

Trade Negotiations Insights

From Doha to Cotonou

Vol.3 No.3
May 2004

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In This Issue

On 16 April 2004, the Caribbean Forum of ACP States (CARIFORUM) became the fourth ACP regional grouping to launch EPA negotiations with the EU. This issue of TNI highlights the negotiating priorities of CARIFORUM, provides readers with an insight into the group's negotiating structure and examines the challenges it faces. A common concern of the ACP is how to include flexibility mechanisms such as special and differential treatment in the EPAs while ensuring their WTO-compatibility. This issue also includes an analysis of how this can be achieved in the important area of services negotiations. Our usual EPA update provides a brief overview of relevant developments in trade negotiations across the ACP.

We hope our readers find this edition a stimulating and useful source of information and analysis on ACP trade issues. We welcome submissions and suggestions on future coverage.

Launch of CARIFORUM–EC Negotiations of an Economic Partnership Agreement

By Junior Lodge*

Negotiations of an Economic Partnership Agreement (EPA) between the CARIFORUM¹ and the European Communities (EC) were successfully launched in Kingston, Jamaica on the 16th of April 2004. The activities could be deemed a success in that both sides agreed on a plan and schedule that will chart the negotiations over the next three and a half years. The Joint CARIFORUM-EC Report is couched within the language of both the Cotonou Agreement and the report of the Second ACP-EC Ministerial on EPAs, held in October 2003.²

Consistency with Cotonou Agreement and the Joint ACP–EC Report

The Plan and Schedule's consistency with the provisions of both Cotonou and the Joint Report is best captured in the introduction, a section of which is quoted at length below:

"The CARIFORUM-European Community (EC) negotiation of the trade dimension of Cotonou must be both mutually reinforcing and supportive of the Partnership Agreement's political dimensions and development co-operation strategies. Pursuant to Article 37(3) of the Cotonou Agreement, the preparatory period of EPA negotiations will be used for capacity building, including measures to enhance competitiveness, strengthen regional integration and upgrade infrastructure. [...] An EPA should build upon and strengthen the regional integration process and complement and support national strategies, policies of adjustment and structural transformation. It should reflect differences among Caribbean economies by levels of development and size, especially bearing in mind Haiti's status as a Least Developed Country (LDC), and the prevalence of firms within the Caribbean region that are small by global standards."

Consistency with the Cotonou Agreement and the all African Caribbean Pacific (ACP)-EC Phase I negotiations is also found in the enumeration of the CARIFORUM negotiations' broad objectives, namely, the attainment of sustainable economic development; expression of the sovereignty of small Caribbean states in the international community consistent with their political and economic aspirations for self-determination; structural transformation of the Caribbean region that allows for the reduction of that region's acute economic vulnerability; and adjustment of Caribbean economies in a manner and at a pace that is conducive to overall economic and social development.

Complementarity and Consistency

In light of the vulnerability of the Caribbean region, one of the myriad of challenges posed by the EPA negotiations will be how to ensure that the EU delivers its commitment that these new trading arrangements will enhance market access conditions currently provided under the Cotonou Agreement.³ A further challenge is to convince the EU that consistent with the provisions of the Cotonou Agreement Article 39(2), both parties must work within the World Trade Organization (WTO) on



a common set of objectives. Major concerns relate to whether the provision on regional trade agreements (GATT Article XXIV) affords sufficient flexibility for development concerns such as special and differential treatment mechanisms, in particular to small and vulnerable states and the grand fathering of existing trade preferences.

Another of the stern challenges facing the Caribbean during EPA negotiations is how to effect the complementarity of trade, development support and political dimension that defines the Cotonou process. In numerous and recent policy documents, the EU has underscored the need for trade and development co-operation to be viewed as complementary to each other, consistent with Article 18 of the Cotonou Agreement. The Europeans have even gone so far as recognizing that trade measures must be supported by adequate development support measures if ACP countries are to experience sustainable development.⁴ Although EPAs and the discussions on a successor arrangement to the 9th European Development Funds (EDF) represent two distinct institutional settings, it remains a strategic imperative that these two processes are twinned. EPAs might be a trade agreement but they must be viewed from the Caribbean's developmental prism. The region's negotiating structure attempts to take cognisance of this strategic link between trade and development co-operation via a negotiation structure that embraces both trade negotiators and development finance experts.

CARIFORUM Negotiation Structure

In preparing for the first negotiating session encounter with the European Commission, CARIFORUM Ministers earlier agreed to both the region's negotiating structure and the phasing of EPA negotiations. Three tiers of negotiations were identified – Ministerial, Principal Negotiator and subject-specific technical experts. At the Ministerial level, Dame Billie Miller of Barbados is the region's Lead Ministerial Spokesperson. Supporting Senior Minister Miller is a troika comprised of Ministers from the Dominican Republic, Saint Lucia and Belize. The Director-General of the Caribbean Regional Negotiating Machinery (CRNM) assumes the role of the region's Principal Negotiator while the technical experts will negotiate at the third and subject-specific tier.

