

# Trade Negotiations Insights

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## EPA deals as stepping stones or stumbling blocks?

San Bilal<sup>1</sup>

The start of 2008 marked the quiet death of over 30 years of Lomé/Cotonou preferences, and yet most ACP countries did not lose their privileged access to European markets. On the contrary, many actually increased it, at least in nominal terms. By signing interim deals - and one full EPA in the case of the Caribbean - or by falling back on the 'Everything but Arms' scheme available to least developed countries (LDCs), 99.5% of ACP exports to the EU are now exempt from duties or quotas. All this and apparent compliance with WTO rules: should it not be cause to rejoice? (See Box 1). At least the EU and several ACP countries think so. But why then, are so many still worried? Why has there been so much criticism of what was agreed at the end of last year?<sup>2</sup>

### Stepping-stone deals

Both the EU and the ACP share the same desire to negotiate EPAs that are first and foremost tools for development, building on and strengthening the regional integration process. Yet although this objective was fixed with the signature of the Cotonou Agreement in 2000, and EPA negotiations began two years later, by the end of 2007, no satisfactory outcome was in sight for most of the ACP (with the notable exception of the Caribbean which, after last-minute reservations and second-thoughts, finally agreed to conclude a full EPA). With the EU's repeated pledge to abide by WTO rules and its refusal to contemplate any extension of the Cotonou preferences, the December 31 deadline became daunting.

By concluding WTO-compatible interim free-trade deals, which provide for the liberalisation of 'substantially all trade' over a reasonable time period (unilaterally defined by the European Commission as at least 80% of ACP imports from Europe over 15 years), the risk that some ACP countries - notably (but not only) non-LDCs - would lose some of their preferential EU market access was removed. For most, a smooth, undisrupted trade transition to 2008 was guaranteed.<sup>3</sup> Free from the pressure to meet WTO commitments, the parties can now continue negotiations towards more comprehensive EPAs, based on their initial development objectives. In the eyes of Europe, interim deals are stepping stones towards full EPAs, designed not only to preserve, but to extend ACP preferences from 2008 onwards.



*Both parties must now build on what was agreed, strengthening ACP regional integration and promoting development.*

## Editorial

As the dawn of 2008 breaks on the negotiations between the ACP and the EU, we see an unfinished picture of the Economic Partnership Agreements. By the beginning of January, the Caribbean region had signed a full EPA deal and another 20 ACP countries had initialled interim agreements, while 43 countries did not want - or were unable - to sign up to anything at all.

It therefore seems as if the first challenge facing the ACP is to examine and understand what was agreed with the Europeans and to deduce what this will mean in practice. For the Caribbean, this will mean scrutinising the texts which were signed and trying to ascertain how significant the content is in terms of boosting development and building regional integration. It will mean looking at the implications of the EPAs for the private sector and how they can take advantage of what was signed.

Given that the Caribbean was the only region to give the green light to a full EPA we thought it was important to dedicate significant TNI column space to garnering initial reactions. Thus, Junior Lodge, a linchpin in the negotiations with the EU, reflects on the rationale, strategy and content of the deal, while Sacha Silva focuses firmly on the market access offer.

For those countries and regions that initialled interim deals, the quest for this year will be to continue negotiating and to move towards full agreements. At least this is the official rhetoric, strongly advocated by the European Commission. Whether or not ACP countries will want to return to the negotiating table to effectively conclude a full EPA is another matter completely. Over the next few weeks and months the ACP will have to decide whether the agreements are inherently beneficial or not. It will be a balancing act to try to grasp the dynamics of the agreements and what it will mean to implement them.

Part of the EU's own balancing act will be to draw those countries who were not interested in signing up to EPAs before December back into the game. In an exclusive interview with DG Development Commissioner Louis Michel, TNI posed some of the questions on everyone's lips, in a bid to get to the bottom of how the EU sees the development aspect of EPAs playing out. From the other side of the negotiating table, ACP Secretary General Sir John Kaputin voices his thoughts on the entire process of the negotiations and what he envisions for the future.

San Bilal opens the first issue of the year with a view to the future. Will the interim EPAs prove to be stepping stones to fuller trade pacts or will the deals cause more harm than good, seriously damaging the prospects for development? Many of these questions can only be answered after the oratory and promises turn into actual deeds. TNI is committed to following the implementation process of the EPAs, reporting on the issues in the regions and giving a platform to all those who have research and analysis to share.

This year, more than at any previous time, we encourage readers to contribute to TNI. And not only on matters relating to the EPAs. Broader trade and development considerations, as well as regional integration processes are at the core of the ACP approach. In parallel, the Doha Round of multilateral trade negotiations will continue this year and it is important that any progress is also reflected in our pages. So if you want to detail your experiences, outline your hopes and fears, or simply pose the question that no one else appears to have asked, send an email to [vhanson@ictsd.ch](mailto:vhanson@ictsd.ch)

*Enjoy the February issue of TNI.*

## No easy task

Reaching development-oriented agreements without arbitrary time pressure is an attractive prospect. But this is no easy task, as the 2008 negotiations will likely show. As such, the promised land of EPAs may remain an unattainable goal.

Separate deals with individual states or groups of countries have effectively split ACP regions and have caused much tension between neighbours. Only the European Commission seems to have the audacity to claim otherwise.<sup>4</sup> The interim deals may have set precedents, unfortunately not necessarily positive ones.

The East African Community (EAC) concluded an agreement independently of the Eastern and Southern Africa (ESA) group. Not surprisingly, tensions have surfaced after the EAC suggested it might once again join the ESA grouping to negotiate a full EPA. This does not necessarily create technical difficulties (the texts of the interim deals are very similar), but the solidarity and unity of the region is undoubtedly bruised.

More serious, is the divide in Central and West Africa. Cameroon, Ghana and the Ivory Coast concluded interim deals out of fear at losing access to European markets. But they were given no support from their respective regional groupings - not even at the technical level - to conclude better deals. On the contrary, they stand accused of compromising regional solidarity. CEMAC and UEMOA are established customs unions, while ECOWAS is a customs union in the making. This means that member countries are supposed to adopt a single external trade regime. Here, the challenge will be to move from country specific deals to regional ones.

## The tricky leap from country to regional liberalisation schedules

Let's first of all consider market access. Identifying a common tariff liberalisation schedule acceptable to all regional partners is likely to be a difficult process, particularly if this schedule is to be based on what was signed by an individual country in its interim agreement. For example, the Ivory Coast has an exclusion list which covers 19.2% of its trade with the EU. However, looking at its list of sensitive products at the regional level, it is clear that the exclusions amount to much more than the 20% acceptable to the European Commission. The same applies for Cameroon and Ghana, whose individual exclusion lists cover 20% and 19.5% of their imports from the EU respectively.

Therefore, either the European Commission has to show unprecedented flexibility by lowering the threshold to less than 80% of trade liberalisation (which several ACP negotiators and experts have been calling for), or some products must be excluded from their individual country list of sensitive products to accommodate those of regional partners (which might not be well received by the private sector in those countries that have concluded interim deals). In the case of West Africa, matters are complicated further by the fact that the liberalisation schedules for the Ivory Coast and Ghana differ.

Reaching a consensus is doomed to create further regional tensions, heightened by the *fait accompli* of having signed interim deals.

## Interim texts carved in stone?

As for the challenge of moving from interim and often country-specific texts, to full regional EPAs, the immediate issue concerns the status of the interim agreements. The European Commission has suggested that these agreements should be open to alteration. Indeed, some interim deals, such as those in Central and West Africa, contain explicit provisions to allow adjustment at the regional level, while others, such as Namibia's, contain annexed declarations for amendments. The plan is for interim deals to form the basis of full EPAs, subject to changes and additions negotiated in 2008 or beyond. But the extent to which these interim deals can be revised remains undetermined. Recent declarations by European Trade Commissioner Peter Mandelson suggest that he does not want to reopen and renegotiate interim deals.<sup>5</sup> This raises two main points of concern:

First, some ACP negotiators have been able to extract better concessions or more favourable deals than others. While it would not make sense for all EPAs to be the same, given their need to reflect specific national and regional interests, the European Commission should not seek to discriminate against certain ACP countries or groupings. Thus, it would seem appropriate that any ACP country or region that so desires, should be allowed to import any provision agreed to by the EU in another interim or full EPA, into its own final EPA.

### Box 1. No compliance to the letter of the WTO rules

It is regrettable, and somewhat ironic, that the European Commission insisted on concluding interim and full EPA deals before the end of 2007 to meet WTO requirements, but has not yet complied with these WTO obligations. By unilaterally starting to implement these agreements without prior notification to the WTO, the EU is in stark violation of GATT Article XXIV on regional agreements and the related WTO decision on transparency procedures. Under these rules, it should have notified the WTO by January 1 2008.

Second, most interim deals were concluded in haste and therefore modifications should be allowed after re-negotiation. More importantly, some of the texts for interim deals were tabled by the European Commission just a few weeks (as was the case for ESA and EAC) and in some cases a few days (Cameroon, Ghana and Ivory Coast) before the deadline for conclusion. These proposals did not reflect prior negotiations with the regional groupings concerned, and only marginal fine-tuning was agreed.

At the time, the Commission's argument was that these Agreements were primarily aimed at safeguarding EU market access and that negotiations would continue in 2008. Several countries concluded deals on this principle, taking into account strategic political and economic considerations, without having the correct technical assessment and input needed. Should the European Commission refuse any request to reconsider some provisions, it would be a fatal blow to the notion that EPAs are based on equal partnerships.

### Momentum for the negotiations

Negotiations are set to continue and should be concluded in 2008 or beyond. The European Commission has the mandate to wrap up full EPAs and it intends to do so. None of their ACP partners have so far renounced this objective. But what is the likelihood of success?

Before any country can address services liberalisation and trade-related issues in a full EPA, it must first identify where its interests lie. They will then have to ascertain a common regional position. For those countries that have already committed to an interim trade deal, the market access bargaining-chip is lost, which may further weaken their stance vis-à-vis the EU. This is a point well understood by the Caribbean, which ruled out an interim deal for the very same reason.<sup>6</sup>

However, some LDCs may find the duty-and-quota free market access under EBA a suitable trade regime to continue exporting to Europe (despite the less favourable rules of origin), and may have no appetite to pursue a broader trade-related agenda. Apparently, this is the current position of Senegal, where President Wade has repeatedly called for a development partnership agreement to replace the EPA initially proposed.

Where differences of opinion prevail in a region, it is possible that a full EPA would contain both regional provisions that would be applied to all members in the group, and country specific ones (for instance on services or investment) that would be applied on an individual basis.

However, if the status quo in some countries prevails and regional partners continue to hold significantly different positions, the regional integration process could be seriously jeopardised. Regional cooperation and the dynamic of further integration would be interrupted: Customs Unions may be unable to apply the same Common External Tariff (CET); new border controls would be required; heterogeneous rules of origin might thwart production integration and political tensions would be sparked across the region.

Still, preserving regional unity is not a sufficient argument to continue negotiations and conclude full EPAs. Strategic considerations on development should determine whether an EPA should be signed, and if so, what that Agreement should entail.

### Principles for moving forward in 2008

The conclusion of full and interim EPAs have made some happy. But the process by which this result was achieved has been a grave cause for concern. Although the European Commission denies having exerted any pressure, there are plenty of ACP accounts to the contrary.<sup>7</sup> The ACP Council of Ministers last December "deplore[d] the enormous pressure that has been brought to bear on the ACP States by the European Commission to initial the interim trade arrangements, contrary to the spirit of the ACP-EU partnership,"<sup>8</sup> in a process characterised by the ACP Secretary General Sir John Kaputin as "fraught with panic, confusion and disagreements."<sup>9</sup> Many ACP Heads of States and Ministers have publicly expressed their disquiet over these EPA negotiations.<sup>10</sup> Even Commissioner Mandelson came to acknowledge that "the last

months of 2007 were difficult" and that "some good relationships [...] have been strained."<sup>11</sup>

The first challenge is thus to mend bruised feelings, restore some confidence and build a true partnership. To that end, positive rhetoric will not suffice. Principles and actions must join forces. These should include, *inter alia*:

- Making a fair and objective assessment of the content of the interim deals (the full EPA for the Caribbean), and the process by which such results have been achieved;
- Learning from the past, notably in terms of negotiation asymmetry, capacity, political and technical ownership, negotiation strategies, regional cohesion, development constraints and objectives;
- Setting a clear agenda and calendar for the negotiations, acceptable to both partners, which does not leave contentious or difficult issues until the end;
- Adopting and promoting more transparency in the negotiations and their outcome, as well as a more participatory approach;
- Respecting regional and national ACP interests, based on the principle of ownership, including the scope of issues to be covered in a full EPA;
- Allowing the possibility to adjust and revise interim deals as appropriate, including permission to adopt provisions granted under one EPA deal in another EPA deal if so desired;
- Committing to prepare, facilitate, support and monitor the implementation of EPAs. This should include binding commitments to support EPA adjustments and accompanying measures in the ACP to facilitate the implementation process; and;
- A commitment from the EU not to exert any pressure on ACP countries or regions to conclude EPAs, notably through not tying them to aid-for-trade.<sup>12</sup>

In doing so, negotiators and policy makers should remember that an EPA is not an end in itself, but should only be designed as a means to promote broader development objectives. As the Caribbean will soon experience, the real challenge is not to negotiate an EPA, but to implement it, making sure that it effectively delivers on its development promises.

