

The Interim Economic Partnership Agreements between the EU and African States

Contents, challenges and prospects

Edited by Sanoussi Bilal and Christopher Stevens



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ECDPM and ODI

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List of acronyms

ACP	African, Caribbean and Pacific
AfT	Aid for Trade
ANSA	Angola, Namibia and South Africa
AoA	[WTO] Agreement on Agriculture
ASCM	Agreement on Subsidies and Countervailing Measures
AU	African Union
BITS	Bilateral Investment Treaties
BLNS	Botswana, Lesotho, Namibia and Swaziland
BLS	Botswana, Lesotho and Swaziland
CARIFORUM	Caribbean Forum
CEMAC	Communauté Économique et Monétaire de l'Afrique Centrale
CET	Common external tariff
c.i.f.	cost, insurance and freight
COMESA	Common Market for Eastern and Southern Africa
Comtrade	United Nations Commodity Trade Statistical Database
CPA	Cotonou Partnership Agreement
DFQF	duty-free, quota-free [access to the EU market]
DSB	[WTO] Dispute Settlement Body
EAC	East African Community
EAFF	Eastern Africa Farmers Federation
EBA	Everything but Arms
EC	European Commission
ECDPM	European Centre for Development Policy Management
ECOWAS	Economic Community of West African States
EDF	European Development Fund
EPA	Economic Partnership Agreement
ESA	Eastern and Southern Africa
EU	European Union
f.o.b.	free on board
FTA	free-trade agreement
GAERC	General Affairs and External Relations Council
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GSP	Generalised System of Preferences
HS	Harmonised System
IEPA	Interim Economic Partnership Agreement
(I)EPA	Interim or full EPA

LDC	least developed country
MDG	Millennium Development Goals
MFN	most favoured nation
NAMA	Non-Agricultural Market Access
NAO	National Authorising Officer
NIP	National Indicative Programme
NTB	non-tariff barrier
NT	national treatment
NTL	national tariff line
ODI	Overseas Development Institute
OECD	Organisation for Economic Co-operation and Development
PACP	Pacific ACP
PNG	Papua New Guinea
PROPAC	Plateforme sous-régionale des organisations paysannes d'Afrique centrale
PRSP	Poverty Reduction Strategy Paper
PSD	private sector development
RAO	Regional Authorising Officer
REC	regional economic community
RIP	Regional Indicative Programme
RoO	rules of origin
ROPFA	Réseau des organisations paysannes et des producteurs agricoles de l'Afrique de l'Ouest
RPTF	Regional Preparatory Task Force
RSP	Regional Strategy Paper
SACAU	Southern Africa Confederation of Agricultural Unions
SACU	Southern African Customs Union
SADC	Southern Africa Development Community
SDT	special and differential treatment
TDCA	[EU–South Africa] Trade, Development and Co-operation Agreement
TRA	trade-related assistance
TRAINS	(UNCTAD's) Trade Information and Analysis System
TRIPS	Trade Related Aspects of Intellectual Property Rights
UEMOA	Union Economique et Monétaire Ouest Africaine
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
UNECA	United Nations Economic Commission for Africa
WINFA	Windward Islands Farmers Association
WTO	World Trade Organization

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Forewords

This book combines analyses undertaken separately by Christopher Stevens, Mareike Meyn and Jane Kennan for the Overseas Development Institute (ODI) and Sanoussi Bilal, Corinna Braun-Munzinger, Dan Lui and Francesco Rampa for the European Centre for Development Policy Management (ECDPM) of the interim economic partnership agreements (IEPAs) between Africa and the European Union (EU). It follows an initial review of the IEPAs undertaken in early 2008 by ODI and ECDPM (Stevens *et al.*, 2008). Chapters 1 and 2 have been jointly written. The ECDPM analysis is the source of Chapters 3, 4, 7 and 8, while ODI has provided Chapters 5 and 6. The book is edited by Sanoussi Bilal and Christopher Stevens. Where relevant comparisons are made with the agreements initialled by the Caribbean Forum (CARIFORUM) states and by those in the Pacific, but the principal focus is Africa.

Executive summary

The negotiation of Economic Partnership Agreements (EPAs) between the European Union (EU) and the African, Caribbean and Pacific (ACP) states to replace the trade provisions of the Cotonou Partnership Agreement (CPA) has been controversial and given rise to many (sometimes wild) claims about the likely development effects. Until now such arguments have been speculative because the final details of the agreements were unknown. But now, following the conclusion of a full EPA with the CARIFORUM region and interim EPAs (IEPAs) with some African and Pacific states, it is possible for the first time to analyse what has actually been agreed and to assess the potential development effects. This book provides a comprehensive analysis of the African IEPAs as they stand in early 2009. It also establishes the negotiations that remain to be completed and the challenges facing Africa in implementation, some of which require support from Europe. It provides both a summary of the principle features of very complex documents and also the foundations for the many follow-up studies that will be needed to look in more detail at specific country, sectoral and other specific features of the IEPAs.

A slow and 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, European Commission and ACP negotiators had 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, had also taken its toll on a smooth progress in the negotiations.

Sifting the hyperbole from the reality

Not surprisingly, the reality of the IEPAs is less dramatic than many of the claims made (both by supporters and by critics) during the negotiations. In a number of respects, the IEPAs provide African parties with better access to the EU market for their exports than was the case under the unilateral preferences of the Cotonou Agreement (and before that the Lomé Conventions). Some of the fears expressed by critics have been defused, for example by the exclusion from any African liberalisation of many very sensitive products and by implementation periods that exceed significantly the 'normal' ten year period cited in the relevant provisions of the World Trade Organization (WTO).

At the same time, some of the concerns expressed by ACP states have not been dealt with – and both sides agree on the need to continue negotiations on them (but disagree over the time scale). Moreover, these complex documents are likely to contain 'surprises' when it comes to implementation. There is a widespread view, for example, that goods excluded by the ACP from liberalisation will be unaffected by the IEPAs, but this is untrue. 'Exclusion' of a product simply means that African tariffs on imports from the EU will not need to be removed (and in some, but not all, IEPAs that tariffs could actually be raised up to the WTO bound level). Apart from this exemption, all other IEPA rules apply to the 'excluded' products. One standard rule in all the IEPAs, for example, is a general prohibition on quantitative restrictions. So no more import bans (at least on goods originating in the EU) may be imposed by IEPA states, even on 'excluded' products, under any circumstances. Some will applaud this restriction on the grounds that import bans are the worst form of protection, while others question the wisdom of a blanket ban. Of more concern for this book is that there is no evidence of any public discussion of the new rule in any of the states that have initialled or signed the IEPAs. So it is unclear that the full implications have been recognised or that the relative merits of alternative means of dealing with an import surge have been assessed.

Was 2008 used to inject flexibility?

Nineteen African states (including most non-least developed and some least developed countries (LDCs)) have initialled IEPAs and, at the time of writing, two of these have signed. Although all except one of the IEPAs was initialled at the end of 2007, a number of changes have been introduced during 2008 either as a result of legal scrubbing or of

further negotiation on details¹. At the May 2008 General Affairs and External Relations Council (GAERC), the EU member states underlined the need for a flexible approach in dealing with ACP concerns, though they did not specify whether these concerned should be addressed in the context of the IEPAs or in the continued negotiations towards full EPAs, as argued by the European Commission. Having analysed the IEPAs in early 2008² and again in early 2009, ODI and ECDPM are able to establish the extent to which the later provisions differ from the earlier ones.

The IEPAs have not changed very much during 2008. Although there have been changes in most of the texts, most are relatively small. In cases where there are changes of substance the net effect is not necessarily to make the provisions more flexible. Ghana's liberalisation schedule, for example, has been amended substantially. One effect has been to reduce the share of imports to be liberalised in the first tranche (and removing the highest tariff items from this tranche) and to increase the proportion of imports excluded from liberalisation. But some liberalisation has also been brought forward so that two-thirds of imports will still be duty free within eight years. The start date for Côte d'Ivoire's liberalisation has been put back but in other respects the schedule is now more tightly defined than before and the trade-weighted tariffs on the goods to be liberalised by 2012 is now almost double what it was in the original version.

The broad pattern of African liberalisation

The interim EPAs were finalised in a rush to beat the end 2007 deadline – and it shows, even after the changes of 2008. All of the African IEPAs 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, Côte d'Ivoire and Ghana, have initialled significantly different texts with different liberalisation commitments, although there is provision that these can be re-negotiated as part of any region-wide deal to bring all (or most) Economic Community of West African States (ECOWAS) states into the IEPA.

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.

¹ The exception is the Zambia IEPA which was initialled in 2008.

² See (Stevens *et al*, 2008) for a preliminary analysis on which this book has expanded.

The picture that emerges is entirely consistent with the hypothesis that countries have a deal that reflects their negotiating skills and the EU's interests: that countries able to negotiate hard, knowing their interests (which were not incompatible with those of the European Commission) 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 three years before Kenya even begins to start reducing its tariffs as part of the IEPA; Ghana will have liberalised completely 68% of its imports by the time Kenya is two years into this process.

Implications for regionalism

A common perception, expressed by many countries, 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 six countries and 70% are being excluded by just one. Comparing Mozambique's schedules with those jointly agreed by Botswana,

3 Five of the 11 Eastern and Southern Africa (ESA) states (excluding the East Africa Community - EAC) initialled an interim EPA in 2007 and a sixth, Zambia, did so in 2008.

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.

EU liberalisation

The EU has granted duty free quota free (DFQF) access to its market for all exports from IEPA initialising states – since January 2008 for most goods, but phased in for sugar and rice. The rules of origin have also been made more appropriate to African production conditions in a small number of cases, and further negotiation is planned. There has been a temporary problem for joint production of exports among two or more African states (which has caused at least one known disruption to trade) as a result of the details of the interim arrangements under which DFQF has been provided since the Cotonou trade regime ended in 2007. But these should disappear when the IEPAs are signed.

By contrast the EU import regime has worsened since 2007 for some of the countries that have not yet initialled and which now export to the European market under other trade regimes. Most export 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. South Africa continues to export under its own free trade agreement (FTA) with the EU, the Trade, Development and Cooperation Agreement (TDCA).

Addressing contentious issues

Despite a period of intense negotiations towards interim EPAs in late 2007, a number of African negotiators and politicians have voiced concerns over a number of provisions appearing within the agreements that they view as ‘contentious’, related *inter alia* to the definition of ‘substantially all trade’, setting out the level of tariff liberalisation required by ACP countries, transitional periods for tariff liberalisation, the stand still clause, export taxes, national treatment, free circulation of goods, bilateral safeguards, infant industries, the most favoured nation (MFN) clause, the ‘non-execution’ clause (which provides for the possibility of trade sanctions in the event of violations of democratic or human rights principles), and rules of origin. This list is neither exhaustive, nor are all the issues viewed in the same way by different African states; it is limited to provisions related to trade in goods in the new agreements, not to services or trade-related issues that are being discussed within ongoing negotiations towards comprehensive EPAs, and where there are some equally contentious issues.

Importantly, both sides of the negotiations have acknowledged the existence of such contentious issues within the interim agreements, and while some African states would like to see the IEPAs amended, both EU member states and the new EU Commissioner for Trade have expressed a willingness to look at contentious areas and adopt a flexible approach to them in the context of future negotiations towards comprehensive EPAs. The importance of these apparently technical issues lies in the fact that unless some way is found of overcoming disagreements (and depending on the priorities in each region) there is a very real risk that negotiations on comprehensive EPAs will be derailed, and regional integration processes disrupted.

In most cases, the potential benefits and challenges of the EPAs in the long run do not critically hinge on the way that concerns over these contentious issues will be addressed. The overall balance of the final EPAs to be concluded, the availability of appropriate accompanying measures (including the willingness of the EU to undertake and deliver Aid for Trade commitments) and the effective pursuit of necessary institutional, structural and economic domestic reforms will be much more prominent factors. But a constructive engagement by all parties to accommodate concerns on this set of contentious issues will be a test of their willingness and readiness to conclude EPAs that both comply with WTO rules and promote development in line with the strategic objectives and priorities of the respective ACP countries and regions.

The analysis presented here shows that there is potential for some flexibility on at least some of the contentious issues.

Options for the way forward

All the parties have been officially committed to concluding comprehensive EPAs, and negotiations are continuing to that end in all regions. However, given past experience and the slow pace of current negotiations in several regions, 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. The challenge though is 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 African 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 is crucial to allow sufficient time to negotiate a truly development friendly, comprehensive EPA that is owned by all involved stakeholders; there is no need to rush to an agreement with ill-conceived provisions. Yet, the momentum of the negotiations should not be lost.

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. Such an approach appears most likely in several regions. 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 and their implementation.

Reducing negotiation asymmetries

The asymmetries in negotiating capacity (between the EU and Africa and among African states) that have contributed to the incoherence of the interim agreements need to be taken into account in the negotiations towards full EPAs and the implementation of the agreements reached if the problems identified with the IEPAs are not to be made worse. This needs to be done through adapting the pace and the agenda of negotiations as well as the style of interaction between the parties and through capacity-building measures under aid for trade (AfT) initiatives.

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. 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 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 African 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 to use aid effectiveness processes to harmonise donors' practices and align them with partner countries' own delivery instruments, at both national and regional levels. But these efforts would be meaningless if African countries and regions do not set up coherent development strategies and programmes to support the reform and adjustment processes that should accompany the conclusion and implementation of EPAs.

