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Replace controversy with debate, says Ashton

A TNI exclusive interview with Baroness Catherine Ashton

In early October 2008, just days before the historic signing of a comprehensive EPA between the EU and the Caribbean, Baroness Catherine Ashton was named the European Trade Commissioner, swiftly replacing her predecessor, Peter Mandelson. For those involved in the EPA negotiations, all eyes immediately turned on Ashton.

Since then, the expectations, controversies, debates, complexities, successes, and failures of the EPA talks, have fallen on her. So, how does this former member of the UK House of Lords view the progress, opportunities, and future of the EPA negotiations? *Trade Negotiations Insights* reached out to Ashton to find out, in her own words.

TNI: *What is needed for the successful completion of the EPAs? Do you expect negotiations to be completed within the deadlines set in the interim EPAs?*

Ashton: The top priority is to get the substance of each EPA right. There are complex issues of timing and content but I believe the political willingness is there. Both member states and ACP partners have regularly restated their commitment to EPAs and there is an increasing consensus about the way forward. No one is questioning the fundamental idea that we need WTO-compatible agreements and if we can match the political willingness with agreements tailor-made to the aspirations of each region, the EU can effectively support economic development and regional integration with our ACP partners.

We should also remember that the dates specified in the interim EPAs aren't deadlines – they're targets. We have a series of ambitious negotiating calendars that have been agreed with each region but these are under continuous review. No one can be pushed into a deal before they are ready.

TNI: *You have emphasised that you wish there to be a 'different character' to the EPA negotiations, the process of which has been widely criticised by civil society organizations*

and leaders across the ACP. How will you ensure that the asymmetries in negotiating power between the ACP and the European Commission are overcome?

Ashton: We must reflect on the state of play and make sure that Economic Partnership Agreements work for everyone involved. The EPA process only makes sense if all parties are brought in, so addressing any questions about trust or confidence is a priority for me. Of course there has been some criticism of the process, and negotiations haven't always been easy, but there are always going to be different views – that is the nature of any trade negotiation. What is important is that we don't lower our ambitions to the lowest common denominator. That would be bad for development and bad for regional integration. So we need to listen to the concerns of each region and replace controversy over interim agreements with a positive debate on full EPAs. We can take huge inspiration from the full EPA recently agreed with Caribbean countries and I am confident that we can make real progress in 2009.

(Continued on page 03)



Editorial

While much has been accomplished in the last twelve months, enormous challenges still remain for 2009: no interim EPA led to a full Agreement by the end of 2008, many African and Pacific states remain sceptical of the negotiations process, and the global economic crisis threatens to impede economic growth and development aims achieved thus far. But the start of the New Year is a time for rejuvenation and looking ahead.

For many ACP states, hope has come in the form of a new EU Trade Commissioner. Appointed in October and leading the way into 2009, Baroness Catherine Ashton has promised to bring flexibility and understanding to the negotiations. To find out her own thoughts about the EPAs, where they have been, where they are headed, and how she will fulfil these promises, TNI asked Baroness Ashton directly. Our lead story of this issue is that exclusive interview.

Further laying out the road ahead, Glenys Kinnock examines in this issue the battles that must be fought and won during the 2009 EPA negotiations. In this piece, she outlines the challenges that persist and how they can – and indeed must – be overcome for the greater good of the ACP and the EU.

One such challenge facing the ACP is the creation of provisions that affect these states but are established without their input. Abdoulaye Diagne examines one such provision: the recently passed EU regulation that aims to limit illegal, unregulated, and unreported fisheries. In his piece, Diagne effectively considers the implications and challenges of such unilaterally established regulations.

Continuing our coverage of the CARIFORUM EPA, TNI considers the implications of the Agreement on a sector not immediately associated with trade and development: cultural industries. Here, we include two pieces on how creative sectors can benefit trade and development, and on what the Caribbean must do if this industry is to capitalise on provisions in the EPAs that will help stimulate economic growth for the region.

Finally, the issue wraps with a hot topic of the day: climate change and the environment. In our final two articles, Paolo Ghisu and Ronnie Hall examine how trade can either undermine or support sustainable development initiatives and economic growth.

As always, comments are welcomed and can be addressed to czaino@ictsd.ch

News and publications

In brief

EU decision on GSP+ applications

Duty-free access to the EU market for around 6400 tariff lines was granted to sixteen developing countries by the European Commission on 9 December 2008. The decision came under the GSP+ special incentive arrangement for sustainable development and good governance. Two ACP countries that had applied, Nigeria and Gabon, were not however accepted because, according to the EU, they failed to meet the criteria: out of twenty-seven conventions on international human rights, good governance, and sustainable development, Nigeria had not ratified one (genocide) and Gabon two (child labour and hazardous waste trade). The Commission rejected the accusation from the National Association of Nigerian Traders that the decision was not “purely legal” but another tool to force Nigeria into signing an EPA.

Political outlook for Southern Africa for 2009

Southern Africa will face heightened political and economic strains in 2009 brought on by a deteriorating security situation in both Zimbabwe and the Democratic Republic of Congo where democratic progress also remains elusive. This will be exacerbated by probable adverse affects from the global economic slowdown. To this, Angola, Botswana, Malawi, Mozambique, Namibia, and South Africa will all go to the polls this year, where multiple elections will likely see ruling parties entrenched.

Challenges for ACP-EU relations in 2009

The year 2009 is set to bring major changes to how the European Union (EU) conducts its international affairs: European Parliament elections will be held in June 2009, a new set of European Commissioners will take office in November, and there will be changes to how the Council of Ministers is run. This year will also mark the second review of the Cotonou Partnership Agreement, where a clearer place will be sought for the African Union in Africa-European relations. Further changes are expected to emerge from a new US administration that is set to rebuild bridges in international affairs and reconnect with popular aspirations globally. The European Centre for Development Policy Management examines these and other pressing challenges for the year ahead in an end of 2008 published InBrief.

To view this publication, see: ECDPM InBrief, James Mackie, Eleonora Koeb and Veronika Tywuschik, December 2008: [www.ecdpm.org/Web_ECDPM/Web/Content/Download.nsf/01183F7F97AD33B88DC1257535003100271\\$FILE/InBrief22_e_challenges%202009.pdf](http://www.ecdpm.org/Web_ECDPM/Web/Content/Download.nsf/01183F7F97AD33B88DC1257535003100271$FILE/InBrief22_e_challenges%202009.pdf)

The EC-CARIFORUM EPA: Assessing the outcomes on services and investment

A recent paper published by the European Centre for International Political Economy (ECIPE) examines the extent to which services and investment provisions in the CARIFORUM EPA advance liberalization, its implications for development in the region, and policy lessons it provides for Africa and the Pacific. The Agreement not only represents a precedent-setting evolution in preferential trade agreements, but it also sets a high standard for all subsequent EPA negotiations. In this ECIPE study, it is made clear how a well-negotiated agreement between highly unequal partners can nonetheless generate outcomes that offer tangible benefits to the weaker player. The report brings a welcome positive outlook to the much-maligned EPA process.

