



Informal workshop on contentious issues of the EPA negotiations and regional delivery mechanisms for Aid for Trade

Brussels, 8-9 July 2009

Final Summary Report

Day 1: Contentious Issues in the EPA Negotiations

The purpose of the first day meeting was to increase common understanding on issues of concern expressed by ACP countries in the current negotiations. Those issues were discussed within three thematic sessions respectively on trade in goods, development cooperation and trade in services and investment.

1. Issues of Concern Related to Trade in Goods

The participants acknowledged that some contentious issues (e.g. standstill clause, export taxes and free circulation of goods) appear to have been resolved in some regions in the context of recent negotiations and following the nomination of a new EU Trade Commissioner. One remaining question was the point at which the agreed issues would be translated into legal text: namely whether prior to finalising the interim EPAs, or in the context only of a move towards comprehensive EPAs. Beyond this, some key issues remain still as potential stumbling blocks remain in the various EPA the negotiations: two in particular were raised and discussed by participants:

- ***The definition of ‘substantially all trade’ and of transitional periods for tariff liberalisation.***

The lasting disagreement on this point reflects a systemic issue: the requirements of the XXVI article of the GATT related to the liberalisation coverage (i.e. the definition of ‘substantially all trade’), as well as to the length of the transition period, remain unclear. While on the one hand the European Commission’s interpretation of requiring ACP partners to liberalise 80% of goods within 15 years could be seen as fairly arbitrary, on the other hand there was an overriding need to ensure that any EPA was compatible with WTO rules, to ensure that preferential market access was less threatened by legal challenge. One of the



EU's major concerns is indeed the maintenance of a strong and effective multilateral trading system.

However, African participants underlined that most African countries still hold different views on the issue. West African countries propose for instance to liberalise 60% to 70% of goods over 25 to 30 years. The various levels of economic development and the diverse structures of trade among the members of a single region makes the objective of a single regional offer of 80% trade liberalisation even trickier. Yet it was emphasised that regional integration processes would be hindered without coherent regional offers. Finally, it was also stressed that the negotiations were taking place in a changing context of global economic crisis and of the initialisation of agreements between the EC and Central American and Andean countries (which impact the level of preference offered in Interim EPAs).

Finally, the participants pointed out that the 'necessary' or required level of flexibility remains fairly subjective. It was acknowledged that under the impulse of Commissioner Ashton, the European Commission recognises that some products will need a long lasting protection and has advocated a sector-by-sector or even tariff-line-by-tariff-line approach. ACP negotiators also favour an assessment by sector rather than a focus on a general target in percentage. Moreover, some participants pointed out that, in practice, the implementation of an EPA may not be quite as strict as for other trade agreements.

- ***The MFN clause***

The EC was charged with a mandate to include MFN clause in EPA in light of the EU's offer of providing 100 per cent duty free, quota free access to ACP goods under the EPAs. While some participants argued that this offer of 100% was no longer a privilege because of preference erosion, supply side constraints and restrictive rules of origin, the European side stressed that liberalisation of some very sensitive products such as sugar was a huge step with important implications for both sides. In theory, the EU could have offered less market access (for example, 98% instead of 100%), which would have made the inclusion of an MFN clause less important. It was argued that the MFN clause also benefits the ACP by providing them with benefits the EU might in future give to third parties in their negotiations.

Yet, ACP participants explained the strong reluctance of their countries to the inclusion of such a clause by putting forward two main reasons: it could undermine regional integration and hinder South-South cooperation. ACP countries do not want to extend concessions given to other developing or emerging countries to the EU. They consider that trade with other partners such as China (which does not impose any conditionality) is essential for their development.

2. Contentious Issues Related to Development Cooperation



Participants began by acknowledging that European and ACP have reached consensus on the need to take into consideration the adjustment costs involved by the EPA, to strengthen the ACP production capacities and to minimise any negative consequences on local development of an increase of European imports. But beyond this general agreement in principle, several tricky issues of concern remain:

- ***The timeframe of the implementation of accompanying measures***

Some generally contentious points were raised relating to the definition of the timeframes for the implementation of trade agreements on one hand, and of the accompanying measures on the other hand. Some stakeholders underlined that the EPAs can be development drivers in themselves given the potential positive impact of liberalisation commitments and enhanced transparency in the trading relationship. Yet other participants stressed that these positive effects will not come automatically, EPAs do entail risks and most of all there are considerable needs to be addressed in order to help ACP countries to benefit from the new opportunities enshrined in the EPA.

