

Regulars

2 Editorial

2 News and publications In brief

12 WTO Roundup

13 Vacancy Announcement: Bilingual Managing Editor / Writer for Africa, Caribbean and the Pacific

14 EPA Update

16 Calendar and resources

Features

1 Riding out the storm: Will the EPAs sink?

*Sanoussi Bilal and Isabelle
Ramdoo*

4 Tackling non-traditional barriers to trade: How EPAs can be made truly pro- development

Denise Prévost

6 Cross-Border Trade in Services: Barriers and Opportunities in EU Services Markets for ACP Exporters

Leonor v. Limburg

8 Africa's trade in services and the Economic Partnership negotiations

Paul Brenton

10 Tailoring IP protection for sustainable development: An examination of the CARIFORUM EPA

Henning Grosse Ruse-Khan

Riding out the storm: Will the EPAs sink?

Sanoussi Bilal and Isabelle Ramdoo

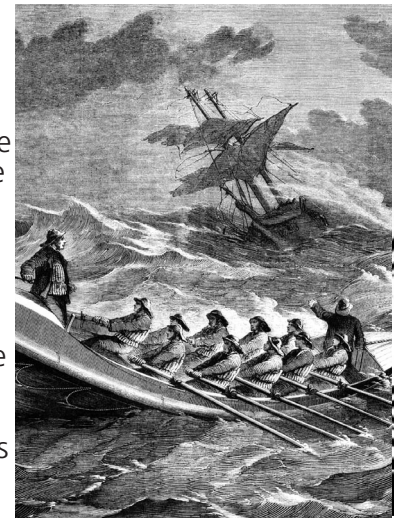
All parties agree: the EPA process needs a new momentum. Yet, the European Union, the African, Caribbean and Pacific countries and the African Union have all missed recent opportunities to show decisive political leadership. It defies common sense to understand why, unless we assume that the parties have given up hope of rescuing the EPA agenda. If that is the case, they should stop wasting their energy. But for those parties still interested in concluding an Economic Partnership Agreement, simple solutions are available, as argued in this second article in TNI's series on the future of EPAs. Whether the parties will rise to this political challenge before it is too late remains to be seen.

The parties to the EPA talks are failing to outline a way forward. On the ACP side, neither the Ministerial Trade Committee, held on 20 and 21 October in Brussels, nor the African Union Ministers of Trade Meeting held in Kigali on 1 and 2 November 2010 were able to articulate clear and forward-looking positions. Instead, ACP and AU policy makers gathering at those meetings simply repeated their long-held concerns over an extensive list of market access provisions pushed by the EU, as well as what they perceive to be a lack of adequate development support. It seems, however, that the ACP and AU policy makers were shouting into deaf European ears. More worrying, top ACP and AU Ministers have so far failed to rally around concrete forward-looking proposals on how to address these concerns; they have also ignored the possible compromises that some regions have already identified.

The ACP trade ministers did unite, however, over a set of 11 pre-conditions to concluding the EPAs, ranging from the achievement of the Millennium Development Goals to currency fluctuations, dashing any hope of completing the negotiations in the foreseeable future. The position on EPAs, endorsed by AU trade ministers in the Kigali Declaration on EPAs on 2 November 2010 and recommended to serve as basis for heads of states' engagement with the EU at the Africa-EU Summit on 29-30 November in Libya, added

further hurdles. They identified several options. One is that the EPAs should be made conditional on the achievement of development benchmarks (an approach that is advocated by many NGOs but that is unlikely to fit WTO rules). Alternatively, they proposed that the conclusion of the EPA negotiations should be postponed until the WTO's Doha Round talks have been concluded, or until Africa has achieved deeper regional integration. If one should read any political message there, it is that the ACP and the AU countries have little appetite to embark on an EPA any time soon – that is, unless ACP and AU common positions remain what they have too often been, strong rhetoric with little implication in practice.

On the EU side, the European Commission and member states' trade and development ministers (who met respectively in September and October 2010), have continued to lament the lack of enthusiasm from African and Pacific countries for a comprehensive EPA agenda. The EU is reluctantly accepting the fact it may have to lower its ambitions if EPAs are to be concluded; it also continues to promise flexibility in addressing ACP concerns. But the EU fell short of articulating any specific concessions or plans to move forward. The European Commission is squarely to be blame for that. Many EU member states were expecting Trade Commissioner Karel De Gucht to produce a position or options paper to thrash out some clear



Editorial

News and publications In brief

The EPA negotiations may be at an impasse, but policy makers can strike technical compromises on the most contentious issues if only they can muster sufficient political will. So argue Sanoussi Bilal, a co-editor of TNI, and Isabelle Ramdoo in this month's lead article, a follow-up to their piece on EPAs in the October issue of TNI. The EPA negotiations must be salvaged soon, the authors argue; time is running out.

Taking a closer look at a specific issue under the EPAs, Denise Prévost of Maastricht University considers the ways in which non-traditional barriers to trade pose challenges for ACP exporters. She argues that such measures – which often come in the form of technical barriers to trade or sanitary and phytosanitary provisions – are often more important than tariffs in discouraging ACP exports. She offers several suggestions as to how the EPAs might be designed to help mitigate some of these obstacles.

TNI then gives the floor to Paul Brenton of the World Bank, who offers an analysis of how international trade can help African countries build their domestic services sectors. The coordination of trade and regulatory reforms in the services field is critical, he argues. He maintains that, as currently structured, the EPAs will not get African countries to commit to service liberalisation since the EU is not ready to make enough concessions in return. He offers specific recommendations on these and other fronts.

Leonor v. Limburg of GTZ picks up a similar theme with an examination of the challenges faced by services exporters based in African, Caribbean and Pacific (ACP) countries. Such exporters must overcome significant barriers – both legal and non-legal – in order to tap in to the lucrative European market, Limburg argues. She maintains that ACP services exporters should be offered more assistance in navigating the complexities of the European market.

Turning to intellectual property, Henning Grosse Ruse-Khan of the Max Planck Institute examines how the EU's EPA with the Caribbean bloc of ACP countries attempts to bolster IP protection without sacrificing the treaty's ultimate goal of encouraging sustainable development. The protection of IP should not be seen as an end in itself, the author argues, but rather as a means of fostering the kind of creativity and innovation that can spur long-term economic growth.

As always, TNI's editorial team welcomes your feedback. Please send any comments or concerns to tni@ictsd.ch.

European Commission, Parliament sign new Framework Agreement

The leaders of the European Commission and European Parliament signed on 20 October a revised Framework Agreement that aims to intensify political dialogue between the two institutions. The finalisation of the deal – which replaces a previous accord that was signed in 2005 – marks the end of a nearly year-long process that began when the Lisbon Treaty entered force in December 2009.

The revised agreement sets out rules and a timeline for intensified, structured dialogue between the two institutions. It establishes detailed rules for how the Commission will inform Parliament about the negotiation and conclusion of international agreements and amends the rules for the provision of classified information to Parliament to bring them into line with international standards. The new Framework Agreement also lays out new rules to bolster the amount of information that the Commission shares with Parliament about the work of experts that the Commission hires to advise it.

European Parliament President Jerzy Buzek praised the new agreement, saying it “reflects the new more influential position of the European Parliament under the Lisbon Treaty and takes our special partnership with the European Commission to a new level.” The European Commission said in a statement the deal would “lead to a more efficient delivery of EU policies.”

For more information, please see the press release from the European Commission, available at: <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/10/1358&format=HTML&aged=0&language=EN&guiLanguage=fr>

EC proposal on farm subsidy reform leaked online

A draft proposal from the European Commission for post-2013 farm spending has been leaked online, just weeks before the EC's official plan is expected to be released to the public.

The unofficial proposals describe plans to maintain the bloc's substantial farm subsidy scheme over the seven-year budgetary cycle, while refocusing spending on more clearly-defined policy outcomes such as environmental goals. Prepared by the Commission's Directorate-General for Agriculture and Rural Development, the draft document recommends that a future Common Agricultural Policy (CAP) for Europe should focus on three objectives: viable food production, sustainable management of natural resources, and balanced territorial development. The leaked text was posted to the capreform.eu website on 8 October (<http://capreform.eu/the-commission-communication-leak-in-full/>).

