of the European Commission to apply the “zero for zero” approach to export subsidies, ACP Trade Ministers suggested in 2007 to “allow regions to impose countervailing duties or include affected products in the exclusion list”. In the negotiation process, SADC and the Eastern and Southern Africa region asked for stricter safeguards, such as to restrict temporarily the importation or exportation of goods for purposes of rural development, food security and poverty alleviation (SADC) or separate clause providing for automatic safeguard triggers (ESA).\textsuperscript{101}

Most-Favoured-Nation Treatment

“MFN Clause: to reject any attempt by the EC to include the MFN Clause in EPAs.”\textsuperscript{102}

African and Pacific countries have expressed a strong position as regards the requirement on the ACP signatories to apply vis-à-vis the EU MFN treatment. This would imply conceding to the EU any more favourable treatment than they might give in the future to a “major trading economy”. The treatment would concern both tariffs and rules of origin. For ACP regions, however, such a MFN requirement would undermine the whole development character of EPAs as it would tie their hands with respect to potential offers representing advantages over the EU. In particular, there would be very little room to manoeuvre in trade negotiations with other developed countries such as the US or Australia, and with major economies as China, India, Brazil, or with regional groupings such as MERCOSUR or ASEAN.

Non-execution clauses

“Non-Execution Clause : The Ministers totally rejected the inclusion of this clause in EPAs.”\textsuperscript{103}

“The non-execution clause should not be included in the EPAs. Dispute settlement cannot be construed as establishing or inducing a system of collective responsibility of the Member States of a region party to an EPA [...] No link should be established between the EPA and Articles 96 and 97 of Cotonou [...].”\textsuperscript{104}

\textsuperscript{95} See Sanoussi Bilal, Isabelle Ramdoo, Which way forward in EPA negotiations? ECDPM Discussion paper, November 2010, pp. 23 at www.ecdpm.org/dp100.
\textsuperscript{96} In the case of an FTA notified under Article XXIV of the GATT 1994, countries are required to “eliminate duties and other restrictions of commerce on substantially all trade”. This implies elimination on both imports and exports but on “substantially all trade”, and not on “all trade”.
\textsuperscript{99} E.g. Article 25, Economic Partnership Agreement between the CARIFORUM States, on the one part, and the European Community and its Member States, on the other part, OJ 10.10.2008.
\textsuperscript{100} Sanoussi Bilal, Isabelle Ramdoo: Which way forward in EPA negotiations? ECDPM Discussion paper, November 2010, pp. 25 at www.ecdpm.org/dp100.
\textsuperscript{102} Communiqué - Conclusions of the Meeting of ACP Ministers Responsible for the EPA Negotiations and Trade, ACP House, Brussels, 8-9 November, at http://www.acpsec.org/en/epa/ACP_EPA_Min_9-11-07_e.htm.
\textsuperscript{103} Communiqué - Conclusions of the Meeting of ACP Ministers Responsible for the EPA Negotiations and Trade, ACP House, Brussels, 8-9 November, at http://www.acpsec.org/en/epa/ACP_EPA_Min_9-11-07_e.htm.
\textsuperscript{104} Decisions and resolutions of the 79th session of the ACP Council of Ministers, 5 May 2004 Gaborone, Botswana, at http://www.cmnn.org.
The so-called non-execution clause relates to parties’ right to undertake measures in the case of a failure to respect human rights, democratic principles and rule of law. The non-execution clause in the existing texts or those in the process of negotiation refers to Articles 11, 96 and 97 of the Cotonou agreement which provide for the conditions and procedures. The ACP position adopted by the Council of Ministers in Botswana in 2004 was that measures of the Cotonou Agreement (Articles 96, 97) to be applied in the case of non-execution of obligations should not concern EPAs and must be confined to political cooperation.105 There is also a concern that sanctions against an individual country could have an adverse impact on its neighbours if they are its key trading partners, or are landlocked territories.106

The agreements, as they currently stand, may include or not the non-execution clause, and the wording varies: the stepping stone agreements with Côte d’Ivoire and Ghana, the interim EPAs with Cameroon (Central Africa) and the EAC, as well as the EPA with CARIFORUM include the clause with an express reference to the possibility of taking trade measures, whereas other texts might include a reference to articles 11, 96 and 97 of the Cotonou Agreement without referring to trade measures, or not include the reference to these articles at all.

Rules of Origin (RoO)

The complexity of RoO is seen as a factor that increases trade costs and thus undermines the effect of preferential access. A longstanding request of ACP regions has been a simplification and relaxation of the existing RoO regime. Another aim was to define rules that encourage trade in added value products. The current interim approach (Cotonou+) is based on the former Cotonou regime but the reform was essentially limited to particular agricultural and textiles products which disappointed ACP partners. Trade Ministers in 2007 welcomed “the improvement by the European Commission” but requested “that rules be further improved, especially in the fisheries sector, and taking into account other areas such as the automatic derogation and cumulation”107, implying that inputs sourced from within an ACP region (or the whole ACP) would under no circumstances be in breach of RoO. CARIFORUM, for instance, adopted the position that the provision of asymmetrical rules of origin would not have any useful effect, having regard to developing ACP countries to the “full EPA” that included non-trade issues, many others have shown reluctance to the idea, mainly because of the complexity of these issues and the lack of capacity in the developing countries to identify needs and priorities. Developing countries therefore sought to remove Singapore issues and intellectual property rights from the Doha round of negotiations.

(Singapore issues (investment, competition, government procurement and trade facilitation) were tools for development, and therefore had to be included in the EPA agenda. Although some countries, such as CARIFORUM members, adopted the “full EPA” that included non-trade issues, many others have shown reluctance to the idea, mainly because of the complexity of these issues and the lack of capacity in the developing countries to identify needs and priorities. Developing countries therefore sought to remove Singapore issues and intellectual property rights from the Doha round of negotiations.

Services

As it became clear that the deadline initially set for signing EPAs could not be met, the parties decided in favour of “first step” interim agreements that would leave trade in services for the second stage of negotiations. While the full EPA signed between the EU and CARIFORUM includes a title on services, negotiations on this subject are continuing with other regions and countries.

The initial position of ACP states in 2002 was to work towards EPAs that would strengthen the efficiency and competitiveness of ACP countries in the supply of services (labour, business, distribution, financial, tourism, cultural and construction and related engineering services, air transport and communications); improve access to services and to prepare for the implementation of Article IV of GATS on increasing participation of developing countries in this area.109 At a later stage, in 2007, ACP Trade Ministers expressed concern that the EC was demanding substantial sectoral coverage beyond what is provided in WTO rules, namely Article V of GATS on services liberalisation agreements,110 and recommended that the ACP regions apply the flexibility available to developing ACP countries to the maximum level.111

Singapore Issues

“Discussions and negotiations in this area will continue in 2008 in most ACP regions [. . .] Commitments on this cluster of issues should be linked to specific EC commitments to support capacity building measures in ACP regions.”112

In the European Commission’s view, the so-called Singapore issues (investment, competition, government procurement and trade facilitation) were tools for development, and therefore had to be included in the EPA agenda. Although some countries, such as CARIFORUM members, adopted the “full EPA” that included non-trade issues, many others have shown reluctance to the idea, mainly because of the complexity of these issues and the lack of capacity in the developing countries to identify needs and priorities. Developing countries therefore sought to remove Singapore issues and intellectual property rights from the Doha round of negotiations.

(See also the point on the Commission’s position “The EC’s stubborn insistence on Singapore and other WTO plus issues”)
3.2.3 EU-ACP Joint Parliamentary Assembly

According to the Cotonou Agreement, decisions of the Council of Ministers are binding on the Parties (ACP states). The ACP Council is bound to take into consideration resolutions and recommendations adopted by the Joint Parliamentary Assembly (JPA), consisting of an equal number of European Parliament Members and MPs from ACP countries. In its resolution of 2006 the JPA called on the EU “[..] not to exert undue pressure and to take steps to ensure that, in the event of negotiations not being completed by 1 January 2008, existing ACP exports to the EU are not disrupted until a final settlement is reached [..]”.

The Resolution of 5 February 2009 focused on the steps to “re-establish an atmosphere of confidence and constructive dialogue in so far as it has been damaged in the course of negotiations (Paragraph 1)”, including:

- accompanying measures in the form of regional Aid for Trade packages for EPAs implementation (Paragraph 2);
- guaranteeing of protection for sectors identified by the ACP as sensitive (Paragraph 8);
- giving ACP negotiators sufficient time to evaluate agreements before adoption (Paragraph 10).

3.2.4 The European Parliament

From the start of the negotiations the European Parliament (EP) has adopted a number of resolutions on EPA. The resolution on Economic Partnership Agreements adopted on 23 May 2007, at a time when it had become clear that the initial negotiation deadline of 1 January 2008 would most likely not be met, called on the Commission to show more flexibility and to “make efforts at WTO level to seek to ensure that disruption of existing ACP exports to the EU is avoided pending a final settlement”. The EP argued in favour of full duty-free, quota-free market access for the ACP, simplified, liberalised and more flexible rules of origin and workable safeguard mechanisms. In addition to the Member States’ pledge to increase their trade-related assistance, the EP backed ACP demands for “concrete commitments to be made [..] which are detailed, quantified and specifically EPA-related”.

The Resolution of 5 February 2009 focused on the steps to “re-establish an atmosphere of confidence and
take a non-mercantilist approach and not pursue any offensive interests.”

It argued that investment, competition and government procurement should be removed from the negotiations, unless specifically requested by an ACP regional negotiating group.

At the General Affairs and External Relations Council on 12 December 2007 Denmark, Ireland, Netherlands and the UK issued a declaration setting out their concern for non-LCDs who had not initialled agreements by the end of 2007. They urged the Commission to show maximum flexibility to ensure that no country has a worse market access in goods after 31 December 2007.

3.2.6 Non-Governmental Organisations (NGOs)

In their criticisms of the EU side, non-governmental organisations put much emphasis on the way the negotiations were conducted and, more particularly, on the inequality of the power positions between the EU and the ACP regions and countries. The requests broadly mirror those of the ACP negotiators but it is the form of the communication that differed, NGOs being less bound by diplomatic concerns. In most cases the central aim was to raise awareness and avoid concluding EPAs hastily, in a form that would leave the ACP group worse off than before. It was during the run-up to the 1 January 2008 deadline for the conclusion of EPAs when the European Commission came in for most criticism. In addition to the disapproval of the form of the negotiations and the lack of flexibility with respect to the demands by the ACP side, the following broad positions may be highlighted:

- The EU must at a minimum respond favourably to ACP requests for re-negotiation of contentious issues, and refrain from pushing countries that have initialled EPAs to sign and ratify these agreements in haste and without amendments;
- The EU should refrain from further overloading and complicating the negotiations by demanding that ACP countries include issues and rules in the agreements that are not required for WTO compatibility, such as the MFN clause and rules on export restrictions, as well as services, intellectual property rights and the so-called Singapore issues;
- The EU should respond positively to proposals for flexible market access arrangements;
- The EU should respond positively to requests for reliable and additional aid for regional economic development programmes;
- In cases where ACP countries say that they are not ready to conclude an EPA, the EU must support any request for alternative solutions.

Involvement of civil society was very active, especially until 2008. The initiative ‘Stop EPAs Campaign’ mobilised more than 120 NGOs and civil society organisations in Europe, the Caribbean and the Pacific region. Although it is difficult to estimate the extent to which the initiatives influenced the formal decisions, it is clear that the mobilisation raised awareness on EPAs, which could be instrumental in negotiating further agreements with other parties.

3.3 Relationship between technical questions and political implications

Although most of the contentious issues were technical in nature, many of them acquired a political dimension. As the degree of politicisation varied from region to region and from country to country, this section offers a selection of cases that have been highlighted in the literature.

The creation of the regional formations for the purpose of EPAs was justified by substantial differences among ACP countries and the assumption that the negotiations with individual ACP countries would be neither practical nor advantageous for ACP themselves in defending their positions. The creation of regional groups was related to a number of technical issues (e.g., incidences on existing formations such as customs unions) but the difficulties at the first phase of negotiations led to a political perspective being added to the issue. The EU’s insistence on negotiating along national lines was however seen as undermining ACP strength as a single group.

Tariff liberalisation conditions form a complex and highly technical set of issues. However, there were instances when discussions on the interpretation of WTO requirements and negotiations about liberalisation levels and schedules were replaced by a political argument. The EU was accused of simply attempting to exercise its trade power according to its strategy set out in the European Commission communication Global Europe - Competing in the world. This suggestion was used also in arguing against other EPA conditions that seem technical by their nature, e.g., inclusion in EPAs of trade related issues, services, investment, intellectual property rights.