To view this publication, see: The EC-Cariform Economic Partnership Agreement: Assessing the Outcome on Services and Investment, ECIPE Paper, Pierre Sauvé and Natasha Ward, European Centre for International Political Economy, January 2009: www.ecipe.org/the-ec-cariform-economic-partnership-agreement-assessing-the-outcome-on-services-and-investment

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- 1 “EU gives developing countries duty-free access with GSP+ Brussels,” 9 December 2008: www.ec.europa.eu/tradel/issues/globall/gsp/pr091208_en.htm
- 2 “NANTS position on the EPA and the EU’s rejection of Nigeria’s GSP+ application,” NANTS, 19 December 2008: www.acp-eu-trade.org
- 3 “Nigeria: The Country and the GSP Debate,” Kelechi Onyemaobi, Delegation of the European Commission to Nigeria, 4 January 2009: www.allafrica.com
- 4 “ACP-EU Newsletter,” Melissa Julian, ECDPM, 10 January 2009: [www.ecdpm.org/Web_ECDPM/Web/Content/Download.nsf/016E26323BC708D8CBC125753C004BB22A1\\$FILE/ACP-EU%20News%20100109.pdf](http://www.ecdpm.org/Web_ECDPM/Web/Content/Download.nsf/016E26323BC708D8CBC125753C004BB22A1$FILE/ACP-EU%20News%20100109.pdf)
- 5 “The political and economic outlook for Southern Africa in 2009: Southern Africa faces multiple strains,” Oxford Analytica, 25 Nov 2008: www.reliefweb.int/rw/rwb.nsf/db900SID/YSAR-7LQUEK?OpenDocument

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TNI: *What scope is there to renegotiate the 'contentious issues' (as identified by the African Union Ministers of Trade and Finance in April 2008 and endorsed by the ACP Council of Ministers) of the interim EPAs in the context of the comprehensive EPA?*

Ashton: Getting to full regional EPAs is an ongoing process involving both ACP countries that did not join interim agreements as well as those that did. All issues tabled during negotiations, contentious or otherwise, are open for discussion. That's why EU and ACP negotiators are regularly re-examining provisions in the interim agreements as well as exploring new areas, such as services, that were not included in the 2007 deals. Obviously, we still need solutions compatible with international trade rules and the Cotonou Agreement. At the same time, working region by region, we are successfully addressing specific regional concerns and edging closer to full agreements.

TNI: *How much flexibility is there to deviate away from Commissioner Louis Michel's previously-held arguments in favour of the Most Favoured Nation provision that the EU is generous in giving duty-free and quota-free access to EPA signatories, but is not naïve enough to allow them to give better access to the EU's "economic adversaries"?*

Ashton: To answer this question we first need to understand the Most Favoured Nation provision. It has two elements. The first element is binding on the EU. It guarantees that all ACP regions have the automatic right to claim any provision agreed with another ACP region either now or in the future. This ensures that no ACP region needs to hold back in negotiations for fear another will agree a "better" provision later. It also ensures equal and open treatment of all ACP regions in the spirit of the overarching Cotonou Agreement. The second element is binding on the ACP and covers special treatment, such as an exemption from liberalization for certain imports justified on the grounds that the sector is sensitive to competition. If an ACP region subsequently agrees to remove these tariffs on imports from another major trading economy, then arguably the original development justification has changed, and this treatment should also be extended to the EU. However, we have to be clear that this provision doesn't apply either to imports from other ACP countries or, in practice, to the overwhelming majority of South-South trade deals.

TNI: *In one of his final speeches as EU Commissioner, Mandelson signalled his desire to have bans on export taxes inserted into all free trade agreements that the European Union concludes. Do you share this view?*

Ashton: The commitment to removing trade barriers like export taxes must be a cornerstone of EU trade policy. I am a firm believer in the benefits of open markets and of the opportunities it can deliver to businesses and individuals. One of my tasks as EU Trade Commissioner is to help entrench and extend those opportunities and I agree that we should use all tools – including trade agreements but also other mechanisms such as the EU's dialogues with strategic partners – to further breakdown barriers to effective trade. Against the backdrop of the financial crisis, we need to enhance openness in the global economy, not undo it.

There are, of course, some exceptions. The world's poorest countries need to protect infant industries and its only right that both multilateral and EU trade regimes give those industries the space and time to grow. So we will continue to look at the role of export taxes on a case-by-case basis, in order to make sure that, at the same time as promoting openness in the world economy, we are underpinning long-term economic development in the poorest countries.

TNI: *The EU has highlighted that regional integration is a major benefit of the EPAs, while interim EPAs seem to have divided ACP regions. How will you ensure that existing ACP regional integration processes are re-established as a guiding principle for EPAs?*

Ashton: Supporting regional integration within and between ACP markets has always been a key objective of the EPA process. By simplifying trade rules and replacing the complex maze of bilateral agreements with a handful of region-to-region trade interfaces, we can create bigger regional markets that are more attractive to investment, which developing markets need in order to create jobs and growth.

Nothing in the interim agreements changes this; ACP countries sign interim EPAs when they are ready and that sometimes means at different times. It shows we are moving at the right pace for each partner, not that the process is dividing regions. Of course, how we tackle the issue of regional integration in the full EPAs is going to vary by region. Some regions, like West Africa, have clear integration processes that the EPA can fit around. In other regions the processes may be overlapping or less clear and we need to build in flexibility to reflect this. Again, the Caribbean EPA provides a good example of how we can institute this kind of flexibility. Provided we meet the basic criteria of WTO-compatibility we can set up a framework that allows everyone to move at their own speed while respecting the overall process of integration.



Photograph courtesy of Reuters



The funds are there and we have the right framework in place – it's now about communication and delivery.



TNI: *What is the link between Aid for Trade and EPAs? What do you see as the role of the European Commission in coordinating overall EU Aid for Trade, including accompanying measures for EPAs?*

Ashton: This is one of the areas of greatest concern to our ACP partners. But the EU is also in a difficult situation. On one hand, some ACP countries are reluctant to agree to trade commitments without up-front finance while on the other hand, the EU cannot make concrete pledges until the details of those commitments are known. We cannot make access to development funds conditional on signing a trade deal – EU finance mechanisms are set up to deliver development funds through clear programmes, not on the basis of progress in trade talks.

So we need to reassure ACP countries that they are not taking on an unfunded mandate to implement these agreements. This is why my colleague Louis Michel, as EU Development Commissioner, has taken steps to increase the visibility of development funds. And just as in the Caribbean EPA, each regional agreement has a specific development financing element. In fact, EPA-related finance has already been built into the 10th European Development Fund and the forthcoming EU Aid for Trade Strategy, which includes ACP regional "Aid for Trade" packages. The funds are there and we have the right framework in place – it's now about communication and delivery.

2009 EPAs at the crossroads

Glenys Kinnock

I suppose things could be worse for the EPA negotiations. After all, this time last year the ACP were contemplating the implications of their initialing of interim EPAs, which were ultimately agreed in haste, proved apparently inflexible, and represented a limited outcome, as far as the Commission was concerned.

The policy of concluding separate deals with individual countries, which has led to clear discrepancies between the Agreements, has had serious implications for the ACP's young and fragile regional groupings. It has also undermined regional integration as a proven tool for promoting development.



It must be acknowledged that the positions of the ACP group, reached at the Ministerial level, have tended to unravel in the face of inordinate EU pressure both at the national and regional level. This has led to conflicts of interest and contention between ACP countries and regions, which is hardly conducive to the encouragement of effective dialogue, increased understanding, and a common pursuit of key development objectives. Nevertheless, there has always been clarity about the fact that those nations understand they are locking themselves into trade regimes of indefinite length and which have huge implications for their citizens.

And of course, whatever happens in the future, there will still be an urgent need to effectively review and monitor the EPA processes. At our Joint Parliamentary Assembly meetings, we are regularly made aware by ACP Parliamentarians of the fact that there has been barely any structural engagement with their Parliaments, and contacts with the ACP public and private sectors have been inadequate, to say the least.

These are ongoing issues. Now, however, we should focus on what are the prospects at the beginning of 2009. First, we can really take heart from the fact that there is a new Commissioner who has pledged to build and renew a relationship of respect, understanding, and partnership with the ACP.

Commissioner Ashton and her DG Trade colleagues cannot afford to continue along the same path followed by the previous Commissioner. I trust that we will see a new flexibility that will be translated into a practical willingness to reduce the pressure on the ACP to suppress their reservations, to "get on with it," and to sign on the dotted line.

The justifiable plaudits that Commissioner Ashton has received for her change in style and tone must now, as she herself has acknowledged, be matched by a change in substance. She is genuinely promising to offer real progress, but many of us can't help fearing that Europe, as the dominant partner, holding all the cards, is unlikely to want to make major concessions. She has inherited a difficult legacy and a great deal hangs on her ability to fulfil the promise that she displayed both at her hearing in the European Parliament and at the meeting with the International Trade Committee.