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<sup>2</sup> This criticism doesn't only come from ill-informed NGOs, as EU Trade Commissioner Peter Mandelson has claimed.

<sup>3</sup> This is not true for all though, as non-LDCs Congo, Gabon and Nigeria in Africa, and seven Pacific islands (Cook Islands, Federated States of Micronesia, Nauru, Niue, Palau, Marshall Islands and Tonga) which did not conclude interim deals face higher barriers to the EU market in 2008 under the standard EU generalised system of preferences (GSP).

<sup>4</sup> In his remarks to the Development Committee of the European Parliament, Peter Mandelson argued that "I do not, however, share the view of some that the decision by some ACP to sign individual agreements will obstruct regional integration. The opposite is more likely to be the case." [http://ec.europa.eu/commission\\_barroso/mandelson/speeches\\_articles/spm190\\_en.htm](http://ec.europa.eu/commission_barroso/mandelson/speeches_articles/spm190_en.htm)

<sup>5</sup> See IPS news at [www.ipsnews.net/news.asp?idnews=40974](http://www.ipsnews.net/news.asp?idnews=40974)

<sup>6</sup> See declarations by the Caribbean Chief Negotiator Dr Richard Bernal, <http://jamaica-gleaner.com/gleaner/20080104/business/business4.html>

<sup>7</sup> See interview by the European Commissioner for Development Louis Michel in this issue and DG Trade. Statements are available at [http://ec.europa.eu/trade/issues/bilateral/regions/acp/pr280108\\_en.htm](http://ec.europa.eu/trade/issues/bilateral/regions/acp/pr280108_en.htm)

<sup>8</sup> Declaration of the ACP Council of Ministers at its 86th Session Expressing Serious Concerns on the Status of the Negotiations of the Economic Partnerships Agreements, ACP/25/013/07, December 13 2007, [www.acp.int/en/com/86/ACP2501307\\_declaration\\_e.pdf](http://www.acp.int/en/com/86/ACP2501307_declaration_e.pdf)

<sup>9</sup> See interview in this issue.

<sup>10</sup> The Ministerial Committee of ECOWAS of December 17 2007 similarly "deplored the pressure being exerted by the European Commission", whereas Guyana President Bharrat Jagdeo said the EU planned "to bully the countries into meeting the deadlines" (*Stabroek* news, January 1 2008, [www.stabroeknews.com/index.pl/article?id=56536297](http://www.stabroeknews.com/index.pl/article?id=56536297))

<sup>11</sup> [http://ec.europa.eu/commission\\_barroso/mandelson/speeches\\_articles/spm190\\_en.htm](http://ec.europa.eu/commission_barroso/mandelson/speeches_articles/spm190_en.htm)

<sup>12</sup> Although the European Commission has clearly stated that development finance is not conditional on the signing of an EPA (see note 5 above), several ACP negotiators and officials have reported that in practice (notably through European Commission delegations at country level, but also high-level political encounters), promises of more aid for trade support were made to ACP countries and regions that would agree to a common agenda with the EU by concluding an EPA.

# Interview

Throughout the EPA negotiations much media attention has been focused purely on the trade aspect of the deals, looking at market access demands and what results might mean in economic terms. But the EPAs were conceived first and foremost as tools for development. Here, EU Development Commissioner Louis Michel considers the hot issues and looks at the potential of the EPAs to encourage progress.

## An interview with Louis Michel European Commissioner for Development and Humanitarian aid



Source: DG Development,  
European Commission.

### **TNI: What is the development dimension of EPAs?**

LM: Let's start with a simple observation : the ACP countries' share of imports to the European Union (EU) has fallen from 7% to 3% since 1975. However, during the same period, the Lomé and Cotonou Agreements made it possible for 97% of exports from these countries to enter the EU free of customs duty. On the other hand, some Asian countries, like China and South Korea, have shown spectacular growth over this period, due partly to the dynamism of their exports to the EU, without benefitting from a similarly advantageous trading regime.

We have therefore reacted to the constraints imposed by WTO rules and replaced the Cotonou regime by Economic Partnership Agreements (EPAs) in order to allow the ACP countries to develop their industries. In a globalised world, isolation is not an option; the Cotonou regime was a kind of isolation, sheltering beneath an umbrella of tariff preferences which may have led to a belief in certain quarters that it was possible for countries to develop without trading with their natural partners: their neighbours, since regional trade has such major economic development potential. The liberalisation we are offering is a highly controlled and asymmetrical liberalisation which will give the ACP the necessary room to manoeuvre in developing their economies.

One example is the rules of origin. The EPA rules of origin are more favourable than those in the Cotonou Agreement. In the case of textiles, for example, and to put it in basic terms, a 'simple transformation' in an ACP country, rather than the previous 'double transformation', will be sufficient for a product to be recognised by the EU as originating within that ACP country. This is one of the reasons why a country like Madagascar, an Least Developed Country (LDC) which already benefits from free access to the European market by virtue of 'Everything but Arms', has decided to go along the EPA route. This country, where textile production is not competitive, will thus be able to develop its industry with the aid of imported cloth, creating domestic wealth and jobs. The Caribbean countries have made the same calculations and they also cite the example of the biscuits they will be able to make with flour imported from third countries and which they can then export to the EU without paying customs duties, as is permitted under the terms of the EPA.

### **TNI: How can EPAs build on the development cooperation aspect of the Cotonou Agreement?**

LM: EPAs are intended to be more effective than the Cotonou Agreement's simple tariff preferences in attaining the

ultimate objective, which obviously continues to be the development of the ACP countries. The Cotonou text states that the aim of economic and trade cooperation is "fostering the smooth and gradual integration of the ACP States into the world economy, with due regard for their political choices and development priorities, thereby promoting their sustainable development and contributing to poverty eradication in the ACP countries". It is for this reason that all EPAs include a chapter on development that sets out in detail the needs of the signatory countries in terms of trade assistance and how the EU will respond to these. We will work particularly within the area of compensation for net fiscal losses.

### **TNI: How will the Regional and National Indicative Programmes (RIPs and NIPs) of the European Development Fund (EDF) support the implementation of each EPA signed? Will this support also be available to those regions and countries that have not signed an EPA?**

We should begin by recalling that the sums allocated to the EDF are considerable (10th EDF: €23 billion) and these are given out in the form of subsidies and gift aid and are not repayable loans.

One of our objectives in programming the 10th EDF was to ensure that our ACP partners meet trading challenges in their development strategies. This objective has been realised: 31 out of the 51 National Indicative Programmes (NIPs) adopted in 2007 include a substantial chapter on trade and regional integration; in all, the volume of trade assistance in the NIPs adopted so far adds up to approximately €3.5 billion: around €3 billion for economic infrastructure and €576 million for trade/EPA and productive sectors - this is three times the amount under the 9th EDF.

Secondly, we must emphasise that the countries which have not signed an EPA have not been 'penalised' : they will benefit from the same financing within the EDF framework. This financing is allocated on the basis of development criteria which are **independent** of the position they take in relation to EPAs.

### **TNI: Will there be additional financing beyond the EDF to accompany EPAs? How does this link up with the Aid for Trade Strategy and the commitments undertaken by Europe in the Paris Declaration on Aid Effectiveness?**

LM: This is a question I am often asked. I have to say that as far as the EDF and the Commission are concerned, there will be no further financing. Any additional funding will have to

come from member states, and no doubt from other funding agencies. In October 2007 member states undertook to make available €1 billion of trade aid to ACP countries in 2010. I also believe that other donor agencies have an interest in supporting the process of regional integration that EPAs will foster. We should not forget that EPAs form part of an agenda of regional integration that pre-dates them and which is supported by Regional Economic Communities such as SADC and CEDEAO. All funding agencies should be aware of this because, in addition to the potentially large economic payoff, **regional integration has major political benefits**. The European example of reconciliation based on economic development is an exceptional case in point. Its political scope may serve as an example of regional integration to other continents, particularly those regions which have experienced - or which are now experiencing - conflicts that may be long-lasting and extremely painful. Regional integration is in itself a first step towards reconciliation and will enable further milestones to be placed along the route to closer cooperation.

**TNI: How does the Commission plan to monitor the development aspect of the EPAs? Have any concrete deadlines been set for this?**

The monitoring of the Agreements is very important. Actors within civil society, member states and the ACP countries themselves are keenly aware of this. This is why monitoring features specifically in the texts of the EPAs. For example, the agreement with East Africa sets out that this follow-up will be carried out on the basis of jointly-agreed indicators. But since the EPAs will not bring about immediate changes in the signatory countries over the coming months, we will carry out a 'pre-monitoring' exercise and we will continue to lay the ground for the implementation of the EPAs within the framework of regional aid programming and Regional Indicative Programmes. We are in the process of identifying the measures necessary to ensure that the ACP countries will be able to derive the greatest possible benefit from the economic opportunities offered by EPAs.

**TNI: Which elements in the EPA deal reinforce regional integration?**

LM: The EU is neutral on the composition of areas of regional integration. These are sovereign decisions to be taken by ACP States. The EU supports ACP regional integration because of the benefits it brings and is in favour of practical solutions.

However, it would be untrue to say that by signing interim EPAs with individual countries, the EU has destroyed efforts towards regional integration. The commitment of the ACP and the EU to regional integration and to the creation of regional markets between ACP countries remains unchanged.

The EU and the Caribbean countries entered into a full regional EPA in December 2007. This is the best example of reinforcement of regional integration. With regard to other ACP regions, the priority for the 22 ACP countries which are not LDCs has been to preserve their access to the European market (they would otherwise risk an increase in customs duties from January 1 2008 because they do not benefit from the EU's 'Everything but Arms' initiative).

Interim EPAs do not merely avoid this risk but should also specifically enable negotiations towards full regional EPAs to go forward.

**TNI: What is the Commission's response to the concern expressed by the ACP Ministers who "deplore the enormous**

**pressure that has been brought to bear on the ACP States by the European Commission to initial the interim trade arrangements, contrary to the spirit of the ACP-EU partnership"?<sup>1</sup> How does the Commission plan to restore confidence and bring countries like Senegal back to the negotiating table?**

LM: First of all, I must assure you that the climate of trust which exists between the European Union and our African partners, including Senegal, has at no time been eroded. We are continuing the process of dialogue, and as in any discussion, we have to accept that some differences of opinion may exist. The President of Senegal, Mr. Wade, has expressed fears concerning the effect that EPAs might have on some economies, even if his own country is not affected by the EPAs since it continues to benefit from the 'Everything but Arms' initiative. Some professional Cassandras even predicted that disaster would ensue on January 1 2008; but this did not happen!

I very much regret that certain people have talked about "pressure" being brought to bear on the ACP with a view to signing Partnership Agreements. The ACP countries have not been forced to enter into interim EPAs under pressure from the European Commission. The EU and Africa were both faced with a common constraint: the Cotonou Agreement trading regime was ruled illegal in 2000. It had to be replaced by a regime that conformed to the rules of the World Trade Organisation, and this had to be done before December 31 2007, when the Cotonou derogation granted by the WTO expired.

The countries which signed interim agreements recognised that they had to do so in order to participate in the multilateral trade regime proposed by the WTO, and indeed they expressed clearly their strong support for the aims of the agreements and their willingness to enter into full regional EPAs in 2008.

