



EPA negotiations and regional integration in Africa:

Building or stumbling blocs

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1 Introduction

The start of 2008 marked the quiet death of over 30 years of Lomé/Cotonou preferences, and yet most African, Caribbean and Pacific (ACP) countries did not lose their privileged access to European markets. Eighteen African states, including most non-least developed and some least developed countries (LDCs), have initialled interim economic partnership agreements (IEPAs) with the European Union (EU), as have two Pacific non-LDCs, Fiji and Papua New Guinea (PNG); the Caribbean countries (CARIFORUM) have gone further and have agreed full economic partnership agreement (EPA), signed on 15 October 2008. The remaining ACP countries, apart from South Africa, now export to the European market under the EU Generalised System of Preferences (GSP): its favourable Everything But Arms (EBA) sub-regime in the case of LDCs, and the less favourable standard GSP for Nigeria, Republic of the Congo, Gabon and seven Pacific countries (Cook Islands, Federated States of Micronesia, Nauru, Niue, Palau, Marshall Islands and Tonga). South Africa continues to export under its own free trade agreement (FTA) with the EU, the Trade, Development and Cooperation Agreement (TDCA).

As World Trade Organization (WTO)-compatible free trade deals, the (interim) EPAs have removed the risk that the end of the Cotonou waiver would result in

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some ACP losing their preferential EU market access. Free from the pressure to meet WTO commitments, the parties can now continue negotiations towards more comprehensive EPAs, based on their initial development objectives.

But what exactly have countries agreed to and what are the implications so far for regional integration in Africa?

2 Background

2.1 From Lomé to Cotonou

The Lomé Agreements were initially considered as highly innovative development cooperation agreements. Predictable aid flows whose management was entrusted primarily to the ACP countries, non-reciprocal trade preferences and several export price stabilization mechanisms as well as commodity protocols for bananas, rum, sugar and beef and veal were considered to be very progressive measures that would enable ACP governments to achieve their development goals. However, over the years the Lomé relationship came under increasing pressure, especially after the end of the Cold War.

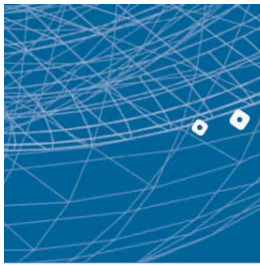
The Lomé trade regime did not achieve its expected results. Despite preferential access to EU markets in as much as 99% of all products, the ACP share in European imports had dwindled, from nearly 8% in 1975 to 2.8% in 2000. Perhaps most strikingly, non-ACP developing countries that did not benefit from the trade preferences have been outperforming the ACP countries in exports to the EU. The export price stabilization mechanisms and the commodity protocols, while providing a lifeline to many (small) ACP countries has not led to the much-needed export diversification of the ACP: in 2007, over three quarters of EU imports from the ACP consisted of primary products, mainly agricultural products (23.8%) and energy (42%)¹. In 2006, 31 ACP countries relied on only one agricultural commodity for more than 20% of their total export earnings². As a result, in 2007, 10.2% of EU imports in agricultural products originated in the ACP, even though in total, products from the ACP accounted for a mere 2.82% of the share of EU total imports. However, gains from agricultural exports are shrinking, as ACP exporters are facing declining prices in the EU market in the context of the reform of the EU Common Agricultural Policy.³

¹ Statistics excluding South Africa, see

http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_113468.%20South%20Africa.pdf

² Koroma, F. and Ford, J.R.D, The agricultural dimension of the ACP-EU Economic Partnership Agreements, FAO 2006, <ftp://ftp.fao.org/docrep/fao/009/a0676e/a0676e00.pdf>

³ Further, EU agricultural exports to the ACP have increased over the past years, which has lowered the ACP trade surplus towards the EU. For an overview of the recent trends in ACP-EU agricultural trade, see: The changing context of ACP-EU agricultural trade relations: developing a response, Paper commissioned for the CTA-ECDPM dialogue, Challenges of changing agricultural markets in the trade: Identifying an Aid for Trade agenda for sector', Brussels, 14-15 April 2008, <https://aidfortrademeeting.pbwiki.com/f/Paper+1+Changing+context+ACP-EU+Agri+trade.pdf>



Besides the disappointing results of the EU preferential trade regime in favour of ACP countries, tension has been growing between the preferences and the rules of the World Trade Organization (WTO). WTO rules do permit preferences as such, as long as they are based on objective and transparent criteria related to development. The inherent discrimination between ACP and non-ACP developing countries within the Lomé and Cotonou trade regime, based on historical grounds (the ACP group being composed of former colonies from European countries) does not fit any of the WTO criteria and hence cannot be allowed under the Enabling Clause. Facing increasing pressure from WTO non-ACP developing country members (in particular banana producing countries), and the high price the EU had to pay to obtain a WTO waiver⁴, the EU became convinced that a new ACP-EU trade relationship was needed, which was WTO-compatible and would foster the ACP integration in the world economy.

2.2 Key features of Economic Partnership Agreements

Addressing the weaknesses of the Lomé Conventions, the EU and the ACP agreed to radically reform the ACP-EU trade relationship through the negotiation of the EPAs. The Cotonou Partnership Agreement (CPA), signed in June 2000, stipulates that the negotiations on EPAs would start in September 2002 and would be concluded no later than 31 December 2007 (CPA Art. 37.1). The preferential trade regime was extended throughout this transitional period⁵.

The Cotonou Agreement sets out four principles along which the EPAs should be formed:

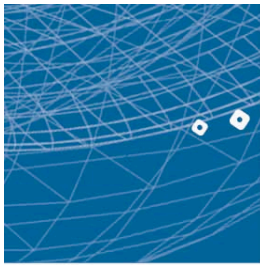
Development: EPA negotiations must be placed in the context of the overall development objectives of ACP countries and of the CPA. To be of benefit to the ACP, EPAs must be 'economically meaningful, politically sustainable, and socially acceptable'. Hence, EPAs are not just ordinary agreements on trade. Rather, they are intended to be development-oriented trade arrangements to foster development and economic growth in ACP countries which will ultimately contribute to poverty eradication.

Reciprocity: The most important element of an EPA is the establishment of an FTA, which will progressively abolish substantially all trade restrictions between both parties (CPA Art. 37.7). This is a radically new element in ACP-EU trade relations and also a necessary requirement to make the EPAs WTO-compatible, in line with Article XXIV of the General Agreement on Tariffs and Trade (GATT).⁶ For the first time, ACP countries will have to open

⁴ A first waiver was obtained in 1995, and expired in 2000; a second waiver was granted in 2001, which expired at the end of 2007.

⁵ As the deadline for the conclusion of EPAs could not be met due to a lack in progress in the negotiations (except in the Caribbean), interim agreements were initialed between the EU and several ACP countries and sub-regions with the aim of safeguarding market access to the EU in a WTO compatible way while creating more time to conclude negotiations towards full regional EPAs.

⁶ For a more detailed discussion of EPAs and WTO-compatibility, see Onguglo, Bonapas and Taisuke, Ito, (2003), *How to make EPAs WTO compatible? Reforming the rules on regional trade agreements*, ECDPM Discussion paper 40, Maastricht: ECDPM. <http://www.ecdpm.org/dp40>



up, on a reciprocal basis, their own markets to EU products in order to retain their preferential access to the EU market. The rationale for reciprocity rests on the principle that liberalisation of ACP markets towards the EU will increase competition within ACP economies, thereby stimulating local and foreign (including EU) investment and the necessary adjustment of their economies, leading to growth and development.

Regionalism: The EU clearly envisages negotiations with ACP regional groupings which are in a position to do so, though it has not ruled out the possibility of concluding agreements with single countries in exceptional cases, such as in some of the interim deals. The principle of basing future trade cooperation on regional integration stems from the conviction that regional integration is a key stepping stone towards further integration into the world economy, as well as an important instrument to stimulate investment and lock in the necessary trade reforms (CPA Art. 35.2).

Differentiation: Considerable weight is given to differentiation and special treatment, which affirms the North-South nature of the relationship. The CPA states that EPAs will take into account the different levels of development of the contracting parties (CPA Art. 35.3). Hence, EPAs should provide sufficient scope for flexibility, special and differential treatment and asymmetry. In particular, LDCs, small and vulnerable economies, landlocked countries and small islands should be able to benefit from special and differential treatment.