And surely, as a matter of basic need and self-interest, the EU must now look beyond EPAs to build the improved relations with the ACP that will be helpful if Europe wants to broker critical multilateral agreements on, for instance, trade and climate change. Clearly in negotiation with countries such as China, India, and Brazil, Europe's alliance with the ACP would be vital.

Similarly, the Commissioner will need to decide how she can convince those ACP countries that have, until now, proved not to be susceptible to European Commission pressure. Building effective regionalization would be an important element, but this implies renegotiation of the interim EPAs, and a commitment to facilitate and support indigenous initiatives.

The ACP has unstintingly asked for clarity from the Commission on the issue of renegotiation and for the "revisiting" of Agreements. It would appear, however, that renegotiation is actually already happening in practice - for instance, in a November 2008 TNI article, Judith Fessehaie reports that Zambia, and the Eastern and Southern African region, are renegotiating provisions on export taxes, quantitative restrictions, and trade remedies for unforeseen events.

Many ACP countries fear that once they have signed an interim EPA, they will have weakened their bargaining position and that disputed provisions in the interim text will remain in the full EPA. Furthermore, it is apparent that renegotiation of contentious provisions is ongoing and overlaps with the negotiation of services and new generation issues.

The Commission, however, continues to maintain that contentious issues can only be renegotiated after signature, in the context of negotiations towards a full EPA. They fear that revisiting one or two clauses will open up a Pandora's Box, and that the interim EPAs initialled at the end of 2007 will unravel. On the other hand, it seems absurd to pressure the ACP to sign an agreement that they do not agree with, and which includes provisions that the Commission knows the ACP is not committed to implement.

It is important to note that the need to continue negotiations was clearly endorsed by the EU Council of May 2008. But now, what we are seeing is a smoke and mirrors approach - and one which has very little to do with legal rules.

It can be argued that not until full ratification will the agreements be non-negotiable and fully binding and the assumption now would appear to be that this should not happen until a full and comprehensive EPA is signed. Ratification of a text before a full EPA is finalised, according to some experts, would seem to make absolutely no sense. And also, some say the claim that the signature is essential for WTO notification is simply a red-herring.

One suggested compromise worth considering would be for the parties to sign a red lined text clarifying their unbreakable and absolute policy positions. This would limit the scope of continuing negotiation to the areas specifically identified, but it would also reassure the ACP of their right to negotiate contentious provisions.

And of course, European and ACP Parliamentarians have naturally spent a great deal of time deliberating on all the issues and problems raised in the EPA negotiations.

As we begin 2009 – because of the implications of EPAs for the EU budget – the European Parliament (as the EU budgetary authority) has the power of assent, without which everything would grind to a halt. This has been described, justifiably, as the “nuclear” option, since the Parliament is constitutionally limited to making a yes or no decision on whether to give assent. However the Parliament is, by its very nature, committed to maximising opportunities to exert influence on the Agreements and to setting out conditions for a Parliamentary assent.

In addition, Parliaments in EU Member States, depending on their constitutional arrangement, may be called upon to ratify EPAs.

At the time of writing, neither the signed Agreements with CARIFORUM or Côte d’Ivoire, nor indeed any other Agreements, have been referred to the European Parliament for assent. And the truth is that the Agreements that have been negotiated but not yet signed are, at the behest of a few member states, still in the Council being translated into all the official languages.

The scrutiny process is continuing, and we have plans for debates, questions, and a number of resolutions on the CARIFORUM EPA and other interim EPAs for the Parliament’s March plenary.

In the coming weeks we must build consensus and undertake to negotiate an outcome that will reflect the need for the Parliament to take a strong and principled position at this time. I trust that the Parliament will remain constructive and that we will, through the Joint Parliamentary Assembly (JPA) and other channels, continue to cooperate with ACP negotiators and colleagues.



The onus is on all of us to work together in the spirit of Cotonou to make EPAs work for the greater good of the ACP and Europe.



My final point relates to the worrying institutional changes included in the Cariforum EPA which, as far as Parliamentary oversight is concerned, threatens to undermine the clear role and responsibility of the JPA as enshrined in the Cotonou Partnership Agreement.

There are concerns about the implications of setting up parallel institutional arrangements to those agreed under the Cotonou Partnership Agreement. It seems that as far as the Parliamentary Forum is concerned, very little thought has gone into the logistics of organizing and paying for new parliamentary structures, and also Council of Ministers structures.

The Caribbean, like all the other ACP regions is experiencing turbulent economic and financial times. It is to be hoped that the high-level meeting planned by the Commonwealth Secretariat on 27 January 2009 will yield rewards and the prospect of some straight-talking that can identify common actions and explore how EPAs can benefit ACP countries.

All of that remains to be seen, but we are encouraged by Commissioner Ashton’s determination to keep EPA negotiations at the top of the agenda. However, I sense that generally there is fatigue around EPAs – the never-ending negotiations that never seem to go anywhere. But there’s still a lot to play for, including ensuring that there is adequate, front loaded, and predictable funding to compensate the ACP for the cost of liberalization, restructuring, and EPA implementation.

These are battles that have to be fought and won in 2009, and that means that there must be a unity of purpose, and a determination to complete the task. The onus is on all of us to work together in the spirit of Cotonou to make EPAs work for the greater good of the ACP and Europe.

Author

Glens Kinnock is Co-President of the ACP-EU Joint Parliamentary Assembly.

A unilateral perspective on an international concern

A look at the EU's IUU regulation

Abdoulaye Diagne

In September 2008, the European Commission passed Council Regulation (EC) No 1005/2008 intended to establish a system to prevent, deter, and eliminate illegal, unreported, and unregulated fishing (IUU). The objective is to ensure greater sustainability of fish stocks, while lessening competition challenges that illegal fishing poses for EU fishermen. The regulation is also a key item in the current exchanges underway between the European Union and third countries, particularly the ACP.



From the developing country perspective, a lot of outstanding questions related to this new provision remain; a fuller explanation of the measures it includes is thus needed so that the relevant economic actors and affected states are sufficiently aware of the issues and the potential future implications for their relations with their main fisheries sector partner: the EU.

For instance, some issues raised by this new regulation relate to the major enhancements of mechanisms for traceability, which will allow all fisheries products to be monitored from the fishing vessel to the point of sale to consumers. Now, the whole cycle, from production to consumption, will be tracked by means of the catch certificate – the key element in the fight against IUU fishing. This catch certificate must not only conform to regulation No. 1005/2008 but must also be validated by the appropriate competent authorities on the basis of national control mechanisms and the enforcement of laws, regulations, and conservation and management measures applicable to the flag state's fishing vessels. While this is an important regulation, some of the measures contained here – and throughout 1005/2008 – risk imposing restrictions on developing countries with limited institutional, human, and material capacities.

Measures likely to cause problems for ACP and developing countries

By way of example, we point to the following potential problematic measures for developing and ACP countries:

01.

Conservation and management measures

Third countries must observe international and community conservation and management measures (CMM), particularly as related to the catch certificate (article 12 para. 3), and as defined in article 2 para. 9. This is in order to ensure that the third party decisions are in conformity with the campaign against IUU fishing. However, it is not clear what these measures consist of or where they are published and updated. In the absence of a comprehensive list of such measures, developing countries will find it difficult to conform to CMMs, particularly given the fragility of their institutions.

02.

Some measures are subject to European States' national legislation

According to the regulation, some clauses are subject to national enforcement (article 1 para. 2, and specifically in the case of sanctions, article 7 para. 3). Given that there are currently twenty-seven states involved, developing countries could potentially be faced with twenty-seven different sets of legislation.

03.

Powers of the various organs of the European Union

The regulation provides for intervention, where appropriate, by different organs of the European Union: the Commission, the Community Fishing Agency, the Council, and Member States. But given their limited capacity, economic actors in developing countries may have some difficulty in navigating their way through the EU system of multiple internal competences.