The outline communication proposes maintaining a decoupled basic income payment for all farmers, supplemented by additional support that would be linked to environmental measures. It also suggests establishing a new ceiling on direct payments to large individual farms. On the hot-button topic of distribution of payments within the 27-nation bloc, the

leaked document proposes introducing “more equity in the distribution of direct payments between Member States.” However, it appears to reject proposals for a single flat rate direct payment available to all producers.

For more information, please see Bridges Weekly, Vol. 14 No. 36: <http://ictsd.org/news/bridgesweekly/89161/>

G-20 ministers pledge cooperation on reducing trade imbalances

Finance ministers and central bankers from the Group of 20 major economic powers have agreed to cooperate in reducing global trade imbalances and calming exchange-rate tensions. The officials met in Gyeongju, South Korea on 22 and 23 October, ahead of the G20 leaders' summit, which is set to take place in Seoul on 11 and 12 November.

Despite their promises to cooperate, the senior policymakers stopped short of establishing numerical targets for countries' current account surpluses and deficits. They instead pledged to work towards an agreement on “indicative guidelines” for identifying “persistently large imbalances” and their causes, as well as to “refrain from competitive devaluation of currencies.” The officials also agreed on a set of reforms aimed at shifting the balance of power and influence within the International Monetary Fund away from Europe and towards fast-growing developing countries, particularly China. The officials met against the backdrop of months of increasingly sharp exchanges among the world's major economies over currency policy and export competitiveness. The US and the EU have been urging China to let its currency rise, and lawmakers in Washington are threatening Beijing with sanctions for alleged currency manipulation. Several developing countries have argued that rich countries' ultra-loose monetary policy is tantamount to devaluation, and is distorting global capital flows.

For more information, please see Bridges Weekly, Vol. 14, No. 37: <http://ictsd.org/news/bridgesweekly/91167/>

Which Way Forward in EPA Negotiations?

After eight years of negotiations, which are now three years behind schedule, the EPA process is in disarray. How does an instrument that was conceived to foster economic development and enhance the partnership between the EU and African, Caribbean and Pacific countries risk turning into a liability in their strategic relations? And how can this be avoided? A recent paper from the European Centre for Development Policy Management (ECDPM) and International Lawyers and Economists Against Poverty (ILEAP) addresses these and related questions. For each of the key contentious issues in the negotiations, the paper identifies options to help the negotiations move forward. The authors warn, however, that technical remedies alone will not be able to unlock the negotiations. Strong political leadership is required from all parties to conclude the EPAs. This paper can be accessed at: <http://www.ecdpm.org/dp100>.

Continued from Front Page

guidelines on the possible way forward to get EPAs out of the impasse. This paper should have informed the discussion at the Informal Meeting of Ministers for Development Cooperation on 21 and 22 October, just before meeting with the ACP Ministers of Trade at the Joint Trade Ministerial Committee (JMTC). Instead, the "Reflection Paper" presented by the Commission ponders of the gloomy state of the EPA negotiations and falls short of identifying any concrete way forward.

Not surprisingly, the JMTC that followed failed to renew a constructive political dialogue among the parties, who had nothing new to put on the table. This represented a most regrettable missed opportunity.

The forthcoming Africa-EU Summit on 29-30 November in Tripoli is unlikely to bring the parties any closer together on EPAs. The EU would prefer not to address the issue at all, though European officials seem resigned to that prospect. EPAs are one of the potential issues for the summit that the EU describes as "irritant" in an internal document. This is another sign that the EU continues to bury its head in the sand about the highly political dimension of EPAs, which it still prefers to consider primarily as a technical matter. It also illustrates the EU's lack of political ambition for the summit, and more broadly for the Joint Africa-EU Strategy. For many African leaders, however, the summit marks another opportunity, after the Lisbon Summit of 2007, to reiterate their discontent about the EPA process. But in the absence of a focused AU position outlining a clear way forward, the summit is unlikely to produce concrete results. The only hope is that a frank exchange could take place, or that there might be sufficient noise about EPAs to at least instil some political sense of urgency in the EPA process.

Perhaps the EPAs should sink and be forgotten. That might be the best outcome for some countries and regions. Yet, for those interested in moving forward along the EPA path, some solutions are available.

First, the ambitions of the EPAs must match the degree of commitment and strategic priorities of the countries and regions concerned. For most regions, this means a narrower agenda, focusing first on market access in goods and the development dimension, leaving aside services and a whole set of trade-related issues for future negotiations, and this in spite of the relevance of these issues for economic development. The EU accepted this principle for Economic Community of West African States (ECOWAS) in June 2009, and it should extend the same flexibility to all other interested parties.

Second, parties that are still seriously committed to concluding an EPA must seek politically acceptable solutions to those "contentious issues" that remain major stumbling blocks to the timely

conclusion of the negotiations. This will require concessions from all parties. It will also require a differentiated approach, as not all countries or regions share the same concerns. Interestingly, in most regions possible compromise solutions have been identified on many of the issues deemed contentious in 2008. But in a bizarre twist, neither the ACP nor the EU seems too keen to capitalise on those solutions. That such compromises have been identified, however, shows that the negotiations are not as intractable as some have claimed.

Third, while it is a shared overall objective that EPAs should promote development, it is clear that the parties have different perceptions of the development merits of some of the specific EPA provisions. A positive way forward would be to acknowledge these differences, and ultimately to respect the ACP parties' assessments of their own development strategies.

In fact, potential solutions can be identified for most issues. Key remaining contentious issues relate to market access, the inclusion of a most-favoured nation (MFN) clause and the treatment of export taxes in the EPAs, among others.¹

On **market access**, the EU has interpreted WTO rules as requiring the ACP regions to liberalise at least 80 percent of their trade with the EU over a period of 15 years, given that, in return, the EU grants them duty- and quota-free market access. Many ACP countries, and in particular LDCs, have contested this interpretation and asked for greater flexibility. ACP and EU officials have argued over the last 10 years about the correct interpretation of the Article XXIV of the General Agreement on Tariffs and Trade, for which no pertinent jurisprudence exist. The objective is not to arbitrarily interpret the WTO rule, but to consider what level of market opening is both politically acceptable and defensible at the WTO. According to many WTO insiders, in the current context, any free trade agreement that would cover 70 percents or more of trade over a 15-20 years period is most likely to pass this WTO test – even more so if one the parties is an LDC or vulnerable economy, as in many ACP regions.

The inclusion of an **MFN** clause – whereby preferences granted to major third parties would be extended to the other parties of an EPA – has also been passionately debated. While this is not required or proscribed by the WTO, it is one of the most politically sensitive issues at stake. From the ACP side, it is simply not acceptable as a matter of principle. ACP policy makers consider it an unacceptable constraint on their future trade agreements with third parties. The EU, however, views it as a matter of "fairness" given their generous concessions under the EPA.

Whether an EPA will include an MFN clause is ultimately a political choice. But even if it does, some options to address concerns

over future agreements with major third parties might be politically acceptable.

A technical compromise would consist in explicitly narrowing the scope of application of the clause and relaxing the trigger mechanisms (in terms of joint decision-making process and thresholds) for its application. The MFN clause in the CARIFORUM EPA or the Pacific States IEPA could be considered: signatories have committed to implement the MFN provision only after consultation, therefore removing any automatic and potentially arbitrary application of the more favourable treatment. The balance of obligations and benefits between a third-country FTA and the EPA could also be considered. Another option would be to increase the threshold (in terms of share of world trade) of what constitutes a major trading partner, so as to exclude more countries from the potential application of the MFN clause.

Technical and flexible solutions could also be found on the question of **export taxes**. The main concern of some ACP is the need to preserve sufficient policy space to industrialise their economies, a position that is challenged by the EU. This is a somewhat grey area at the WTO. However, strictly speaking, WTO rules do not expressly require countries to prohibit the use of export taxes. Therefore, there is no obligation to have a clause on export restrictions in the EPA; if there is one, a simple reference to WTO rules could suffice. Even with a binding provision on export taxes, countries could preserve some flexibility by excluding a list of products from the application of the clause. The introduction of temporary measures under specific circumstances could also be provided for, for instance in case of specific revenue needs, or to protect an infant industry, ensure food security, protect the environment or where a country can justify industrial development needs.

The way out of the current deadlock is a question of political will. Technical solutions can be found on many of the remaining issues, if only policy makers on both sides are bold enough to seize them.