At first glance, the CARIFORUM negotiating structure mirrors that applied

in the Free Trade Area of the Americas (FTAA). Both negotiating arenas embrace three tiers of negotiations, with a Lead Ministerial Spokesperson, the CRNM as the Principal Negotiator and a College of Negotiators grouping the technical experts. However, the structure for EPAs differs from the FTAA in a number of respects. First, the inclusion of the Dominican Republic reflects the CARIFORUM configuration, as opposed to the FTAA where CARICOM negotiates on its own accord. Second, EPA's accent on supporting the regional integration process is reflected in the central role the regional integration secretariats (from the CARICOM and the Organisation of Eastern Caribbean States (OECS)) are expected to play in negotiations with the EC. Third, the formal negotiating structure will be shadowed by the Regional Preparatory Task Force (RPTF). This body, manned by National and Regional Authorizing Officers (NAOs and RAOs) along with representatives of regional secretariats, non-state actors (NSAs) and universities, will act as a nexus between the EPA negotiations and the development support component of Cotonou. Fourthly, the complementarity of the three pillars (trade, development and political dimensions) of the Cotonou Agreement is signalled by the appointment of the Barbadian Ambassador in Brussels as the Vice-Dean of the EPA College of Negotiators.

Assigning the post of the Principal Negotiator to the CRNM is fuelled by the recognition of two facts, (a) the highly technical nature of these negotiations, (not only in terms of the scope and complexity of modern trade negotiations, but also the incorporation of trade liberalization commitments on the part of the Caribbean) and (b) the imperative of achieving coherence in all spheres of the region's trade negotiations. The same rationale applies to the formation of the EPA College of Negotiators whose members should stem mainly from CARICOM technical experts drawn heavily from the FTAA process and complemented by their counterparts from the Dominican Republic. This group of technical experts, headed by the Principal Negotiator, will be mandated to provide the technical oversight of horizontal issues emerging during the EPA negotiations. It would have been incongruent if the region did not avail itself of services of technical experts who have worked on "new generation" trade agreements such as the FTAA. The institutional mechanism of the EPA College allows the Caribbean

to draw on the most technically competent and tested negotiators while facilitating coherence across negotiating arenas.

Participation by CARIFORUM Member States

CARIFORUM countries members were understandably and correctly insistent on the imperative of maintaining all elements of the negotiating structure open to all member states. For example, although a cluster of entities has been identified as the core members of the RPTF, all CARIFORUM countries are open to participate in all deliberations, if they deem so necessary. Caribbean member states are bent on exercising their sovereign right to participate in all tiers of the regional negotiating structure mainly in recognition of gravity of the upcoming negotiations with the EC. Concerns about the loss of fiscal revenue, erosion of tariff preferences and the impact of enhanced access to European exporters on domestic production and employment exercise the minds of policymakers. Adding to the zeal of member states to participate in the negotiations at the front seat is the fact that CARIFORUM is not a customs union with delegated supranational secretariat. All member states assume the legal responsibilities of any agreement negotiated with the EU.

In terms of coordination of policy mandates and signing off on agreements, CARIFORUM has developed a regional structure with clear reporting mechanisms. The Lead Ministerial Spokes-person on EPA will report regularly to the Prime Ministerial Sub-Committee (PMSC) on External Negotiations and the Conference on Heads of Governments – the body with final political oversight for the negotiations. Ministers meeting regularly at the Council on Trade and Economic Development (COTED) can issue recommendations to negotiators. The Principal Negotiator is also required to provide regular reports on the state of negotiations to both the PMSC on External Negotiations and COTED. The region's technical positions in the negotiations are defined at meetings of the Technical Working Groups (TWGs). These TWGs comprise officials and experts from all CARIFORUM member states, regional secretariats, non-state actors and the RNM. In addition to the EPA specific TWG, the region has benefited from subject-specific TWGs, e.g. on market access, agriculture, services and intellectual property.

The CRNM has committed itself to actively support the formation of a CARIFORUM NSA Forum on EPAs. The

emergence of such a body could provide a platform for the region's stakeholders to both consult and channel their views into the negotiations. The consultative process with NSAs would not be limited to the establishment of the Forum. Private sector groupings, trade unions and NGOs also actively participate in the meetings of the various TWGs along with the appropriate bodies of CARICOM. In Kingston, both CARIFORUM and the EC agreed to further channel NSAs input into the negotiations via the Sustainable Impact Assessment (SIA) studies. The legitimacy of EPAs would be undermined if the region's stakeholders were robbed of an opportunity to voice their legitimate concerns and bring their considerable experience to bear on the negotiations. In addition, Caribbean NSAs have amassed considerable experience in trade negotiations and are therefore well placed to contribute to the negotiation exercise.