04.

Powers of inspection

Vessels of EU Member States have wide powers of inspection and these may therefore, if used inappropriately, constitute administrative harassment amounting to a technical obstacle to trade. It is envisaged that there will be inspection of "at least 5% of landing and transshipment operations" (article 9 para. 1) with no indication of any ceiling on inspection. In the case of vessels suspected of IUU fishing, inspection is obligatory.

05.

Conservation and management measures by national fisheries

Conservation and management measures are obligatory under the FAO International Plan of Action (IPAO) on IUU¹ and the present regulation. But, the majority of developing countries have yet to draw up their national plans.

06.

The specific case of artisanal fishing

The new regulation does not distinguish between types and methods of fishing, but rather lays down general rules applicable to all situations. However, in developing countries the majority of catches are made by artisan fishermen who are frequently illiterate. Due to their lack of education, it is expected that these fishermen would experience real difficulties in fulfilling the conditions required for validation of the catch certificate.

07.

The lack of proportion between the conditions imposed on third countries including ACP countries and their capacity to comply

One flaw of the EU regulation is that not all affected parties are involved in formulating them; another is the reliance on a mechanism of cooperation whose scope, goals, and targets are not specified in advance. For developing and ACP countries, this becomes an acute and reoccurring challenge.

Relationship to international trade rules

Along with the ambiguity around some of the measures in the regulation, it is also doubtful whether all are compatible with the rules and principles generally adhered to in the international trade system. Specific areas of concern are:

01. The extension of powers (of sanction, injunction, declaration of non-cooperating states, listing of IUU fishing vessels, etc.) to third countries who are not party to any Agreement, or in this case, to a regulation drawn-up unilaterally, although referring to the FAO IPAO on IUU.
02. The vague, ill-defined, and subjective nature of some of the measures, which contravene the principles of clarity and transparency observed by the rules of multilateral trade, such as "reasonable proof" or inspection of "at least 5% of landing and transshipment operations."
03. The increased powers of sanction of EU Member States in the form of immediate implementation measures (halting fishing activities, seizure) under article 43 para. 1. The regulation does not mention the possibility of appeal or of compensation if the assumed contravention is not proven. These sanctions may even constitute measures restricting access to EU markets on the basis of presumption alone. Would this not be defined as 'technical obstacles to trade'?
04. The lack of respect for the principles of non-discrimination and equality of treatment between operators and states. The flexibility envisaged for the EU list of IUU vessels is not applied to third countries' vessels (article 27 para. 8). Similarly, the requirement to disembark and use port services in areas or ports reserved for third countries could constitute a source of discrimination against these countries.

Ways forward

EU regulation is a useful instrument in the campaign against IUU fishing, which is a threat and a handicap to operators and states engaged in responsible fishing. However, despite the unilateral way in which it has been drawn-up, this new regulation may be utilised by developing and ACP countries – the main victims of IUU fishing. As argued here, the regulation can also be seen as a system to be improved by taking into account other multilateral trade system mechanisms and the concerns developing countries have expressed. The following areas in particular may be explored:

01. Guaranteeing free access, without unnecessary restrictions, under the the EU Everything But Arms (EBA) scheme, as well as preserving duty- and quota-free market access to LDCs and non-LDCs ACP countries under the EPAs.
02. Establishing a coordinated and lasting strategy that considers both the negative effects of IUU fishing and the negative economic effects of the measures required to implement the EU/IUU regulation;
03. Ensuring flexibility in carrying out traceability checks on processed products with diverse origins. This involves mutual and reciprocal recognition of catch certificates validated by the competent authorities in neighbouring countries (in the case of shared species);
04. Carrying out impact studies prior to the implementation of the regulation in ACP countries and requesting a moratorium for countries that do not yet have the capacity for compliance;
05. Specifying the sources of finance and the types of cooperation and aid provided to cover the costs of implementing the regulation, given that the relevant national programmes have already been put in place; and
06. Following up on the Ministerial Conference on fishing in ACP countries scheduled for 2009 in the Seychelles, where one of the items for discussion may be the application of the EU regulation.



For developing and ACP countries, a more multilateral approach to illegal fishing would strengthen its acceptability, inclusiveness, and effectiveness.



In conclusion, IUU fishing is an issue of concern to both developed and developing countries and the European initiative of regulation 1005/2008 opens up the possibility of addressing this problem. This provision may be used as a springboard to the launch of a multilateral agreement on the campaign against IUU fishing. But, for developing and ACP countries, a more multilateral approach to illegal fishing would strengthen its acceptability, inclusiveness, and effectiveness.

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Notes

- 1 An International Action Plan aiming to prevent, deter and eliminate illegal, undeclared and unregulated fishing: UN Food and Agriculture Organization, 2001.

As EPA ink dries What's next for our creative sectors in the Caribbean?

Josanne Leonard

The cultural sector and the EPAs

Following the signing of the EU-CARIFORUM EPA in mid-October 2008, policy discussions and political debates over the implications and the implementation of the Agreement took over what were once heated dialogues on whether or not to sign the EPA in the first place. Amongst the trade and development community, the typical issues have been the focus of these implementation discussions. But, what about other sectors that are also critical components to both the Caribbean and European economies? How will they be affected and what is their role in promoting development and economic growth? In this issue, *Trade Negotiations Insights* decided to find out how the cultural sector feels about the EPA, its implications, and the possibility of the creative industries playing a key part in strengthening developing country economies.

It's now three months since the controversial CARIFORUM-EU Economic Partnership Agreement (EPA) was signed in Bridgetown, Barbados, even as debate raged across the region about the broader implications of the EPA and our state of readiness for benefiting from potential opportunities. But, whatever the merits and demerits of the EPA, the dye is now cast. The region has entered 2009 with the ink dry on the deal and fully wedded to the EPA. So what now?

While by no means exhaustive, this article attempts to highlight some of the EPA text on the Protocol on Cultural Cooperation, with a focus on the implications for the region's cultural industries and entertainment sectors.

First, it is important to note that historically the EU has never permitted market access commitments in the audio-visual sector and the EPA is no different. This is a jealously guarded industry, integral to their sense of culture and identity. And, it is supported by a range of cross-cutting policies, incentives, and institutional mechanisms designed to buttress, support, and strengthen its competitiveness. Most notable is the MEDIA 2007, which runs until 2013 providing 755 million Euros to Europe's audio-visual industry.

But what the EPA does provide, according to the officials at the Caribbean Regional Negotiating Machinery (CRNM), is a legal right to market access involving commercial enterprises in the entertainment sector – with the exception of the audio-visual industry. In the EPA, a special Protocol on Cultural Cooperation – which CRNM saw as an opportunity for extracting some development assistance – was thus agreed. The CRNM states that the objectives of the Protocol are “to improve the conditions governing the exchanges of cultural activities, goods and services and redressing the structural imbalances and asymmetrical patterns which may exist in trade in these, between CARIFORUM states and the EU.”

Yet, before the Caribbean can fully capitalise on the Protocol, policymakers and those in the creative sectors must review and extensively discuss what strategies are needed to understand the full implications of its provisions. This should begin with a proper assessment of what is in the Protocol and how it can be used: for example, what Caribbean producers and originators of audio-visual content will require in order to gain better market access to distribution platforms in the EU; what collaborations exist – if any – with EU firms and/or producers; determining possible threats and opportunities for Caribbean producers and distributors; and identifying areas for collaboration (technical cooperation, co-financing etc).

What is immediately clear, however, is that the following is necessary if our creative sectors are to realise any benefit from the EPA:

Local Content: We have to recognise and admit that, for a variety of reasons, we have developed minimal content, and as such, we have little or nothing to market.

Co-production Agreements: Apart from Jamaica, which has an agreement with the UK, the region has no co-production agreements with EU countries. Experts say that even the Jamaica-UK agreement is not forward looking enough given one glaring omission: audio-visuals.

Financing: There are few financing instruments for the creative industries and even less for audio-visuals. But, the Protocol suggests that Caribbean producers can access EU funds once bilateral agreements are concluded.