Authors

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Notes

- 1 For a detailed discussion, see Bilal S. *et al.* (2010), "Which Way Forward in EPA Negotiations? Seeking Political leadership to address bottlenecks", ECDPM-ILEAP study, ECDPM Discussion Paper 100, November, www.ecdpm.org/dp100
- 2 Many FTAs notified at the WTO, including by the EU, have lower thresholds than those currently advocated by the EU for EPAs.
- 3 See for instance Diouf, E.H., "Why the MFN clause should not be included in EPAs", Trade Negotiations Insights, Vol.9, No.8, October 2010.

Tackling non-traditional barriers to trade: How EPAs can be made truly pro-development

Denise Prévost

The significance of non-traditional barriers to trade has greatly increased in recent years, overtaking even the relevance of tariffs and quotas in trade between the European Union and African, Caribbean and Pacific (ACP) countries. Non-traditional barriers, which typically take the form of regulatory requirements and administrative procedures to determine conformity with these requirements, can be formidable obstacles to ACP access to the European market.

While certain ACP countries, such as Kenya, have succeeded in adjusting to the regulatory requirements they face on the EU market in important export sectors, many developing countries have encountered serious difficulties in doing so. This has had significant consequences for their trade.

The Economic Partnership Agreements (EPAs) currently under negotiation between the EU and ACP countries provide a promising new forum in which such concerns can be addressed. However, if the EPAs are to be truly effective in promoting development and increasing ACP exports to Europe, as officials have promised, then these agreements will have to provide some innovative solutions to the challenges posed by non-traditional barriers to trade; these solutions will have to go beyond what currently exists in WTO rules.

SPS and TBTs in context

Non-traditional barriers to trade typically come in two forms: technical barriers to trade (TBT measures) and sanitary and phytosanitary (SPS) measures.

TBT measures lay down mandatory substantive requirements or voluntary standards relating to product characteristics or their related processes and production methods. They also include labelling requirements that apply to products, processes and production methods. In addition, the category includes administrative procedures that assess whether products/processes conform to the applicable requirements.

SPS measures can be seen as a subcategory of TBT measures in that they may also take the form of regulations, standards or conformity assessment procedures. However, the subcategory of SPS measures is defined according to the purpose of the measure, namely the protection of human, animal or plant health from risks from food/feed or from pests/diseases of plants/animals. This subcategory of technical regulations



is often addressed separately in trade agreements.

Clearly, TBT and SPS measures often serve important policy goals such as consumer protection, but they can also be misused as tools of protectionism. To that end, the WTO's SPS and TBT Agreements contain disciplines that diminish the trade-restrictive effects and protectionist potential of these measures.

“ The EPAs should be designed and used as tools to help ACP countries overcome their current supply-side constraints. ”

But some observers say that these agreements do not go far enough. Indeed, developing countries have identified several inadequacies in these agreements – inadequacies that could be more effectively addressed on a somewhat smaller scale, such as in the context of a regional trade agreement among parties that have a long history of trade and cooperation. This is precisely the case with the EPAs between the EU and the ACP groupings.

In their current form, the EPAs fall short of their promise to wholeheartedly promote development in ACP countries by ensuring effective access to the EU market. They do not contain sufficiently detailed provisions on SPS and TBT measures nor do they set out procedural guidelines for operationalising key disciplines in these areas. As such, the

EPAs fail to address SPS and TBT measures in a manner that goes beyond the existing WTO rules and takes full advantage of the closer integration between the EPA Parties.

There have been some hopeful signs on this front, however, as embodied in the recent proposal on SPS matters in the EPA negotiations between the EU and the countries in the Eastern and Southern Africa (ESA) grouping. This proposal, which takes on board certain useful aspects of the SPS section in the EU's recent association agreement with Chile, represents the most promising rules on SPS matters in the EPAs thus far. It includes development-friendly clauses on issues like equivalence, precautionary measures, and SPS measures stricter than those embodied in international standards.

But much more must be done. Particularly, the EU needs to bolster its commitment to development cooperation, which is essential to building the capacity of ACP countries to address supply-side constraints to meeting sanitary, phytosanitary and technical requirements for market access. Currently, the EPA's language on this front largely consists of vague statements of objectives and priorities and does not offer firm budgetary commitments or mechanisms for timely and predictable disbursements. This gives cause for concern.

Looking ahead: Recommendations on SPS and TBT disciplines in the EPAs

The EPAs can be adjusted in a number of ways to help reduce non-traditional barriers to ACP exports to the EU. Indeed, the EPAs could specifically address the deficiencies of the WTO agreements by facilitating the implementation of provisions in the

SPS and TBT Agreements that are of particular interest to ACP countries (such as transparency, equivalence and adaptation to regional conditions). Some specific recommendations can be made in this regard:

- Equivalence agreements should actively be pursued as part of the ongoing negotiations on the interim EPAs in selected areas. These could focus either on specific priority products (for example fishery products) or on specific aspects of the regulatory regimes of the ACP parties (for example, certification of conformity). In addition, negotiators should agree on detailed procedural steps, bound to concrete timelines, to facilitate the recognition of equivalence ad hoc or through mutual recognition agreements. Such steps could follow the non-binding guidelines developed by the WTO's SPS Committee in this respect, but they could also be incorporated into the EPAs and thus turned into binding obligations. Real commitments on development cooperation will be essential, as investments will likely be needed to ensure that the relevant products or regulatory systems meet the EU's policy objectives. However, once achieved, the recognition of equivalence will grant the relevant ACP exports a crucial competitive advantage on the EU market, without any reduction in the level of protection secured for European consumers.
- Negotiators should aim to secure the EU's official recognition of the pest or disease status of particular ACP regions. Where possible, such recognition should be pursued on the basis of the guidelines laid down by the World Organization for Animal Health (OIE) and the International Plant Protection Convention (IPPC) system. In addition, officials should hammer out detailed procedures and objective criteria for future requests for recognition of pest or disease status. Once again, a good place to start might be the guidelines set out by the WTO's SPS Committee, in its Decision on Regionalization but the procedural steps and substantive criteria should be made binding through incorporation into the text of the EPAs.
- Technical committees should be set up under the EPAs to deal with TBT and SPS barriers to trade. These

committees should create a forum in which expert officials of the EPA parties can engage in discussions and come to cooperative solutions on specific concerns raised by such non-traditional barriers to trade. For instance, they could agree on adjustments to the measures at issue or on technical or financial assistance to facilitate compliance.

- Specific development cooperation commitments, along with mechanisms for their implementation, should be negotiated for each of the EPA chapters in which non-traditional barriers to trade are addressed. Such commitments should focus on priority areas identified by the ACP beneficiaries themselves and set out budgets and timelines for their achievement. Without clear budgetary commitments, it is unlikely that ACP parties will be able to rise above the supply-side constraints that currently limit their ability to benefit fully from the potential for increased market access of the EPAs.

Broadly speaking, the EPAs should be designed and used as tools to help ACP countries overcome their current supply-side constraints. Negotiators can achieve this by creating effective rules on non-traditional barriers to trade, including substantive SPS and technical requirements, and establishing effective disciplines on the administrative procedures for the assessment of conformity with these rules. If the EPAs succeed on this front, then they may truly become instruments for development.

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Cross-border trade in services: Barriers and opportunities in EU services markets for ACP exporters

Leonor v. Limburg

African, Caribbean and Pacific (ACP) countries are increasingly interested in trade in services, and for good reason. From 1990 to 2006, world exports of services more than tripled to over US\$ 2.8 billion. Expanding services sectors are typically associated with higher merchandise exports and increased productivity. The EU, a long-time close trading partner of the ACP, is the world's largest exporter and importer of services. In 2007, the EU imported more than US\$ 400 billion of services from the rest of the world.

Trade in services is notoriously difficult to measure and monitor. Identifying barriers to services exports can be equally challenging. Impediments to trade in services usually come in the form of non-tariff barriers instead of simple tariffs. Some of these barriers are embedded in domestic laws and regulations. Such legal impediments to cross-border trade in services are often overlooked in discussions on market access because they do not directly and specifically discriminate against foreign providers; instead, they are designed to protect existing providers from both domestic and foreign newcomers.

Taken together, all of these factors help foster the mistaken perception that markets for services are relatively open. In truth, it was only recently, after the adoption of the EU Services Directive in 2006, that the EU internal services market really started to open. For services providers outside the EU, however, most of the existing barriers remain in place.