**TNI: How does the Commission plan to ensure that European aid will be available to support EPAs and not be used as a tool to encourage reluctant ACP countries to support the deals?**

LM: As I have said, the EU has never made the granting of trade aid conditional on signing up to an EPA. At the EU-Africa Summit in Lisbon in December 2007, the Commission signed 'country strategy papers' with 31 African countries, which allocate €8 billion from the 10th EDF over the period 2008-2013. Half the signatory countries to these documents have not signed EPAs. As for regional aid, it will certainly reinforce ACP regional integration, but its programming guidelines do not require the signing of an EPA.

**TNI: What is the agenda and date of the meeting with the African Heads of State proposed at the Lisbon Summit by the President of the European Commission, Jose Manuel Barroso?**

LM: At the EU-Africa Summit, the President of the European Commission, Mr. Barroso proposed that political dialogue on the issue of EPAs should be pursued at the highest level with the different regions involved in 2008. At the present time no date has yet been fixed for these meetings. However, bilateral contacts with our African partners are continuing.

<sup>1</sup> Declaration of the ACP Council of Ministers at its 86th Session Expressing Serious Concerns on the Status of the Negotiations of the Economic Partnerships Agreements, ACP/25/013/07, December 13 2007, [www.acp.int/en/com/86/ACP2501307\\_declaration\\_e.pdf](http://www.acp.int/en/com/86/ACP2501307_declaration_e.pdf)

# CARIFORUM EPA negotiations: an initial reflection

Junior Lodge<sup>1</sup>

After three and half years of negotiations, CARIFORUM and the European Commission finally concluded a comprehensive Economic Partnership Agreement on December 16, 2007. An EPA constitutes new territory in a number of respects, but three are most notable. First, it is a GATT Article XXIV-consistent Free Trade Agreement and thereby represents a radical departure from the Lomé/Cotonou paradigm of non-reciprocal market access. Second, the range of technical disciplines on which commitments are assumed is comprehensive and not confined to tariff liberalisation. Third, the EPA recognises regional integration as a pro-development tool and therefore applies CARIFORUM-wide commitments.

## CARIFORUM rationale for a comprehensive EPA

Before enumerating the most salient features of the CARIFORUM EPA, it might be useful to sketch the region's motivation for agreeing to this modern trade and development compact. First, CARIFORUM needed to bind current levels of EU preferences and immunise such preferences from WTO litigation. The recent spate of challenges to the EU's preferential regimes for sugar and bananas under the Dispute Settlement Understanding strengthened the need to secure the existing EU preferences to ACP countries. Second, as trade dependent economies, CARIFORUM states need to improve their access to the EU market - the world's largest regional bloc and a longstanding trading partner. All CARIFORUM States, except Guyana and Suriname, have a service sector that is the most significant contributor to GDP. Preferential access to the EU services market was therefore a prime requirement to drive increased growth of Caribbean economies.

Third, the combination of preference erosion and secular decline in agricultural prices compels the region to diversify its export base and capture greater value from its exportables. In 2005, the major six CARICOM exports to the EU were: alumina (15.6% export share); rum (11.3%); petroleum (11.1%); sugar (9.5%) and natural gas (4.7%). The performance of the Dominican



Major CARICOM exports to the EU include rum, sugar and bananas

Republic mirrors that of its other CARIFORUM partners, with 2005 exports to the EU dominated by commodities, namely ferro-alloys, bananas and rum. CARIFORUM States exude characteristics typical of small economies, i.e. production costs are high, the export base is undiversified and production volumes are constrained. These problems are compounded by the region's physical expanse which is dominated by an arc of islands that results in, *inter alia*, high transport costs. The challenge, therefore, is to enhance competitiveness, graduate into branded and high-value products and develop innovation systems as a strategic tool.

Fourth, in spite of being longstanding and firmly embedded in the region's political DNA, implementation of Caribbean regional integration has been sub-optimal. The CARICOM Single Market and Economy (CSME) was promulgated in 1989, yet a number of regional rules and regulatory framework are yet to emerge. One key policy mechanism - the Common External Tariff - remains uncommon in terms of the rates applied by each of the 12 CSME members. In 2006, CARICOM Heads renewed a timetable to fully implement the CSME by 2015. A Free Trade Agreement binding CARICOM with the Dominican Republic was signed in 1998, yet implementation has been limited to goods, while progress on the built-in agenda (Services, Government Procurement, Intellectual Property and Trade Facilitation) awaits completion of CSME regimes. The EPA's thrust on regional integration should engender the injection of greater dynamism into the CARIFORUM-designed effort. In addition, the EPA includes CARIFORUM development priorities and should therefore facilitate the delivery of European Commission development assistance to support CARIFORUM regional integration.

Fifth, while the Lomé/Cotonou trade preferences delivered market access for Caribbean economic operators, the ability of these firms to contest the EU market required the assessment of regulatory issues and productive capacity. Mastering the modern and competitive trading environment requires rules, such as Technical Barriers to Trade, Sanitary and Phytosanitary Measures, Services, Investment, Government Procurement, Competition Policy, Trade Facilitation, Trade Defence Measures and Intellectual Property Rights. The EPA supports the establishment of CARIFORUM regimes in these disciplines, primarily through the promotion of a regional policy framework. This modern regionalism does not countenance a common economic space protected from global competition via high tariffs. Instead, strengthened CARIFORUM regional integration provides the major policy tool through which the Caribbean enhances competitiveness, advances productive capacity, and innovates in both new products and production systems. Accelerated economic integration therefore represents the platform through which the Caribbean seeks to garner the benefits of increasingly internationalised production chains while modulating the impact of globalisation's more deleterious face.

Sixth, an EPA constitutes a forceful signal - to both investors and development partners - of the earnestness of the Caribbean's programme of economic reform. As net capital importing countries, CARIFORUM States can use an EPA to lever increased investment and heighten the region's appeal as a premier investment destination. In addition, CARIFORUM development partners are now presented with an advanced trade and development framework that requires long-term funding. In this context, an EPA is also a vehicle aimed at reversing the declining share of development assistance extended to the Caribbean.

## CARIFORUM's overarching approach

The provisions of the CARIFORUM EPA were carefully calibrated in order to respect a number of approaches. These include (a) special and differential treatment, and in particular, asymmetry; (b) respect for CARIFORUM regional integration; (c) a modulated tariff liberalisation schedule that would facilitate the reform of national tax regimes while safeguarding trade-generated fiscal revenue and domestic production; and (d) a holistic approach that combined the articulation of rules with the definition of CARIFORUM priorities to benefit from EU development assistance.

The Agreement is littered with examples of the asymmetrical commitments. This can be evinced in the liberalisation schedules for goods and services where the EU's commitments are higher than those of the Caribbean. Asymmetry is also expressed in the construct of the safeguard measures, CARIFORUM retaining the use of export subsidies while those

of the EU are eliminated; and only CARIFORUM has recourse to recalibration of its tariff schedule (while respecting the overall architecture of liberalisation).

One of CARIFORUM's central objectives was to retain the veracity of its own regional integration process. This was one of the reasons why the initial EU Commission proposal of harmonisation was rejected, as it would be complemented by the principle of non-discrimination, and in particular, the Commission's demand for CAFTA-parity. Acceptance of this EU approach would have resulted in not only a front-loaded liberalisation schedule but also the Dominican Republic, a non-member of the deepest form of Caribbean regional integration, solely determining the nature of the CARIFORUM economic space. One of the key EPA instruments in strengthening Caribbean integration is regional preference. While the concept has a compelling economic logic and is consistent with the MFN provision of the Revised Treaty of Chaguaramas, implementation was staggered in order to afford time for the

### Key elements of the Agreement

The elements below represent the key elements of the CARIFORUM EPA, viz.:

- CARIFORUM liberalises 86.9% of the value of its imports, 82.7% of which within the first 15 years. The Agreement will result in the liberalisation of 92% of bilateral CARIFORUM-EU trade;
- CARIFORUM applies a general moratorium on its tariff liberalisation commitments on all products for the first three years of the Agreement. For revenue sensitive items such as gasoline, motor vehicles and parts, the moratorium is extended to 10 years;
- Other Duties and Charges (ODCs) are to be maintained during the first seven years and then phased out during the subsequent three years;
- The Sugar Protocol (SP) quotas will remain on a transitional basis until September 2009 when Duty-Free Quota-Free will be introduced. During the transitional period, the SP quotas will be complemented by a Tariff Rate Quota of 60,000 tonnes split evenly between CARIFORUM SP members and the Dominican Republic. In addition, a joint declaration commits both Parties to ensure, within the structures of the SP rules, that shortfalls of any CARIFORUM SP member will be reallocated to another CARIFORUM SP member;
- An Agricultural chapter that establishes rules consistent with the objectives of pursuing sustainable development, poverty eradication, enhanced competitiveness and food security. Most notable in the provisions on agriculture is the zero for zero treatment of EU export subsidies. That is, the EU eliminates export subsidies on all agricultural products that CARIFORUM liberalises;
- The EU shall exclude CARIFORUM exports from any contemplated use of a multilateral safeguard measure and consider the use of constructive remedies before imposing anti-dumping or countervailing duties in respect of products imported from CARIFORUM States;
- Both CARIFORUM and the EU automatically confer on each other any better treatment granted by one Party to a major trading partner. Such entities are defined as countries or regional blocs garnering 1%, or 1.5% and above, of world merchandise exports. This MFN provision covers both goods and services;
- In services, the EU liberalises 94% of W120 list of sectors while the respective figures for CARIFORUM LDCs and MDCs are 65% and 75% respectively.<sup>2</sup> The Bahamas and Haiti have six months within which to submit their respective liberalisation schedules. The commitments also include a standstill clause and provisions for future liberalisation;
- In the case of the temporary movement of natural persons (Mode 4) the EU Commission has granted market access for Caribbean professionals in 29 sectors for Caribbean Contractual Service Suppliers (CSS) to enter the EU to supply services once a contract has been secured. This includes entertainment services for all EU Member States - except Belgium and Italy. The EU has liberalised 11 sectors for temporary entry by CARIFORUM Independent Professionals (IPs) or self employed persons;
- CARIFORUM access to the EU entertainment market is complemented by a Protocol on Cultural Cooperation that provides for greater collaboration on all cultural fronts and with special provisions on audiovisual activities. In particular, co-produced audiovisual products involving European and Caribbean creative teams will qualify as European works and thereby satisfy cultural content rules in all EU member states;
- The rules on investment confer predictability and transparency on market access in agriculture and forestry, manufacturing, mining and service sectors in both EU and CARIFORUM. Both regions have liberalised most areas of manufacturing except for some sensitive areas in CARIFORUM and the EU. However, public services and utilities and other sensitive sectors have not been liberalised to EU investors. CARIFORUM has also maintained special reservations for small and medium enterprises in some sectors;
- The EPA also contains obligations that will ensure that investors safeguard the environment and maintain high labour, occupational health and safety standards. Furthermore, the Agreement proscribes the Parties from lowering environmental and social standards in order to attract investment, and forbids investors from engaging in corruption to secure special concessions from public officials;
- Finally, regional preference (whatever concession is granted by one CARIFORUM State to the EU should automatically be conferred on all other CARIFORUM States) will be implemented in one, two and five years respectively in CARIFORUM MDCs, LDCs and Haiti.

negotiation of the built-in agenda of the CARICOM-DR FTA.<sup>3</sup> Similarly, CARIFORUM exempted from tariff liberalisation all items currently on the Revised Treaty of Chaguaramas Article 164 list of products.<sup>4</sup> Furthermore, the Agreement can be recast to allow for any item placed on the Article 164 list in future to attract similar treatment.

There has been concern that the EPA compromises CARIFORUM capacity to design and implement its own brand of regional integration. Such a conclusion is at stark variance with the provisions of the CARIFORUM EPA. Again, respect for CARIFORUM-designed regional integration characterises the entire Agreement but two examples should suffice. First, the region limited Government Procurement negotiations to transparency precisely because it did not want to circumscribe the design and implementation of its own GP regime. Second, a decision not to impose duties on EU-originating goods circulating within CARIFORUM is not only a best endeavour, but hinges on the establishment of a CARIFORUM free-circulation regime. The EPA should strengthen CARIFORUM regional integration in terms of facilitating deeper ties with The Bahamas and Haiti - two states where relationships with the CSME are ill-defined. Indeed, the EPA entrenches the right of every CARIFORUM State to grant each other preferences that need not be awarded to the EU. Furthermore, the clear enumeration of CARIFORUM development needs should allow for the delivery of EU development assistance aimed at the establishment of regional trade regimes.