More political by its nature was the issue of the MFN clause for trade in goods. The clause would require passing onto the EU any more favourable treatment the ACP countries might give to another major trading economy. For developing countries the perspective of committing themselves to the EU regarding future agreements with other

122. General terms such as “NGOs”, “civil society” etc. might be oversimplified but common features in their positions can be found via campaigns such as www.stopepa.de (currently 164 stakeholders) and various platforms (see e.g., http://epawatch.eu).
123. Critical issues in the EPA negotiations. An EU CSO discussion paper, ECDPM Discussion paper (1, August 2009).
countries, with yet unknown contents, prompted internal polemics. A solution was found in the CARIFORUM EPA and the Pacific interim EPA providing for the use of the MFN clause only after consultation, thereby allowing the parties to find a compromise and/or avoid transforming the issues into political ones. Thus the MFN clause is also an example of finding technical compromises to politically tinted problems.

On some occasions the essentially technical question on rules of origin also acquired a political dimension. The derogation from the standard rules of origin for fish landed and manufactured in Pacific states (but caught in any waters) prompted a debate about whether it would not set a dangerous precedent for other countries in the world that would request the same treatment.

It can be observed that the degree to which an issue is perceived as political is often related to the way the problem is communicated. For obvious reasons, referring to history or to the EU’s attempts to assert its power through trade will naturally add a political dimension to an issue.
Negotiating EPAs with regions was considered the best option as it became clear that a multilateral deal was impossible. The EU has always supported a regional approach in its foreign relations seeing it, inter alia, as a viable engine for growth and development. However, the EPA process with regional groupings created specifically for EPA purposes faced a number of setbacks. EPA regions are far from homogenous and their structures overlap with existing integration initiatives. This has been of little help to negotiations that have been advancing at a snail’s pace. Apart from the CARIFORUM group, none of the groups has concluded a full EPA. Interim EPAs were therefore offered as the solution in order to avoid the disruption of trade as a result of the expiry of the WTO-granted exception. This chapter provides a detailed overview of where each region and its individual countries stand in the EPA negotiations.

4.1 STATE OF PLAY - CENTRAL AFRICA REGION

4.1.1 Countries and status

The EU-Central Africa EPA is negotiated with 8 countries: Cameroon, Central African Republic (CAR), Chad, Congo, Democratic Republic of Congo (DRC), Equatorial Guinea, Gabon, Sao Tome and Principe. The table below provides an overview of the negotiating status of these countries and the alternative EU tariff reduction schemes they could rely on in the absence of an Economic Partnership Agreement such as the Generalised System of Preferences (GSP) or Everything But Arms (EBA).

<table>
<thead>
<tr>
<th>Country</th>
<th>EPA</th>
<th>Alternatives</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cameroon</td>
<td>Agreed (2007) and signed (2009) the interim EPA. Negotiations for comprehensive EPA ongoing.</td>
<td>GSP</td>
</tr>
<tr>
<td>Central African Republic (CAR)</td>
<td>Negotiations for comprehensive EPA ongoing.</td>
<td>EBA</td>
</tr>
<tr>
<td>Chad</td>
<td>Negotiations for comprehensive EPA ongoing.</td>
<td>EBA</td>
</tr>
<tr>
<td>Congo</td>
<td>Negotiations for comprehensive EPA ongoing.</td>
<td>GSP</td>
</tr>
<tr>
<td>Democratic Republic of Congo (DRC)</td>
<td>Negotiations for comprehensive EPA ongoing.</td>
<td>EBA</td>
</tr>
<tr>
<td>Equatorial Guinea</td>
<td>Negotiations for comprehensive EPA ongoing.</td>
<td>EBA</td>
</tr>
<tr>
<td>Gabon</td>
<td>Negotiations for comprehensive EPA ongoing.</td>
<td>GSP</td>
</tr>
<tr>
<td>Sao Tome and Principe</td>
<td>Negotiations for comprehensive EPA ongoing.</td>
<td>EBA</td>
</tr>
</tbody>
</table>

4.1.2. Bilateral trade in goods

In 2008, the main exports from the Central African region to the EU were raw materials: oil (70%), wood (10%), cocoa (3%) and diamonds (3%). The main products that the region imported from the EU in the same year were mechanical machinery (22%) and electrical machinery (10%).
4.1.3 Reduction of tariffs on trade in goods

Cameroon is the only country of this group to so far have signed an interim EPA with the EU and therefore enjoys duty free quota free (DFQF) access on all exports to the EU since 1 January 2008. For its part, Cameroon agreed to the gradual liberalisation (removal of duties and quotas) on up to 80% of EU exports to Cameroon between 2010 and 2025. Farm products such as meat, flour and dairy products are among Cameroon’s sensitive sectors that are excluded in the interim EPA.\(^{125}\)

---

**Central Africa region: main exports to the EU (2008)**

<table>
<thead>
<tr>
<th>Product</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Oil</td>
<td>70%</td>
</tr>
<tr>
<td>Wood</td>
<td>10%</td>
</tr>
<tr>
<td>Diamonds</td>
<td>3%</td>
</tr>
<tr>
<td>Cocoa</td>
<td>3%</td>
</tr>
</tbody>
</table>

Source: European Commission

**Central Africa region: main imports from the EU (2008)**

<table>
<thead>
<tr>
<th>Product</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mechanical machinery</td>
<td>22%</td>
</tr>
<tr>
<td>Vehicles</td>
<td>10%</td>
</tr>
<tr>
<td>Electrical machinery</td>
<td>10%</td>
</tr>
<tr>
<td>Iron and steel</td>
<td>5%</td>
</tr>
</tbody>
</table>

Source: European Commission

---

4.1.4 Perspectives and sensitive issues

In the beginning of 2011 the EU and the Central African countries relaunched the negotiations after two years of inactivity owing to the reorganisation of the Secretariat of the Economic Community of Central African States (CEMAC).

Throughout the period of negotiations one of the problems has been that the Central African countries are split between Least Developed Countries (LDCs) and non-LDCs (Congo, Gabon and Cameroon). This difference makes for diverging sets of interests and therefore difficult negotiations. Nevertheless, even Gabon and Cameroon are by no means similar either. Cameroon decided to sign an interim EPA with the EU because of its dependency on the export

---

of bananas to the EU. In the period 2006-2008, bananas were Cameroon’s fourth biggest export to the EU. Gabon and Congo, on the other hand, are major exporters of oil and therefore less affected by an increase in tariffs on agricultural products following a shift to the GSP regime. It is therefore no surprise that these countries have not yet signed an interim EPA with the EU.

The main obstacle in the negotiations so far has been the market access offer. Having been unable to reach an agreement at the end of 2007, since the beginning of 2008 Gabon and Congo have been subject to the GSP regime.

Cameroon did sign an interim EPA, but this seems to complicate rather than simplify the negotiation process: the other countries refused to take the tariffs reduction scheme as negotiated by Cameroon as a starting point. This has led to a situation where, for a regional EPA to be concluded, either Cameroon has to increase its own custom duties to the level of the rest of the region, or the other countries have to lower their custom duties quicker than desirable.

The EU standpoint is that 80% of products should be liberalised over 15 years. The Central African countries in 2008 offered to liberalise 71% of imports by value over the next 25 years. The EU considers this to be insufficient to qualify for compatibility with article XXIV of the GATT (“substantially all the trade”).

Central Africa also rejects the EU proposal to include the Most-Favoured-Nation (MFN) rule in the EPA.

According to Agritrade, “the only potentially problematic areas in terms of the EPA negotiations around non-tariff issues relate to Chad’s use of export bans and restrictions, and Cameroon’s use of import restrictions.”

In addition to market access offer for goods, the negotiations on full EPA cover trade in services, investment and other trade related rules relevant for development and regional integration such as competition or transparency in government procurement. On services, the negotiations have gone relatively smoothly and are now reasonably close to completion.

## 4.2 STATE OF PLAY - EAST AFRICAN COMMUNITY (EAC)

The table provides an overview of the negotiating status of these countries and the alternative EU tariff reduction schemes they could rely on in the absence of an Economic Partnership Agreement such as the Generalised System of Preferences (GSP) or Everything But Arms (EBA).

<table>
<thead>
<tr>
<th>Country</th>
<th>EPA</th>
<th>Alternatives</th>
</tr>
</thead>
<tbody>
<tr>
<td>Burundi</td>
<td>Agreed interim EPA in November 2007, negotiations for comprehensive EPA ongoing.</td>
<td>EBA</td>
</tr>
<tr>
<td>Rwanda</td>
<td>Agreed interim EPA in November 2007, negotiations for comprehensive EPA ongoing.</td>
<td>EBA</td>
</tr>
<tr>
<td>Tanzania</td>
<td>Agreed interim EPA in November 2007, negotiations for comprehensive EPA ongoing.</td>
<td>EBA</td>
</tr>
<tr>
<td>Uganda</td>
<td>Agreed interim EPA in November 2007, negotiations for comprehensive EPA ongoing.</td>
<td>EBA</td>
</tr>
<tr>
<td>Kenya</td>
<td>Agreed interim EPA in November 2007, negotiations for comprehensive EPA ongoing.</td>
<td>GSP</td>
</tr>
</tbody>
</table>

4.2.1 Countries and status

The East African Community (EAC) consists of Burundi, Rwanda, Tanzania, Uganda (all of which are Least Developed Countries or LDCs) and Kenya (which is non-LDC).

4.2.2 Bilateral trade in goods

In 2008, the main exports from the EAC region to the EU were coffee, tea and spices (27%), plants and flowers (24%), fish products (11%) and vegetables (10%). The main products that the region imported from the EU in the same year were mechanical machinery (23%) and electrical machinery (22%).

4.2.3 Reduction of tariffs on trade in goods

All countries have signed an interim EPA with the EU and therefore enjoy duty free quota free (DFQF) access on all their traded goods since 1 January 2008, with transition periods for rice and sugar. Over the next 25 years, EAC will liberalise 82.6% of imports from the EU by value (65% by 2010, 80% by 2023 and the remainder by 2033). The EAC decided to exclude the following products from liberalisation: agricultural products, wines and spirits, chemicals, plastics, wood based paper, textiles and clothing, footwear, ceramic products, glassware, articles of base metal and vehicles.130

---

4.2.4 Perspectives and sensitive issues

One of the particular challenges for the negotiations with the EAC group is the complexity of regional integration processes in the region. Four countries - Burundi, Rwanda, Uganda and Kenya - are also members of the Common Market for Eastern and Southern Africa (COMESA) and they were part of the negotiating process between the EU and COMESA until mid 2007. At that point the EAC decided to negotiate an EPA on its own. Tanzania, the fifth EAC member, also belongs to the Southern African Development Community (SADC).131

One of the contentious issues on which no agreement has been found yet is the Most-Favoured-Nation (MFN) clause. The MFN clause concerns the requirement for signatories to the EPAs in future not to treat the EU any less favourably than any other major trading economy. The EU's argument is that it wants something in return for allowing the ACP countries a list of excluded products while it has opened up its own markets completely. The ACP countries do not want to give up policy space. The EAC's demand has been to delete the MFN clause altogether.132

Another controversial issue that has not been resolved is that of export taxes. The EAC group holds that there is a need to maintain export taxes in certain circumstances. Examples of these circumstances would include pursuing development objectives, diversification of food security and revenue and environmental considerations.

After negotiations slowed down in the second half of 2010, the EAC region in December 2010 submitted a request to Commissioner De Gucht to relaunch the negotiations with the aim to conclude them by the end of 2011. While the Commissioner agreed to this request, he stressed the need for a realistic timetable.

4.3 STATE OF PLAY - EASTERN AND SOUTHERN AFRICA REGION (ESA)

4.3.1 Countries and status

The Eastern and Southern African (ESA) region has a very diverse composition. It consists of countries in the Horn of Africa (Djibouti, Ethiopia, Eritrea and Sudan), countries that are located in Southern Africa (Malawi, Zambia and Zimbabwe) and several island states in the Indian Ocean (Comoros, Madagascar, Mauritius and the Seychelles). All countries are members of COMESA.

4.3.2 Bilateral trade in goods

In 2008, the main exports from the ESA region to the EU were textiles (20%), sugar (12%), fish products (11%) and coffee, tea and spices (together 8%). In 2007 total EU imports from the ESA Group reached around €3.17bn, or 0.38% of all EU imports. The main products that the region imported from the EU in the same year were mechanical machinery (23%) and electrical machinery (14%). EU exports to ESA, comprised mainly of machinery (32%), vehicles and chemicals, reached about €3.96bn in 2007.

