



Economic Partnership Agreements:

The End of the Beginning

Christopher Stevens

The trouble with trade negotiations is that they are conducted by trade officials not trade economists! This means, at least from the perspective of the latter, they are treated as a mercantilist exchange of ‘concessions’ – and that the hard issues are left right until the end, making impact assessment problematic.

Each side normally seeks as few changes as possible to its own policy (in the form of cuts to tariff or non-tariff import barriers and new trade rules) while pressing for the greatest change to its partners’ policies. The changes that would make the maximum impact on the domestic market are usually resisted most energetically and, until almost the very end, both sides in the poker game insist they will not happen. If, despite this, they are changed, it is not only agreed in a rush right at the end but often subject to a host of caveats – including, often, a significant delay in implementation (of up to 25 years in the case of Economic Partnership Agreements (EPAs)).

So any impact assessment undertaken sufficiently early to have an effect on the outcome has to be done in ignorance of detail on the changes most likely to produce a relatively large economic impact. A consequence is that the actual impact will tend to become apparent only over time – often many years – as an agreement is implemented (and after so much else has happened that the impact of the trade agreement itself may be hard to identify).

The end of the EU’s autonomous ACP preferences

For EPAs, this period of little or no major change has been extended – as a consequence of the dynamics of negotiations between trade officials. Begun formally in 2002, the EPA negotiations dragged on with little progress as the 2007 deadline set by the EC steadily approached. As 2007 began, it was clear that a set of

full EPAs was unlikely to be completed by the end of the year (as too much technical detail remained to be addressed, let alone agreed), but the EC rebutted all calls for an extension. This was partly because the World Trade Organization (WTO) waiver justifying the pre-EPA trade Cotonou preferences expired at the end of the year, and partly in order to maintain pressure on the Africa, Caribbean and Pacific (ACP) negotiators.

But reality broke through during the last quarter when, first, the EC agreed that only interim EPAs, covering only goods, needed to be completed by the deadline and, then, when even this appeared unachievable, introduced an autonomous regulation that extended pre-existing preferences to all ACP countries that were still negotiating in good faith. As a result, there were very few casualties from the EPA process in 2008. Most of the countries that walked away from the negotiations were Least Developed Countries (LDCs) that remain eligible under the Everything But Arms (EBA) tranche of the Generalised System of Preferences (GSP) for preferences that are very similar to those that they had enjoyed previously under Cotonou. The small number of non-LDC states that walked away were countries like Nigeria and Gabon which exported few goods to the EU that face high tariffs.

This stay of execution is set to end at the start of 2014 (when the EU’s new GSP is expected also to kick in), see essay number 6, because the EC has proposed to remove autonomous preferences from any state that has failed to sign and ratify an EPA by this date – although they can be reinstated ‘as soon as they have taken the necessary steps towards ratification of their respective Agreements, and pending their entry into force’ (EC 2011). Eighteen ACP states are affected.¹ The imposition of this deadline is likely to force the pace of negotiations so that some – perhaps most – of the states sign (in those cases where they have not yet done so) and ratify, although some may not.

Non-trivial trade policy changes will start to happen ...

Because of delays in implementation by EPA signatories and the extension of the negotiating period for others, the impact of EPAs thus far has been underwhelming. However, this is set to change in 2014 when the first non-trivial changes will happen if some of the non-LDCs on the EC list fail to ratify and experience a significant increase in the tariffs they pay on their exports to the EU. The countries and products that are vulnerable to tariff hikes are listed in a 2007 report by ODI.

Other non-trivial changes will follow in short order. For the Caribbean Forum (CARIFORUM), some big changes are due in 2015-2017 when the EPA rules on 'para tariffs' kick in. These are taxes on imports other than tariffs, and the Caribbean region boasts a particularly impressive array. They range from special taxes that apply only to imports, to importer fees that greatly exceed the costs of providing the services delivered. Under the EPA (signed in 2008), these must be eliminated between Years 7 (2014) and 10. Also, over the coming years, most of the timetables included in the draft and interim EPAs of 2008 require that some significant tariffs start being removed.

... Which may put the ball in the EU's court

The EPA negotiations exhibited an unusually asymmetrical power relationship. The EU was able to offer few improvements in market access over Cotonou simply because most imports from the ACP already entered its market duty free. In return for the major changes it sought to ACP trade policy, it could offer only a negative: that it would not impose new tariffs on ACP exports and thus hobble existing trade.

Once this threat of new tariffs has been lifted by EPA signature and ratification, though, the asymmetry reverses direction. It is the ACP that must decide whether, how (and within limits) when to apply the changes to which it has agreed. In many of the more contentious areas, there is some ambiguity over what is required. It is for the ACP state, for example, to decide in the first instance whether a particular tax or charge qualifies as a para tariff that must be removed. Only if the EU takes a different view can the matter be tested – and only if it refers the matter to arbitration will an enforceable 'independent' view be expressed. Although the precise provisions on dispute settlement vary between EPAs, they all share two features. First, one arbitrator is nominated independently by the EU and one by the ACP (and they jointly select a third, who chairs). So it is far from certain that the ACP will 'lose' all disputes. Second, if the ACP does lose and fails to apply the measure it is adjudged to have omitted, the maximum penalty is the EU's removal of equivalent trade concessions. Even if the ACP and EU take the same view, administrative constraints may delay implementation – as has happened in CARIFORUM, the only full EPA signed and ratified by (almost all) parties.

In other words, the EU is likely over the coming years to face a series of 'challenges' in the form of actions (or inactions) by its ACP EPA partners that fail to apply wholly or in part the changes it believes have been agreed. Not all such challenges will even be noticed; not all those noticed will be subject to EU action. When action is taken, the EU will not always prevail. And, even when it does, the ACP party may not comply. Such tussles are bound to spill over to some extent into broader development policy. Negotiating the EPAs soured other aspects of EU-ACP development policy. Implementing the EPAs may be worse.

References

- EC (European Commission) (2011) 'Proposal for a Regulation of the European Parliament and of the Council amending Annex I to Council Regulation (EC) No 1528/2007 as Regards the Exclusion of a Number of Countries from the List of Regions or States Which Have Concluded Negotiations. COM(2011) 598 final 2011/0260 (COD), 30 September. Brussels: EC.
- ODI (Overseas Development Institute) (2007) 'The Costs to the ACP of Exporting to the EU under the GSP'. Research Report. London: ODI.

Footnotes

1. Botswana, Burundi, Cameroon, Comoros, Côte d'Ivoire, Fiji, Ghana, Haiti, Kenya, Lesotho, Mozambique, Namibia, Rwanda, Swaziland, Tanzania, Uganda, Zambia and Zimbabwe.