1. Introduction

1.1 *The scope of the book*

In the context of the negotiation of economic partnership agreements (EPAs) between the African, Caribbean and Pacific States (ACP) with the European Union (EU, at the time of writing, only 19 African states had initialled and two had signed interim economic partnership agreements (IEPAs) with the EU (out of a possible 46).⁴ How did we get here, what do the IEPAs contain, how might they affect trade and development policy and what are the options for the future? This book answers these questions. Having set the historical context it identifies the trade rules and liberalisation that African states have agreed to undertake in relation to imports from the EU (and *vice versa*) and the issues that have proved most contentious and remain an area of negotiation. Particular attention is given to any changes that have been introduced during 2008 as well as to the areas of remaining disagreement contained in the IEPAs and the way ahead. This is partly to allow the reader to judge how far such changes reflect the conclusions of the European Council in May 2008 which acknowledged

'concerns expressed by ACP [African, Caribbean and Pacific] partners and the existence of, in some cases, problematic issues still outstanding in the negotiation [and underlined] the need for a flexible approach while ensuring adequate progress and [called] on the Commission to use all WTO-compatible flexibility and asymmetry, in order to take account of different needs and levels of development of the ACP countries and regions (Council of the European Union, 2008).'

The book also considers the implications on the various regional integration processes in Africa, outlines the possible scenarios for the completion (or not) of comprehensive regional EPAs and discuss the modalities of accompanying aid for trade.

The analysis of the liberalisation schedules is based on the latest versions of the IEPAs hosted on the European Council website. It has been apparent through discussions with some negotiators, however, that these documents are not always complete. Some lists of specific details appear to have been agreed but have not yet found their way into the full IEPA text on the website. None the less, the versions reviewed appear

⁴ In addition, 15 other countries initialled and later 14 signed a full EPA in the Caribbean, and 2 countries initialled an IEPA in the Pacific. For an analysis of the Caribbean and Pacific EPAs, see Stevens, Kennan and Meyn (2009).

to be sufficiently complete to allow a full and substantial analysis even though a small number of extra details may emerge over the coming months⁵.

1.2 *The approach*

The book maintains a clear distinction between the analysis of objective data on the IEPA commitments, a dispassionate analytical summary of contentious areas, and a more subjective summary of what appear to be important country-level or Africa-wide features. This approach partly reflects the fact that the negotiation of the IEPAs has been a contentious process. By providing objective data on the provisions and a dispassionate summary of the contentious areas we offer the reader the information that they need to make their own judgements.

But there is a lot of information, which is why some form of signposting is also essential (even though it is necessarily subjective). Almost every African IEPA agreement is different from the others. The result is that many hundreds of pages of text and tens of thousands of tariff lines have had to be analysed in the course of this research. Readers who do not wish to focus narrowly on, for example, Ghana or on the ‘implications for cereals’ require in addition to the country- and product-specific information a broad picture of what has been agreed. Moreover, there is a lot of ‘history’ to the IEPAs – understanding the dynamics of the current and forthcoming negotiations requires an appreciation of how we have got to where we are.

The format of this book has been selected to deal with the ‘history’ separately from the analysis of the *status quo*, to provide both objective country-level detail and ‘signposting’ through identifying (albeit subjectively) broad patterns, and by considering the options for future negotiations taking account of the issues and concerns expressed in the past.

Part 1 provides a summary of the evolution of the negotiations, the sticking points, the outcome so far and the broad provisions of the IEPAs. Chapter 2 serves as an overview to the process and provides a broad assessment of the features of the six IEPAs that have been initialled or signed. Although there is no chapter of ‘Conclusions’ the findings of Chapter 2 provide a statement of the authors’ overall assessment. Chapter 3 provides a detailed history of the evolution of the negotiations and the sticking points for each

5 This book provides an extended and updated analysis of the preliminary study by Stevens *et al.* (2008).

party. It is followed by a review of the main contentious issues contained in the IEPAs (Chapter 4), most of which have not yet been resolved, and identify possible options to address each of them.

Part 2 provides a country-by-country analysis of the provisions in each IEPA. The main focus for attention is the liberalisation commitments made by the ACP (Chapter 5) and the EU (Chapter 6), but the provisions in the main texts are also reviewed – with the conclusion that only detailed country studies will identify the potential effects of the new trade rules. The IEPAs are enormously detailed. Chapter 5 serves as a ‘baseline analysis’ on which further country and regional studies can build. But although it is not the last word on the subject they are able to identify some key features on the speed, scope and potential ‘shocks’ and opportunities arising from the IEPAs. In order to provide a balance between readability and detail, and to offer a broad picture of the range of key features, liberalisation data are normally provided in three or four standard tables (depending on the specific circumstances). The first provides an overview of the whole liberalisation schedule: its timetable, the share of trade covered by each tranche and indicators of the current tariff on the goods to be liberalised. The second and third tables provide details of the goods that are being excluded from liberalisation. And the fourth, where a country’s timetable makes this appropriate, gives details of the first tranche of liberalisation to provide an indication of the scale of the initial ‘shock’. In addition some guidance is provided on the potential effects of the liberalisation on government revenue in each country.

Part 3 looks to the future. Chapter 7 identifies the range of options for the further negotiations towards comprehensive regional EPAs, as well as possible scenarios should some countries opt for a different approach (e.g. conclude agreements on goods only or fail to reach an agreement). In doing so, it also addresses regional implications of the various options. Finally, Chapter 8 assesses the challenge for the ACP and for donors to support the IEPAs. Considering the scale of the costs that might be incurred to implement and adjust to the new economic partnership agreements, it reviews the scope and levels of aid for trade (Aft) commitments compared to the needs, and discusses some of the modalities to ensure greater effectiveness of the accompanying Aft.

PART 1

Where we are and how we got here



2. Overview of the negotiating process and outcome

ECDPM and ODI

2.1 *The road to December 2007*

The EU has had preferential trade and aid agreements with the ACP since 1975. The latest, the Cotonou Partnership Agreement (CPA) of 2000, specifically provided that the trade regime would be recast and a successor implemented by 2008 (although the rest of the accord remains in force until 2020). A key reason for this is that the trade provisions of Cotonou's predecessor (the Lomé Convention) were the subject of adverse rulings during the 1990s, first in the General Agreement on Tariffs and Trade (GATT) and then in the World Trade Organization (WTO). This is because they involve the EU discriminating in favour of some developing countries (the ACP) and against others in ways that cannot be justified under WTO rules. After two years of negotiations, and in the context of the Doha Ministerial summit, the EU obtained support from WTO members for a waiver that would allow this discrimination to continue – but only to the end of 2007. It was also claimed that trade preferences did not stimulate the diversification of exports for most ACP countries and did not prevent the share of ACP exports in the EU market from falling. The EU proposed a change of regime that would move away from trade preferences and address key trade and economic concerns such as technical barriers to trade, standards, trade in services and beyond the border regulatory issues (including competition, investment, public procurement, trade facilitation, intellectual property rights, etc.), in a concerted effort to build effective regional markets in the ACP, smooth their integration into the world economy and foster their sustainable development.

The EU's preferred option for making the preferential access for ACP exports 'WTO legal' has been to recast the relationship in such a way that it can be justified under the WTO provisions that allow discrimination provided the countries concerned are forming a free trade agreement (FTA) or customs union. An essential feature of any such recasting is that the ACP liberalise on imports from the EU – which has been the source of much of the contestation over EPAs. But there has also been controversy because the EU's negotiating mandate led it to seek changes to ACP policy that went much further than required for a narrow FTA on goods – which is all that was needed

to deal with the WTO ruling. This raft of other trade-related policies included General Agreement on Trade in Services-compatible liberalisation of services and investment, aspects of government procurement, and rules on competition policies. Although the Caribbean and Pacific negotiators were keen to make major advances in the services negotiations, other groups were less enthusiastic about a rapid completion on these topics.

But the controversies have not been limited to these broader issues; provisions on trade in goods caused difficulty and continue to do so for some ACP states. Though often appearing to be technical in nature, the various issues considered by ACP negotiators as ‘contentious’ are viewed as having significant economic and political consequences for their development, and are analysed in detail in Chapter 4. The importance of the issues lies in the fact that unless some way is found of overcoming disagreements (and depending on the priorities in each region) there is a very real risk that negotiations on comprehensive EPAs will be derailed and might not be concluded. This would leave the process of regional integration – one of the original motivations for EPA negotiations in the first place – in several ACP regions in a difficult position.⁶

Partly because of the controversies it was clear by early 2007 that negotiations had barely begun on the details which are at the heart of an FTA and that insufficient time remained to complete them in the way that is normal in trade negotiations (which habitually overrun precisely because the devil is in the detail). In deference to the rapidly approaching deadline, the European Commission (EC) agreed in October 2007 to split the negotiations into two stages: (i) the conclusion of an interim (also called stepping stone or framework) EPA, to be concluded by the end of 2007, that entails an FTA on goods between the EU and the ACP countries willing to prevent a loss of market access to the EU after 2007; followed by (ii) further negotiations towards comprehensive EPAs to be concluded at the regional level. This ‘compromise’ failed to allow the details of the goods offer to be agreed at a slower pace, since only the non-goods issues could be deferred until 2008. The ‘interim agreements’ to be initialled before the end of 2007 had to include complete provisions on goods. The European Commission made it clear that the trade regime of unilateral preferences agreed temporarily in the CPA would cease on 31 December 2007. The EU agreed enabling legislation that would offer duty-free quota-free (DFQF) access to imports (deferred for rice and sugar – see Chapter 6) to all countries that had initialled IEPAs by

⁶ For references on EPAs, see the ECDPM dedicated website www.acp-eu-trade.org; see for instance ODI and ECDPM, (2006), Bilal and Grynberg (2007) and World Bank (2008).

the end of the year. Any others would export on the basis of the 'next most favourable' regime for which they were eligible. For least-developed countries (LDCs) this was Everything But Arms (EBA), which is very similar to the CPA trade regime except in relation to the rules on cumulation.⁷ In the case of non-LDC ACP states, the next most favourable regime was the standard Generalised System of Preferences (GSP).

Given the imminent loss of export preferences, some African states initialled interim or 'stepping stone' agreements to avoid the significant economic harm from a sharp increase in EU tariffs on key exports. Indeed, the general pattern of initialling (see Table 1 below) suggests that the motives for accepting the agreements were perhaps less related to reasons of supporting either trade development or regional integration than of simply preserving market access for established export industries that relied on preferences. As a corollary, and in the light of its negotiating posture, the EC found itself accused of adopting a too aggressive stance, trying to divide ACP regions and presenting EPAs and their basic provisions as a *fait accompli* (see Chapter 3).

Even after initialling the agreements, the ACP have continued to call openly for assurances that certain contentious issues in the agreements be revisited in future negotiations (see Chapter 4). For example in the case of Namibia, a statement to that effect was annexed to the agreement:

'The Republic of Namibia has initialled the Interim Economic Partnership Agreement on the understanding that concerns which Namibia had identified throughout the negotiations of the Interim Economic Partnership Agreement would be addressed through the negotiations towards a comprehensive Economic Partnership Agreement'⁸

The EU, for its part, proposed a two-pronged approach: initialled agreements needed to undertake a 'legal scrubbing' (in principle a purely technical exercise to ensure the legal coherence and clarity of the agreement, with no substantive implications) before being signed and notified to the WTO, and then ratified; in parallel, negotiations towards regional comprehensive EPAs continued.

7 These rules establish the conditions under which a product becomes eligible for a preference as a result of working on it that has occurred in two or more preference beneficiary states.

8 Annex 3 to the SADC Interim EPA Text.

2.2 *The discussion continues in 2008*

Consequently, discussion on the content of EPAs evolved during 2008, whether as a result of ‘legal scrubbing’ discussion or continued negotiations. While the list of contentious issues naturally varies from one ACP region to another, a number have attracted particular attention amongst negotiators and politicians, as well as wider EPA stakeholders. Meeting in Addis Ababa in April 2008, the Ministers of Trade and Finance of the African Union identified a list of 9 issues (African Union, 2008) considered as critical to development-oriented EPAs in the interim agreements initialised by the 18 African countries at the time:

- the definition of ‘substantially all trade’, setting out the level of tariff liberalisation required by ACP countries;
- transitional periods for tariff liberalisation;
- export taxes;
- national treatment;
- free circulation of goods (within ACP regions);
- bilateral safeguards;
- infant industry;
- the most favoured nation, or MFN, clause; and
- the ‘non-execution’ clause (which provides for the possibility of trade sanctions in the event of violations of democratic or human rights principles).

The Ministerial Declaration made a call to review these issues during negotiations towards full EPAs, to ensure that the trade agreements would safeguard development and regional integration.

In addition to the AU list, negotiators in Africa and elsewhere have also separately highlighted two more issues of importance in the texts: rules of origin reform and the ‘standstill’ clause in goods, which prohibits any increases to tariffs once agreements enter into force. At the all-ACP level the issue of contentious clauses in the EPAs was formally included in the ACP Council’s June 2008 Declaration and the ACP Heads of State summit in Accra in October 2008, where the mandate was given for a high-level tripartite delegation to undertake a visit to EU member states and the EC. Amongst the country responses, Angola, Namibia and South Africa sent a letter to the EU member states outlining their concerns on the text of the SADC interim EPA (ANSA, 2009).

In response to the strong views expressed by ACP countries, the EC has on numerous occasions signalled its willingness to revisit some of the contentious issues during the negotiation of comprehensive EPAs. One of the earliest such expressions was an apparent undertaking given by EC president José Manuel Barroso in at the joint EU-Africa in Lisbon to African Heads of State in December 2007 that all areas would be open to negotiation in the following year (though this has since been denied by the EC).

