

Between «the Hammer and the Anvil»:

# What happens if EPAs are not concluded in time?

*As the deadline of negotiations between the EU and ACP nears, Economic Partnership Agreements (EPAs) seem the likely outcome. Yet some ACP countries may not be in a position to sign an EPA by the end of the year. There is no easy solution, but development objectives should remain the guiding principle.*



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Should any of the 41 ACP LDCs not sign an EPA, it would maintain, under the «Everything But Arms» Initiative – EBA –, its current market access to the EU.

In signing the Cotonou Partnership Agreement (CPA), the European Union (EU) and the African, Caribbean and Pacific states (ACP) agreed to replace the current preferential trade regime with Economic Partnership Agreements (EPAs). These must be reciprocal free trade agreements, compatible with World Trade Organization (WTO) rules, which will liberalize trade between the parties and could enhance cooperation in all trade-related areas. EPAs are due to be agreed by the end of 2007 to enter into force from 1 January 2008, as stipulated in the CPA. 1 January 2008 also marks the expiry of the WTO waiver for the current regime. The waiver was necessary to maintain, during the negotiating period, the non-reciprocal Cotonou preferences that characterize trade between the EU and the ACP, as these arbitrarily discriminate between developing countries in a way not compatible with WTO rules. In the EPA review required by Article 37.4 of the CPA, completed in May 2007, all parties reaffirmed their commitment to conclude EPA negotiations on time. But they noted that this depends on acceptable progress, mainly in three areas: market access, the text of the EPA, and accompanying measures. Divergences remain. Some question the adequacy of the deadline. Some point that they will not sign an EPA by the end of the year 2007 if it does not promote development.

If that is the case, what are the alternatives available as for 2008 onward? Under the CPA, the EU must provide a new framework for trade which is equivalent

to the existing situation and compliant with WTO rules. These requirements narrow the options down to two: the EU's generalized system of preferences (GSP), that cannot guarantee all ACP countries the same level of market access that they enjoy now and would thus have to be changed, which seems improbable, or a continuation of the current regime that, being discriminatory, would require another WTO waiver, which seems difficult (For a detailed analysis, see S. Bilal, *Concluding EPAs*, ECDPM Management Brief 12, 2007, [www.ecdpm.org/pmr12](http://www.ecdpm.org/pmr12)).

## Maintaining the status quo

Prolonging the Cotonou regime would leave no ACP country worse off, but would discriminate among WTO members. The EU would need a new waiver to cover the non-discrimination imposed by article I of the GATT. And the chances of obtaining it seem slim. Besides, the EU is reluctant to this option. It states that unilateral preferences have failed to promote development and should be replaced by EPAs. Also, it does neither want to prolong a situation that is illegal under WTO rules, nor to do «favours» to other WTO members in return for agreement on the waiver.

## The «next best» regime

According to the European Commission, the default option would be the «next lowest» trade regime: the GSP. From Janu-

Dr Sanoussi Bilal  
Enrique Valerdi  
European Centre for Development Policy  
Management (ECDPM)  
Onze Lieve Vrouweplein 21  
6211 HE Maastricht  
The Netherlands  
sb@ecdpm.org

ary 2008, the EU will apply GSP tariffs on all imports from ACP countries that have not signed an EPA. Although compatible with WTO rules, the generalized system of preferences – GSP – would, in its present form, fail to provide these countries with a new framework for trade which is equivalent to their existing situation.

The EU's GSP has three different schemes: the standard GSP, the special arrangement for least-developed countries (LDCs), or Everything but Arms (EBA), and the special incentive arrangement for sustainable development and good governance, or GSP+.

EBA grants all LDCs duty-free, quota-free (DFQF) access to the EU for all products save arms and munitions. Should any of the 41 ACP LDCs not sign an EPA, it would maintain, under EBA its current market access to the EU, in compliance with WTO rules, though under more restrictive rules of origin.

The EU trade relations with ACP non-LDC countries, which are not eligible for EPA, would thus fall under the standard GSP scheme, much less favourable than Cotonou. A report of the Overseas Development Institute (*The costs to the ACP of exporting to the EU under the GSP*) found that all non-LDC ACP states would face tariff jumps. Concretely, 267 of their exports would experience a 10 percent or more ad valorem tariff jump and/or the imposition of new or increased specific or compound duties, some of which are high enough to render ACP exports from these countries uncompetitive and make them collapse. Exporting to the EU under the standard GSP regime would be very damaging for some ACP countries. ODI estimated that «the new tariffs of 10 percent or less would result in the transfer from the ACP states to the European treasuries of some euro 156 million per year, equivalent, for example, to 2.6 times EuropeAid's commitments to health projects in all ACP states in 2005.