Incentives: As with financial instruments, there is very limited public policy space to encourage investment in the regional audio-visual sector.

Culture Policy: Regional harmonised policies in the areas of culture, media, and telecommunications are needed.

In a recent briefing on the EPA and opportunities for the audio-visual sector, a senior CRNM official contended that the region has a two to five year window to get into the game; we are behind on the policy and regulatory fronts, so if these pronouncements about the competitive advantage of our creative sectors are to mean anything, we must move to put our collective houses in order.

And given the collapse of the traditional commodities and financial markets, there could be no better time to turn inward and support home grown music, fashion, design, film and television, and the rest of our cultural sectors, which can provide new avenues for sustainable growth and employment. Industry must now aggressively roll out discussions in conjunction with our culture, technology, investment, and trade officials to determine what we want to extract out of the EPA deal.

On the policy front, this is the time for our decision makers to champion medium and long-term measures in support of knowledge-based and creative economies. More importantly, our governments must ensure that National Indicative Programmes place creative industries at the centre of domestic development agendas.

Expanding trade flows of cultural goods and services

Edna dos Santos Duisenberg

The EPA may have been seen by some as a happy-ever-after fairy tale to boost the fortunes of creators and creative enterprises (mainly micro and small) with a desire to survive the corporate filter that has all but destroyed local content and creativity. Because of the EPA, we are now engaged in earnest debates about quality and quantity of local audio-visual content. Yet for the last three decades, we have been contented as new independent states to view ourselves through the foreign media prism. Yes, even as we grumbled about the quality of our culture, we somehow lacked the perspective and commitment necessary to identify the importance of our local media institutions to support our cultural, political, and social development.

So possibilities in the EPA will remain exactly that – possibilities – if we do not move to decisive and strategic action. With all the ‘sexiness’ around creative industries, this is the time to recognise that our cultural sectors not only add value to our tourism sectors but may very well be the key to developing a new and sustainable brand of tourism that protects our fragile island environments.

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Notes

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According to UNCTAD, world trade in creative goods and services are among the most dynamic sectors of the multilateral trading system. From 2000 to 2005, the sector experienced an impressive annual growth rate of 8.7%, reaching USD 424.4 billion.¹ Yet, despite their abundance of creative talents and rich cultural assets, developing countries – including the ACP – are not yet benefiting from the huge potential of their creative industries to promote economic growth, job creation, social inclusion, and export earnings. Paradoxically, developing countries are big net importers of cultural products. The total share of Caribbean countries in world markets remains insignificant, even if some countries – in particular Jamaica, Trinidad & Tobago, Dominican Republic, and Barbados – have already taken steps to start shaping a creative-economy strategy. But this situation has the potential to be improved and all opportunities to do so should be seized.

The EPA is one such opportunity. The CARIFORUM-EU EPA, finalised in mid-October of last year, has two instruments that can be used by the Caribbean community to foster the cultural sector and entertainment services: (i) market access commitments by the European states for entertainment services from CARIFORUM states that are governed by the rules of the “Services and Investment” chapter and the general provisions of the EPA; and (ii) a special “Protocol on Cultural Cooperation.”² This protocol has the potential to generate substantial development and trade gains if effectively implemented as a mechanism for strengthening institutional, regulatory, and supply capacities. It also provides for bilateral cooperation on all cultural fronts with special provisions on the audio-visual sector.

In addition, the EPAs made an important step forward by allowing for Caribbean firms to invest in entertainment activities in Europe and vice-versa, which is expected to facilitate joint-ventures, partnerships, and cooperation. Inspired by this cultural collaboration, a multi-agency pilot project was launched in 2008 to enhance the economic, social, and cultural potential of the creative industries in other ACP states, beyond the Caribbean. Today, five ACP countries – Fiji, Mozambique, Senegal, Trinidad & Tobago, and Zambia – are participating in this project, which brings a new holistic approach to dealing with the interface of economic, social, and cultural aspects for development. Designed through collaboration among three United Nations agencies, namely UNCTAD, ILO, and UNESCO, the initiative is funded by the European Commission as part of the EU-ACP support programme for cultural industries.

In many developing countries the performance and competitiveness of the creative industries have suffered from weak institutional and political support, low levels of entrepreneurial capability, low added-value, over-dependence on foreign firms, and massive copyright infringement. Employment and earnings, however, could be enhanced if the industry were more effectively organized, if supply capacities and cultural entrepreneurship were strengthened, and if new market opportunities, at national and international levels, were exploited more fully. The new project is expected to respond to these needs of the participating countries by offering policy advice and capacity-building activities. By nurturing the creative industries, the budding project aims at enhancing the music, visual and performing arts, publishing, cultural festivals, and other creative sectors through target activities over the next three years, until 2011. In this way, it hopes to transform local talent into a catalyst for dynamic creative industries that can foster economic growth, employment, and trade expansion while promoting the linkages between culture, trade, and development.

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Notes

- 1 See: UNCTAD Global databank on world trade of creative goods and services, www.unctad.org/creative-programme
- 2 See: Trade in Services and Development Implications, UNCTAD, Geneva, 2007 (TD/B/COM.1/85)

Undercutting Africa Why EPAs threaten the world's forests and forest peoples

Ronnie Hall

The year 2009 will be one of change for the European Union, which will have a new Parliament and new Commissioners in place by November. Perhaps then, it will also be a year in which the EU abandons its aggressive Global Europe and Raw Materials policies, stops using Economic Partnership Agreement (EPA) negotiations to further its trade interests, and revitalises its rapidly deteriorating relationship with ACP countries. Urgent action is needed on all three fronts, not least because of the severe impacts that EPAs are likely to have on the world's poor and its biodiversity, including forests and forest-dependent communities.



One key concern is the inclusion of investment liberalization in the Caribbean EPA, which explicitly refers to investment in forests, mining, and agriculture: other ACP countries will undoubtedly be expected to follow suit. If they do, however, they will have to hand over more rights to foreign corporations to exploit forests, fisheries, agriculture, and other natural resources such as oil and gas, which could in turn lead to even more forests and small farms being cleared to make way for logging, mining, and export-oriented agriculture. Recent analysis shows that measures – such as Ghana's restrictions ensuring local involvement in mineral and oil projects, and Cameroon's policy of only issuing forest exploitation licences to residents or companies headquartered in Cameroon – could be at risk under the terms of the interim Economic Partnership Agreements (IEPAs) they have initialled.

The EU is also determined to remove export restrictions. The European Commission views these as unfair impediments to its manufacturing industries, implying that Europe should have an equal right to exploit other nations' natural resources. Yet this flies in the face of the United Nations International Covenant on Economic, Social and Cultural Rights, which states that "All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence."

Measures that countries use to limit or prohibit exports of raw materials include log export bans, export quotas and taxes, selective bans on particular species, and harvesting limits. Ghana has managed to protect its round wood and log exports ban, but is virtually alone in this respect. Neighbouring Côte d'Ivoire could be asked to remove its quantitative log export restrictions under the terms of its newly signed 'stepping stone' EPA; and Cameroon's species log export bans,

export permits, and restrictions ensuring that logs are processed on site, could also be challenged under its IEPA.

So why is the EU pursuing such a harsh liberalization agenda? The answer can be found in its Global Europe policy documents, which reveal an overriding fear that emerging economies will out-compete Europe, and a desire to maintain material inputs for European manufacturing. Thus, trade must be prioritised at all costs, and EPAs have been hijacked to this end even though the EU is aware of the negative social and environmental consequences of this course of action.

The European Commission's own mid-term Sustainability Impact Assessment (SIA)¹, for example, comments that "trade liberalization and the economic pressure that it encourages threaten biodiversity in a number of ways" including through increasing illegal trade in endangered species, facilitating the introduction of alien invasive species, permitting the continued destruction and fragmentation of habitats, and because of increasing industrial and agricultural activities. It specifically identifies West Africa as a vulnerable region, commenting that additional pressure on primary forests in countries like Ghana and Côte D'Ivoire "seems difficult."

