

Trade Negotiations Insights

From Doha to Cotonou

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Welcome to the first issue of Trade Negotiations Insights for 2004! Taking the occasion of the most recent WTO General Council meeting on 15 December 2003, as well as the multitude of timelines recently set for launching EPA negotiations, the lead article offers a reflection on how the outcome of the WTO's Cancun Ministerial has impacted (and will continue to impact) the EPA negotiations. This is complemented with our regular column, EPA Update, which provides a comprehensive review of activities taking place at the ACP-EU level over the last few months.

We hope our readers find TNI's contents useful and timely, and as always, we remain open to any suggestions, comments, or relevant contributions on the varied challenges facing the ACP in their multi-tiered trade negotiations. We wish you all the best in the New Year, and look forward to a very fruitful 2004!

The Journey from Cotonou to Cancun, and beyond: the changing dynamics of WTO and EPA negotiations

By David Primack
& Sanoussi Bilal*

The outcome of the Fifth Ministerial Conference of the World Trade Organization (WTO) in September 2003 in Cancun has demonstrated that the political will required by the developed countries to meet the ambitious commitments made at Doha, and thus help facilitate the transition of the multilateral trading system to a fair and equitable one, has not yet arrived.

Despite the decision taken at the WTO's 15 December 2003 General Council meeting to reactivate the negotiating committees, the current impasse implies a status quo in the WTO's work programme. For the African, Caribbean and Pacific (ACP) countries, this outcome stresses once again the imperative for, inter alia, greater coherence in strategy between negotiations in the Doha round and their negotiations on economic partnership agreements (EPAs) with the European Union (EU), a more in-depth understanding and articulation of their own trade-related sustainable development priorities, and effective institutional structures to manage increasing economic integration at the bilateral, regional and multilateral levels. Whether EPAs offer a better forum for effectively linking trade and development issues will depend in many ways on the ability of the EU to approach them with effective capacity building, patience, and most of all, the political will to 'walk' their pro-development 'talk'.

Starting first with a consideration of the political dimensions of the Cancun outcome, this article delves into the web of implications for the ACP countries. Particular attention is paid to how the lack of progress at the WTO may influence the recently commenced EPA negotiations between the EU and various ACP regional groupings under the Cotonou

Agreement. The aim is to highlight key aspects of the changing dynamics of WTO and EPA negotiations post-Cancun, and offer suggestions on how the relevant actors may consider moving forward.

The fallout from Cancun: destination missed or just part of the journey?

Despite more than 20 months of virtual gridlock at the WTO between the Fourth Ministerial Conference in November 2001 in Doha and the Fifth session this past September in Cancun, the collapse of talks in Cancun took many observers by surprise. While little of the delicately negotiated balance of the Doha bargain had come to fruition by September 2003² (both in process and substance), few expected the talks to end the way they did – closing half a day early with no consensus on any of the agenda items.³ Since the collapse, a global debate has emerged attempting to assign blame for the outcome, as well as establish whether it was indeed a victory for developing countries (DCs), or rather the loss of a rare opportunity to re-balance the top rung of the international trading architecture. Steering clear of the often unproductive 'blame-game', it can clearly be said that the fallout from Cancun has forced all actors and observers to reassess the process, substance and systemic



dimensions of the current multilateral trading system (MTS) and its future direction.

From a substantive perspective, the argument has been made that Cancun was merely a midway checkpoint on the progress towards the ambitious commitments laid out by Members in Doha. Granted the 'development agenda' report card did show failing grades in terms of missed deadlines and unfilled promises for almost all its components, the second half of the allotted time to conclude the round still lies ahead (with arguably more time available than initially envisaged, as few believe the conclusion date of 1 January 2005 is attainable). As astutely noted by Rubens Ricupero, the Secretary-General of the United Nations Conference on Trade and Development (UNCTAD), Cancun should thus be treated "as part of a journey, not as a destination missed."⁴ Indeed, history shows that such a collapse during the process of ambitious trade negotiations is not uncommon. What was to be the mid-term review during the Uruguay Round in Montreal in 1988, ended without agreement in all but a handful of areas, and the December 1990 meeting in Brussels – where the round was to be concluded – ended in no less than a disaster, with delegates walking out empty handed. Clearly ambitious journeys take many an unexpected turn.

Yet, as journeys often unfold, certain moments can be pointed to as playing a pivotal role in defining the path ahead. *From a political perspective*, Cancun certainly played this role for a majority of DCs – especially for those in the ACP.

Coming of age

Heading into Cancun, many feared that as had historically been the norm for trade negotiations, DCs would acquiesce to the will of the great trading powers on the majority of their pro-development demands and accept the best deal they could get. However, proving perhaps that the 1999 Seattle WTO Ministerial⁵ was not as anomalous as some might have hoped, Cancun was a political 'coming of age', signalling for once and for all that the concerns of the smallest and poorest Members of the WTO could no longer be drowned out at the will of their larger trading partners. If one clear 'win' for developing countries can be said to have emerged from Cancun, it was their ability to form broad alliances in the *defence* (if not yet promotion) of their core development interests, thus changing the dynamics of multilateral trade negotiations.

