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## Launching the COMESA Customs Union: The Secretary General Talks

TNI meets with Sindiso Ngwenya, Secretary General of the Common Market for Eastern and Southern Africa (COMESA), to discuss the much-anticipated launch of the Customs Union and the signing of the Interim EPAs.

**TNI:** The launch of the Customs Union has been postponed several times in the past. Why is now the time right to launch the Customs Union?

**Ngwenya:** The launch of the COMESA Customs Union has become an irreversible process. First and foremost, what is forgotten in Africa is that regional cooperation, regional economic integration is essentially a politically driven project. Politically driven on the basis of shared values and objectives in terms of creating wealth, in terms of creating a zone of prosperity. The financial crisis, which resulted in one of the worst global economic recessions, is also a wakeup call for our countries because what is being demonstrated through regional integration is that there have been no cancellation of orders for products traded within the region although we know there has been cancellation of orders for exports outside because demand for our products is now depressed. We also know that it is difficult for us to get credit – trade credit there is an estimated shortfall of anything from US\$80-100 billion in terms of trade financing but we have also launched our Regional Payments and Settlements System which will no longer use letters of credit because it will be financed through the accounts by commercial banks which are pre-funded by central banks. In the current trade of US\$15.2 billion, we estimate that the region has been paying US\$500 million for confirming letters of credit and the trade transaction. Now we estimate that our clearing house is going to reduce that trade (there will be a 1 percent or less transaction fee – because they still have to charge for the service) US\$75-80 million. So all these combination of factors have situated the customs union in a better position because it is not only the CU but also supported by financial payment facilities that we have established.

**TNI:** How do you expect to collect and distribute revenue collected?

**Ngwenya:** It is very simple. You can collect revenue from customs duties at the port of entry, then you transfer it to the destination country. This will be achieved in the medium term as it would require that COMESA puts in place a revolving fund which will ensure that the revenue is promptly

transferred to the receiving country. If you collect US\$20 million, you transfer US\$20 million to that country. It will work because we launched the Regional Payments Settlement System in Victoria falls, which can be used to credit the account within 24 hours. In fact, governments will be better off under that revenue collection system because at times it takes about one month for goods to move in transit from the port of entry to the country. In the mean time the government does not have revenue. Whereas if you collect it there, within 24 hours the government will have the revenue. Now the second way to collect revenue is to collect revenue and put it in a common pool where you distribute it according to a formula. Now we cannot do that at this point in time, for the simple reason that our governments still depend heavily on trade taxes but this is the ultimate objective of COMESA.

**TNI:** How will COMESA facilitate this process?

**Ngwenya:** In order for us to fast track revenue collection and forward, it to the recipient countries, we suggest that under the aid for trade programme – in partnership with the EU, our biggest partner – we could set up a revolving fund which is not going to be a grant, but which is going to be used only to make sure that the monies are paid. If you put up a revolving fund for US\$200 million you should be able to get the governments to get all their money, because you have a fund from which you are paying what has been collected, and you then put the money that you have forwarded into that revolving fund, and then do away with transit and all these problems. You do away with the current problems of goods in transit that get diverted into transit countries and cause injury to domestic businesses that are paying their taxes. It will also eliminate the corruption that is associated with the movement of transit traffic – some of these reforms will strike at the core of corruption.

**TNI:** What more can African business expect from the customs union?

**Ngwenya:** When we were supposed establish the

*(Continued on page 3)*



International Centre for Trade  
and Sustainable Development



## Editorial

TNI's September issue leads with an exclusive interview with COMESA Secretary General Sindiso Ngwenya, who speaks frankly on the recent launch of the COMESA customs union and ESA's signing of the Interim EPA. While member states have deferred the launch of the customs union for a number of years, Ngwenya identifies the financial crisis as a motivating force to launch the customs union now. Ngwenya discusses COMESA's tariff revenue collection system and outlines the concrete steps that are taking place towards harmonisation of the common external tariff among COMESA countries themselves and the East African Community.

In "They Want To Silence Us: The Impact Of Governance On Trade And Rural Development In Cameroon" ACDIC Secretary General Jacob Kotcho draws on the recent National Anti-Corruption Commission report regarding the maize sector scandal involving the Ministry of Agriculture in Cameroon to demonstrate how lack of democracy, freedom, and respect for established rules, constitute a major barrier to taking full advantage of trade. Kotcho also considers the impact of a democratic deficit in international fora and points to a lack of transparency in the EPA negotiations to illustrate how ACP governments' accountability to their citizens has been compromised.

Following on from this, El Hadji Diouf offers an African perspective on GATT Article XXIV and the market access offers in EPAs and presents legal arguments that support West Africa's offer to liberalise 60 percent of their trade with the EU.

On 30 September, the EC's Sugar protocol will officially expire. In this article, Patricia Garcia-Duran, Elisa Casanova, and Montserrat Millet examine the changes to the EU-ACP sugar trade regime and discuss the provisions that have been made to allow gradual adaptation to the new reality over the next 6 years.

A midterm review of the Joint Africa-EU Strategy is currently underway. In "Shortfalls and Opportunities: The implementation of the Africa-EU Trade, Regional Integration and Infrastructure Partnership" Veronika Tywuschik and Stephanie Colin provide an overview of the progress to date and consider the partnership's potential in order to stimulate discussion as the review awaits approval at the Ministerial Troika of October 2009.

As always, comments are welcomed and can be addressed to [aw@ecdpm.org](mailto:aw@ecdpm.org).

## News and publications In brief

### Africa Wants Greater Voice at IMF

Civil society in Kenya is urging the International Monetary Fund (IMF) for greater representation within its decision-making boards and the formation of a dispute resolution body. In 2008, the IMF launched an effort to reform its governance structure by soliciting feedback from a wide range of audiences, including civil society organisations. Peter Gakunu, a former executive director of a constituency representing 21 African countries on the board of the IMF, called for greater representation of African countries on the board of the IMF, where vital decisions are made, as well as within the IMF staff. After numerous dialogues across the globe, which were facilitated by New Rules for Global Finance - a coalition of development, human rights, labour, environmental and religious organisations, the draft summary of recommendations for IMF governance reform is offering valuable insights. The draft indicates a consensus among CSOs to change the scope and nature of lending policy conditionality. In addition, transparency and the increased role of the IMF in addressing the global financial crisis were cited as major concerns for CSOs in Kenya. To address these issues, the draft called for the formation of an external dispute resolution body that would contribute to lessons learned and promote the design of better IMF programmes.

### African Countries Join WB Agricultural Development Initiative

Working to improve the results from their agriculture investments, eight African countries have collaborated with the World Bank and several partner agencies to design a plan to measure the effectiveness of programs with the help of a new initiative that aims to find out what works on the ground, and what does not. Agricultural Adaptations, or AADAPT, supports rigorous assessments of agricultural development projects known as 'impact evaluations'. The program's major goals are to gather knowledge about agricultural best practices and to provide the evidence needed for more effective agricultural policies and initiatives. AADAPT seeks to bridge knowledge gaps in the adoption of agricultural technology, irrigation and rural infrastructure, and management of natural resources. For more information on the initiative, visit: <http://web.worldbank.org/>

### New Book Looks at Interim EPAs

"The Interim Economic Partnership Agreements between the EU and African states: Contents, challenges and prospects," (ECDPM policy Management Report 17). Bilal. S and C. Stevens (eds.) 2009. Given the conclusion of a full EPA with the CARIFORUM region along with interim EPAs (IEPAs) with some African and Pacific states, this book provides a comprehensive analysis of the agreements and potential development effects of the African IEPAs as they stand in early 2009. In addition, the book outlines the negotiations that remain to be completed and the challenges facing Africa in implementation. Finally, the book provides a summary of the principle features of complex documentation on the subject and foundation for follow-up studies that will be needed to look in more detail at specific country, sectoral and other specific features of the IEPAs. To view this publication, visit [www.ecdpm.org/pmr17](http://www.ecdpm.org/pmr17)

### New Report Analyses Implications of Financial Crisis on EPAs

"Global Financial and Economic Crisis: Analysis of and Implications for ACP-EU Economic Partnership Agreements (EPAs)," (Discussion Paper 92) Bilal, S., P. Draper and DW te Velde. This report discusses the role of Economic partnership agreements (EPAs) between the EU and regional groupings of the African, Caribbean and Pacific (ACP) group of countries in the context of the financial crisis and its negative effects on the most vulnerable populations. In order to stimulate development, the report discusses the need for African countries to create effective regional markets, coordinate policy and engage in resource pooling to stimulate production capacities, trade, and investment flows. EPAs between the EU and regional groupings of ACP countries should, the report concludes, be designed in a manner that contributes to these objectives. To prevent negative impacts in the short run, EPAs should be flexible and reflect the specific conditions and development approaches of each country and region. To view this publication, visit [www.ecdpm.org/dp92](http://www.ecdpm.org/dp92)

#### News Sources

"Africa Wants Greater Voice at IMF," IPS News, 2 August 2009.

## Continued from front page

Customs Union in May 2008, our trade moved from US\$9.2 billion to US\$15.2 billion in one year, between 2007-2008. This tells you that the market expects quite a lot from this Customs Union. Notwithstanding the global economic recession, I expect our trade by next year to hit US\$20 billion. Also, our heads of state and government have also approved the regulations on trade in services within the region. And trade and services as a contribution to each national GDP is 50 percent. For any product that you trade, 60 percent of the value is accounted for by trade in services. Our Customs Union is saying let them integrate services into the product market, and then we move towards the integration of the labour market, which may take us some time because of its sensitivity.