Legal and non-legal barriers to trade in services in the EU

Barriers to trade in goods within the EU were dismantled much more quickly than barriers to trade in services, a consequence of the high level of sensitivity in many services sectors. Some of the EU's most important legal barriers to trade in services include restricted access to distribution channels; quotas governing the number of providers in a market; territorial restrictions; nationality and residency requirements; lengthy and complicated authorisation and registration procedures; restrictions on real estate purchases; and difficulties in the recognition of professional qualifications.

Not all of the barriers to trade in services in the EU are related to laws and regulations, however. Demands and requirements on the side of buyers,

although not legally binding, can also pose serious obstacles to services exporters. In consumers' perception, the quality of a service is highly linked to the image and reputation of its provider. Consumers want to make sure that their needs and demands are well understood. De facto barriers thus exist when foreign services providers are unable to effectively demonstrate their capabilities in a market or communicate with their potential customers. These market-determined or "soft" barriers can be as serious impediments to cross-border trade in services as legal ones, yet they are often taken lightly by exporters and trade support institutions. Examples of these barriers include: lack of credibility and profile; insufficient language competences; cultural distance; difficulties to travelling travel to the market; and a lack of access to relevant networks and information channels.

Obtaining information about EU services markets

ACP countries have repeatedly stressed that their services exporters and trade support institutions need help understanding the intricacies of European services markets. Information and resources available online are growing but remain limited in number and scope.

The World Trade Organization (WTO) provides ample information about trade in services via its WTO - Services Gateway Page but the information there is targeted toward policymakers, negotiators and researchers – not exporters.

In accordance with the WTO's General Agreement on Trade in Services (GATS), every EU member country has established a GATS enquiry point to provide direct support to services exporters and facilitate access to information for services providers from developing countries. For this support to be effective, however, potential exporters have to be able to formulate specific information requests. Moreover, the enquiry point has to have the capacity to provide highly detailed, sector-specific information in response. This is not always the case. In various EU countries the GATS enquiry points are staffed by a single person within the trade or economic ministry; that person, who likely has other duties to attend to as well, often does not have time to respond to each request comprehensively. In the best-case scenario, in which specific requests

do receive a comprehensive answer, the responses are not systematically documented and made public. Thus, other potential exporters cannot profit from the information.

Many EU member states directly offer information of interest to services exporters via the websites of their trade and investment agencies, their ministries of economics and their institutions that deal with the recognition of professional qualifications, among others. Yet, to find and systematise all of the relevant data in order to assess opportunities and constraints requires a good deal of time and effort since the information is scattered across various sources and is often provided only in the national language.

“ ACP countries have repeatedly stressed that their services exporters need help understanding the intricacies of European services markets. ”

Another potential source of information, the EU Export Helpdesk, was established by the European Commission as an online resource for developing country exporters looking to tap into the EU market. But while the site provides information and assistance to exporters of goods, it does not address the needs of services exporters

Thus, for ACP services exporters and support institutions it remains difficult to obtain specific, structured and ready-to-use information. Although online resources are rapidly expanding, they mostly provide general information about different aspects of trade in services. Only recently have studies on sector-specific opportunities and constraints in EU services markets become available.

Examples of such studies include reports commissioned by the ACP Business Climate Facility for the sectors of business professional and audiovisual services, as well as the reports provided online by the Centre for the Promotion of Imports from Developing Countries for the sectors of engineering, business processes outsourcing and information technology services. Additionally,

the International Trade Centre (ITC) provides online access to some tools and resources for services exporters, including publications on quality standards for services, as well as tools to assess export readiness and to design services export strategies.

To truly close the information gap, however, will require greater effort. One way to do this would be to encourage an ACP trade support umbrella organisation to establish an online information portal comparable to the EU Market Access Database. Through easy access to a user-friendly information centre, potential service exporters could evaluate market access conditions and requirements by sub-sector in the different EU countries. While in the initial stages the tool might not be able to answer all requests, in time it could become a well-visited reference centre. Its success will largely hinge on whether it can effectively compile the rapidly expanding body of information aimed at assisting service exporters that is currently scattered in different places. Another possibility would be to expand the EU Helpdesk to address services exporters. These two possibilities are not necessarily mutually exclusive, but coordination would be required to avoid duplicating efforts and to ensure broad coverage.

Issues and trends in selected EU services sectors

Healthcare related professional services

ACP countries have identified professional healthcare services as one of the sectors in which they would like to focus the development of their services export capacities. Yet access to the EU healthcare services market is difficult for non-European professional healthcare providers, especially if they aim to provide services under mode 4 of the GATS (temporary movement of natural persons). The restrictions are partly grounded on ethical concerns (policymakers do not want to encourage the emigration of professionals from developing countries that face much more severe shortages of healthcare providers). Another important reason is the now-challenged view that the growing demand for healthcare services in the European Union could be more than sufficiently serviced by EU nationals, thanks to both the surge in the number of healthcare professional graduates in recent years as well as the EU's expansion.

In France and Germany, the exercise of healthcare occupations is in principle reserved for European citizens (that is, nationals of EU countries, of the enlarged European Economic Area, or of Switzerland). A restricted permit can be obtained in the case of a demonstrated shortage that cannot be filled by a European, provided that the candidate demonstrates comparable qualification to that of a national graduate and proficiency in the national language. In the UK, work permits for healthcare providers can only be granted to non-EU nationals if the enquiring person's profession appears in the national occupations shortage list. The person also must have a concrete job offer, have registered at the corresponding professional body, have demonstrated the equivalence of their qualification to those of UK graduates, and be a proficient English speaker. The recognition of professional qualification in the healthcare sector is a lengthy and demanding process in most EU member states.

Computer-related professional services

The services market for computer-related professional services was relatively open during the booming economic periods in the mid-1990s and mid-2000s. Many EU countries easily granted special waivers and work permits to IT specialists to help solve the perceived "skills gap." The situation changed drastically in response to massive job losses in the IT sector resulting from the 2008 economic crisis. But the barriers determined by the market are more serious than the barriers currently imposed by the unfavourable economic landscape. EU firms looking to contract IT services abroad consider language proficiency and cultural closeness a must. They also want their contractors to keep close personal contact with clients and to maintain a Western business style.

Maritime-related professional services

The services market for maritime-related professional services has traditionally been one of the most fiercely protected, and not without reason. Almost 90 percent of EU trade with the rest of the world and 40 percent of intra-EU trade is transported by sea. One quarter of the world's shipping tonnage is registered under EU flags and around 40 percent of the global shipping fleet is owned by EU nationals. Yet, market conditions might be inducing the opening up of this sector. Of particular

concern is the serious and growing shortage of EU seafarers, as fewer and fewer young people are choosing a maritime profession. Besides making strong attempts to build up the EU seafarers' pool, EU authorities are also increasingly encouraging worldwide compliance with international labour, social and environmental standards. If current trends continue, they will need to consider how to best integrate non-EU seafarers into EU maritime operations.

Looking ahead

The constraints and opportunities that shape the trade landscape change over time, sometimes rapidly. New economic circumstances can trigger non-legal, market-driven barriers that can discourage foreign services providers in sectors in which they used to enjoy easier access. On the other hand, changing economic circumstances can also create opportunities in sectors traditionally closed to services exporters. Domestic regulation and trade agreements respond, albeit slowly, to shifting market and economic conditions. Therefore, in addition to seeking improved market access, developing countries should also enhance their ability to track and react to market and economic developments. By identifying and addressing the supply-side constraints in their services sectors, developing countries can take an important step in that direction.

Author

Leonor v. Limburg is an international trade consultant. This article summarises the main findings of a study commissioned by GTZ on behalf of the German Ministry for Economic Cooperation and Development (BMZ) and conducted by Dr. Leonor v. Limburg. The study can be accessed at <http://www.gtz.de/en/dokumente/gtz2010-en-eu-services-markets.pdf>

Africa's trade in services and the Economic Partnership negotiations

Paul Brenton

Services matter for economic growth and development. The provision of clean water, effective sewerage, a stable supply of energy, and access to education and health services are critical to increasing welfare and alleviating poverty. Telecommunications, energy, transport, and business services are important inputs into the production of goods and other services and hence influence productivity and competitiveness. Increasing the availability, affordability and quality of these services is crucial for economic growth and poverty reduction in all African countries.