Negotiations in Four Phases

At the first Ministerial working session, both CARIFORUM and the EC agreed on four distinct phases of negotiations:

1. Initial Phase: *Establishing the Priorities of EPA Negotiations* (04.04–09.04);
2. Second phase: *Convergence on Strategic Approach to CARIFORUM Regional Integration* (09.04–09.05);
3. Third phase: *Structuring and consolidating of EPA negotiations* (09.05–12.06);
4. Final phase: *Finalisation* (01.07–12.07).

The four phases can be collapsed into two distinct periods, *viz.* (a) a period of identifying the priorities of CARIFORUM regional integration and the requisite support measures and (b) the trade liberalisation period. From the perspective of the Caribbean, the phasing of the negotiations into these two distinct clusters is both logical and commonsensical. The form of CARIFORUM regional integration remains undefined and must be implemented before market access concessions can be granted. Furthermore, the WTO defines the base arrangements on preferences, RTAs, subsidies and services. CARIFORUM member states remain cognisant of the imperative of first establishing the institutional architecture of the multi-lateral trading system before assuming market access commitments within the ambit of EPA negotiations. All CARIFORUM Members with the notable exception of the Dominican Republic are members of the CARICOM. The Caribbean's premier

project in terms of regional integration remains the completion of the CARICOM Single Market and Economy (CSME) by 2005. Once fully implemented, CSME will facilitate the emergence of a contiguous and single economic space facilitating the free movement of goods services, capital and with notable exceptions, of persons.

Both parties to EPA negotiations agree that EPAs should support the regional integration process as defined by CARIFORUM. The orientation of the CSME has been well defined and its full implementation is being accelerated, even if the schedule date of completion might be delayed. The negotiation of an EPA gives the region its own internal platform of addressing the derogations granted to The Bahamas (permanent) and Haiti (temporary). The Caribbean project of regional integration transcends the CSME. The nature of regional integration between CARICOM and the Dominican Republic remains a political and technical challenge. In addressing this issue, the region can be guided by the CARIFORUM Regional Integration Development Strategy, Annex IV of the 9th Caribbean Regional Indicative Programme. The CARICOM-Dominican Republic FTA is yet another policy plank on which CARIFORUM can build upon. The review of the agreement, slated to be conducted later this year, provides an opportunity to the economic relations between both sides to be upgraded (for example, negotiating the provisions on services) or superseded by an EPA.

All ACP Dimension

The start of CARIFORUM-EC negotiations of an EPA does not obviate the need to retain an All-ACP structure. To the contrary, the launch of regional negotiations in four ACP regions strengthens the case for increased intra-ACP collaboration. In pursuit of this objective, the Caribbean has championed a proposal aimed at developing the ACP Follow-Up Group (FUG). At its inaugural meeting in January 2004, the Caribbean tabled proposals in terms of how this entity could become a vehicle for the articulation of common ACP positions. The Caribbean anticipates that after a period of reflection, ACP member states with understandable reservations will recognise that the FUG is an advisory body and therefore act in manner that would not seek to undermine the sovereign decision of any ACP region.

In terms of the continuation of the All-ACP process, the Troika of ACP Ambassadors and a senior European Commission official have held initial

discussions on dispute settlement mechanism and non-execution clauses. On both issues, all ACP member states and regions have voiced their concern of the EU stance. Take the example of the EU insistence that a non-execution clause not only forms an indelible element of an EPA but in case of an infringement by a member state of an ACP region, the sanctions apply to all members of that region. The ACP has firm reservation on the need to insert such a clause in a trade agreement. Furthermore, even if agreement could be struck on inserting a non-execution clause in an EPA, why should the entire ACP region be punished for the actions of one of its members? The strength of the ACP position attests to the need to retain mechanisms through which the solidarity and unity of the group can be manifestly expressed.

A final testimony of the vibrancy of intra-ACP collaboration has been the informal exchange among ACP regional organisations and member states. The Caribbean has benefited tremendously from the technical and strategic work of other ACP regions. The pooling and sharing of technical studies and policy considerations among ACP regions has greatly contributed to CARIFORUM's willingness to assume the challenges of EPA negotiations.

Endnotes

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¹ For the purposes of these negotiations, the Caribbean Forum of ACP States (CARIFORUM) comprises the following 15 countries – Antigua and Barbuda, The Bahamas, Barbados, Belize, Commonwealth of Dominica, Dominican Republic, Grenada, Guyana, Haiti, Jamaica, St. Kitts and Nevis, Saint Lucia, St. Vincent and the Grenadines, Suriname and Trinidad and Tobago.

² The Second ACP-EC Joint Ministerial reviewed the progress made during the All-ACP Phase of EPA negotiations and chartered the framework for the conduct of Phase II regional negotiations. The Joint Report (ACP/00/118/03) adopted at that meeting outlines the progress made during Phase I and also reflects agreement to establish an ACP-EC Technical Monitoring Committee.