A formal acknowledgement of the need for flexibility on contentious issues was provided by the EU's General Affairs and External Relations Committee (GAERC) conclusions of May 2008:

'Acknowledging concerns expressed by ACP partners and the existence of, in some cases, problematic issues still outstanding in the negotiation, the Council underlines the need for a flexible approach while ensuring adequate progress, and calls on the Commission to use all WTO-compatible flexibility and asymmetry, in order to take account of different needs and levels of development of the ACP countries and regions. The Council emphasizes that ACP countries and regions who so wish could draw, if appropriate, on provisions agreed by others in their EPA negotiation.' (Council of the European Union, 2008).

Separately, a number of EU governments have also expressed their position (see Box 1).

Box 1. Position of some EU member states

In a letter to the new EU Trade Commissioner Baroness Ashton, dated 7 November 2008, the development ministers of Denmark, Ireland and the Netherlands stated:

we have much to do to ensure that EPAs genuinely live up to the goals formulated in the Cotonou Partnership Agreement. We therefore need to ensure that EPAs will actively support regional integration and contribute to a regulatory framework that will stimulate economic development.

If we are to succeed in this, we must be prepared to show more flexibility towards the countries and regions concerned in the next rounds of negotiations. In May of this year, the European Council already underlined how important it is to take a flexible approach to the transition from interim agreements to regional Economic

Partnership Agreements and called on the Commission to make full use of the flexibility and asymmetry permissible under current WTO law so as to reflect the different development levels and development needs of the ACP countries and regions.

Judging by the vast majority of reactions received from the ACP over recent weeks and months, it is clear that as yet no sufficient degree of consensus has been achieved on the disputed negotiating issues as to allow negotiations to be brought to a successful conclusion. We would therefore like to urgently appeal to the Commission to make full use of all the flexibility available to us under current WTO law and to actively display that flexibility in current negotiations.

Source: Letter from Denmark, Ireland and the Netherlands to Baroness Ashton on EPAs, 7 November 2008 (quoted on TRALAC website: www.tralac.org)

More recently, Baroness Ashton, the EU Trade Commissioner has also made it clear that contentious issues can be renegotiated in the context of a mover towards full EPAs. In a recent interview she stated that:

'All issues tabled during negotiations, contentious or otherwise, are open for discussion. That's why EU and ACP negotiators are regularly re-examining provisions in the interim agreements as well as exploring new areas, such as services, that were not included in the 2007 deals (Ashton. C., 2009)'

An important point to note in this statement is the EC view that contentious issues should be addressed during negotiations towards comprehensive EPAs, rather than in the context of making changes to existing interim EPAs. This differs from the view of some ACP negotiators, who would like to see the issues addressed in advance of interim agreements being ratified, or in the context of a review of them.⁹

2.3 Which countries have initialled?

By the end of 2007 just 18 African states (out of a possible 46) had initialled IEPAs, and they were joined by one more (Zambia) during 2008. The broad position on membership for all the ACP group is shown in Table 1.

⁹ For further resources, see the bibliography provided at the end of this paper.

Column 4 of Table 1 indicates the tariff regime currently being applied by the EU on imports from non-signatories. It confirms that ACP states now export to the EU under several regimes: DFQF for IEPA initialisers/signatories; EBA for LDC non-initialisers; and the standard GSP for all except one non-LDC, non-initialiser (which is South Africa, which continues to receive preferences under its Trade Development and Co-operation Agreement (TDCA) with the EU). The issues that this has created are reviewed in Chapter 5.

At the time of writing only two IEPAs (between the European Community and Côte d'Ivoire and Cameroon) had been signed. During 2008 the Côte d'Ivoire and Ghana IEPAs renegotiated their liberalisation schedules, and as indicated above talks continue in all regions. Signature of the other agreements has been provisionally agreed to take place within the first five months of 2009.

How far the IEPAs are yet being applied by ACP states is unknown. All the African texts foresee that the parties will 'apply the agreement, in whole or in part, before

Table 1. Overview of IEPA signatory states

	Members	Initialising/Signatory states ^a	Countries falling into EBA/ <u>standard GSP</u>	Proportion of signatory countries	Number of liberalisation schedules
ESA IEPA	Comoros Djibouti Eritrea Ethiopia Madagascar Malawi Mauritius Seychelles Sudan Zambia Zimbabwe	<i>Comoros</i> <i>Madagascar</i> <i>Mauritius</i> <i>Seychelles</i> <i>Zambia</i> <i>Zimbabwe</i>	Djibouti Eritrea Ethiopia Malawi Sudan	55%	6
EAC IEPA	Burundi Kenya Rwanda Tanzania Uganda	<i>Burundi</i> <i>Kenya</i> <i>Rwanda</i> <i>Tanzania</i> <i>Uganda</i>	—	100%	1
SADC IEPA	Angola Botswana Lesotho Mozambique Namibia South Africa Swaziland	Botswana <i>Lesotho</i> <i>Mozambique</i> Namibia Swaziland	Angola	71%	2
CEMAC IEPA	Cameroon Chad Cent. African Rep. Congo DR Congo Eq. Guinea Gabon S. Tomé/Príncipe	Cameroon	Chad Cent. African Rep. Congo DR Congo Eq. Guinea Gabon S. Tomé/Príncipe	12.5%	1

	Members	Initialling/Signatory states^a	Countries falling into EBA/<u>standard GSP</u>	Proportion of signatory countries	Number of liberalisation schedules
ECOWAS IEPA	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 IEPA	Cook Islands Fed. Micronesia Fiji Kiribati Marshall Islands Nauru Niue Palau Papua New Guinea Samoa Solomon Islands Tonga Tuvalu Vanuatu	Fiji Papua New Guinea	<u>Cook Islands</u> <u>Fed. Micronesia</u> Kiribati <u>Marshall Islands</u> <u>Nauru</u> <u>Niue</u> <u>Palau</u> Samoa Solomon Islands <u>Tonga</u> Tuvalu Vanuatu	14%	2
CARIFORUM EPA	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
Notes: (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. (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.					

provisional application, to the extent this is possible under their domestic law'.¹⁰ To what extent this is the case in light of the incomplete legal procedures is not known.

What is known, however, is that negotiations towards the full EPA have not yet been finalised in any African region. Surprisingly the final IEPAs have not extended the

¹⁰ The exact wording differs between IEPAs. These words are taken from the Ghana IEPA Article 75.6

deadlines for the ongoing negotiations for which the norm was 31 December 2008 except for EAC and ESA (31 July 2009) and for CEMAC and SADC in relation to services. The areas for these follow-on negotiations are set out in ‘*rendezvous clauses*’ in each IEPA. There are big differences in these clauses. How important these differences are in practice remains to be seen since the clauses are ‘guidelines’ for the areas to be negotiated, and additional topics the parties deem to be relevant might come up in the ongoing negotiations. But the differences do need to be noted (see Table 2).

With the exception of SADC, all African EPA regions provide for continued negotiations on intellectual property rules and only EAC and ESA identify good governance in the

Table 2. Areas subject to the ‘rendezvous clause’

	EAC	ESA	SADC	CEMAC	Ghana	Cote d'Ivoire	PACP
Customs and trade facilitation	✓	✓			✓	✓	
Outstanding market access issues	✓	✓					
Agriculture	✓	✓					
TBT/SPS	✓	✓					
Services	✓	✓	✓	✓	✓	✓	
Investment	✓	✓	✓	✓	✓	✓	
Competition	✓	✓	✓	✓	✓	✓	
Current payments	✓	✓		✓		✓	
Public procurement	✓	✓	✓	✓		✓	
Intellectual Property	✓	✓		✓	✓	✓	
Environment/sustainable development	✓	✓		✓		✓	
Social issues				✓			
Dispute settlement	✓	✓					
Institutions	✓	✓					
Personal data protection							
Good governance in tax areas	✓	✓					
Development cooperation	✓	✓		✓			✓
Integration of other countries	✓	✓	✓	✓	✓	✓	✓
Any other areas	✓	✓					✓
Deadline	31 July 2009	31 July 2009	31/12/08. Service negotiations have to be completed "within a period of three years following the conclusion of the full EPA."	01/01/09. No deadline for finalising service negotiations.	31/12/08	31/12/08	31/12/08

area of tax. The CEMAC text appears to be most ambitious with respect to regional rules aiming to agree on competition, public procurement and intellectual property rules.

2.4 *The regional picture*

Table 1 shows that all members in two of the six negotiating regions have initialled treaties with the EU: CARIFORUM and the East African Community (EAC). In all of the others, at least one member (but in most cases fewer than half the members) have initialled. The unanimous EAC initialling was, perhaps, the more noteworthy since all but one of the members are LDCs, and hence had 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 have agreed to the same liberalisation schedule and so the IEPA should not in principle cause any problems for achieving a common external tariff (CET). In fact, EAC is the only region for which this is the case. The CARIFORUM EPA gives the impression that there is a single regional liberalisation commitment with a few exceptions, but this is misleading. Rather than there being 'one schedule with some exceptions' the reality is that the ACP states have 15 different national schedules with a certain, limited overlap between them during much of the first 15 years of the implementation period; even by the end of the implementation period there will remain differences for a relatively small number of goods.

At the other end of the spectrum is West Africa. Only two countries have initialled an IEPA, and they are significantly different from each other. Provision has been made that these agreements can be amended if more of the Economic Community of West African States (ECOWAS) become parties, but for the present 14 out of 16 negotiating countries are absent and there is in place no established accord that, if all joined, would provide a region-wide agreement. Instead, the West African region has decided to continue negotiations towards a regional EPA based on the progress made up to October 2007, when the regional negotiations broke off, and not on the IEPAs concluded by Côte d'Ivoire and Ghana. For the present, though, all that can be analysed are the texts and schedules of two separate 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 IEPA. In practice, however, its situation is the same as in West Africa, where over four-fifths of members have not joined the IEPA and negotiations continues on a regional EPA, not based on the interim agreement concluded by Cameroon.

The other 'regions' – Eastern and Southern Africa (ESA), the Pacific ACP countries (PACP) and the Southern Africa Development Community (SADC)-minus – were in a midway position at the start of 2008. Each of the signatories within the group had agreed an identical text, but their liberalisation schedules differ, with implications for future regional integration.

The word 'regions' 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 last year (and, of course, from those that have agreed FTAs or customs unions under the Common Market for 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 IEPA. That leaves Botswana, Lesotho, Namibia and Swaziland (BLNS) and Mozambique as countries having initialled the IEPA, 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 initialling states, comprised in January 2008 just four islands plus Zimbabwe (the current ability of which to implement any trade agreement must be a matter for conjecture). Zambia joined in October. As such it was unclear how this grouping could be considered a 'real' region. The implications for COMESA are clearly very important (and are taken up in Chapter 5).

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 IEPA, this consent has clearly not been given. This issue proved to be a very important one during 2008.

Thus, if the interim EPAs have served to preserve access to the EU market for exports of some ACP countries, they have also led to the split of many regions, whose member countries currently trade with the EU under different regimes (see Table 1).

2.5 *The broad pattern of African liberalisation*

The rationale for Africa-wide comparisons

The development impact of the IEPAs will be determined at a country and regional level. The details of all the agreements are different as are the *status quo* and aspirations of each state. So too are the concerns -as is clear from Chapter 4. Any Africa-wide assessment of the IEPAs and the extent to which they treat the contentious issues must therefore be made with caution.

Nonetheless it is desirable to draw valid Africa-wide comparisons where this is possible in addition to providing in the country-specific chapters the key details on the IEPA provisions. This section provides Africa-wide comparisons that satisfy two criteria. One is a criterion of relevance. To satisfy it, an issue must be better understood by making comparisons between the provisions of different IEPAs than by focussing on the detail of one particular country. The second criterion relates to the appropriateness of the data for such a comparison. Much as it would be interesting to make them, some comparisons would go beyond what the data can legitimately support. Chapter 5, for example, provides many details of each ACP country's liberalisation schedule but not all of these figures are directly comparable with each other.¹¹ Tables 3 and 4 meet both criteria. The first identifies five key features of the liberalisation schedules and demonstrates that there exist wide differences between the IEPAs on features that will have a major influence on their impact for which no obvious development or poverty criteria exist. This is a point that can only be made by an Africa-wide comparison and the data we have used are appropriate for this point. The detail is provided on a country-by-country basis in Chapter 5. The 'message' from Table 3 is threefold:

- (1) most IEPAs involve liberalising only low tariffs in the first tranche ;
- (2) but the share of imports covered by this tranche varies hugely (again, according to no obvious development or poverty criterion); and
- (3) there is no significant change in most cases from the November 2007 schedules (which supports a conclusion that the IEPAs were not re-negotiated in 2008 and that the flexibility promised by the GAERC has not yet materialised.

¹¹ Some of the data on import levels cited in these tables are taken directly from the IEPA schedules, but in other countries the data is taken from COMTRADE because no figures are given in the schedule. In yet other cases the data are mirror data because there are no accurate COMTRADE figures and in one case we use a combination of the schedule (which is incomplete) plus COMTRADE. These differences are spelled out in each table of Chapter 5 and do not undermine the analysis made there – but they do make it inadvisable simply to compare the figures from each country without making appropriate allowances.

Table 3 aggregates the African states analysed in detail in Chapter 5 into one of three categories in relation to each of the five IEPA characteristics that are covered. These 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.¹² Between them they aim to provide a broad picture of how quickly and extensively the IEPAs will begin to ‘make a difference’.