International trade can play a key role in the development of services sectors in Africa. Opening up to services imports including foreign direct investment can increase competition and efficiency in the provision of services in the domestic economy. Liberalisation of services trade can have positive impacts on the production and export of goods and services throughout the economy. In addition, services themselves offer dynamic opportunities for developing new exports; however, services are too often overlooked as a source of export diversification, as trade policies tend to focus solely on promoting trade in goods. For example, the fastest growing company in Kenya last year was an exporter of back-office processing services which has increased its staff to more than 600 people within just five years. Exports of services are of particular importance to landlocked countries, where opportunities to diversify into the export of manufactures are more limited due to high transportation costs.

The importance of coordinating trade and regulatory reform.

Opening up trade in services is typically more complex than liberalising goods trade; it can require considerable technical capacity, which is often lacking in Africa. The complexity arises from the fact that many services sectors need to be regulated in order to ensure that they operate efficiently in the face of market failures. For example, financial services need to be regulated to avoid systemic risks to the economy. Passenger transport services require regulation to ensure that vehicles are safe and drivers do not spend too long at the wheel. And sectors where there are high sunk costs require rules to promote competition.



Opening up to services trade in the absence of appropriate regulations may not always be beneficial. For example, opening up to foreign direct investment (FDI) in the tourist sector in the absence of appropriate environmental regulations may undermine future growth of the sector. It may also be necessary to put in place mechanisms to ensure that social objectives regarding access to key services, such as health, education, electricity and water, are not compromised by trade reform. The challenge is not necessarily deregulation but one of effectively implementing a regulatory environment that delivers competitive services sectors and allows public policy objectives to be met.

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Liberalisation of services trade can have positive impacts on the production and export of goods and services throughout the economy.

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It is therefore important to coordinate services trade liberalisation with regulatory reform. Although regulatory reform does not necessarily need to precede trade liberalisation or vice versa, in general efforts should be made to ensure competition in the market. In some cases, trade liberalisation can be a driver of regulatory reform, such as when regulatory agencies have been captured by incumbent producers and

trade liberalisation leads to greater participation of consumers and new suppliers of services in the regulatory process. In other cases, regulatory reform or an improvement in the business climate may be necessary to allow investment or cross-border trade to take place. Regulation must adapt to technological change, which itself can be spurred by trade opening, especially when services are provided through commercial presence. For example, a number of countries in Africa opened up to allow FDI in telecommunications but did not adjust regulations to allow voice over the internet technologies (VOIP), which constrained the development of exports of back-office processing services.

The key issues in EPA negotiations on services

International trade agreements are typically seen as a useful mechanism to support governments that wish to implement reforms but that are opposed by powerful vested interests. They can help break domestic deadlocks by improving market access for the country's exporters and mobilising export groups to support the reform effort. Trade agreements can also provide a mechanism for overcoming domestic resistance to desirable reforms by locking in the commitment to reform and enhancing the credibility of the reform process.

However, as currently structured, the EPA negotiations on services will not deliver the type of agreement that is required to assist the reform of services sectors in Africa. There are two key issues that the EPA negotiations must address if they are to be successful. First, the current approach is a standard

mercantilist GATS type negotiation, in which countries request commitments across a wide range of services sectors on market access and national treatment and, in return, make offers on access to their own market.

This approach has largely failed to encourage developing countries to liberalise their services sectors in negotiations at the WTO, and it is not working in the EPAs. The reason is that the standard trade bargain is not there: there is nothing substantial on the table for African countries in terms of new market access. In many sectors, such as finance, telecommunications and information technology, Europe is already open to all service suppliers, including those from Africa. On the other hand, however, Europe is very restrictive and *not* prepared to make offers in the area of greatest potential benefit for Africa – the temporary movement of unskilled workers. Hence, there are no offensive export interests to balance the political and economic resistance to opening up domestic services sectors. Europe has to offer African countries more if the current approach to the negotiations is to work.

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There is an increasing appetite for services reform in Africa.

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Second, policy makers have devoted an insufficient level of attention and resources to improving regulatory policies and strengthening regulatory institutions in African countries. A well-designed EPA would support the implementation of domestic reform programmes in Africa. At present two sets of trade negotiators are focused on market access across a wide range of sectors. The sector specialists with knowledge of the regulatory issues are not heavily involved and the coordination with regulatory reform is not there. Regulators are interested in the substantive arguments for reform, while bargaining over market access alone is of little importance to them.

The negotiations need to address concerns over the impact of market access commitments on the capacity to regulate and assist in overcoming resistance to domestic reform by entrenched interests. This can be achieved on a sector-by-sector basis through a series of open, all-

inclusive discussions that are based on careful analysis of the nature of regulatory policies in each sector. The discussions would touch on how those regulations have impacted trade and investment; they would also seek to assess the economic benefits and wider consequences of reform. It would be particularly important for the stakeholders who participate in these discussions to have access to lessons learned elsewhere in similar reform efforts. Such information could help policy makers in Africa design appropriate and effective trade and regulatory reforms that are backed up by technical assistance to enhance capacity building for successful implementation.

The way forward

There is an increasing appetite for services reform in Africa. A notable example is the recent signing of a common market agreement in the East African Community that includes commitments to cooperate on regulatory reform and to liberalise seven key services sectors.

What can be done to support this and other reform initiatives in Africa? First, the international community can mobilise aid for trade resources to provide the knowledge platforms and technical assistance that is required to implement appropriate regulations and coordinate these with trade opening. Second, Europe could contribute more effectively through a move away from a focus on broad but shallow trade negotiations on market access to supporting reforms of a small number of priority service sectors identified by each African country. Once success has been demonstrated in the priority sectors, Europe could help African countries scale up these reforms to other parts of the economy.

The nature of trade opening would be dictated by the development interests of the African countries, with a strong presumption that this would be on an MFN basis, as in the case of Chile, for example. This all requires a shift toward a more collaborative approach to services trade reform – an approach that includes much greater involvement on the part of sector and development specialists, as well as a broad dialogue with all stakeholders. African countries could then use an EPA to bind their liberalisation. Trade commitments under an EPA would be a flexible tool that would serve as one element of a partnership that supports the domestic

reform process; they would not be the end goal in and of themselves.

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Notes

For further reading on trade in services, please also consult our TNI Reader on Trade in Services, a compilation of articles published on this topic in TNI from 2006 to present. It can be accessed at: <http://www.ecdpm.org/wb>

Tailoring IP protection for sustainable development: An examination of the CARIFORUM EPA

Henning Grosse Ruse-Khan

The Economic Partnership Agreement (EPA) that was signed by the European Union and the CARIFORUM group of Caribbean states in October 2008 offers an innovative example of how the protection of intellectual property – if sufficiently flexible to be tailored to domestic needs – can promote sustainable development. The CARIFORUM EPA takes a step toward that goal by highlighting sustainable development as an objective of the agreement. If taken seriously, this allows officials to reconcile the three pillars of sustainable development by integrating the economic, social and environmental aspects in the implementation of the CARIFORUM EPA. This approach could serve as a template not only for other EPA negotiations, but also for the free trade agreements that Europe is pursuing with India and countries in Southeast Asia and South and Central America.

Sustainable development in international law

In international law, nearly all documents related to sustainable development emphasise the principle of integration and reconciliation. The focus is generally on balancing economic, social and environmental aspects and integrating them into all decision-making processes, whether legislative, administrative or judicial.

Such an approach, however, gives rise to ambiguities and unresolved questions. The nature of the economic, social or environmental issues to be balanced is context-dependent and driven by normative preferences. International legal documents tend not to specify, for any given intersection, how a concrete, integrated outcome might be achieved. Instead, legal texts tend to focus on establishing a *process* of decision-making that integrates the many key elements of sustainable development. In principle, this process of integration offers significant discretion and policy space for countries to decide how they wish to balance economic, social and environmental concerns. For sustainable development to be achieved via international law, the concept must be integrated into policymaking at both the international and national levels. However, if a specific integrative approach is adopted internationally, then states will have less policy space to account for their domestic interests.



In essence, sustainable development must be understood as an overarching, integrative and holistic approach. It should be seen as a call for reconciliation of all relevant economic, environmental and social concerns in decision-making processes.