Hence, the EPA negotiations constitute a shift in ACP-EU trade cooperation relations, ending an era of non-reciprocal trade preferences and replacing the all-ACP-EU trading arrangement by several separate agreements that are negotiated between the EU and six ACP negotiating regions, with the objective of fostering regional integration in the ACP. In essence, the EPAs should thus be essentially enhanced, development-oriented free trade areas between ACP regional groupings and the EU. They aim to cover not only trade in goods and agricultural products, but also in services, and should address tariff, non-tariff and technical barriers to trade. As proposed by the European Commission, other trade-related areas would also be covered, including by increased cooperation between the EU and the ACP, such as competition, investment, protection of intellectual property rights, standardisation and certification, sanitary and phytosanitary (SPS) measures, trade facilitation, trade and environment, trade and labour standards, consumer policy regulation and consumer health protection, food security, public procurement, etc.

3 The negotiation process

The EPA process has not been an easy or friendly one; words and deeds have often been at odds, and tension has flared up. From the outset, EPA negotiations have been extremely challenging, in terms of both process and substance. As a result, and amidst much tension and frustration on either side of the table, there had been only limited substantive progress in most negotiations a few months ahead of the 31 December 2007 deadline.



Officially launched on 27 September 2002, the EPA negotiations have been structured around two main phases. The first phase of the negotiations, extending until September 2003, took place between the European Commission (EC) and the ACP Group as a whole. The objectives were to define the format, structure and principles for the negotiations. After this initial phase of negotiations (consisting mainly in exchange of views and clarifications from both parties) at the all ACP Group level with the EU, a second phase of negotiations started at the regional level, in view of concluded regional EPAs. Each of the main ACP regional groupings has thus entered into bilateral negotiations with the EU: Central Africa (CEMAC-plus) and West Africa (ECOWAS-plus) in October 2003, East and Southern Africa (ESA) in February 2004, the Caribbean (CARIFORUM) in May 2004, Southern Africa (SADC-minus) in July 2004, and Pacific in September 2004. These negotiations were thus intended to build on and foster the regional integration process of the ACP groupings.

For various reasons, European Commission and ACP negotiators have in most cases not been able to reach a common understanding and approach on the cornerstones of the new trading arrangement, notably, and quite surprisingly, on the development component and regionalism. A good, but striking, illustration in this respect is the fundamental divergence between the negotiating parties in terms of their approach towards development. For the EU, EPAs will foster development mainly through trade liberalisation and the creation of the right policy framework to attract investment. In addition, by building on the ACP regional integration processes, EPAs should contribute to the establishment of effective regional markets in the ACP, thus attracting and stimulating both domestic and foreign investment, a necessary condition for sustainable development. While most of the ACP states would agree with the EU on the development opportunities offered by an EPA, they tend to consider trade liberalisation and regional integration as necessary, yet far from sufficient, conditions to foster development and alleviate poverty. From an ACP perspective, an EPA must also be accompanied by appropriately arranged financial support to address supply-side constraints as well as measures to mitigate the related adjustment costs. Such support should be binding, predictable and made available in addition to the existing EDF, albeit in a more flexible manner. While the EC recognises the structural and institutional constraints impeding ACP countries' productive and trading capacities, it has however been reluctant to discuss these issues in the EPA negotiating sessions, arguing that the latter were about trade and trade-related issues only, and not development financing, which is covered already by the EDF under the Cotonou Agreement and complemented by EU Member States bilateral cooperation.

Early in 2007, the EC furthermore conceded to the inclusion of development chapters in the scope of the negotiated agreements and a clear link between AFT and the development support for EPAs was established in the EU Strategy on Aid for Trade adopted in October 2007⁷. However, the EPA texts do not contain any

⁷ A substantial share ('in the range of 50%') of this trade-related assistance (TRA) would be earmarked to support the ACP, including for EPAs, see EU Strategy on Aid for Trade adopted by the



binding financial commitments on development cooperation, as demanded by the ACP side.

A deadline can often be regarded as a stimulus for the parties to move ahead and may have helped to put trade higher on the agenda of policy-makers. But both parties certainly started too late to negotiate on substantive issues while spending the initial years discussing systemic questions without being able to reach agreement. The push given by the looming deadline may thus have helped to propel both parties to the negotiating table and to focus on the major issues (notably market access, a core issue in any free trade agreement). However, the recent events also demonstrate that too much pressure in an asymmetric relationship like that between the EU and the ACP, can lead to a lot of suspicion and a lack of ownership of the final result and is certainly not conducive to a harmonious relationship.⁸

The lack of institutional and technical capacity on the ACP side, as well as insufficient political leadership in many regions, has also taken its toll on a smooth progress in the negotiations. EPA negotiations brought to the table two groups of countries between which there was a wide gap in terms of negotiating power. This was formally recognised in the Cotonou Agreement, in which the EC and the ACP also agreed to use the preparatory period in the run up to December 2007 to build ACP capacity for the purpose of the negotiations and future implementation of the new trading arrangements (CPA Article 37.3). However, since 2002 the ACP countries have repeatedly voiced their concerns about persisting capacity constraints, which affect their ability to negotiate effectively and implement the EPAs.

The EU therefore may have succeeded in getting countries to sign through pressure and the threat of imposing tariffs from 2008 on. But many ACP stakeholders are left with the perception that the agreements have been externally imposed. As a consequence, there is a loss of domestic ownership and they may be less willing to bring forward the process and related reforms.

In addition, by the end of 2007, many were left with the perception that commercial and political interests, in both the EU and ACP countries, too often prevailed over development concerns. It seems that largely pragmatic concerns ultimately overshadowed the outcome of the negotiations. While conformity with the WTO rules of its trade regimes available to ACP countries as of 1 January 2008 was paramount to the EU,⁹ preserving access to the EU market was of prime importance for most of its ACP counterparts.

Furthermore, the EPA process clearly exposed the weak regional cohesion in most EPA regions in which national interests still prevail over regional integration

GAERC on 15 October 2007, <http://register.consilium.europa.eu/pdf/en/07/st14/st14470.en07.pdf>

⁸ Or as African Business Woman put it 'You may impose your EPA, but it will not be ours', cited by Karin Ulmer in: The Emperor's new clothes, *Trade Negotiations Insights*, Vol.6, No.8, December 2007 – January 2008, ECDPM-ICTSD, www.acp-eu-trade.org/tni

⁹ In this regard it is somewhat surprising that the EU and the ACP countries that have concluded an EPA or interim deal have not yet notified these agreements to the WTO prior to their application, contrary to their WTO obligations.



agendas. Conducting interim agreements bilaterally provided the opportunity to also safeguard market access in those regions where regional solutions were not possible in the remaining time. The bilateral approach adopted by the EC and some ACP counterparts, however, is clearly at odds with one of the key objectives of the EPAs, which is to build on and reinforce regional integration.

The first challenge for the ongoing negotiations towards full agreements is thus to mend bruised feelings, restore some confidence and trust and build a true partnership. To that end, positive rhetoric will not suffice. It will be necessary to allow for the adjustment of interim texts that do not fully reflect the interests of all parties. In revising an interim agreement it may be helpful to draw on texts concluded in other ACP regions, adopting some provisions from these as suitable.

4 The agreements initialed in 2007

4.1 Which countries have concluded (interim) EPAs

The list that of countries, within their regional groupings, that have concluded an (interim) EPA is presented in the Annex.¹⁰

In two regions all members have signed. These are the Caribbean Forum (CARIFORUM) and the East African Community (EAC). The latter is perhaps the more noteworthy, since all but one signatory are LDCs and, hence, have no immediate need to join an EPA to avoid tariffs being increased on their exports to the EU. It is also an 'EPA negotiating region' that emerged only in the final months of the five-year process.

In EAC all parties appear to have agreed to the same liberalisation schedule and so the EPA should not in principle cause any problems for achieving a CET. In fact, EAC is the only region for which this is the case. The end point for CARIFORUM (apart from Dominican Republic) is understood from those involved in the negotiations to be very similar but not identical, although there are many variations in how countries arrive, evident in complex variations in the schedules for the implementation.