**TNI:** The East African Community (EAC) has opted out of the COMESA Customs Union. What impact will this have?

**Ngwenya:** We have harmonised the Common External Tariff (CET) with EAC, which means that the EAC and COMESA Customs Unions have been harmonised. If you decide to harmonise the CET you have created one single customs territory – especially when you are all in a Free Trade Area (FTA) with the same rules of origin. We have harmonised customs duty, we have harmonised customs documentation. Harmonisation is a process – it is ongoing. The very fact that we are working on establishing one FTA, and one Customs Union, that is part of the process of harmonisation.

**TNI:** COMESA countries are at different levels of development. Does this complicate the implementation of the Customs Union?

**Ngwenya:** There is a fiction here, and I want this to be recorded: when people talk about these countries and their different levels of development, that's not true! The structure of the economy is marginally different it is not substantially different. When you look at how much industry employs in Kenya vis-à-vis agriculture, 80 percent of the people still live on the land. There are a lot of these myths that have become popular truths, but they are not correct. When you look at these economies, they are just the same. Let us stop this nonsense. This is why globalisation has gone wrong – us using indicators that do not really tell us [the full truth]. What Africa needs is not sympathy, what Africa needs is a wakeup call, to say you are the richest resource continent, exploit your resources for the benefit of your people. What Africa needs is a wakeup call to say 'the future lies with you', and with the Africans in particular.

**TNI:** Are you confident there is political commitment to see the reforms through?

**Ngwenya:** It is there. By virtue of the fact that these countries decided to reduce their tariffs to zero and establish the COMESA FTA – that was political commitment with social and economic consequences for each country because you are foregoing your customs revenue in order to create a FTA. When you now move towards the Customs Union, you are also giving up your sovereignty in terms of national trade policy. And you should now have a common trade policy as a region. That is political commitment. Political commitments are not the statements that are issued, it is something that countries do. We now have regulations for

trade in services and we are going to negotiate and see how we can trade – that is political commitment! Your political commitment under our transit facilitation programs as COMESA where countries say I will allow another country to license this truck to operate in the COMESA region and that license is recognised by each country. You issue the license here, the truck can move and pick up goods everywhere. That is political commitment.

**TNI:** How will the signing of the Interim EPAs impact on the future of the COMESA Customs Union?

**Ngwenya:** First and foremost, I am delighted by the EC Trade Commissioner Baroness Catherine Ashton who is an eminently sensible person in whom most of the ministers – if not all in the [Eastern and Southern African] configuration – have got confidence and trust because she is transparent and direct. Now that we have launched our Customs Union, we can – with the EAC – negotiate a comprehensive EPA with the EU. There is nothing to stop us.

“What Africa needs is not sympathy, what Africa needs is a wakeup call.”

**TNI:** Can the two blocs overcome the challenge posed by EAC and COMESA countries submitting different liberalisation schedules?

**Ngwenya:** We have harmonised the COMESA CET, with the EAC CET which means, in effect, we have got one common external tariff structure. The list of sensitive products may be different but what is important in that the structure is the same so we have got a harmonised one, so we can now engage the EU on that basis.

**TNI:** What are the outstanding issues in the EPA negotiations for ESA?

**Ngwenya:** When it comes to some of the 'contentious' issues, like export taxes, etc., the EU is now prepared to concede. The thing we have still to deal with is the issue of Most Favoured Nation treatment where they are saying that that one they cannot negotiate because they do not want to be discriminated against, we must demonstrate to them why we want to discriminate against them. It's up to us to convince them why we need to have that difference. The homework is on us.

It's very interesting that we have this so-called 80 percent of substantially all trade. Article 24 is a non-article because it simply tells us that the members of the World Trade Organization do not want to have a rules based regime when it comes to regional trade. They have failed to agree, because when there are no rules, it is those that are almighty and powerful who will then manipulate it to their own interest. It is now subject to interpretation. That is why as COMESA, we will be making a formal submission to the WTO to challenge this article to say that it is an article which means that it is not part of the rules.

The second thing I want to mention is why should we open our market to the EU for agricultural products, and yet you and I know very well that for us for that sector, we have not had any subsidies to our farmers, we do not have any domestic support – why should we open up that market to the EU, which over the past 30 years or more under the common agricultural policy, they have put hundreds of trillions of Euros into supporting their farmers to become competitive. Therefore, there is no level playing field. You are asking my farmer, who does not have any support and we are still using farming technology that belongs to the century before Christ, to compete with you? That's not fair. And this is why I'll be pushing for those to be excluded.

**TNI:** Could the signing of the Interim EPA amongst the SACU countries lead to the break-up of the oldest Customs Union in the world?

**Ngwenya:** It does not have implications for that. I don't understand why people will look at Botswana, Lesotho, and Swaziland (BLS) as undermining SACU – because it doesn't. The Europeans were the first to undermine SACU by signing a Trade and Development Cooperation Agreement with South Africa when they signed the TDCA agreement without SACU countries being in. What they need now to do is to see how you can then factor in the interests of the BLS countries through what they have signed, into the TDCA and harmonise it. So when these countries now want to make sure that the market access is maintained, there is nothing wrong with that. I think the challenge now is for them to see how they can harmonise and integrate these EPA agreements they have signed with TDCA. SACU will remain as it is – it is not going to be destabilised by this. They will find a solution.

**TNI:** Which of COMESA's trade partners are priorities to engage in trade negotiations in the future?

**Ngwenya:** Now that we have the Customs Union we shall engage the new industrialised economies. But when we engage them I have told them, we don't want them to come and look for raw materials. You must come for raw materials and also value addition. And they have accepted that, so we shall be dealing with them.

We are no longer going to work on the basis of being victims. The major problem for Africa under colonisation is that colonisation left in the African mentality the victim mentality where they then see themselves as victims and they want to evoke sympathy. What we are interested in is to engage them on the basis of our own self interest. We cannot reduce poverty by pleading for people to take us out of poverty. You must first of all have self confidence, belief in yourself, and that's how the Chinese and Indians operate: they themselves believe in themselves. When they say it, they do it.

The views that I have expressed are the views of the COMESA heads of state and government. And here at COMESA we are saying that through trade and not aid that we can create wealth – with trade and investment we shall create the wealth.

# They Want to Silence Us: The Impact of Governance on Trade and Rural Development in Cameroon

Jacob Kotcho

One of the major obstacles to the “harmonious and favourable integration” of ACP countries in global trade is lack of governance. Contributing to global trade presupposes many requirements that several ACP countries can’t meet due to poor governance, observed both in these countries’ institutions (executive, parliament, and justice) and in international fora where global trade rules are defined.



Poor governance practices within national institutions include embezzlement, corruption, and a lack of adequate political vision and framework for trade development. Regarding international fora, governance problems are linked to a lack of transparency between parties and to the failure to respect commitments and regulations.

It is noteworthy to mention that there are numerous causes to the lack of governance preventing trade development in ACP countries. The lack of democracy, freedom, and respect for established rules constitute a major barrier to taking full advantage of trade liberalisation. In such a context, independent stakeholders who are not party to trade negotiations can play a key role in ensuring better citizen monitoring.

Political will to fight behaviours contrary to good governance principles cannot be imposed, and the lack of a development agenda based on a citizen vision and of clearly identified and respected priorities are the source of a highly detrimental lack of transparency.

Based on these seemingly insignificant events occurring in some ACP countries, this article exemplifies the impacts of poor governance on trade development.

## Having an adequate qualitative and quantitative trade offer

According to free trade logic, in order to compete with other global market providers, ACP countries must have a sufficient offering of both goods and services. The development of the initiative depends on important investments made by public authorities and by private stakeholders. But these investments often come up against governance issues. The case of Cameroon’s maize sector is a good example of this situation.

Indeed, from 2004 to 2006, ACDIC,<sup>1</sup> along with its partners, carried out a campaign against the imports of frozen chicken parts from Europe and America. As a result of the

campaign, the imports ended, the investments in local poultry sector were boosted – the weekly production of day-old chicks increased from 225,000 to 600,000 – and public authorities subsidised the production of broilers. The increase of poultry production triggered a higher demand in maize, which makes up more than 65 percent of a farmed chicken’s diet. In September 2008, one kilo of maize was worth 195 CFA francs compared to 90 CFA francs in September 2007. In this situation, poultry farmers’ profit margins were seriously affected and they were unable to produce a 2.2-kilo chicken at the approved price of 2,200 CFA francs. This situation is beyond understanding since (i) only one third of Cameroon’s cultivable land is being utilised<sup>2</sup>, (ii) a young and trained workforce is available and (iii) research has developed improved maize seeds, which grow in every agro-ecological zone of the country. Furthermore, public authorities have designed and implemented a national program aiming to support the poultry sector<sup>3</sup>. Despite all these advantages, in 2008 Cameroon experienced a maize shortage of 60,000 tons, and it could be of 120,000 tons in 2009. In order to understand the situation, ACDIC carried out a study that found the following: 62 percent of the funds intended for maize farmers as subsidies had been embezzled.

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The adequate functioning of institutions in charge of regulating political, economic, and social life is a prerequisite for the development of a trade sector. ”

This fact clearly shows that poor governance practices have serious consequences on the development of the countries’ trading capacities. Indeed, regarding Cameroon maize demand and export possibilities to neighbouring countries – thanks to Cameroon’s position within CEMAC<sup>4</sup> – the development of this production should have

generated important wealth and employment, as well as some strengthening of the regional trading area. For the moment, these effects have been jeopardised due to the embezzlement of public funds intended for production.

## Lack of freedom, democracy, and respect for established rules

The adequate functioning of institutions in charge of regulating political, economic, and social life is a prerequisite for the development of a trade sector. These institutions guarantee a favourable framework for public and private investments, protect the country’s interests in a development perspective, and regulate trading areas for the protection of all stakeholders. Hence, their failure to function properly is an open door to governance abuses. In such a context, independent stakeholders charged with citizen monitoring of public action could be silenced and prevented from acting.