It is surprising then that the final summary report from the European Commission's SIA on EPAs² makes no mention of potential impacts on forests at all; biodiversity is only mentioned once (in relation to tourism in the Caribbean). It seems that some very serious potential environmental and social concerns are being overlooked, whether by accident or design, in the rush to finalize EPAs.

Change is long overdue. The EPA negotiations should be stopped, and those agreements already initialled, repealed. The EU should focus on developing a real, equitable partnership with the ACP, ensuring financial and practical support to ACP countries to develop fair and sustainable societies.

ACP countries should be able to maintain their sovereignty and policy space, including in relation to the appropriate use of their own natural resources. The EU certainly has no automatic right of access to other countries' raw materials; rather, it should implement a full and immediate review of its trade strategy, placing sustainable development for the poor and their environment at the top of its agenda, and delinking Europe's economy from excessive resource use and fossil fuel dependence. There should be no need to usurp Africa's natural resources.

Author

Ronnie Hall, consultant, is author of the Friends of the Earth report "Undercutting Africa: why EPAs threaten the world's forests and forest peoples." It is available in full at: www.foe.co.uk/resource/reports/undercutting_africa.pdf

Notes

- 1 PWC (2003). *Sustainability Impact Assessment (SIA) of Trade Negotiations of the EU-ACP Economic Partnership Agreements*, working draft, 1 October 2003, PricewaterhouseCoopers: www.sia-gcc.org/acp/download/summarized_mid-term_report_final_doc_light.pdf
- 2 PWC (2007). *Sustainability Impact Assessment of the EU-ACP Economic Partnership Agreements, Summary of key findings, policy recommendations and lessons learned*, PricewaterhouseCoopers: www.pwc.com/extweb/pwcpublishations.nsf/docid/43B1554F067FF2AE8525738A006E6FD6

A perfect storm Ensuring trade promotes resiliency and adaptation against climate change threats

Paolo Ghisu

In the coming years, least developed countries (LDCs), small and vulnerable economies (SVEs), and small islands developing states (SIDS) are expected to face increasing levels of climate-related threats such as droughts, floods, and hurricanes. Given their economic and trade specialization in sectors like agriculture, fisheries, and tourism – major impact-takers under climate change – these countries are rendered even more vulnerable to such natural disasters.



Yet, the interests and concerns of smaller developing countries in climate change negotiations remains largely unaddressed. As such, some of the responses to the challenges of climate change could indirectly hurt LDCs, SVEs, and SIDS. For instance, a levy on fuels or emission trading schemes on shipping and aviation, which are under discussion at the International Maritime Organization, will result in higher transportation costs with a potential negative impact for countries like SIDS, which are remotely located and have a large trade exposure. On the other hand, the funds generated could be channelled to developing countries to promote adaptation and mitigation strategies.

Measures like carbon labelling and food miles, which are now extensively used, can be detrimental for developing countries as well. In fact, the rise of standards and eco-labelling, which are often the result of private initiatives, threaten to become a non-tariff barrier to market access. Eco-labels usually signal only one part of the carbon footprint – namely transport, where countries in the South have a distinct disadvantage – while ignoring other parts of the production process. Yet, exporters operating in developing countries often produce goods that embody less carbon emissions. Therefore, different labelling schemes that consider the “life cycle” of foodstuffs – that is, the total carbon emissions of a product in all the supply chain from production to distribution – may benefit LDCs, SVEs, and SIDS producers. Moreover, carbon schemes should be simple, transparent, and involve low transaction costs in order not to constitute barriers to market access for smaller developing countries.

In the context of climate change mitigation and adaptation, technology also plays a key role both as a cause and as a potential solution to the problem. Here, current trade rules and discussions constitute an important obstacle for transferring more efficient technologies and promoting innovation in developing countries. As an example, the

patents regime limits access to technology and the downstream adaptation of technology in developing countries. In general, the current Intellectual Property Rights (IPRs) system does not provide incentives to invest in technologies that protect public goods, like the environment. In this context, many development advocates encourage that IPRs be amended to provide both incentives in the North to develop new clean technologies that are useful in the South, and to foster innovation in LDCs, SVEs, and SIDS.

Furthermore, current discussions on liberalizing Environmental Goods and Services (EGS) should include the technologies and know-how that are relevant for smaller developing countries, like ocean thermal energy conversion and fuel cells. Developing countries, however, are concerned that they will end up liberalizing other goods as well, which do not have any environmental end use. But the liberalization of EGS, like the reform of IPRs, is crucial to favour the diffusion of those green technologies that contribute to climate change mitigation and adaptation.

To enhance the mitigation, adaptation, and resilience in LDCs, SVEs, and SIDS, sustainable development advocates believe it is also essential to promote technical assistance, capacity building, foreign direct investment, and other financing mechanisms. In particular, climate change and trade-related financing mechanisms could be used in a complementary and reinforcing manner. These instruments could focus on strengthening the competitiveness and resilience of smaller developing countries, facilitating the diversification of their economies into less vulnerable sectors, and promoting a strategic climate adapted trade policy at the global level.

In the coming years, further research is needed to identify the specific needs, requirements, and priorities of LDCs, SVEs, and SIDS, and to understand the links between trade and climate change. In particular, new trade rules should support the climate change agenda and facilitate the use of eco-friendly goods, services, and technologies and promote innovation both in developed and developing countries. Market-based instruments such as carbon labels and emission trading schemes may provide incentives to use greener technologies and reduce carbon emissions, as well. But these instruments should be effective, efficient, and equitable for developing countries in terms of potential trade impacts (e.g. market access) and in accordance with the principle of common but differentiated responsibilities.

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Notes

- 1 The recommendations and findings of this article are based on a meeting organized by ICTSD, Chatham House, and the Commonwealth Secretariat in Geneva on 20-21 November 2008. The meeting intended to explore the interface between trade and climate change for LDCs, SVEs, and SIDS from a competitiveness, adaptation, and resilience perspective, and to identify policy priorities and future research agendas.

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WTO Roundup

Another do-or-die moment for Doha

Whether reaching a successful conclusion to the Doha Round will ever be possible has dominated discussions in trade circles following the disintegration of plans for a WTO ministerial meeting in late December 2008 in Geneva. The planned meetings were called off after Members failed to reach a consensus on negotiating texts on agriculture and non-agricultural market access (NAMA).

With the start of a new year and divergences still plaguing the Round, WTO Director General Pascal Lamy encouraged that advancing Doha should be the WTO's main objective for the year. Many, however, believe that the WTO has suffered from its narrow focus on the faltering talks and that the Round should be abandoned altogether. Others have proposed suspending formal negotiations for a year to allow time for new administrations in the US, the EU, and India to define their positions on international trade. So far, such proposals have not gained any government endorsements, although outgoing US Trade Representative (USTR) Susan Schwab suggested in January that Members might "take a step back, review where we are in the Doha Round and take some time to move it forward."

Changing of the guard

US engagement in the WTO will be vital to ensure that the rules-based trading system continues to function and fulfils the development promises that featured so highly in the rhetoric surrounding the launch of the Doha Round. Some have suggested that a WTO ministerial conference, held perhaps in early summer, could give President Obama's economic team an incentive to set multilateral trade policy objectives and reassume US leadership in international cooperation.

With Susan Schwab being replaced by Ron Kirk, a lawyer and former mayor of Dallas, Texas, it is clear that the new US administration and USTR office will need to decide their approach to the stalled Round. Yet, since Kirk's nomination was announced late last year, his positions on specific trade issues have been the object of significant public scrutiny. For the most part, his admittedly limited record on trade shows that he appreciates the value of open markets. As mayor of Dallas, Kirk was a strong supporter of NAFTA, which he viewed as key to stimulating the local economy. He has also gone on record in favour of establishing permanent normalised trade relations with China.