Often without realising the future impacts, developing countries traded away vast tracts of national policymaking space during the Uruguay Round (for example, accepting rules on intellectual property rights, investment measures, and subsidies) in return for expected fruits in market access (mainly in agriculture and textiles), much of which has yet to materialise. Having learned from these painful lessons, they now have a much greater appreciation of the importance of understanding and articulating their own trade-related priorities, as well as knowing the implications of disciplines demanded by others.⁶ The increased democratisation of policymaking in many parts of the world, and the engagement of capable domestic and international civil society organisations, has also meant that developing country governments could not justify accepting another bad deal. As a result, developed countries were unable to once again offer DCs a few 'bones' at the last minute in exchange for their agreement on a wide-ranging agenda that did not reflect their pro-development priorities (and that arguably contained elements antithetical to their sustainable development priorities). The notion that 'no deal is better than a bad deal' had come home to roost for DCs. This alone made Cancun a watershed event in the history of North-South trade negotiations.

From this viewpoint, Cancun was certainly not a 'destination missed', but rather a well-needed reality check along the Doha round journey, offering a glimpse of the kind of political will required to make the transition to a multilateral trading system based on sustainable and equitable development. If anything was missed, it was the opportunity for developed countries to demonstrate the political willingness to pursue the ambitions set out in the so-called Doha 'development agenda', and take leadership in working towards a pro-sustainable development evolution of the MTS. In view of the new role taken on by DCs, one can only hope that Professor Jagdish Bhagwati was correct in saying "Cancun will serve as a stepping stone to a successful conclusion of the Doha Round of trade negotiations".⁷

A shift in negotiating dynamics

The widespread use of alliances in Cancun allowed DCs to withstand the pressures from their major developed country partners. If this strategy can be reproduced – as it was arguably done at the Free Trade Area of the Americas

(FTAA) Ministerial in November 2003⁸, it has the potential to fundamentally change the dynamics of multilateral negotiations. To maximise this change however, and play a meaningful role in shaping the future of the MTS, developing countries will have to demonstrate their ability to transform defensive alliances into positive ones.

If the attainment of negotiating power is defined as the ability to have elements of one's agenda represented in the outcome of an exchange of commitments, balanced alongside the interests of other parties, then it would be difficult to argue that DCs flexed such power in Cancun. The quick rise to stardom of the cotton initiative, like the more successful initiative on access to medicines in Doha, offers but a glimpse of some of the more egregious distortions in the trading system that might be addressed when positive negotiating power is exploited by DCs. In contrast, the debates in Cancun were alarmingly silent on longstanding development issues such as special and differential treatment (S&DT), implementation issues, as well as declining commodity prices. To add insult to injury, the language in the 13 September draft text would have seen negotiations on three of the four 'Singapore' issues⁹ move ahead – despite demands from over 70 developing country Members to the contrary. As a result of this political coming of age however, this unacceptable text could not be forced upon the unwilling majority of developing country Members.

These facts bear out that the shift in the role of developing countries in the WTO represents the arrival of an important ability to block the imposition of another's agenda. This is by no means a trivial achievement. It is however, only a step – albeit a fundamental one – along the path towards achieving greater participation in WTO negotiations and greater influence in positively shaping their outcomes. Thus DCs must be mindful of the important role of alliances (and maintaining the flexibility to arrive at acceptable compromises), not only in defending common development interests, but also in promoting their respective strategic objectives through concrete proposals.

Alliances show their might – the example of agriculture

Clearly few developing countries can independently withstand pressures from industrialized partners – an understandable reason why a number of DCs are approaching bilateral negotiations with extreme caution. However in alliances,

such as the G-20 alliance of DCs on agriculture (see box) or the ACP/African Union (AU)/Least developed countries (LDC) tripartite alliance¹⁰, developing countries *can* act as more effective counterweights to industrialised country demands. The case of the G-20 in agriculture offers an interesting illustration.

