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Economic Partnership Agreements: What happens in 2008?

The EU–ACP trade negotiations are running out of time and all the available options are unpalatable or difficult

The terms on which the EU and the Africa Caribbean and Pacific (ACP) states trade with each other are established in the Cotonou Agreement 2000, which specifies that a new regime must be agreed by end-2007, a date that coincides with the expiry of a World Trade Organization (WTO) waiver for the current regime (Box 1). This Briefing Paper which builds upon substantial ODI work identifies the best way forward.¹

The waiver is necessary because the EU–ACP trade regime was found during the 1990s to be in conflict with multilateral trade rules because the EU discriminates in favour of some developing countries in ways that cannot be justified under any other WTO procedures. The negotiations are focusing on Economic Partnership Agreements (EPAs), one of the stated objectives of which is to make the regime WTO compliant.

The problem is that the EPAs will be very detailed agreements, specifying exactly what treatment will be accorded to thousands of separate products. Yet discussion of these details has barely begun.

It is now too late for agreements that are credible, negotiated and detailed to be in place by 31 December 2007. On past precedent (such as the EU–South Africa trade agreement) the negotiations still have two to three years to run.

The available options are (in declining order of the problems they would cause):

1. to replace Cotonou in January 2008 with the EU's 'next best' trade regime whilst negotiations continue;



Will Namibian beef still go to Europe in 2008?

2. to agree without negotiation detailed schedules prepared by one party to the EPA talks;
3. to seek an extension of the WTO waiver;
4. to create a better 'fallback, interim regime' for the ACP than exists at present;
5. to agree EPA agreements that establish the key principles but leave the details to further negotiation.

The first two are undesirable. The other three face problems.

The 'next best' regime

According to the statements made by the European Commission officials, this will be the default option. The Commission accepts that it would be a bad outcome; ODI research has quantified the scale of the damage.²

Unless positive action is taken to avoid this,

Key points

- EPAs will be very detailed agreements: discussion of these details has barely begun.
- Namibia could find itself paying in taxes to the EU four times as much each year as it receives from EuropeAid.
- Solutions can be found: but only if they are sought.

Overseas Development Institute

ODI is the UK's leading independent think tank on international development and humanitarian issues.

Box 1: Why EPAs?

The EU has had a special aid and trade regime with the ACP since 1975 under a succession of accords. The latest of these, the Cotonou Agreement in 2000, continues the traditional aid regime but foresees a major change on trade that responds to adverse rulings in the GATT and WTO on its predecessor. It gives as the preferred – but not only – option the creation of EPAs by 2007 that inter alia require the ACP to liberalise their imports from the EU (in order to comply with WTO Article 24). Whilst these are being negotiated the old unilateral Cotonou regime has continued.

So far the ACP are negotiating in six regional groups which will lead to separate EPAs, but in early 2007 it became clear that there is a debate in East Africa over whether to set up a seventh EPA.

officials say, from January 2008 the EU will apply to imports from the ACP the tariffs set by the regime that applies to all developing countries: the Generalised System of Preferences (GSP). There are three ‘levels’ of GSP tariff: the standard (which would apply to all ACP other than the least developed countries (LDCs), the Everything But Arms regime covering all LDCs (including those that are ACP states), and the GSP+ (for which no ACP are currently eligible).

The standard GSP regime is much less favourable for many ACP exports than is Cotonou. ODI’s research has found that all non-LDC ACP states would experience a jump in the EU tariff applied to some of their exports. Although many of the increases would be relatively small, 267 of the goods they export will experience a tariff jump of 10% or more ad valorem and/or the imposition of new or increased specific or compound duties, some of which are very high.

Nearly two-thirds of non-LDC ACP states would see a tariff-jump on over 25% by value of their current exports to the EU; for just over one-quarter of them, the proportion affected will be over 50%. The most seriously affected countries will be those with a relatively high proportion of exports in products that will face the steepest tariff jumps: 20 states including Belize, Kenya, Namibia, Suriname and Swaziland, will be particularly badly hit (Box 2).