³ Para 3.2 of Annex I on EC Directives for the negotiations of EPA with ACP countries and regions, June 17, 2002. http://www.epawatch.net/documents/doc71_1.doc

⁴ 'Trade and Development—Assisting Developing Countries to Benefit from Trade' COM (2002) 513, p. 12. <http://europa.eu.int/comm/trade/issues/global/development/pr180902.htm>

Special and Differential Treatment in Post-Cotonou Services Negotiations

By Dirk Willem te Velde*

The Cotonou Partnership Agreement (CPA), signed in 2000, allows Economic Partnership Agreements (EPAs) between the European Union (EU) and African, Caribbean and Pacific (ACP) countries to be extended to services. There are provisions in the General Agreement for Trade in Services (GATS) that could make EPAs WTO compatible while still including the possibility for flexibility (or special and differential treatment - S&D) in the case of the ACP. The CPA calls for S&D of ACP services suppliers (CPA article 41:2), so it is important to examine how to apply S&D in services negotiations in order to benefit the ACP. A new report suggests ways how this might be done.¹ Rather than focusing on the potential costs and benefits of services liberalisation in the ACP, the question addressed here is how ACP services export opportunities could be boosted by EPA services negotiations.

While ACP countries are in principle not obliged to start negotiations, the EU and the ACP did agree to extend their partnership to encompass the liberalisation of services in accordance with the provisions of GATS (CPA articles 41-43). There are further provisions for maritime services, information and communication technologies, information society, and tourism. The CPA also incorporates a reaffirmation of GATS commitments and emphasises the need for S&D for ACP suppliers of services, such as through consideration to the ACP states' priorities in the European Community (EC) schedule and through strengthening the ACP supply capacity.

The all-ACP phase 1 of EPA negotiations, which began in September 2002, concluded that services liberalisation in an EPA should be progressive, based on a positive list, adapted to the level of ACP countries and their sectors and specific constraints, and underpinned by principles of S&D, asymmetry and positive regional discrimination. The EC agreed to discuss liberalisation in mode 4 (temporary movement of natural persons) in the context of EPA negotiations (see Box). This issue is sensitive for the EU but crucial for the ACP. The EU and the ACP also agreed that support for the development of services sectors should be provided to ACP countries within the context of EPAs, but there is disagreement over the need for additional funds that can be used flexibly and rapidly (as requested by the ACP) as opposed to no additional funds (the position of the EU) beyond existing European Development Funds (EDF) commitments. Finally, while the EU argues for a GATS-plus agreement, the ACP group is unlikely to want to proceed (significantly) beyond commitments in the GATS.

Negotiating services under EPAs...

There appear to be four ways forward for EPA services negotiations:

1. No services agreement or new resources.
2. No services agreement but some S&D options, such as additional resources.
3. A limited services agreement. No ACP commitments beyond GATS but new EU commitments and inclusion of several S&D options.
4. Advanced services agreement, with both the ACP and the EU committing beyond GATS.

...Building on S&D provisions in GATS

An understanding of S&D as applied to services negotiations in GATS can provide a template for the structure of possible EPA services negotiations and also a background against which regional negotiations can take place (for ACP countries that are also WTO members). There are several S&D provisions in the GATS:

- Provisions aimed at increasing participation of developing country members in world trade, with specific attention to least developed countries (LDCs).
- Provisions under which WTO members should safeguard the interests of developing country members by carrying out assessment studies and establishing negotiating guidelines.
- Provisions that allow flexibility of commitments by developing countries, flexibility of action with regard to establishment of enquiry points and use of policy instruments, and flexibility to developing countries with respect to

services commitments in economic integration arrangements.

- Provisions specifying the use of technical assistance in developing countries.

S&D in GATS is difficult to measure, not yet fully operational and often not mandatory. Negotiations on emergency safeguard measures are also ongoing. The ACP group will be interested in the development of S&D in GATS, as it will inform their negotiations with the EU on a possible services agreement under EPAs. However, this does not preclude thinking on how S&D can be applied in EPAs before S&D negotiations in GATS have finally finished.

It is possible to 'scope in' 10 possible options for including S&D in post-Cotonou negotiations on services:

1. Financial support for services export capacity building.
2. Facilitation of the recognition of professional credentials between the EU and the ACP by setting up one-stop shops in ACP countries (e.g. establishing an ACPASS initiative similar to a recently announced EUROPASS initiative).²
3. Information centres for ACP exporters of services.
4. Increase in technology transfer to the ACP services sectors using 'home country measures' (e.g. PROINVEST, European Investment Bank (EIB) Investment Facility).
5. Full credit for autonomous ACP liberalisation of services.

GATS 4 modes

Mode 1: Cross-border supply	When a service crosses a national border. An example is the purchase of insurance or software by a consumer from a producer abroad.
Mode 2: Consumption abroad	When a consumer travels abroad to consume from the service supplier, such as in tourism, education, or health services.
Mode 3: Commercial presence	When a foreign-owned company sells services (e.g. foreign branches of banks).
Mode 4: Temporary movement of natural persons	When independent service providers or employees of a multinational firm temporarily move to another country.