At the other end of the spectrum is West Africa. Only two countries have signed interim EPAs, and they are significantly different from each other. This means that over four-fifths of the Economic Community of West African States (ECOWAS) have not joined the interim EPA, and that there is no established accord that, if all joined, would provide a region-wide agreement. In principle it would be possible for all the non-signatories to accede to the text agreed by Ghana, or that agreed by Côte d'Ivoire – but even if this were to happen there would still be at least one country in the region with different tariff obligations towards the EU from all the

¹⁰ In addition to this information, the table indicates the EU tariff regime that now applies to imports from non-signatories, the proportion of members of each regional grouping that have signed, and the number of liberalisation schedules that they have submitted.



rest. The interim agreement with Côte d'Ivoire specifically raises the possibility of re-negotiating the liberalisation schedule as part of a wider ECOWAS EPA. Although the agreement with Ghana does not do so, Commission officials have confirmed orally that it is current policy to allow a re-negotiation of both accords in the context of a broader ECOWAS EPA. For the present, though, all that can be analysed are the texts and schedules of these two bilateral accords.

The *Communauté Economique et Monétaire de l'Afrique Centrale* (CEMAC) is notionally in the same position as CARIFORUM and EAC, in that there is just one text and liberalisation schedule. But this is because Cameroon is the only country in the group to have initialled an interim EPA. As with ECOWAS, over four-fifths of members have not so far joined.

The other 'regions' – Eastern and Southern Africa (ESA), the Pacific ACP countries (PACP) and the Southern African Development Community (SADC)-minus – are in a midway position. Each of the signatories within the group has agreed an identical text, but their liberalisation schedules differ, with implications for future regional integration.

The word 'region' is in inverted commas above because both ESA and SADC-minus are now different groupings from those that were engaged in negotiations with the EU until the middle of 2007 (and, of course, from those that have agreed FTAs or customs unions under Common Market of Eastern and Southern Africa (COMESA) and under SADC). Apart from the unresolved position of South Africa (see below) the differences are relatively small for SADC-minus: Tanzania has joined EAC and Angola has not signed an interim EPA. That leaves Botswana, Lesotho, Namibia and Swaziland (BLNS) and Mozambique as signatories, with the position of South Africa still under a question mark.

In the case of ESA, though, the changes are substantial. The 'ESA region', as determined by the signatory states, now consists just of four islands plus Zimbabwe (the current ability of which to implement any trade agreement must be a matter for conjecture).¹¹ Unless other countries join, it is hard to see how this grouping can be considered a 'real' region. The implications for COMESA are clearly very important.

The position of the Southern African Customs Union (SACU) is an anomaly. Under the 2004 SACU Agreement, no member can agree a new trade regime with a foreign country without the consent of all. Since South Africa has not initialled an interim EPA, this consent has clearly not been given. What happens now is uncertain. South Africa would appear to have the right, if it so chose, to support autonomously a change in the SACU CET towards the EU that brought it into line with the obligations that BLNS have accepted. In other words, there would appear to be a *prima facie* case that South Africa would not need actually to sign an EPA in order for the situation to be regularised; it would merely need to accept autonomously the required changes to the SACU tariff. But, unless the 'common' SACU external tariff were to have separate BLNS and SACU schedules (at least

¹¹ Zambia has initialled an EPA with a liberalization schedule on 30 September 2008 only.



during the EPA implementation period) the EU would also need to accept some changes to the provisions of its TDCA. This is because some goods will be liberalised later under the EPA than is scheduled under the TDCA. Unless and until both of these things happen it would appear that the commitments to which BLNS have agreed are not enforceable in law within SACU.

As a result of the conclusion of interim EPAs, the EU is now trading with Sub-Saharan African countries under four different regimes: interim EPAs for those countries that have initialled one, and for the others, the standard GSP (or most-favoured-nation (MFN) tariffs) on imports from non-LDC ACP countries (Congo, Gabon and Nigeria), and the duty-free quota-free Everything-But-Arms regime for other LDCs, and the TDCA with South Africa. This is hardly conducive to strengthen regional integration, as discussed in Section 5.

4.2 Provisions in the texts of the agreements

The impact of the provisions laid down in the legal texts of the agreements is highly dependent on their interpretation and enforcement. Despite this need for caution in drawing bold conclusions on the texts, there are some clear patterns on some specific issues. These are summarised below.

4.2.1 Border measures

Specific border measures are provided in the EPAs which may slightly alter some of the features of the liberalisation regimes. CEMAC has provision to halt tariff reduction unilaterally for a maximum period of one year, and the 'standstill clause' phrasing in the SADC EPA does not apply to goods excluded from liberalisation. All the African EPAs except ESA allow for the temporary introduction/increase of export duties in 'exceptional circumstances' following 'joint agreement' with the EC (EAC) or 'consultations' (CEMAC, Ghana, Côte d'Ivoire and SADC).

A general prohibition on import barriers other than customs duties and taxes (apart from measures taken in the context of anti-dumping and countervailing measures/safeguards) is subject to exemptions in all EPA texts (e.g. for infant industry protection or in case of public finance difficulties). The maintenance of national subsidies conforming to WTO provisions is also allowed in all the texts. The CEMAC text refers to the gradual phasing out by the EU of its agricultural export subsidies, which it is already committed in the WTO to do by 2013. There are strict provisions on customs and trade facilitation with sanctions in case of failure to provide administrative cooperation. If the Joint Council/Committee cannot come to a mutually accepted solution within three months, the complaining party can suspend preference for up to six months (renewable).

4.2.2 Areas for continued negotiation

There are big differences in the '*rendezvous* clauses' in the interim EPAs which establish the areas in which negotiations must continue. How important these differences are in practice remains to be seen since the clauses are 'guidelines' for the areas to be negotiated, and all texts foresee additional topics deemed by the parties to be relevant coming up in the ongoing negotiations towards a full EPA.



4.2.3 Dispute settlement

The dispute avoidance and settlement provisions are more extensive and rigid than in some previous EU FTAs, such as the TDCA with South Africa. The procedures for consultations, seeking advice from a mediator and establishing an arbitration panel are detailed and the time-frames are very strict. The procedures are largely identical except in EAC and ESA, where negotiations continue. The application of temporary trade remedies is envisaged in cases of non-compliance with an arbitration decision.

4.2.4 Development cooperation and finance

All the African EPAs except EAC have comprehensive but wholly non-binding provisions for development cooperation, mentioned in each and every chapter as well as in a section on development cooperation (most extensively in the ESA text). The EAC, ESA and CEMAC texts also explicitly foresee continued negotiations on this.

4.3 Market access commitments

The interim EPAs in Africa and the Pacific focus on market access in goods; discussions on liberalising trade in services and on trade related areas are kept for the ongoing negotiations towards full EPAs. Whereas the EC market access offer is the same for all regions – duty and quota free market access with transition periods for sugar and rice – market opening by the ACP differs across countries and is specified in liberalisation schedules annexed to the agreements¹².

4.3.1 Comparing levels of national commitment

The interim EPAs were finalised in a rush to beat the end 2007 deadline – and it shows. All of the African EPAs are different and in only one region does more than one country have the same commitments as the others: this is the East African Community (EAC). At the other extreme is West Africa, where the only two EPA countries have initialled significantly different texts with different liberalisation commitments.

Table 1 identifies five key features of the liberalisation schedules and, in relation to each of these, aggregates the African states analysed into one of three categories. The five features are the time period over which liberalisation will be implemented, the date at which countries will start to remove tariffs on goods that are not already duty free, the extent to which the early tranches of liberalisation remove high tariffs on goods that the EU can export and which might compete with domestic production, the 'hypothetical revenue loss' in the early tranches, and the relative size of the exclusion basket. Some categories are defined in wholly objective terms (such as the duration of implementation or size of the exclusion basket). Others involve an element of judgement by the authors (notably the

¹² See ODI-ECDPM (2008), *The New EPAs*, www.ecdpm.org/pmr14 for a summary of market access commitments by country.



adjustment and revenue impact of the early tranches). Between them they aim to provide a picture of how quickly and extensively the EPAs will begin to ‘make a difference’. This is an essential starting point for identifying the support that countries need both to take advantage of new opportunities and to help them adjust to the competitive and revenue shocks.