All except the impact of early adjustment are defined in wholly objective terms (such as the duration of implementation or size of the exclusion basket). The impact of early adjustment is explicitly subjective because it requires three separate characteristics to be combined. As is clear from Chapter 5, figures on the proportion of imports being liberalised in each year are meaningless unless combined with data on the level of the current tariff and whether the item is imported from the EU (both of which every country table gives). Liberalising zero tariffs has no direct impact,¹³ liberalising modest tariffs has a very limited adjustment effect (although it could have a more substantial revenue effect) whilst liberalising high tariffs has a major adjustment effect. By the same token, liberalising goods that are not imported from the EU will have less impact than liberalising goods that are imported (unless there are reasons to expect major trade diversion). The country tables in Chapter 5 provide all three sets of data so that each reader can form their own judgement; in Table 3 we provide our own subjective assessment about the *relative* scale of the early adjustment required under each IEPA.

Similarly, a full appreciation of the ‘policy shock’ required by full implementation of the IEPA is country-specific. For African states that start with a much higher level of protection than others full implementation of the IEPA will involve a more substantial change to trade policy - *unless* they have a larger exclusion basket/longer implementation period (which can be determined from Table 3). The perceived (un)desirability of such a policy change will take account of many of the issues discussed in Chapter 4), and

¹² To avoid confusion the time periods in the table are counted from January 2009. In the original report they were counted from January 2008. When comparing the two reports this gives the misleading impression in some cases that the available period has fallen by one year.

¹³ As explained in Chapter 4 there could be an indirect impact from liberalising zero tariffs if the country’s WTO bound rate for that item is above zero since this would limit future freedom of manoeuvre in raising tariffs up to the bound rate. But to establish the extent to which this is the case requires knowing which of the items that are currently 0% have a positive bound rate and, in turn, this involves converting all zero rated items from the nomenclature used in the EPA to that used in the Uruguay Round (if these are different). This is a major task.

opinions will differ. An Africa-wide comparison of all tranches will not tell much about differences in the IEPAs – it will primarily identify differences in the initial trade policy of the countries concerned. Because of this we limit our all-Africa comparison in Table 4 to the first tranche only of liberalisation which is the one of most immediate importance to policymakers (in the ACP and among donors). If 50% of imports with a trade-weighted tariff of 10% is being liberalised in 5 years the adjustment task will be greater than is 15% of imports with a trade-weighted tariff of 2% is being liberalised over the same period. So Table 4 shows which countries need the most urgent help – and that they are mainly the poorer ones!

Wide differences in the overall scale and speed of liberalisation...

The IEPA requirement for reciprocity and the share of ACP imports that must be liberalised has been an important contentious issue. The top and bottom rows of Table 3 identify how far ACP concerns have been accommodated. In addition, the country level analysis of Chapter 5 indicates how far new flexibility was introduced during 2008. The answer in both cases is ‘not very far’.

The European General Affairs and External Relations Council (GAERC) in Brussels on 14-15 May 2007 final conclusions stated that Council recognises that ‘flexibility in favour of ACP states (exclusions of products, long transition periods and safeguard clauses) must be compatible with WTO rules’.¹⁴ Shortly afterwards, the then European Trade Commissioner Peter Mandelson stated that “in many areas, we are ready to give serious consideration to transition periods and in some cases very long transition periods – up to 25 years – together with substantial financial aid to help these countries implement their commitments so that EPAs genuinely act as a catalyst for policy reforms in ACP countries.”¹⁵ The 2005 UK Commission for Africa set up under Tony Blair’s government suggests selected products should be given up to 20 years to be liberalized if necessary (Commission for Africa, 2005) The letter from the governments of Denmark, Ireland and Netherlands to the new European Trade Commissioner Ashton called for the EC to make full use of the flexibility and asymmetry permissible under current WTO laws, so as to reflect the different development levels and development needs of the ACP countries and regions (Letter from Denmark, Ireland and the Netherlands to Baroness

¹⁴ Council of the European Union. Press release following the European General Affairs and External Relations Council (GAERC), Brussels, Belgium, 14-15 May 2007.

www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/gena/94116.pdf

¹⁵ Mandelson, P. Remarks at the European Parliament Debate on EPAs, Strasbourg, France, 22 May 2007. www.acp-eu-trade.org/library/library_detail.php?library_detail_id=4359&doc_language=Both

Ashton on EPAs, 2008). Commissioner Ashton has been promising increased flexibility in the negotiations since her appointment in November 2008 (Julian, M. 2008/2009).

Given that the initial EC requirement during most of the negotiation period was a minimum of 80% of liberalisation over a maximum of 15 years from all the ACP, the data in Table 3 show that there has been movement only for a small number of ACP. Indeed, some face more stringent terms than has earlier been established as a norm.

There are two clear groups of countries in terms of the speed with which tariffs are to be removed. At one extreme is EAC, which has over 20 years implementation and need not remove any already agreed common tariffs for over six years. By contrast, all of the other states apart from Cameroon, Zambia and Zimbabwe have fewer than 15 years implementation, and all except Comoros and Zambia must start to remove positive tariffs in five years or fewer. At the other extreme are SADC, Côte d'Ivoire, and Mauritius, which have the shortest implementation periods and must start reducing existing tariffs within two years. Côte d'Ivoire, for example, will have removed completely tariffs on 60% of its imports from the EU three years before Kenya even begins to start reducing its tariffs as part of the IEPA; Ghana will have liberalised completely 68% of its imports by the time Kenya is two years into this process. These two comparisons have been made because both the Côte d'Ivoire and Ghana provisions (compared unfavourably to those of Kenya in Stevens *et al.*, 2008) were re-negotiated during 2008 – but not, it would appear, in a way that significantly affected the disparity in effort.

There is also variation (though more modest) in the proportion of imports being liberalised. The largest group is liberalising 80-85% of imports and although five states are liberalising more than 85% of their imports (i.e. their exclusion basket is 15% or less) in each case there are special circumstances that mitigate what might appear to be, at face value, a significantly more onerous target than the norm.¹⁶ The IEPA provisions are therefore close to the EC's initial position (particularly since several of the countries shown to have exclusion baskets of over 20% are liberalising only fractionally less than the target).

¹⁶ The three members of SACU are already bound de facto by the commitments entered into bilaterally by South Africa and the EU in the TDCA; as is clear from Chapter 5 their IEPA commitments mirror to a large extent those in the TDCA. The other two states shown in the table to be liberalising 90%+ of imports are islands that are using sales taxes as an alternative to tariffs.

Table 3. Comparison of liberalisation schedules

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

...and in the early 'shocks

An option to mitigate the potential negative effects of liberalisation is to defer or backload market opening for sensitive products. The extent to which this has been achieved in the current draft is indicated for all IEPAs in Table 4 (with fuller details provided at a country level in Chapter 5). It also provides a comparison between the provisions in the latest IEPAs and the versions that were initialled at the end of 2007 in order to show how far the conclusions of the May 2008 European Council appear to have been taken into account.

There are two key indicators for the scale of the immediate 'shock': the proportion of imports that will be liberalised and the height of the tariffs that will be removed. There has been a change in the share of imports to be liberalised for four IEPAs during the course of 2008. In two cases (Côte d'Ivoire and Ghana) it has fallen. In the other

two (EAC and Mozambique) it has risen, but in the EAC case this may reflect the fact that the schedules appended to the end-2007 version were incomplete. In the case of Mozambique, though, it is known that the Commission sought additional liberalisation during 2008 – and the share of imports to be liberalised during the first tranche (on entry into force) has risen from half to somewhat under three-quarters.

On the second measure – the height of the tariffs being removed – there exists a wide disparity between, at one extreme, Côte d'Ivoire which has a trade-weighted average tariff on the good to be liberalised in the first phase of 11.2% and EAC, BLNS and some ESA states where it is zero or negligible. Such comparisons need to take account of the fact that the duration of this initial phase varies between the IEPAs (see column 2), but nonetheless tends to reinforce the conclusion that differentiation is not based on any SDT for poorer states. It should be borne in mind, too, that a trade-weighted tariff in double (or high single) digits is likely to involve liberalising some high tariff goods given that the basket also includes many that are zero rated.

Moreover there is no clear evidence that the negotiations of 2008 have been used to diminish disparities that do not reflect poverty criteria; rather the reverse. There is no significant change for EAC between the January 2008 and January 2009 positions – a higher proportion of imports may be being 'liberalised' but they all have an EAC CET of zero. For Mozambique, the trade-weighted average tariff being removed has actually fallen slightly, indicating that some of the 'new' liberalisations are of items that had low or zero tariffs. But Côte d'Ivoire sees its trade-weighted average tariff almost doubling – it has to liberalise a smaller share of its imports in the first tranche but the tariffs are higher (implying that some of those for which liberalisation has been deferred currently face low or zero tariffs).

Table 4. Relative scale of the first tranche liberalisation

Country/Region	1st-tranche liberalisation dates ^a		Share of imports		Average trade-weighted tariff	
	at Jan. 2008	Jan. 2009 equivalent	at Jan. 2008	Jan. 2009 equivalent	at Jan. 2008	Jan. 2009 equivalent
Cameroon	2010-2013	no change	24.5%	no change	8.1%	no change
Côte d'Ivoire	2009-12	2009, 2010, 2011, 2012, 2013 (1 Jan.)	59.5%	54.1%	6.0%	11.2%
Ghana	2009-13	1 Jan. 2013	28.8%	8.7%	6.6%	5%
EAC	2010	2010	18.4%	Overall: 50% Individually: 41.5-52.3%	0%	0%
ESA						
Comoros	2008 or 2013	no change	21.5-62.1%	no change	0-104.1%	no change
Madagascar						
Mauritius						
Seychelles						
Zimbabwe	n/a	2014	n/a	20.8%	n/a	5%
Zambia						
BLNS	2008	no change	Overall: 79.3% Individually: 63.7-83%	no change	0.01-1.2%	no change
Mozambique	2008	2009	50.8%	70.5%	6.8%	5.2%
Note: (a) To facilitate this comparison it has been necessary to provide comparable time periods between the 'first tranche' as defined in the end-2007 texts and the latest versions. As will be seen from Chapter 3, there is one case (Côte d'Ivoire) in which a multi-year 'first tranche' has been replaced by a set of annual tranches, and another (Ghana) where the opposite has happened. In each case the comparison has been facilitated by aggregating the annual tranches falling within the multi-year tranche which they replace (Côte d'Ivoire) or are replaced by (Ghana).						

3. How we got here

ECDPM

This Chapter provides a more detailed review of the EPA negotiating process and its dynamics to follow up the summary of Chapter 2 and set the scene for Chapter 4 which analyses the main issues of contention. When the EU and the ACP group of countries started negotiating a new WTO-compatible trade regime in 2002, it was with the intention of concluding EPAs by the end of 2007. After a first ACP-wide phase to address issues of interest to all ACP countries – to little avail – negotiations were taken to the regional-level. The EU and six ACP regional configurations thus engaged in discussions on the scope and substance of future trade and development agreements which have been formally conducted for the last three to four years.

On 31 December 2007, the date set for the WTO waiver for the Cotonou preferences to expire, a somewhat different picture emerged than expected. As explained in Chapter 2 one ACP region had initialled interim goods agreements, known as ‘stepping-stone agreements’, with the EU (EAC), others had concluded interim goods agreements for some individual countries or sub-sets of countries within a region (in West Africa, Central Africa, ESA, SACU ‘+’ minus South Africa, and the Pacific), and only one region had initialled a full EPA with the EU (the Caribbean region).

Since then, the CARIFORUM-EU EPA was signed by all parties (except Haiti) in October 2008; all the other regions concerned have indicated their commitment to continue negotiations towards comprehensive and regional EPAs. It yet remains to be seen whether, in the framework of their trade relations with the EU, these African and Pacific regions will indeed opt for an EPA as the best way forward to meet their development objectives. What could change at this stage, compared to the period up to 2007, that would get countries like Nigeria – an oil-rich nation that has been exporting under the GSP scheme since the start of the year 2008 – to conclude an EPA? A look back over the recent years of negotiations reveals certain fundamental flaws in the negotiations that the parties were unable to bridge. This can only suggest a rocky road ahead – and a narrow call, if the parties are not to lose the momentum for the negotiations. It is, nevertheless, a useful exercise to draw attention to some key lessons for the way forward.

3.1 *The EPA negotiations: a turbulent process*

From the outset, EPA negotiations have been extremely challenging, in terms of both process and substance. As a result, and amid much tension and frustration on both sides of the table, there was only limited substantive progress in most negotiations a few months before the 31 December 2007 deadline. For various reasons, in most cases European Commission and ACP negotiators were unable to reach a common understanding and approach to issues relating to the key principles of EPAs (see Box 2).

Trade and development at odds

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. From an ACP perspective, however, EPAs only make sense if they foster 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.

Throughout the negotiations, negotiators and stakeholders from all ACP regions have repeatedly expressed their serious concerns regarding the ‘development dimension’ of EPAs. In their view, if an EPA is to promote development in the ACP regions, this objective must permeate all aspects of the EPA agreement. The 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.

Box 2. Key features of Economic Partnership Agreements according to Cotonou

The Cotonou Partnership Agreement (CPA) sets out four core elements around which the EPAs should be developed:

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 substantially abolish 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).^{*} For the first time, ACP countries will have to open 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. 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.

^{*} For a more detailed discussion of EPAs and WTO-compatibility, see (Onguglo and Taisuke, 2005).

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. This particular issue would be addressed through the Regional Preparatory Task Forces (RPTF), whose precise mandate is to link the EPA negotiations with the programming of EC development finance.¹⁷ In addition, development assistance for the ACP is already covered through the EDF, which amounts to € 22.7 billion for the 2007-2013 timeframe. Lastly, the European Commission contended that it did not have a mandate from the EU Member States to enter into negotiations on development assistance.