Pre-Cancun, the agriculture section of the draft text (sent to Ministers on WTO General Council Chair Carlos Pérez del Castillo's own responsibility) mirrored in large part the joint EU-US framework agreement on agricultural modalities – both essentially signalling the willingness of the two agricultural giants not to challenge the fundamentals of the other's distortionary agricultural practices. A group of 20 DCs (including heavyweights Brazil, India, China, and South Africa) responded with their own version of a framework agreement, calling for, *inter alia*, far-reaching concessions from developed countries on domestic and export subsidies, broad market access commitments on products of DC export interest, and smaller tariff cuts for DCs. The talks in Cancun were halted before agriculture could take centre stage, ostensibly over intractable differences on the Singapore issues.¹¹ However many observers have attributed the deadlock to a lack of political will on the part of South Korea, Japan, and the US to show flexibility in agriculture. The G-20, for its part, had in fact prepared an internal document¹² pointing to areas for potential compromise in agriculture. While the turn of events seems to have precluded an eventual compromise, at least at that point in time, some have speculated that the counterbalancing force of the G-20 alliance, as well as the ACP/AU/LDC alliance (who voiced its concerns with regards to both framework proposals), prevented the EU-US proposal from being forced upon all Members in Cancun.

How this will play out at the WTO, and whether this achievement can be maintained in the post-Cancun period, remains to be seen. Cancun has demonstrated, however, the potential power that broad coalitions and alliances can bring to developing countries' positions. One of the main challenges for these diverse coalitions in the future will be to transform themselves from blocking forces into vehicles to promote a positive agenda. The disparate interests of the G20, notably (but not only) on agriculture, may prove difficult to reconcile, in particular when it becomes time to make concessions. Similarly, the ACP/AU/LDC alliance comprises countries with very

different levels of development and strategic interests. They must come to the negotiating table with a plan in hand as to how they will maintain their cohesiveness on potentially divisive issues, such as the EU preferential regime on agriculture, including through the Commodity Protocols, from which some ACP countries benefit significantly, and others (including non-ACP alliance members) have condemned as harmful. To effectively shape the future of the multilateral trading system, developing countries will have to find allies and form coalitions that promote compromised positions among their members.

WTO – where to now?

Since Cancun, things at the WTO have moved slowly.¹³ Heading into the 15 December 2003 General Council meeting – at which Members were instructed by Ministers at Cancun to “take the action necessary at that stage to enable [them] to move towards a successful and timely conclusion of the negotiations” – numerous developed and developing countries expressed varying degrees of openness for compromise. The mood in the General Council was reportedly positive, with Members agreeing to reactivate the Trade Negotiations Committee (the body overseeing the negotiations) and the negotiating bodies under it. While this outcome was limited to procedure rather than substance, no one having expected much more, it points to the fact that for all Members, the journey moves on post-Cancun.

The impact of Cancun on regional negotiations

In the immediate aftermath of the Cancun failure, the US Trade Representative (USTR) Robert Zoellick, noting that the “key division at Cancun was between the can-do and won't-do” countries, warned that “[a]s WTO members ponder the future, the US will not wait [and] will move towards free trade with can-do countries”.¹⁴ Such sentiments throw into the limelight the longstanding debate of multilateralism versus regionalism, where free trade agreements are sometimes considered stumbling blocks, rather than building blocks, towards an enhanced and *coherent* MTS.

Aside from expressing frustration with Cancun's outcome, Mr. Zoellick's statement did not seem to indicate that the US would shy away from the multilateral path *per se*. This was confirmed in a 12 January 2004 letter he sent to the other WTO Members proposing a “common

Led by Brazil, the G-20 currently includes Argentina, Bolivia, Chile, China, Cuba, Ecuador, Egypt, India, Indonesia, Mexico, Nigeria, Pakistan, Paraguay, the Philippines, South Africa, Thailand, Venezuela, and Zimbabwe. Due to political 'considerations', the composition of the group has changed over time, as has the name (G-20/G-21/G-20+). Of note, Colombia, Costa Rica, El Salvador, Guatemala, and Peru have left the G-20; all are either awaiting, or in the process of, negotiating a free trade agreement (FTA) with the US. The remaining group has since decided to maintain the name G-20.

sense approach” to advancing the Doha round, in an attempt to “reach out to developing countries”.¹⁵ In particular, he called for the elimination of agricultural export subsidies, offered to eliminate the subsidy component of US food export credit programmes, and suggested that competition and investment issues be dropped from the Doha work programme. More importantly however, he clearly signalled the US' continued commitment to the multilateral system. In an interview on the same day with the Financial Times, Mr. Zoellick emphasised this commitment, stating “[w]e want to make sure people recognise that not only are we not turning away from the global trade goal and the Doha agenda, we are putting it front and centre.”¹⁶

However Mr. Zoellick's lashing at some developing countries soon after Cancun does confirm the US' intent to push even more aggressively on regional negotiations – as demonstrated by the flurry of bilateral and regional negotiating activity since last September. Nevertheless, these bilateral trade talks in the Americas, Southern Africa, the Middle East, and Asia have long been part of a longer-term strategy towards promoting US interests abroad, complementing rather than substituting multilateral negotiations.