<table>
<thead>
<tr>
<th>Country</th>
<th>EPA</th>
<th>Alternatives</th>
</tr>
</thead>
<tbody>
<tr>
<td>Djibouti</td>
<td>Negotiations for comprehensive EPA ongoing.</td>
<td>EBA</td>
</tr>
<tr>
<td>Ethiopia</td>
<td>Negotiations for comprehensive EPA ongoing.</td>
<td>EBA</td>
</tr>
<tr>
<td>Eritrea</td>
<td>Negotiations for comprehensive EPA ongoing.</td>
<td>EBA</td>
</tr>
<tr>
<td>Sudan</td>
<td>Negotiations for comprehensive EPA ongoing.</td>
<td>EBA</td>
</tr>
<tr>
<td>Malawi</td>
<td>Negotiations for comprehensive EPA ongoing.</td>
<td>EBA</td>
</tr>
<tr>
<td>Zambia</td>
<td>Agreed interim EPA in November 2007. Has not yet signed the agreement, negotiations for comprehensive EPA ongoing.</td>
<td>EBA</td>
</tr>
<tr>
<td>Zimbabwe</td>
<td>Agreed interim EPA in November 2007 and signed the agreement in August 2009, negotiations for comprehensive EPA ongoing.</td>
<td>GSP</td>
</tr>
<tr>
<td>Comoros</td>
<td>Agreed interim EPA in November 2007. Has not yet signed the agreement, negotiations for comprehensive EPA ongoing.</td>
<td>EBA</td>
</tr>
<tr>
<td>Madagascar</td>
<td>Agreed interim EPA in November 2007 and signed the agreement in August 2009, negotiations for comprehensive EPA ongoing.</td>
<td>EBA</td>
</tr>
<tr>
<td>Mauritius</td>
<td>Agreed interim EPA in November 2007 and signed the agreement in August 2009, negotiations for comprehensive EPA ongoing.</td>
<td>GSP</td>
</tr>
<tr>
<td>Seychelles</td>
<td>Agreed interim EPA in November 2007 and signed the agreement in August 2009, negotiations for comprehensive EPA ongoing.</td>
<td>GSP</td>
</tr>
</tbody>
</table>

The table provides an overview of the negotiating status of these countries and the alternative EU tariff reduction schemes they can rely on in the absence of an Economic Partnership Agreement such as the Generalised System of Preferences (GSP) or Everything But Arms (EBA).
The agreement also includes the possibility for all participating countries to re-introduce duties / quotas to help shield local economies, a commitment by the EU to foster trade within the region and support exporters in meeting EU import standards and a commitment on behalf of the EU’s negotiating partners to conclude an EPA covering services and investment.\textsuperscript{133}

### 4.3.3 Reduction of tariffs on trade in goods

The six countries that have agreed an interim EPA with the EU enjoy duty free quota free (DFQF) access on all their imports since 1 January 2008, with transition periods for rice and sugar. In return the EU also enjoys DFQF on most of its imports, with every country having negotiated a specific schedule.

<table>
<thead>
<tr>
<th>Country</th>
<th>Liberalisation of EU imports</th>
<th>Country</th>
<th>Liberalisation of EU imports</th>
</tr>
</thead>
<tbody>
<tr>
<td>Comoros</td>
<td>81%</td>
<td>Seychelles</td>
<td>98%</td>
</tr>
<tr>
<td>Madagascar</td>
<td>81%</td>
<td>Zambia</td>
<td>80%</td>
</tr>
<tr>
<td>Mauritius</td>
<td>96%</td>
<td>Zimbabwe</td>
<td>80%</td>
</tr>
</tbody>
</table>

Source: European Commission

\textsuperscript{133} http://ec.europa.eu/development/icenter/repository/fact_sheet_epa_esa.pdf.
4.3.4 Perspectives and sensitive issues

Within the framework of the ESA-EU EPA discussions, there have been no negotiations since December 2010. One of the main stumbling blocks in the negotiation process is the heterogeneous nature of this particular EPA negotiating group. As stated above, the region has a very diverse composition. It consists of countries in the Horn of Africa, countries that are located in Southern Africa and several Indian Ocean island states. It is for this reason that EU officials have indicated that ESA is a possible case for an EPA with variable geometry.134 This would mean that some countries sign on to more commitments than others.

At the same time, other typical contentious issues within the EU-ESA negotiation framework have to be dealt with such as the Most-Favoured-Nation (MFN) treatment resulting from future free trade agreements (FTAs) and the removal of export taxes and safeguards.

The standstill clause has also proved to be a difficult matter as the regional integration process within COMESA - of which all ESA countries are members - is taking place at the same time as the EPA negotiations. The EU’s request to rule out any future modification of the tariff schedules has been perceived by the ESA group as impeding their options to arrive ultimately at a common external tariff (CET) within ESA. The EU and ESA have agreed that the standstill provision will at least not apply to the goods on the exclusion list.

The discussion on the standstill clause is exemplary for the broader discussion at the negotiation table in which the ESA region has frequently stressed the need for a better balance between their own process of regional integration and the completion of the EPA negotiations. This would in the long run enable a fully-fledged region-to-region EPA where the current approach risks derailing that very same integration process.

While it was initially planned to relaunch the negotiations at a technical level in the beginning of 2011, there is at present little prospect for concluding a regional EPA. This is due to the unresponsiveness and unclear level of ambition of the countries in the region.

4.4 STATE OF PLAY - WEST AFRICA REGION

4.4.1 Countries and status

The West Africa region consists of Mauritania and 15 members of Economic Community of West African States (ECOWAS): Benin, Burkina Faso, Cape Verde, Ivory Coast, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo.

The table provides an overview of the negotiating status of these countries and the alternative EU tariff reduction schemes they could rely on in the absence of an Economic Partnership Agreement such as the Generalised System of Preferences (GSP) or Everything But Arms (EBA).

<table>
<thead>
<tr>
<th>Country</th>
<th>EPA</th>
<th>Alternatives</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mauritania</td>
<td>Negotiations for comprehensive EPA ongoing.</td>
<td>EBA</td>
</tr>
<tr>
<td>Benin</td>
<td>Negotiations for comprehensive EPA ongoing.</td>
<td>EBA</td>
</tr>
<tr>
<td>Burkina Faso</td>
<td>Negotiations for comprehensive EPA ongoing.</td>
<td>EBA</td>
</tr>
<tr>
<td>Cape Verde</td>
<td>Negotiations for comprehensive EPA ongoing.</td>
<td>EBA until end of 2011, after GSP (or GSP+)</td>
</tr>
<tr>
<td>Ivory Coast</td>
<td>Agreed (2007) and signed (2008) the interim EPA. Negotiations for comprehensive EPA ongoing. Approved by the EP in March 2009.</td>
<td>GSP</td>
</tr>
<tr>
<td>Gambia</td>
<td>Negotiations for comprehensive EPA ongoing.</td>
<td>EBA</td>
</tr>
<tr>
<td>Ghana</td>
<td>Agreed an interim EPA with the EU in 2007, but has not yet signed. Negotiations for comprehensive EPA ongoing.</td>
<td>GSP</td>
</tr>
<tr>
<td>Guinea</td>
<td>Negotiations for comprehensive EPA ongoing.</td>
<td>EBA</td>
</tr>
<tr>
<td>Guinea-Bissau</td>
<td>Negotiations for comprehensive EPA ongoing.</td>
<td>EBA</td>
</tr>
<tr>
<td>Liberia</td>
<td>Negotiations for comprehensive EPA ongoing.</td>
<td>EBA</td>
</tr>
<tr>
<td>Mali</td>
<td>Negotiations for comprehensive EPA ongoing.</td>
<td>EBA</td>
</tr>
<tr>
<td>Niger</td>
<td>Negotiations for comprehensive EPA ongoing.</td>
<td>EBA</td>
</tr>
<tr>
<td>Nigeria</td>
<td>Negotiations for comprehensive EPA ongoing.</td>
<td>GSP</td>
</tr>
<tr>
<td>Senegal</td>
<td>Negotiations for comprehensive EPA ongoing.</td>
<td>EBA</td>
</tr>
<tr>
<td>Sierra Leone</td>
<td>Negotiations for comprehensive EPA ongoing.</td>
<td>EBA</td>
</tr>
<tr>
<td>Togo</td>
<td>Negotiations for comprehensive EPA ongoing.</td>
<td>EBA</td>
</tr>
</tbody>
</table>
4.4.2 Bilateral trade in goods

In 2008, the main exports from the West Africa region to the EU were raw materials: oil (55%), gas (16%), cocoa (12%) and iron (2%). The main products that the region imported from the EU in the same year were oil (27%), mechanical machinery (14%) and electrical machinery (10%).

4.4.3 Reduction of tariffs on trade in goods

Ivory Coast and Ghana are the only countries of this group so far to have agreed an interim EPA with the EU and therefore enjoy duty free quota free (DFQF) access on all their exports to the EU since 1 January 2008. The two countries in return agreed to a gradual liberalisation (removal of duties and quotas) over 15 years for 81% of goods exported from the EU to Ivory Coast and 80% to Ghana. The interim EPA includes safeguard provisions enabling both countries to protect fragile economic sectors by re-introducing quotas or duties, an agreement to foster cross-border trade within the region (e.g. more efficient customs procedures) and EU support to help local companies become more competitive and meet EU import standards.

4.4.4 Perspectives and sensitive issues

After a stalemate in negotiations since September 2010, West African and EU negotiators met in Senegal on 23-25
May 2011. They made progress in negotiations on rules of origin, market access, the EPA Development Programme and other outstanding issues. Negotiations continued at a technical level on differences in the Most Favoured Nation clause.

To a certain extent the delay in the negotiations - and especially the previous year’s delay - can be attributed to the situation in Ivory Coast. The ECOWAS and West African Economic and Monetary Union (WAEMU) Commissions have understandably prioritised regional peace and security over trade issues.

However, the West African negotiating group also suffers from problems similar to those of the other EPA negotiating groups of countries. First of all, there is a degree of complexity when it comes to the overlapping customs unions. Benin, Burkina Faso, Ivory Coast, Guinea, Mali, Niger, Senegal and Togo - all French speaking - have united in a customs and a monetary union, the WAEMU. Together with seven other countries (Cape Verde, Guinea Bissau, Nigeria, Sierra Leone, Liberia, Ghana and Gambia), the WAEMU is planning to complete their customs union by 2015. Mauritania is not in either grouping but still joined the other countries in order to be able to negotiate an EPA.

At the same time, the negotiations are also complicated by the different levels of development in the West African countries. Cape Verde, Ghana, Ivory Coast and Nigeria are not LDCs, the rest of the countries are. Ivory Coast has signed an interim EPA with the EU while Nigeria did not opt for an EPA because it relies more on (tariff free) oil exports than on agricultural exports.

The fact that Ivory Coast had signed interim EPA with the EU does not make it easier for the negotiations with the West African group as a whole, nor for the negotiations for a common external tariff (CET) for ECOWAS.

On the level of EU-West Africa EPA negotiations, the tariff reduction schedule remains a stumbling block. According to Agritrade, “West Africa indicated that its market liberalisation offer of 69.69% in volume and 69.75% in tariff lines over a 25-year period matches its development level and is final” while “the EU considers there is scope to expand that offer to maximise its pro-development effects.”135 The EU reportedly wants 80% liberalisation over a 15 year period.136

Disagreements also exist in the areas of rules of origin, the MFN clause, and the use of trade policy measures. According to Trade Negotiations Insights, “on the EPA Development Programme protocol, officials found consensus on several issues but failed to reach agreement on the sources and amounts of finance and whether legally binding commitments on EU support can be included in the EPA.” 137

4.5 STATE OF PLAY - PACIFIC

4.5.1 Countries and status

The Pacific EPA negotiating group consists of 15 island states in the Pacific: Cook Islands, East Timor, Fiji, Kiribati, Marshall Islands, Micronesia, Nauru, Niue, Palau, Papua New Guinea (PNG), Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu.
4.5.3 Reduction of tariffs on trade in goods

For both Fiji and Papua New Guinea the interim EPA that they signed with the EU provides their products with duty- and quota-free access to the EU since 1 January 2008. In return, Papua New Guinea will liberalise 88% of EU imports, excluding the most sensitive economic sectors (e.g. meat, fish, vegetables, furniture and jewellery). Fiji will liberalise 14% of EU imports to the country, rising to a maximum 87% over 15 years, excluding products from sensitive economic sectors and important for revenue, (e.g. meat, fish, fruit and vegetables, alcohol, tubes and iron). The interim agreements also include safeguard provisions, provisions on technical barriers to trade, and sanitary and phytosanitary (SPS) measures to help Pacific exporters meet EU import standards, and a part on customs and trade facilitation.

4.5.2 Bilateral trade in goods

In 2008, the main exports from the Pacific EPA group region to the EU were: animal and vegetable oils (49%), sugar (14%), coffee, tea and spices (10%) and copper (8%). The main products that the region imported from the EU in the same year were electrical machinery (38%) and mechanical machinery (19%).
Also part of the agreement are improved Rules of Origin for processed fish products from the Pacific which could boost development in the region.  