Yet another popular myth of the CARIFORUM EPA refers to the tariff liberalisation schedule. In particular, CARIFORUM negotiators have been charged with accepting tariff liberalisation commitments that are front-loaded. As stated earlier, CARIFORUM will liberalise 82.7% of its EU imports in 15 years. This headline figure should be read in conjunction with a number of other salient facts. First, the corresponding liberalisation effort over 5 and 10 years is 57% and 61.1% respectively. However, the key benchmark is the current level of EU imports that is already liberalised, i.e. 51%. An additional 1.8% of CARIFORUM imports were immediately liberalised as well as items attracting nuisance tariffs, thereby resulting in total liberalisation of 52.8% when the Agreement comes into effect. There, CARIFORUM States will eliminate duties on an additional 8.3% of their EU imports during the first ten years of the Agreement.

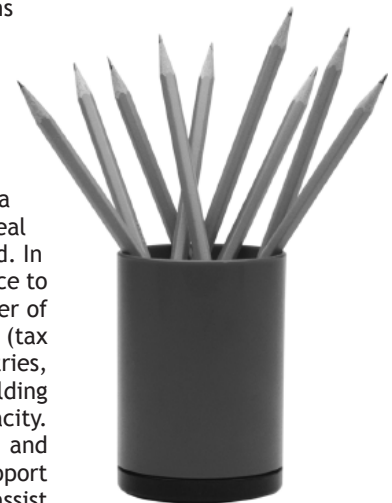
Second, the three-year moratorium is aimed at cushioning governments from any sudden loss in fiscal receipts and shielding domestic producers from facing immediate competition from EU exports. Protection of government revenue was also the primary motivation for securing a ten-year moratorium on high-revenue sensitive items coupled with the phased elimination of other duties and charges. Thirdly, only 50% of the number of agricultural tariff lines will be subjected to tariff liberalisation. The impact of the CARIFORUM liberalisation schedules on both government revenue and domestic production are deliberately moderate. This tempered pace of liberalisation is complemented by the EU's commitment to assist in reform of national tax regimes. Whether the Doha Round is successful or not, reducing CARIFORUM States' reliance on trade taxes remains an immediate task. Indeed, looking at the imminent FTA negotiations with other major trading partners, prudence dictates that CARIFORUM States vigorously implement alternative taxation regimes.

The final overarching approach of the CARIFORUM EPA concerns the treatment of development cooperation. Informed by the 'Free Trade Area of the Americas' process, Caribbean governments were adamant that development should infuse all provisions of the EPA. Furthermore, the region was strident

in articulating the view that its developmental ambitions should not be conflated with development cooperation. At the September 2006 meeting of Principal Negotiators, agreement was struck on a generic approach to development cooperation. First, there would be a prominently placed 'Development Chapter' that would reflect the pro-development logic of an EPA. The parameters governing this 'Development Chapter' are: monitoring of the agreement to ensure its continued relevance and ability to meet stated objectives; cooperation in international fora (most notably in the WTO); promotion of CARIFORUM regional integration; pursuit of the principle of sustainable development; and development cooperation instruments.

Second, CARIFORUM development priorities are articulated in subject-specific chapters and thereby complement the specific rules. For example, the section on Agriculture charts the following cooperation priorities to be supported by EU development assistance, viz.: (a) enhance the competitiveness of potentially viable production; (b) develop export marketing capabilities; (c) develop CARIFORUM capacity to comply with and adopt quality standards relating to food production and marketing - including standards relating to environmentally and socially sound agricultural practices and organic and non-genetically modified foods; and (d) promote private investment and public-private partnerships in potentially viable production. Furthermore, a number of the CARIFORUM commitments are linked to the delivery of EU Commission support, e.g. in trade facilitation and intellectual property rights.

The CARIFORUM EPA encompasses provisions on a clutch of pro-development and modern trade disciplines. The Agreement aims at repositioning the Caribbean away from commodity producers and purveyors of rudimentary services. As stated before, the region's production cost profile is not conducive to mass manufacture of low cost items. Instead, moving up the value chain through branding or shifting to production that is neither scale-specific nor price competitive remains imperative. While the EPA text is replete with opportunities for Caribbean economic operators, the real challenge lies in giving operational effect to the legal commitments. Furthermore, the benefits of a major trade and development deal cannot be automatically harnessed. In liberalising, albeit at a modest pace to the EU, CARIFORUM faces a number of challenges in terms of adjustment (tax reform, addressing sunset industries, retooling, retraining) and building productive and institutional capacity. However, properly implemented, and accompanied by the requisite support measures, the EPA should assist CARIFORUM States to bridge the gap between their economic and social potential and actual performance.



*The Agreement is littered with examples of asymmetrical commitments.*

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<sup>2</sup> The 'W120' title refers to the name of the official WTO document, which provides a list of all sectors that can be negotiated under the GATS.  
<sup>3</sup> The Revised Treaty of Chaguaramas established the Caribbean Community including the CARICOM Single Market and Economy. It was signed by the Heads of Government of the Caribbean Community on July 5, 2001 at the Twenty-Second Meeting of their Conference in Nassau, The Bahamas.  
<sup>4</sup> Article 164 addresses the promotion of the industrial development of CARICOM-designated LDCs

# Lessons Learned:

## The Caribbean EPA market access offer

Sacha Silva<sup>1</sup>

In the wee hours of a mid-December Sunday morning in 2007, negotiators representing the Caribbean and the European Union signed a historic Economic Partnership Agreement (EPA), replacing the trade provisions of the Cotonou Agreement which were due to expire two weeks later. Part of the negotiators' tasks was to initial, page-by-page, an annexed Caribbean market access schedule running to well over three hundred pages. The schedule represented several years of hard work by Caribbean senior officials and trade negotiators to reconcile the different development needs and levels of regional integration among CARIFORUM's fifteen member states (the fourteen independent states of CARICOM plus the Dominican Republic). This article looks at some of the many obstacles encountered by CARIFORUM in preparing its market access offer and assesses some of the ways in which Caribbean officials sought to overcome these.



### 1. The Preparatory Stage

During the preparatory stage, the Caribbean Regional Negotiating Machinery (CRNM) undertook a yearlong exercise with two main goals: building a trade and tariff database; and conducting country consultations.

#### Database demands

The building of a Caribbean trade and tariff database would serve to identify, early on, some of the region's potential revenue and production sensitivities, giving them a technical tool to evaluate the level of ambition within the CARIFORUM offer as the negotiations proceeded. The task proved enormously difficult. In order for the negotiations to be conducted equitably, both tariffs and trade data for the fifteen CARIFORUM States needed to be presented in a common format, which in the case of the EPA took the form of the 2002 version of the Harmonised System (HS). However, even in regions that shared the CARICOM Common External Tariff (CET), few countries had updated their national tariff data to meet the new classification. Most states continued to use HS 1996 - and in the case of one state - HS 1992. As a result, no single country had all three years of data in the HS version required. Language differences across the region (Spanish in the Dominican Republic, French in Haiti, Dutch in Suriname and English in the remaining states) served to compound the problem. The conversion of data from each country and the preparation of a coherent database required the expertise of a former Harmonised System Committee chairman and several trade experts. Even procuring the actual tariffs and trade data proved to be a headache, as no single database (e.g. those belonging to the WTO or UNCTAD) contained all the required facts and figures. At least one piece of information needed to be procured (often in person) from trade, statistics, finance or customs officials in almost every country. Given that this trade data would serve as the basis for 'substantially all' liberalisation assessment, any use of so-called 'mirror data' (i.e. data other than that from the CARIFORUM customs authorities) was avoided as far as possible in order to reflect the economic activity perceived by the Caribbean countries themselves.

#### Challenging consultations

The second goal was to conduct, country-by-country, consultations across the public, private and civil society sectors to make key stakeholders aware of the salient features of the EPA and highlight any potentially sensitive sectors which would require special treatment. Much like the building of the trade database, the consultations proved challenging, despite the best efforts of many national officials and the clear potential of the Caribbean granting reciprocal market access to a developed economy for the first time. In many countries, turnout was low and understanding of the EPA limited among the various stakeholders, even after the two rounds of country consultations which were eventually conducted. In-depth presentations by both regional officials and members of the trade negotiating team were needed to dispel a number of myths about the EPA and ascertain offensive and defensive positions of those involved. The participation of private sector associations was crucial in bridging the gap between national and regional officials on one hand and the private sector on the other. More importantly, during the consultations it became apparent that most stakeholders viewed their positions in market access as integrally linked to other parts of the agreement. For example, one firm initially sought exclusion for its product in the liberalisation schedules but was willing to consider a long-term (i.e. 25 years) phasing-in period if certain development cooperation measures and EU export barriers could be addressed.

### 2. The Negotiating Stage

During the actual negotiation of the agreement, which stretched from 2005 to 2007, the biggest obstacle and greatest challenge for CARIFORUM was its lack of human resources and a general funding constraint at both the national and regional level. Caribbean states have small economies and at times one individual official was in charge of market access negotiations or indeed in charge of all areas of trade. This resulted in enormous pressure on national officials during the course of the negotiations, especially given that for many officials, the European negotiations were only one part

of a much longer job description. As the required meetings multiplied far beyond the schedule initially envisioned, it often proved difficult - despite the fact that regional bodies would fund the participation of senior officials in intra-regional technical working groups - to reach a 'full house', and as such, decisions were often *ad referendum* to member states who were unable to attend. This considerably slowed down the progress of crafting a CARIFORUM offer since work was conducted on a consensus basis and a single state could block a decision pertaining to the whole group.

### Mandate limitations

Another key obstacle to crafting the CARIFORUM offer was the 'mandate constraint' at the national level. Despite official pronouncements to the contrary, trade officials representing individual CARIFORUM states were often not given adequate mandates to make concessions within the wider group without referring to a host of stakeholders and ministries back in capitals. While this consultative process helped to increase ownership of the final agreement, the lack of flexibility accorded to national trade officials considerably slowed down progress, especially as the CARIFORUM side was required to respond quickly to negotiating demands and changes in position from the European side. The result of this constraint was that, time and time again, even minor changes in the CARIFORUM offer had to be decided at the highest level, including that of Heads of Government. The EPA often had to fight for agenda space with the many other pressing issues in the region, including the rising cost of food and fuel, and the challenges of implementing a Single Market and Economy.

At the regional level, negotiators and technicians were faced with reconciling the different integration processes. Even the fourteen CARICOM States, which have a relatively long history and advanced level of regional integration relative to the other ACP regions, had different 'streams' of integration: the deep integration of the Organisation of Eastern Caribbean States (OECS); the recent accession of Haiti; and the participation of the Bahamas (a CARICOM member but not signatory to the Single Market). Within CARIFORUM as a whole, different but by no means less important demarcations existed. For example, the signed and partially-implemented free trade agreement between CARICOM and the Dominican Republic (DR). Moreover, it was not immediately clear how the DR's recent free trade agreement with the United States and Central American countries (the DR-CAFTA agreement) would impact its own position within the EPA or the level of liberalisation within the CARIFORUM bloc. Each of these regional integration processes was governed by their own pieces of enabling legislation and institutions, all setting sharp limits on what could be agreed to.

### A collective offer

Compounding the region's challenges, both the EU and CARIFORUM wished to simplify the presentation and implementation of the agreement as much as possible. As a spur to regional integration, CARIFORUM was committed to pursuing a common offer (i.e. treatment of individual products, with exclusions, phased reduction and immediate liberalisation to be uniform across countries). The considerable pressure from the European Commission for Caribbean officials to take on regional commitments, and the inherent desire of the Caribbean countries to push the integration process forward themselves, had to be balanced with the

political and economic realities of the proverbial 'spaghetti bowl' of overlapping objectives and obligations. Looming over the entire process was the spectre of future negotiations - with Canada, the US and other hemispheric partners - and the possible impact that the EPA could have on these and vice-versa. Finally, the region's negotiators had to remain mindful of the need to provide the lesser-developed and small economies with increased flexibilities in terms of the time frame for phased reduction and the criteria for exclusion.

In most cases, reconciling all of these various factors required exhaustive product-by-product, line-by-line debate and analysis. Sometimes it required case-by-case departures from the 'common' CARIFORUM treatment, although in the end, these cases were largely restricted to the Dominican Republic's previous concessions under DR-CAFTA. In many ways, the primary achievement of the CARIFORUM side was to craft a common market access offer despite the significant internal pressures to produce wholly national schedules.