Towards the end of 2006, however, bridge-building efforts were made in this respect. At the October 2006 General Affairs and External Relations Council (GAERC), EU Member States agreed to provide bilateral funds for AfT to complement the EC administered EDF. The conclusions of the meeting together with the EU Strategy on Aid for Trade adopted in October 2007 established a clear link between AfT and the development support for EPAs, as a substantial share ('in the range of 50%' - (Council of the European Union, 2007(b)) of this trade-related assistance (TRA) would be earmarked to support the ACP, including for EPAs (see Chapter B4). Early in 2007, the EC furthermore conceded to the inclusion of development chapters in the scope of the negotiated agreements (see Appendix 3, Table A3.2, for an overview of the development chapters in the various agreements initialised so far).

¹⁷ However, as revealed by the CPA Article 37.4 review of the EPA negotiations conducted in early 2007, the RPTFs have not proven to be the most effective means for the ACP regional groups to elaborate on and get commitment to the development support aspects of an EPA.

Some key issues however, remain outstanding. Firstly, the ACP has asked the EU to make binding commitments in the legal text of each EPA for the existing or additional¹⁸ resources covering EPA-related costs. Their major concern is the need for predictability of the available funds. Independently of the debate on the amounts of support needed (additional to the EDF), the ACP countries want legal certainty that such resources will be available when needed, in order to make sure that the EPA-related trade reforms that they will be committing to are matched by correspondingly binding EPA-related support from the EU. However, binding commitments of this nature for development assistance in an EPA are not found in the existing texts.

Secondly, the issue of sequencing remains a contentious one. In several regions, particularly Central Africa and ESA, the requirement for prior development of production and trading capacities was a fundamental point of disagreement in the negotiations. Even in regions like the SADC EPA configuration where integration is considered most advanced, there has also been little liberalisation within the grouping itself, and countries lack a harmonised approach to key issues discussed in the EPA. In this respect, they have argued for the possibility of integrating first and developing a proper regional framework, with adequate assistance, as a prerequisite for the opening their markets to the EU – but to no avail so far.

Further, while the EU repeatedly emphasised that Aid for Trade would not be conditional on finalising EPA negotiations,¹⁹ this has at times been perceived differently on the ACP side. Weller (2008) reports that 10 out of 13 ACP negotiators interviewed in a survey ‘confirmed that aid was being made conditional on the signing of an EPA’(Weller, 2008). This perception has contributed to the pressure felt by the ACP (see below).

In fact, besides the difficulty of finding common ground on the question of development, regional integration also appeared to be a problematic issue for EC and ACP negotiators throughout the various phases of the negotiations, as described in the following section.

¹⁸ It remains to be seen whether the resources available under Aid for Trade will indeed be additional to the existing funds to be made available. Some fear that little extra support will be provided and that EU commitments will be honoured by re-labelling existing aid commitments to trade and regional integration objectives. For a more detailed discussion, see Part B, Section 3.

¹⁹ See e.g. Council of the European Union, (2008) and Council of the European Union (2007c).

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.²⁰ A closer look further shows that some regional sub-groupings²¹ 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 (see Section 5.2, sub-section *Defining the ‘IEPA effect’*).

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

20 The EAC decision to negotiate an EPA as a bloc was made as early as 2002, but, this was not concretised until late 2007 when the region initialised 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 initialised an interim EPA in Africa.

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

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.

As a result, a common perception is that there is little coherence between the EPA agenda and the regional integration processes in Africa, a view expressed by many countries in the independent and regional analysis conducted for the review of the EPA negotiations under Article 37.4 of the Cotonou Agreement (see Box 3). Interestingly enough, the formal joint review of the most problematic region in terms of overlapping and multiple membership between regions, the ESA, stated that by sharing the same objective of integrating the regional economy into the global economic system, integration processes and EPA commitments have the potential to coexist and support each other. However, as revealed by the analysis in Section 5.7, this is not reflected in the ESA liberalisation schedules, which, in the current status, make regional integration in a COMESA framework an extremely difficult objective to meet, if attainable.

The lack of progress in serious and sustainable regional integration in many ACP countries, in particular in Africa, also had further repercussions in another fundamental area of the EPA negotiations, i.e., market access. While this formed the cornerstone for the WTO-compatibility of the new ACP-EU trade regime, both parties actually shied away from tackling this difficult technical issue right from the start of the negotiating

process. It was not until a few months into 2007 that market access started to be seriously addressed, when the EC tabled its offer to EPA negotiating regions. On the ACP side, progress in identifying common market access offers with regional coverage was also hampered by the fact that most regions encountered difficulties in identifying their list of sensitive products at both national and regional levels, a necessary step for determining the exclusion basket and level of liberalisation towards the EU. Diverging national interests often prevailed over regional concerns, preventing agreement on a common regional market access offer or resulting in offers unlikely to pass the 'WTO-compatible' test.

Beyond their technical features, the way discussions on market access have evolved (or not) are also in many respects symptomatic of the ownership (or lack thereof) and capacity problems that have hindered many ACP countries.

Asymmetric negotiating power

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). Article 37.4 of the Cotonou Agreement further provided for the parties to formally assess, in 2006, the progress made in the preparations and negotiations of the EPAs to ensure that no further time would be needed to complete both aspects.

However, since 2002 the ACP countries have repeatedly voiced their concerns about capacity constraints which affect not only their ability to negotiate effectively and implement the EPAs, but also the ability to conclude a development-friendly EPA by the end of 2007 deadline. In relation to conducting the negotiations the ACP has been challenged by a range of institutional and technical capacity constraints at both regional and national levels. This was further revealed by the various Article 37.4 reviews which the parties were only able to formally conclude in May 2007.

In some cases, notably ESA and the Caribbean, the region took a strong leadership in the negotiations and the negotiating structure has been instrumental in moving key aspects of their agenda forward. However, as mentioned above, difficult yet fundamental areas of the negotiations were not dealt with before late in the process. In the case of ESA, for instance, while the region strongly argued for the development

dimension of an EPA and elaborated a detailed development matrix, the region was ill prepared in submitting other offensive interests, pertaining notably to market access, to the EU. Furthermore, most of the countries individually were generally unprepared for the completion of the EPA negotiations and in many cases the process was mainly driven by a handful of countries within the configurations. Often, the negotiation structure and the flow of information, as well as the allocation of responsibilities to member states within the EPA negotiating groups did not work well. Lack of capacity 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 has generated general public hostility towards the EPAs.

Apparently, these constraints have not been sufficiently addressed during the EPA process, specifically in terms of the provision of funding and time for building negotiating capacity. As a result, engaging in negotiations on substantive issues continued to be difficult and was likely to result in an unsatisfactory articulation and defending of interests on the ACP side.

Box 3. CPA Article 37.4 Review of the EPA negotiations: a lost opportunity?

Article 37(4) of the CPA mandates the ACP and the EU to undertake a formal and comprehensive review of the EPA negotiations during 2006. The negotiating parties were therefore provided with an opportunity to assess the progress made in the negotiations, identify outstanding issues and challenges, and make suggestions for the way forward. After several delays, the review was adopted in May 2007 at the ACP-EU Council of Ministers, i.e. just a few months before the year-end deadline.

Taking into account the controversy generated by EPAs and their possible impact since the start of the negotiations in 2002, as well as the difficulties encountered on the ACP side in negotiating such complex agreements, the Article 37(4) Review might have been expected to be a key stock-taking moment in the negotiation process. On the contrary, the Review seems to have had hardly any impact on the overall EPA process. Several reports from various sources (independent, regional and joint) were fed into the review exercise, with various degrees of analysis, consultation and involvement of non-negotiating stakeholders. Despite the diversity of the information available

in terms of quality and area of focus, major bottlenecks in the negotiations emerged pertaining to both the content and process of the EPAs, in particular in the regional and independent reviews. The extent to which the formal joint ACP-EC reviews incorporated key messages taken from the ACP reports differs from one region to another. Although it was recognised that the negotiations are generally behind schedule, the final joint Review concluded that despite some problems and a need to expedite negotiations in certain areas, the parties had confirmed that, despite the delays, they were prepared and willing to conclude EPA negotiations by the end of 2007.

The impression is that many on both the ACP and EU sides perceived the EPA Review mainly as a hurdle, which risked distraction from the ongoing negotiations. The fact that the final text of the Joint Review was negotiated in Brussels, involving mainly ACP Ambassadors and few ACP negotiators, may indicate that some saw such an exercise as an all-ACP step, detached from the reality and needs of the individual countries. Little thought appears to have been given to the strategic use of the review process which, in fact, received only marginal attention in public debates and the media, and apparently at the negotiating tables as well. It could be argued that to a large extent the Article 37.4 review of the EPA negotiations was a lost opportunity.

For a more detailed overview of the Article 37.4 Reviews of the EPA negotiations, see ECDPM, 2007

It should also be noted that many in the ACP lacked the necessary political leadership to take up the challenges posed by the EPAs. Despite the criticisms, it is indeed widely acknowledged that for the EPA vision of development to succeed, ACP countries and regions must adopt and implement a reform agenda for development, which the EPA would then support, foster and strengthen. However, mainstreaming trade into ACP development strategies remains a challenge which many of them are still struggling with. Most of the ACP countries engaged in the EPA negotiations with reluctance and with the prime objective of maintaining their preferential market access to the EU while making the least possible commitments in terms of opening of their own markets.

However, in cases where EPA regional groupings did engage and try to promote their reforms for a development agenda, the Commission has often been perceived as either slow or unresponsive to their demands. In SADC, for instance, the negotiations were literally suspended throughout 2006, as the region awaited the EC's formal response to the Framework proposal tabled in March of the same year. It was not until February

2007 that the EU Council of Ministers formally responded to the SADC proposal. While the ESA region regretted the reluctance of the EC to discuss key issues for the region and ACP as a whole, such as agriculture and the issue of commodity protocols under an EPA, in the Pacific, stakeholders pointed to the prevalence of 'non papers' process over actual negotiations, and complained about the delays and lack of responsiveness to some of their proposals by EC negotiators. This has contributed to a general frustration with and distrust of the EPA process.

As a result, by mid-2007, there was a growing perception within the ACP that EPAs would be more about trade and WTO-compatibility than about development and capacity building needs. While it can be argued that the Article 37.4 review was a lost opportunity, the discrepancy in the conclusions of the internal or independent reviews and those of the joint review adopted in May 2007 is noticeable. For instance, most of the former questioned the full ownership of the EPA process and the preparedness of the regions to conclude the negotiations expeditiously, often recommending a postponement of the 2007 deadline. Although it was recognised that the negotiations were generally behind schedule, the final joint Review concluded that despite some problems and a need to expedite negotiations in certain areas, the parties were committed to 'concluding negotiations by the end of 2007 as stated in the Cotonou Agreement.' It seemed unrealistic, however, given the short time remaining, that substantial progress could be made on all outstanding issues, such as market access, accompanying measures and the financial resources necessary to strengthen ACP capacity. As this became clear, a sense of urgency developed within the ACP as countries and regions, pushed by the European Commission, scattered and scrambled at the eleventh hour of the negotiations to reach a deal before the daunting 31 December deadline.

Box 4: Key lessons on the EPA negotiations

- It is a vital for the parties to reach common ground on how to approach the key issues to move the ACP-EU trade agenda forward in a spirit of true partnership. (This was, in fact, the objective of the first phase of the negotiations.)
- For a sustainable outcome, there needs to be stronger coherence between EPAs and ACP regional integration initiatives (e.g. see Sections 5.7 and 5.5). Liberalisation schedules and other commitments need to be harmonised. 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.
- Otherwise, there is a risk that there will be no room on the ACP side to engage effectively in the negotiations (take ownership), and this would also leave little scope for ACP political leadership.
- In the same vein, transparency will be key in the upcoming EPA negotiations to allow involvement, and by extension, ownership of the EPA process by non-state actors and further strengthen ACP positions.
- Without ownership, capacity and adequate support to effectively engage, EPAs may not turn out to be the coherent tool at the nexus of trade and development that they were expected to be.
- Building a partnership, which seeks to encompass both trade and development issues takes time as it involves both technical and political considerations. An intimidating deadline by no means creates a conducive environment for this.

3.2 The political dynamics

This section reviews some of the major dynamics of the negotiation process, highlighting in particular key political tensions that appeared in the run up to the deadline of 31 December 2007. Based on these insights, major lessons are then drawn on how to guide the future process of ACP EU trade and other relations.

From EPAs to interim agreements

As explained in Chapter 2, by October-November 2007 none of the African regions and the Pacific were in a position to conclude a full EPA. The EU insisted on abiding by the letter of the WTO rules and on not seeking any further derogation.

In the absence of any decision to the contrary, the only alternative trade regime available for those ACP countries not signing an EPA would have been EBA for LDCs and the GSP for others. For non-LDC ACP countries the GSP offers less favourable conditions, notably as it does not cover key products such as sugar and bananas. Market access was not such a pivotal issue for LDCs as under the EBA initiative LDCs benefit from duty-free and quota-free access to the EU, although the regime has more stringent RoO than those provided under the Cotonou preferences (ODI, 2007). The ACP therefore asked for an alternative to EPAs that would safeguard market access from 2008 onwards. Proposals ranged from an extension of the Cotonou preferences (through a formal request for a prolongation of the WTO waiver) to the granting of GSP+ preferences to all ACP countries.²² The European Commission however refused such approaches and stressed that failure to reach agreement by the end of the year would not spur the EU to engage in an alternative strategy (Mandelson, 2007).

The interim agreements proposed by the European Commission provided a legal alternative to the conclusion by the end of 2007 of comprehensive EPAs, as originally envisaged. However, this proposal maintained the pressure on ACP non-LDCs to conclude an FTA compatible with GATT Article XXIV by the end of 2007 if they did not want to face new protection measures by the EU.