4.5.4 Perspectives and sensitive issues

The Pacific region has declared that it continues to be committed to finding agreement on a comprehensive regional EPA. In July 2011 the region made new offers on market access and submitted a new proposal for the EPA text. “The Pacific region expects to engage in negotiations with the European Commission in the first half of 2012 to consider flexibility on these key contentious issues. They include the most favoured nation, non-execution clause, export taxes, infant industry clause, standstill, degree of liberalization, and the transitional period. In the meantime, work on the part of some Pacific ACP member countries also needs to be done before the formal negotiations of 2012”, said Tonga’s Minister for Labour, Commerce and Industries, Isileli Pulu, on behalf of the Pacific ACP Group in December 2011. However, for a variety of reasons different PACP countries have no pressing interest in signing on to a comprehensive EPA with the EU. Firstly, Fiji and Papua New Guinea - whose exports would be most directly affected by a rise in tariffs following the move to the GSP regime - have already signed an interim EPA with the EU. Secondly, the Federated States of Micronesia (FSM), Kiribati, and the Solomon Islands have signed a bilateral Fisheries Partnership Agreement (FPAs) with the EU to maintain preferential access for their fish products. Finally, a whole range of other countries (East Timor, Samoa, Tuvalu, Vanuatu and again Kiribati and the Solomon Islands) qualify as Least Developed Countries (LDCs) and are therefore under little pressure to agree to a fully-fledged EPA.

4.6 STATE OF PLAY - CARIFORUM REGION

4.6.1 Countries and status

The CARIFORUM region consists of the Dominican Republic and the 14 members of the Caribbean Community (CARICOM) - Antigua and Barbuda, The Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, Saint Lucia, Saint Vincent and the Grenadines, Saint Kitts and Nevis, Surinam, and Trinidad and Tobago.

4.6.2 Bilateral trade in goods

The main exports from the Caribbean to the European Union are primary materials such as gas (25%), oil (17%), corundum (10%) and iron and steel (together 5%). The EU, on the other hand, exports mainly mechanical machinery (20%) and electrical machinery (11%) to the states of the CARIFORUM.
The table provides an overview of the negotiating status of these countries and the alternative EU tariff reduction schemes they could rely on in the absence of an Economic Partnership Agreement such as the Generalised System of Preferences (GSP) or Everything But Arms (EBA).

<table>
<thead>
<tr>
<th>Country</th>
<th>EPA</th>
<th>Alternatives</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dominican Republic</td>
<td>Signed EPA in October 2008.</td>
<td>GSP</td>
</tr>
<tr>
<td>Antigua and Barbuda</td>
<td>Signed EPA in October 2008.</td>
<td>GSP</td>
</tr>
<tr>
<td>Barbados</td>
<td>Signed EPA in October 2008.</td>
<td>GSP</td>
</tr>
<tr>
<td>Belize</td>
<td>Signed EPA in October 2008.</td>
<td>GSP</td>
</tr>
<tr>
<td>Dominica</td>
<td>Signed EPA in October 2008.</td>
<td>GSP</td>
</tr>
<tr>
<td>Grenada</td>
<td>Signed EPA in October 2008.</td>
<td>GSP</td>
</tr>
<tr>
<td>Guyana</td>
<td>Signed EPA in October 2008.</td>
<td>GSP</td>
</tr>
<tr>
<td>Haiti</td>
<td>Signed EPA in December 2009.</td>
<td>EBA</td>
</tr>
<tr>
<td>Jamaica</td>
<td>Signed EPA in October 2008.</td>
<td>GSP</td>
</tr>
<tr>
<td>Saint Lucia</td>
<td>Signed EPA in October 2008.</td>
<td>GSP</td>
</tr>
<tr>
<td>Saint Vincent and the Grenadines</td>
<td>Signed EPA in October 2008.</td>
<td>GSP</td>
</tr>
<tr>
<td>Saint Kitts and Nevis</td>
<td>Signed EPA in October 2008.</td>
<td>GSP</td>
</tr>
<tr>
<td>Surinam</td>
<td>Signed EPA in October 2008.</td>
<td>GSP</td>
</tr>
<tr>
<td>Trinidad and Tobago</td>
<td>Signed EPA in October 2008.</td>
<td>GSP</td>
</tr>
</tbody>
</table>

The table shows the predominant imports from the EU in 2008, with the following proportions:

- **Mechanical machinery**: 20%
- **Electrical machinery**: 11%
- **Oil**: 6%
- **Iron and steel**: 6%

Source: European Commission
4.6.3 Reduction of tariffs on trade in goods

According to the European Commission, the EPA eliminates all tariffs and quotas on Caribbean exports to the EU with immediate effect. The only exceptions are sugar and rice, which will be liberalised over short periods. The coverage of goods liberalised by CARIFORUM countries under this Agreement amounts to 61% of EU exports towards the region in value over 10 years, 82% over 15 years (85% of tariff lines) and 86% over 25 years (90% of tariff lines). The main exclusions from tariff cuts are agricultural and processed agricultural products, some chemicals, furniture and other industrial products.

4.6.4 Perspectives and sensitive issues

At this moment in time, it is too early for a meaningful and extensive assessment of the impact of the EPA on trade and economic relations between the EU and the CARIFORUM countries: First of all, the EPA has only been recently concluded. Secondly, the CARIFORUM countries have a 25 year phase-in period for the reduction of tariffs. Tariffs on the most sensitive products - where the greatest effect can be expected - will only take place at a later stage. Thirdly, the fact that tariff reduction schedules vary significantly from country to country makes a region-wide assessment very difficult. As Stevens, Kennan and Meyn note, “an analysis of each individual CARIFORUM country liberalisation commitments/schedule is the only way by which a proper assessment of the impact of the EPA could be achieved”.

Moreover, the adoption of the agreement coincided with the global economic and financial crisis and it is virtually impossible to disentangle that effect from the possible impact of the EPA.

A factor that can be provisionally assessed is the implementation on the part of the CARIFORUM countries. According to a December 2010 paper by the Economic Commission for Latin America (ECLA) of the United Nations (UN), implementation has been slow. It notes the delay in the establishment of institutional arrangements as one of the main impediments to effective implementation. Only Antigua and Barbuda, Barbados, the Bahamas, Dominican Republic and Jamaica have established EPA implementation units. The implementation unit at CARICOM level was established a month after the agreement had entered into force. Lack of funding seems to be the main obstacle to the creation of these institutional arrangements. On the one hand, this is a consequence of fiscal constraints as a result of the recent global financial and economic crisis. On the other hand, CARIFORUM governments consider the financial resources made available under the EDF to assist the region in capacity-building to be insufficient.

Unresolved differences between CARICOM and the Dominican Republic - CARIFORUM - are another reason given by the ECLA report for the slow progress in implementation. The report states that some CARICOM Governments are reluctant to grant the Dominican Republic the same tariff treatment granted to the EU as required by the EPA. This was a problem in itself, but also had broader consequences as it delayed the first Joint ministerial Council of the EU and the CARIFORUM states. This meeting was required to set the direction for the effective implementation of the agreement. Without it, practical allocation of the funds provided for the regional EPA programme under the EDF would be impossible. The meeting eventually took place in Madrid in May 2010.

In an interview with Trade Negotiations Insights, Branford Isaacs, Head of CARICOM’s EPA Implementation Unit and specialist in Trade in Goods, and Allyson Francis, the Unit’s Trade in Services and Investment specialist, refuted claims that the CARIFORUM states would not be really focused on implementation. Instead, they pointed out the difficulties of the Caribbean countries in the implementation process. Isaacs and Francis alluded to “the lack of financial and human resources, combined with the difficulty of accessing those financial resources that are available” as the main factors slowing down the pace of EPA implementation and, referring to development assistance, stated that “understanding where and how to tap into the funding that allows us to speed up the implementation process is a major challenge”.

H.E. Errol Humphrey, Head of the EPA Implementation Unit in Barbados, also in an interview with Trade Negotiations Insights, shared the worries of Isaacs and Francis regarding the lack of financial and human resources. He stated that his unit has been operational for approximately fifteen months, but is operating on limited resources. Several deadlines have already elapsed, but with a roadmap in hand the Barbados Implementation Unit aims to complete various implementation obligations as soon as possible. Humphrey also added a second implementation challenge: educating the stakeholders on the provisions of the agreement. He stated that “because stakeholders are less knowledgeable about the EPA than was expected, more time than anticipated has to be spent informing both the public and private sectors about the obligations and opportunities associated with the Agreement”. This has also led to stakeholders having been slow in requesting assistance from the EU and other donor agencies for actual projects.

141. For a more detailed overview of the content of the EU-CARIFORUM EPA see the previous chapters.
147. International Centre for Trade and Sustainable Development (ICTSD), An interview with Branford Isaacs, Head of CARICOM’s EPA Implementation Unit and Specialist in Trade in Goods, and Ms Allyson Francis, the Unit’s Trade in Services and Investment Specialist (2010) at http://ictsd.org/competition/hr/97942/.
4.7. STATE OF PLAY - SOUTHERN AFRICAN DEVELOPMENT COMMUNITY (SADC)

4.7.1 Countries and status

The countries negotiating their EPAs through the Southern African Development Community (SADC) EPA group are Angola, Botswana, Lesotho, Mozambique, Namibia, Swaziland and South Africa. The other six members of SADC – Democratic Republic of the Congo, Madagascar, Malawi, Mauritius, Zambia and Zimbabwe - are negotiating EPAs within other regional groups.

4.7.2 Bilateral trade in goods

In 2008, the main exports from the SADC EPA group region to the EU were raw materials: oil (23%), diamonds (11%) and coal (12%). However, 8% of its exports consisted of mechanical machinery. The main products that the region imported from the EU in the same year were mechanical machinery (24%), vehicles (15%) and electrical machinery (12%).

4.7.3 Reduction of tariffs on trade in goods

Under the terms of the interim EPAs, all goods originated in Botswana, Lesotho, Mozambique and Swaziland have entered the EU duty- and quota-free since 1 January 2008 (with the exception of rice and sugar which are subject to transition periods until 2010 and 2015 respectively).

<table>
<thead>
<tr>
<th>Country</th>
<th>EPA</th>
<th>Alternatives</th>
</tr>
</thead>
<tbody>
<tr>
<td>Angola</td>
<td>Did not agree interim EPA. Negotiations for comprehensive EPA ongoing.</td>
<td>EBA</td>
</tr>
<tr>
<td>Lesotho</td>
<td>Agreed an interim region-to-region EPA in 2007 and signed in 2009. Negotiations for comprehensive EPA ongoing.</td>
<td>EBA</td>
</tr>
<tr>
<td>Mozambique</td>
<td>Agreed an interim region-to-region EPA in 2007 and signed in 2009. Negotiations for comprehensive EPA ongoing.</td>
<td>EBA</td>
</tr>
<tr>
<td>Namibia</td>
<td>Agreed an interim region-to-region EPA in 2007. Namibia has not yet signed the interim EPA. Negotiations for comprehensive EPA ongoing.</td>
<td>GSP</td>
</tr>
<tr>
<td>Swaziland</td>
<td>Agreed an interim region-to-region EPA in 2007 and signed in 2009. Negotiations for comprehensive EPA ongoing.</td>
<td>GSP</td>
</tr>
<tr>
<td>South Africa</td>
<td>Did not agree interim EPA. Negotiations for comprehensive EPA ongoing.</td>
<td>GSP / TDCA*</td>
</tr>
</tbody>
</table>

* Trade and Development Cooperation Agreement between the EU and South Africa

The table provides an overview of the negotiating status of these countries and the alternative EU tariff reduction schemes they could rely on in the absence of an Economic Partnership Agreement such as the Generalised System of Preferences (GSP) or Everything But Arms (EBA).
In return, Botswana, Lesotho and Swaziland committed themselves to liberalise 86% of EU imports over the next 4 years. As these countries are members of the Southern Africa Customs Union (SACU), this commitment to liberalise trade was already enforced in the framework of the Trade, Development and Cooperation Agreement (TDCA) between the EU and South Africa. For some tariff lines liberalisation has been postponed until 2015. Mozambique committed itself to liberalise 81% of imports from the EU by 2023.

The fact that Botswana, Lesotho, Mozambique, Namibia and Swaziland decided to liberalise mainly industrial and fisheries products is not surprising considering that these countries’ exports are almost entirely agricultural goods and raw materials.

4.7.4 Perspectives and sensitive issues

The negotiating process with the SADC EPA group has proven to be a rather complex exercise for a number of reasons such as the possible incongruence of the South African Customs Union (SACU) and the EPA, the special position of South Africa, the different level of development and the often conflicting interests dividing its members.

**SACU**

The South African Customs Union (SACU) is formed by South Africa, Botswana, Lesotho, Namibia and Swaziland. SACU operates a common external tariff (CET). That is the reason why the signing of the interim EPA by Botswana, Lesotho and Swaziland did not please South Africa. Pretoria warned that this decision endangered the very existence of SACU and at the very least resulted in reinforced “customs controls and rules of origin controls in the region”. It also accused the EU of jeopardising the process of regional economic integration.