### A balancing act

A last, but by no means final, difficulty in the crafting of the market access offer was to resolve the concerns of key Caribbean stakeholders with the liberalisation process and the 'substantially all' liberalisation trade provisions of Article XXIV of the GATT.<sup>2</sup> While acknowledging the different interpretations of the Understanding on Article XXIV, the Caribbean and EU negotiators sought to craft an offer which would achieve three goals: (i) address the legitimate concerns of Caribbean industry to the competitive threat from EU industries, as well as the loss of revenue for Caribbean governments; (ii) minimise the risk of adverse legal action within the WTO by complying with Article XXIV provisions; and (iii) allow for flexibilities afforded within the WTO to small developing states. Even as the negotiations reached their conclusion, the actual scope for potential leeway under Article XXIV, and the degree of liberalisation which CARIFORUM should agree to in order to assure safe passage of the EPA at the WTO, excited a strong and lively debate among CARIFORUM states.

The agreed liberalisation package represented a compromise between the many overlapping and often conflicting objectives. The final annexed schedules represent a deal whereby 82.7% of Caribbean imports would be opened up within the first 15 years of the EPA, and 92% of total Caribbean-EU trade would be liberalised within a 25-year time period. Nearly one in ten tariff lines was excluded from liberalisation altogether, including more than half of the tariff headings dealing with agriculture and fisheries. Nearly every significant revenue source was either placed on an exclusion list or given a phased reduction period of 15 years or longer, allowing for Caribbean states to carry out their own internally agreed tax reforms in a bid to replace potential revenue loss from the EPA. Apart from the numbers, the offer represented a hard-fought middle ground between the region's stakeholders and the demands of the European negotiators. It is likely to have been a useful exercise for the Caribbean region, which will serve as a basis for its ambitious negotiating schedule in the future.

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<sup>2</sup> Article XXIV of the General Agreement on Tariffs and Trade (GATT) provides an important exception to Article I (most favored nation clause) by permitting countries to enter into preferential free trade agreements.

# The usual last-minute banana peels

OPINION

Alistair Smith<sup>1</sup>

It is traditional that on the eve of signing multilateral treaties and trade agreements, bananas are the last and most controversial bone of contention. This happened before the endorsement of the Treaty of Rome, the creation of the European Single Market and the signing of the Marrakech Agreement to establish the WTO itself. The December 31 2007 deadline for negotiating the six regional Economic Partnership Agreements (EPAs) was no exception.

Three ACP regional groupings were concerned: seven members of CARIFORUM (Dominican Republic, Belize, Suriname, St Lucia, Jamaica, St Vincent and Dominica - in descending order of their current banana export volumes); two members of ECOWAS (Ivory Coast and Ghana), and Cameroon from CEMAC. In the space of less than ten days in December, all these countries were involved in last-minute signings of either an EPA or an interim deal. The European Commission refused to consider requesting an extension of the waiver, despite pressure from the African regions to do so. Thus, the African governments ceded to pressure stronger than that of the argument against regional 'dis-integration', despite pledges of regional solidarity.

There is little doubt that, in addition to the constant demands from Brussels negotiators, the African banana exporters applied strong corporate pressure on their governments. Commodity companies had a major influence in persuading Abidjan, Accra and Yaoundé to break ranks with fellow members of their regional groupings. For example, it is known that the *Compagnie Fruitière*, controlled by the world's biggest fruit company *Dole*, was actively lobbying for the three countries where it has plantations to sign EPAs. Late on in the negotiations, when it was clear that only an interim deal would save the company from having to pay the €176 per tonne tariff into the EU, the company even wrote to request the support of the Ghanaian trade workers' union - despite the union's clear public position against the EPA that was on the table.

## WTO banana panel: an ironic twist of fate?

The longest and most complex of WTO disputes was always likely to muddy the waters for ten African and Caribbean banana exporting countries, most of which need to continue with their duty-free access to the EU market if their industries are to survive. During 2007, Ecuador challenged both the level of the EU banana import tariff and the ACP tariff preference in the Dispute Settlement Body; while the US launched a separate challenge over the ACP tariff preference. Although the panel recommendations reached in November for Ecuador are not yet public, it was made clear that the EU was clearly in breach of WTO rules with its ACP duty-free treatment and quota.

Presumably, the intention of the WTO complainants was to make the renewal of the Cotonou waiver, secured in Doha in 2001, impossible. Moreover, the EU presumably knew that it was likely to lose the panel, because it had been insisting - with those non-LDC ACP partners with a major export sector benefitting from Cotonou commodity preferences - that renewing the waiver was not an option.

Ironically, being condemned in the WTO for its ACP banana tariff preferences has not only given Brussels more leverage with countries showing resistance to EPAs, but has taken some of the wind out of Ecuador's sails now that the ACP banana exporters have all got deals giving them WTO compatible duty-free treatment. Unlike the last time it won a panel against the



EU, it appears that Ecuador as a country has little to gain from further action at the WTO. It will continue to pursue a reduction in the EU banana import tariff, but any reduction will benefit the exporting companies that actually pay the tariff like *Dole*, far more than it will help Ecuador's economy.

## So is everybody happy now?

Bernard Cornibert, CEO of the Windward Islands Banana Development and Exporting Company - a company 50% owned by the island governments - told regional media that they were left "holding the short end of the stick and that the deal will not come anywhere close to resolving the problems that the industry has faced over the years."<sup>2</sup> On the wider value of the EPA for the Caribbean, CARICOM's President Bharrat Jagdeo was very critical indeed, describing regional EPAs as a: "well thought-out ploy by Europe to dismantle the solidarity of the ACP by dividing the ACP into six negotiating theatres and playing one off against the other."<sup>3</sup>

The Windward Islands have always had duty-free access to EU markets, so it is the quota-free component that threatens the survival of their industry. ACP exporting countries will now compete head-to-head to retain a place in the EU market with its ever decreasing prices. A duty-free and quota-free system favours producers with low labour costs or high externalised environmental costs - like the Dominican Republic or Belize. If Ghanaian production really takes off now that duty-free access is guaranteed for any volume, or the fruit companies choose to expand within the Ivory Coast, Cameroon or even Angola, then the smaller Caribbean exporters will be increasingly squeezed out.<sup>4</sup> Although the EPA rhetoric of the European Commission was about creating social and environmental linkages within the regions, nothing has yet been done. What is certain, is that the end of the ACP quota suits corporate players, for whom any volume restrictions complicate their strategic planning and operations.

It is not yet known whether EU governments with major banana production interests, notably France and Spain, will continue to lobby for bananas to be treated as a 'sensitive' product along with rice and sugar. However, it is clear that European banana producers are not happy that there are no longer any restrictions on ACP duty-free imports into the EU - for the first time since the single market was created in 1993. Given that other major consumer markets are not a realistic option for expanding African banana exports, any increase in supply is likely to come at the expense of the most expensive fruit. Despite high levels of subsidies, European bananas remain the most expensive on the market.

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<sup>2</sup> Caribbean Broadcasting Corporation, Bridgetown, January 2 2008.

<sup>3</sup> Stabroek News, Guyana, January 8 2008.

<sup>4</sup> Fruit company *Chiquita* has been investigating a major new operation there for several years.

Much has been said and printed about the EPAs since the December 31 deadline elapsed. Some of that rhetoric has been conflicting: from anti-EPA campaigners who marched in the streets, to EPA supporters who voiced joy at the potential gains the deals might bring. As the Secretary General of the ACP Group, Sir John Kaputin is well aware of these contradictory opinions. Here, Sir John reflects on the past and present EPA process, and predicts what the future may hold for the ACP Group itself.

## An interview with Sir John Kaputin: Secretary General of the ACP Group



**TNI: How would you qualify the process leading to the initialling of several interim agreements and one full EPA?**

JK: The ACP Ministers responsible for EPAs held a meeting in early November less than two months before the end of the Cotonou trade regime and the expiry of the WTO waiver. By then it was clear that the process towards the finalisation of the EPA talks had become crucially important in light of the information that most, if not all, of the ACP regions would not be able to conclude the negotiations on time. Moreover, the European Commission had categorically repeated that there was "no plan B".

The ACP Ministers were seriously concerned about the possible disruption of trade flows should negotiations on EPAs not be completed on time. Available information suggested that some importers from Europe were holding back placing orders for early 2008 deliveries ostensibly because there was lack of clarity on the trading regime that would apply for ACP imports in the European Union as from January 1 2008.

However, the EU Commission issued a communication on EPAs on October 23 2007 which provided a sort of road-map based on signing interim agreements as the only way of stemming the disruption of trade. This diverted the focus of most ACP regions to this new proposal. In the end, we saw regions splintering and individual countries parting ways with others to conclude and initial bilateral agreements with the EU. The decisions of ACP States were driven by sovereign national trade interests. Unfortunately, in some cases, their position was at variance with the regional approach and compromised the solidarity of the region.

Therefore, I can describe the process towards the initialling as one fraught with panic, confusion and disagreements at the national and regional level. At both levels, viewpoints differed between technicians and politicians on whether or not to initial. In the end, we have a total of 35 ACP States that have initialled a full or interim EPA.

The ACP Group regrets that in nearly all cases, the agreements were initialled under the great pressure of

time. It has since emerged that there are some contentious clauses in the interim agreements which several ACP States and regions concerned have requested be revisited when finalising full EPAs.

**TNI: How would you characterise the outcome of that process?**

JK: With the EU's adoption of its Council Regulation on EPAs on December 20 2007, the threat of trade sanctions in the form of higher tariffs and the resultant trade disruption have somewhat been averted for most non-LDC ACP States.<sup>1</sup> The implementation of the regulation, if applied with adequate flexibility, will result in effective duty and quota-free access to the EU market for all ACP products (with the exception of sugar and rice which are subject to transitional arrangements). This is welcome.

However, it must be emphasised that duty free and quota-free market access on its own will not lead to market entry. Technical barriers to trade, sanitary and phytosanitary issues and rules of origin have to be addressed for the ACP to accrue the full benefits.

Furthermore, the existence of different trade regimes within the same regional economic grouping, lack of uniform rules of origin and varying tempo in the implementation of the EPAs are likely to greatly challenge the regional integration initiatives within the ACP.

For non-LDC ACP States that did not sign the interim EPAs - namely Nigeria, Republic of Congo and Gabon in Africa, and Cook Islands, Federated States of Micronesia, Nauru, Niue, Palau, Marshall Islands and Tonga in the Pacific - the regulation does not apply. The ACP calls upon the EU Commission to ensure that all measures are taken to guarantee the continuation of trade, so that the economic operators remain in the market and the welfare of the citizens of those ACP States is not compromised. Where tariffs are paid prior to the initialling of interim or full EPAs, the Commission should refund any amount paid between January 1 2008 and the date the country joins the EPA pact.

The Caribbean region, which concluded a complete EPA before the December deadline, deserves to be complimented.

Other regions have committed to conclude full EPAs, but only if these agreements respond to the development needs and aspirations of their citizens.

The variation in content and detail of the initialled EPAs, highlights the need for concessions and benefits agreed with one region on a certain subject to be made available to other regions that so request. The negotiations have been premised on this principle and the European Union is expected to uphold it.

It has also been noted that while ACP commitments are clearly spelled out in the initialled texts, EU obligations are couched in a 'best endeavour' language. It is imperative that the EU makes specific commitments with regard to additionality and availability of resources, which should be determinable and predictable with a clear time frame for delivery.

**TNI: With less than half the ACP countries having signed an EPA, and only the Caribbean having concluded a full EPA, what are the prospects for the unity of the ACP Group?**

JK: The ACP recognises the need to be guided by the overriding principle of unity and solidarity. For unity is strength in our diversity. The unity of the ACP lies in the hands of its Member States. The ACP has resisted and will continue to resist any attempt to divide it at the all-ACP level. Let me reiterate that despite its diversity, there are some common interests in the economic, social, political and cultural fields. The need to maintain, solidify and deepen that unity even as the ACP tackles the outstanding EPA issues can not be over-emphasised.

**TNI: How would you see the dynamics of the negotiations panning out in 2008, and how can the ACP best advance their developmental interests?**

JK: The outstanding EPA issues will have to be negotiated and completed as stipulated in the rendezvous clauses of the interim agreements. ACP states and regions will face difficult decisions since the implications of the remaining areas are the least understood. In addition to a lack of human resources and a lack of common regional positions, there are few appropriate institutions to implement any agreements reached.

Let me add that EPAs are the most complicated and complex set of negotiations that the ACP countries have ever been engaged in. The ACP States were expected to garner consensus at the national, regional and - in some cases - ACP level before meeting with the EU Commission on each of the subject areas to be negotiated. The situation is complicated by the fact that negotiations have been taking place in parallel to those at the WTO.