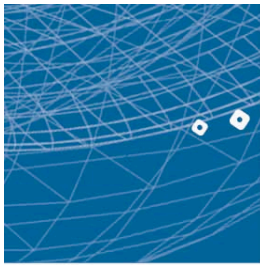
Table 1. Comparison of liberalisation schedules

Duration	15 years or fewer	16–20 years	20+ years
	BLNS Comoros Côte d'Ivoire Ghana Madagascar Mauritius Mozambique Seychelles	Cameroon Zimbabwe	All EAC
Liberalisation starts for positive-tariff goods	2 years or fewer	3–5 years	6+ years
	BLNS Côte d'Ivoire Ghana Mauritius Mozambique	Cameroon	All EAC Comoros Madagascar Seychelles Zimbabwe
Impact of early tranche(s)	High	Medium	Low
Adjustment	BLNS Côte d'Ivoire Mozambique Zimbabwe Seychelles	Ghana Madagascar Mauritius	All EAC Cameroon Comoros
	30%+	10–30%	Under 10%
Revenue	Burundi Côte d'Ivoire Kenya Madagascar Mozambique Rwanda Seychelles Tanzania Uganda Zimbabwe	Cameroon Comoros Ghana Mauritius Namibia	Botswana Lesotho Swaziland
Exclusions	Under 15%	15–20%	20%+
	Lesotho Mauritius Namibia Seychelles Swaziland	Côte d'Ivoire Kenya Uganda Comoros Madagascar	Botswana Burundi Cameroon Ghana Mozambique Rwanda Tanzania Zimbabwe

Source: ODI-ECDPM (2008), *The New EPAs*, www.ecdpm.org/pmr14

No clear pattern can be identified that the poorer countries have longer to adjust than the richer ones or of the EPAs being tailored to development needs (however defined). Some of the richer countries among the list have to adjust quickly – but so do some of the poorest.

The picture that emerges is entirely consistent with the hypothesis that countries have a deal that reflects their negotiating skills: that countries able to negotiate



hard, knowing their interests, have obtained a better deal than those lacking these characteristics. Côte d'Ivoire and Mozambique will face adjustment challenges that are among the largest and will appear soonest. Côte d'Ivoire, for example, will have removed completely tariffs on 60% of its imports from the EU two years before Kenya even begins to start reducing its tariffs as part of the EPA; Ghana will have liberalised completely 71% of its imports by the time Kenya is three years into this process which, after a further six years, will result in just 39% of its imports being duty free.

4.3.2 Market opening in the agricultural sector

Given the importance of agriculture for ACP economies and concerns about surges of cheap European imports, agricultural products make up a significant share of the tariff lines excluded from liberalisation. The proportion varies across the national exclusion lists between 9% (Zimbabwe) and 67% (Comoros); in most cases agricultural products make up roughly a third of excluded tariff lines.

5 Implications for regional integration in Africa

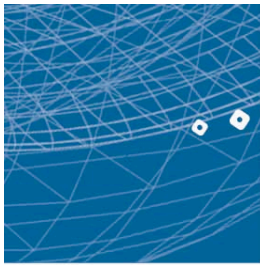
A common perception, expressed by many countries in the independent Article 37.4 review of the negotiations, and illustrated by the partial conclusion of interim EPAs, is that there is little coherence between the EPA agenda and the regional integration processes in Africa.

5.1 *Insufficient synergies between EPAs and regional integration*

EPAs are supposed to build on and reinforce regional integration within the negotiating regions. According to the European Commission, by negotiating EPAs on a regional basis, the ACP countries would have an opportunity to strengthen their regional integration processes and create dynamic regional markets, conducive to investment and development. This would be possible if the ACP countries and regions embrace a wider scope than just trade liberalisation, as trade-related issues covered in an EPA – a legally enforceable text – will help to drive much needed economic reforms in the region. The regional partnership with the EU would also enhance the credibility of regional integration processes, notably in Africa, whereby the EU would act as an “external guarantor” to avoid a reversal of economic and integration policy.

However, this approach presented serious challenges and problems for many of the parties, particularly in Africa. Indeed, with the start of the EPA negotiations in 2002, an additional layer of complexity was added to the already intricate picture of regional integration in Africa. The regional groupings within which African countries chose to negotiate their respective EPAs did not match the contours of the formally recognised regional economic communities (RECs) to which they belong, except in the recent case of EAC.¹³ A closer look further shows that some

¹³ The EAC decision to negotiate an EPA as a bloc was made as early as 2002, but, this was not



regional sub-groupings¹⁴ are more fully integrated than the broader EPA configurations within which they are negotiating with the EU. Besides this, many African countries are members of more than one REC with often conflicting objectives and obligations and, in recognition of this, have taken up the challenge of rationalising the RECs at pan-African level. In assessing the impact of an EPA, the parallel implementation of EPAs and endogenous regional integration initiatives in the ACP poses some challenges in terms of identifying the consequences of the different processes.

While it remains that regional integration in Africa has seen slow progress and been hampered by various obstacles and challenges, both internal and external, little consideration seems to have been given to the complexity and importance of existing regional integration efforts in the context of the EPA negotiations. Many African countries, in particular in ESA, opted to favour national interests over commitments to regional solidarity and agenda when considering which regional EPA grouping to join, with some countries shifting from one configuration to another a few years into the negotiations. Whether a regional integration process can be driven or supported by external forces such as the EU or should be internally driven in order to be sustainable is a question that can ultimately only be answered by the African (and by extension, the ACP) countries themselves. Nevertheless, in the context of the ongoing EPA negotiations, EC proposals for tariff harmonisation and liberalisation cut across or even pre-empted existing regional integration initiatives. Indeed, ACP countries were pressured to negotiate on trade-related issues, such as investment and government procurement, in cases where there is little capacity or incentive at either regional or national level to enter into commitments in such areas. This raised the concern that the pace set by the EPA negotiations left little time to focus on internal factors relating to autonomous regional integration and could, in fact, undermine such efforts. At the same time, it has been recognised that the EPA negotiations process provided some impetus for further focus on regional integration agenda (e.g. ESA and West Africa regions) and revived otherwise somewhat dormant economic cooperation initiatives (e.g. the Indian Ocean Commission). Yet, calls for integration at the regional level before opening up to the EU under an EPA remained unanswered.

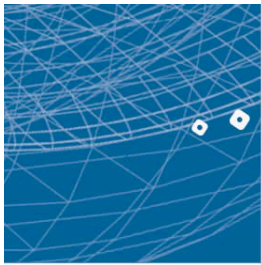
5.2 Conflicting market access commitments

Of particular is that countries in the same economic region might liberalise different baskets of products and so create new barriers to intra-regional trade in order to avoid trade deflection. This concern has been vindicated by the interim EPAs that have been agreed.

In the case of Central and West Africa the principal challenge for regional integration is that most countries have not initialled an EPA, but Cameroon, Côte d'Ivoire and Ghana have done so. The countries in the regions that do not

concretised until late 2007 when the region initialled an interim EPA with the EU. Until then, the region negotiated within the ESA configuration. In the current state of play,, the EAC is the only coherent regional configuration to have initialled an interim EPA in Africa.

¹⁴ Notably the UEMOA within ECOWAS, EAC within ESA and SACU within SADC.



currently belong to an EPA will reduce none of their tariffs towards the EU, maximising the incompatibility between their trade regimes and those of Cameroon, Côte d'Ivoire and Ghana.

Only in the case of EAC have all members joined the EPA and accepted identical liberalisation schedules. If these are implemented fully and in a timely way economic integration will have been reinforced.

Those Eastern and Southern Africa (ESA) countries¹⁵ and the five Southern Africa Development Community sub-group (SADC-minus) states that have initialled, have done so to single agreements, but there is considerable dissimilarity in the country liberalisation schedules and exclusion baskets. All of the ESA states have established their liberalisation schedules in relation to the common external tariff (CET) (presumably of the Common Market for Eastern and Southern Africa – COMESA), but it is not only the details of their liberalisation and of their exclusion baskets that are different – so is their classification of goods. The agreed phasing of liberalisation is made in relation to the product groups established by COMESA for its CET. Although the COMESA members agreed that the CET should be set at different levels for these groups, they have not so far agreed a formal definition that allocated each item in the nomenclature to one or other group. The EPAs have required countries to make this specific link – and they have done so differently, which will create problems for implementing any eventual COMESA CET. There are over a thousand items being liberalised by one or more of the ESA countries where there is some degree of discrepancy in the CET classification.

Provided that there is goodwill and flexibility on all sides, it ought to be possible to avoid the EPA process creating new barriers to African integration. But this requires a recognition that not all the details of the current texts are set in stone. The demands that will arise from moving towards the agreement of full EPAs will reinforce this need.