In January 2009 Angola, Namibia and South Africa (the ANSA grouping) submitted a joint demarche to EU member states in which they stated that “proposed solutions that
unduly exacerbate differentiation between South Africa and other members of SADC and SACU should be avoided, as they create additional trade-policy divisions in the region”. 149

However, such a situation would only materialise were the countries to ratify or provisionally apply the interim EPAs. This has not been the case so far. In February 2010, the five SACU members reported that they neither intended to apply provisionally, nor - in the case of Namibia - to sign the interim EPA. Rather they proposed to focus on reaching an “inclusive” and comprehensive agreement with the whole group.150 To help SACU implement its CET, the Commission proposed to align the interim EPA with the Trade and Development Cooperation Agreement applicable to South Africa.

South Africa

The special position of South Africa is worth more consideration as it further contributes to the complexity of the negotiations between the EU and the SADC EPA group. South Africa, which did not benefit from the Cotonou trade regime, was not an original contracting party in the SADC EPA. Its participation was requested by SACU in 2006. The EU accepted this request on the basis that the participation of South Africa to the SADC EPA would have strengthened the regional integration process. The EU, in accepting the inclusion of South Africa in the EPA negotiations, made it clear that, although South Africa was much more developed than the other SADC partners, it would not have been subjected to a different, less favourable, tariff regime.

South Africa - the EU’s biggest trading partner within the SADC EPA group - has already signed a so-called Trade, Development and Co-operation Agreement with the EU. This implies that South Africa has considerable leverage over its SACU partners. Its minor SACU partners are overwhelmingly dependent on South Africa’s embrace.

Moreover, Botswana, Lesotho, Namibia and Swaziland receive most of their revenue from the customs controlled by South Africa. For these countries the end of SACU could be a real economic disaster. In fact according to the International Centre for Trade and Sustainable Development (ICTSD) “70 percent of Swaziland’s and 60 percent of Lesotho’s state revenue is earned through the SACU, its participation proposed to align the interim EPA with the Trade and Development Cooperation Agreement applicable to South Africa.

Other issues

As with many other EPA negotiating regions, the SADC EPA group also has to deal with different levels of development amongst its members. On the one hand, Angola, Lesotho and Mozambique are considered Least Developed Countries (LDCs) and can profit from the EBA regime. On the other hand, Botswana, Namibia and Swaziland are bound to rely on the GSP.

Together with the power imbalance between South Africa and its partners, differences in development have made it difficult to agree on more typical negotiations issues such as the Most-Favoured-Nation (MFN) clause. Under this clause, the EU would be entitled to receive automatic trade concessions, should South Africa decide to sign a trade agreement with another country or regional organisation under terms more favourable than those included in the agreement it has signed with the EU. According to South Africa (and its partners Namibia and Angola), the MFN clause would hamper efforts to diversify the region’s trade relations with other key economies and limit the scope for industrial and agricultural development policies in the SADC.

While this political choice is understandable for South Africa, it might be perhaps less appropriate for the other countries in the SADC region which have less to gain but much more to lose from a new generation of agreements with third countries under terms which are likely to be less favourable than those granted by the EU.

South Africa also opted out of making any commitment on services and investments. South Africa (despite a precise commitment in the TDCA) refuses to open its markets to foreign services providers and seeks in this way to maintain a de facto monopoly on services in the region. The line of action taken by South Africa is also difficult to reconcile with the offers they tabled in the Doha Round (see above). At the same time, other SADC members are mostly services importers. They would therefore benefit from services liberalisation allowing them to have access to a cheaper and more differentiated service offer.

Several other issues are also unresolved. European Commission officials informed members of the European Parliament’s International Trade Committee meeting on 1 December 2010 that current sticking points include new EU proposals on rules of origin and cumulation (cf. glossary); fisheries rules of origin for Namibia and Mozambique; differentiated treatment for some South African exports; and services, investment and trade related issues. 152
4.8 OUTLOOK 2012: NEW DYNAMICS IN EU-ACP TRADE RELATIONS

4.8.1 Sunset for ACP trade preferences under the Market Access Regulation?

As negotiations to conclude Economic Partnership Agreements would not be completed by the original deadline of 31 December 2007, the Commission provided an interim solution by proposing the so-called Market Access Regulation (MAR) which was adopted by the EU Council 20 December 2007.\(^\text{153}\)

This regulation provides for provisional application of trade preferences for ACP countries that are in the process of concluding, at least, an interim (or stepping stone) EPA with the EU.

Article 2(3) of the Regulation states that ACP countries eligible for preferential access to the EU market are listed in an annex to the MAR until the annex is amended by the EU in cases where:

(a) the ACP beneficiary indicates that it intends not to ratify an EPA agreement;

(b) the ratification of an agreement has not taken place within a reasonable period of time such that the entry into force is unduly delayed;

(c) the agreement is terminated, or the region or state concerned terminates its rights and obligations under the agreement but the agreement otherwise remains in force.

As shown above, four years after the adoption of the MAR, a majority of ACP countries have not ratified interim EPAs, and many have not even concluded negotiations.

Hence the Commission came to the conclusion that the current situation could not be sustained indefinitely because it breaches the EU's WTO obligations and is not in line with the original intentions of the Market Access Regulation.

On 30 September 2011, the European Commission therefore published a legislative proposal to amend the list of countries benefitting from trade preferences under the Market Access Regulation with effect from 1 January 2014 for those countries that have, in the view of the Commission, “still not taken the necessary steps towards ratification of an EPA”.

According to the Commission, besides the 14 Caribbean countries (having concluded a comprehensive EPA), only Madagascar, Mauritius, the Seychelles and Papua New Guinea had taken the required steps to benefit from continued preferential market access under the Regulation’s terms. All other countries have either concluded negotiations for interim agreements but not signed them,\(^\text{154}\) or have concluded and signed an interim agreement but have not taken the required steps towards actually ratifying it.\(^\text{155}\) The Commission asserts that all of these countries “no longer meet the conditions of the Market Access Regulation for advance provisional application of trade preferences which were extended to them as of 1 January 2008 in anticipation of the steps towards ratification of an EPA”.

The Commission made it clear nevertheless that trade preferences would be reinstated to those countries which take the necessary steps towards ratification.

The Commission proposal to suspend trade preferences for countries not complying with the Market Access Regulation has been criticised by both the ACP governments and NGOs\(^\text{156}\) which have accused the Commission of having proceeded unilaterally against ACP countries. Some critics argue that the unilateral nature of the proposed repeal of preferences could be in breach of the Vienna Convention on the Law of Treaties. The ACP Council of Ministers stated that “the delay in concluding the negotiations is due to the non-resolution of contentious issues owing to entrenched positions of the EC side as well as additional issues being added to the negotiating agenda in which the EC side cannot be absolved from blame”.\(^\text{157}\) Furthermore, it expressed “concern that the proposed amendment to the regulation exerts pressure on the governments of ACP States concerned to sign and ratify their EPA within the specified timeframe regardless of whether or not the contentious provisions have been resolved”. It noted that, in order to have agreements ratified by 1 January 2014, “negotiations would have to be concluded and agreements signed by around June 2012”.

The Commission’s proposal did not come as a surprise, however. EU Trade Commissioner Karel De Gucht had stressed repeatedly the need to duly conclude the EPA ratification process in a reasonable period of time. It is probably fair to view the proposed amendment of the Market Access Regulation not simply as a step towards actually removing the preferences, but rather as a lever to encourage reluctant ACP countries to speed up their ratification process.

The proposal has been submitted to the Parliament and the Council under the ordinary legislative procedure and is currently under consideration. A first reading vote in Parliament is foreseen for the summer of 2012.\(^\text{158}\)

154. this being the case for Burundi, Comoros, Ghana, Kenya, Namibia, Rwanda, Tanzania, Uganda, and Zambia - see Commission proposal COM(2011) 598 final, p. 2.
156. See e.g. ECDPM, EPA Negotiations: the honeymoon is over (30 September 2011) and ECDPM, Legal constraints on the EU's ability to withdraw EPA preferences under Regulation 1528/2007 (October 2011).
4.8.2. Generalised System of Preferences

On 10 May 2011, the European Commission adopted a set of proposals160 to reform the EU preferential import schemes for developing countries known as the Generalised System of Preferences (GSP). These proposals are presented here because the GSP is sometimes seen as an alternative to EPAs (see chapter 5, in particular 5.4).

The changes are proposed in the context of the regular revision of the scheme which is implemented over cycles of ten years in order to take into account changing trade patterns (and through successive regulations, each applying for three years).160

One of the most significant phenomena over the last decade has been a substantial improvement in the economic situation of several countries still benefiting from the GSP. Per capita income of some of those countries has reached or even exceeded that of some EU countries. The legislative proposal therefore acknowledges that the privileged access to the EU market via GSP in many cases is no longer justified. Instead, it should be directed at the countries effectively in need.

According to the European Commission, the proposed GSP reform intends to pursue three objectives: (a) concentrate benefits on weaker countries (reducing the number of beneficiaries from 176 to 80); (b) promote core principles of sustainable development and good governance; and (c) ensure enhanced legal certainty and stability of the instrument.

Current GSP: main characteristics

The first GSP scheme was introduced by the European Community in July 1971.161 The example was followed by other developed countries such as the US soon after. As a rule, GSP schemes guarantee preferential access to industrialised countries’ markets for all developing countries, on a non-discriminatory and non-reciprocal basis, by means of a reduction in import tariffs for the eligible countries.

As explained in chapter 5.4, the EU scheme is divided into three categories:

- the general arrangement – often described simply as “GSP”;
- the special incentive arrangement for sustainable development and good governance – described as “GSP+”, offering additional preferences as incentives to support vulnerable162 developing countries in ratifying and implementing 27 international conventions on human and labour rights, environment and good governance;
- the Everything But Arms arrangement (EBA), which provides duty-free, quota-free access to Least Developed Countries (LDCs).

Proposed changes

The changes the Commission has proposed to make to the current system can be summarised as follows:

Eligibility to GSP: Under the proposed scheme, access to GSP will be restricted to least developed countries (under EBA, which remains unchanged) and to “low income” and “lower middle income” countries as classified by the World Bank. Russia, Saudi Arabia, Qatar, Argentina, Brazil, Costa Rica, Cuba, Botswana, Gabon and a number of countries in the Caribbean and the Pacific are among those that will lose their access to GSP benefits if the new proposals are adopted. Countries which have been granted similar or better preferences by means of bilateral free trade agreements or other EU autonomous trade arrangements will also be excluded.163

Graduation: When imports of products originating in GSP countries exceed a given threshold they no longer benefit from privileged access to the EU market. This process is called “Graduation” and is intended to prevent imports from relatively competitive countries with no need of preferential treatment entering the EU at reduced customs rates. According to the new proposal, the product sections subject to this procedure will be refined, increasing the number of sections from 21 to 32 to better reflect import structures and thresholds would be increased from 15% to 17.5% (and from 12.5% to 14.5% for textiles.) The EC also proposes to cease applying “Graduation” to GSP+ imports, arguing that GSP+ countries are vulnerable countries with a non-diversified export base.

GSP+ mechanism: While the number of conventions to be adopted and implemented remains unchanged, the vulnerability criterion is to be softened. At the same time, the proposals place more responsibility on the countries, e.g., regarding proof of compliance, and require stricter scrutiny of eligibility by the EU.

160. The current cycle began in 2006 and will expire in 2015. The scheme is implemented through successive Regulations applying for three years.
161. The current GSP scheme is established by Council Regulation (EC) No 732/2008, in force from 1.1.2009 till 31.1.2011. A “roll-over” Regulation was adopted to extend the present system until the end of 2013 while the institutions discuss the new GSP proposal.
162. For a more extensive overview, see “Possible Alternatives to EPAs”.
163. Vulnerability (non diversification) is an import-share criterion according to which countries can qualify for GSP “plus” only if their 5 largest product sections cover at least 75% of total exports to the EU.
164. Aruba, Bahamas, Bahrain, Barbados, Bermuda, Brunei Darussalam, Cayman (Islands), French Polynesia, Greenland, Guam, Kuwait, Macao, New Caledonia, Northern Mariana Islands, Oman, Qatar, Saudi Arabia, the Netherlands Antilles, Trinidad and Tobago, United Arab Emirates, Virgin British (Islands) have been classified as High Income Countries in the last 3 years. American Samoa, Antigua and Barbuda, Argentina, Belarus, Botswana, Brazil, Costa Rica, Cuba, Dominica, Fiji Islands, Gabon, Grenada, Jamaica, Kazakhstan, Lebanon, Libyan (Jamahiriy Arab), Malaysia, Mauritius, Mexico, Mayotte, Palau, Panama, Russia, Saint Lucia, Saint Vincent and the Grenadines, Seychelles, South Africa, St. Kitts and Nevis, Suriname, Uruguay and Venezuela have been classified as Upper Middle Income in the last 3 years.
Clarity and predictability: If the proposal is adopted as proposed, the GSP system, so far subject to review every three years, will become open ended. Conditions for withdrawal from the GSP will be clarified, e.g., by making explicit that unfair trading practices include those affecting the supply of raw materials and by underlining that preferences may be temporarily withdrawn if beneficiaries fail to comply with international conventions on anti-terrorism. A set of safeguard and surveillance measures is also proposed, albeit for exceptional circumstances, such as serious harm to various sectors, and exceeding certain import thresholds in agriculture, fisheries and textiles.