6. Fewer or no services commitments by ACP-LDC countries (affirming GATS commitments).
7. EU commitments over and above GATS. This should cover more liberal mode 4 conditions (e.g. an ACP business travel card), safeguarding mode 1 supplies, and removal of restrictions in mode 3 and mode 4 in specific sectors. Lifting of some restrictions can be achieved more easily at Cotonou/EPA level than in the GATS, but EPAs should be formed under GATS article V (on Economic Integration).
8. Inclusion of (parts of) EU government procurement (e.g. health and information technology - IT).
9. Operationalisation of Emergency Safeguards Measures for the ACP.
10. Flexible implementation period (this could apply to mutual recognition of qualifications and inventories of restrictions).

Not all S&D options will benefit ACP countries equally and more detailed case studies should assess their relative importance. An examination of the possible benefits of EC liberalisation should be based on mode of delivery, sector and regulation. The benefits depend on i) which EU barriers to ACP exports in services (sectors, modes, and specific regulations) can be liberalised; and ii) the supply response of the ACP to EU liberalisation (by mode, sector, country and region), in other words, whether ACP countries are sufficiently competitive and have the capacity to supply services to the EU.

ACP trade in services

The services export capacity of the ACP is diverse across countries, sectors and modes of delivery. A simple analysis of the performance of ACP services trade finds that:

- The average share of services in GDP is 50 percent for the ACP but varies widely across countries; the share of services in total exports ranges from over 75 percent for a number of Caribbean countries (typically high because of tourism) to under five percent for several African countries.
- Despite strong growth in the value of ACP exports of services (US\$8 billion in 1980 to US\$20.8 billion in 2000), the world share of the ACP dropped from 2.4 percent in 1980 to 1.5 percent in 2000.
- In 2000, the largest eight exporters of services in the ACP group accounted for more than half of total ACP services exports. These include the Dominican Republic, Bahamas, Jamaica, Mauritius, Barbados, Kenya, Zimbabwe and Nigeria.

- For the ACP group of countries the largest export sector is travel, which accounts for more than half of all ACP services exports, followed by transport, business services and government services.
- Almost three-quarters of recorded African ACP exports of services have gone to the EU. Seven percent of extra-EU trade in services is with the ACP. Exports of services account for one-third of all ACP exports of goods and services to the EU.

ACP services export opportunities

The strength of services exports in most ACP countries lies in modes 1, 2 and 4. Mode 4 is by definition labour intensive; *vis-à-vis* the EU, the ACP has a comparative advantage in labour owing to relative labour abundance (though not necessarily in highly skilled services). However, mode 4 delivery is seriously hampered by the current EU trade regime in the form of economic-needs tests and diploma and nationality requirements, as well as outright restrictions on movement of less-skilled workers or short-term workers for ACP companies. Linking mode 4 delivery to commercial presence (mode 3), or cross-border delivery (mode 1) delivery to mode 3, constitutes further barriers to the ACP because the ACP has a comparative disadvantage in setting up a commercial presence (mode 3).

Mode 1 delivery has increased in importance owing to technical improvements in telecommunications and information networks. Bound commitments in mode 1 by the EC would safeguard cross-border ACP exports of services, but there are several unbound mode 1 commitments. Most back office service sectors have been fully committed by the EC (e.g. computer-related services CPC 84), but not all (e.g. collection, telephone answering and duplicating services). Mode 2 is the main mode of ACP supply of services and features few barriers.

Scoping possible benefits of EU liberalisation to the ACP by sector and type of regulation provides an improved insight into S&D option 7. Generally, there are EU-wide regulations (when services have been liberalised internally) and country-specific regulations, many of which involve 'beyond the border' regulations. For instance, in business services many individual member states require a university degree, professional qualifications and several years' professional experience. For construction and related engineering services, there are EC member state nationality requirements in market access under mode 3 and qualification requirements in mode 4, while mode 1 is largely unbound. The

potential for ACP exports of health services is significant. Removing restrictions in health services in modes 3 and 4 (economic-needs tests) or including it as committed sectors (as many EU health sectors are unbound or uncommitted) should help such exports. Experience suggests that removing mode 4 restrictions in recreational, cultural and sporting services, which includes economic-needs tests, main professions, and employment contracts with authorised enterprise, would facilitate ACP exports of services, including entertainment groups.

Preparation for services negotiations

In order to obtain modest gains for ACP services exports from a services agreement under EPAs, the ACP would need to table specific S&D options. Since it is potentially costly to be unprepared, and considering that this process may be a lengthy one, now is the time to begin thinking about which specific options are likely to be most effective. Moreover, certain negotiating capacities on services built up in regional negotiations could be transferable to the ongoing GATS 2000 negotiations.

The need for further capacity building will depend on which services negotiating option will be chosen. The following issues could help to prioritise services on the ACP's negotiating agenda, given the expected potential gains, at a time when several non-ACP developing countries, such as India, have also become more interested in international services negotiations. For each EPA region:

- Identify the country and sector specific effects of financial resources on ACP services productivity and export capacity.
- Identify at the country/sector level the effectiveness of the 10 S&D options listed above.
- Initiate public-private dialogue to examine which trade barriers should be lifted by the EU to trigger a supply response in the ACP.
- Initiate a mode 4 study to examine feasibility and effects of a possible ACP business travel card.