5.3 Regional scope of agreements

Having concluded interim agreements with one sub-region and individual countries, it remains to be seen whether it will be possible to indeed extend interim agreements to full EPAs that cover all the countries belonging to each of the negotiating regions. Instead of creating full EPAs at the regional level, different countries within the same region might make different choices about the trade regimes: (i) a full and comprehensive EPA; (ii) a narrow (or permanent interim) EPA; (iii) the standard GSP (or GSP-plus); and (iv) the Everything-But-Arms for LDCs. Note that, as interim agreements are open for other countries in the region to join, the regional scope of the agreements could be widened without extending the range of issues covered to a full EPA.

¹⁵ Only five of the 11 ESA states (excluding EAC) have initialled an interim EPA by December 2007. Zambia concluded its interim EPA with a liberalisation schedule on 30 September 2008 only.



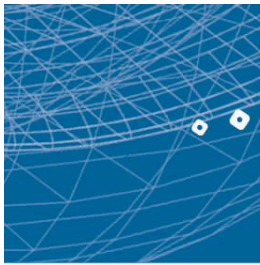
Box 1 presents possible consequences related to choices made in term of the regional scope of any agreement.

Box 1. Scenarios regarding the regional coverage of the agreements

Scope of the agreements	Threats and opportunities
Agreements at the regional level	<ul style="list-style-type: none"> • Provided all countries within one region can agree on a common liberalisation schedule towards the EU, it will foster regional integration dynamics and allow for the formation and implementation of customs unions with CETs and policies, e.g. for the existing customs unions CEMAC, EAC, SACU and UEMOA, as well as for the emerging/expected customs unions in COMESA, ECOWAS and SADC. • Possible difficulties in arriving at a regional list of sensitive products/reduced opportunity to protect nationally sensitive sectors from EU competition. • Even though varying degrees of commitment on services and trade-related issues are possible within an EPA, a common understanding across the region on coverage of these issues will be conducive to regional integration. Different positions on these issues may create political tensions and weaken the cohesion of the regional grouping.
Agreements at the sub-regional level (leaving out some members of the negotiating group)	<ul style="list-style-type: none"> • Preserve narrow deeper regional integration, such as exists in EAC, SACU and UEMOA, but prevent broader regional integration, as in COMESA, SADC and ECOWAS. • Offer the possibility for some countries in the region not to open their markets to EU imports, e.g. for LDCs that export under EBA or for non-LDCs that apply for GSP+.
Agreements at the level of individual countries	<ul style="list-style-type: none"> • Counteract regional integration processes and create political tension, e.g. in the case of Côte d'Ivoire and Ghana initialling interim agreements alongside the negotiations at regional level in West Africa. • Offer the possibility for some countries in the region not to open their markets to EU imports, e.g. for LDCs that export under EBA or for non-LDCs that apply for GSP+ or opt for the standard GSP. • Market access offers at individual country level provide the largest policy room for determining sensitive products specific to each country's situation. • Create a need to introduce new barriers to trade and border controls within a region in order to implement rules of origin to avoid trade deflection.

Source: ODI-ECDPM (2008), *The New EPAs*, www.ecdpm.org/pmr14

In the process of designing a regional agreement, countries will have to determine a common regional position on services liberalisation and trade-related issues, based on the interests of each country defined at the national level. Where differences of opinion prevail in a region, it is possible that a full EPA could contain regional provisions that would apply to all members of the group, and country-specific ones (e.g. on services, investment) that would apply on an individual basis. This would allow a regional agreement to be concluded which is in line with existing integration dynamics, while respecting the choices made by individual countries.



However, if the *status quo* in some countries persists and regional partners continue to hold significantly different positions, the regional integration process could be seriously jeopardised. Regional cooperation and the dynamic of further integration would be interrupted: customs unions will be unable to apply the same CET; new border controls will be required; heterogeneous rules of origin might thwart production integration and political tensions would rise across the region. Nevertheless, preserving regional unity may not be a sufficiently strong argument to continue negotiations and conclude regional (potentially full) EPAs. Strategic considerations on development should determine whether an EPA should be signed, and if so, what that agreement would entail.

5.4 Possible scenarios for the African negotiating regions

Negotiations have continued in 2008 and should be concluded in 2009. The European Commission has the mandate to conclude full EPAs and it intends to do so. None of their ACP partners has so far renounced this objective. But what is the likelihood of success?

The rushed conclusion of interim agreements at the end of 2007 may have created a sense of urgency about the need to improve on the situation created by these agreements. However, for those countries that have already committed to an interim trade deal, the market access bargaining-chip has been lost, which may weaken their stance *vis-à-vis* the EU. This is a point well understood by the Caribbean, which ruled out an interim deal for this very reason.¹⁶ Further, some LDCs that have not initialled an interim agreement may find the duty and quota-free market access under EBA a suitable trade regime to continue exporting to Europe (despite the less favourable rules of origin), and may have no appetite to pursue a broader trade-related agenda.¹⁷

The remainder of this section considers the situation in each of the four African groupings negotiating an EPA with the EU, outlining key options and indicating the most likely scenarios.

5.4.1 Possible scenarios for West Africa

The West Africa-EC EPA negotiations were essentially frozen during the last few weeks of 2007 and were replaced by bilateral talks between the European Commission and individual countries in the region, which led to the initialling of interim agreements by Côte d'Ivoire and Ghana. Since then, the West Africa EPA grouping has clearly indicated its commitment to concluding a full and regional EPA by June 2009. In line with this, a detailed action plan has been drafted and

¹⁶ See declarations by the Caribbean Chief Negotiator, Dr. Richard Bernal, <http://jamaica-gleaner.com/gleaner/20080104/business/business4.html>

¹⁷ For an extended discussion, see Bilal, S. 2007. ACP-EU negotiations on Economic Partnership Agreements (EPAs) and EBA: A dual relationship. In: European Union trade politics and development: Everything but arms unravelled, G. Faber and J. Orbie (eds.). Oxford: Routledge: 203-220.



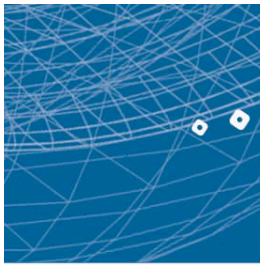
will be further detailed. More recently, the region also confirmed that the interim agreements of Côte d'Ivoire and Ghana would be superseded by a regional EPA. To meet this objective, some key issues will need to be addressed. These include the development framework for the EPA, which has been a major stumbling block in the negotiations so far. Concerns relate to the net fiscal impact of EPA implementation, as well as the necessary development programme and accompanying measures that need to be in place to enable the region to take advantage of the new opportunities provided by an EPA and to respond to the various adjustment costs incurred through the implementation of the new trade regime with the EU.¹⁸

While the region has confirmed that the interim agreements will be superseded by a comprehensive regional EPA, it remains to be seen whether or not negotiations will be based on existing texts, and if so, which one (the last draft agreed at the regional level in 2007, or the text of the interim deal of Côte d'Ivoire, or the one of Ghana) and to what extent it can be amended or re-drafted. More fundamentally, the challenge for the West African region will be to adopt a common position that reflects their regional ambitions while respecting their national sensitivities and interests.

A priority for West Africa is to determine its common market access offer. First, each country will have to identify its list of sensitive products to be excluded from liberalisation. It is expected that all national lists will be submitted by the end of March 2008, on the basis of which the region will draw up the common regional exclusion list. The outcome of such an exercise will have to be acceptable to all in the region and reflect in a balanced manner the interests of each country, while still falling within the scope of 'WTO-compatibility'. This will be most challenging. Côte d'Ivoire and Ghana already rushed through such a process at the end of 2007. But their market access offers differ and extending any of them to the region would lead to an exclusion basket of goods whose coverage would be well beyond the levels acceptable to the European Commission. In this context, either the EC will have to demonstrate flexibility by lowering its interpretation of the 'substantially all trade' threshold to significantly less than 80% of trade liberalisation (which would be in line with what West Africa has been calling for), or Côte d'Ivoire and Ghana will have to adjust their market access offer to accommodate the interests of their regional partners (which might trigger discontent in the private sector).

A second and crucial challenge for the West African region and integration efforts, relates more specifically to the liberalisation process towards the EU. This will largely depend on the outcome of the internal discussions currently taking place on the implementation of the ECOWAS CET. This was adopted in January 2006 and was to be implemented after a two-year transition period, building on the existing UEMOA CET. Entry into force would have therefore coincided with the start of the implementation of the EPA on the 1st January 2008. However, despite a fast-track approach, the harmonisation of the ECOWAS CET with that of the

¹⁸ This last point – or lack of clarity and clear EU commitments on this matter – is at the core of Senegal's strong opposition to the proposed EPAs and the subsequent proposal to replace them with a 'development partnership agreement'.