These market access considerations are key to understanding why some ACP countries have initialled an interim agreement with the EU, while others have not (see also Chapter A4). In Africa, all non-LDCs have concluded such deals, with the exception of oil rich countries (Congo, Gabon and Nigeria) and South Africa, which already has an FTA with the EU, the TDCA. Their concerns related mainly to preserving preferences for a limited number of commodities, notably bananas (e.g. Cameroon, Côte d'Ivoire), sugar (e.g. Mauritius), beef (e.g. Namibia), fisheries (e.g. Seychelles, Mauritius). With regard to LDCs, those that have initialled an interim agreement have done so in the context of a regional agreement, as in the case of EAC, and/or because they had some

22 For a discussion of GSP+, see Part B, Section 2.1 and Appendix 5. See also for instance Stevens (2007), and Bilal, (2007).

specific concerns related to less favourable RoO for certain products under EBA, as in the case of the small islands in the Indian Ocean Commission for fisheries, or Lesotho with clothing and textiles.

Some of the key events in these final weeks of negotiation are summarised in Box 5.

The final conclusion of full and interim EPAs has pleased some as it safeguarded market access, the major concern of most ACP countries. But the process by which this result was achieved has been a cause for grave concern. Many were left with the perception that negotiations accelerated too quickly, too much pressure was put on ACP negotiators and that too many concessions were made to the EU without getting much in return.

From economic partnership to free trade

Although the interim agreements offered ACP countries an opportunity to temporarily safeguard market access, the European Commission has been accused of pushing ACP countries into signing what are *de facto* simply FTAs. Some have interpreted this as the EU showing its real face after years of empty rhetoric, while others considered this interim approach merely as a face-saving exercise that allows the EU to avoid re-imposing tariffs on ACP countries, thereby buying time to negotiate full EPAs without pressure from the WTO.

The EU defends its approach and interpreted the signing of several interim agreements in late 2007 as significant progress. According to its argument the interim deals are stepping stones towards comprehensive regional EPAs. The European Commission criticised the ‘myths and fictions’ that surrounded the EPA debate (European Commission, 2008), which according to the then Trade Commissioner Peter Mandelson has been ‘subjected to an aggressive NGO campaign’.²³ He further criticised NGOs for ‘show[ing] no respect for the many ACP negotiators and reform-minded ministers who have worked hard with the EU to build agreements that do reflect development needs’.²⁴

²³ Mandelson, P., quoted in Cronin, D. 2007. Trade: EPAs Signed “Under Duress”, Says South Africa. IPS, 21 December 2007, <http://ipsnews.net/news.asp?idnews=40567>

²⁴ *ibid*

Box 5. Key events in EPA negotiations, autumn 2007

- 25 September African Union Chairman Kufour addressed EPAs at the UN General Assembly and asked the EU to extend the deadline of 31 December 2007.
- 27 September ‘Stop EPAs Day’: On the fifth anniversary of the start of EPA negotiations, civil society organisations called for an extension of the deadline of 31 December 2007.
- 28 September The Council of the European Union adopted a decision to unilaterally denounce the sugar protocol annexed to the Cotonou Agreement with effect from 1 October 2009.
- 28 September According to press reports, senior World Bank Staff asked the EU to consider an extension of the deadline.
- 4 October The African Industrial Association issued a press release stating that ‘Nearly a hundred industrialists from Western and Central Africa have already signed the petition against the Economic Partnership Agreements (EPAs).’
- 23 October By October 2007, it became apparent that EPAs would not be concluded by the target date of 31 December 2007. In reaction to this, the European Commission issued a communication on 23 October 2007, in which it proposed to conclude WTO-compatible interim agreements (that cover trade in goods as a minimum requirement) to safeguard preferential market access for non-LDC countries from 1 January 2008 and allow for more time to negotiate on outstanding issues. These interim agreements could be signed at regional, sub-regional or national level.
- 1–2 November The networks of the farmers’ organisations of the ACP regions (PROPAC, ROPPA, SACAU, EAFF, WINFA) met in Brussels (Belgium). They condemned the interim approach as not being in conformity with the Cotonou Agreement.
- 6–9 November ACP ministers and senior officials met to address the outstanding issues in the EPA negotiations and to take stock of the negotiations underway at the WTO. Ministers ‘endorsed concerns expressed that

negotiations should not be conducted in a manner that continues to exert pressure on ACP regions in a take-it-or-leave-it-manner' and 'noted that most regions would not be in a position to conclude a full EPA by the agreed deadline.'

- 20 November The Council of the EU endorsed the two-step approach proposed in the Commission communication.
- 22 November The 14th ACP-EU Joint Parliamentary Assembly adopted the Kigali Declaration calling for more time for EPA negotiations .
- 25 November The Commonwealth Heads of Government underlined the need for EPAs to take account of capacity constraints, stressed the need for accompanying measures and regretted the denunciation of the sugar protocol.
- 9 December At the EU-Africa Summit in Lisbon, European and African Heads of Government approved the joint Africa-EU strategy. Different views on EPAs were prominently addressed in the discussions.
- 10 December The Council of the EU reached political agreement on the draft regulation on market access, to be adopted without discussion on 20 December 2007.
- 13 December During the 86th Session of the ACP Council of Ministers, participants issued a declaration 'expressing serious concern on the status of the negotiations of the Economic Partnership Agreements'. They further welcomed 'the assurances given by the President of the European Commission, Mr. Manuel Barroso ... that the discussions on the Economic Partnership Agreements would continue beyond the initialling of interim arrangements and that the contentious clauses therein would be opened up for re-negotiation.'
- 20 December On 20 December 2007, the Council of the EU formally adopted a market access regulation to grant duty and quota-free access to the EU market to ACP countries from 1 January 2008, with transition periods for sugar and rice.

Some NGOs have indeed been responsible for oversimplification of the issues and presenting undifferentiated arguments, but the harsh approach by the European Commission and the tense process during the run up to the end of the year deadline was real and certainly soured relations between the EU and the ACP.

ACP under pressure

Although the European Commission denies having exerted any pressure,²⁵ there are plenty of ACP accounts to the contrary (see Box 6). The ACP Council of Ministers last December 'deplore[d] the enormous pressure that has been brought to bear on the ACP States by the European Commission to initial the interim trade arrangements, contrary to the spirit of the ACP-EU partnership,' (ACP Secretariat 2007(b)) in a process characterised by the ACP Secretary General Sir John Kaputin as 'fraught with panic, confusion and disagreements.' (Kaputin, 2008). Many ACP Heads of States and Ministers have publicly expressed their disquiet over these EPA negotiations.²⁶ Even then Trade Commissioner Mandelson came to acknowledge that 'the last months of 2007 were difficult' and that 'some good relationships [...] have been strained'.²⁷

According to a survey carried out on behalf of ICCO, out of 13 ACP negotiators interviewed, 'Eight felt that the EC did not listen to ACP concerns or proposals' and 'Eleven felt that they had been put under pressure to negotiate trade-related issues by the European Commission' (Weller, 2008).

25 See Louis. M. Q&A: We Are Generous but Not Naïve. Interview with IPS, 11 January 2008. www.ipsnews.net/news.asp?idnews=40762 and European Commission. Mandelson: EU and ACP seek full Economic Partnership Agreements in 2008 (DG Trade statements), January 2008.

http://ec.europa.eu/trade/issues/bilateral/regions/acp/pr280108_en.htm

26 The Ministerial Committee of ECOWAS on 17 December 2007 similarly 'deplored the pressure being exerted by the European Commission', whereas Guyana President Bharrat Jagdeo accused the EU of 'bully[ing] the countries into meeting the deadlines'. Stabroek news, 6 January 2008.

www.stabroeknews.com/index.pl/article?id=56536297

27 Peter Mandelson speaking to the European Parliament Development Committee, 28 January 2008. http://ec.europa.eu/commission_barroso/mandelson/speeches_articles/sppm190_en.htm

The then European Trade Commissioner Peter Mandelson, in particular, has been perceived not only as a 'hard line' negotiator but also as being disrespectful to ACP negotiators and NGO representatives. Development Commissioner Michel was also accused of putting European interests at the expense of development. Being asked about South Africa's reluctance to agree on a MFN clause, he was quoted: 'Evidently, it is a question of national sovereignty. But it's also a question of sovereignty for Europe. The European Commission and our member states provide 56 percent of all development assistance in the world. It is difficult to say that Europe should let our partner countries treat our economic adversaries better than us. We are generous but not naïve'.²⁸

In addition to these general perceptions, concrete cases running counter to the partnership principle have been reported by observers and negotiators throughout the regions. In the Pacific region, reportedly, about ten countries were ready to sign late 2007, but by then end of November only two countries that are highly dependent on a few commodities exports to Europe, namely Fiji and PNG, were left. A meeting with the European Commission mid-October was described as 'a humiliation' by Pacific officials who reportedly felt 'insulted and disgusted'.

²⁸ Michel, L. Q&A: 'We Are Generous but Not Naïve'. Interview with IPS, 11 January 2008. www.ipsnews.net/news.asp?idnews=40762

Box 6. Negative reactions to EPA process

<p>President Bharrat Jagdeo, Head of State Guyana</p>	<p>‘No matter how the EC tries to portray this as a wonderful new development partnership for the future, a modern partnership, a mature arrangement that will stimulate trade, we feel that the countries that were part of the LOME convention will see significant changes in the benefits they received in the past’ www.caribbeanpressreleases.com/articles/2440/1/CARIFORUM-negotiations-faced-several-bottlenecks--Guyana-President-Jagdeo/Region-must-retain-benefits-of-Lome.html</p> <p>‘I resent that characterisation that we won from these negotiations. We did not win anything whatsoever.’</p>
<p>Rob Davies, South Africa’s deputy trade minister</p>	<p>‘We were not legally obliged to enter into the EPA process. But we did so because we thought it could be a step to regional integration. I’m afraid it has worked out in an end-game that could contribute to regional disintegration.’ http://ipsnews.net/news.asp?idnews=40567</p> <p>‘This (the threat to impose tariffs from 2008) led to a situation where a country that was unwilling to sign on did so under huge duress and with little enthusiasm’. http://ipsnews.net/news.asp?idnews=40567</p>
<p>Assembly of the African Union, Tenth Ordinary Session, 31 January – 2 February 2008</p>	<p>The Assembly is ‘further concerned that the process leading to the conclusion of Interim Economic Partnership Agreements did not build on what was negotiated earlier and in particular that political and economic pressures are being exerted by the European Commission on African countries to initial Interim Economic Partnership Agreements’ DECLARATION ON ECONOMIC PARTNERSHIP AGREEMENTS (EPAs) DOC. EX.CL/394 (XII)</p>

Satiawan Gunessee, Mauritius' ambassador to the EU	'The last few weeks of 2007 were very painful' said Gunessee, adding that the European side 'has created a lot of strain and mistrust in the process'. www.ipsnews.net/news.asp?idnews=41015
Sir John Kaputin, Secretary General of the ACP Group	'The decisions of ACP States were driven by sovereign national trade interests. Unfortunately in some cases their position was at variance with the regional approach and compromised the solidarity of the region ... I can describe the process towards the initialling as one fraught with panic, confusion and disagreement at the national and regional level ... The ACP group regrets that in nearly all cases, the agreements were initialled under the great pressure of time ...' TNI Vol.7, No.1, February 2008.
Vitorrio Agnoletto, Member of the European Parliament	'The Commission has been able to apply the notion of divide and conquer... I think this is the logic the European Commission will continue to follow.' (Vitorrio Agnoletto from Italy, Member of the European Parliament) www.ipsnews.net/news.asp?idnews=41015
Bacar Dia, Senegalese information minister	'When we are asked to open our borders to allow in products from the north without any customs barriers, without taxes, it's almost like declaring nuclear war on us.' http://mwcnews.net/content/view/19264&Itemid=1
Elisabeth Tankeu, AU trade commissioner	'Africa must remain very vigilant and speak out with one voice. Hurrying to do things individually can lead to errors which the countries may regret in later years ... It is regrettable that some countries have gone ahead to sign interim EPAs with the European Union.' http://africa.reuters.com/wire/news/usnLo8

ACP negotiator responding to a survey carried out on behalf of ICCO*	‘The balance of power in terms of economic clout and resources – meaning experts – is horribly tilted against the ACP. So it’s very hard to see how to have a balanced negotiation in the circumstances. So it’s neither a partnership nor a negotiation.’ http://www.icco.nl/documents/pdf//31-10.Dialogue-Deaf.pdf
* Quoted in (Weller, 2008)	

According to reports, Mandelson threatened to walk out unless ministers were prepared to negotiate on the outstanding issues, so that they ‘gave in on virtually every issue’ (Primack, 2007). According to observers in the CEMAC region, during the ministerial conference with the EU at the end of October, the European Commission threatened to suspend or ‘delay’ programming of regional EDF envelopes and raise tariffs to GSP level. In order to bypass differences within the region the European Commission further proposed to the Central African negotiation party to limit the CEMAC negotiation team to a handful of willing experts (Ulmer, 2007). Even in the Caribbean region, which was praised by the Commission as exemplary for its commitment and progress, tensions were exacerbated. In what has been described as ‘as a particularly brutal meeting’ late December, the European Commission threatened to impose GSP tariffs if the Caribbean could not improve its market access offer (Jessop, 2007). The European Commission has further been accused of trying to play regions and countries off against each other. Reportedly, EC negotiators have in some cases claimed progress on certain contentious areas (agreement on certain provisions) in one region, to convince another to agree to the same. According to several actors this negotiation stance illustrated the Commission’s attempts to secure an EPA signature at any price.