In most, if not all cases, the same players are involved in both sets of negotiations. This exercise has been draining the scarce financial and human resources needed for ACP negotiations. With the initialling of the agreements, there is a perception that the benefits reaped by the ACP negotiators in several areas of the WTO process have been severely undermined. Examples include the non-requirement for LDC reciprocal market access and the level of market opening and binding of tariffs for non-LDCs. As negotiations proceed

in the WTO, there will be greater need for consultation between the Geneva and Brussels-based ACP negotiating teams so as to ensure coherence in approach and position.

It is also expected that the negotiated EPAs will be notified to the WTO in 2008. However, it is not clear whether this will be done before or after signature and ratification by the EU Commission and the ACP States and regions concerned. The ratification process is complicated: look at the process involving the revised Cotonou Agreement, where the 10th EDF failed to come into effect by January 1 2008 due to an inability to meet the minimum requirements for ratification - namely two-thirds of the ACP Group and all the EU Member States plus the EU Commission. In the case of EPAs, all the Parties would be expected to sign and ratify. We can recall also that it took the EU side four good years to ratify the South Africa Trade and Development Cooperation Agreement.

**TNI: What is the role of the ACP Group in such a process and how can the ACP Secretariat best support it?**

The ACP Group will continue to meet, consult and exchange views and experiences on issues related to trade and economic cooperation - including EPAs - as it does in other aspects of cooperation detailed in the Cotonou Agreement. These meetings will take place under the aegis of established bodies such as the Committee of Ambassadors and its subcommittee on trade; the ACP Technical Follow-up Group on EPA negotiations, the Ministerial Trade Committee and the Council of Ministers. The ACP Secretariat as the technical adviser to the ACP Group will continue to provide support to the ACP States and regions in the process. In this regard, the Secretariat will continue to rely on the good will and assistance of its cooperation partners such as ECDPM, Commonwealth Secretariat, IOF, UNCTAD, UNECA and UNDP, to name but a few - all of which have so far proved to be of great benefit to the ACP Group's work.

In addition, the Secretariat will continue to provide technical assistance through existing instruments such as the all-ACP TradeCom programme.

**TNI: What are the implications of EPAs for the development cooperation aspect of the Cotonou Agreement?**

JK: I consider the development dimensions of EPAs to be three-fold. First, in the structure of the EPA itself, concerning



*Sir John Kaputin with WTO Director General Pascal Lamy at the ACP Ministerial Meeting on trade in Brussels, November 8-9 2007. Photo by Alec Singh: [www.acpsec.org](http://www.acpsec.org)*

the scope of product coverage, transition periods and the time-frame for tariff eliminations, treatment of sensitive products, inclusion and treatment of trade-related areas, and finally, trade in services. The structure will determine the extent of the adjustment challenges to be faced by the ACP.

The second refers to the content of EPAs. Here, I will mention the development programmes that accompany the trade provisions in order to address the supply-side constraints hampering the competitiveness of the ACP suppliers. Production factors that should be addressed include hard infrastructure, such as transport and communication networks (roads, rail, marine, waterways and air transport), telecommunications, energy and soft infrastructure, such as trade facilitation.

The third dimension relates not only to the quantum of EU funds to support the implementation of EPAs but also the financial mechanisms that will be put in place to address specific EPA related adjustment costs.

Let me say that EPAs are expected to define the economic and trade cooperation between the ACP and Europe. According to the Cotonou Agreement, development strategies should be interlinked and complementary, as well as mutually reinforcing economic and trade cooperation. Hence, the development support provided by the EU for EPAs must be commensurate with the costs that ACP States will incur in adjustment to implementation. It should also address the cost of preference erosion arising from EU Common Agricultural Policy (CAP) reform, and tackle the impact of the EU's trade arrangements with third parties.

Whether this can be achieved in the EPAs is another matter. The Cotonou Agreement provides the framework for defining the development support and strategies that the EU will proffer to the ACP Group over time, while the EPA will add another dimension that defines the strategy to support trade development. The delivery mechanisms to be used must be made effective and efficient.

### **TNI: Is there a role for the ACP Group in the implementation and monitoring of the EPAs?**

JK: Although much of the implementation of EPAs will be at the national and regional level, some of the administrative procedures are expected to continue at the ACP-EU level. Indeed it is foreseen that once EPA Councils are created they will report to the ACP-EU Council of Ministers.

Therefore, it will be necessary to continue to use existing structures such as the ACP and ACP-EU Committee of Ambassadors, Ministerial Trade Committee and the Council of Ministers to ensure a free flow of information and facilitate dialogue between the regional groupings during the implementation of EPAs. Hence, I cannot see the role of the ACP Group diminishing in fostering cooperation when EPAs come into effect.

In addition, it has been agreed that the ACP and the EU should establish an appropriate EPA monitoring mechanism to ensure that expected benefits accrue in the implementation of the EPAs. The mechanism can be managed within the existing ACP-EU institutions and bodies, including the ACP

Secretariat, the Commission and the EU Council. It could also be agreed that the Parliamentary Assembly be furnished with annual reports on EPA implementation.

### **TNI: Could EPAs eventually be a substitute for the ACP-EU Partnership Agreement? Do EPAs signal the forthcoming disappearance of the ACP as a group? How can the ACP Group foster its relevance?**

JK: This is for the two partners to decide. However, the ACP-EU Partnership is the best model of cooperation between North and South which is the envy of many countries. However, we live in a dynamic world and the framework has to be adjusted in response to existing and evolving needs, challenges and circumstances. That is why the EU's discussion and conclusion of separate strategies with each of the main ACP regions was a welcome development in that the strategies will focus on the specific needs and peculiarities of each region. EPAs are but one of the facets of cooperation covering trade and economic issues. It also seems that the market access component of EPAs for all imports from the ACP into Europe will be governed by the same regulation. This justifies the existence of a common follow-up mechanism for the entire ACP Group.

Furthermore, the Cotonou framework is far broader covering political dialogue, development finance cooperation and other areas which bind the ACP Group. I also believe that jointly, the ACP and the EU can play an instrumental role in influencing the global development agenda if they work in concert. I think this will be possible after the heat of the debate on EPAs has subsided. Therefore, the need for retaining this framework at the all-ACP level with the ever-expanding EU is desirable and should be encouraged. To this end, the ACP Ministers held discussions on the Group's future and ideas were floated on how to strengthen it. Not a single Minister spoke in favour of dismantling. On the contrary, they all expressed the need to fortify and revitalise the Group. Long live the ACP!

- Sir John R. KAPUTIN was appointed ACP Secretary-General on December 2, 2004.
- He is a National of Papua New Guinea.
- Sir John received his education in Papua New Guinea, Australia, and the United States of America studying Business Administration as well as Public Administration.
- As a Member of Parliament, Sir John served for 30 years in the National Parliament of Papua New Guinea between 1972 and 2002.
- He was Co-President of the ACP-EU Joint Parliamentary Assembly from 1995-1997.
- Sir John has been associated with the Lomé Convention and the Cotonou Agreement since 1978.

<sup>1</sup> Council Regulation (EC) No. 1528/2007 of December 20 2007, 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 establishments of Economic Partnership Agreements See: [http://eur-lex.europa.eu/LexUriServ/site/en/oj/2007/L\\_348/L\\_34820071231en00010154.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2007/L_348/L_34820071231en00010154.pdf)

# Public procurement and EPAS

Tomasz Iwanow and Colin Kirkpatrick<sup>1</sup>

Although public procurement is off the multilateral agenda, it is working its way back into bilateral trade negotiations. This is partly through the European Union's efforts to negotiate access to procurement markets through its Free Trade Agreements (FTAs) - including the Economic Partnership Agreements with African Caribbean and Pacific countries. What are the implications for the parties negotiating such commitments, particularly for the developing countries that are being asked to agree to public procurement market liberalisation?

Government procurement is the term used to describe the purchasing activities of government and government controlled entities. Government spending on tradable goods and services is estimated at more than US \$2,000 billion annually.<sup>2</sup> Government procurement of goods and services typically accounts for 10-15 per cent of GDP for developing countries and around 20 per cent of GDP for developed countries. A large fraction of this spending is on services.

## The EU agenda

Although government procurement was dropped from the Doha Round, the EU is keen to negotiate substantial commitments.<sup>3</sup> Its inclusion in bilateral European trade negotiations closely follows the EU's '*Global Europe: Competing in the World*' strategy, which identifies government procurement as key for EU companies to compete on an international basis (See box 1). In line with this, the European Commission is vigorously pursuing the inclusion of public procurement in EPAs. This is mainly for two reasons: First, to improve European access to ACP public procurement markets. Second, to promote the potential gains for the ACP. It claims that rules to improve transparency and accountability in public procurement activities could help alleviate poverty through improved efficiency in public services delivery, improve public expenditure procedures and reduce corruption and rent seeking activities in ACP countries.<sup>4</sup> Moreover, EU member states deem transparency and accountability in government procurement vital for the EU to support Official Development Assistance, and it could help justify an increase in aid.

### Box 1: An area of untapped potential

The European Commission identified public procurement as "an area of significant untapped potential for EU exporters. EU companies are world leaders in areas such as transport equipment, public works and utilities. But they face discriminatory practices in almost all our trading partners, which effectively close off exporting opportunities. This is probably the biggest trade sector remaining sheltered from multilateral disciplines".<sup>5</sup>

The areas where government procurement is most prevalent coincide with the EU's main 'offensive interests', as its companies are world leaders in these areas: services and sectors such as construction, pharmaceuticals, public utilities or transport equipment. The EU thus deems the lack of multilateral disciplines in public procurement as a serious constraint for its companies to compete for public contracts in foreign markets and is seeking to gain access through its bilateral trade agreements and free trade agreements, encouraging third countries to negotiate substantial commitments with Europe.

The EU's standard proposal for the inclusion of government procurement (see Box 2), was put to all ACP regions and received differing responses. Whereas the Caribbean agreed to include government procurement in an EPA, other regions were less forthcoming. Yet, even in the Caribbean EPA (the only full agreement to be signed by the December 31 deadline), there was no firm commitment or binding obligation on public procurement, merely a 'best endeavour' provision on transparency and non-discrimination.

## ACP resistance

Some ACP regions resist the inclusion of government procurement in the agreements because it is seen as an instrument to develop their own industrial policy. Juicy government contracts can help rear infant industries, and are something the ACP does not want to surrender to more competitive foreign contractors. There is also a fear of predatory

pricing by foreign companies and the eventual creation of monopolies that drive local firms out. Moreover, ACP negotiators lack clarity on the necessary government procurement commitments and are afraid to agree to irreversible obligations. On an institutional level, the ACP has limited capacity to implement and enforce the required rules. Besides, the ACP is sceptical about its capacity to take advantage of public markets in the EU, and feels that the group would be giving away an area with potential for development without, in practice, getting anything in return.

### Box 2: An EU proposal on Government Procurement<sup>6</sup>

The standard EU Commission proposal for EPAs is based on the WTO agreement on government procurement and thus allows for Special and Differentiated treatment. It has as its objective the "effective, reciprocal and gradual opening of government procurement markets". It provides for national treatment and no discrimination between the parties and within the partner region states. It lists exceptions such as land, assistance and fiscal services.

There is a strong focus on transparency and is comprehensive on the methods of procurement and tendering, with rules on actors, thresholds, valuation, safeguards, cases of non-applicability, rules of origin, time limits, bid challenge by suppliers and provisions applicable to limited tendering.

Time-limited exemptions from the principle of national treatment for some countries are envisaged, and there is a provision for transitional measures, taking into account the "development, financial and trade needs" of the EPA member states.

## A future path

So, how should the EPA countries respond to the EU's insistence that public procurement be an integral part of the negotiations? Regrettably, there is little evidence that assesses the potential effects of agreeing to public procurement reforms in low income developing countries.<sup>7</sup>

However, suggestions include making access to government procurement markets conditional - like joint ventures - so as to allow technology transfer and promote access to knowledge. This would help the ACP move up the value chain, build capacity and develop. Strengthening the base for decision-making should be an integral part of regional trade negotiations. As part of the EPA talks in 2008, the ACP should insist on a detailed development-focused assessment of the potential impact of public procurement market liberalisation from the Commission, as a precondition to further negotiations. This would allow for more informed rule-making in public procurement reform, while at the same time helping to identify the complementary measures that are needed to ensure that such reforms support the development process.