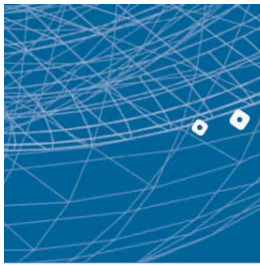


UEMOA has been delayed for various reasons, notably because of a controversial request a fifth level of customs duty to be introduced. In addition to the four categories agreed for UEMOA and ECOWAS CET rates (at 0%, 5%, 10% and 20%), a 'fifth band' at 50% had initially been proposed by Nigeria, with the support of many non-state actors in the region. The principle of a fifth band has now been approved by the region, set at the lower level of 35% though. In this context a key aspect to consider is the starting point for liberalisation towards the EU. Will it be the maximum fourth band at 20% as already applied by UEMOA or the fifth band at 35% proposed for ECOWAS CET? This could raise some problems for future liberalisation at the regional level within the framework of an EPA. Some West African countries could find themselves in a situation where they would have first to increase their tariffs towards the EU (to the level of the fifth band) before dismantling them. Fortunately, in practice, the fifth band covers goods mainly produced by Nigeria. Tariff increases may also contradict the standstill clause in the interim EPAs of Côte d'Ivoire and Ghana. The time frame for the liberalisation schedules may also prove tricky. With the market opening starting as early as 2009 for Côte d'Ivoire and Ghana under the terms of their respective interim agreements, these countries may have to re-impose tariffs on EU imports to accommodate the new liberalisation schedule of a full regional EPA which would replace their interim agreements sometime after June 2009 or beyond.¹⁹ Here, a further consideration to bear in mind is whether such countries would, in this process, also be forced to go beyond their MFN commitments at the WTO level and face a possible sanction from multilateral partners.

In spite of the optimistic and positive rhetoric in the region on the prospect of concluding a full regional EPA, given the current situation, the road ahead remains unclear. Harmonisation of tariff liberalisation in West Africa will by no means be smooth and straightforward. The issues to be addressed are sensitive and highly political.

In this context, another scenario could emerge, albeit one which is less favourable to regional integration efforts, in which a differentiation is made between UEMOA and non-UEMOA countries within the ECOWAS grouping. The former constituting a customs union with an established CET would have a common market access offer, while ECOWAS' non-UEMOA countries could have a separate market access offer and liberalisation schedules, specific to individual countries. Should a common understanding prevail on the scope and content of the agreement, it would still be possible to envisage a common EPA text. Regional integration in West Africa would then be essentially driven by the pace of liberalisation towards the EU, while the UEMOA sub-grouping and other West African countries would undertake separate liberalisation commitments. These could gradually converge over time to reach a common level of liberalisation towards the EU. But in the meantime, this would prevent the implementation of an ECOWAS customs union with a CET. This will also have an affect other aspects under negotiation, notably services.

¹⁹ This would also run counter to the standstill clause imposed by the EC in all its interim agreements.



It is therefore crucial for the West African region to make sufficient effort to define as soon as possible its market access offer to the EU under an EPA, in a manner which is satisfactory to all its members. While this is technically challenging, it requires strong political leadership and commitment. Several issues will have to be addressed to meet this objective, including that of RoO. This last matter will most likely prove to be equally challenging: while these rules are still in the process of being defined at the regional level, they are at the same time being further discussed between the EC and the signatories to an interim agreement. Here again a careful balance will have to be found between the various interests at stake and forces at work.

Besides, with many West African countries, and in particular LDCs and Nigeria, having shown little interest in all the trade-related issues advocated by the EU in the EPA agenda, the parties need to give careful consideration to the development cooperation issue and accompanying reforms if the negotiations are to be successfully concluded. Otherwise, some countries, notably LDCs, may ultimately decide to opt out from an agreement with the EU, which for most of them would result in only a marginal loss of effective preferences, if any at all. By the same token though, the EU should not be perceived as enticing reluctant governments to conclude an EPA they dislike simply to obtain more financial aid.

Efforts will have to be directed towards identifying a common position that will be sustained at the regional institutional level, with a strong buy-in from all members. In this respect, the establishment and operationalisation of a Regional Fund to support EPA implementation could play a key role in drawing various interests together.

5.4.2 Possible scenarios in Central Africa

The Central African region is facing the challenge of defining a common regional position after initialising an interim agreement between an individual country, Cameroon, and the EU. At a joint technical meeting on 6-7 February 2008 in Douala, Central African and European negotiators re-stated their objective of concluding a regional EPA. The parties agreed to use the conclusions of previous Central Africa-EC ministerial meetings in 2007 as a basis for future negotiations, rather than building on the text of the interim agreement. Although the text of the Cameroon-EU interim agreement is accordingly expected to be superseded by a full regional EPA, an open question relates to the extent to which commitments taken on by Cameroon in the interim agreement will influence the regional agreement, including in terms of the definition of sensitive products. However, extending the exclusion list of Cameroon to the whole region would be likely to result in an exclusion of more than 20% of imports from the EU. The percentage would increase even more if additional products of interest to other Central African countries were added to the list. Accordingly, either adjustments will have to be made in the range of products excluded or agreement will have to be reached on a higher threshold for exclusion. Moreover, Cameroon will start liberalising its tariffs from the CEMAC CET level in 2010. Given that this CET is not yet fully implemented, a delay in the conclusion of a regional agreement would require



some additional effort to realign tariffs within the region during the implementation of a full EPA.²⁰ Should the conclusion of a regional agreement be delayed beyond that date, this would mean that Cameroon would already have cut tariffs below the CEMAC CET level applied by other countries in the region. Accordingly, in order to implement a regional EPA, either Cameroon would have to re-increase tariffs to the regional level, other countries would have to accept rapid cuts in tariffs to reach the level of Cameroon, or the regional EPA would have to specify a transition period during which Cameroon would apply different tariff levels than other countries in the region, until these gradually reach the same level of liberalisation as Cameroon.

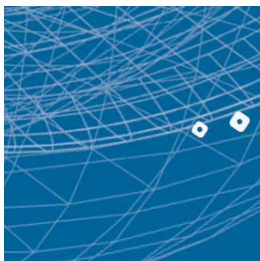
The economic interest in concluding a regional EPA is likely to be stronger for some countries than for others. The non-LDCs Gabon and the Republic of the Congo would benefit from improved market access under an EPA, compared to the standard GSP under which they currently export to the EU. So far, Gabon has shown greater interest in concluding an agreement than the Republic of the Congo. For the non-LDCs in the region, political considerations on regional integration and the expectation of gaining easier access to development finance may well be stronger incentives for continuing EPA negotiations than provisions on market access. Hence, based on the experience from negotiations up to 2007, binding EU commitments on the availability of finance for accompanying measures and compensation of net fiscal revenues are likely to remain a key issue in the region.

Another matter that needs to be taken into account when reflecting on the negotiations in Central Africa is the limited technical negotiating capacity in the region. This may lead to little regional ownership of the outcome of negotiations at the technical level, e.g. in areas such as intellectual property rights or services. Yet, rather than technical issues, political concerns about regional coherence and development cooperation with the EU are likely to be decisive in determining whether to sign an EPA or not, and in defining its scope.

Based on the above and information from the negotiating circles, four scenarios can be put forward as possible outcomes of the future negotiations:

- (1) A very comprehensive regional EPA could be concluded which would be only marginally owned by the region. Central Africa and the EC were close to adopting such a solution in November 2007.
- (2) A less complex regional EPA may be signed which would reflect the different levels of ambition within the region as well as a desire for regional unity.
- (3) Cameroon could keep its individual agreement with the EU while the other countries in the region would negotiate a separate or differentiated deal with the EU. This might occur if the challenges of aligning the interim agreement with a regional position were perceived to be too great, notably in the area of

²⁰ In the case of Cameroon, however, the differences between the CET and maximum MFN tariffs are small (see Part A).



market access. Such an outcome would most likely disrupt the regional integration process of Central Africa.

- (4) Some countries in the region might decide against an EPA. In this case, Gabon and possibly some other countries may join the Cameroon-EU interim agreement, while the remaining countries would export to the EU under the standard GSP or EBA initiative without taking on any reciprocal commitments. This scenario would run counter to the regional integration dynamics of the region, preventing the implementation of the CEMAC CET. But it might best reflect the national interests of CEMAC countries regarding an EPA.