Endnotes

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¹ D.W. te Velde, I. Gillson and S. Page (2004) *Scoping Study on Special and Differential Treatment in post-Cotonou Services Negotiations*, ODI. http://www.odi.org.uk/iedg/Projects/s&d_cotonou.pdf. Comments are welcome.

² See http://europa.eu.int/comm/education/programmes/europass/index_en.html and <http://www.europass-uk.co.uk/index.html>

EPA Negotiations Update: State of Play of the Negotiations

By Melissa Julian

On 16 April 2004, countries from the Caribbean region¹ launched Economic Partnership Agreement (EPA) negotiations with the European Union (EU). Caribbean Ministers and European Commission (EC) Trade Commissioner Lamy agreed negotiating structures and a plan and schedule for the negotiations.² Caribbean and EC Principle Negotiators are scheduled to meet in May to begin elaborating the priorities of EPA negotiations.

First Meeting of Eastern and Southern Africa Regional Negotiating Forum

Following the launch of ESA-EU EPA negotiations in February, the first meeting of the Eastern and Southern Africa (ESA) Regional Negotiating Forum (RNF) was held in Mombasa on 19-21 April. The RNF is responsible for preparing briefs for the region's negotiators in EPA negotiations.³ Exchanges revealed that the levels of preparation at the national level, particularly in terms of the creation of the National Development and Trade Policy Forums, which feed into the RNF and the stage each national impact assessment study is at, vary amongst the Member States. ESA is not an homogenous region. Twelve of the sixteen Member States are least developed countries (LDCs), some countries' economies are more diversified, whereas others are dependent on only one or two commodities or sectors.

Participants also discussed funding of the national forums, coordination mechanisms with the African Union (AU) and other ACP sub-regions, the ESA road map for the negotiations and capacity building support programmes. The ESA-EC Regional Preparatory Task Force has not yet been established but the RNF agreed that the six Lead Ambassadors, plus the Secretariat servicing the RNF, should meet with the EC in May to discuss terms of reference and composition of the RPTF, which would then be subject to the approval of the RNF. The Joint EC-ESA Roadmap envisages a meeting between the Ambassadors and the EC Negotiator in July, ahead of the start of substantive negotiations in September.

West and Central African Road Maps for Negotiations Inch Towards Adoption

Since officially launching EPA negotiations in October last year, neither West nor Central Africa has formally agreed a road map for the negotiations with the EC. This is considered to be due to various political, substantive and capacity reasons. At a joint

West Africa-EC experts meeting held in Abuja on 11-14 March both sides agreed, at a technical level, the road map for EPA negotiations. The road map sets out the priorities of the region including deepening regional integration, improving competitiveness, and capacity building for the preparation and conduct of the negotiations. It also sets out the negotiating structure, operational modalities and schedule for negotiations.

On development issues, the major sticking point to date, both parties are satisfied that the agreed text ensures a sufficient development dimension to EPAs. Furthermore, there is also consensus on both sides that the development of supply capacity and implementation of actions aimed at enhancing competitiveness will be done in parallel with the strengthening of the regional integration process ahead of trade liberalisation with the EU.

The road map has been formally approved by EC Trade and Development Commissioners Pascal Lamy and Poul Nielson. West African Trade Ministers will have the opportunity to discuss it at a meeting to be held at the end of May. It remains to be seen whether Ministers will agree the nuanced text which does not explicitly call for the provision of resources additional to the current European Development Funds (EDF) (contrary to their demands). If the Ministers agree, a joint technical level meeting of the Regional Negotiating Committee could then be held in June to begin discussions on ways to support regional priorities.

In the case of Central Africa, Trade Ministers of this region met on 9 April in Libreville and adopted the road map for EPA negotiations with the EC. If EC Commissioners currently considering the text, agree and endorse it, the first meeting of the Contact Group will be held in Brussels in June 2004 to discuss the integration objectives of the region and outline a response strategy and a possible fast track support programme for funding under the regional indicative programme (RIP).

SADC to Launch EPA Negotiations on 8 July

SADC (Southern African Development Community) members who have chosen not to join the ESA framework⁴ will launch separate EPA negotiations with the EU on 8 July 2004 in Windhoek, Namibia. Trade Ministers met on 30 April to further elaborate the road map. The intention is to discuss this with the EC at technical level so that it can be formally agreed at the launch.

African Union Moves to Facilitate EPA Coordination

African Union (AU) Heads of Government in November 2003 called on the AU to play a facilitating and coordinating role in EPAs.⁵ Ultimately, the objective is to harmonise African EPAs at an AU level to ensure the widest regional integration. An AU Commission-Regional Organisations coordination meeting is scheduled to take place in Addis Ababa from 10-12 May to discuss, among other issues, a regional mechanism to improve transparency, information exchange and coordination between the AU and the EU and Regional Organisations in respect of the EPA negotiations. The African Union Commission is also holding the second Ordinary Session of the AU Ministers of Trade Conference in Kigali, Rwanda from 24-28 May 2004, where EPAs will feature prominently on the agenda.