- ***The added value of 'new' development aid instruments dedicated to the EPAs.***

The added-value of the new aid for trade strategies, such as West Africa's Programme d'Accord de Partenariat Economique pour le Développement (PAPED), was discussed. Some participants argued that aid for trade has been implemented for decades under general development cooperation. Similarly, the PAPED itself contains a number of existing or planned projects. However, other participants highlighted that such a strategic Aid for Trade document aims at bringing stronger coherence in the current approaches and setting strategic priorities to address the development needs linked to the implementation of the EPA.

3. Contentious Issues Related to Trade in Services and Investment

The debate on liberalisation in services and investment raised a wide range of key contentious issues.

- ***Relevance of liberalisation in services and investment***

While the EC considers legal commitments in the areas of services and investment as important for economic growth, some ACP participants highlighted that the impact of liberalisation of trade in services and investment on development remains unclear. While some ACP countries have already reached a high level of liberalisation in these sectors, not all countries are convinced of the need for commitments in services and investment. Some participants highlighted the need for preliminary diagnostic studies to see the state of play in their countries, and assess the competitiveness of the services and investment sectors,



and potential trading opportunities. Flexible approaches to scheduling, such as using transition periods, were also raised as a possible way of overcoming a reluctance to make commitments.

- ***GATS model versus EU proposed combined services and investment model?***

While this has been a point of contention in the negotiations, European participants underlined that the EU's approach remains flexible and the commitments undertaken in the CARIFORUM EPA follow more closely the structure of those undertaken at the WTO.

- ***Level of regional integration needed***

Given the diverse levels of liberalisation in services and the priority of establishing a regional framework, regional coherence is a desirable goal though not a necessary requirement from a strictly legal point of view. Moreover, the EC would propose to continue the negotiations region to region while commitments are taken country by country and sector by sector. Domestic regulations, public services or conditions of exercising a profession could still be defined by each country. This approach would not contradict the objectives of enhancing regional integration because this integration could still be pursued.

4. Concluding Points

In conclusion it was felt that flexible approaches on various sticking points in the EPA negotiations were being identified, and that this was very important. However, the devil is in the detail, and it would be important particularly for the ACP to illustrate concerns about specific issues with concrete examples/demands and engage all EU actors, as well as the Commission negotiators.



Day 2: Regional Delivery Mechanisms for Aid for Trade

Effective implementation of Aid for Trade is a key issue in order to support ACP countries in seizing the opportunities and meeting the challenges for EPAs. However, practitioners are still in the process of determining the best ways of delivering finance in this area. Hence, the purpose of the second day of the meeting was to discuss mechanisms for the delivery of Aid for Trade and development support to EPAs, with a focus on the regional dimension that is crucial in achieving the regional integration objectives of EPAs

The morning session was dedicated to exchanging specific experiences, plans and expectations among ACP and EU experts. A brief overview was provided on the state of play on Aid with focus on delivery mechanisms in different ACP regions¹, as well as an overview of the main issues and challenges linked to the regionally owned funds as mechanisms for delivery of EU Aid for Trade in ACP regions².

The initial discussion after the presentations revealed continuing confusion on the additionality of Aid for Trade resources. Some participants expressed the view that Aid for Trade is 'old wine in new bottles', while others stressed that new resources are being allocated to Aid for Trade. Several participants emphasized that the value of the Aid for Trade agenda goes beyond additional funding. They argued that work on AfT in recent years has contributed to a more strategic approach, as the link and coherence between different interventions is strengthened and more attention is paid as to how trade support leads to development and poverty reduction.

While the importance of discussing and thinking on regional delivery mechanisms was recognised by the participants, the need for further work on the identification of what is to be funded was highlighted. Only once needs and priorities of ACP countries and regions are identified can delivery mechanisms be put to good use.

In this context, several ACP participants emphasized the difficulty of identifying and prioritising aid for trade needs without knowing the scope of resources available. On the other hand, EU Member states, while recognising the need to improve predictability of funding, noted that a lack of information on concrete AfT needs and strategies in the ACP, prevents them from committing resources.

The potential value of regional funds as a regional delivery mechanism for Aid for Trade and EPA support was recognised by most participants. The concept of regional funds as a mechanism to deliver Aid for Trade has gained prominence in recent years. Intentions to make use of regional funds have been expressed in the

¹ For more information on the topic, see: Lui, D., 2008. *The Aid for Trade Agenda and accompanying measures for EPAs: Current state of affairs*, (ECDPM Discussion Paper 86). Maastricht [\[www.ecdpm.org/dp86\]](http://www.ecdpm.org/dp86)

² For more information on the topic, see: Braun-Munzinger, C., 2009. *Regionally Owned Funds Mechanisms for delivery of EU Aid for Trade in ACP regions?* (ECDPM Discussion Paper 90). Maastricht. [\[www.ecdpm.org/dp90\]](http://www.ecdpm.org/dp90)



context of the ACP-EU negotiations on EPAs as well as in the joint EU Aid for Trade Strategy, and the creation of such funds is being considered in all ACP regions. Arguments in favour of regional funds highlighted by the participants included enhanced ownership by the region as well as strengthened coordination among donors.

