

The new EPAs: comparative analysis of their content and the challenges for 2008

Executive Summary

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This report¹ provides a comprehensive analysis of the trade regimes for Africa that on 1 January 2008 replaced the Cotonou Partnership Agreement (CPA), the negotiations that remain to be completed and the challenges facing Africa in implementation, some of which require support from Europe. Part A provides an analysis of the liberalisation that African states have agreed to undertake in relation to imports from the European Union (EU) and *vice versa* and key features of the main texts of the interim Economic Partnership Agreements (EPAs). Part B reviews the process that culminated in the initialling of interim EPAs by some ACP states but not by others to learn the lessons, reviews the future options for both current signatories and non-signatories and assesses the aid for trade (AFT) modalities.

Eighteen African states (including most non-least developed and some least developed countries (LDCs)) have initialled interim EPAs, as have two Pacific non-LDCs (Fiji and Papua New Guinea (PNG)); the Caribbean countries (CARIFORUM) have gone further and have agreed full EPAs. The remaining African, Caribbean and Pacific (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.² 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 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. 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, whilst reaching development-oriented agreements without arbitrary time pressure is an attractive prospect, it is no easy task.

Key features of the interim EPAs

Part A analyses the agreements initialled by African countries and, where relevant, makes a comparison with the CARIFORUM and Pacific agreements. It responds to five specific research questions posed in the terms of reference for the study.

1. National level: what is the impact of the agreed tariff liberalisation schedules, when compared to current applied tariffs? Aspects to be addressed are the coverage (relative impact on products and sector) and speed of tariff liberalisation (front loading/back loading of products/sectors), analysis of the exclusion list (products/sectors) and impact on hypothetical government revenue.
2. Regional level: how should the individual agreements (if applicable) be interpreted in relation to current and future regional integration initiatives? Including comparative analysis of exclusion lists and liberalisation schedules of countries within the same region, identification of (dis)similarities in exclusion baskets and liberalisation schedules.

¹ This report provides the findings from a study commissioned and funded by the Ministry of Foreign Affairs of the Netherlands and undertaken by the Overseas Development Institute (ODI) and the European Centre for Development Policy Management (ECDPM). The views expressed are those of the authors, and do not necessarily reflect those of the Ministry.

² Cook Islands, Federated States of Micronesia, Nauru, Niue, Palau, Marshall Islands and Tonga.

3. ACP–EU exports: what does the DFQF market access to the EU mean for ACP countries in terms of (additional) market opening to the EU? Special attention should be given to the regime for sugar.
4. What do the agreed interim agreements/stepping stone agreements say about possibilities to opt out and conditions and time schedules to come to a full EPA (incl. conditions in relation to the Singapore issues, etc.).
5. In how far are the agreed texts for African regions and countries i) similar to each other and to the text for the Caribbean region and ii) development friendly? Aspects to be addressed are for example provisions on export taxes, compensation of export revenues, trade-related technical assistance and capacity building., infant industry and safeguards.

It does this through a detailed analysis of the changes that each party (both ACP and the EU) will make to tariffs and quotas on goods trade and a review of the main texts of the agreements which concentrate upon: the provisions required for an FTA in goods such as can be presented to the WTO; necessary institutional infrastructure; provisions on trade defence; some provisions (but not complete ones) on those elements that have been included in the negotiations but on which final agreement has not yet been reached such as services and the so-called Singapore Issues.

As such, it provides a country-by-country and region-by-region snapshot of the interim EPAs, explaining in broad terms what has been agreed and what changes will be made to current policy – and when. As well as providing a starting point for further, more detailed country- and issue-focused work, certain broad themes have emerged from this initial scrutiny. Some important findings on research questions 1, 2, 4 and 5 are summarised in the next three sub-sections, and those from research question 3 are included in the sub-section on Aid for Trade.

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.

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.

Implications for regionalism

A common perception, expressed by many countries in the independent Article 37.4 review of the negotiations, is that there is little coherence between the EPA agenda and the regional integration processes in Africa. One particular concern has been 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 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) countries³ 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. Of the goods being excluded by ESA not a single item is in the basket of all five countries and over three-quarters are being excluded by just one. Comparing Mozambique's schedules with those jointly agreed by Botswana, Lesotho, Namibia and Swaziland (BLNS), just one-fifth of the items are being excluded by both parties.

ESA faces an additional challenge. 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.

Some key provisions of the interim agreements

The issues highlighted above (which respond to research questions 1 and 2) have been derived from the complex and detailed EPA schedules using the authors' judgements about the relative importance of different elements of the agreements. This subjective dimension is even greater when attention shifts to answering research questions 4 and 5. This takes attention away from the schedules of tariffs to be liberalised or excluded towards the main texts, the impact of which will become clear only over time in the light of circumstances.

³ Only five of the 11 ESA states (excluding EAC) have initialled an interim EPA.

Part A explains how judging features of the main texts that have already attracted attention (such as the ‘MFN clause’) depends on how they are interpreted and enforced as well as on the analyst’s political and economic perspective. The same applies to the fact that the recent food export ban imposed by Tanzania (to fight domestic shortages) will be illegal in any EPA once implemented other than that of the EAC.

It is for this reason that an issue-by-issue summary of the main provisions of the EPAs is provided in Appendix 3. It is the safest guide to what the parties have agreed and allows a comparison to be made of each main provision in the various EPA texts. The TDCA and EU–Mexico FTA are less restrictive than any of the EPAs in several (but not all) respects: they contain no MFN clause, standstill clause, or time restrictions for pre-emptive safeguards, and provide no sanctions in case of a lack of administrative cooperation. And in some respects the CARIFORUM and Pacific EPAs are less restrictive than those in Africa (though in other cases the reverse is true, so it is not possible to say that one EPA is more or less restrictive than another across the board). There are seven provisions found in the CARIFORUM and/or PACP EPAs but not in any of the African ones, and six of these have the effect of making the accords less restrictive.