After studies on the management of funds allocated to maize production financing carried out within Cameroon’s Ministry of Agriculture and Rural Development, ACDIC denounced the actions. Among other initiatives, it attempted to organise a public demonstration, which was prohibited by Yaoundé local authorities even though it strictly respected the country’s laws. At ACDIC president’s request, the association’s members later gathered at the Ministry’s headquarters where they were violently dispersed by the police; two protesters were injured and ten others were arrested. At the end of the police investigation, five of the ten ACDIC members arrested were brought before Yaoundé Court on 22 May 2009 and two of them were found guilty of organising an illegal demonstration and sentenced to two months of imprisonment and three years of deferred sentence<sup>5</sup>.

Such an abuse of justice illustrates how the inadequate functioning of institutions can quell initiatives likely to generate opportunities. This organisation, which

denounces poor governance, is condemned while those embezzling public funds intended for the trade development are left free. Although the law dictates that the state prosecutor take up any denunciation of action damaging public funds, no such action has been engaged against the persons responsible for the embezzlement in the maize sector within Cameroon's Ministry of Agriculture.



The National Anti-Corruption Commission (CONAC), an institution of the Republic of Cameroon in charge of fighting corruption, has taken up the matter, carried out a verification investigation and published a report in June 2009 which confirms the ACDIC accusations. Despite the report's publication and the media coverage it received, no action has been taken against the embezzlers whose names are stated in the report.

Beyond the case of the maize sector, it's important to be aware that the lack of democracy, freedom and respect for established rules constitute a major barrier to taking full advantage of trade.

#### Need for transparency in international fora: "Do as I say not as I do"?

The lack of transparency in trade rules negotiations fora is another obstacle jeopardising ACP countries' trade development. While an important element of trade agreements is to help promote good

#### Some extracts of the CONAC report:

- Cases of embezzlement have been identified in all five regions and all nineteen departments examined by CONAC investigators.
- The testimonies gathered and facts observed affirm that embezzlement has been found at all level of the hierarchy.
- We can affirm that only a very small part of the funds intended for subsidising maize production in the framework of PNAFM (national plan to support the maize sector) was indeed distributed.
- 36.09 percent of funds allocated to 97 investigated GIC (common initiative group) were received by 30 GIC and associations considered as unknown on the field
- Out of the 97 GIC and associations investigated, 77 have not produced maize although they have received a subsidy to do so
- 92.15 percent declare they have not received all of the subsidy
- Only 29 GIC out of the 97 investigated say they have received the subsidy and cultivate maize
- The import deemed embezzled from maize production is estimated to 611,259,555 CFA francs.

governance, the EPA negotiations process itself is an obstacle. Key groups, such as poor producers, farm workers, and small producers, are still kept out of trade negotiations while the EU uses its dominant position to get what it wants. In turn, ACP governments' capacity and will to account for their actions to their citizens is reduced<sup>6</sup>.

“**'Good governance' cannot be imported; it is built from the inside-out.**”

Regardless, civil society participation to EPA negotiations has proven to be essential. It became the voice to express disagreements and dishonest tactics. "Good governance" cannot be imported; it is built from the inside-out. Good governance needs civil society as the soil needs worms, which daily work the land, ceaselessly digging to bring oxygen, and which guarantee the sustainable fertility of the land.

To conclude, it's important to underline that the responsibility for the lack of governance curbing ACP countries' trade development is shared. Given the lack of political will of countries within the Central African region to fight behaviours contrary to good governance principles, the European Commission could further encourage participative democracy through EPAs, so that negotiations are truly appropriate and trigger deep reforms. This goal should also lead to adopt more flexible rules: a more tangible asymmetry through the introduction of Special and Differential Treatment in EPAs for ACP countries, in accordance with their level of development.

#### Author

Jacob Kotcho is Secretary General of the Citizens Association for the Defence of Collective Interests (ACDIC).

#### Notes

- 1 Association Citoyenne de Défense des Intérêts Collectifs (Citizens Association for the Defence of Collective Interests), organisation under Cameroon law [www.acdic.net](http://www.acdic.net) / [acdic@acdic.net](mailto:acdic@acdic.net)
- 2 Cameroon's area is 475,000 Km<sup>2</sup> of which 15% (71,250 km<sup>2</sup>) are arable land. Only 29% of these are cultivated, i.e. 14,200 km<sup>2</sup>, which means that 57,000 km<sup>2</sup> of arable land are available.
- 3 The PNAFM (national support program of the maize sector) is financed under HIPC and has a 5.2 billion CFA francs budget for 3 years. From 2006 to 2008, the project should distribute 2.08 billion CFA francs of subsidies to maize producers.
- 4 The Economic and Monetary Community of Central Africa, made up of 6 countries (Cameroon, Central African Republic, Chad, Republic of Congo, Equatorial Guinea, and Gabon), is a 30-million consumers market, and Cameroon is the economic leader.
- 5 See Euronews documentation on 19 May 2009 at <http://www.euronews.net/2009/02/19/cameroon-battle-for-food-sovereignty/>
- 6 For more information, see 'The EU's cock-eyed approach to trade and governance' in Trade Negotiations Insights, vol.8, no.2, March 2009, and also 'The Emperor's new clothes' vol.6, no.8, [www.acp-eu-trade.org/tni](http://www.acp-eu-trade.org/tni)

# The ACP Advantage: Interpreting GATT Article XXIV and Market Access Implications for EPAs

El Hadji A. Diouf<sup>1</sup>

The Economic Partnership Agreements between ACP countries and the European Commission must comply with Article XXIV of the General Agreement on Tariffs and Trade (GATT), which governs regional trade agreements concluded by WTO members. Article XXIV stipulates that 'free trade areas' must eliminate duties on "substantially all the trade" within a "reasonable length of time," yet these terms remain loosely defined in the WTO. West Africa and the European Commission hold divergent views on the definition of these two terms. This article highlights the legal arguments in support of West Africa's position.



One of the most important and contentious issues in ACP-EU EPA negotiations relates to the interpretation of Article XXIV of the General Agreement on Tariffs and Trade (GATT) and determining the market access offers of the parties. The EU stands by its position of a minimal trade coverage rate of 80 percent in ACP regions, over a 15-year liberalisation schedule. Some regions, such as Western Africa, argue that a 60 percent coverage rate along with a 25-year implementation period would not be WTO-incompatible. The following legal analysis attempts to prove it.

## The term "substantially all the trade" in WTO/GATT law and practice

Pursuant to Article 3.2 of the Memorandum of Understanding on the WTO's Dispute Settlement Understanding (DSU), the clarification of existing rules of the WTO agreements should follow the customary rules of interpretation of public international law. These rules are explained in Articles 31 and 32 of the Vienna Convention on the Law of Treaties of 1969. They make reference to good faith, ordinary meaning, context, with subsequent agreements and practices, and preparatory work. Most of these tools have been used for a proper understanding of Article XXIV of GATT in vain.

Interpretation tools for international treaties noted earlier have been applied to Article XXIV of GATT in vain. While WTO jurisprudence has tried to follow the Vienna Convention instructions recurring to the preparatory work, the results are not satisfactory:

*"We have... analyzed in detail Article XXIV negotiations history. We observe that this article's title is not perfectly clear and has been subject to many divergent – sometimes conflicting – views between the signing parties, the Members and the authors"*<sup>2</sup>

The WTO has also tried to question the members on their practice. But no additional information was obtained due to the absence

of an agreed upon practice between members.

*"Examining WTO/GATT practice clearly shows that... there has been no consensus nor agreed practice in relation to Article XXIV of GATT"*<sup>3</sup>

Furthermore, the notion of "substantially all the trade" referred to in Article XXIV.8 is not clearly defined and the meaning of the word substantial – which is intended to define the liberalisation threshold of regional agreements – has never been made explicit. The WTO Appellate Body itself came to the following conclusion:

*"Neither the GATT Contracting Parties nor the WTO Members have ever reached an agreement on the interpretation of the term 'substantially' in this provision."*<sup>4</sup>

All things considered, the only rule of interpretation used by jurisprudence and which seems to apply to Article XXIV.8 is the implicit reference to the context and circumstances of the treaty's conclusion. The Special Group opened a breach for a new reading of the article in a different context.

*"We know... that the economic and political realities that existed at the time of Article XXIV drafting have changed and that the scope of regional agreements is now much wider than it was in 1948"*<sup>5</sup>

By using a-contrario reasoning, the Special Group suggests to read and apply Article XXIV by taking today's economic and political realities into account. This stance includes the new dimension of RTAs between developed and developing countries and posits an interpretation which legitimises an important asymmetry in EPAs.

After all, one of the few consensuses in interpreting the concept of substantially all the trade is the primacy given to the quantitative approach. But this primacy does not solve the

problem by itself. Thresholds must be defined. Nevertheless, WTO/GATT texts give no figure, nor do the jurisprudence or the practices agreed in the system. Moreover, jurisprudence recently said the following on that question.

*"It is clear that 'substantially all the trade' is not the same as all the trade, and also that 'substantially all the trade' is something considerably more than merely some of the trade."*<sup>6</sup>

If the text refers to neither all the trade nor just a part of it, then what does substantially all trade actually mean? Members' practice indicates that a regional trade agreement liberalising 80 percent of goods would not have compatibility problems with WTO law. Therefore, assuming that liberalisation of 80 percent of trade has been accepted by the EC in the WTO context, this implies that the same percentage would be acceptable to both the EC and the WTO membership in the context of the EPAs. The question remains: how to make up 80 percent of the trade in EPAs. Two interpretations are possible. The first one is that each party shall liberalise at least 80 percent of its goods. In this case, this threshold would be a consolidated limit above which the EPA would no longer be WTO-compatible. This interpretation seems to be incorrect. Article XXIV.8 clearly states that substantially all trade to be liberalised relates to "products originating from the constituent territories of the free-trade area."