Which of these options will be chosen is likely to be determined to a large extent by political considerations. Given the fragile security situation in the Central African Republic, Chad and the Democratic Republic of the Congo – concerns about political stability, in particular, could turn the question of whether or not to join an EPA into a strategic political matter rather than a purely economic one.

5.4.3 Possible scenarios for ESA

The post-2007 deadline for a new WTO-compatible trade regime between the EU and the ACP gives a splintered picture of the ESA region which, to a large extent, reflects the inherent disparity of the grouping. Now six countries have initialled the ESA agreement, but with separate schedules for liberalisation (Comoros, Madagascar, Mauritius, Seychelles and Zimbabwe), and five others have initialled under the recently emerged EAC EPA grouping (Burundi, Kenya, Rwanda, Tanzania and Uganda). The remaining five countries are LDCs (Djibouti, Eritrea, Ethiopia, Malawi and Sudan) continue to export to the EU under the EBA initiative since January 1st 2008.²¹

At this stage, the regional character of the ESA EPA grouping is difficult to see and, indeed, the initialling of a separate agreement by EAC partner states has created some tensions within the grouping. Restoring the ESA configuration is further complicated by the high degree of variation between the liberalisation schedules of the different ESA signatories and EAC signatories. To be aligned, the new liberalisation schedules will have to be negotiated. All the parties involved in the ESA EPA negotiations have made the political commitment to pursue negotiations towards a full and comprehensive EPA, building on and improving the existing texts. It is expected that countries signing the ESA or EAC text (including liberalisation schedules on trade in goods and services) will be in a position to do so by July 2009 at the latest. In addition, all ESA members, including the EAC countries, have committed to coordinate and harmonise their positions in the negotiation of a comprehensive EPA with the EU. More recently, EAC Ministers tabled a proposal to their SADC and ESA partners which aim to create a larger trading bloc encompassing EAC, COMESA and SADC, aiming at the “expeditious

²¹ It should be noted that while Zambia had initialled the interim ESA EPA text with no market access offer in December 2007. Zambia has been exporting to the EU under the EBA regime since 1st January 2008; Zambia finally initialled an interim EPA with a liberalization schedule on 30 September 2008.



establishment” of an FTA among them, “with the ultimate goal of establishing a single Customs Union”.²² Countries in the region are openly committed to restoring the regional coherence beyond that of just the EAC and the broader framework of the ESA configuration. But they are confronted to challenging realities.

In this respect, the scenario officially expected for the ESA region would be the successful conclusion of a comprehensive ESA-EC EPA, to which all countries in the configuration, including the EAC Member States, would adhere. Looking at the existing provisions, this appears to be technically feasible as each of the signatories of the ESA group has agreed to identical provisions and, the EAC ones are fairly similar. However, the fact that ESA countries tabled separate individual market access offers does serious concern, which could prevent the formation of a customs union in COMESA.²³ Harmonisation of liberalisation schedules between ESA and EAC will prove most challenging.

In this context, another possible scenario emerges in which the EAC market access offer would remain unaltered and ESA countries would table offers in line with their specific interests and where possible, on the basis of a common agenda for all areas of negotiation, including trade-related issues and services. This might lead to an ESA EPA as a framework agreement, with various degrees of commitment for different ESA countries or sub-groups of countries (as in the case of EAC for market access in goods). This should preserve some regional unity; however, it could limit deeper integration processes and would most likely prevent the formation of an effective COMESA customs union.

While there is a clear political drive to move towards a comprehensive and regional EPA, each country within the ESA configuration will have to look carefully at where its interests lie. Those countries, like Mauritius or Kenya, that had a clear interest in concluding an agreement with Europe have already done so and will most likely spearhead the process towards a full EPA. Throughout the EPA negotiating process, such leadership has been key in overcoming the diverse composition of the region and in ensuring progress in the negotiations. However, as the unfortunate recent events in Kenya show, security and political considerations will most likely take their toll on both the EPA negotiations and implementation in this country and have an impact on political leadership at the broader regional level.

Either of the above scenarios also implies that those LDCs that have opted-out of an interim agreement with the EU are convinced of the benefits of signing at least an FTA with the EU and possibly a comprehensive and full EPA. However, in the absence of an established CET for COMESA, it is less clear what interest such countries would have in tabling a market access offer. Beyond the crucial need for

²² See *Final Communiqué of the COMESA-EAC-SADC Tripartite Summit of Heads of State and Government*, Kampala, 22 October 2008, http://about.comesa.int/attachments/078_Final_Communique-Kampala_22_10_08.pdf

²³ A Common External Tariff has already been agreed upon and the region aims to launch the COMESA customs union by the end of 2008. It is doubtful though that this deadline will be met and that an effective customs union can be put in place soon in the COMESA region.



regional coherence and establishing a common regulatory framework, development cooperation and the extent to which accompanying measures are adequately addressed within the framework of an EPA can therefore play a key role in galvanising support from the LDCs. This will be crucial to avoid a situation where countries opt for a pick-and-mix EPA and regional integration processes in the ESA are further jeopardised. The risk remains, however, that providing adequate development support and aid to accompany an EPA could be used by the EU as a way to 'induce' reluctant ESA countries to sign an EPA; an outcome which cannot in any way be conducive to the development objectives owned by the countries of the region. Since no additional resources will be provided by the EU for the conclusion and implementation of an EPA, several LDCs in the ESA have informally been suggesting that they are not interested in signing an EPA with the EU.

5.4.4 Possible scenarios for the SADC EPA configuration

Uncertainty about the position of South Africa makes predictions about future developments in the SADC region difficult. While South African President Thabo Mbeki in his State of the Nation Address expressed his willingness to 'ensure that the negotiations on the Economic Partnership Agreement are completed as soon as possible',²⁴ South Africa has repeatedly expressed concern about a number of provisions in the interim agreement.

Trade in services and trade-related rules are key issues in the region. In the interim agreement, Botswana, Lesotho, Mozambique and Swaziland have taken on the commitment to continue negotiations on these areas in 2008, while South Africa and Namibia have been reluctant to do so. Contrary to other regions, commitments on development finance do not play a key role in the SADC configuration, even though the definition of support measures is important for the effective implementation of specific EPA provisions.

Considering South Africa's firm opposition to binding commitments in the area of services and trade-related issues, a comprehensive regional EPA covering these areas and including South Africa is unlikely to be concluded, unless South Africa reverses its position held so far. Given that the countries that initialled the interim agreement have expressed a strong interest in the EPA, several possible options can be imagined as outcomes of the second stage of negotiations:

- (1) A regional EPA including South Africa may be signed with identical liberalisation commitments on trade in goods but possibly varying degrees of commitments on services and trade-related issues. This would foster the customs union SACU and allow some members to go beyond a goods-only deal without compelling South Africa to negotiate on issues it prefers to exclude from an agreement. It would require an harmonisation between the liberalisation schedule of the interim EPAs agreed so far and the one of the TDCA.

²⁴ State of the Nation Address of the President of South Africa, Thabo Mbeki, *The Citizen*, 8 February 2008, <http://www.citizen.co.za/index/article.aspx?pDesc=58071,1,22>



- (2) A regional EPA including South Africa may be signed covering trade in goods only. Provided a single liberalisation schedule for SACU is agreed upon, this would preserve regional integration within SACU with all members. The possibility of concluding a common agreement on trade in services and trade-related issues with the EU at some later stage, after increased capacity building and integration within SADC, could be kept open. However, a goods only agreement would contradict the commitments taken on by Botswana, Lesotho, Mozambique and Swaziland in the interim agreement.
- (3) South Africa may decide not to join an EPA and to continue exporting under its current FTA with the EU, the TDCA, while other countries would conclude a full EPA. This would solidify the *status quo* further to initialling the interim agreement, thereby creating a permanent split in the region. This may jeopardise the relevance, and ultimately survival, of SACU. Hence, the opportunity of promoting stronger coherence in SACU and SADC through an EPA would be lost.

Under SACU, the conclusion of an EPA by those countries that have initialled the interim agreement is legally possible with the consent of South Africa even if it is not a practical possibility for most goods. A refusal to give this consent, however, might put the existence of SACU in question. The extent and the urgency of the threat to economic regional integration posed by a possible non-participation of South Africa in an EPA depends on the differences in liberalisation schedules under an (interim) EPA compared to those under the TDCA. Fortunately, recent progress in the negotiations has contributed to harmonised the liberalisation schedules.