Fears that the EU would adopt a similar position post-Cancun were evident. The European Commission (EC) has so far taken an ambiguous posture, spending over two months after Cancun to reassess its attitude, although apparently not its commitment, towards the successful conclusion of the Doha round. Clearly, the EC needed to evaluate the myriad of political and systemic implications com-

ing out of Cancun, to say nothing of its consequences for their policy direction. European Trade Commissioner Pascal Lamy repeatedly stressed that it was not possible to continue “business as usual” at the WTO, and in particular that some thought needed to go into how to improve the ability of a 148-member organisation to take decisions. However tactical considerations clearly played a key role in their approach. Having taken a lead role in promoting the Doha ‘development agenda’, the EU had also come to realise that it was expected to make major concessions to ensure its success. By publicly re-evaluating its position towards the round, the EU astutely attempted to shift the responsibility for a successful outcome on other developed and developing country WTO members. In the meantime, the EC has also suggested that a more pro-active approach on bilateral and regional agreements (such as EPAs) may bear more fruits.¹⁷

Not surprisingly, many have been wondering whether the EC will not try to be more ambitious in pushing for greater movement during the EPA negotiations on issues that have to date been a stronger priority in their WTO agenda, but have garnered less support at the multilateral level – such as the Singapore issues. Several Commission officials have denied such intentions. In reality however, the bilateral and regional trade negotiating agenda of the EU has always been very ambitious, not only with respect to EPAs, but also with the recent Balkan, Mediterranean and Mercosur negotiations. With this in mind, one must ask whether the call for a stronger push for regional initiatives (explicit on the part of the US and hinted at by the EU) is not merely political rhetoric aimed at increasing pressure on the WTO’s developing country Members to step back from some of their demands, thereby helping put the Doha round back on track.

The post-Cancun climate has already influenced the initial position of some ACP countries in the EPA negotiations. For instance, some ACP representatives have called for the exclusion of the Singapore issues from any EPA – most notably investment and competition – for the sake of consistency with the position of the ACP/AU/LDC alliance in Cancun. Arguably however, it may be that some trade and trade-related issues can be addressed in a more effective manner in WTO-plus regional trading agreements than in a multilateral context. Some ACP groupings might be interested in negotiating bilaterally with the EU on certain issues (in-

cluding investment and competition, among others), where greater cooperation and adjustment support may also be sought, while remaining opposed to making any binding commitments at the multilateral level.

Nonetheless, to the extent that DCs will be pressured to adopt regulatory instruments and institutions similar to those of their preferential trading partners in the North, they will also become more likely to adopt positions in the WTO that align with those of their developed partners. This is clearly the expectation of the EC, for which “the Economic Partnership Agreement negotiations with the ACP countries offer a wide scope for propagating our approach to international economic co-operation”.¹⁸

The way forward for the ACP¹⁹

For ACP countries, one of the biggest challenges will be to establish and maintain a coherent strategy within and across the EPA and WTO negotiations. With the start of the regional phase of EPA negotiations, and in view of the meagre results of the first all-ACP phase from the past year, the cohesion of the ACP Group is at risk. Beyond the political correctness regularly expressed in ACP declarations, mechanisms for an *effective* coordination among (and within) the various ACP groupings and sub-groups have to be established quickly if any meaningful substantive outcome is to be sought.

The preparations for Cancun demonstrated that consultations and coordination among DCs could lead to the identification of common positions, as in the case of the ACP/AU/LDC alliance. However, due to the nature of most ACP countries’ dependence on the EU for market access as well as development assistance, it will surely be more difficult for the ACP countries to maintain the power to block issues against their interests in the EPA negotiations (to say nothing of the power to promote their own). Two related factors will be vital if this power is to be maintained (and/or expanded).

To establish and maintain alliances, the ACP must not only identify broad issues where they might have a common interest, but they must undertake effective substantive (and political) preparatory work with respect to all the major areas of negotiations. This can be pursued at the all-ACP level. To date, only a few studies of this nature exist. More importantly however, each regional grouping, and whenever possible the individual

countries, must first carry out their own assessments based on self-interest, thereby providing the basis for sustainable common action. It is only in this way, and by sharing their views and experiences, that the ACP groupings will be able to identify effective areas of common interest, and determine, on an issue-by-issue basis, the extent to which they want to pursue common positions in their negotiations with the EU. To this end, a pragmatic approach is called for, relying primarily on the work of the ACP regional organisations and their member states. Effective coordination mechanisms, at the all-ACP, continental and cross-regional levels, must support – not substitute – for regional and national initiatives.

Such preparatory work should help facilitate much needed movement for ACP countries from defensive alliances to coalitions with a positive agenda on EPAs (as well as in the WTO). In the first phase of the EPA negotiations, ACP countries have, with some noticeable exceptions, tended to adopt a reactive attitude towards the EU, taking on a pro-active attitude mainly to defend broad, albeit important, development concerns. The start of regional EPA negotiations provides the opportunity to develop concrete proposals, not only on broader principles, but also on technical issues.