There is clearly no attempt to share the burden of liberalisation between parties. And the numerous regional agreements signed under the aegis of Article XXIV almost never imply liberalisation evenly shared between the parties. Hence, the agreed 80 percent will be considered as a weighted average incorporating the parties' efforts. The fact is the EU is going to liberalise up to 100 percent of its trade. From that point, to reach the weighted average of 80 percent of liberalised trade, nothing but their own unilateral political

will should force African countries to go beyond a 60 percent market opening. This stance would not infringe any WTO rule nor would it be an obstacle to the legality of the EPA. We cannot reasonably say that 80 percent of trade liberalised in a regional agreement does not go beyond “merely some of the trade”.

**Reasonable length of time and exceptional circumstances in WTO law**

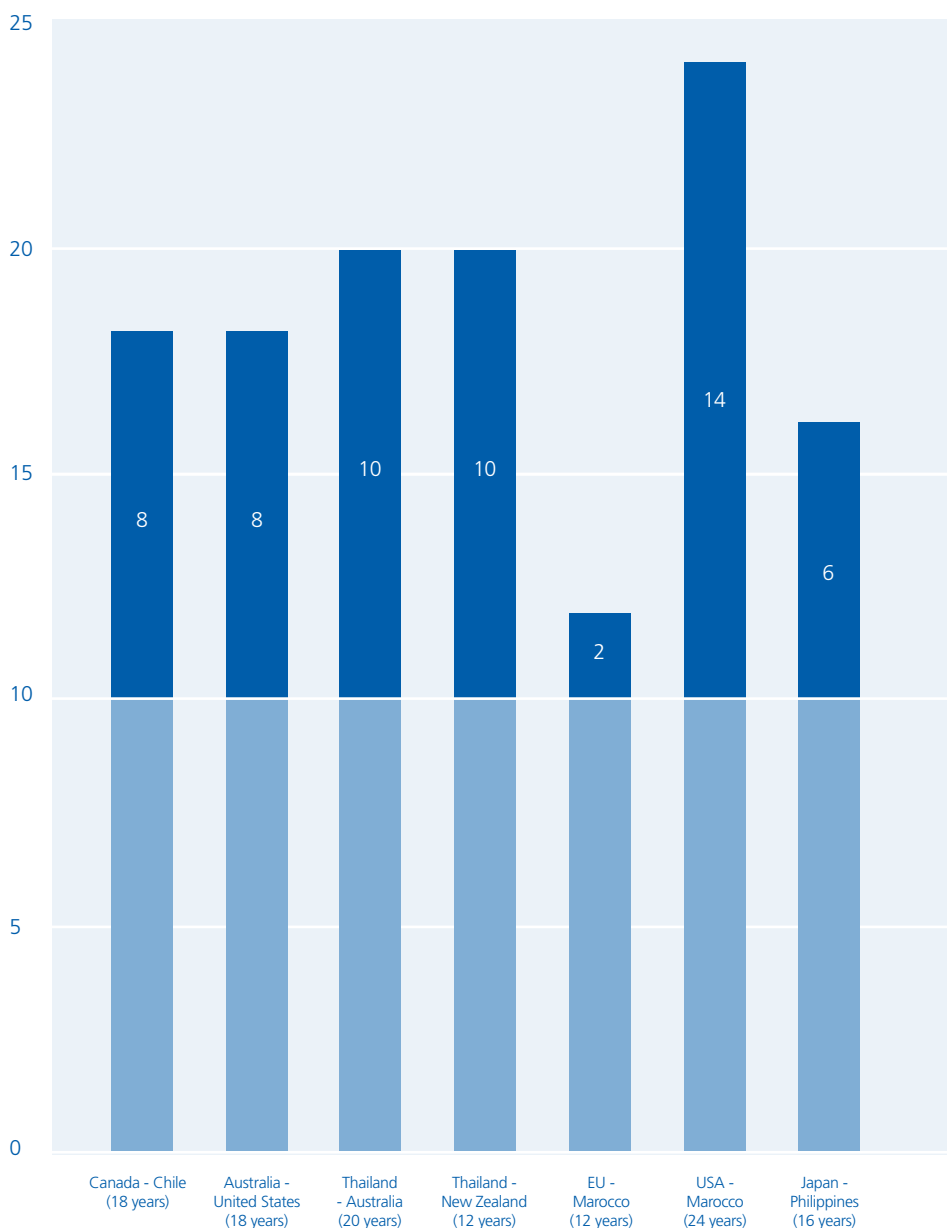
In the same vein, the concept of a reasonable length of time allowed for regional agreements’ implementation period is not explicit in Article XXIV of GATT. It is stated that the reasonable length of time for regional agreements should exceed 10 years only in exceptional cases and that in cases where member parties to an interim agreement believe that 10 years would be insufficient they shall provide a full explanation to the Council for Trade in Goods of the need for a longer period. As well as for the substantial part of the trade, it is the concept of exceptional cases that can be subject to interpretation.

The interpretation of Article XXIV in favour of exceeding a 10-year period only in exceptional cases has been followed by a legalism period before the members adopted more permissive stances regarding calculation of time limits on regional agreements.

*“Regarding the RTAs which entered into force in the latter half of the 1990s, only in rare cases did transition periods exceed ten years.” On the contrary, regarding the many RTAs recently concluded, we observe that transition periods greatly exceed 10 years. These cases become the rule rather than the exception”<sup>17</sup>*

In spite of this, all regional agreements concluded with an implementation period beyond the rule have been considered WTO-compatible. The idea of conformity with WTO law no longer guides regional agreements, but rather the consideration of the parties’ interests. As members have not reached agreement on this, practice provides many interesting cases and orientations, as the table above shows.

It appears that a large majority of free-trade areas between developed and developing countries are asymmetrical and that a systematic time limit of 20 years is not exceptional (e.g., Thailand’s agreements with Australia and New-Zealand). Moreover, even agreements between developed countries such as the Australia/US FTA define an 18-year



implementation period without exceptional circumstances. Finally, we observe that the longest time period belongs to Morocco in its agreement with the US. It’s a 24-year period and it is practically similar to the 25-year period asked for by African countries for their EPA. Yet, this agreement has been notified to the WTO. From that example, what can justify such a long time period, which is obviously a special and differential treatment for developed countries and would not be applicable in the case of an EPA involving some of the poorest Least Developed Countries in the world? Clearly, this alone constitutes an exceptional case which justifies that African countries may benefit from a 25-year time period, just one year longer than the Morocco/US agreement.

**Authors**

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**Notes**

- 1 A more detailed version has been published by Enda Tiers Monde, a West African civil society organisation. The paper has been used to form the basis of a market access offer in Western Africa-UE EPA negotiations. The opinions expressed are those of the author and do not reflect ICTSD’s.
- 2 Report of the Special Group, Paragraph 9.97
- 3 Ibid. Paragraph 9.166
- 4 Turkey – Restrictions on Imports of Textile and Clothing Products. Report of the Appellate Body, 22 October 1999 (WT/DS34/AB/R), Paragraph 48
- 5 Turkey/Textiles, Special Group, Paragraph 9.97
- 6 Turkey/Textiles, Appellate Body, 22 October 1999 (WT/DS34/AB/R), Paragraph 48
- 7 Report of the WTO Secretary, 2002 (WT/REG/W/46, page 22

# After the Sugar Protocol

Patricia Garcia-Duran, Elisa Casanova, and Montserrat Millet

On 30 September 2009, the Sugar Protocol will officially expire. Following a six year transition period, the Protocol – which provides a group of ACP countries with guaranteed access to the EU market for fixed quantities of sugar at preferential prices – will be replaced by a non-reciprocal duty and quota-free preferential trade system on 1 October 2015. This article examines these changes to the EU-ACP sugar trade regime.



## The Sugar Protocol<sup>1</sup>

The Sugar Protocol has been a feature of EU policy to ACP countries since 1975. The Protocol, which was attached to the first Lomé Convention, granted non-reciprocal, preferential conditions regarding sugar exports to a group of ACP countries. These conditions were retained in the later Lomé Conventions and the Cotonou Agreement.

Under the Protocol, only 19 of the 77 countries which comprise the ACP group were to benefit from these privileged trade relations. Eleven were from Africa, seven from the Caribbean region, and only one (Fiji) is located in the Pacific (table 1). Of these countries, six are Least Developed Countries (LDCs) and 13 non-LDCs.

These countries have had quota-based access to the EU market. Under the Protocol, the European Community undertook to import, duty-free, specific quantities of cane sugar (raw or white) from these countries, which in turn undertook to deliver it. The tariff quota has always been around 1,279,700 million tonnes (mt) per campaign. Since 1995, other additional quantities of sugar have been allowed into the EU in preferential conditions in amounts which vary in each campaign, depending on the “basic supply needs” of European refineries; on average, they have amounted to 300,000 mt per campaign.<sup>2</sup>

Last, but not least, the Protocol has also offered producer countries a guaranteed price. The quota of the 19 ACP countries can only be purchased at a price negotiated for each campaign that is close to the internal intervention price set by the Common Market Organization for Sugar.<sup>3</sup>

## The transition period

Provisions have been made to allow for a gradual adaptation to the new reality from October 2009 to October 2015. During this period, three major changes will be introduced: guaranteed prices will decrease and finally disappear, quotas will be increased, and the number of ACP countries which can benefit from preferential relations

with the EU for sugar will triple.