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.

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).

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.

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.

Development cooperation and finance

All the 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.

The way forward

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 the agreement of full EPAs reinforce this need.

Part B considers the implications of the interim EPAs concluded in Africa, and the way they were concluded, on the continuing EPA negotiation process, and identifies options for the way forward. It addresses five questions raised in the terms of reference for the study.

1. What are the lessons learned from the EPA negotiation process?
2. Based on the findings from part 1, what are the different scenarios for the way forward, including: – moving from interim to comprehensive EPAs, moving from country to regional EPAs, and/or moving from interim EPAs to GSP+?
3. What could be the changes and additions to the interim EPAs to make them comprehensive, development friendly and in support of regional integration?
4. What are the opportunities and threats for the ACP for the negotiations on ‘phase 2’? Special attention should be given to the lessons from phase 1, the political dynamics and the interaction between regional integration and EPA negotiation processes.
5. Considering the outcomes of part 1, what are the implications for aid modalities for the coming years (where should ACP and donors pay attention to compared to the current state of affairs)?

A turbulent negotiating 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. For various reasons, EC 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. 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.

The first challenge 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.

Options for the way forward

All the parties are officially committed to concluding comprehensive EPAs, and negotiations are continuing to that end in all regions. However, given past experience, this goal may not be as easy to achieve as hoped and different outcomes of the negotiation process may be envisaged. These range from concluding full EPAs over adopting the initialled interim agreements as permanent solutions (possibly joined by additional countries), to opting out of EPAs, relying instead on the GSP (EBA, GSP+ or standard GSP, depending on the criteria met by the countries) to access the EU market and liberalising under the intra-regional and multilateral frameworks, if at all. It is not for the authors of this study to identify which is the best option, as this is a task for each country and region. In fact, different countries, even within the same region, may prefer different options. As indicated by the analysis in Part A, the challenge will be for each grouping to adopt a common approach consistent with their regional integration processes, while promoting their development objectives.

The need for ownership

The range of issues to be covered in a full EPA should reflect both ACP national and regional 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 pressured 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 stakeholders; while the momentum of the negotiations should not be lost, there is no need to rush to an agreement with ill-conceived provisions. A clear agenda and calendar for the negotiation that is acceptable to both partners should be defined, and should avoid leaving contentious or difficult issues until the end.

Instead of moving from interim agreements directly to full EPAs it would be possible to address different areas of negotiations step-by-step through a built-in agenda consisting of *rendezvous* clauses with different issue-specific deadlines to finalise negotiations. Implementing commitments in line with this agenda could further be made conditional on the availability of support for capacity building.

Increasing transparency

There is a need to increase transparency in the negotiations and their outcomes 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 to be taken into account in the further negotiations if the problems identified in Part A are not to be made worse. 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 AfT initiative.

Lack of capacity has also hampered the effective consultation, involvement and participation in the EPA process of ACP civil society, private sector and parliamentarians, a fact which consequently often hindered the ACP negotiating positions. As a result, the EPA process has generally not been effectively embedded in national policy processes in the ACP and in extreme cases it has generated a general public hostility towards the EPAs.

Aid for Trade and EPA related development support

Although the EPAs have only non-binding provisions for development cooperation, the African ACP states will lose significant tariff revenue – in some cases very quickly – and financial support to offset this is needed. The total ‘theoretical revenue’ (as defined in Part A) that will be lost during the first tranches of liberalisation is \$359 million per year.

Such inflows are needed just to maintain the *status quo*: the support needed for domestic producers to adjust to increased competition from imports and new opportunities for exports as a result of duty-free, quota-free access (DFQF) is additional. DFQF will bring some immediate and valuable gains from the redistribution of the revenue that until the end of 2007 the EU accrued as import tax. But it still needs to be built on by enabling an increase in ACP supply to bring longer-term benefits. This will often require significant investment in both physical and human resources, some of which will need to come from the private sector and some from the public sector.

As the centrepiece of the EU’s commitment to EPAs so far, it would be sensible to ensure that there is also adequate aid provision to help remove blockages to increased supply. Europe has committed itself to provide more Aid for Trade (AfT) to developing countries and should ensure that part of this enhances the use of DFQF by removing obstacles to production and export, such as poor infrastructure and other physical or institutional deficiencies.

Indeed, the EU decided that EPA-related needs should be addressed through the ‘EU Aid for Trade Strategy’ in favour of all developing countries, recognising that the availability of aid for trade should not be made conditional on concluding an EPA. However, there is no clarity on what resources will be available for each ACP country and by when as part of the AfT Strategy.

Improving mechanisms and procedures for delivering AfT and trade-related assistance is as important as providing an appropriate level of support. Effectiveness of delivery will determine the capacity to implement EPAs and any further trade reform. Given that the AfT Strategy builds on the EU commitments for improving the quality of aid in line with the Paris

Declaration, there is a window of opportunity in 2008 to use aid effectiveness processes to harmonise donors' practices and align them with partner countries' own delivery instruments.

The ACP regions and countries should proactively ensure that the EU AfT Strategy is operational and effective by identifying gaps in existing support and improvements needed in AfT delivery instruments. There is urgent need in particular to assess the added value of different mechanisms (regional funds and national-level instruments, etc.).