Sustainable development in the EU-CARIFORUM EPA

The objective of sustainable development is laid out in several sections of the CARIFORUM EPA. Explicit mentions of the subject appear in the preamble, in Article 1, and in Article 3, which carries the heading “Sustainable Development.”

Section 1 of Article 3 notes that the treaty’s stated goal of promoting sustainable development should be seen as an interpretative tool that affects all of the treaty’s provisions. The pursuit of the agreement’s sustainable development objective “is to be applied and integrated at every level of [the] economic partnership,” the section states.

“The promotion of creativity, innovation and competitiveness should be seen as a means for achieving the goal of sustainable development.”

The agreement’s chapter on innovation and IP sets out the context and objectives as well as the nature and scope of the parties’ specific IP obligations. Article 139 (2) adopts an integrative approach that reconciles economic and social interests within the IP section. It states that, *inter alia*, the parties

... agree that an adequate and effective enforcement of intellectual property rights should take account of the development needs of the CARIFORUM States, provide a balance of rights and obligations between right-holders and users and allow the EC Party and the Signatory CARIFORUM States to protect public health and nutrition.

Since this provision defines the “Nature and Scope of Obligations” in the EPA, individual IP provisions must be interpreted and implemented in a way that allows domestic measures to protect public health and nutrition. This can be quite a challenge whenever individual provisions – such as those on IP enforcement – contain very detailed obligations that primarily take the economic interests of right holders into account. The Caribbean states implementing the agreement nevertheless should try their best to find solutions that respond to all relevant domestic interests.

Even within the text of the agreement itself, however, the interaction between IP protection and sustainable development is not always straightforward. For instance, the second paragraph of Article 131 sets out two rather contradictory aims.

In Article 131, the parties agree that

... fostering innovation and creativity improves competitiveness and is a crucial element in their economic partnership, in achieving sustainable development, promoting trade between them and ensuring the gradual integration of CARIFORUM States into the world economy.

In relation to IP in particular, they recognise that

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

On the one hand, the second paragraph calls for increasing levels of protection – thereby building on the assumption that a continuous increase in IP protection is beneficial and positive in all cases. On the other hand, this phrase is subject to the condition that such (increasing) protection must be appropriate to the levels of development of the contracting parties. The latter reinforces the recognition that “one size does not fit all,” which already has been deduced from the general objective of sustainable development: IP protection must be tailored to meet the needs of the domestic economy and in particular reflect the comparative advantage (in innovation or imitation) of the country concerned.

One way to resolve this tension would be to broaden the understanding of the term “protection” to include the protection of interests of IP users, competitors and the public domain. Such an understanding would find support in the overall goal of IP protection to promote societal progress.

Looking ahead

The general objectives and principles of the EU–CARIFORUM EPA allow the concept of sustainable development to play such a role – if the contracting parties are able and willing to use its potential. The obligations that the contracting parties undertake in Article 3 with respect to the implementation of sustainable development objectives align with the general understanding of the function of a sustainable development objective in international treaties: to empower and oblige all actors involved in the application of the treaty to take an integrative approach in the process of decision-making. The EU – CARIFORUM EPA further qualifies the obligation of adopting an integrative approach by requiring this decision-making process to incorporate the principles of ownership, participation and dialogue.

Given the slow pace of multilateral negotiations, the standards set by FTAs are likely to impact future multilateral outcomes. In this respect, the EU’s negotiating agenda at the regional

and bilateral levels should be seen as particularly relevant. In the IP context, the EU is not only pursuing stricter standards on IP protection; the bloc is also establishing several interesting norms that address and are affected by the concept of sustainable development.

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IP negotiators in all forums should be encouraged to pay close attention to the economic, social and environmental aspects of sustainable development.

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What can we learn from these new norms in terms of how to reform of the international IP system? Countries, international organisations and other relevant actors should acknowledge the need for a comprehensive integration of economic, social and environmental concerns in all areas of decision-making. Incorporating sustainable development as a treaty objective in international IP agreements can help negotiators overcome the structural bias and self-contained nature of international IP regulation.

Existing international obligations – especially under the WTO’s Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) – should not prevent negotiators from coming up with flexible solutions to account for the interests of all parties that are affected by IP protection. For instance, the policy space flowing from the sustainable development objective in the preamble of the Agreement Establishing the WTO – which also affects the interpretation of TRIPS – often can offer adequate discretion for a tailored domestic attempt to give effect to public interests.

IP negotiators in all forums should be encouraged to pay close attention to the economic, social and environmental aspects of sustainable development. The World Intellectual Property Organization’s (WIPO) Development Agenda and the WTO’s ongoing negotiations on the relationship between TRIPS and the Convention on

Biological Diversity can be good forums for action.

One size simply does not fit all when it comes to designing countries’ IP protection strategies. The implementing country’s particular circumstances should determine the level of IP protection that can best facilitate that country’s (sustainable) economic, technological and cultural development. This “tailoring” of course must further be balanced against security and predictability in trade relations, which demands a certain degree of harmonisation among all contracting parties. Reconciling these interests is inherent to the concept of sustainable development and its core principle of integration.

Broadly speaking, the promotion of creativity, innovation and competitiveness should be seen as a means for achieving the goal of sustainable development. The protection of IP is no end in itself, but merely an important tool for achieving those goals.

Author

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WTO Roundup

New WTO Agreement on Government Procurement within reach by December

A deal that would liberalise access to billions of dollars worth of public procurement contracts among more than 40 WTO members is within reach by the end of the year. However, it remains unclear whether China will become part of the optional scheme in the foreseeable future. Major trading powers like the US and the EU want China to join, but not on the terms Beijing has offered thus far.

The WTO government procurement committee met on 14-15 October, following bilateral and small-group gatherings earlier in the week. Two issues top the committee's agenda, neither of which are linked to the WTO's struggling Doha Round talks: revising the Agreement on Government Procurement (GPA), a plurilateral WTO accord that has since 1996 opened up access to several types of public tenders to companies from all participating countries; and negotiating the accession to the GPA of several WTO members, most significantly China.

The draft revised GPA text is almost complete, based largely on a version that was provisionally agreed in December 2006. The parties are presently discussing its final provisions, and confirming the accuracy of legal translations. A two-week session has been planned starting 6 December for members to finalise changes to the draft text. One of the issues that need to be defined is future work on public procurement. Nicholas Niggli, the Swiss senior trade official who chairs the government procurement committee, told Bridges that members had a window of opportunity between now and early 2011 to reach an agreement on revising the GPA. Beyond that, countries may grow weary and walk away from the process. This would in turn dissuade new countries from joining the GPA, he warned.

Trade finance hard to access for some developing countries, despite recovery

Countries on the periphery of global trade are finding it hard to access trade finance, even though finance flows elsewhere have largely recovered from the recent credit crunch, an experts' meeting convened by WTO Director-General Pascal Lamy was told on 22 October.

Sources familiar with the meeting's discussions said that trade finance flows have improved considerably, particularly in North America, Europe, and Asia. However, affordable trade finance remains scarce in low-income countries, particularly in Africa. Larger developing countries, such as Vietnam, Ukraine, Mongolia, and Pakistan, are also suffering from inadequate finance. Taken together, the shortages constituted a systemically significant development challenge, the group concluded. The trade finance experts also examined regulatory issues. Some expressed concern that the proposed "Basel III" set of global banking rules, intended to reduce the risk of future financial crises, might actually make trade finance scarcer.

WTO chief Lamy concluded the meeting by pledging continued work on aid for trade, noting that inadequate trade finance might obstruct trade just as surely as tariffs and other traditional market access barriers.

Lamy looks to G20 for 'political signal' on Doha

Informal talks among Geneva-based delegations have helped WTO members build trust and identify specific obstacles to an agreement in the Doha Round of global trade talks, but a "clear political signal" from world leaders would be needed for the struggling negotiations to enter the "final stretch," WTO Director-General Pascal Lamy said on 19 October.

Speaking to the Trade Negotiations Committee, the WTO body that oversees the Doha Round trade talks - and of which he is the chair - Lamy made clear that officials in Geneva were hoping that such signals would emerge from November's summit of leaders from the Group of 20 leading industrialised and developing nations in Seoul, as well as from an Asia-Pacific Economic Cooperation gathering in Japan. Declarations of support for a swift conclusion to the Doha Round have in recent years become a fixture of international economic summitry - albeit to little effect on the WTO talks themselves, which have dragged on into what will soon become their tenth year.