The appointment of Catherine Ashton as European Commissioner for Trade in October 2008, succeeding Peter Mandelson, has led observers to hope for a change in the EC approach. In her address to the European Parliament on 20 October 2008, Ashton explained with respect to EPAs that she wanted ‘to listen to and learn from our ACP partners how best to take forward final agreements’.²⁹ In January 2009 she continued this attitude and stated: ‘addressing any questions about trust or confidence is a priority for me’ (Ashton, 2009). Stakeholders now wait to see how these promises will in practice make a difference on process and substance of the EPA negotiations.

29 Ashton, C. Presentation to the European Parliament, Strasbourg, France, 20 October 2008. http://trade.ec.europa.eu/doclib/docs/2008/october/tradoc_141163.pdf

From regions to sub-regions and countries

In addition, the EC switched from a regional to a double approach with negotiations at both national and regional levels. Regional market access offers were foreseen but when it became apparent that it would not be possible to reach an agreement, as a fall back position, the European Commission started conducting bilateral negotiations in parallel with single countries and sub-regions (Watson, 2007). In West Africa, the European Commission reportedly sent regional drafts to ECOWAS and the *Union Economique et Monétaire Ouest Africaine* (UEMOA), as well as national drafts to Ghana and Côte d'Ivoire. In Central Africa the European Commission changed its tactics and negotiated a bilateral interim agreement with Cameroon, without involving CEMAC.³⁰

According to the European Commission this was the only WTO-compatible way of securing market access, one of the major concerns of most ACP countries. The European Commission repeatedly highlighted its commitment to negotiate comprehensive full regional EPAs and defended the interim agreements as stepping stones towards full regional agreements specifically drafted to provide a basis for negotiations towards full regional EPAs to continue.³¹ Yet, by adopting the double approach, the European Commission by-passed the formal regional negotiation structures and was therefore accused of actively weakening regional solidarity. The fragmentation of countries has led to tensions within the regions and put non-LDCs in an extremely difficult situation. They had to make the difficult choice of either concluding an agreement individually and thus disrupting regional integration, a politically costly option, or align with the region and fall back to GSP, an economically costly option. However, some countries were also more inclined to favour national interests over those of the region, as they did not see the need to find a regional compromise on their exclusion baskets. This is the case notably of many ESA signatories which are not yet sufficiently integrated.

The EPA process clearly exposed the weak regional cohesion in most EPA regions in which national interests still prevail over regional integration agendas. Or to put it in the words of Mr. Augustine Adongo, Chief Executive at the Federation of Associations of Ghanaian Exporters: 'To harmonise the interests of all 16 West African countries would not have been best for Ghana, as interests differ from country to country'.³²

30 Interestingly, though, the text of the interim agreement with Central Africa quotes CEMAC as partner (only signed by Cameroon so far), while the texts with West Africa quote Ghana and Côte d'Ivoire as partner (and other ECOWAS countries as possible acceding countries).

31 See, for example European Commission (2008a).

32 Interim EPA Not A Threat, Daily Graphic, 22 January 2008, published at ModernGhana.com, www.modernghana.com/GhanaHome/NewsArchive/news_details.asp?menu_id=1&id=VFZSVk1FNUVTVFEG

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.

Negotiations in 2008 have aimed at reconciling the actual EPA process with its initial objective of fostering regional integration in the ACP. The need for flexibility in order to safeguard the objectives of development and regional integration has also been emphasised in several official statements on both ACP and EU side (see Box 7). Despite interim agreements having been concluded on a bilateral basis in several cases, in 2008 negotiations have been taking place at regional level again in all groups. Hence, good will to harmonise trade regimes with the EU at regional level has been shown on all sides. At the same time, different starting situations and interests among members of ACP negotiating regions remain. Accordingly, sustained efforts will be needed to consolidate regional positions within EPA groupings and to then reach agreement between ACP and EU side on full EPAs at regional level.

Market access as the driving force

The political and economic cost of disrupting regional solidarity and rushing an agreement through were hardly taken into account. While interim agreements in the Pacific are more or less a conglomeration of what had been agreed until end of the year, interim agreements in Ghana, Côte d'Ivoire and Cameroon have been agreed on the basis of draft texts proposed by the Commission at the last minute. This left little space for democratic scrutiny or time to examine and amend the agreements. Some interim agreements reportedly have never been properly checked by ACP technical experts and were agreed on only at political level.

Box 7. Key official statements on EPA negotiations in 2008

2 February	The Assembly of the African Union called ‘for the review of the interim EPAs, in line with the concerns raised by African Heads of State during the Second Africa-EU Summit’ and urged ‘the Regional Economic Communities and African Negotiating Groups that have initialed Interim Agreements to ensure that final agreements still to be signed are coherent with their regional integration agenda’. (African Union, 2008(b))
20 March	The ACP-EU Joint Parliamentary Assembly called ‘on the EU and ACP countries to ensure that the EPAs are consistent with and contribute to the strengthening of ACP regional integration initiatives; notes that many ACP countries fear that the current trend in the EPA negotiations and the adoption of agreements by subregions may undermine regional integration efforts’ (ACP-EU JPA, 2008).
3 April	African Union Ministers of Trade and Finance recognised ‘that there are contentious issues in the interim agreements’ and called to ‘review and re-negotiate these within the context of a comprehensive and full EPA to ensure an all inclusive comprehensive EPA that would safeguard development and regional integration efforts’ (African Union, 2008(a)).
27 May	The Council of the EU stated: ‘Acknowledging concerns expressed by ACP partners and the existence of, in some cases, problematic issues still outstanding in the negotiation, the Council underlines the need for a flexible approach while ensuring adequate progress, and calls on the Commission to use all WTO-compatible flexibility and asymmetry, in order to take account of different needs and levels of development of the ACP countries and regions. The Council emphasises that ACP countries and regions who so wish could draw, if appropriate, on provisions agreed by others in their EPA negotiation.’ (Council of the European Union, 2008).

13 June	The ACP-EC Council of Ministers expressed 'its commitment to make every effort to ensure that all regions conclude WTO compatible full EPAs, within agreed timeframes and with due regard for ACP political choices, development priorities and administrative capacities in order to release their entire development potential.' Further, 'acknowledging concerns identified by ACP states', the Council recognised 'the value of a flexible and pragmatic approach when moving from interim agreements towards regional EPAs' and confirmed that 'ACP requests for adjustments' would 'be taken into account where appropriate, to the benefit of regional integration.' (Council of the European Union and ACP States, 2008).
3 October	ACP Heads of State and Government decided that they would 'engage in high level consultations on the EPAs, with a number of EU Member States' (ACP HeadS of State and Government, 2008).
11 November	The Council of the EU reaffirmed its conclusions of 27 May (see above) and, with respect to development support, Ministers expressed hope 'that the dialogue already begun between ACP regions, the European Commission and the Member States will be stepped up in the first half of 2009 in order to prepare the aid for trade regional packages including the needs resulting from the implementation of the EPAs'. (Council of the European Union, 2008b)

This saved time and in some countries it may have been the only way to conclude an agreement in time. Yet in some cases this has led to a severe lack of ownership of both the negotiation process and its outcome. Indeed, it seems that many ACP countries signed not because they believe in the benefits and the concept of EPAs as originally envisaged but only because they saw no other way of safeguarding market access, one of the main concerns for most of ACP countries; the cost of not signing was greater than that of signing.³³ This is acknowledged by Mandelson who argued: 'If all of Africa has rejected EPAs, why are we getting people signing?' And added: 'It's because in some cases they reluctantly feel that they don't have any alternative and don't want their

³³ Some observers have even put it in more drastic terms: 'It is not as if politicians in developing countries don't know that these agreements are bad. They know, but for many, the only alternative they see is worse. Europe has put them between a rock and a hard place'. See Bloomer, P. EU has put region between a rock and a hard place. New Vision (Kampala), 19 December 2007. <http://allafrica.com/stories/200712200031.html>

trade disrupted, and in other cases because they see an opportunity.’³⁴ This is in sharp contrast with the development rhetoric of Europe, according to which: ‘EPAs [...] should no longer be conceived as trade agreements in the conventional sense where both sides are seeking mutual advantage [...]. The purpose of EPAs is to promote regional integration and economic development.’³⁵

But the ACP countries have their share of responsibility as well in this frantic process: many left contentious or difficult issues until the end of the negotiations. The EU cannot be held accountable for the fact that market access offers were prepared in a rush and under great pressure, as the countries and regions knew about the 2007 deadline for years. The ESA region reportedly met in mid-October in Madagascar in an attempt to create a unified regional market access offer. As more countries submitted their national lists of sensitive products it became apparent that it would be impossible to reach a unified position, given that the regional list of sensitive products covered over 90 percent of trade with the EU (Watson, 2007). With time running out, no common position could be reached. But the issues of market access could have been addressed earlier.

A tense process but satisfying outcome for many

Despite the tense process, many ACP countries that have initialled an agreement have publicly declared their satisfaction with the outcome. In the Caribbean many celebrated the EPA as a mutual partnership with the Caribbean being able to get some major concessions from EU, namely in the service sector. In other regions (and countries) too, positive comments were heard (mainly officials or the private sector) praising the interim agreements as paving the way for a more mature partnership (see Box 8).

In the end, it seems that those countries and regions which have shown strong commitment to the EPA process and were better prepared, are now more likely to benefit from the agreements (see Chapter 5).

34 See Schomberg, W. EU's Mandelson hits back at African leaders on trade, Reuters Africa, 10 December 2007. <http://africa.reuters.com/wire/news/usnL10259362.html>

35 Mandelson, P. 2005. An action plan for trade and development in 2005: the EU, the WTO, the G8. Extract from a speech at the London School of Economics, 4 February 2005, European Union, MEMO/05/39. <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/05/39&format=HTML&aged=1&language=EN&guiLanguage=en>

Box 8. Positive reactions to EPAs

<p>NAU President Raimar von Hase</p>	<p>Namibia Agricultural Union is grateful and relieved that the government signed an interim trade deal with the EU. 'The NAU would like to express its joy and gratitude about the signature. It is well known that negotiations between Government and the EU were at times difficult,' said Raimar von Hase. http://allafrica.com/stories/200712180685.html</p>
<p>Stephen Mbithi, chief executive FPEAK</p>	<p>'We don't see any reason why it [the economy] should go down. Our biggest worry was the economic partnership agreements, that's out of the way now' (Stephen Mbithi, chief executive of Fresh Produce Exporters Association of Kenya (FPEAK)) www.guardian.co.uk/feedarticle?id=7216979</p>
<p>Peter Mandelson, European Trade Commissioner (2004-2008), speaking to the European Development Committee, 28 January 2008</p>	<p>'Too many poor people in the ACP have been trapped in poverty while others in the developing world have moved on. We all agree we need to amend this situation and I believe that in December, we and the ACP did something very significant about it. I do not pretend that this has been easy. That is not surprising given the important change involved in the economic partnership between the EU and ACP. But I do think we are now moving forward on the basis of a solid platform.'</p>
<p>Mr. Vimal Shah, Vice Chairman Kenya, Association of Manufacturers</p>	<p>'The government has demonstrated strong leadership throughout the negotiation period in ensuring that the country gets a deal despite all odds and last-minute hitches and challenges from the EAC neighbours.' http://allafrica.com/stories/200712031448.html</p>

Mr. Harvey Rouse, the European delegation's head of trade, based in Nairobi.	'This is a truly historic day as it is the first international agreement concluded by the EAC as a bloc, as well as the first trade agreement concluded by the EU with another customs union.' http://allafrica.com/stories/200712031448.html
Côte d'Ivoire's Minister of African Integration, Amadou Kone	The agreement paves the way for the 'strengthening of economic and trade relations and the establishing of lasting relations ... in order to safeguard Ivory Coast's major trade interests with the European Union'. http://afp.google.com/article/ALeqM5jLUKah18ZDh7kcJaSyUX5OGX1BLA
Zhivargo Laing, minister of state in the Ministry of Finance, Bahamas	'We are very happy with the agreement ... It gives us access to the EU market in the area of goods through our membership in CARIFORUM...' He called the agreement a 'win-win' for The Bahamas. www.thenassauguardian.com/bixex/325295312187329.php
Henry Jeffrey, Foreign Trade Minister, Guyana	'They have done well in terms of hard negotiations. It was four years of hard slog and I think for the most part they have come through for us.' www.stabroeknews.com/index.pl/article_general_news?id=56535726

A wake up call?

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 FTA). 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.³⁶ 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,³⁷ preserving access to the EU market was of prime importance for most of its ACP counterparts. Over the last few years, the one or the other side certainly had to learn ‘that there is no link more politically emotive than the link between trade and development’ (Peter Mandelson³⁸).

Looking at the process as a whole some important lessons can be drawn that could help to guide the future relationship between ACP and the EU. Key lessons are summarised below (Box 9).

Although the climate between the negotiating parties seems to have improved during 2008 while working jointly towards comprehensive regional solutions, several provisions contained in the interim agreements remain contentious. These are covered in more detail in the next Chapter.

³⁶ Or as African Business Woman put it ‘You may impose your EPA, but it will not be ours’, cited in Ulmer (2007).

³⁷ 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.