After 30 September 2009, the EU will offer preferential non-reciprocal treatment to sugar originating from any ACP country that has signed or initialled an Economic Partnership Agreement (EPA) with the Community and, as a result of the ‘Everything But Arms’ (EBA) initiative, from any country of the world recognised as an LDC by the United Nations. Taking into account the number of ACP countries involved, the EPA regime will apply to almost half the ACP countries (36),<sup>4</sup> and the EBA regime to 31.<sup>5</sup> As Table 1 indicates, all 19 ACP beneficiaries of the Sugar Protocol will come either under the EPA (17) or the EBA regime (2). The only ACP countries excluded from the preferential regime will be the 10 non-LDCs that have neither signed nor initialled an EPA with the EU.

In both the EPA and EBA initiatives, the provisions regarding sugar during the transition period are the same. Guaranteed prices will be reduced but maintained until September 2012 and limits on imports will apply until October 2015.

Regarding the guaranteed prices, imports of sugar from the ACP countries concerned will be subject to a minimum price between 1 October 2009 and 30 September 2012. This price shall be no lower than 90 percent of the EU reference price for the marketing year in question.<sup>6</sup> After September 2012, prices shall be determined by the market. As the EU reference price for sugar is being reduced as the result of the 2006 reform,<sup>7</sup> the guaranteed price for ACP raw sugar has already been reduced by at least 33 percent during 2008 and 2009.

Quotas will be maintained until 2015 but in an indirect way and, in principle, only for EPA non-LDCs imports. Country-specific quotas and immunity from safeguard measures will no longer apply. During the period between 1 October 2009 and 30 September 2015, there will be no country or EPA quotas. Access will be duty free within automatic safeguard ceilings.

The EC may impose the applied Most Favoured Nation duty on products originating in EPA non-LDCs, of tariff heading 1701 sugar, if they are imported in excess of two volume-safeguards at the same time. The first ceiling is based on ACP non-LDC imports: 1.38 tonnes in 2009/10; 1.45 tonnes in 2010/11; and 1.6 tonnes in the following four marketing years. The second ceiling concerns the sugar imports from the whole ACP group: 3.5 tonnes in a marketing year.<sup>8</sup> If both ceilings are exceeded in the same marketing year, the EU may decide to impose duties on EPA non-LDC imports.

LDC imports do not necessarily need to be subject to the same treatment. It is important to emphasise that although the second ceiling takes into account all ACP imports – that is, imports from both EPA and non-EPA ACP LDCs and non-LDCs – EPA and EBA LDCs imports will only be subject to a regular safeguard clause.

## After the transition period

As of 1 October 2015, sugar from EPA and EBA countries will have non-reciprocal duty and quota-free access to the EU market. In principle, both regimes will be compatible with WTO rules: the EBA regime on the grounds of the so-called World Trade Organization’s “Enabling Clause”, and the EPA regime on the grounds of Article XXIV of the GATT.

After the transition period, the only remaining language regarding sugar will be a safeguard clause.<sup>9</sup> Under the EPA regime, this clause will no longer be defined on the grounds of the volume of imports but rather on the sugar price. In other words, there is a move away from a preferential system based on quantitative limits, as seen in the Sugar Protocol or the transition regime, to a system of control based on price. Both EPA LDCs and non-LDCs will be subject to the same safeguard mechanism: the EU will be able to impose duties “in situations where the European Community market price of white sugar falls during two consecutive months below 80 percent of the European

Community market price for white sugar prevailing during the previous marketing year.”<sup>10</sup>

As for non-EPA LDCs, the present General System of Preferences (and thus EBA) Regulation does not provide for any specification of the general safeguard clause. Nonetheless, as the Regulation covers the period from 1 January 2009 to 31 December 2011, it would not be surprising if the EPA safeguard specification were to be included in the EBA regime in the near future.

### Conclusion

The Sugar Protocol legally expires in October 2009 but some of its benefits will continue until 2015 through the EPA and EBA regimes. These benefits will no longer be limited to the 19 beneficiaries of the Sugar Protocol: under the EPA regime they will be offered to all 36 countries that have signed or initialled an EPA, and under the EBA regime, they will be offered to 31 ACP LDCs (as well as to 9 LDCs that are not ACP countries). At the end of the day, sugar originating in 67 ACP countries, rather than 19, will benefit from preferential access to the EU market. As of 1 October 2015, the only restriction on their sugar access to the EU market will be a price-based safeguard clause. From October 2009 until October 2015, the access for LDCs will, in principle, be freer than for EPA non-LDCs.

### Authors

The authors are faculty at the Department of International Law and Economy at the University of Barcelona.

### Notes

- 1 Casanova, E (2005) "Evaluación de impacto del Protocolo del Azúcar CE-ACP," doctoral thesis, University of Barcelona. An English abstract can be found here: <http://www.tesisenxarxa.net/TDX-0407105-122429>
- 2 From 1995 to 2006, these quantities were fixed in accordance with the Special Preferential Sugar agreement. From 2006 onwards, the "additional quantities" are negotiated for each campaign.
- 3 If no commercial buyer for their sugar can be found in the EU at the guaranteed price, EU intervention agencies had to buy the product.
- 4 Only one full EPA has been negotiated and signed with the 15 states of the Caribbean ACP region, although Haiti has initialled the agreement it has not yet signed. Nevertheless, several 'interim EPAs' have been initialled by 21 ACP countries, 12 of which are non-LDCs and 9 LDCs (European Commission, 2009 Update, [http://ec.europa.eu/trade/issues/bilateral/regions/acpl/index\\_en.htm](http://ec.europa.eu/trade/issues/bilateral/regions/acpl/index_en.htm))
- 5 The Republic of Cape Verde, which was excluded by the United Nations from the list of the LDCs in 2007, has been given three more years in the EBA as a transitional period.
- 6 The role of the EU intervention agencies as 'buyers of last resort' under the Sugar Protocol will be abolished.
- 7 Casanova, E., Garcia-Duran, P and M. Millet (2009) "An Interpretation of the European Sugar Regime New

EPA Region	EPA regime	EPA regime	Others
Caribbean	<b>Antigua &amp; Barb</b> <b>Bahamas</b> <b>Barbados</b> <i>Belize</i> <b>Dominica</b> <b>Dom. Republic</b> <b>Grenada</b> <b>Guyana</b> <i>Haiti</i> <b>Jamaica</b> <b>St Kitts&amp;Nevis</b> <b>St Lucia</b> <b>St Vinc &amp; Gren</b> <b>Surinam</b> <b>Trinidad&amp;Tob</b>		
Central Africa	<b>Cameroon</b>	Central Africa Rep. <i>DR Congo</i> <i>Chad</i> <i>Equatorial Guinea</i> <i>Sao Tome</i>	<b>Gabon</b> <b>Rep Congo</b>
Eastern/Southern Africa	<b>EAC: Burundi, Kenya,</b> <i>Rwanda, Tanzania,</i> <i>Uganda</i> <b>ESA: Comoros,</b> <i>Madagascar, Mauritius,</i> <i>Seychelles, Zambia,</i> <i>Zimbabwe</i>	<i>Djibouti</i> <i>Eritrea</i> <i>Etiopia</i> <i>Malawi</i> <i>Somalia</i> <i>Sudan</i>	
Pacific	<b>Papua New Guinea</b> <i>Fiji</i>	<i>East Timor</i> <i>Kiribati</i> <i>Samoa</i> <i>Solomon Islands</i> <i>Tuvalu</i> <i>Vanuatu</i>	<b>Cook Islands</b> <b>Tonga</b> <b>Marshall Islands</b> <b>Niue</b> <b>Micronesia</b> <b>Palau</b> <b>Nauru</b>
West Africa	<b>Côte d'Ivoire</b> <b>Ghana</b>	<i>Benin</i> <i>Burkina Faso</i> <i>Cape-Verde</i> <i>Gambia</i> <i>Guinea</i> <i>Guinea Bissau</i> <i>Liberia</i> <i>Mali</i> <i>Mauritania</i> <i>Niger</i> <i>Senegal</i> <i>Sierra Leone</i> <i>Togo</i>	<b>Nigeria</b>
SADC	<b>Botswana</b> <i>Lesotho</i> <b>Namibia</b> <i>Mozambique</i> <b>Swaziland</b>	<i>Angola</i>	
Development status ACP	10 LDCs; 26 non-LDCs	31 LDCs	10 non-LDCs

Sources: European Commission, 2009, [http://ec.europa.eu/trade/issues/bilateral/regions/acpl/index\\_en.htm](http://ec.europa.eu/trade/issues/bilateral/regions/acpl/index_en.htm)  
Non-LDCs are shown in bold. Sugar Protocol beneficiaries are shown in italics

8 Legislation View of WTO Rules and Negotiations," Discussion Paper n° 37, European Development Policy Study Group, Manchester Metropolitan University.  
For a limited number of processed agricultural products with high sugar content an enhanced surveillance mechanism will be applied in order to prevent circumvention of the safeguard ceilings. (Point 7 of the EPAs' Annex on Customs duties on products originating in the states concerned)

9 There is also another clause on the possibility of extending a provision regarding ACP sugar released for free circulation in the French outermost regions  
10 Point 6 of the EPAs' Annex on Customs duties on products originating in the ACP states concerned.

# Shortfalls and Opportunities: The Implementation of the Africa-EU Trade, Regional Integration and Infrastructure Partnership

Veronika Tywuschik and Stéphanie Colin

More than a year-and-a-half has passed since European Union (EU) and African Heads of State adopted the Joint Africa-EU Strategy (JAES) at the Lisbon Summit in December 2007. The main objectives of the JAES framework are to enhance political dialogue, to strengthen institutional ties and to address common challenges through a partnership of equals. This is the first arena to treat Africa as a single entity, to emphasise joint ownership and responsibility (including in the implementation), and to involve non-state actors in its institutional set-up and functioning.