To establish and maintain a common position at the regional level and alliances at the all-ACP level, ACP governments will also have to look beyond their own narrow mercantilist interests, and pursue collective interests. This is not to say that the ACP should display more altruistic features than others. However, the negotiation process in both the WTO and the EPAs require trade offs, the identification of strategic allies, and collective bargaining. Like in a chess game, it might be beneficial to sacrifice some pieces to save the essentials. This can only be done when core interests and key strategies are clearly understood, which once again sounds the call for a thorough preparation of all actors – including those from the private sector and civil society.

Substantive issues: continued ambiguity

The status quo on the WTO work programme poses quite a dilemma for the ACP. This is due to the fact that the extent to which WTO rules can evolve within the Doha round will determine in many ways the framework conditions for the EPAs. Moreover, the content of the EPAs will also depend on the Doha work

programme and its successful conclusion. In that regard, the ACP countries need clarity in certain key areas surrounding EPA linkages with WTO issues and coherence, including on possible reform of GATT Article XXIV on regional agreements, and on issue such as S&DT provisions, agriculture, services, and trade-related issues.

Some observers fear negative implications for the EPA negotiations as a result of Cancun, in particular for the issues noted above – and the coherence problem that has been characterised as ‘trying to hit a moving target’. Others wonder whether this status quo could not serve some benefit, slowing down the EPA negotiating process and giving the ACP more time to prepare. It is also conceivable that the current WTO stalemate may allow for greater flexibility in the EPA negotiations, as well as give ACP countries the chance to focus their scarce financial and negotiating resources in the EPA domain. Most importantly, provided the political momentum is not lost, a slower negotiating pace at both the WTO and on EPAs could provide the time for DC’s to develop greater capacity and more robust institutions, so as to help ensure that the various trade integration processes in which they participate better support their sustainable development objectives.

Conclusion

The process of getting from Doha to Cancun has confirmed that for the international trading system to become an instrument for promoting poverty reduction and sustainable development, it must meaningfully evolve beyond the conventions of its GATT-history days as an arbiter of cross-Atlantic trade (with marginal consideration of Southern needs) and become an equitable system that takes the needs of its most marginalised Members at its core. Such an evolution requires, at its foundation, the political will on the part of the major trading powers not only to accept such an evolution (and sharing of power), but also to promote it. The Cancun outcome – and especially the treatment of agriculture (including cotton) and the Singapore issues – would indicate that at least at the level of the WTO, the political will to move away from neo-mercantilism and towards sustainable and equitable trade integration does not yet exist. For ACP countries, this observation begets the question of whether it can be demonstrated by the EU at the level of the EPA negotiations.

Looking ahead, the ACP – having shown the ability in Cancun, alongside other developing countries, to block undesired decisions – have a major opportunity to transform defensive agendas into a more systematic and pro-active advancement of their respective interests. The key lies in deepening their understanding of their trade-related sustainable development priorities and ensuring a greater coherence in negotiating strategies, regionally, in the EPAs, and at the WTO. For the EU’s part, EPAs offer an opportunity to demonstrate its global leadership in having the political will to meaningfully promote sustainable development objectives through trade – something that has so far eluded the major powers at the WTO. Whether the occasion of moving into the second phase of the EPA negotiations will open the door for the EU to seize the day and put its best development foot forward remains to be seen.

What is clear is that the path to be taken towards the successful completion of the Doha round and the EPA negotiations – and indeed the look and feel of the destination to which this integration journey presumably takes us – is inextricably tied to the commitment of the industrial powers, and in particular the EU in the case of the EPAs, to help developing countries build their trade and negotiating capacities, as well as utilise the policy spaces required to achieve their sustainable development objectives. Until such time as this commitment becomes evident, the journey trudges on...

Endnotes

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² See ICTSD’s ‘Cancun Update’ of the *Doha Round Briefing Series* for the status of the Doha negotiations pre-Cancun, <http://www.ictsd.org/pubs/dohabriefings>.

³ For a review of the events in Cancun, see *BRIDGES* Year 7 No. 7, October 2003, <http://www.ictsd.org/monthly/archive.htm>.

⁴ Statement of Rubens Ricupero, ‘Review of Developments and Issues in Post-Doha Work Programme of Particular Concern to Developing Countries: The Outcome of the Fifth WTO Ministerial Conference’ <http://www.unctad.org/Templates/webflyer.asp?docid=4175&intItemID=2054&lang=1>.

⁵ The Seattle meeting failed to launch a new

round of trade negotiations (see *BRIDGES* Year 4 No. 1, January-February 2000, <http://www.ictsd.org/monthly/archive.htm>).