But beyond those few statements, Kirk's record on trade is thin. Time will tell how the USTR office under his direction will handle the numerous trade challenges before them and how other WTO Members will react to shifting positions and new approaches. One hopes the changes will be positive if Doha is to survive another year.

New draft text on rules highlights entrenched differences

Doha's fate was made even more tenuous in late December 2008, however, after a new draft text released by the chair of the WTO's negotiating group on rules revealed that longstanding differences in some areas appeared as entrenched as ever.

By far one of the most controversial aspects of the rules negotiations has centred on the US' use of a long-controversial anti-dumping tool known as zeroing. When determining the extent to which imports are being exported at artificially low prices ('dumped', in WTO parlance), US trade authorities 'zero out' cases in which goods are sold at higher prices in the US than in the exporting country. Only cases where prices in the US are lower are considered.

Critics say that zeroing artificially inflates 'dumping margins' and allows affected US companies to secure unsuitably high levels of anti-dumping duties on imports with which their products compete. Outcry against this provision has been both strong and widespread since the release of the previous rules text in November 2007. Yet, the draft text released in December 2008 showed just how little progress has been made to bridge Members' differences.

Other areas of disagreement on anti-dumping include whether countries should be required to distinguish the effects of dumped imports and other factors, and whether retaliatory tariffs should be subject to a sunset clause that would phase them out automatically after a set period has elapsed.

The rules group is also charged with strengthening disciplines on subsidies in the fisheries sector. The November 2007 text, which included specific legal language on fisheries, called for a ban on several types of fisheries subsidy payments, especially those that boost fishing capacity or create other incentives to fish. But following controversy over several of those positions, the chair took a step back this time replacing the legal language of the previous draft with a 'roadmap' for future work on the matter.

Discussion on the rules text is expected to begin in early February. The group is one of the several areas that have prevented the seven-year-old Doha Round talks from reaching a successful conclusion.

As for movement on regional trade agreements (RTAs) rules – a key issue for the ACP in their EPA negotiations – that too remains stalled.



Parts of this article originally featured in

- 1 "So, what next? Another do-or-die moment for Doha," ICTSD Trade and Sustainable Development Agenda, 20 January 2009: www.ictsd.net
- 2 "Obama Picks Former Mayor Ron Kirk for Top Trade Post," Bridges Weekly Trade News Digest, Volume 13, Number 1, 14th January 2009.
- 3 "New WTO Rules Text Brings Old Rifts into Focus," Bridges Weekly Trade News Digest, Volume 13, Number 1, 14th January 2009.

EPA

Negotiations update

Melissa Julian

ACP Council

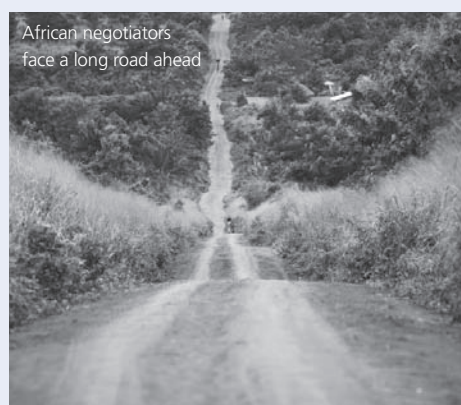
The Africa, Caribbean, and Pacific (ACP) Council of Ministers adopted a resolution reiterating their commitment to conclude inclusive (involving all members of regional integration groupings) Economic Partnership Agreements (EPAs) that contribute to their countries' economic growth, sustainable development, and regional integration on 18 December 2008. They also called for contentious issues¹ that have dissuaded some ACP States from entering into EPAs to be addressed. Only the EU Council that gave the mandate to deliver development through EPAs to the European Commission could instruct the European Commission to amend their EPA negotiating positions (though the European Parliament could withhold its assent and national parliaments could refuse to ratify EPAs). In light of this, the ACP Ministers expressed regret that their request for high-level ACP-European Union Member States consultations to address their EPA concerns had not yet taken place and they called on the EU Presidency to facilitate the convening of the meeting as soon as possible in 2009.

The ACP Council also called on the EU to provide a roadmap for the implementation of its Aid for Trade commitments in relation to EPAs. In addition, the ACP Committee of Ambassadors was mandated to consider the feasibility of establishing an independent monitoring entity that would evaluate, assess, and recommend how EPAs can meet their development objectives.

Central Africa

An interim EPA (IEPA) between the EU and Cameroon was signed on 15 January 2009.² In the Agreement, the EU committed to assisting Cameroon in improving its competitiveness. The IEPA also allows Cameroon to continue duty-free, quota-free access to the EU market, but with an asymmetric and gradual opening of its own markets to EU goods. Improved rules of origin will be given only if agreed in a comprehensive regional EPA that will also cover trade in goods, services, and other trade-related issues, though no regional EPA negotiating rounds have occurred in the past two months. The final goal remains to conclude a comprehensive EPA with all members of the Central African region. How Cameroon's market access provisions can be folded into a regional offer is expected to be a difficult exercise. Sceptics claim Cameroon's economy may suffer losses of 20 billion Euros over the next 20 years as a consequence of the EPA.³

Ministers from the Communauté Economique et Monétaire de l'Afrique Centrale/The Economic and Monetary Community of Central Africa (CEMAC) meeting on 19 December 2008 instructed the CEMAC Secretariat to convene a meeting of Ministerial EPA Negotiators as soon as possible to provide new orientations to technical negotiators in view of the persistent blockage in the EPA negotiations.⁴



African negotiators face a long road ahead

West Africa

To ensure the signing of a comprehensive, equitable, development focused agreement by June 2009, the Economic Community of West African States (ECOWAS) Summit on 19 December 2008 called for the acceleration of EPA negotiations.⁵

A meeting of the four major economies of the region (Côte d'Ivoire, Ghana, Senegal, and Nigeria) on 2-4 December 2008 led to agreements on 90% of the tariff lines for the region's common market access offer for goods in the EPA negotiations. They also agreed that the liberalization of pharmaceutical products must be further considered in view of the fact that they should be easily accessible, while allowing space for the industry to develop.

At a meeting of the West Africa Regional Preparatory Task Force (RPTF), from 11-12 December 2008, discussions were mainly focused on the EPA Development Programme (Programme de l'APE pour le Développement (PAPED)). The PAPED covers a broad range of domains, including infrastructure, agri-food, textiles, and tourism, with financing requirements totalling 9.5 billion Euros for 5 years. The aim is to finalise the programme during the first semester of 2009.

Ghana's signature of its IEPA was postponed due to their change of government; they are now waiting on a date for signing.

Eastern and Southern Africa

The end of year deadline to conclude a comprehensive regional EPA was missed by the Eastern and Southern Africa (ESA) EPA regional configuration. Both ESA and the European Commission agreed that the timeline set to complete the negotiations could not be met because of the number of issues to be addressed; it was thus decided to pursue negotiations beyond 2008.

With regard to the negotiations towards a regional EPA, the ESA Council of Ministers decided at a 5 December 2008 meeting to establish a high-level technical team comprising of chairpersons from the five new negotiation clusters (market access for goods, development, trade in services, trade-related issues, and dispute avoidance and settlement). The team will develop options to progress negotiations on each of the contentious issues for the consideration of the ESA Ministers, while the ESA also continues discussions with EU Member States. In the margins of the Council, there was also a meeting of the Implementation Committee on the IEPA and it was decided that Mauritius will host the Common Market for Eastern and Southern Africa (COMESA) Fund.

ESA Ministers also stressed the need to ensure the implementation of the regional Tripartite Summit (initially agreed on 22 October 2008) on the harmonisation and coordination of EPA negotiations amongst the three Regional Economic Communities (COMESA, the Southern African Development Community and the East African Community) to ensure convergence and monitoring.