### Trade-offs and waivers

The current waiver demanded great efforts and concessions from the EU to remove opposition (namely from Latin American banana producers and Asian canned tuna producers). These countries, competing with ACP exports in the EU market, are likely to oppose an extension of the Cotonou regime. And other countries might use the EU waiver request as a bargaining chip on other WTO issues.

Also, WTO members are not being responsive to requests for waivers. The EU request, in 2005, for extension of the banana regime waiver and the USA request, also in 2005, for a waiver for AGOA (African Growth and Opportunity Act), have stalled before the Goods Council of the WTO.

Namibia could find itself paying in taxes to the EU four times as much each year as it receives from «EuropeAid». According to the European Commission itself, West Africa region could lose more than 1 billion euros of trade and Central Africa, about 360 millions euros. Obviously, this would not comply with the CPA requisite that no country shall be left worse off.

The GSP+ is the one scheme close to a trade regime that would leave no country worse off. But, as Cotonou preferences were better, no ACP country applied by the deadline (December 2005), and the list is now closed.

### An enhanced GSP+

Some think the special incentive arrangement for sustainable development and good governance (GSP+), or an enhanced GSP, could be a good alternative to EPAs. ODI suggests that only about one tenth of ACP exports are not covered by the GSP+ and their inclusion in it would not erode significantly ACP preferences. To be an effective alternative, GSP+ should also cover the small number of products that receive better treatment under Cotonou. However, this requires an overhaul of the EU's trade system, which is not envisaged. The list of beneficiaries is closed until 2009. And few ACP States are currently eligible. GSP+ may be granted to a country that has ratified and effectively implemented 16 core human and labour rights conventions and at least 7 environment and governance conventions; and that is vulnerable, considering the volume and diversification of its GSP-covered exports to the EU and its income as classified by the World Bank.

Whilst all ACP countries but South Africa are vulnerable, only 11 had ratified the required conventions at the beginning of 2007. However, the GSP+ regulation offers some flexibility. GSP+ may be granted to a country that has, due to constitutional constraints, not ratified and implemented two of the human/labour rights conventions if it formally commits to sign, ratify and implement them within a period of time. This was the case of El Salvador. The EU could offer the same treatment to the ACP. Such flexibility could be crucial, as 32 ACP States – non-LDCs as populous as Nigeria or landlocked as Zimbabwe among them – miss only one or two conventions.

### A defeat for development

According to EU Trade Commissioner Peter Mandelson (ECDPM & ICTSD, *Trade Negotiations Insights*, September 2007), «there is certainly no Plan B that offers

### The case of El Salvador

When applying for GSP+, El Salvador invoked incompatibility with its Constitution of ILO conventions 87 and 98. However, it committed to sign and ratify them before the end of 2006. The Commission examined the request and included, provisionally, El Salvador in the list of GSP+ beneficiaries from 1 January 2006 to 31 December 2008. In August 2006 El Salvador ratified both conventions. Later, it provided all other requisites envisaged by the regulation. In December 2006, El Salvador was granted GSP+ beyond 1 January 2007.

either the same development benefits or can improve on ACP market access to Europe». The EU might face an insurmountable challenge to comply with both the CPA and WTO rules if any ACP country does not sign an EPA.

But the gist lies elsewhere. The aim of the CPA is the reduction and eventual eradication of poverty, consistent with sustainable development and the gradual integration of the ACP into the world economy. EPAs should bring this about via free trade agreements that cover issues such as services and investment, key to development, accompanied by measures to offset the painful readjustments liberalization requires. Both parties agree on this and wish to make EPAs tools for development. But they diverge as to how to achieve it.

The ACP are right: liberalization must be handled carefully if it is to promote development; they have the right not to sign an offer that might fail to do so; and removing the preferences that have been a lifeline for them would be very damaging. But the ACP countries must reform if they are to develop. With the global economy becoming ever more integrated, closed markets do not seem to make sense. Development implies change – for the better. Sticking to the same schemes hardly seems to be the best way for the EU and ACP to promote development. The ACP must adopt a forward looking approach, focusing first on establishing their own reform strategy for development. In doing so, they have to identify whether, and if so how best, an EPA can serve as a catalyst in this process. Unfortunately, only few ACP countries have engaged in such an approach, whereas the EU is putting increasing pressure on all ACP to conclude comprehensive EPAs. Development is at that cost, the European Commission believes. This might rather be at the cost of development, though!