Possible effects on ACP countries

Tariff consolidation: If adopted, the proposed reduction of GSP beneficiaries should benefit the weaker economies that maintain preferences. However, these benefits should not be overestimated. Many imports from the excluded stronger economies already enter the EU under various advantageous arrangements, and the number of (bilateral) free trade agreements is steadily increasing as a result of the stalled Doha negotiations. The impact will also vary from country to country depending on their trade structure.

Legal impact: The new Regulation will not apply formally to ACP countries that have signed an EPA/Interim EPA, since EPAs include their own preference schemes with a more extensive economic framework. Nor will it apply to countries benefiting from EBA as this arrangement remains unchanged. As to GSP+, currently there is no ACP country benefiting from this arrangement as it implies ratifying and implementing 27 international conventions.

The proposal is currently being discussed at the European Parliament and the Council in view of being adopted by 2014.

164. On GSP as alternatives to EPAs, see “Possible Alternatives to EPAs”.
5. POSSIBLE ALTERNATIVES TO EPAs

Introduction

In a 2006 argumentaire, the European Commission stated that deals other than EPAs are possible but that there is “no alternative that offers either the same development benefits or can improve on ACP market access to Europe”. The then Commissioner for Trade Peter Mandelson went further when he declared in a hearing organised by the European Parliament that “I’m always open to the arguments, but I don’t believe there is any remotely realistic alternative to EPAs that have the same content and potential. We could push on with unilateral preferences. Something like Generalised System of Preferences (GSP); tariff only, less generous access than under Cotonou for many and no economic governance framework. Is this a long-term development model? Not in my book”.

Although other options are theoretically possible, the real alternatives open to the ACP countries are rather limited. Some of them are clearly politically unrealistic and may not meet basic WTO standards. The European Commission also made clear that it considered EPAs to be the best option available and showed reluctance to take other solutions into consideration.

Article 37.6 of the Cotonou Agreement foresees that “in 2004, the Community will assess the situation of the non-LDCs [Least Developed Countries] which, after consultations with the Community decide that they are not in a position to enter into economic partnership agreements and will examine all alternative possibilities, in order to provide these countries with a new framework for trade which is equivalent to their existing situation and in conformity with WTO rules”.

At the request of the ACP side, the EU agreed not to apply the 2004 deadline for discussing alternatives and to extend the deadline for such an assessment to 2006. Despite this extension, no alternative assessment was finally carried out. In fact, EPA negotiations started in 2002 with all ACP countries and, despite strong pressure from NGOs and other stakeholders, no ACP government formally requested the EU to examine other viable alternatives to EPAs.

A set of alternative options has been identified by NGOs and other EPA experts. Some of them are theoretically feasible, while others are unrealistic. Possible alternatives include:

- Status quo;
- New WTO waiver;
- Change of WTO rules;
- Revised (and extended) GSP Plus and EBA for LDCs;
- “Simplified” EPA.

5.1 Status quo

This option was invoked at the beginning of EPA negotiations. Many studies erroneously compare EPA negotiations to the status quo (Cotonou-Lomé); in truth, in the absence of EPAs (interim or full), ACP countries would have no choice but to revert to the situation of other developing economies in the WTO: the Generalised System of Preferences (GSP) of the Everything But Arms (EBA) scheme for LDCs.

Maintaining asymmetrical benefits for ACP countries after the expiry of the Cotonou waiver would have paved the way for a serious legal dispute (before the WTO Dispute Settlement Body) and possibly a trade war with negative repercussions for both the ACP countries and the EU. Moreover, this option would have denied the standing EU commitment to fully respect WTO rules and seriously undermined the already shaky Doha Development Agenda.

5.2 New WTO waiver

In theory there were no legal obstacles to the negotiation of a new WTO waiver guaranteeing further asymmetrical access to the EU market for goods originating in the ACP countries.

The 2001 waiver, as seen above, took a long time before being authorised and triggered substantial concessions from both the ACP countries and the EU. The original Cotonou waiver was, in the end, only secured by agreeing to remove the preferential access to the EU market granted to ACP countries.

Accordingly, this derogation was granted on a time-limited basis, i.e. “until 31 December 2007, to the extent necessary to permit the European Communities to provide preferential tariff treatment for products originating in ACP States (…) without being required to extend the same preferential treatment to like products of any other member”. But the waiver made it clear that by the end of the preparatory period extending until 31 December 2007, “new trading arrangements shall be concluded between the Parties to the Agreement”.

Although the idea of a new waiver came up several times before 2008, it was always dismissed, even before being formally discussed by the WTO Committee on trade in

goods. Non-ACP developing countries made it clear that they were not ready to re-discuss the terms of the 2001 compromise, stressing that they were against preferential commercial concessions to the ACP because of their selective nature. From a moral standpoint, it might be difficult to defend the fairness of a scheme that discriminates against developing countries because they were not former colonies of any of the EU Member States, even though many developing countries are actually poorer than some ACP countries.

Moreover, even assuming that WTO members were favourable to a new waiver, this would not have been without cost. The price to secure the new derogatory regime could have been higher than the real value of actual advantages stemming from the extension of the Cotonou waiver. In particular, the effect on ACP preference erosion was likely to be significant.

5.3 Change of WTO rules

In the search for an alternative solution to EPAs, some ACP and NGO representatives proposed to revise the WTO Agreements in a way which would have allowed the establishment of a legal system of asymmetric preferences for ACP. 165 Their reasoning was based on the fact that GATT 1947 provisions (in particular Article XXIV) were negotiated when many developing countries were still under colonial rule and that they could not cover agreements between industrialised and developing countries.

In the Doha Declaration (para. 29), WTO Members agreed to pursue “negotiations aimed at clarifying and improving disciplines and procedures under the existing WTO provisions applying to regional trade agreements. The negotiations shall take into account the developmental aspects of regional trade agreements”. 166

The Doha agenda, however, never included a point on the revision of Article XXIV of the GATT. Not only was there no consensus on a revision of the GATT, but any such proposals could have undermined the whole international trading system based on the principle of reciprocity (Most-Favoured Nation, or MFN).

The Doha Development Agenda is most probably nearing its end. After 10 years of meetings and discussions, the parties were unable to find an acceptable compromise on sensitive issues such as trade distorting subsidies on agriculture or on outstanding Non-Agricultural Market Access issues. The last resort of a “Doha Light” deal desperately defended by the WTO Secretariat does not seem to be supported by the majority of Members and a breakdown of the Doha Round is rather likely. Failure to find a meaningful agreement in Geneva will not only hit developing countries (and in particular LDCs), but it may also jeopardise the whole WTO system created by the Uruguay Round Agreements of 2004. In this context, any further request to modify the WTO rules in a direction more favourable to the ACP countries appears completely unrealistic.

5.4 GSP Plus

The “Generalised System of Preferences” (GSP) dates back to the 1960s, when the need to improve trading conditions for developing countries, many of which had recently become independent, was discussed in Geneva at the UNCTAD I Conference (1964). The establishment of a GSP was subsequently decided in New Delhi at UNCTAD II (1968), and took concrete form in an UNCTAD understanding in October 1970. 167

The main aims of the GSP were to increase exports (mainly commodities and raw materials) from developing countries in order to contribute to their economic development and poverty reduction. The GSP scheme guarantees preferential access to industrialised countries’ markets for all developing countries, on a non-discriminatory and non-reciprocal basis, by means of a reduction in import tariffs for the eligible countries. However, the new GSP measures were in breach of the MFN principle and therefore inconsistent with the GATT. This problem was eventually resolved by the adoption of the “Enabling Clause” in GATT in 1979 (see above). The first GSP scheme was introduced by the European Community in July 1971. This was followed by other developed countries such as the US soon after.

The scheme is divided into three categories:

- General GSP;
- GSP “Plus”;
- Everything but Arms (EBA).

The “general” GSP scheme, currently under revision by the European Union, provides trade preferences (duty reduction or elimination) to 176 countries. 168 It involves roughly €48 billion worth of trade.

Besides the General GSP scheme, over time other instruments were implemented by the European Commission. EBA provides unconditional free trade access (duty free, quota free) to the EU market for all LDCs goods except for weapons.
GSP “plus” provides enhanced trade preferences to countries that have ratified and effectively implemented a set of international conventions relating to human and labour rights as well as environmental and good governance issues (27 in total). Other conditions attached to the GSP “plus” scheme are (a) graduation and (b) vulnerability.

While theoretically attractive, the GSP plus option has some drawbacks and does not appear within reach for a fully ratified and implemented the 27 conventions which are the prerequisite for application to the GSP plus scheme.

Moreover, no ACP countries currently qualifies for GSP plus. The main problem is that ACP countries are far from having ratified and implemented the 27 conventions that are the prerequisite for application to the GSP plus scheme.

The GSP is also completed by a specific set of “preferential” rules of origin. In the GSP system, “regional cumulation” of Rules of Origin is allowed only for the countries of one of the regional groups recognised by the EU. Regional Groups are listed in Article 86 of Commission Regulation 1063/2010. However, no ACP country is listed in one of the regional groups.

### Tab. 12: The “standard” EPA proposal versus GSP and GSP+ alternatives

<table>
<thead>
<tr>
<th></th>
<th>“standard” EPA proposal</th>
<th>GSP option</th>
<th>GSP+ option</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACP</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Welfare</td>
<td>-851</td>
<td>-459</td>
<td>-51</td>
</tr>
<tr>
<td>Real GDP</td>
<td>-183</td>
<td>-79</td>
<td>-9</td>
</tr>
<tr>
<td>Trade balance</td>
<td>-1,223</td>
<td>234</td>
<td>26</td>
</tr>
<tr>
<td>Fiscal imbalance (%GDP)</td>
<td>0.7%</td>
<td>0%</td>
<td>0%</td>
</tr>
<tr>
<td>Regional trade</td>
<td>-407</td>
<td>60</td>
<td>7</td>
</tr>
</tbody>
</table>

171. Reduction to zero duty for a total of 7200 products.

172. Graduation: GSP plus does not apply to certain product groups imported from one or more countries if these products are already competitive on the Community market. “Graduation” applies when a group of products (section of the custom code) from a particular country exceeds 15% of total EU imports of the same products under GSP over the last three consecutive years. For textiles, the threshold is slightly lower: 12.5%.

173. Vulnerability (non diversification) is an import-share criteria according to which countries can qualify for GSP “plus” only if their 5 largest product sections cover at least 75% of total exports to the EU.


176. Article 67.1(h) “Regional cumulation” means a system whereby products which, according to this Regulation, originate in a country which is a member of a regional group and are considered as materials originating in another country of the same regional group (or a country of another regional group where cumulation between groups is possible) when further processed or incorporated in a product manufactured there.

these groups, meaning regional cumulation does not apply to potential GSP plus candidates from the ACP.

On the other hand, EPA or interim EPA signatories that are party to a preferential trade agreement are allowed to share production and jointly comply with the relevant Rules of Origin. Regional cumulation is only allowed among interim EPA signatories in one of the given EPA regions and does not extend to GSP or EBA beneficiaries. This would represent a step backward from the Cotonou provisions that included all ACP countries which is even more serious when considering that the number of ACP countries having entered an (interim) EPA is still rather limited.

These conclusions, however, are not shared by all authors. In a 2006 paper, Romain Perez concluded that a revised version of the GSP plus scheme (including more tariff lines of particular interest for the ACP countries) would be preferable to the EPA option. The table below summarises the author’s conclusions based on his own calculations.

Many Least Developed Countries decided not to initial an interim EPA and therefore maintained their preferential access to the EU Single Market via the EBA scheme. As already mentioned above, EBA represents a serious alternative to EPAs for LDCs since it provides free access to all products which are not arms. However, in the long run this choice may be counterproductive since it would prevent these countries from profiting from the regional integration benefits of EPAs.

5.5 Simplified EPA

Another option would be to restrict the scope of negotiations only to trade in goods provisions, thus avoiding having to deal with contentious issues such as trade in services, IPR protection and the so-called “Singapore issues.”