<sup>1</sup> Impact Assessment Research Centre (IARC) University of Manchester, UK. ([www.manchester.ac.uk/sed/research/iarc](http://www.manchester.ac.uk/sed/research/iarc))

<sup>2</sup> OECD, 2003.

<sup>3</sup> [www.ec.europa.eu/trade/issues/sectoral/gov\\_proc/index\\_en.htm](http://www.ec.europa.eu/trade/issues/sectoral/gov_proc/index_en.htm)

<sup>4</sup> The Commission has stated that its approach to regional trade negotiations with 'poorer countries' on public procurement should be consistent with the EU's international development policy. This could mean that the EU will only focus on achieving agreement on greater transparency in government procurement procedures, as a means of improving the quality of public governance in the partner countries.

<sup>5</sup> Source: "Global Europe: Competing in the World"; European Commission, 2006. [www.trade.ec.europa.eu/doclib/html/130376.htm](http://www.trade.ec.europa.eu/doclib/html/130376.htm)

<sup>6</sup> Source: draft European Commission consolidated proposal for EPA with SADC. June 5 2007, [www.bilaterals.org/article.php3?id\\_article=9719](http://www.bilaterals.org/article.php3?id_article=9719)

<sup>7</sup> As noted by Evenett and Hoekman (2005) the evidence offered to support the claims that public procurement reform can support development policy, needs to trace through the changes in public procurement policies to observable outcomes and also needs to take into account the other possible non-procurement related factors that might be at work. This is a difficult empirical task and therefore the authors conclude that there is insufficient evidence as to the means by which successful public procurement reform can be implemented.

# ACP farmers' organisations and EPAs:

## from a whisper to a roar in two short years

Nora McKeon<sup>1</sup>

The European Union was created with a view to tackle the issues concerning the citizens of a region that had been severely traumatised by World War II. A central element of its institutional system was the Common Agricultural Policy (CAP), which was founded on the need to ensure European food security.



This largely social model was progressively institutionalised through the establishment of the European Parliament and a whole fabric of consultative bodies. Yet these institutions did not suffice to keep a sense of regional identity and citizen ownership alive. The rejection of the European Constitution in France and the Netherlands in 2005 was a cautionary illustration of the importance of maintaining a dynamic interaction with non-state actors. Yet the EU is ignoring this self-learnt lesson in its declared efforts to promote the regional integration of ACP countries.

The Cotonou Agreement rightly views stakeholder participation as an indispensable aspect of the process of promoting regional integration and development, but rhetoric has not been followed by action.<sup>2</sup> The European Commission has conducted EPA negotiations in an aggressive manner, not only inhibiting civil society involvement but regional integration itself, placing priority on meeting the December 31 2007 deadline for signature at any cost. The Commission Communication of October 23, which envisaged signature by sub-regional groups of countries and was denounced by more than one African leader at the recent Lisbon Summit, confirmed this pig-headed single minded approach.

On the European front, the EPA negotiations have constituted yet another demonstration of the impermeability of the EU Commission to debate policy dialogue with its own citizens. On the ACP side, the EU has demurely suggested that it is up to ACP regional economic organisations to arrange for stakeholder participation if they so desire. Such respect for ACP sovereignty might be acceptable if the EU was not imposing a series of far heavier conditions on the negotiators themselves. As it is, this smacks of hypocrisy. With a considerable budget devoted to grinding the negotiations to their conclusion (it would be interesting to have the figures) no dedicated resources have been made available to facilitate ACP stakeholder involvement.

How have the ACP farmers' organisations (FO) reacted to such a situation? During the course of 2005, major regional farmers' networks began to express increasing concern with negotiations that would clearly have an enormous impact on their livelihoods.<sup>3</sup> They also felt frustrated with the rubber wall they encountered when seeking clear information. At a seminar on EPAs in Rome during February 2006, a group of FOs requested longstanding European partners (non-governmental organisations with whom they collaborated in the context of the Europafrica campaign)<sup>4</sup> to join with the UN's Rome-based Food and Agriculture Organisation (FAO) and the International Fund for Agricultural Development (IFAD), to support the preparation of an independent contribution to the EPA midterm review.<sup>5</sup>

The partnership was based on respect for the different identities and roles of each actor. Political control of the review was squarely in the hands of the farmers' networks:

IFAD provided financial support, FAO gave technical assistance, while the NGOs ensured the farmers' organisations had access to strategic documents and information. The results were compelling. In the space of just six months, five autonomous assessments were prepared and presented to the respective regional integration organisations. A synthesis of these assessments - presented to the ACP Secretary General on December 15 - won global recognition, securing inclusion for farmers' networks in the all-ACP experts' deliberations.<sup>6</sup> On the home front, farmers' networks continued to lobby with other sectors of civil society, mobilising rural populations and making them sensitive to the key issues.

It is too early to talk about the long-term impact of such action, but FOs are undoubtedly helping to make ACP regions and national governments more accountable to social actors. Indeed, the increasing mobilisation of citizens has influenced two regions to reject the December 31 deadline.<sup>7</sup> The FOs are also strengthening ACP negotiating positions. In West Africa, in particular, the Network of Peasant and Agricultural Producers' Organisations (ROPPA) has been included in the working group on productive activities, making authoritative contributions on technical questions in the interests of the small farmers who constitute the majority of the population. The work on EPAs has helped to strengthen exchange and cooperation among ACP regional farmers' networks and has helped to forge alliances between farmers and other sectors of civil society. In particular, this work has contributed to building links between ACP social actors and European civil society advocacy campaigns, creating common platforms with European farmers' organisations which advocate CAP support for multifunctional agriculture and rural development.

Whatever the eventual outcome of the EPAs, ACP farmer networks have succeeded in exploiting the negotiations to raise their voices to such a roar that governments will find difficult to ignore them in the future: A significant achievement in itself.

<sup>1</sup> Nora McKeon works for Terra Nuova/Europafrica. This article is based on a chapter that will appear in Philippe De Lombarde and Michael Schulz, *The 'Makability' of Regions. An Evaluation of EU Monitoring and Support to Regional Integration Worldwide*. CRIS/UNU.

<sup>2</sup> See the second "fundamental principle" listed in Article 2.

<sup>3</sup> East African Farmers Federation (EAFF) in East Africa, Sub-regional Platform of Peasant Organisations of Central Africa (PROPAC) in Central Africa, Network of Peasant and Agricultural Producers' Organisations in West Africa (ROPPA), Southern African Confederation of Agricultural Unions (SACAU) in Southern Africa, and Winward Island Farmers Association (WINFA) in the Caribbean.

<sup>4</sup> Coordinated by *Collectif stratégies alimentaires* in Belgium and *Terra Nuova and Crocevia* on behalf of the *Support Group for the Farmers' Movements in Africa* in Italy.

<sup>5</sup> The latter had just conducted its first Farmers' Forum in conjunction with the IFAD governing council.

<sup>6</sup> The documents can be accessed at [www.europafrica.info](http://www.europafrica.info).

<sup>7</sup> ECOWAS and CEMAC.

# WTO Roundup

## Doha talks inch forward amid cautious optimism

Victoria Hanson, ICTSD

WTO Members insist that they have not given up on concluding the Doha Round of global trade talks in 2008. The start of year brought fresh hopes that a deal may be potentially inching closer, despite many of the well-known obstacles persisting.

WTO Director General Pascal Lamy, voiced his optimism during a recent visit to meet ministers in Beijing. "It's an Olympic year for China and maybe an Olympic year for Doha too," Lamy told a Chinese newspaper on January 22.<sup>1</sup> "What I see from WTO members is a desire to try to finish the negotiations, which have been cooking for six years, sometime during this year," he said. Lamy claimed that a deal "is doable as we now have both political and technical conditions to make it possible".

### Agriculture takes the lead

The Chairman of the agricultural negotiating group, Crawford Falconer, claimed there had been "significant progress" following the circulation of eight 'working documents' on market access and domestic support during the first two weeks of January. The documents were aimed at identifying possible areas of convergence in the talks.

Signs that the EU could now consider elimination of the 'special agricultural safeguard' were particularly constructive, Falconer told a meeting of the negotiating committee on January 11. The mechanism, designed to allow farm imports to be restricted in the event of import surges, has been used extensively by the EU and others to maintain high tariffs on certain products, to exporters' longstanding dismay.

Shortly before the end-of-year break, Falconer released eight other papers setting out a six-year programme of cuts in permitted ceilings on agricultural domestic support payments. The proposals, issued late on December 21, offered new details on how the various curbs on domestic support would be applied, although sources claim there has been little progress on the size of the cuts to be made.

### NAMA talks in the deep-freeze

In contrast to the progress on technical issues in agriculture, wide gaps remain between Member's positions on non-agricultural market access (NAMA). "Nothing happened" during recent talks to narrow long-standing gaps, Chair Ambassador Don Stephenson told delegates at the negotiating committee on January 21. Indeed, it seems little has changed in the divide over NAMA since July 2007.

This deadlock has hampered Stephenson's ability to revise the figures in his own draft texts. He claims the key issues in the NAMA talks would only be resolvable in conjunction with the farm negotiations, as part of cross-sector trade-offs. I.e. some countries might be willing to soften their positions on industrial tariffs if they receive the concessions that they want in agriculture - and vice versa.

### World economy fears dominate at Davos

The recent pessimistic world economic outlook reinvigorated trade ministers meeting in Davos this month to voice the need for a final push to clinch the Round. Following the financial

aftershocks of the subprime catastrophe in the US, ministers from some 20 key WTO members stressed the need to finalise a deal so as to avoid any fresh blow to confidence and growth.

"All are aware that if they cannot conclude the Doha Round in 2008, probably they will never conclude," Swiss economics minister Doris Leuthard told colleagues at the World Economic Forum meeting on January 27.<sup>2</sup> Leuthard, who hosted the meeting, said momentum could be derived from the potential financial crisis which might affect world markets. "We can give a strong signal to stabilise the world economy when you achieve the goal to conclude the Round in 2008," she said.

During a special lunch to discuss the Round, Pascal Lamy proposed to hold a full ministerial meeting sometime around Easter to reach a deal on the remaining crucial issues. The move was reportedly supported by all attending, with Brazil's Foreign Minister Celso Amorim describing the drive for a ministerial as "a window of opportunity - but because of the financial crisis it has also become a window of necessity."

### EU and US covet deal before year-end

According to EU Trade Commissioner Peter Mandelson, there was a real possibility that the Doha initiative would be dropped if there was no agreement on 'modalities' by Easter. "If we don't see such a ministerial meeting agreeing the modalities... round about Easter or just after I think the chances of us completing the Round this year will be very seriously reduced," Mandelson told journalists on January 24. "And if we fail to do it this year I do not have high expectations of an incoming US administration simply taking up where President Bush left off," he added.<sup>3</sup>

Mandelson's trade counterpart Susan Schwab said the US was committed to striking a deal in 2008 and claimed the approach of the presidential elections need not hamper a successful conclusion. "Substance obviously has to dominate calendar," Schwab said.<sup>4</sup> "No-one is going to sign up to an agreement they or we don't believe is in our best interests. But there is a sense of momentum, there is a sense of urgency, that we have a window. You can't negotiate around elections when you have 152 countries in the WTO."

### New Doha drafts planned for February

The push for an April breakthrough will be based on a new set of negotiating texts from the chairs of the two working groups on agriculture and NAMA. Falconer, who will release the agriculture paper first, was expected to table the document at the end of January. However, it is now only likely to be made public after the WTO General Council meeting, scheduled for February 5-6, in a bid to prevent the text from dominating discussions.

According to Falconer, these highly anticipated texts, designed to update the drafts circulated by the chairs last July, will be "a lot cleaner."

Sceptics have pointed out that there was a similar level of optimism and pledges to action in the Doha Round following the Davos summit last year. But Lamy claimed after the meeting: "We are much nearer to 'nearly there' than last year."

<sup>1</sup> See: WTO Director-General Pascal Lamy during an interview with China Daily, January 22 2008.

<sup>2</sup> See: WTO ministers seek to conclude Doha Round in 2008, January 27 2008. www.chinaview.cn

<sup>3</sup> See: Reuters, Jonathan Lynn, EU says outline Doha deal needed by Easter, January 24 2008.

<sup>4</sup> See: Reuters, Presidential elections need not hamper Doha, January 25 2008.