Pacific Preparations Continue

Pacific Trade Ministers met in Port Moresby (Papua New Guinea) from 5-7 April and agreed a roadmap and procedural guidelines for regional EPA negotiations with the EC. The roadmap, yet to be jointly agreed with the EC, consists of a detailed integrated programme of activities to be undertaken in order to facilitate the region's preparations for and engagement in EPA negotiations. The official launch of Pacific-EU EPA negotiations is proposed to be held in September this year.

An important component of the road map will be the Outreach Programme, designed

to provide trade officials, non-state actors and others with information on developments relating to the EPA negotiations and the region's positions on key issues and to feed these into the negotiating process. The programme will focus on issues such as social dimensions of EPAs and the impact on specific economic sectors in the region.

Establishing Regional Preparatory Task Forces, a Priority in Regional Negotiations

An immediate priority in regional EPA negotiations is to establish Regional Preparatory Task Forces (RPTFs).⁶ The RPTFs will comprise EC and ACP officials, and will be responsible for ensuring asymmetry and proper sequencing between EPA tariff negotiations and regional integration activities and capacity building supported with Cotonou development resources so that ACP countries can benefit from trade liberalisation under EPAs. Establishing the RPTFs is particularly urgent because there are some important EU and ACP-EU debates in 2004 that will have a potentially profound impact on ACP development cooperation, EPAs and the crucial link between the two.⁷

All-ACP Level Discussions

The all-ACP-EC phase of EPA negotiations concluded at the end of March 2004 without reaching agreement on any of the outstanding issues. The ACP Council of Ministers will be asked to extend the all-ACP-EC phase.

ACP Ambassadors met with senior EC officials on 25 March to discuss dispute settlement issues and the non-execution clause, but failed to bridge their differences.⁸

The second meeting of the ACP Technical Follow-up Group for Phase II EPA negotiations, scheduled for April, was postponed. As a pragmatic alternative, likeminded regional groups are consulting informally amongst themselves on preparations and strategic approaches towards EPA negotiations.

ACP discussions continued on the group's submission to the EC's consultation on EU rules of origin applied under its preferential trade arrangements. Some ACP members expressed concern that their participation in this process would be considered by the EC as a replacement for negotiations on this issue under EPAs in 2005, in tandem with tariff reduction negotiations. The ACP submitted preliminary views to the EC consultation stating clearly that they are without prejudice to EPA negotiations.⁹ Three additional

meetings of the rules of origin experts group are anticipated, the next one in June.

EPA progress reports will be presented to the ACP and ACP-EU Councils to be held in Gaborone from 3-7 May (as TNI goes to press).¹⁰ Ministers are expected to call for additional EDF funding for EPAs and to postpone from 2004 to 2006 the review anticipated in the Cotonou Agreement of the situation of non-LDCs that are not in a position to enter into EPAs.

WTO Dimension

Clearly, EPA negotiations are complicated by the stalled WTO Doha Development Negotiations and the subsequent absence of a clear multilateral reference (on issues such as special and differentiated treatment and subsidies). Some trade experts anticipate that the recent interim ruling by a WTO panel that US subsidies to its cotton farmers are incompatible with certain WTO rules¹¹ may encourage the initiation of similar challenges against subsidies maintained by developed countries.¹² This, they argue, could strengthen the hands of developing country trade negotiators calling for the elimination of agriculture subsidies in various negotiating fora. Furthermore, a WTO Appellate Body has recently held that WTO rules (i.e. the Enabling Clause) allow for differentiation between developing countries in non-reciprocal trade preference schemes, provided that such arrangements are based on objective criteria and identical treatment and are available to all similarly situated developing countries. This decision may also set an important precedent for (future) ACP preferences.¹³

Endnotes

¹ Antigua and Barbuda, The Bahamas, Barbados, Belize, Commonwealth of Dominica, Dominican Republic, Grenada, Guyana, Haiti, Jamaica, St. Kitts and Nevis, Saint Lucia, St. Vincent and the Grenadines, Suriname, and Trinidad and Tobago.

² For more information, see the article on the Caribbean-EU EPA negotiations in this issue, as well as www.crn.org and http://europa.eu.int/comm/trade/issues/bilateral/regions/acp/acp_caraib_en.htm.

³ See "Perspectives for EPA Negotiations: Challenges for the Eastern and Southern African Region" by Mark Pearson in the March 2004 issue of TNI (vol.3, no.2).

⁴ This includes Angola, Botswana, Lesotho, Mozambique, Namibia, Swaziland and Tanzania. South Africa is an observer in the SADC-EU negotiating process.

⁵ See www.africa-union.org.

⁶ For the ESA region, it is a little different as they have a structure already in place, the Inter-Regional Co-ordinating Committee (IRCC) which ensures coordination between COMESA, EAC, IOC and IGAD and which could serve the function of a RPTF.