What has the Strategy achieved so far? Has it positively added to the EU-Africa dialogue on trade and trade-related issues? A mid-term review, approved by the JAES Ministerial Troika on 14 October 2009, is set to take place this autumn. This article provides a brief overview of the progress to date of the Trade, Regional Integration, and Infrastructure (TRII) partnership – one of the eight thematic partnerships of the JAES1 – and considers some of its potential, in an effort to stimulate the discussion.<sup>2</sup>

## Current state of affairs

In December 2007, an Action Plan was adopted by Heads of State that specifies three jointly-agreed priority actions for the TRII partnership:

- Support to the African Integration Agenda
- Strengthen African capacities in the area of rules, standards, and quality control
- Implement the EU-Africa Infrastructure partnership

Since its adoption, the discussions have focused on finding appropriate JAES structures such as the European and African Implementation Teams (EU ITs / Af ITs) – consisting of member states, Council and Commission – and Joint Expert Groups (JEGs) – composed of EU ITs and Af ITs, as well as civil society, the European Parliament and the Pan African Parliament – that were finally approved by the Ministerial Troika in September 2008. With the joint structures being in place and functioning<sup>3</sup>, the JAES meetings have started to move into a more content related debate, in particular, looking at concrete early deliverables for the three priority actions in November 2008<sup>4</sup>. The last Ministerial Troika meeting in April 2009 endorsed an implementation roadmap prepared by the JEGs, outlining the priorities, projects, timeline and source of financing for the partnership.

The next step is to refine the roadmap, tackle the shortfalls, reach out to the stakeholders, and undertake a mid-term assessment of their respective partnerships. To do so, the partnership has to overcome various challenges in the monitoring and implementation process.

## Challenges and recommendations

Experts have not taken as keen an interest in the JAES process as initially expected. In addition, though the TRII partnership has been able to claim progress in some areas, the 'success' has mainly rested on pre-existing initiatives which have been incorporated into the JAES such as the Infrastructure Trust Fund. The implementation of the partnership has raised questions on the added value of its contribution to the current Africa-EU dialogue on trade and regional integration processes and existing EU-Africa frameworks. Overcoming these difficulties will be an indication of the effective potential of the TRII partnership.

## Increasing participation

EU and African actors acknowledge that increasing the participation of JAES stakeholders, in particular the member states and the Regional Economic Communities (RECs), is essential for delivering further on tangible results, and is critical to the JAES, especially at the early stage of its implementation.

Compared to other partnerships, the TRII partnership shows some positive developments. It is the only JAES partnership with a Sub-Saharan co-chair (South Africa) and attended by European and African member states' ministries beyond foreign affairs and development. In addition, over half of the participants at the last Joint Expert Group of the TRII partnership were African, which shows greater interest among African actors for that particular partnership. There is still potential for increased participation once

member states have a clearer idea of their roles and interest in participating in the TRII partnership.<sup>5</sup> This is particularly relevant for EU member states, as the trade-related issues dealt with fall under the competence of the European Commission, and not that of individual EU member states. Civil society organisations (CSO) participate, to some extent, in the EU and African Implementation Teams and the JEGs, yet their representative and effective participation could be increased further once the resistance of African member states and internal problems of the African and European CSO Steering Group are overcome.

Although attendance of some stakeholders, such as member states and EC officials, involved in the TRII partnership seems to be relatively high, some actors have expressed their concerns about the level of expertise in the meetings. In the future, the quality of debate in the partnership will greatly benefit from attracting more participants with an expertise on the priority actions, rather than diplomats, in line with the jointly agreed guidelines for JEGs.<sup>6</sup> This will enable a full implementation of the Action Plan as discussions would be focusing further on the substance of the partnership. It remains to be seen, however, to which extent the technical aspects of the Action Plan and the roadmap will be addressed in a more systematic manner in the near future if most initiatives fall technically outside the TRII partnership. Disconcertingly, only one REC was represented at the last JEG meeting. The current efforts made by African and EU actors to increase the information available, including the launch of a website<sup>7</sup>, an intranet, as well as direct outreach to RECs, should be sustained and strengthened as the information has not yet fully reached all the relevant actors, notably the member states and the RECs at the regional level<sup>8</sup>. Few are aware of its existence. The recent decision to establish more systematic contact with the RECs through the

appointment of a reference person<sup>9</sup>, as well as the current European Commission efforts to better inform the EC Delegations in Africa, in particular those who have regional offices to the RECs, holds potential for improvement.

The limited participation of the RECs in the TRII might be due to their limited interest in the TRII, perhaps because it is not yet, as it currently stands, perceived to be of direct relevance to them. Given their limited capacities, it is worth exploring whether a serious investment of the RECs in the partnership could be encouraged by focusing on the issues that are closest to their own priorities and processes, and by identifying the corresponding potential areas of complementarity. If lack of capacity proves to be an issue, financial support could also help tap the potential for higher input of the RECs in setting the trade and regional integration agendas of the partnership.

### Ensuring complementarity between existing EU-African frameworks

To be relevant, the TRII partnership should bring increased synergies between African integration processes and EPAs,<sup>10</sup> the Euro-Mediterranean Partnership, and bilateral trade agreements. Support to regional integration through EPAs is further an objective of the EC as spelled out in its October 2008 communication on regional integration.<sup>11</sup>

However, these issues have so far been deliberately avoided in the discussions of the TRII partnership. Political and technical dialogue on EPAs and EPA development support programmes, which is often quite sensitive and at times controversial, has taken place directly with the concerned regional groupings and countries. This is understandable from a trade negotiation perspective. Yet, as trade and regional integration are core elements of the TRII partnership, an outstanding challenge for the partnership would be to help better articulate the links and areas of complementarity between the existing processes at sub-regional level in Africa, EPAs, and the activities carried out at continental level.<sup>12</sup>

One way the JAES framework could potentially play a coordination role between those existing processes would be by offering a platform for sharing experiences and knowledge between North African and Sub-Saharan African countries on ongoing regional integration initiatives. In addition, synergies on the capacity building needs for the implementation of regional integration processes and trade agreements could be better identified and linked explicitly to ongoing needs assessments in the EPA context.

### Box 1

*Specific examples related to the three priority actions can be given as illustrations.*

With regard to the first priority action 'Support to African Regional Integration', regional Aid for Trade packages financed under the 10th European Development Fund (EDF) regional indicative programmes are counted as progress in the implementation of the first priority action. In addition, the Joint dimension of the Minimum Integration Programme (MIP) presented by the AUC in May 2009, and agreed to be a key activity for the implementation of the priority action for regional integration, would also need to be made more explicit. Similarly, among the ongoing activities in the second priority action, Africa-wide trainings on sanitary and phytosanitary measures (SPS) are provided through an existing EC initiative: the 'Better training for Safer Food Initiative'. Finally, the priority action infrastructure, which is currently the most advanced of the three in terms of implementation, is resting on a pre-existing mechanism (the Infrastructure Trust Fund). € 147 million have been committed, eight major projects approved, and € 10 million from the 9th EDF dedicated to support the start-up phase.

A new initiative worth noting and following in terms of potential added value, however, is the decision included in the roadmap to establish a new capacity building programme on Economic Policy Development and Management<sup>13</sup>.

### Clarifying the added value of the partnership further

Ultimately, the merits of the TRII partnership will depend on its effective added value to current processes. Actors in Africa and in Europe, beyond the AU and European Commissions, may show more enthusiasm once the specific contribution of the JAES in the areas covered is better defined and articulated. To do so, a pragmatic but nonetheless ambitious approach is required.

A closer look at the current roadmap reveals that the priority actions are mainly resting on existing initiatives external to the JAES (see Box 1). Moreover the financial resources for activities and institutional arrangement related to the TRII partnership will more likely be managed through existing frameworks such as the Cotonou Partnership Agreement.

The draft roadmap of the TRII partnership could benefit from further defining some concrete activities on areas of dialogue such as support to the AU and RECs efforts to better coordinate and rationalise regional integration processes in Africa, exchange of experiences with implementing FTAs with the EU in North and Sub-Saharan Africa, coordination of future monitoring exercises for EPAs at the sub-regional level and adapting EU support to regional integration in Africa (through Regional Indicative Programmes and regional Aid for Trade packages). The ultimate relevance of the TRII partnership will depend on its capacity to become a useful platform for EU-Africa dialogue on such trade and integration related issues in the future. If not, it will remain a mainly sterile technocratic exercise which is unlikely to attract true African and European interest for much longer.