Any new tariff results in taxes being paid to the EU, notionally by the importer but in practice (through a cut in the price paid) by the ACP. ODI calculates that the new tariffs of 10% or less would result in the transfer from the ACP states to the European treasuries of some €156 million per year (equivalent, for example, to 2.6 times EuropeAid’s commitments to health projects in all ACP states in 2005). When tariffs of over 10% and specific duties are included, the EU’s tax take would be much greater. Namibia could find itself paying in taxes to the EU four times as much each year as it receives from EuropeAid.

But in such cases these high taxes will often not be paid – for the simple reason that ACP exports will collapse. The tariff is so high as to make ACP exports uncompetitive; and in many cases their competitors receive more favourable, non-reciprocal access (and will continue to do so). This option would not create a level, WTO-friendly playing field: EU trade policy would continue to discriminate in favour of some

trade partners (that are richer than the ACP in some cases).

The argument advanced for this option is that EU rules require it to take a positive decision if Cotonou preferences are to be extended into 2008 – it will not happen by default – but with 27 members the necessary political will is absent. Instead, the EU will by default do what it has never done before: raise tariffs whilst trade negotiations (which always overrun) are still continuing.

If it were true that an EU of 27 is unwilling to continue low tariffs on imports from very poor and mainly uncompetitive countries its ability to liberalise elsewhere would be in doubt. This would undermine the credibility of assurances that, for example, the EU would ratify any deal under the Doha Round of negotiations (which would liberalise towards very competitive states).

Imposed schedules

It would be possible to complete the negotiations by end 2007 if one side were to produce a set of liberalisation schedules as a *fait accompli* – which the other side must sign (under the threat, for example, of the GSP option). This may not be a likely outcome as it would impose formidable technical as well as political challenges for the EU. But it exists as a possible outcome and its undesirability hardly needs explanation.

The reason this is second and not first in the list of undesirable outcomes is that it would delay the point of reckoning for ACP exports. Once an EPA is signed it will be the task of each ACP state to draft and implement laws to lower its tariffs on imports from the EU over a period lasting, probably, over

Box 2: Social impact: The case of Namibia and Kenya

Around 70% of Namibia’s population is wholly or partly dependent on agriculture, mainly livestock rearing. Secure access to the EU beef market has enabled the industry to pay premium prices to farmers and invest heavily in the development of communal livestock production. However, Namibia’s beef exports to the EU would pay tariffs equivalent to 142% if it lost the current preference, which would endanger the whole industry since supply to the EU is highly interlinked to its ability to enter other markets.⁴

The Kenyan horticulture industry, which employs around 135,000 people, will also find it hard to continue exporting to the EU under GSP since its major competitors face zero tariffs. Its collapse would not only have severe social consequences, but would also undermine EU development aid programmes such as those of the UK and Denmark which are supporting the horticultural Business Service Market Development Programme.

two decades. Even with agreed negotiated schedules there will be great scope for backtracking by reluctant states. Only if, and when, the EU declares one of its partners to be in default would it change its treatment of their exports. As things stand, this would be to the GSP – so the effect would be no different from that of option 1, only later.

Extend WTO waiver

This option is not undesirable, but it is problematic. Waivers have traditionally been the response of choice by OECD states wishing to ensure the multilateral legality of their preferential accords. It is a favoured option for some in the ACP and the European Parliament. But the ACP face two related problems.

One, it is the EU that must act in the WTO but the ACP that will suffer if it does not. The GATT and WTO rulings went against the trade policy of the EU, which must therefore be brought into conformity. A waiver to allow the ruled-against practices to continue for an extra period of time must be sought by the country that has the problematic trade policies: the EU. The ACP may request the EU to act, but they cannot ensure that it does so.

The EU's reluctance arises partly from a legitimate desire not to have to seek a further extension of policies that have been declared 'WTO illegal' and partly because other WTO members have begun to ask for 'favours' in return for agreeing to a waiver. The EU is reluctant to concede such requests, and if it did the effect would be to erode ACP preferences.