⁷ See EPA Negotiations Update in the March 2004 issue of TNI (vol.3, no.2).

⁸ For more information, see the article by Junior Lodge in this issue.

⁹ See www.europa.eu.int/comm/taxation_customs/customs/consultations_en.htm.

¹⁰ See www.acpsec.org/gaborone/gaborone-en.htm

¹¹ As TNI goes to press, the report is officially still confidential as it was only issued to the parties. At the end of April, the main substance of the panel's ruling against the US cotton subsidies was already widely cited in the press. For background documents on this case see US-Subsidies on Upland Cotton (WT/DS267/16) available at <http://docsonline.wto.org>.

¹² For more reactions on the impact of this interim ruling see Bridges Weekly, 28 April 2004, available at <http://www.ictsd.org/weekly/04-04-28/story1.htm>

¹³ See Appellate Body Report, European Communities - Conditions for the Granting of Tariff Preferences to Developing Countries (WT/DS246/10) available at <http://docsonline.wto.org>

Trade Negotiations Insights

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This bimonthly publication is made possible through the financial contribution of the Government of the United Kingdom (DFID) and the Swiss Development Cooperation (SDC).

Trade Negotiations Insights ©
ISSN 1682-6744

Calendar

WTO Events

17-18 May	General Council
17-19 May	Textiles Monitoring Body
19 May	Dispute Settlement Body
24-25 May	Special Session of the Dispute Settlement Body
25-27 May	WTO Public Symposium 2004
28 May	Special Session of the Dispute Settlement Body
2-4 June	Special Session of the Committee on Agriculture
7 June	Sub-Committee on Least-Developed Countries
15-17 June	Council for Trade-Related Aspects of Intellectual Property Rights
17 June	Committee on Agriculture
21 June	Committee on Market Access
22 June	Special Session of the Committee on Trade and Environment
22 June	Dispute Settlement Body
23-25 June	Special Session of the Committee on Agriculture
23-24 June	Services Meeting
25 June	Council for Trade in Services
25 June	Working Party on the Accession of Algeria
28 & 30 June	Trade Policy Review Body – Benin/Burkina Faso/Mali
28 June	Special Session of the Council for Trade in Services
29 June	Technical Barriers to Trade – Dedicated Session
2 July	Special Session of the Council for Trade in Services
5 July	Council for Trade in Goods
6-8 July	Textiles Monitoring Body
14-15 July	Special Session of the Committee on Agriculture
19 July	Special Session of the Committee on Trade and Development

ACP-EU Events

21-24 June	4th ACP Heads of Government Summit, Maputo, Mozambique
8 July	SADC-EC EPA launch, Windhoek, Namibia
September	Pacific-EU EPA launch (tbd)
20-25 Nov.	ACP-EU Joint Parliamentary Assembly, The Hague, Netherlands

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Resources

- UNCTAD Launches UNCTAD XI website: www.unctadxi.org
- MERCOSUR's Experiences of Building Capacity for Trade Negotiations with the EU. By Roberto Bouzas (ECDPM Discussion Paper 50) (2004). <http://www.ecdpm.org/dp50>
- A strong cocktail or a weak punch? A case study of EDF assistance to the ACP private sector. By Adam Dunlop (ECDPM Discussion Paper 52) (2004). <http://www.ecdpm.org/dp52>
- Making Economic Partnership Agreements work for Development in Southern Africa. By Rob Davies MP and Dr Paul Goodison. (Tralac, 2004). <http://www.tralac.org/scripts/content.php?id=2477>
- Banana Wars - The Price of Free Trade: A Caribbean Perspective. By Gordon Myers (Zed Books, 2004). <http://zedweb.cybergecko.net/cgi-bin/a.cgi?1%2084277%20452%202>
- World Trade 2003, Prospects for 2004. By WTO. (April 2004). http://www.wto.org/english/news_e/pres04_e/pr373_e.htm
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- New ACP-EU Trade Arrangements: New Barriers to Eradicating Poverty? By Eurostep and partner organisations in ACP Countries. (March 2004). http://www.eurostep.org/pubs/trade_study.pdf
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- Income Volatility in Small and Developing Economies: Export Concentration Matters. By WTO. (2004). http://www.wto.org/english/res_e/booksp_e/dis03_e.pdf
- The Puzzle of WTO Safeguards and Regional Trade Agreements. By Joost Pauwelyn. (January 2004). Journal of International Economic Law 7 (1, 2004) pp. 109-142. <http://www3.oup.co.uk/jielaw/>
- Globalisation and Africa's Economic Recovery: A Case Study of the European Union-South Africa Post-Apartheid Trading Regime. By Richard Gibb, Journal of Southern African Studies, Volume 29, Number 4, (December 2003) <http://www.id21.org/zinter/id21zinter.exe?a=0&i=s7brg1g1&u=404d9034>

All WTO meetings take place in Geneva. Please contact the Secretariat for confirmation of dates (also available at <http://www.ictsd.org/cal/>).

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