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#### Notes

- 1 Peace and Security, Democratic Governance and Human Rights, Trade, Regional Integration and Infrastructure, Millennium Development Goals, Energy, Climate Change, Migration, Mobility and Employment, Science, Information Society and Space
- 2 A more detailed discussion on the TRII is forthcoming in an ECDPM Discussion Paper. Comments and suggestions are welcome (sb@ecdpm.org).
- 3 For a description of the institutional setting, see: Tywuschik, V. and A. Sherriff (2009), Beyond Structures? Reflections on the Implementation of the Joint Africa-EU Strategy, ECDPM Discussion Paper 87. Maastricht: ECDPM. <http://www.ecdpm.org/dp87> and Walker, A. and S. Colin (2009), The Africa-EU Partnership on Trade, Regional Integration and Infrastructure: Current state of affairs, ECDPM Background Note [http://www.acp-eu-trade.org/library/detail.php?library\\_detail\\_id=5057&doc\\_language=Both](http://www.acp-eu-trade.org/library/detail.php?library_detail_id=5057&doc_language=Both)
- 4 For more details on the past meetings, see [www.europafrica.org](http://www.europafrica.org) and the table annexed to Walker and Colin (2009).
- 5 This issue is not specific to the TRII partnership. See, for instance, on the Peace and Security partnership, Elowson, C. 2009. The Joint Africa-EU Strategy-A study of the Peace and Security Partnership. <http://europafrica.files.wordpress.com/2009/06/jaes-ps-foir2736.pdf>
- 6 Endorsed by the Africa-EU Ministerial Troika, November 2008.
- 7 <http://africa-eu-partnership.org>
- 8 Awareness of the RECs on the JAES at the regional level is limited while some contacts have been established with the liaison offices of the RECs in Addis.
- 9 Some positive elements can be already highlighted. Facilitated by ECDPM, the IRCC, for instance, officially representing COMESA, EAC, IOC, IGAD and SADC, has shown interest in participating in future joint meetings of the JAES at their 18th Regional Meeting in Nairobi. IRCC has decided to incorporate the implementation of the JAES in its work programme for 2010.
- 10 Action Plan for the Africa-EU TRII Partnership, December 2007; Communiqué from the 10th Ministerial Troika meeting, September 2008.
- 11 English version: [http://ec.europa.eu/development/center/repository/Communication\\_on\\_Regional\\_Integration\\_COM-2008-604\\_en.pdf](http://ec.europa.eu/development/center/repository/Communication_on_Regional_Integration_COM-2008-604_en.pdf); French version [http://ec.europa.eu/development/center/repository/Communication\\_on\\_Regional\\_Integration\\_COM-2008-604\\_fr.pdf](http://ec.europa.eu/development/center/repository/Communication_on_Regional_Integration_COM-2008-604_fr.pdf)
- 12 The European Parliament has also drawn attention on the coherence issue in the Report Maertens, One Year after Lisbon: the Africa-EU partnership at work, Report Maertens, 19 February 2009, 'the Joint Strategy should also address issues which, although formally belonging to a different institutional architecture, have a profound influence on the future of Africa and which shape the relationship between the two continents'.
- 13 Draft Roadmap for the implementation of the Action Plan, Priority Action 'Support to African integration agenda', 28 April 2009 : [http://africa-eu-partnership.org/au-eu/pages/templates/include.jsp?type=alfresco&older=Documents&subkey=documents\\_all](http://africa-eu-partnership.org/au-eu/pages/templates/include.jsp?type=alfresco&older=Documents&subkey=documents_all).

# WTO Roundup

## Canada Threatens WTO Action over EU Seal Ban

EU foreign ministers agreed to ban the import of seal products at a July meeting, amid pressure from domestic constituents. Hailed as a victory for animal rights groups, the ban has drawn strong criticism from Canada, which says the embargo violates international trade rules. Canada's annual seal hunt is the largest in the world and is an integral part of some coastal Canadian economies.

The ban would apply to all goods that contain seal products, such as fur, meat, and omega-3 diet supplements made from seal oil. However, the regulation contains an exemption for seal products produced from the traditional hunts of Inuit communities in Alaska, Canada, Greenland, and Russia. The ban does not prohibit shipment of seal products through EU member countries.

No countries voted against the proposal in Monday's meeting, although Denmark, Romania and Austria abstained. The EU parliament voted 550-49 to pass the ban in May).

The announcement of the vote drew quick reaction from Ottawa, which indicated plans to raise the issue with the WTO's Dispute Settlement Body (DSB). By requesting DSB consultations, Canada will initiate bilateral consultations on the matter. If those talks fail to produce a resolution after 60 days, Ottawa will have the right to launch an official appeal, asking the international trade court to rule on the issue.

On the eve of the EU vote, Canada's trade minister, Stockwell Day, and fisheries and oceans minister, Gail Shea, urged EU ministers to reject the ban noting that Canada's seal hunt is lawful, sustainable, and humane. They accused the EU of pandering to special interest groups, and argued that the trade decision should be based on science. They offered that the ban should include a clause that would exempt countries that follow humanitarian, scientific and environmental guidelines established by the EU themselves.

Still, the EU indicated public concern over the hunt could not be ignored.

## Lamy Reports Little Progress in IP Talks

WTO Members remain deeply divided on critical intellectual property issues in the Doha Round negotiations, WTO Director-General Pascal Lamy said in late July at an informal consultation open to the entire Membership. Despite Lamy's active involvement in the negotiations since March, Members remain at loggerheads over substantive matters, as well as over whether the current round of trade talks even has a mandate to address some of the intellectual property issues as part of the "single undertaking" of the Doha Round trade talks.

Two issues in particular have snarled discussions in the WTO's Council of Trade-Related Aspects of Intellectual Property Rights (TRIPS): whether to extend to all products the strong level of protection that is currently accorded to geographical indications, known as GIs, of wines and spirits; and whether the WTO's TRIPS Agreement should be amended to require patent applicants to disclose the origin of any genetic resources or traditional knowledge involved in their inventions, to show that they have received permission to use the materials and knowledge, and to demonstrate that they are sharing the benefits with the original owners.

The issues have largely split the WTO Membership into two sides. In July of last year, a coalition of more than 100 developed and developing nations - including the EU, Brazil, India, many African countries, and Switzerland - put forward a set of 'draft modalities' that call for the Doha talks to include the extension of GI protection afforded to wines and spirits to all products, as well as an amendment to the TRIPS Agreement to address the 'disclosure' issue and make the accord compatible with the Convention on Biological Diversity. But that group has been countered by another coalition - whose members include Argentina, Australia, Canada, New Zealand and the United States - that has opposed these 'modalities' on substantive and procedural grounds.

Since March, Lamy has held four informal consultations with a select group of 17 WTO members that represent the major sides in the debate. Despite the lack of progress in the talks, Lamy remained cautiously optimistic that the consultations had better defined the gaps and urged members to continue to focus on what is "practically achievable." Lamy's next consultation with the group of 17 countries will be held on 8 October.

## Canada-EU Make Peace on Biotech Dispute

Canada and the European Union have recently settled an ongoing trade dispute regarding Brussels' restrictions on imports of genetically modified (GM) products. In exchange for Canada dropping its complaint at the WTO Dispute Settlement Body (DSB), the EU has agreed to meet two times per year with Canadian authorities to discuss issues relevant to trade in genetically modified organisms (GMOs). The two parties will notify this settlement to the international trade court as a mutually agreed solution.

Canada, along with the US and Argentina, filed separate complaints with the DSB in May 2003 challenging the EU's GM import restrictions.

The Canadian complaint focused on canola, as this product had been previously banned by the EU on GMO grounds. The canola issue was resolved in March of this year when Brussels approved the last GM canola seed used by Canadian farmers, according to Trish Jordan, a spokeswoman for Monsanto Canada. Since then, Ottawa has consulted seed producers and farmers regarding the future of the trade complaint.

Canada and other countries have been lobbying the EU to accept genetically modified food since 1998, but the EU Trade Commission still faces resistance from some member states. Surveys also show European consumers are opposed to GMOs due to fears of health risks and the development of herbicide-resistant 'superweeds'.

Although Brussels has remained firm on its broader GM restrictions, its agreement with Ottawa may suggest that it is prepared to consider GMO products on a case-by-case basis, such as in the case of the July 2004 approval of imports of modified corn by Monsanto. The settlement with Canada does not require the EU to modify its policies, but rather to be open to an exchange of information aimed at avoiding barriers to trade.

The EU's discussions with the US and Argentina are ongoing.

*This information has been summarised from ICTSD's Bridges Weekly Trade News Digest and Bridges Trade BioRes.*

# EPA Update

Aurelie Walker<sup>1</sup>

## The Bahamas continues negotiations as CARIFORUM EPA is implemented

After signing an EPA with the EC on 15 October 2008, the government of the Bahamas was given a six-month extension to finalise the services offer. Although the goods component of the EPA is completed and signed, the EC is still working with the Bahamian authorities to finalise the negotiations of their services and investment commitments.

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Countries remain focused on the implementation of the [SADC] IEPA, its notification to the WTO, and ratification.

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## SADC IEPA signatory countries moving forward

Despite heavy criticism by fellow Southern African Customs Union (SACU) members against Botswana, Lesotho, and Swaziland for signing the IEPA together with Mozambique in June 2009, countries remain focused on the implementation of the IEPA, its notification to the WTO, and ratification. Negotiations continue on outstanding issues, and regional representatives have reaffirmed that negotiations towards a full EPA covering trade in services, investment, and trade related issues will be held in the future. SACU countries say they are concerned about the operation of the customs union. Speaking at the Southern African Forum on Trade, Xavier Carim, Deputy Director-General of International Trade in South Africa's Department of Trade and Industry reaffirmed that because only some SACU countries have signed the Interim EPA with the EC, customs controls and rules of origins controls will have to be strengthened within the region. Namibia and South Africa put forward proposals to explore alternatives to the EPA with the EC. The EC's primary concern is to maintain regional coherence and avoid regional fragmentation. Both sides agreed to meet again in September.