# EPA Negotiations Update

Victoria Hanson and Melissa Julian

## EU and ACP to push for full EPAs in 2008

EU Trade Commissioner Peter Mandelson said that he plans to use 2008 to transform the interim Economic Partnership Agreements (EPAs) initialled by the EU and the ACP in December 2007 into full trade and development agreements. Speaking to the Development Committee of the European Parliament in Brussels on January 28, Mandelson said that the agreements were a significant achievement in difficult circumstances and showed that the "ACP and EU working together can make policy and build partnerships as equals."<sup>1</sup>

Mandelson told MEPs that some 99.5% of exports from ACP countries can now enter the EU duty and quota-free, although a small number of products still remain protected. "We have delivered three things: duty and quota free market access; flexible liberalisation that protects growing ACP industries; and exclusions that protect farmers," Mandelson said.

Interim EPAs must now be expanded into full EPAs that will include rules governing goods, services, investment, trade rules and development, Mandelson underlined. He said that he would not use the final stages of negotiations to crowbar the so-called "Singapore" issues - investment, competition, procurement and services - into final deals. "But I am in no doubt that these are development issues," he said. "These are Cotonou issues, not Singapore issues."

Mandelson attacked NGOs for arguing that the agreements would further impoverish developing countries. "There is a huge amount of misinformation out there," he said. "On NGO websites you can read that Ghana's chicken farmers, or Mozambique's flour millers, are threatened by EU imports, when both of these products have been excluded from any liberalisation," he said. African banana and beef exporters are also happy with the outcome of the EPA deals, he claimed. Many MEPs took issue with Mandelson's comments and asked for a lengthy period of debate on the consequences of the EPAs before they are implemented.

## No date set for Barroso's EPA intervention

European Commission President José Manuel Barroso has yet to set a date for high-level talks on the EPAs. It had been thought that Barroso would do so in February, after extending a personal olive branch to the ACP last December. During the EU-Africa Summit meeting of leaders in Lisbon on December 8-9, Barroso promised that there would be an opportunity to continue discussions beyond the initialling of interim arrangements and to open up contentious clauses for re-negotiation. Barroso also indicated he would take a more hands-on approach by visiting ACP regions to discuss these matters further.

The ACP Council President, Misa Telefoni, met Barroso on January 24 to talk about this commitment. According to one source Barroso was supportive and confirmed he would visit the four African regions and address the ACP Council if invited. It now appears that talks will take place at the regional and ministerial level to identify which regions need high-level dialogue.

## AU to increase EPA coordination

The African Union is also gearing up for the high-level political meeting proposed by Barroso. How to move forward with the EPAs was the main issue discussed at the fifth AU coordination meeting with regional and financial bodies, ahead of the 10th AU Summit, in Addis Ababa. Representatives of the RECs involved in EPA negotiations highlighted the flaws in the EPA negotiating process and the extreme pressure exerted on African regions - in particular in the last weeks of 2007. The AU made a decision,

subsequently adopted at the Summit, to provide political direction for the months ahead and strengthen the role of the AU Commission in the EPA process. A protocol defining the relations between the AU and the RECs was also signed.

## Central Africa searches for unity after EPA split

The Central African region is finding it difficult to establish a common regional position, after Cameroon signed a bilateral interim Agreement with the Commission last December. One source claims that regional integration has been badly damaged after CEMAC was not involved in the interim negotiations which led to Cameroon's deal, Gabon has not yet signed, Congo did not officially negotiate and Least Developed Countries did not consider an interim pact to be an option.

Technical experts, who are particularly unhappy with the interim text Cameroon agreed at the political level, are now due to meet with the European Commission from February 4-8 in Douala. Here they will try to hammer out a strategy to continue with negotiations. Topping the list of unanswered questions is whether the old texts should be used as a basis to move forward for the region and whether Cameroon's offer can be modified or improved. After this technical meeting, CEMAC ministers will meet to decide if they will continue with regional or bilateral interim negotiations.

## West Africa to continue negotiating as a region

West African leaders stated their desire to continue negotiating EPAs as a bloc this year, despite the Ivory Coast and Ghana being the only two countries to have initialled an EPA with the EU. During the 33rd ordinary ECOWAS Summit in Ouagadougou, Burkina Faso, on January 18, Heads of State and governments directed the ECOWAS commission to convene a meeting of member states to agree on an appropriate regional roadmap for the EPA and make proposals to resolve outstanding issues in connection with the introduction of a region-wide Common External Tariff (CET).

The Ivory Coast will formally sign its EPA with the EU by June this year, Amadou Koné, Minister of African Integration for the Ivory Coast, said on January 31. An interim EPA between the two parties was inked on December 7, but both parties will be driving forward talks to complete a full agreement. At the close of a meeting between Mandelson and Koné in Brussels, Koné said: "I welcome the interim agreement reached with the EU in December. Côte D'Ivoire is committed to ensuring the formal signature of the agreement before the end of June of this year."

The start of the year saw vocal opposition to the EPAs, in part organised by Senegalese President Abdoulaye Wade. Hundreds of government backed protesters marched in Senegal's capital Dakar in early January, while protesters from throughout Europe gathered in Brussels to say "No to EPAs, Yes to an equal partnership with Europe." Senegalese rapper Dider Awadi even wrote an anti-EPA song.<sup>2</sup>

## SADC set to feel effects of FTA

The Southern African Development Community (SADC) Free Trade Area came into effect on January 1, meaning that most goods produced in the region can move freely between member states without the imposition of customs duties that non-SADC countries must pay.<sup>3</sup> Some SADC countries fear South Africa stands to gain most from the new arrangement.

An urgent meeting of the South African Customs Union (SACU) trade minister has been scheduled for early 2008 to deal with the fact that most SACU countries have initialled interim trade arrangements with the EU while South Africa has not. The South African government fears that a lack of regional alignment will threaten the unity and regional integration possibilities for SACU.

Given that the annual holiday only finished at the end of January, no schedule for further SADC-EPA negotiations has yet been finalised. Formal get-togethers are not expected before March,

when a senior officials meeting could re-launch the process. There is a slim possibility of a ministerial, but sources believe March is too soon. Meanwhile, TRALAC is working on a seminar on trade in services and investment, for negotiators and the private sector in Cape Town at the end of February. The European Commission Trade and Development DGs will attend.

### COMESA navigating troubled waters

Disquiet has emerged in the Common Market for Eastern and Southern Africa (COMESA), where some member states initialled EPAs to the exclusion of others. Although COMESA had been pursuing joint trade deals with the EU under the Eastern and Southern Africa (ESA) platform, only 9 of the 16 member states have signed new pacts with Brussels - most under separate proposals.

This partition prompted the Secretariat to raise the alarm over the threat this will pose to the region's future. Indeed, the divisions took centre stage during a stormy Regional Negotiating Forum (RNF) meeting in Lusaka on January 16-17, where officials pushed for urgent talks between regional ministers to tackle the situation.

"In view of the need to preserve regional solidarity and unity, it is necessary that we discuss the way forward and strategies to achieve our negotiating mandate and objectives on Economic Partnership Agreements," COMESA secretary-general Erastus Mwencha said.<sup>4</sup> According to media reports, the final report of the meeting offered a "grim" overview, claiming the interim arrangements were potentially negative for regional integration. The COMESA Secretariat will now review the different interim agreements reached in the sub-region with a view to co-ordinate regional integration programmes by April 2008.

Meanwhile, the post-election crisis in Kenya, means that the East African Community (EAC) may be unable to establish a common market by its target date of January next year. The EAC had set the target date for ratifying the Common Market Protocol for June 2009, expecting to officially launch it in January 2010.

### Caribbean reflects on signing comprehensive deal

In the Caribbean, the only region to have signed a full EPA with the European Commission, reactions have ranged from delight to dismay. While some regional negotiators described the eleventh-hour signing as a "negotiated victory", Guyana's President Bharatt Jagdeo, claimed the region had had little choice and that signing was nothing more than capitulation to EU pressure. CARICOM's Council for Trade and Economic Development (COTED) called for an "independent review" of the EPA on January 25. There have also been murmurs that both St. Lucia and Barbados are uncomfortable with what was negotiated.<sup>5</sup>

But Jamaica's Prime Minister Bruce Golding hit back at critics of the EPA, accusing them of begging and a failure to escape the psychological shackles of slavery. He said that the belief that preferences - such as those that existed for sugar - should remain, was "a kind of mendicancy that we need to purge ourselves of." In a keynote speech to an annual regional conference on Investments and Capital Markets in Montego Bay on January 29, Golding stated the EPA represented a decent deal: "Did we get all that we asked for? No. Did we get a good deal? I say yes".<sup>6</sup>

A ministerial signature of the Caribbean-EU EPA is foreseen no later than April 2008, possibly in Barbados.

### Pacific regional relations tested by EPA

Pacific regional relations have been strained since Fiji and Papua New Guinea broke ranks with the rest of the region to sign interim EPAs with the Commission last December. Technical experts in particular were unhappy that Pacific politicians had given the deals a green light without knowing the full implications. Pacific trade officials will now meet in early February to see if they can pick up negotiations where they left off last year.

The main annual holiday period in the Pacific region only finished towards the end of January so there are no concrete plans for further follow up on EPAs. The European Commission has said it intends to hold an EPA information seminar in Papua New Guinea in April, but this still has to be confirmed.

For a more detailed version of the EPA update and the latest on the negotiations, please visit: [www.acp-eu-trade.org/epa](http://www.acp-eu-trade.org/epa) and [www.ecdpm.org/epa](http://www.ecdpm.org/epa)

<sup>1</sup> To read Mandelson's full speech see: [http://ec.europa.eu/commission\\_barroso/mandelson/speeches\\_articles/sppm190\\_en.htm](http://ec.europa.eu/commission_barroso/mandelson/speeches_articles/sppm190_en.htm)

<sup>2</sup> To listen click: [www.awadimusic.com](http://www.awadimusic.com)

<sup>3</sup> See: [www.tralac.org/scripts/content.php?id=7305](http://www.tralac.org/scripts/content.php?id=7305)

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<sup>5</sup> See: *Caribbean at Loggerheads*, St. Vincent and the Grenadines, February 1.

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# Trade Negotiations Insights

## Calendar and resources

### ACP-EU EVENTS

#### FEBRUARY

- 4-8 Technical level meeting of CEMAC, EU Commission and Cameroon. Following this, CEMAC ministers will meet to see if they can continue regional negotiations or only the interim agreements.
- 4-8 Meeting of EAC Sectoral Council on Trade to plan a roadmap for EPAs over the next 18 months.
- 7-8 ECOWAS and UEMOA will have an EPA coordinating meeting in Abuja
- 10 ESA Working Group and Council meet to decide EPA strategy.
- 13 Workshop on the CARIFORUM-EU Commission EPA: A first look at opportunities and challenges. Organised by DG Trade, Brussels.
- 15 Mid-February ECOWAS ministerial meeting.
- 17-18 EU Slovenian Presidency meeting on challenges of EU 27 development policy. Includes seminar on EDF with NGOs participation.
- 18-19 EU General Affairs Council (Foreign Ministers).
- 20 A Pacific ACP meeting of Trade officials to discuss next steps of EPA process, most likely in Fiji.
- 20 COMSEC and OIF Hubs and Spokes Coordinating Committee
- 25 TRALAC is working on a seminar on trade in services and investment, for negotiators and private sector, Cape Town, end February. EU Commission DGs Trade and Development will attend.
- 28 Caribbean States in 2020: Sinking, Surviving or Prospering? Wilton Park.

#### MARCH

- 10 EU General Affairs Council (Foreign Ministers).
- 13 EU Summit.
- 15 ACP-EU Joint Parliamentary Assembly.
- 15 Caribbean-European Commission EPA formal signing scheduled to take place.
- 28 Informal EU General Affairs Council (Foreign Ministers).

### WTO EVENTS

#### FEBRUARY

- 5 General Council.
- 11 + 13 Trade Policy Review Body, Mexico.
- 15 WTO Introduction Day.
- 18 + 20-22 Negotiating Group on Trade Facilitation.
- 19 Dispute Settlement Body.
- 25 + 27 Trade Policy Review Body, Brunei Darussalam.

#### MARCH

- 11 Council for Trade in Goods.
- 13-14 Council for Trade-Related Aspects of Intellectual Property Rights.
- 14 Dispute Settlement Body.
- 17 Round of consultations on the Development Aspect of Cotton.
- 18-19 Committee on Agriculture.
- 18-19 Technical Barriers to Trade Workshop - Good Regularity Practice.
- 20 Committee on Technical Barriers to Trade.
- 21 GOOD FRIDAY (WTO non-working day).
- 24 EASTER MONDAY (WTO non-working day).
- 31 Workshop - Sanitary and Phytosanitary Measures.

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