The extent of the participation of Angola and Namibia remains to be seen. Angola has expressed its 'intention of acceding to the full EPA once this agreement is concluded',²⁵ but has not initialled the interim agreement. As an oil-rich country, it has little direct incentive to do so. Namibia, on the other hand, is party to the interim agreement and has strong interest in access to the EU market in goods (notably for its beef exports). But Namibia has shown less interest in negotiations on services and trade-related issues, and has initialled the interim agreement on the condition that several issues of concern would be addressed in the ongoing negotiations. It is now siding with South Africa in refusing to make substantive commitments on these issues in the context of a final EPA.

6 Conclusion and recommendations for the way forward

EPA negotiations are continuing in 2008 with the aim of reaching comprehensive agreements at the regional level with a broader coverage of subject areas and corresponding in their geographic scope more closely to integration processes in the ACP.

²⁵ Joint Declaration of the EC-SADC EPA Ministerial Meeting, 4 March 2008, Gaborone.



It remains to be seen to what extent and by what date²⁶ such full EPAs will be realised. In some cases, the interim agreements – once signed and ratified – might become a long term solution. However, all parties to the interim deals have expressed their commitment to continue striving for comprehensive EPAs, in order to realise the objectives in terms of development, ACP regional integration and integration into the world economy. From our analysis of the negotiation process up to now, several elements emerge that might be kept in mind for the future in an effort to make the process as effective as possible:

The need for ownership

The EPA negotiation process has too often been chaotic and led by the European Commission. To reach truly development oriented outcomes, it will be necessary to allow for the adjustment of interim texts that do not fully reflect the interests of all parties. In revising an interim agreement it may be helpful to draw on texts concluded in other ACP regions, adopting some provisions from these where suitable.

The range of issues to be covered in a full EPA should reflect both national and regional ACP interests. If interests among countries within a region differ, an EPA might include varying degrees of commitment on trade in services and trade related issues. Further, signing an EPA should be a sovereign decision by each country: if a country chooses not to take part it should not be compelled to join through political pressure or through aid conditionality.

Timing

It will be crucial to allow sufficient time to negotiate a truly development friendly, comprehensive EPA that is owned by all involved; while the momentum of the negotiations should not be lost, there is no need to rush into an agreement with ill conceived provisions. A clear agenda and calendar for negotiation that is acceptable to both partners should be defined. In particular, this should avoid leaving contentious or difficult issues until the end.

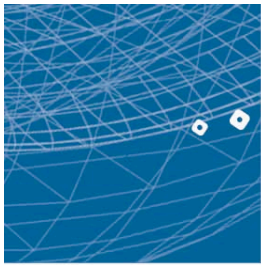
Increasing transparency

There is a need to increase transparency in the negotiations and their outcome, in order to allow for public scrutiny by policy makers, parliamentarians, private sector and civil society representatives. This will foster a more participatory approach and contribute to increasing ownership of the agreements reached.

Reducing negotiation asymmetries

The asymmetries in negotiating capacity (between the EU and ACP and among the ACP) that have contributed to the incoherence of the interim agreements need

²⁶ Most interim agreements specify a deadline to conclude negotiations on outstanding issues by the end of 2008, often postpone to mid-2009. However, it will depend on progress in the negotiations whether this deadline will be met.



to be taken into account in future negotiations if the problems arising from the rushed conclusions of the interim EPAs are not to be exacerbated. This needs to be done through adapting the pace of negotiations as well as the style of interaction between the parties and through capacity building measures under the Aid for Trade initiative.

Development support for EPAs

In order for ACP countries and regions to benefit from EPAs, accompanying measures will be essential. These include for instance compensation for lost customs revenue, strengthening the competitiveness of local producers to enable them to face liberalisation and supporting the implementation of EPA provisions. Attention needs to be paid both to the availability of sufficient resources, notably under the EU Aid for Trade Strategy, as well as to the improvement of delivery mechanisms and effective programming.

Coherence with regional integration processes

Given that except in the case of EAC, the interim agreements have been concluded individual countries and sub-groupings that form part of larger regional communities, it will be crucial to ensure coherence between EPAs and ACP regional integration processes. Liberalisation schedules and other commitments need to be harmonised in order to reach a sustainable outcome. This entails responsibilities on both sides of the table as well as providing appropriate policy initiative from ACP countries to take their regional agenda forward.

But the reality is that, for many African LDCs, EPAs are not perceived as an opportunity to reform their economies and foster their development. They thus have no appetite to conclude an agreement with the EU. May they may be forced to do so for the sake of preserving the regional integration processes they are actively engaged in, which include non-LDCs that need an EPA to maintain their preferential market access to the EU. Unless African countries succeed in aligning EPAs with their reform and development agenda, they may either conclude an undesirable EPA for the sake of safeguarding regional integration, or downplay their regional ambitions and reject an EPA; none of these options can be conducive to their development, let alone lead to constructive relations with their EU partners.



Annex I - Overview of EPA signatory states

Table a. Overview of EPA signatory states

	Members	States having concluded as of October 2008 ^a	Countries falling into <u>EBA/standard GSP</u>	Proportion of signatory countries	Number of liberalisation schedules
ESA EPA	Comoros Djibouti Eritrea Ethiopia Madagascar Malawi Mauritius Seychelles Sudan Zambia Zimbabwe	<i>Comoros</i> <i>Madagascar</i> Mauritius Seychelles Zimbabwe <i>Zambia</i>	Djibouti Eritrea Ethiopia Malawi Sudan	55%	6
EAC EPA	Burundi Kenya Rwanda Tanzania Uganda	<i>Burundi</i> Kenya <i>Rwanda</i> <i>Tanzania</i> <i>Uganda</i>	—	100%	1
SADC EPA	Angola Botswana Lesotho Mozambique Namibia South Africa Swaziland	Botswana <i>Lesotho</i> <i>Mozambique</i> Namibia Swaziland	Angola	71%	2
CEMAC EPA	Cameroon Chad Cent. African Rep. Congo DR Congo Eq. Guinea Gabon S. Tomé/Principe	Cameroon	Chad Cent. African Rep. Congo DR Congo Eq. Guinea Gabon S. Tomé/Principe	12.5%	1
ECOWAS EPA	Benin Burkina Faso Cape Verde Côte d'Ivoire Gambia Ghana Guinea Bissau Liberia Mali Mauritania Niger Nigeria Senegal Sierra Leone Togo	Côte d'Ivoire Ghana	Benin Burkina Faso Cape Verde ^b Gambia Guinea Bissau Liberia Mali Mauritania Niger Nigeria Senegal Sierra Leone Togo	13%	2
PACP EPA	Cook Islands Fed. Micronesia Fiji Kiribati Marshall Islands Nauru Niue Palau Papua New Guinea	Fiji Papua New Guinea	Cook Islands Fed. Micronesia Kiribati Marshall Islands Nauru Niue Palau Samoa Solomon Islands	14%	2



	Members	States having concluded as of October 2008 ^a	Countries falling into EBA/standard GSP	Proportion of signatory countries	Number of liberalisation schedules
	Samoa Solomon Islands Tonga Tuvalu Vanuatu		<u>Tonga</u> Tuvalu Vanuatu		
CARIFORUM	Antigua/Barbuda Bahamas Barbados Belize Dominica Dominican Rep. Grenada Guyana Haiti Jamaica St Kitts/Nevis St Lucia St Vincent/Grenadines Suriname Trinidad/Tobago	Antigua/Barbuda Bahamas Barbados Belize Dominica Dominican Rep. Grenada Guyana <i>Haiti</i> Jamaica St Kitts/Nevis St Lucia St Vincent/Grenadines Suriname Trinidad/Tobago	—	100%	1
<p><i>Notes:</i></p> <p>(a) Countries in italics are classified as LDCs. In the table compiled by the Commission (http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/08/15&format=HTML&aged=0&language=EN&guiLanguage=en), Somalia and Timor Leste are listed as LDC non-signatories (in the ESA and PACP groupings respectively). Since neither has played any part in the negotiation of EPAs, they are omitted here.</p> <p>(b) Cape Verde has been classified as non-LDC since January 2008 but will be able to export to the EU under the EBA initiative for a transitional period of three years.</p>					

Source: ODI-ECDPM (2008), *The New EPAs*, www.ecdpm.org/pmr14

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