In Geneva, WTO member delegations have been meeting in a variety of configurations - bilaterally, in groups

of varying sizes, in consultations with Lamy, and in the Doha Round negotiating committees - in an attempt to understand each others' positions and find a way forward. The WTO chief has dubbed this the "cocktail approach." In particular, a group of ambassadors has been meeting regularly since September to exchange views and "brainstorm" on each issue in the negotiations. It has been the first time that some issues, such as fisheries subsidies, have received detailed attention at the ambassadorial level. Lamy spoke favourably about the various meetings. "I understand that good and positive discussions are taking place, ideas are being exchanged, brains are being stormed, scenarios are being tested," he told the TNC. "As negotiators, you all know that engagement and trust-building are pre-conditions for any end-game."

Trade is on the agenda for the G-20 leaders' summit in Seoul on 11-12 November. As during the Toronto summit earlier this year, trade will be the focus of a leaders-only lunch. Whether the meeting - and crucially, governments' follow-up to it - yields anything more than the standard pledge to conclude the Doha Round as soon as possible remains to be seen.

Lamy: Uncooperative currency policies could jeopardise economic recovery

Global economic recovery could be "put in serious jeopardy" if governments do not cooperate on exchange rate policies, WTO Director-General Pascal Lamy warned trade officials at a meeting of the WTO's Trade Negotiations Committee on 19 October. The WTO chief said that while major economies had largely resisted protectionist pressures through the worst economic downturn in decades, he had recently heard "warnings that this stability could be put at considerable risk" by disorderly currency movements. Lamy's remarks marked a rare intervention on the subject of exchange rates, an issue that he has generally left to the International Monetary Fund and finance ministers.

Recent months have been marked by increasingly sharp exchanges among the world's major economies over currency policy and attempts to boost export competitiveness. Brazil's finance minister, Guido Mantega, recently declared the world economy to be in

an “international currency war.” The US and the EU have been critical of China for failing to let its currency, the yuan, appreciate more quickly. The US House of Representatives has passed a bill opening the door to the imposition of tariffs on Chinese imports to offset the subsidising effects of China’s allegedly undervalued exchange rate. China, meanwhile, has rebuffed calls for a stronger yuan. It blames structural factors and financial policies for the US’s cavernous trade deficits, and has criticised ultra-loose monetary policy in developed countries, especially the US, for distorting global demand and currency values.

Roundtable looks at Aid for Trade’s implications for women

The WTO’s programme to promote and monitor trade-related development assistance examined the “gender dimension” of such support at a meeting on 25 October. It was the first time that the programme has conducted such an assessment. The aim of the meeting was to inform participants – which included representatives from governments as well as international organisations, private sector groups, and civil society – about trade-related assistance policies specifically aimed at women in developing countries. Various studies have revealed that the impacts of trade are not gender-neutral.

The roundtable was organised around presentations of case studies demonstrating how women can benefit from better integration into aid-for-trade efforts. One example came from Uganda, where a National Export Strategy incorporating gender dimensions was launched in 2007 with support from the International Trade Commission (ITC). Under that programme, officials carried out detailed gender-sensitive value chain analyses, and identified key cross-sectoral issues that compromise women’s export competence. Banks were encouraged to target women specifically. A special focus was given to the dairy, tourism, handicraft, and coffee sectors, which mainly employ women. ITC’s report concluded that targeting women “worked as a catalyst for the entire economy,” since 80 percent of the enterprises in Uganda are small or medium-sized, many of them run by women.

In Mali, the Canadian government gave targeted support to agricultural supply chains in which women were dominant, such as that for shea butter, a widely used input in the cosmetics sector. The results included improvements in production and sales, as well as greater equality between men and women.

The gathering resulted in an establishment of a network of gender and trade experts to whom governments, intergovernmental organisations and others could look to for advice as well as for implementing and evaluating aid-for-trade activities aimed at benefiting women.

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

Vacancy Announcement: Bilingual Managing Editor / Writer for Africa, Caribbean and the Pacific

Closing date: 1 December 2010

The International Centre for Trade and Sustainable Development (ICTSD), an independent non-profit and non-governmental organization contributing to a better understanding of development and environment concerns in the context of international trade, seeks to recruit a high-calibre professional to fill the following position:

Bilingual Managing Editor / Writer for Africa, Caribbean and the Pacific

The objective of the position is to support ICTSD’s mission in order to influence the international trade system so that it advances the goal of sustainable development. The Bilingual Managing Editor will be responsible of producing news, analysis, and opportunities to interact on issues at the interface of trade policy and sustainable development for Africa, Caribbean and the Pacific.

Applications should be sent to jobs@ictsd.ch. For additional details on the job description, please visit <http://ictsd.org/wp-content/uploads/2010/10/tor-editor-for-africa-caribbean-and-the-pacific-2010.pdf>.

EPA UPDATE

Melissa Julian

ACP-EU ministers debate way forward on EPAs at Brussels meeting

A debate at the ACP-EU Ministerial Trade Committee (JMTC) held in Brussels on 22 October revealed continued divergence between EU and ACP positions over how to move forward in the negotiation, conclusion and implementation of EPAs. The meeting was attended by African trade ministers or their officials, several EU development ministers and the European trade commissioner.

The debate in the JMTC sets the stage for a high-level discussion on EPAs that will take place at the upcoming Africa-EU summit in Libya on 29 and 30 November. At that meeting, heads of government could offer specific political guidance on the concessions they will be willing to offer in order to move the EPA process forward.

Following the 22 October gathering, EU Trade Commissioner Karel De Gucht told journalists that he had informed ACP officials that, while the EU is prepared to be flexible, within the limits of WTO compatibility, in addressing their concerns, the EPA negotiations cannot continue forever. He also noted that he had told the officials that those ACP countries that have not yet signed or implemented interim EPAs cannot maintain their current levels of access to the European market indefinitely. As the negotiations have been at an impasse since 2007, the EU is looking for a way to drive the process forward.

The EPAs were discussed at an informal meeting of European development ministers immediately prior to the JMTC. EU sources indicate that the ministers discussed a "reflection paper" from the European Commission that set out the status of EPA negotiations and explained the EC's view on why negotiations are blocked. One cited reason, for example, was that the ACP countries face significant political difficulties at home in reforming rules and making trade liberalisation commitments.

The EC paper also points out that the EPA market access provisions call for ratification of interim EPAs "within a reasonable period of time." Interim EPAs were initialled three years ago, the paper notes, and the ACP now need to sign and implement those agreements to ensure that the EU-ACP trade regime is in compliance with WTO rules and EU law.

Belgian Development Minister Charles Michel informed journalists in a separate press conference² that a majority of EU member states are in favour of setting a timetable for concluding the EPAs and amending ACP market access regulation if negotiations cannot be concluded. He also said that a

majority of member states are in favour of increased EU flexibility, within the limits of WTO compatibility, to conclude the EPA talks. He further stressed that the EU needs to send a clear message to Africa on EPAs at the upcoming Africa-EU summit.

The meeting was informal, so no official decisions were taken. Concrete actions on the way forward will probably be considered early next year, sources said.

The ACP Trade Ministers' Spokesman, Gabon's Economy and Trade Minister Paul Boundoukou-Latha, also addressed journalists after the JMTC meeting. He reported that he had told European officials that the EU must show flexibility in responding to ACP concerns if the EPA talks are to be concluded.

ACP trade ministers met prior to the JMTC and adopted a report with elements of a possible ACP EPA position, sources said. This position includes a definition of "substantially all trade" of less than 80 percent; timeframes for liberalisation or more than 20 years; no inclusion of export taxes and quantitative restrictions; no inclusion of a Most Favoured Nation clause; and no non-execution clause, among other items.

Minister Boundoukou-Latha also said that he had told the EU that setting a deadline to conclude EPAs would not break the impasse. The negotiations should be based on objective criteria, he said, which should be used to determine countries' various levels of preparedness and, therefore, the time at which the EPAs should be concluded. However, sources indicate that this stance was not formally agreed by the ACP; regional or national negotiators could take a different position.

Minister Boundoukou-Latha also called for the EU to maintain the interim EPA market access regulations for ACP countries until the full EPAs have been signed and implemented. He also called for an EPA discussion with the EU at a heads-of-government level.