As already stressed by many analysts, there is no obligation on the ACP countries to liberalise their trade in services and implement the other trade issues which are typically part of EU second-generation FTAs. In fact, article XXIV of GATT only covers trade in goods and, given their relative weakness, ACP countries have defensive rather than offensive interests in this field. The fact that developing countries dislike the “Singapore issues” is confirmed by their steady commitment to remove them from the Doha Round of negotiations at the WTO. In a similar vein, the inclusion of trade in services in the EPA negotiations has been strenuously criticised by both the ACP countries and NGOs because of its potentially disruptive effect on their fragile economies.

On the other hand, the Cotonou Agreement explicitly states that services liberalisation can be negotiated only after ACP countries “have acquired some experience in applying Most-Favoured-Nation (MFN) treatment under GATS” (art.41.4).

5.6 Conclusions

Currently, the scenario of “simplified EPAs” by the way of transforming interim EPAs into definitive deals seems to be the most feasible one. In the light of the strong resistance from many ACP governments, the EU has slightly softened its position. The Council publicly stated that it would prefer to see non-trade in goods’ issues included in the EPAs but also that it “fully respects the right of all ACP States and regions to determine the best policies for their development” (Conclusions of 15 May 2007, §7 or of 19-20 November §6). Similarly, in responding to an oral question by the European Parliament, the then EU Trade Commissioner Catherine Ashton stated that: “the Singapore Issues are only included if wanted and welcomed.”

Although this option does not restore the previous asymmetrical market access granted to the ACP, it may at least satisfy basic WTO requirements while avoiding further concessions on sectors which are considered “sensitive” by the ACP countries.

This option has not yet been formalised but the way negotiations for fully-fledged EPAs are evolving shows that, not only the ACP, but also the European Commission, are no longer pushing for a quick conclusion of full EPAs, which are definitely not within reach. A likely scenario could therefore be the transformation of “interim” or “stepping stone” EPAs into definitive deals that only cover trade in goods issues and a limited set of other mutually agreeable negotiation chapters. In such a case, a common decision by both parties and a formalisation before the WTO would still be needed.

179. Transparency in government procurement, trade facilitation (customs issues), trade and investment, and trade and competition.
# ANNEX 1: LIST OF ACRONYMS

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>AAD</td>
<td>Agreement on the Implementation of Article VI of GATT 1994 (on anti-dumping, WTO)</td>
</tr>
<tr>
<td>ACP</td>
<td>African, Caribbean and Pacific Group of States</td>
</tr>
<tr>
<td>AGOA</td>
<td>African Growth and Opportunity Act</td>
</tr>
<tr>
<td>ASCM</td>
<td>Agreement on Subsidies and Countervailing Measures</td>
</tr>
<tr>
<td>ASEAN</td>
<td>Association of South-East Asian Nations</td>
</tr>
<tr>
<td>ASG</td>
<td>Agreement on Safeguards (WTO)</td>
</tr>
<tr>
<td>BOP</td>
<td>Balance of payments</td>
</tr>
<tr>
<td>CBI</td>
<td>Caribbean Basin Initiative</td>
</tr>
<tr>
<td>CTG</td>
<td>Council for Trade in Goods (WTO)</td>
</tr>
<tr>
<td>CVD</td>
<td>Countervailing duties</td>
</tr>
<tr>
<td>CARICOM</td>
<td>Caribbean Community and Common Market</td>
</tr>
<tr>
<td>COMESA</td>
<td>Common Market for Eastern and Southern Africa</td>
</tr>
<tr>
<td>CRTA</td>
<td>Committee on Regional Trade Agreements (WTO)</td>
</tr>
<tr>
<td>DCs</td>
<td>Developing countries</td>
</tr>
<tr>
<td>DDA</td>
<td>Doha development agenda</td>
</tr>
<tr>
<td>DDCs</td>
<td>Developed countries</td>
</tr>
<tr>
<td>DSB</td>
<td>Dispute Settlement Body (WTO)</td>
</tr>
<tr>
<td>DSU</td>
<td>Understanding on Rules and Procedures Governing the Settlement of Disputes (WTO)</td>
</tr>
<tr>
<td>EAC</td>
<td>East African Community</td>
</tr>
<tr>
<td>EBA</td>
<td>Everything but Arms initiative</td>
</tr>
<tr>
<td>EC</td>
<td>European Commission</td>
</tr>
<tr>
<td>ECOWAS</td>
<td>Economic Community of West African States</td>
</tr>
<tr>
<td>EFTA</td>
<td>European Free Trade Association</td>
</tr>
<tr>
<td>EIA</td>
<td>Economic Integration Agreement on trade in services</td>
</tr>
<tr>
<td>EPA</td>
<td>Economic Partnership Agreement</td>
</tr>
<tr>
<td>ESA</td>
<td>Eastern and Southern Africa (region)</td>
</tr>
<tr>
<td>EU</td>
<td>European Union</td>
</tr>
<tr>
<td>FTA</td>
<td>Free trade area</td>
</tr>
<tr>
<td>FTAA</td>
<td>Free Trade Area of the Americas</td>
</tr>
<tr>
<td>GATS</td>
<td>General Agreement on Trade in Services (WTO)</td>
</tr>
<tr>
<td>GATT</td>
<td>General Agreement on Tariffs and Trade</td>
</tr>
<tr>
<td>GCC</td>
<td>Gulf Cooperation Council</td>
</tr>
<tr>
<td>GSP</td>
<td>Generalised System of Preferences among developing countries</td>
</tr>
<tr>
<td>GSTP</td>
<td>Global System of Trade Preferences</td>
</tr>
<tr>
<td>HS</td>
<td>Harmonized Commodity and Description and Coding System</td>
</tr>
<tr>
<td>IEPA</td>
<td>Interim Economic Partnership Agreement</td>
</tr>
<tr>
<td>LDC</td>
<td>least developed country</td>
</tr>
<tr>
<td>MERCOSUR</td>
<td>Southern Common Market</td>
</tr>
<tr>
<td>MFN</td>
<td>most-favoured-nation</td>
</tr>
<tr>
<td>MRA</td>
<td>mutual recognition agreement</td>
</tr>
</tbody>
</table>
NAFTA North America Free Trade Area
NTB non-tariff barrier to trade
ORC other regulations of commerce
ORRC other restrictive regulations of commerce
PICTA Pacific Island Countries Trade Agreement
ROO rules of origin
RTA regional trade agreement
SAARC South Asian Association for Regional Cooperation
SACU South African Customs Union
SADC Southern African Development Community
SAT substantially all the trade
SDT special and differential treatment
SIA Sustainability Impact Assessment
SPARTECA South Pacific Regional Trade and Economic Cooperation Agreement
SPS sanitary and phytosanitary measures
TBT technical barrier to trade
UEMOA West African Economic and Monetary Union
UNCTAD United Nations Conference on Trade and Development
WTO World Trade Organisation
ANNEX 2: GLOSSARY

ACP Group of States
Group of countries from the African, Caribbean and Pacific Region officially established in 1975. Relations between the EU and the ACP countries were formalised over time through the conclusion of several agreements or conventions (Yaoundé, Lomé and Cotonou).

Aid for Trade
A WTO initiative launched in 2005 that aims to help developing countries, particularly least-developed countries, develop the trade-related skills and infrastructure that is needed to implement and benefit from WTO agreements and to expand their trade. The EU Strategy on Aid for Trade aims at enhancing the EU support for these purposes as part of the broader development policies.

Cotonou Agreement
A partnership agreement between the EU and the ACP Group, signed in 23 June 2000 in Cotonou, Benin. The Agreement replaces the Lomé agreements. The main objective is to reduce poverty, consistent with the objectives of sustainable development and the integration of the ACP countries into the world economy. The Agreement provides for setting up a new trade arrangement, characterised by reciprocal liberalisation in accordance with WTO rules.

Cumulation
The term refers to Rules of Origin in trade agreements and the possibility of allowing processing in and sourcing from other countries without the finished product losing the benefit of preferential customs tariffs.

Customs Union
A group of countries that eliminate tariffs among themselves and apply a common external tariff against non-members.

The Doha Round
The Doha Round is the latest round of trade negotiations among WTO members. Its aim is to achieve major reform of the international trading system through the introduction of lower trade barriers and revised trade rules. The Round is also known semi-officially as the Doha Development Agenda as a fundamental objective is to improve the trading prospects of developing countries. The Round was officially launched at the WTO’s Fourth Ministerial Conference in Doha, Qatar, in November 2001. The mandate for negotiations includes agriculture, services and an intellectual property topic.

Dumping
Dumping occurs when goods are exported at a price less than their normal value, generally meaning they are exported for less than they are sold in the domestic market or third country markets, or at less than production cost.

Enabling Clause
The Enabling Clause is officially called the “Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries” and was adopted under GATT in 1979. It enables developed members of the WTO to give differential and more favourable treatment to developing countries. In addition, the Clause is the legal basis for regional arrangements among developing countries.

Everything But Arms (EBA)
EBA are special arrangements for least developed countries (LDCs) formally recognised as such by the United Nations. Under this initiative, the EU grants duty-free access to imports of all products from the LDCs, except arms and ammunition, without any quantitative restrictions (with the exception of bananas, sugar and rice for a limited period). At present, 49 developing countries belong to the category of LDCs. EBA Regulation has been incorporated into the GSP Council Regulation (EC) No 2501/2001.

Free trade area
Area where trade within the group of trading entities is duty free but members set their own tariffs on imports from non-members (e.g. NAFTA).

General Agreement on Tariffs and Trade (GATT)
The GATT covers international trade in goods. Originally signed by 23 nations in 1947, it was an informal multilateral agreement covering international trade activities among states. A series of international trade rounds have progressively moved nations to freer trade through removal of tariff and non-tariff barriers. The Uruguay Round of the GATT created the World Trade Organisation as an international body in 1995 to administer the GATT.

General Agreement on Trade in Services
WTO Agreement on international trade in services. It applies to measures of WTO members that affect trade in services. Trade in services can take place in four different modes of supply, which are all covered by GATS: cross-border supply, consumption abroad, commercial presence in the consuming country and presence of natural persons.
**Generalised System of Preferences (GSP)**

In 1968, the first United Nations Conference on Trade and Development (UNCTAD) recommended the creation of a “Generalised System Tariff of Preferences” under which industrialised countries grant autonomous trade preferences to all developing countries. The acronym “GSP” sometimes refers to the system as a whole, sometimes to one of the individual schemes. The European Community was the first to implement a GSP scheme in 1971.

**Intellectual Property Rights**

Monopoly protection for creative works (intellectual property) such as writing (copyright), inventions (patents), processes (trade secrets) and identifiers (trademarks).

**Least Developed Country (LDC)**

The General Assembly of the United Nations officially designates countries as “least developed”, on the basis of a number of agreed criteria. There are currently 48 least-developed countries on the UN list, 31 of which to date have become WTO members.

**Lomé Agreements**

The agreements between the EU and the ACP Group, which were signed for the first time in 1975 and ended in 1999. The main characteristics are: the partnership principle, the contractual nature of the relationship, and the combination of aid, trade and political aspects, together with its long-term perspective (5 to 10 years). These principles together are sometime referred to as the Lomé Convention. The Lomé Agreements were replaced by the Cotonou Agreement in June 2000.

**Most-Favoured-Nation (MFN) Principle**

An obligation that there should be no discrimination between goods, services or companies on the basis of their origin or destination (GATT Article I, GATS Article II and TRIPS Article 4).

**Multilateral**

In the context of the WTO, actions/measures involving all members. In WTO affairs, “multilateral” also contrasts with actions taken regionally or by other smaller groups of countries.

**National Treatment (NT) Principle**

Article III of GATT 1994, which is an obligation that requires imports not to be treated less favourably than domestically produced goods once they have entered the country.

**Non Tariff Barrier (NTB)**

Any policy that interferes with exports or imports other than a simple tariff, prominently including quotas and voluntary export restraints

Other examples are import licensing systems, sanitary regulations, prohibitions, etc.

**Plurilateral**

In the context of the WTO, involving only some members.

**Rules of Origin (ROO)**

Laws, regulations and administrative procedures that determine a product’s country of origin. A decision by a customs authority on origin can determine whether goods fall within a quota limitation, qualify for a tariff preference or are affected by an anti-dumping duty. A typical ROO would be that a certain minimum percentage of the value of the good must represent value added from within the PTA; otherwise it is subject to the tariff that the importing country applies to imports from outside the PTA.

**Safeguard measures**

Action taken to protect a specific industry from an unexpected build-up of imports — generally governed by Article XIX of GATT.

**Sanitary and Phytosanitary Measures**

SPS are food safety and animal and plant health standards that should be applied only to the extent necessary to protect human, animal or plant life or health. Within the WTO, a separate agreement on standards (the Sanitary and Phytosanitary Measures Agreement or SPS) sets out the basic rules. It allows countries to set their own standards but it also requires that regulations are based on science.

**Singapore issues**

Four issues introduced into the WTO agenda at the December 1996 Ministerial Conference in Singapore: trade and investment, trade and competition policy, transparency in government procurement, and trade facilitation.