⁶ See also Sheila Page, *Developing Countries: Victims or Participants – Their changing role in international negotiations*, Overseas Development Institute, 2003. http://www.odi.org.uk/iedg/publications/dev_countries_web.pdf

⁷ Jagdish Bhagwati, ‘Don’t Cry for Cancun’, *Foreign Affairs*, January/February 2004, <http://www.foreignaffairs.org>

⁸ At the Ministerial, a number of developing countries, led by Brazil, were able to secure a deal that would in principle allow countries to take on only a level of commitments they were comfortable with (i.e. no single undertaking) – an option that had previously been rejected by the hemisphere’s advanced trading nations (including the US).

⁹ Investment, competition, trade facilitation, and transparency in government procurement.

¹⁰ Also known as the G-90, comprising over 90 countries (not all WTO Members) and almost half the WTO’s Membership.

¹¹ See *BRIDGES* Year 7 No. 7, October 2003, <http://www.ictsd.org/monthly/archive.htm>.

¹² See http://www.ictsd.org/ministerial/cancun/docs/G21_ag_text.pdf.

¹³ See *BRIDGES* Weekly Trade News Digest, <http://www.ictsd.org/weekly/03-12-17/>.

¹⁴ See *Financial Times*, 22 September 2003, <http://www.ustr.gov/speech-test/zoellick/2003-09-22-ft.htm>.

¹⁵ See <http://www.ictsd.org/ministerial/cancun/docs/Zoellick-letter.pdf>.

¹⁶ See <http://www.reuters.co.uk/newsPackageArticle.jhtml?type=businessNews&storyID=437000>.

¹⁷ In a 9 October 2003 speech, Peter Carl, Director General Trade of the EC, stated “[t]here has been much speculation surrounding the question of whether the EU or others would now engage more in bilateral negotiations than before” and that “this very question is the subject of much internal discussion [...]” http://europa.eu.int/comm/commissioners/lamy/speeches_articles/sp_mpcl1.htm.

¹⁸ See European Commission, Directorate-General Trade, *The Doha Development Agenda After Cancun*, Brussels, 25 September 2003, <http://www.ictsd.org/ministerial/cancun/docs/COMMISSION-Cancun-and-Beyond-Sept-03.pdf>.

¹⁹ See also *EPA Update*, this issue.

EPA Negotiations Update: Start of Regional Negotiations

By Melissa Julian

Following three days of arduous negotiations at the ACP-EU Ambassadorial level – as well as within the ACP Ministerial Trade Committee and the ACP Council – Ministers from the African, Caribbean, and Pacific (ACP) States met with their European Union (EU) Trade and Development Commissioner counterparts Pascal Lamy and Poul Nielson in Brussels on 2 October 2003.

Here the parties adopted a joint declaration¹ and a detailed joint report setting out the convergences and divergences of the first year of all-ACP level Economic Partnership Agreement (EPA) discussions.² Where divergence remains on issues of interest to all ACP countries, the joint documents also set out the modalities and mechanisms for further discussions. These modalities and mechanisms also cover information sharing and possible collaboration in the regional (Phase II) negotiations.

Two days later, on 4 October 2003, the first Phase II regional EPA negotiations were formally launched between the EU and CEMAC³ in Central Africa; and on 6 October, with ECOWAS⁴ in West Africa.⁵ Other regional groupings are soon to follow (see below). It remains uncertain as to whether the ‘roadmaps’ for each of the regions can be agreed upon with the European Commission (EC) at their joint meetings next month.

Also on the all-ACP-EU level, the ACP-EU Joint Parliamentary Assembly held its bi-annual meeting in Rome, Italy from 11 to 15 October 2003.⁶ Of note, the Parliamentarians were unable to agree on a draft resolution on the outcome of the WTO Ministerial conference in Cancun and the state of negotiations on EPAs. Later in November, ACP Trade and Foreign Ministers met in Brussels, adopting a resolution on various EPA-related issues, as well as their approach to WTO negotiations post-Cancun.⁷

All-ACP level EPA negotiations: some convergence, but differences remain

The joint declaration and report on the progress of the all-ACP level discussions adopted at the ACP-EU Ministerial Negotiating meeting in October 2003 are the result of compromise. The ACP sought to have a legally binding agreement on the issues agreed in Phase I to provide guidelines for Phase II regional negotiations. The EC maintained all along that the objective of all-ACP level discussions was a clarification of issues and that the Cotonou Agreement served as a suffi-

cient legal basis for negotiations. It was finally agreed that the joint report would “serve as a point of reference, and provide guidance, for the negotiations to be conducted at regional level”.

A detailed examination of the report reveals convergence mainly in reaffirming existing principles and objectives, and not in areas of substance that exceed the existing commitments of the Cotonou Agreement. Even where there is convergence, differences in interpretation remain. For instance, the ACP and the EU agree that access to the EU market should be maintained and improved under EPAs. However, in the context of increasing trade liberalisation and diminishing preferential treatment, improved market access can only arise from more favourable rules of origin and comprehensive treatment of non-tariff barriers. The EU’s commitment to tackling issues of this nature remains unclear.