(Continued on page 14)

East African Community

The EAC missed its end of year deadline to complete its internal negotiations and sign the EAC Common Market Protocol. The new deadline is April 2009 to provide enough time for the protocol to be implemented in 2010.⁶

Consensus on new issues was reached at the EAC Common Market High Level Task Force negotiations held on 2-10 December 2008.⁷ Tanzania's stance on land ownership and issuance of regional identity cards, however, prevented overall agreement. Experts warn that unless a compromise is found, the EAC integration project could be permanently undermined.

The pace of EAC-EU EPA negotiations is dependent on the EAC integration process, which will determine the commitments the EAC are ready to take in the EPA.

Southern African Development Community

The impasse between members on how to move forward on the EPA failed to break at the SACU Council of Ministers meeting on 5 December 2008. Unless a compromise is found quickly, the signing of the SADC IEPA could lead to serious divisions among members, the collapse of regional SADC EPA negotiations, and the dismantlement of SACU with serious consequences for poorer countries in the region and a deterioration of relations with the EU.

The European Commission put forward a "non-paper" for a tariff alignment deal aimed at preserving SACU tariff coherence at a meeting between SADC Ambassadors and European Commission officials on 10 December 2008. The "non-paper" proposes that South Africa align its tariffs to the commitments taken by Botswana, Namibia, Lesotho, and Swaziland (BNLS) under the IEPA in return for improved access for South Africa to the EU market. The European Commission indicated that it is also willing to go beyond this and include further market access concessions on both sides if South Africa is in agreement with the proposal.

The governments of South Africa, Namibia, and Angola (ANSA) wrote to EU Member States on 6 January 2009 welcoming the European Commission's "non-paper" as a positive acknowledgement of the ANSA contention that the IEPA, in its current form, will undermine the SACU common external tariff. ANSA stated that this positive development could constitute a basis for addressing concerns with the IEPA that moves away from a piecemeal and partial approach to one that is decisive and comprehensive, in order to effectively promote regional development and integration and to meaningfully strengthen trade relations between Southern Africa and the EU. ANSA called on the EU Council to delay the signing of the IEPA so as to allow time to create the conditions for all Members of the SADC EPA group to participate in a final EPA outcome and establish a single regional trade arrangement with the EU.



“

Positive development could constitute a basis for addressing concerns with the IEPA that moves away from a piecemeal and partial approach to one that is decisive and comprehensive.

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South Africa and the EU agreed at the South Africa-EU Strategic Partnership Ministerial Troika Meeting on 16 January 2009⁸ that both sides should consider the implications of the EPA on current processes of regional integration in SADC. They agreed that both sides should seek to find mutually acceptable solutions to the concerns raised in the negotiations. South Africa and the EU remain committed to reaching an outcome that consolidates SACU's common external tariff and which constitutes the essential underpinning for the proper functioning of the customs union.

European Trade Commissioner Ashton will visit South Africa in early February 2009 and will meet bilaterally with the South African Minister of Trade and Industry, Mandisi Mphahla, as well as jointly with the Trade Ministers of Angola, Namibia, and South Africa to discuss their concerns.

Caribbean

Following the signing of a full EPA in mid-October 2008, the focus in the Caribbean is now on implementation;⁹ the CARIFORUM-EU EPA began to be provisionally applied as of 29 December 2008.¹⁰ Most Caribbean countries have started to make progress in addressing the requirements of implementation at the national level. The more sensitive issue of addressing implementation requirements at the regional level, however, must be dealt with through regional consensus amongst the Caribbean Forum of African, Caribbean, and Pacific States (CARIFORUM). The Dominican Republic is leading a call – that is increasingly backed by a number of Caribbean governments – to determine the best regional vehicle to ensure the EPA is effectively delivered. The country tabled a Statement on Matters Related to Institutional Arrangements¹¹ at the 3 December 2008 Caribbean Community and Common Market (CARICOM) Council for Trade and Economic Development (COTED) meeting. The statement proposes options for a regional EPA implementing institution that calls for an explicit consensus of all CARIFORUM representatives. Emerging regional positions on this issue appear to point towards delegating responsibility either to the Caribbean Regional Negotiating Machinery or the Caribbean Export Development Agency; the CARICOM Secretariat is viewed as unacceptable.

The United Kingdom Parliament has not started ratifying the CARIFORUM EPA because Haiti has yet to sign. Parties are working with Haiti to ensure that the country is in a position to sign shortly, however. The issue may need to be resolved before all national ratification processes are completed.

The EU-CARIFORUM EPA has been placed in the World Trade Organization (WTO) category of Regional Trade Agreements for which factual presentation is on hold because it includes a non-Member of the WTO (Bahamas). Such inclusion has implications on the examination process for which there is no consensus yet in the WTO on how to proceed; the issue is still under consideration at the WTO.

Pacific

The Pacific ACP (PACP) countries also missed their 31 December 2008 deadline for completing regional EPA negotiations, though talk with the EU have advanced via e-mail exchanges since the last round of negotiations in September 2008. It may be necessary to move negotiations forward at the Ministerial level to resolve issues that cannot be addressed at the technical level. The European Commission is working on its reply to the Pacific's EPA draft text covering mutually agreed areas (goods, fisheries, development chapter, etc.).

The European Commission's proposal to sign the IEPAs with Fiji and Papua New Guinea has been transmitted to the EU Council for approval. Translation is complete and the Council Secretariat is preparing the final documents for approval and signature.

For a longer version of the EPA update, please see:
www.acp-eu-trade.org/newsletter/tni.php

Notes

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Calendar and resources

ACP-EU Events

February	
TBC	EU Council ACP Working Party Seminar on EPAs (early February)
TBC	European Commission-Central Africa technical and senior officials EPA negotiations, Central African Region (venue tbc)
TBC	ESA ministerial meeting on contentious issues (venue tbc)
2-4	Regional meeting on the draft EPA Development Programme (PAPEP), Accra
4-6	SADC-European Commission EPA technical negotiations, Brussels (tbc)
4-7	European Commission-Central Africa Negotiations on services, Libreville
9-11	SADC-European Commission EPA senior officials and ministerial meeting
9-12	15th Session of the ACP Parliamentary Assembly and Inter-Sessional Meetings of the ACP-EU Joint Parliamentary Assembly, Brussels
11-12	Special EAC meeting with Tanzania on services, Dar Es Salaam
12	The Africa-EU Business & Development Event, House of Commons, London
12-13	Task Force Workshop on Trade and Investment in the CARIFORUM-European Commission EPA for Overseas Territories and French Outermost Regions, Guadeloupe
13	Regional Trade Facilitation Programme Steering Committee Meeting, Nadi
16-20	European Commission-West Africa Technical and Senior Officials EPA negotiations and Regional Preparatory Task Force meeting, Dakar

19-20	Expert Group Meeting on the CARIFORUM-European Commission EPA, UNECLAC, Port-of-Spain
24-27	3rd Regional Meeting of the ACP-EU Joint Parliamentary Assembly, Georgetown
25-26	Regional Information Seminar on the European Commission-Central Africa EPA, Douala
March	
TBC	Joint PACP-European Commission Technical Working Party Meeting (venue tbc)
TBC	EU-Pacific senior officials partnership dialogue, Suva
10-11	EAC-European Commission EPA negotiations, Mombasa
12-13	20th Inter-Sessional Meeting of the Conference of Heads of Government of the CARICOM, Belize

WTO Events

February	
3-4	General Council
4+6	Trade Policy Review Body, Guatemala
18+20	Trade Policy Review Body, Japan
19	Dispute Settlement Body
23+27	Negotiating Group on Trade Facilitation
25-26	Committee on Sanitary and Phytosanitary Measures
February	
3-4	Council for Trade-Related Aspects of Intellectual Property Rights
9+11	Trade Policy Review Body, Brazil
12	Committee on Agriculture
16-17	Technical Barriers to Trade Committee Workshop on the Role of international Standards in Economic Development
18-19	Committee on Technical Barriers to Trade
19	Committee on Rules of Origin
20	Dispute Settlement Body
24	Council for Trade in Goods
25+27	Trade Policy Review Body, Fiji

Resources All references are available at: www.acp-eu-trade.org/library

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