Some key issues for the implementation of regional funds were raised and discussed:

- **Ensure subsidiarity.** When setting up a fund, the added value of a new mechanisms needs to be assessed as compared to existing mechanisms at the national and/or regional level. Several participants pointed out that aid for trade is currently mainly delivered at the national level, particularly in the framework of bilateral cooperation between EU Member States and their ACP partners. Regional funds are thought to be useful mechanisms to strengthen delivery on the regional level.
- **Purpose and scope of interventions.** It was recognised that the precise purpose and scope of interventions should be clearly identified when setting up a fund. No agreement exists among experts on what categories of AfT a regional fund might be most suitable for. Some participants expressed the opinion that infrastructure and adjustments costs are suitable intervention areas to be financed through regional funds. Opinions amongst the participants differed on the need and possibility of a fund to focus particularly on support for the implementation of an EPA (planned in Central Africa, West Africa and the Pacific), as opposed to more general support for regional integration and/or world trade.
- **Institutional and legal setting.** Participants discussed the possibilities of funds being hosted by a regional organisation, a regional bank or a private entity. It was concluded that a choice needs to be made on a case by case basis, depending on the specificities of individual regions and existing institutions. In some regions, the regional bank and the regional committee do not have precisely the same members (e.g. Central Africa, the Caribbean), an additional challenge that needs to be taken into consideration.
- **Definition of beneficiaries.** It was stressed that eligibility criteria to benefit from the fund need to be clearly defined (e.g. regional and/or national projects, public and/or private sector, Least Developed Countries or all countries in the region). It was highlighted that when a fund functions on a 'first come, first serve basis', then more developed countries are more likely to benefit from the fund than LDCs. A level playing field could be created by setting up a Programme Implementation Unit, who can assist LDCs in developing bankable project and funding requests.
- **Financing instruments:** Appropriate financing instruments need to be identified on a case by case basis (e.g. grant and/or loans, programme and/or projects).
- **Sources of funding.** Potential sources of funding that were presented include members of the region, EU and non EU donors, international financial institutions, sovereign funds and private investors. It was stressed that successful use of the fund is likely to attract addition funders.



As an example, the participants particularly discussed the approach taken by COMESA, a region that is relatively advanced in setting up a regional fund. The region has decided for the fund to cover two types of activities: investments in infrastructure (under the *COMESA Infrastructure Fund*) and adjustment costs (under the COMESA Adjustment Facility). Three categories of adjustment costs will be specifically addressed: (i) revenue losses, (ii) frictional costs, (3) addressing vulnerable sectors. As for the institutional and legal setting, it was explained that the Infrastructure Fund (CIF) will be set up as an independent private entity. The fund is expected to provide primarily loans and (to a limited extend) grants. Potential sources of funding for the CIF include COMESA Member States, donors, development finance institutions, sovereign funds as well as private investors. Potential beneficiaries of both the CIF and the Adjustment Facility are all COMESA members. Both funds are foreseen to favour particularly Least Developed Countries. Support to projects and programmes will be decided on a 'first come, first serve' basis. To create a more level playing field, specific measures to support LDCs in accessing funding are expected to be introduced at a later stage.

Finally, many participants stressed the need for strengthening ACP – EU dialogue on aid for trade, particularly on the regional level. The *Regional Preparatory Task Forces*³ have in many eyes produced disappointing results, due to e.g. a lack of continuity in officials participating in the meeting, and irregularity of the meetings. The participants agreed on the potential benefit of revitalising the RPTF to make them effective coordination platforms, or finding some other way of maintaining meaningful dialogue (making use of existing for a within ACP countries).

In this context, ACP and EU participants stressed the value of this seminar as an occasion for the ACP, European Commission and EU Member States to discuss the topic of delivery of aid for trade informally. The hope was expressed that this was not a one-off event, but the start of a process. Specific follow-up was promised by ECDPM for the IRCC configuration (for example to facilitate further exchange between ACP regions and EU Member States for advancing on AfT), and for other ACP regions on request.

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³ Regional Preparatory Task Forces were set up in the context of the EPA negotiation process, as mechanisms to ensure coherence between the programming of development support and the EPA negotiation process.