Both sides eventually agreed that discussions on remaining divergences on all-ACP issues could continue in parallel with regional level negotiations. The setting up of an ACP Follow-up Mechanism for the regional Phase II negotiations was agreed, mandated to ensure circulation of information among the regions and coherence in the various negotiating processes, as well as to provide non-binding advice on issues or approaches in the negotiations (should the need arise).

Some confusion remains over the length of the period for continuing the all-ACP-EU negotiations. The ACP Council conclusions⁸ stipulate that these must be concluded no later than the end of the first quarter of 2004, however this language is not to be found in the joint conclusions agreed upon with the EU.

Regional EPAs launched with CEMAC and ECOWAS

At the launch of negotiations in October, Central and West African Ministers were very cautious to make commitments in the post-Cancun climate. CEMAC and ECOWAS member states were seeking greater involvement and collaboration with their regional organisations in the

negotiations, a necessary pre-condition for successful EPA negotiations. Since the launch, CEMAC’s EPA Regional Co-ordination Committee has formulated a negotiating structure and “roadmap” to be put to Trade Ministers, which may then be endorsed by Heads of Government at their meetings at the end of January 2004. In November, ECOWAS Trade and Finance Ministers agreed on their own “roadmap” and negotiating structure. Some Member States continue to question the prominence accorded to negotiating bodies, demanding a greater role in the negotiations alongside the regional secretariats.

Each “roadmap” must be jointly agreed on with the EC. The first joint meetings of the EC-CEMAC and EC-ECOWAS technical groups and the respective Regional Preparatory Task Forces are scheduled to be held in Brussels in mid-February 2004.

The Caribbean to launch EPA negotiations in March-April

In November 2003, the Caribbean Community (CARICOM)⁹ Heads of Government agreed to launch EPA negotiations with the EU, likely to start in March or April 2004. A Caribbean Regional Contact Group will prepare the launch with the EC and act as the secretariat once talks have been initiated. Preparations continue at a technical level to work out the modalities for a “roadmap”, negotiating guidelines, and negotiating structures. These must first be agreed upon by CARICOM members ahead of the launch of negotiations with the EC, where it is hoped that a joint “roadmap” can be agreed on.

“Eastern and Southern Africa Group” and SADC to negotiate separate EPAs

Heads of Government from Eastern and Southern African (ESA)¹⁰ agreed to 7 February 2004 as the launch date for their EPA negotiations with the EU. The ESA configuration remains open to all ACP states eligible to negotiate an EPA with the EU and which are members of COMESA or SADC or both. SADC members who have chosen not to join the ESA framework¹¹ will launch separate EPA negotiations with the EU in March.

In November 2003, Trade Ministers from these countries approved a “roadmap” and negotiating guidelines for a SADC EPA to be launched in March 2004.

There has been considerable debate in Eastern and Southern Africa over configuration, due in particular to overlapping memberships within COMESA and SADC. Moreover, because South Africa’s Trade and Development Cooperation Agreement (TDCA) with the EU *de facto* applies to the other four SACU (Southern African Customs Union) Members States (Botswana, Lesotho, Namibia and Swaziland, or BLNS) they need not negotiate an EPA. Although South Africa can only observe in the SADC EPA (having already the TDCA), it could still be affected by it. For instance, the SADC EPA may define cumulative rules of origin that would allow South Africa to benefit from more generous EPA preferences through supplying inputs to exporters in the region. EPA negotiations may also affect the phasing in of the trade liberalisation and regional integration processes ongoing in SADC and SACU (in particular for the BLNS). That South Africa is not a member of COMESA may have served as a driving force for the ESA/SADC EPA negotiating split.¹²

As in the Caribbean, both ESA and SADC preparations continue at a technical level to work out the modalities for a “roadmap”, negotiating guidelines and negotiating structures that can be agreed ahead of the launch of negotiations with the EC, where it is hoped that a joint “roadmap” can be agreed. Coordination, especially between the two African regional negotiating blocks, will be essential.

Preparations in the Pacific continue

Preparations also continue in the Pacific region, with negotiations likely to be launched with the EU in September 2004.

Key issues to come

The mechanisms for all-ACP information sharing and collaboration have not yet been fully implemented. This perhaps reflects the doubts that some ACP regions have in the potential efficacy of such a Brussels-based structure. This scepticism is apparently shared to some degree by the EC, which has expressed frustration at times over the slow progress achieved in all-ACP level discussions. Discussions on how to move forward are to take place at the first meeting of the ACP follow-up mechanism, scheduled in Brussels for 19-20 January 2004.