Still no date set for Central African regional consultation meeting

Sources indicate that the Central African region is refining its EPA negotiating strategy at the technical level. Officials in the region are also finalising the joint orientations document, which includes an identification of needs as well as different sources of potential financing. Officials are also working to finalise the draft text for the creation and implementation of the Regional EPA Fund.

Sources have also said embassies in Brussels were encouraged to engage in diplomatic actions with the EU to support Cameroon's request not to implement the interim EPA until a full regional EPA has been concluded.

In making this demand, Cameroon hopes to preserve the regional integration process.

West Africa, EU hold Regional Preparatory Task Force meeting

A Regional Preparatory Task Force meeting was held within the framework of EPA negotiations between West Africa and the EU on 21 September in Brussels. West Africa presented the EPA Development Programme's (EPADP) National Operational Plans (except the one for Ghana and the regional plan, which are still being finalised). West Africa argued that these plans, together with the EPADP framework document, provide adequate information on priority activities to accompany the EPA. West Africa maintains that the activities identified within the EPADP will require more resources than are currently available.

Discussions centred on the use of the EPADP as a reference framework to prioritise needs and develop a dialogue between governments and donors. It was also agreed that dialogue between the EU and West Africa should start at the country level so as to allow officials to examine how to meet the preliminary conditions for the implementation of the EPADP.

The next round of technical-level EPA negotiations will be held in West Africa, probably in November. Consideration is also being given to the possibility of having a ministerial-level negotiation.

East and Southern Africa await political guidance on EPA talks

No East and Southern Africa EPA negotiations have been held since the last issue of TNI. Sources indicate that the ESA bloc is coordinating with other African regions while waiting for high-level political guidance from the EPA discussions to be held at the Africa-EU Summit.

ESA is also reportedly calling for all ACP regions to conduct a reality check with the EC levels immediately after the Africa-EU summit, with the aim of determining what can be achieved on the most contentious issues in the EPA talks. A roadmap could then be drawn up for the finalisation of the negotiations.

EU to fund East African Community EPA meetings

EU delegations in the five nations of the East African Community (EAC) have agreed to provide funding to enable the EAC's technical-level EPA negotiators to meet and prepare for negotiations with the EU.³ The EAC secretariat and EAC member states had reportedly run out of money to finance the meeting themselves. A regional meeting is necessary to discuss national EPA positions, agree a regional EPA position,

and finalise a roadmap for the conclusion of the negotiations. Officials will also continue to work toward signing a comprehensive regional EPA (to replace an initialled interim EPA) with the EU in the coming months (the self-imposed end-November deadline is no longer considered feasible). No meeting dates have been fixed as TNI goes to press.

SADC-EU negotiations moving forward

Technical and senior officials from the EU and the Southern African Development Community (SADC) EPA Group met from 27 September to 1 October in Johannesburg to negotiate the provisions of a comprehensive regional EPA.⁴

Discussions touched on a number of issues, but focussed on goods market access, alignment of market access tariffs between SACU and South Africa and rules of origin/cumulation. Officials also broached unresolved issues such as the Most Favoured Nation clause, infant industry, export taxes, and other specific issues of concern for some SADC EPA Group countries, such as fisheries for Namibia. Sources say that EU negotiators are showing increased flexibility in addressing the region's concerns.

Discussions will continue in the next round of negotiations, which is scheduled to take place from 8-12 November in Maputo, Mozambique. Another round will follow in early December. Officials on both sides think that it is unlikely, however, that they will conclude negotiations this year.

An EU-South Africa summit was held in Brussels on 28 September.⁵ The two sides emphasised the shared objective to conclude by the end of the year a final EPA between the EU and the SADC-EPA countries.

Caribbean countries continue work on EPA implementation

Caribbean ministers informed their ACP colleagues at the Joint Ministerial Committee meeting in Brussels in October that in-country consultations conducted by the CARIFORUM EPA Unit have identified the general challenges that CARIFORUM states face with regard to services. One of the central challenges is a lack of adequate financial and human resources to meet their obligations on investment, services trade, and e-commerce, they said.

With regard to trade in goods, the EPA Unit is working with CARIFORUM states to identify the taxes (over and above customs duties) that are applied on imports. The EPA allows duties and charges that were in force in CARIFORUM states when the agreement was signed to be maintained for seven years. At the same time, CARIFORUM states have identified those taxes and fees that they consider to be

internal. They hope to continue applying these measures without limitation.

The EPA Unit is also providing guidance to CARIFORUM states on the preparation of statutory instruments that will provide for the first reduction of CARIFORUM tariffs on EU exports as provided in the EPA. This phased reduction of customs tariffs is scheduled to commence on 1 January 2011.

Pacific seeks to speed up regional EPA negotiations

Pacific Ministers informed the ACP Ministerial Trade Committee meeting in October that the Pacific ACP group (PACP) is continuing to prepare key issues, particularly on fisheries, rules of origin, customs-related provisions and market access offers, with a view to moving forward in the PACP-EU EPA negotiations.

Technical preparations are ongoing to assist seven PACP countries in formulating their market access offers. A joint PACP-EU regional market access workshop has been proposed for 22-26 November to be held in the PACP region. The purpose of the workshop would be to allow officials to conduct technical reviews and reach a common understanding on the market access offers.

Pacific countries are dissatisfied with the slow progress made by the Pacific Islands Forum Secretariat in concluding regional EPA negotiations, especially with respect to fisheries and Aid for Trade, according to a report in *Island Business*.⁶ Pacific ACP ambassadors in the EU underlined the need to speed up the EPA negotiations.

Author

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Notes

- 1 ACP-EU Joint Ministerial Trade Committee Meeting Conclusions. Press Conference video. 22 October 2010., <http://ec.europa.eu/avservices/player/streaming.cfm?type=ebsplus&sid=168193>
- 2 EU Informal Development Ministers Meeting Conclusions. Press Conference video. 22 October 2010. <http://ec.europa.eu/avservices/player/streaming.cfm?type=ebsvod&sid=167608>
- 3 <http://www.eac.int/about-eac/eacnews/500.html?task=view>
- 4 EU and SADC negotiators discuss EPA. EC press release. 6 October 2010. http://www.acp-eu-trade.org/library/library_detail.php?doc_language=en&library_detail_id=5445
- 5 <http://www.consilium.europa.eu/App/NewsRoom/loadDocument.aspx?id=360&lang=EN&directory=en/er/&fileName=116791.pdf>
- 6 http://www.islandsbusiness.com/islands_business/index_dynamic/containerNameToReplace=MiddleMiddle/focusModuleID=19392/overrideSkinName=issueArticle-full.tpl

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Trade Negotiations Insights

Calendar and resources

ACP-EU Events

November	
29/10-2 6th Ordinary Session of the AU conference of Ministers of Trade, Kigali, Rwanda	TBC
3-5 2nd Joint Meeting of the COMESA –EAC-SADC Tripartite Agreement on the elimination of NTBs, Nairobi, Kenya	TBC
8-10 Meeting of the ACP Council, Brussels, Belgium	
8-12 EU-SADC negotiation session, Maputo, Mozambique	
11-12 G20 Summit, Seoul, Korea	
22-26 Joint PACP-EU regional market access workshop, (place TBC)	
26-28 4th EU-Africa Business Forum, Tripoli, Libya	
29-30 3rd EU-Africa Summit, Tripoli, Libya	
30- 5/12 20th ACP-EU Joint Parliamentary Assembly, Kinshasa, DRC	

December	
29th Meeting of the COMESA Intergovernmental Committee, Lusaka, Zambia	
3-4 29th Meeting of the COMESA Intergovernmental Committee, Lusaka, Zambia	
4 First meeting of the Trade and Development Committee, Georgetown, Guyana	
6 29th Meeting of the COMESA Council of Ministers, Lusaka, Zambia	
6-7 5th edition of the European Development Days, Brussels, Belgium	
9 EU Development Council, Brussels, Belgium	
TBC EU-SADC negotiation session (place TBC)	

WTO Events

November	
15 -19 Geneva Week	
16 + 18 Trade Policy Review Body – Papua New Guinea	
23 Dispute Settlement Body	
24 + 26 Trade Policy Review Body – Democratic Republic of Congo	

December	
1 – 3 Negotiating Group on Trade Facilitation	
14 + 15 General Council	

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

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