**Special and Differential (S&D) Treatment**

Specific legal provisions giving developing and least-developed countries preferential treatment included throughout the WTO agreements.
Standstill clause
A clause in a trade agreement which prohibits new customs duties to be applied, or existing ones to be raised after entry into force of the agreement.

Tariff
A tax on trade, usually an import tariff but sometimes used to denote an export tax. Tariffs may be ad valorem (i.e. defined as a percentage of the value of an imported good) or specific/ lump sum (i.e. specified as an amount of currency per unit of the good).

Trade Facilitation
Trade facilitation is often defined as the simplification and harmonisation of international trade procedures (activities, practices and formalities involved in processing data for the movement of goods in international trade).

Trade Related Intellectual Property Rights (TRIPs) Agreement
The agreement negotiated during the Uruguay Round that incorporated issues of intellectual property into the WTO. The three main features of the Agreement are standards, enforcement and dispute settlement.

Trade Round
A set of multilateral negotiations, held under the auspices of the GATT/ WTO, in which countries exchange commitments to reduce tariffs and agree to extensions of the GATT/ WTO rules. It discusses a package of issues instead of a single issue.

Uruguay Round
The last finalised and largest GATT round which lasted from 1986 to 1994 and led to the WTO’s creation.

Waiver
Permission granted by WTO members allowing a WTO member not to comply with normal commitments. Waivers have time limits and extensions have to be justified.

World Trade Organisation
Organisation based in Geneva that supervises existing international trade accords and provides a forum for the negotiation of new agreements and the adjudication of disputes. Launched in 1995; successor organisation to the General Agreement on Tariffs and Trade (GATT).
In October 2011 the OPPD organised a seminar on the “Role of Parliaments in Scrutinising International Agreements”. The seminar was held in response to a request from the Bureau of the ACP-EU Joint Parliamentary Assembly, supporting an idea that had been put forward by the Réseau African des Personnels des Parlements - RAPP, or African Parliamentary Staff Network, to the assembly Co-President Louis Michel (MEP). The seminar focussed largely on Economic Partnership Agreements and the present reader was originally produced for this seminar.

The seminar programme aimed to put the EPA negotiations into a broader context: it did so by imparting knowledge on the WTO framework and underlining the (at least partial) failure of trade preferences to induce economic development but also by presenting EPAs as an example of the wider challenge for parliaments to scrutinise the ever-growing number of international agreements which are negotiated by executive branches of government.

By specifically inviting representatives of African transborder parliaments, the OPPD also sought to stimulate networking within these parliaments which so far, to a large extent, have lacked the opportunity to cooperate or have exchanges among themselves. The issue of EPAs was particularly relevant for them as the agreements, at least in theory, also aim to foster regional integration in Africa. Besides the regional parliaments, two representatives of the RAPP also took part in the seminar, as did a staff member of the parliament of Ghana, representing a country which had concluded negotiations but had not signed an interim EPA.

The first day of the seminar focussed on introductions to the topic of international agreements, highlighting the role that the European Parliament plays in this area and including exchanges with MEP Charles Goerens from the Development committee and David Martin, who is a Member of the International Trade committee and was rapporteur for the Cariforum EPA.

On the second day, participants looked at the general context of EPAs in the international trade regime, potential implications for regional integration, and were updated on the state of negotiations and related developments such as the announcement of the EC to phase out the market access regulation which provided interim solutions for market access in the absence of fully WTO-compatible EPAs (cf. chapter 4.8). A researcher from Ghana presented a comparative study of the Cariforum EPA (the only full EPA concluded to date) and the potential ECOWAS EPA.

On the third day, participants heard about the challenges and negotiations of the Cariforum EPA from one of its Caribbean negotiators. They had an exchange of views with a representative of the ACP Group of States Secretariat, were introduced to impact assessment methodology by the Commission and heard a presentation on the critical views of European development NGOs. The last day was dedicated to the presentation of an ex-ante impact assessment (trade and poverty impact) for Uganda, a lively closing round table discussion and a debriefing.

The debriefing and written evaluations showed that participants felt that they had acquired important and detailed knowledge about the substance of Economic Partnership Agreements and the methods and challenges of parliamentary scrutiny. Participants also showed a strong motivation to stay in contact individually or as a group.

The seminar participants encouraged the European Parliament and the OPPD in particular to continue supporting African parliaments, including MPs, in view of their increasing responsibility to monitor and scrutinise international trade negotiations and international treaties. Furthermore, the topic of regional integration in Africa and the role of African parliaments therein, seems a topic that can be further deepened.

On 30 September 2011 the European Commission put forward a proposal to cease by 2014 those trade preferences extended since January 2008 via the Market Access Regulation, in the continued absence of, at least, ratified interim EPAs.

It remains to be seen to what extent this new Commission strategy will lead to the successful conclusion of EPAs. It will certainly rekindle interest in these agreements during 2012 and 2013 and it is likely that more and more parliaments in Africa and the Pacific will be confronted with ratification procedures.

The European Parliament itself also will be called upon to take positions on the review of the Market Access Regulation and potentially will have to ratify regional or interim agreements. Parliaments on both sides should therefore, side by side, step up their efforts to get to grips with the implications and the substance matter of these agreements.

---

181. The Pan-African Parliament, the parliament of CEMAC (Central Africa), EALA (East Africa), ECOWAS (West Africa) and the parliamentary forum of SADC (Southern Africa).
ANNEX 4: RECENT DG EXPO POLICY DEPARTMENT STUDIES

An assessment of the balancing of EU development objectives with other policies and priorities, 2011, by S. Sarisoy Guerin (IES VUB) S. Kingah (UNI-CRIS & IES), C. Gerstetter & J. Kirschey (Ecologic Institute)
Increasing the impact of EU development policy, 2011, by Dr. P. Morazán (Südwind Institute) & C. Gerstetter (Ecologic Institute)
A Snapshot of the Banana trade: Who gets what?, 2010, by Dr. P. Morazán (Institut Südwind)
The application of Human Rights conditionality in the EU’s bilateral trade agreements and other trade arrangements with third countries, 2008, by Dr. L. Bartels
The European Union’s raw materials strategy, 2011, by Dr. Bardt (CIER, Germany) and Dr Karapinar (ODI, UK)
The Role of Parliaments in Scrutinising and Influencing Trade Policy - A Comparative Analysis, 2005, by SWP Berlin


ANNEX 5: SELECTED BIBLIOGRAPHY

1. THE WTO AND DEVELOPMENT

1.1 legal texts

1.1.1 The Uruguay Round agreements
General Agreement on Tariffs and Trade 1994 (GATT)
Decision on Measures in Favour of Least-Developed Countries

1.1.2 Enabling clause

1.2 WTO documents

1.3 Papers on WTO related issues (including WTO compatibility of EPAs)
South Center, Article XXIV and RTAs: How much wiggle room for developing countries, Geneva 2008.
James Scott, Developing Countries in the ITO and GATT Negotiations, BWPI working paper 95, May 2009;
South Center, The Cotonou Partnership Agreement, the Economic Partnership Agreements and WTO compatibility: can initialed interim EPAs be notified? (2009)
EPAs and WTO Compatibility - A Development Perspective / Analytical Note, South Centre November 2010, 39 p.
2. EU-ACP documents

2.1 Cotonou Agreement (Signed in Cotonou on 23 June 2000)


2.2 European Union communications

European Communities — the ACP-EC Partnership Agreement, Decision of 14 November 2001 http://www.wto.org/english/tratop_e/minist_e/min01_e/mindecl_acp_ec_agre_e.htm
European Commission, Orientations on the Qualification of ACP Regions for the Negotiation of Economic Partnership Agreements (2001)
Joint statement by the Council and the representatives of the governments of the Member States meeting within the Council, the European Parliament and the Commission on European Union Development Policy: ‘The European Consensus’ (2006/C 46/01)

3. ACP Documents and declarations


4. Impact assessments (including SIA)

ODI, The Potential Economic Impact and WTO Compatibility of the Economic Partnership Agreements (Study commissioned by the EP Committee on international Trade), 2006.

5. EU-ACP trade statistics

6. Cariforum EPA


International Centre for Trade and Sustainable Development (ICTSD), An interview with Branford Isaacs, Head of CARICOM’s EPA Implementation Unit and Specialist in Trade in Goods, and Ms Allyson Francis, the Unit’s Trade in Services and Investment Specialist (2010) at http://ictsd.org/i/competitiveness/97942/


Legal Analysis of Services and Investment in the Cariforum-EC EPA: Lessons for other Developing Countries / Kelsey, Jane; South Centre Research Paper, July 2010, 139 p.

7. Interim EPAs

7.1 Legal texts


7.2 Studies and papers


ATPC, Interim Economic Partnership Agreements Point to the Classic Regional Trade Agreements after all: Should African countries really be worried? (2009)


8. Relations EU-ACP in general


James Scott, Developing Countries in the ITO and GATT Negotiations, BWPI working paper 95, May 2009


Assessing prospective trade policy : methods applied to EU-ACP economic partnership agreements, Edited by Morrissey, Oliver, Routledge, 2011,
9. Alternatives to EPAs


Sanoussi Bilal, Isabelle Ramdoo, Which way forward in EPA negotiations? ECDPM Discussion paper, November 2010, pp. 23 at www.ecdpm.org/dp100

10. Papers in French

France, Rapport au Président de la République

France, Assemblée Nationale

Annex 6: GATT Article XXIV

Article XXIV: Territorial Application

Frontier Traffic — Customs Unions and Free-trade Areas

4. The contracting parties recognize the desirability of increasing freedom of trade by the development, through voluntary agreements, of closer integration between the economies of the countries parties to such agreements. They also recognize that the purpose of a customs union or of a free-trade area should be to facilitate trade between the constituent territories and not to raise barriers to the trade of other contracting parties with such territories.

5. Accordingly, the provisions of this Agreement shall not prevent, as between the territories of contracting parties, the formation of a customs union or of a free-trade area or the adoption of an interim agreement necessary for the formation of a customs union or of a free-trade area; Provided that:

(b) with respect to a free-trade area, or an interim agreement leading to the formation of a free-trade area, the duties and other regulations of commerce maintained in each of the constituent territories and applicable at the formation of such free trade area or the adoption of such interim agreement to the trade of contracting parties not included in such area or not parties to such agreement shall not be higher or more restrictive than the corresponding duties and other regulations of commerce existing in the same constituent territories prior to the formation of the free-trade area, or interim agreement as the case may be; and

(c) any interim agreement referred to in subparagraphs (a) and (b) shall include a plan and schedule for the formation of such a customs union or of such a free-trade area within a reasonable length of time.

8. For the purposes of this Agreement:

(b) A free-trade area shall be understood to mean a group of two or more customs territories in which the duties and other restrictive regulations of commerce (except, where necessary, those permitted under Articles XI, XII, XIII, XIV, XV and XX) are eliminated on substantially all the trade between the constituent territories in products originating in such territories.

Economic Partnership Agreements (EPAs) intend to create a free trade area (FTA) between the European Union (EU) and the African, Caribbean and Pacific Group of States (ACP) countries. The EPAs are designed to make EU trade preferences for ACP countries compatible with WTO rules. As this requires ACP countries to open their markets further, the EPAs also have a clear development dimension.

The EPAs are negotiated between the EU and seven partner regions (five in Africa, the other two in the Pacific and the Caribbean). The EPAs were initially to take effect as of 2008 but, at present, a comprehensive EPA is only in place with the CARIFORUM countries.

This study analyses the current state of affairs, provides background information on the relevant legal framework, lists the positions and the roles of key actors and reviews alternatives to EPAs.

182. Full text at http://www.wto.org/english/docs_e/legal_e/gatt47_02_e.htm#articleXXIV.
Economic Partnership Agreements (EPAs) intend to create a free trade area (FTA) between the European Union (EU) and the African, Caribbean and Pacific Group of States (ACP) countries. The EPAs are designed to make EU trade preferences for ACP countries compatible with WTO rules. As this requires ACP countries to open their markets further, the EPAs also have a clear development dimension.

The EPAs are negotiated between the EU and seven partner regions (five in Africa, the other two in the Pacific and the Caribbean). The EPAs were initially to take effect as of 2008 but, at present, a comprehensive EPA is only in place with the CARIFORUM countries.

This reader analyses the current state of affairs, provides background information on the relevant legal framework, lists the positions and the roles of key actors and reviews alternatives to EPAs.

For more information, please contact:

OPPD - Office for Promotion of Parliamentary Democracy
European Parliament - DG EXPO
60, rue Wiertz - Office WIB 03M061
1047 Brussels, Belgium
Tel +32 (0)2 284 4229
Fax +32 (0)2 284 9005
Email oppd@europarl.europa.eu
Web www.europarl.europa.eu/oppd