There appears to be a divergence of views between the ACP and the EC emerging on how to address ACP supply side constraints and the structural support measures necessary to support regional integration and take advantage of trade liberalisation. Fundamental differences between the ACP and EC regarding the ACP’s request for additional resources to address these issues have already plagued the first phase of the negotiations. ACP regional proposals, however, reportedly aim to broaden the debate beyond the “additionality of resources”. The ACP argues that development is unlikely to flow automatically from regional integration and that mechanisms going beyond the current instruments and approaches applied under Cotonou to enable them to benefit from market access opportunities should be a central part of the EPA negotiations. This, in addition to “mainstreaming” development throughout all other discussions, would ensure that development aspects receive the same focus as trade liberalisation aspects.

The EC has maintained that these types of discussions can be held in parallel with (as opposed to within) the EPA negotiations. While their strategy is clearly to support regional integration as a means to development, they argue that sufficient development resources and instruments are available under the Cotonou Partnership Agreement. Each region should establish a “Regional Preparatory Task Force” (RPTF), which should provide, they argue, an effective bridge between these provisions and the EPA trade negotiations. The RPTFs would comprise EC and ACP officials, and would be responsible for monitoring the EPA negotiations and making recommendations on the type of support needed to the officials responsible for programming development finance.

Whether the ACP-EC differences are semantic or fundamental remains to be seen.

Endnotes

¹ <http://www.acpsec.org/gb/press/jtdecla2oct.htm>.

² <http://www.acpsec.org/gb/sed/acp0011803-e.htm>.

³ The Central African Economic and Monetary Community: Cameroon, Central African Republic, Chad, Republic of Congo, Gabon, and Guinea Equatorial. Sao Tome and Principe will also take part in this EPA.

⁴ The Economic Community of West African States: Benin, Burkina Faso, Cape Verde, Côte d’Ivoire, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone,

and Togo. Mauritania should also be integrated in this configuration.

⁵ See http://europa.eu.int/comm/trade/issues/bilateral/regions/acp/pr031003_en.htm

⁶ See http://www.europarl.eu.int/intcoop/acp/60_06/default_en.htm

⁷ See <http://www.acpsec.org/gb/press/decre78e.htm>

⁸ See <http://www.acpsec.org/gb/press/epas.htm>.

⁹ CARICOM consists of: Antigua/Barbuda, Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, St. Kitts/Nevis, St. Lucia, St. Vincent & the Grenadines, Suriname, and Trinidad & Tobago, along with the Dominican Republic.

¹⁰ The ESA configuration comprises: Burundi, Comoros, Djibouti, Eritrea, Ethiopia, Kenya, Madagascar, Rwanda, Seychelles, Sudan, and Uganda, as well as Southern Africa Development Community (SADC) members: the Democratic Republic of Congo, Malawi, Mauritius, Zambia, and Zimbabwe.

¹¹ This includes Angola, Botswana, Lesotho, Mozambique, Namibia, Swaziland, and Tanzania. South Africa is an observer in the SADC negotiating process

¹² The Zimbabwe-based Trade and Development Studies Centre organized a regional conference for COMESA and SADC preparations for phase II of EPA negotiations with the European Union http://www.tradescentre.org.zw/conference_papers.html

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Calendar

WTO Events

ACP-EU Events

January

- 26-27 Jan. Dispute Settlement Body - Special Session
27 Jan. Working Group on Trade, Debt and Finance

February

- 4&6 Feb. Trade Policy Review Body - Gambia
9-11 Feb. Textiles Monitoring Body
11-12 Feb. General Council
13 Feb. Integrated Framework Steering Committee
17 Feb. Dispute Settlement Body
18 Feb. Committee on Trade and Development
24-25 Feb. Dispute Settlement Body - Special Session
26 Feb. Committee of Participants on the Expansion of Trade in Information Technology Products

March

- 8 March Committee on Customs Valuation
8-10 March Council for Trade-Related Aspects of Intellectual Property Rights
9 March Sub-Committee on Least-Developed Countries
12 March Committee on Market Access
15-17 March Textiles Monitoring Body
16-17 March Committee on Trade and Environment
17-18 March Committee on Sanitary and Phytosanitary Measures
19 March Dispute Settlement Body
22-26 March Services Meeting
23 March Committee on Technical Barriers to Trade
25 March Committee on Agriculture
25 March Dispute Settlement Body - Special Session
29-30 March Committee on Regional Trade Agreements
29 March-2 April Services Meeting
9 April Good Friday (WTO non-working day)
12 April Easter Monday (WTO non-working day)

- 15 February ACP-EU Joint Parliamentary Assembly Standing Committees – Addis Ababa, Ethiopia

- 16-19 Feb. 7th Session of the ACP-EU Joint Parliamentary Assembly – Addis Ababa, Ethiopia

- 3-7 May ACP and ACP-EC Council of Ministers – Gaborone, Botswana

- 21-24 June 4th ACP Heads of Government Summit – Maputo, Mozambique

Unless specified, meetings take place in Brussels.

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