However, there is a precedent that could be useful: the waiver for Cotonou that expires in 2007 was delayed for two years whilst the EU negotiated with objectors. This supports the EU argument that obtaining a waiver is now difficult but it also shows that the EU considers it legitimate to continue with Cotonou preferences whilst a waiver is being negotiated (as it did from 2000 to 2002). The waiver does not need to be agreed by January 2008, only to be under discussion, to justify a continuation of the current trade regime. The key obstacle, therefore, is EU reluctance to seek a new waiver.

A better fall-back regime

According to Cotonou EPAs are not the only option – only the first to be investigated. Article 37(6) commits the EU to consider providing states that do not join an EPA with a 'new framework for trade which is equivalent to their existing situation ...', and which would be 'in conformity with WTO rules'. The EU's problem is that it has agreed to an obligation that it cannot easily fulfil. In 2000 when it signed Cotonou none of its other trade regimes was 'equivalent' to Cotonou. During the succeeding eight years it has failed to create such a regime.

But one regime comes close: it is the GSP+, which is available to the 15 countries that applied by

December 2005 and meet its criteria (Box 3). None of the ACP applied by the terminal date (as they had no immediate need since Cotonou is better), and the beneficiary lists are now closed until 2009 unless the EU decides otherwise.

To be an effective fallback, the GSP+ must be accorded temporarily to all non-LDC ACP states from January 2008 and extended (at least for them) to improve its provisions on the limited number of goods for which Cotonou is better. If the EU were to do this, it would avoid a short-term disruption to trade whilst giving all parties a breathing space in which either to finalise an EPA, or to ratify and implement the remaining conventions needed to establish permanent eligibility (or both). These actions are wholly autonomous actions that the EU can decide to take (just as it could create an alternative, GSP-based regime specifically for the ACP, though whether there is time to do this by end 2007 is questionable).

Unlike the WTO waiver option the 'solution' is entirely in the hands of the EU but, like the waiver, the problem is its unwillingness to act. Again, a casualty will be the EU27's credibility as a liberalising force. So far the Commission has set its face against either of the changes to the GSP+ which it alone can initiate.

A framework EPA

End-2007 is an impossible deadline for a 'normal' trade agreement because of the need to agree thousands of detailed tariff changes, but it is not necessarily unattainable for an accord that establishes the key principles and leaves the detail for later. The ACP have asked for the negotiations to be extended for two or three years, but there is a legitimate concern that this might simply result in a loss of momentum. This could be avoided by a framework EPA that established:

- the parties' intention to liberalise 'substantially all' trade (a key WTO requirement – Box 1);
- the date by which this would be completed; the Commission has indicated this could be as late as 2032;³
- the phasing of liberalisation within this period

Box 3: GSP+: are the ACP eligible?

There are two sets of criteria for GSP+ eligibility: on 'vulnerability,' and on human/labour rights and environmental/governance principles. The first is unproblematic: all the ACP appear to be eligible. On the second, the 2005 Regulation required countries initially to have ratified and implemented at least 23 out of 27 relevant Conventions and, by end 2008, to have ratified and implemented all. But the existing beneficiaries of the scheme that GSP+ replaced (all Latin American) were deemed automatically to fulfil the initial requirement in order not to disrupt trade, even though three of the 11 appear not to have done so. This is critical: the EU could offer the same initial flexibility to avoid trade disruption to the ACP (12 of which appear already to have ratified more than the initially required numbers, whilst a further 29 are missing only one or two). It would be building on its own precedent not bending the rules.

Box 4: The WTO and a framework EPA

For an EPA to be WTO-compatible, the minimum requirement is that it complies with Article 24 of GATT 1994, which requires duties to be eliminated on 'substantially all the trade' with 'a plan and schedule for the formation of the trade agreement within a reasonable length of time.' In other words, to reach a WTO compatible trade agreement by the end of this year, an EPA must provide a 'schedule' for reciprocal tariff liberalisation – but not necessarily a list of which item falls into each of the sequential tranches provided in the schedule. Nor does an EPA need to include an agreement on services or trade-related issues to ensure WTO compatibility.