## Namibian civil society supports government's cautious stance on EPA

Civil society organisations in Namibia are rallying behind the government in its decision not to sign the interim EPA in its current form. Groups are lobbying the government to remain firm until the EC agrees to trade



concessions on infant industry protection, food security, export taxes, and free goods flow in writing. Nangof, the umbrella network for non-governmental organisations in Namibia, is canvassing signatures for a strongly-worded joint statement on the EPA, in which they voice their concern on major unresolved issues, as well as the threat to the Southern African Customs Union (SACU) now that Lesotho, Botswana, and Swaziland have signed the interim EPA.<sup>2</sup>

## East African Community delays EPA signing

The initialled Framework Economic Partnership Agreement (FEPA) calls for comprehensive EAC-EC EPA negotiations to be concluded by 31 July. However, the FEPA itself remains initialled and has not yet been signed which renders the deadline for the comprehensive EPA redundant. EAC countries say they would like to reach an agreement on outstanding contentious issues before signing the FEPA. "Negotiations on the EPAs were meant to conclude on July 31, but that will not be achieved because of EU introducing other voluntary trade-related issues," said Mary Nagu, Tanzania's trade minister in her ministry's budget presentation. She said the outstanding issues included government procurement, environment and sustainable development. "East African Community member states, including Tanzania, do not agree with this, as they are yet to be agreed on under the World Trade Organisation," Nagu said.<sup>3</sup>

## Business, trade groups agree to boost private sector role in EAC-EC EPA

The East African Business Council and TradeCom Facility have agreed to work together to strengthen the role of East African private sector in East African Community-European Commission Economic Partnership Agreement negotiations. Under the partnership, EABC will run a programme that will improve private sector awareness of the EAC-EC EPA negotiations and also strengthen its participation in trade policy formulation.<sup>4</sup>

## ESA countries to sign IEPA

ESA countries Madagascar, Mauritius, the Seychelles and Zimbabwe signed an interim EPA with the EC on 29 August.<sup>5</sup> Comoros and Zambia will sign at a later date. The ESA group has been working hard together with the EC over the summer and agreement may soon be reached on some of the remaining contentious issues. The ESA region has agreed to sign the IEPA in the form in which it was initialled and to lock-in the progress that has so far been made in the negotiations. ESA countries will receive a political guarantee from the EC Trade Commissioner that any agreements reached will be transferred into the comprehensive EPA, removing the need to alter the text of the IEPA. Both sides have agreed to continue negotiations on the outstanding contentious issues during negotiations towards the full EPA. The conclusion of the full EPA was previously considered to take place at the end of October 2009. A Ministerial meeting took

(Continued on page 14)

## Continued from page 13

place before the signing of the IEPA for EC Trade Commissioner Catherine Ashton and ESA Ministers to agree on an agenda for the timing and substance of the full EPA, with a view to finalising the negotiations.

### New West Africa market access offer

An EC-West African region technical experts and senior officials' negotiating session took place in Dakar from 16-23 July. Negotiators made significant progress in a number of areas including the EPA Development Programme (PAPED) and rules of origin.<sup>6</sup> Negotiators endorsed the convergence reported by the Technical Committee set up to examine the EC's new proposal on cooperation to implement the development dimension of the EPAs and noted the differences remaining. They instructed their experts to continue consultations in order to achieve consensus on proposals to submit to them during the next negotiating session.



West African negotiators presented a new market access offer at the meeting that foresees liberalisation of 63.12 percent of trade over 25 years (2010-2034). EC negotiators "took note" of the new proposal stressing that the improvement is marginal and that the offer will not foster economic development in the region. On the MFN clause, the parties reaffirmed their commitment to address this issue using the methodology agreed by the Chief Negotiators. The clause will be formulated to reflect the principles of reciprocity, and application of the clause will be on a case by case basis. The region submitted a draft text to the EC, of which the EC took note. Both

parties agreed to continue negotiations to reach a mutually satisfactory formulation.

Both parties recognised the importance of regional levies to the functioning of UEMOA and ECOWAS and agreed on the need to preserve these resources. A joint legal study will be undertaken on the nature of the taxes to determine appropriate wording in the text of the agreement. The next round of technical negotiations is scheduled for 21 September.

The West African Ministerial Monitoring Committee recommended to Ivory Coast to envisage postponing the beginning of liberalisation within the framework of its EPA Committee by at least 1 year to ensure that appropriate rules of origin are set in place. Ivory Coast is the only member of the UEMOA customs union trading with the EC under the EPA. Rules of origin need to be in place to prevent trade deflection as the country undertakes its liberalisation commitments towards the EC without the rest of customs union.

### West Africa, EC make progress on rules of origin – fish still controversial

A meeting of the West African-EC expert group on rules of origin took place in Dakar from 20- 21 July. Agreement was reached on 10 chapters and headings for agricultural products in chapters 2-23. Similarly, with regard to industrial products, the parties have negotiated headings in Chapters 32 to 94. An agreement was reached on the chapters and headings ex 3404, ex 3922-3926, 69. In the case of products containing sugar, the parties agreed to continue discussions at future meetings. Discussions on fish and crustacea under chapters 3 and 16 did not take place. However, the EC presented a new 'fish package' to the meeting. In return, the EC demanded that WA withdraw all other fish related demands that had been submitted. This was not accepted by the group and, as such, both sides agreed to continue discussions on issues relating to fish to allow negotiations to progress.

### Central Africa EPA negotiations remain stalled

Progress in the CEMAC region is dependent upon the completion of internal reorganisation in the CEMAC secretariat. This process has yet to be completed and therefore no progress has been made.

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Papua New Guinea will remove customs duties on 88 percent and Fiji will cut 87 percent of their imports from the EU over the next 15 years.

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### Papua New Guinea signs IEPA

Papua New Guinea signed an interim EPA in London on 30 July. Fiji – the only other of the 14 Pacific Island Forum (PIF) countries negotiating with the EC to initial the interim EPA claimed that more time was needed for completion of their national procedures and therefore has not signed yet. The agreement focuses on trade in goods and includes important provisions on rules of origin for the fisheries sector. Papua New Guinea will remove customs duties on 88 percent and Fiji will cut 87 percent of their imports from the EU over the next 15 years.<sup>7</sup> Currently, a text is being drafted on the rendezvous clause on services that will commit the two parties to negotiate services in the future. However, the PIF secretariat has insisted that there will be no services negotiations unless there is an enhanced-mode 4 commitment from the EU side. Furthermore the PIF is trying to conclude a regional framework on trade in services before negotiating services with the EU.

### Pacific Islands agree to PACER plus negotiations

Heads of state and governments at the 40th Pacific Islands Forum in Australia, held from 5-6 August, have agreed to the recommendation from Forum trade ministers to commence PACER Plus negotiations forthwith.<sup>8</sup> Leaders directed that the trade ministers should discuss a framework for PACER Plus negotiations including timelines and identification of issues, which the Chief Trade Advisor could negotiate. Fiji, which was suspended from the group following a military coup, has been excluded from the talks. Fiji's Prime Minister Commodore Voreqe Bainimarama said his country is pulling out of the Trade Agreement negotiations entirely as a result of the suspension. "If we are not included in the talks – we withdraw from the talks," Bainimarama said. "They don't have to come and talk to us anymore."<sup>9</sup>



“

If we are not included in the talks – we withdraw from the talks. ”

*Fijian Prime Minister Commodore Voreqe Bainimarama*

### High-level EC negotiations target Lisbon treaty

The European Union's legal and institutional architecture will undergo fundamental transformation with the possible entry into force of the Lisbon Treaty in October 2009. Sensitive negotiations are taking place at the highest levels in the run-up and public information is scarce. Entry into force of the Lisbon Treaty will have significant implications for future development cooperation and EU external action in general.

#### Author

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#### Notes

- 1 Melissa Julian is away.
- 2 <http://allafrica.com/stories/200907090919.html>
- 3 <http://www.nation.co.ke/business/news/-/1006/6317201-lhrcvz/-/>
- 4 <http://allafrica.com/stories/200907201264.html>
- 5 [http://www.bilaterals.org/article.php3?id\\_article=15765](http://www.bilaterals.org/article.php3?id_article=15765)
- 6 EPA news Flash from DG Trade EU-West Africa Economic Partnership Agreement (EPA): negotiators meet in Dakar (Senegal)
- 7 EU and Papua New Guinea sign trade and development agreement  
<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/1210&format=HTML&aged=0&language=EN&guiLanguage=en>
- 8 <http://www.forumsec.org/pages.cfm/newsroom/press-statements/2009/final-communique-of-40th-pacific-islands-forum-cairns.html>
- 9 [http://www.bilaterals.org/article.php3?id\\_article=15745](http://www.bilaterals.org/article.php3?id_article=15745)

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# Trade Negotiations Insights

## Calendar and resources

### ACP-EU Events

September	
EU-Pacific Technical Meeting, Brussels (tbc)	21-26 EU-West Africa Technical Negotiations (tbc)
2-8 SADC Summit for Heads of State and Government, Kinshasa, DRC	22-23 OECS Trade Negotiating Group, St. Lucia
3-4 TRALAC Annual Conference, Cape Town, South Africa	23-25 CARIFORUM/French Caribbean Overseas Regions/ European Overseas Countries and Territories TF on the EPA, Martinique
7-11 ECOWAS Regional Workshop and Training on MDGs, Abuja, Nigeria	24-25 Tripartite COMESA-EAC-SADC Regional meeting, Lusaka, Zambia
11 EU-South Africa Summit, South Africa (tbc)	28-29 EU Africa Business Forum (with Commissioner De Gucht), Nairobi (tbc)
16-18 ILO/CARICOM Workshop on International Trade Negotiations, FTAs and the Decent Work Agenda, Port-of-Spain	28-1 17th Session of the ACP Parliamentary Assembly and Inter-Sessional meetings of the ACP-EU Joint Parliamentary Assembly, Brussels
18 2nd ACP-EC negotiating meeting of Group II "Revision of the Cotonou Agreement"	

### WTO Events

September	
6	WTO Open Day
14-15	Committee on Trade and Development – Dedicated Session on RTAs
15-16	Committee on Regional Trade Agreements
22	Working Group on Trade, Debt and Finance
24	Committee on Agriculture
25	Dispute Settlement Body
28-30	WTO Public Forum 2009 – Global Problems, Global Solutions: Towards Better Global Governance
October	
5-9	Council for Trade in Services
7+9	Trade Policy Review Body - Chile
8	Committee on Budget, Finance and Administration

### Resources All references are available at: [www.acp-eu-trade.org/library](http://www.acp-eu-trade.org/library)

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