Source: Bilal, San (2007) 'Concluding EPA Negotiations: Legal and institutional issues', report prepared for the Netherlands Ministry of Foreign Affairs, Maastricht and Brussels: ECDPM.

by specifying the dates (probably around five) on which groups of products would be liberalised (and the dates for the parties to agree the precise list of goods to be liberalised in each group);

- similarly broad provisions of principle on the development dimensions of an EPA and any other provisions (such as on services trade) to which the parties are willing to agree in principle (with target dates for agreement on the details);
- institutional and safeguard arrangements.

Such an accord could be WTO-compatible (Box 4). Provided that it represents a genuine commitment and is implemented according to its timetable, it is certainly not clearly incompatible.

Such an approach has not been widely discussed, so its acceptability to the EU and the ACP is unknown. To work, the ACP would have to agree a framework without all the details being in place. They may be unwilling to do this even though the only commitment is to the deadlines for agreeing what is to be liberalised, and when. At the worst, if agreement cannot subsequently be reached on these details, an ACP state can always withdraw and be no worse off than under the GSP option. If it with-

draws after 2008, it may have been able to become a GSP+ beneficiary, making an EPA unnecessary.

The need for debate

None of the options is problem free. The first is the worst and the most worrying because it is what will happen unless the Commission takes positive action to prevent it. Frank, open discussion of these (and possibly other) options is not happening. This is because the EU has retreated into 'negotiation mode': a belief that to admit the possibility of December 2007 being an unrealistic deadline will be self-fulfilling by removing the pressure on parties to agree. Commission officials decline to be drawn on what will happen in January 2008 if EPAs are not in place.

But there are other 'self-fulfilling prophecies' to consider. European importers and investors in the ACP have to decide what they will do from 2008. They may consider that prudence requires them to assume that the standard GSP will be enforced. In their decisions on what to purchase next year (which they will start to make from mid-2007) or where to invest they may produce the negative (and incoherent) effects foreseen in Box 2.

It is this drift in EU practice that is damaging development. Solutions can be found: ODI has identified a range of options and no doubt there are others. But they will be found only if they are sought. The Commission is making itself hostage to achieving the seemingly impossible target of the EPA deadline.

One potential casualty is the Lisbon Euro–Africa summit which will take place in December with EPAs still unresolved. European leaders may find themselves facing hostile African partners, concerned over their fate a month hence and, possibly, knowing that export orders have been cancelled by importers fearful of paying GSP duties. The EU bears a heavy responsibility to ensure that its trade policy is coherent with its other policies on development and on Africa.

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Endnotes

1. See ODI Briefing Papers (2006): 'Economic Partnership Agreements (EPAs): Where we are', *Briefing Paper 4*; 'The Potential Effects of Economic Partnership Agreements: What quantitative models say', *Briefing Paper 5*; 'The "Development Dimension": Matching problems and solutions', *Briefing Paper 6*. All at http://www.odi.org.uk/publications/briefing/briefing_papers/index.html; ODI (2007a) 'The Costs to the ACP of Exporting to the EU under the GSP', report prepared for the Netherlands Ministry of Foreign Affairs; ODI (2007b) 'Analysis of the Economic and Social Effects of Namibia's Potential Loss of Current Preference to the European Union', report prepared for the Namibian Agriculture Trade Forum.
2. See speech by Commissioner Peter Mandelson (2007) at the plenary session in Strasbourg on 23 May 2007. See ODI (2007b) op. cit. (f/n 1) for detailed results.
3. As suggested by Peter Mandelson (2007) at the ACP EU Development Council meeting in Bonn on 13 March 2007, the EPA schedule for the ACP could comprise bands of liberalisation which would give transition periods up to 25 years for sensitive products.
4. ODI (2007c) 'The end of current EU preferences for Namibia: Economic and social impacts', *Project Briefing*.

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