³⁸ Mandelson, P. 2006. Address to European Parliament Socialist Party Conference on Economic Partnership Agreements, Brussels, Belgium, 19 October 2006. <http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/06/612&format=PDF&aged=1&language=EN&guiLanguage=en>

Box 9 Key lessons on political dynamics

- External pressure was a crucial element during the final weeks of negotiations. It functioned as a wake-up call to negotiators, getting them to tackle contentious and outstanding issues.
- The core interests of market access and WTO compatibility help to move negotiations forward. Yet these entail the risk of dominating all other concerns and may be used to the detriment of the counterpart.
- Ambitions were set high (perhaps too high) and agreement could only be reached by adopting a pragmatic approach and lowering expectations.
- The attitude in negotiations cannot be separated from the content. A tense atmosphere during negotiations is at odds with the development objectives and partnership dimension of the agreements.
- The process has created mistrust and resentment, the political costs of which are likely to be felt beyond the negotiation arena. An open and fair process is therefore crucial to achieve a result that is owned by all parties involved and to build a stable partnership.

4. Contentious issues*

ECDPM

As explained in Chapter 2 there is a range of unresolved issues that remain contentious between the EU and the ACP. Both sides recognise the need to continue negotiations though, as explained, the former tend to see this in the context of transforming the IEPAs into full EPAs whilst the latter want to see progress on issues related solely to trade in goods before they sign the IEPAs. Beyond these, have also been some long-standing concerns in some African (and Pacific) countries about making new commitments in the EPAs in services and investment, and in trade-related areas such as intellectual property. The important but complex issue of development support and accompanying measures for EPAs is also closely related to the negotiations.

Whilst recognising that the contentious issues extend beyond the provisions for trade in goods, this Chapter covers only those highlighted in the interim EPAs, i.e. not trade-related issues or services. Opinions on the problems with, the relative importance of, and the arguments for and against certain provisions of course differ among the concerned parties and stakeholders. This Chapter summarizes the key arguments and identify possible flexibility for compromise on each of the main contentious issues identified, it does seek to be exhaustive and does not intended to be prescriptive in any way to negotiators. No attempt is made here to give a comprehensive account of every concern.

4.1 ***‘Substantially all trade’ and transition periods for tariff liberalisation***

As explained in Chapters 2 and 3, one of the key concerns in the negotiation of both interim and final EPAs was to replace the previous system of unilateral trade preferences provided by the EU under the Cotonou agreement with one that was compatible with WTO rules. The deadline of December 2007 for the completion of EPA negotiations was driven largely by the expiry of a waiver for the Cotonou preferences secured from other WTO members in November 2001.

* This Chapter is an abridged version of Lui and Bilal (2009).

In order for the new EPAs to be compatible with WTO rules, the key requirement was a need to comply with Article XXIV of the General Agreement on Trade and Tariffs (GATT), which stipulates that regional trade agreements must eliminate duties on 'substantially all the trade' within a 'reasonable length of time'. One obvious difference between the Cotonou and EPA regimes is that for the first time liberalisation obligations are reciprocal (i.e. requiring removal of tariffs on both sides).

Crucially, the term 'substantially all trade' has never been defined by the WTO. The Understanding on the Interpretation of Article XXIV of GATT 1994 provides that a 'reasonable length of time' should exceed 10 years only in 'exceptional cases', but the term 'exceptional cases' is undefined. Negotiations in the EPAs on the issue therefore centred on differing interpretations of what was required to comply with Article XXIV.

The Cotonou Partnership Agreement (CPA) contains a number of provisions giving guidance on the WTO compatibility of EPAs, most notably in Article 37.7, which states that EPA negotiations would be 'as flexible as possible in establishing the duration of a sufficient transitional period, the final product coverage, taking into account sensitive sectors, and the degree of asymmetry in the timetable for dismantling tariffs'.

Pros

The EU has consistently emphasised the jointly-held ACP-EU position that EPAs are to be WTO-compatible, pointing out that any legal challenges to the agreements would threaten the preferential market access that ACP exports enjoy in EU markets. One of the key advantages of EPAs would be that they provided long-term security for such access, free from the threat of any legal challenge at the WTO.

In a proposal on the issue at the WTO, the EC interprets the 'substantially all trade' requirement for free trade agreements to mean that liberalisation should cover a minimum of 90 per cent of total trade between the parties. In the context of the EPAs it is argued that the 90 per cent threshold could be met with a simple average of the EU liberalising 100 per cent of trade (with transition periods for sugar and rice) and the ACP side only 80 per cent – measured in terms of both tariff lines and by value of the imported goods. With regard to the transition period in the EPAs and the 'reasonable length of time' in which liberalisation should occur, the EC position has been that while tariffs on 'the bulk' of liberalised goods should fall to zero within 10 years, the 'exceptional cases' warranted some flexibility in EPAs – especially the LDCs amongst

them – in liberalising a limited number of sensitive goods over a timeframe of 15 years. As in some other areas of the EPAs, the EC pointed to the asymmetry in the obligations as evidence that it had taken account of the development concerns of ACP countries.

The above position was tabled by the EC in September 2007 as an indication of the maximum ‘flexibility’ that it would be prepared to defend at the WTO, while ACP countries were required to present ‘WTO-defensible’ trade liberalisation offers in order to become a party to an EPA and benefit from continued preferential market access. Indeed, it is this position that has been adopted in practice by ACP countries in the EPA and various interim EPAs, with some ACP even liberalising more or over shorter periods of time (see Table 3 in Chapter 2).

Apart from the technical discussion on WTO compatibility, the EU has also emphasised the development impact that liberalisation of inputs, certain consumer goods or medicines would bring in terms of increased welfare of the population and competitiveness.

Cons

Notwithstanding the intensive negotiations of October and November 2007, which saw many countries table offers that met the EC’s preferred position, a number of ACP countries and regions had throughout the EPA discussions pressed for flexibility on the issue of tariff liberalisation and the interpretation of WTO rules in these areas. Indeed, the extent of tariff liberalisation demanded in the EPAs was the single most important reason why the majority of African and Pacific countries – particularly LDCs – decided not to sign an agreement, jeopardising *inter alia* their ongoing respective regional integration processes (see Chapter 2).

The emphasis on flexibility in the EPAs is justified by ACP States on the grounds that a reciprocal trade agreement between the ACP States and the EU is likely to impose greater adjustment costs on the part of ACP States, for two principle reasons. Firstly, tariff dismantling will result in revenue loss, and governments will have to establish alternative sources of fiscal revenue.³⁹ Secondly, uncompetitive industries will either have to adapt to improve their competitiveness relative to European products and industries, or policies will have to be put in place to develop new industries. (Onguglo, and Ito, 2002; 2003)

³⁹ For a discussion and further references, see Bilal and Roza (2007) and Babula and Baltzer (2007).

Though negotiators and commentators on both sides have tried to point to precedents in other free trade agreements, the EPA negotiations are, by any definition, accepted as 'exceptional cases' and unprecedented, because of the number of countries involved, a very large proportion of which are LDCs, landlocked, small island states, or otherwise marginalised. It is indeed hard to conceive of a bigger difference in the size and level of development between the parties to the negotiations. Many ACP stakeholders argue that regional integration among the ACP States could also be undermined by requiring a pace and level of liberalization that only some ACP States within a region could attain.

In addition, requiring the same minimum level of tariff liberalization from all ACP States for the purpose of WTO-defensibility does not, in the eyes of many ACP stakeholders, take into account the greater need for flexibility for some ACP States because of the higher existing tariff levels, the structure of the economy, dependence on tariff revenue, etc. In this sense, the 'exceptional cases' are not receiving exceptional treatment that might be justified under the WTO. The significance of any required level of tariff liberalisation for WTO-defensibility will also depend on the other rules in a trade agreement, including the rules governing the use of safeguards and infant industry protection and any standstill commitments.

Further flexibility could be considered regarding the unilateral, and somewhat arbitrary, interpretation of GATT Article XXIV by the EC, though common understanding on indicative thresholds might be useful. In their own submission to the WTO on the interpretation of Article XXIV (Onguglo and Ito, 2005), the ACP countries have argued for a lower threshold of liberalisation. What ultimately matters is that the liberalization commitments by the parties respects the WTO condition of covering 'substantially all trade' (which remains unspecified) over a reasonable period of time, and that these commitments are politically and technically defensible at the WTO to prevent possible challenges from WTO third party members.⁴⁰ When needed, the negotiating parties to an EPA could thus engage in constructive flexibility. To be credible, however, requests for flexibility must be based on detailed analyses and argumentations based on the specificities of the regional and national economies of the countries concerns.

40 The question of what is defensible at the WTO is an important one. Together the EU and ACP countries make up almost a majority of WTO members, which would play heavily in their favour in any debate on the interpretation of 'substantially all trade'. Furthermore it is arguably unlikely that any third party would challenge the level of liberalisation in an EPA, since the most probable successful outcome of such a challenge would be for more liberalisation (and therefore greater discrimination against the complainant). For these reasons, it could be argued that should any ACP region liberalise only 70 to 75 per cent of its trade, this will raise few concerns at the WTO; alternatively it should be acknowledged that the 80 per cent threshold is itself not immune from a potential challenge.

Substantially all trade is not a contentious issue across all the regions, as additional flexibility is not required by all ACP states. One fifth of countries in the Caribbean and almost three quarters of SADC countries have unilaterally reduced their tariffs and have a marginal tariff of 5 per cent or lower.⁴¹ Such countries can exclude the most sensitive products from liberalization altogether while still meeting the EC's definition of substantially all trade – although there may be issues over forfeiting the flexibility, or 'policy space', to raise tariffs on liberalised goods in future. The issue of the liberalisation threshold is most contentious in Central and West Africa, where over half of countries apply average marginal tariffs of 20 per cent or more. Nevertheless there have been efforts made in both regions to bring an agreed regional offer to the table – CEMAC has tabled an offer that is understood to represent around 71 per cent of trade,⁴² which (following the EC's approach) would give a simple average above 85 per cent of trade liberalised by the parties in total: arguably this is not far removed from the EC's 90 per cent threshold.⁴³ One further point about the scheduling process is that not all goods currently attracting high tariffs are actually developmentally sensitive (in the sense that imports damage pro-poor growth prospects) and by contrast, not all genuinely sensitive areas of domestic production are currently protected by high tariffs.⁴⁴

Potential flexibilities

The most common arguments for more flexibility on tariff liberalisation are that countries need to exclude products beyond the 20 per cent level either because tariff revenue on a larger range of products is a significant source of income for the government, or because more sectors need to be shielded from the negative consequences of increased competition from EC products. The EC argues that each case where more than 20 per cent may be needed should be judged on its own merits and, in accordance with the principles of the Cotonou Agreement, from a development and regional integration angle.

41 ODI calculation based on 2006 trade data from Eurostat, UNCTAD TRAINS Database and regional sources in Stevens and Kennan (2007).

42 This is over a period of 20 years though (and not 15 years), up from an initial offer of only 60 per cent; see PANEAC (2009).

43 In contrast to the EC's approach, another idea put forward by some ACP negotiators was to use a threshold of 80 per cent but based on total amounts of two-way trade (rather than subjecting EU liberalisation and ACP liberalisation to separate, albeit different, thresholds). This approach would allow for parties to take account of imbalances in the trade relationship.

44 See Commission for Africa (2005). It is also worth noting there may have been insufficient work also on defining potential trade strategies and for example analysis of industries in terms of the effective rate of protection (which more accurately captures the real value added of the protective tariff to the economy).

Some ACP regions have argued that tariffs specifically earmarked for regional integration activities – such as the running of regional secretariats or as part of a regional tax pool – should be given a further exclusion from liberalisation. WTO rules make no distinction between normal taxes and those earmarked for regional integration; the use of taxes for such objectives may however help regions make a case for additional flexibility, given the overall objectives of the EPAs.

As far as the protective needs of those sensitive sectors are concerned that are not excluded from liberalisation the EC refers to safeguards in all agreements that may be used in the event that a surge in imports causes or threatens to cause injury to domestic industry or ‘disturbances’ in a sector. However, relying solely on safeguard measures restricts the policy space a country has, especially if in such situations tariffs can only be raised up to the applied rate for a limited amount of time; moreover, safeguards may be difficult for ACP countries to apply in practice (see Section 4.6).

The CARIFORUM EPA potentially offers further flexibility. Article 17 states that “in the light of the special development needs” of certain CARIFORUM countries, “Parties may decide in the CARIFORUM-EC Trade and Development Committee to modify the level of customs duties stipulated” provided that the EPA remains compatible with the requirements of Article XXIV. Similarly, the Euro-med agreements allow revisions of liberalisation commitments subject to the general incidence of liberalisation being the same. This clause however would require the agreement of both the exporting and the importing countries, in effect giving the EC a veto power on any proposal under the article from the ACP region concerned. The importing countries may doubt whether an exporting country would agree to the re-imposition of tariffs if its exports were causing harm to small local firms in the importing country. A clause like Article 17 of the CARIFORUM EPA could include a clear statement of the conditions under which modification of schedules would be permitted that corresponds to the key concerns of the ACP States while addressing EU concerns about secure long-term market access.

4.2 Standstill

The standstill clauses in the EPAs stipulate that no new tariffs can be introduced and, once eliminated, tariffs may not be re-imposed or increased. Under the EPA, tariffs would therefore be bound at the applied rate, which is different from the WTO where applied tariff rates are often much lower than the rate at which they are bound in the WTO. A standstill obligation is included in all EPAs, but the clauses are not identical.

In the CARIFORUM, SADC and Pacific EPA texts the obligation only applies to products subject to liberalisation, whereas in the remaining regions the standstill clause still applies even if a product is excluded from liberalization.⁴⁵

Pros

One argument for 'standstill' provisions might be that they were required to establish a baseline rate for tariffs, from which liberalisation would follow according to the timelines laid down in ACP countries' respective schedules. Perhaps the main argument put forward by the EC for a standstill clause was that the whole purpose of EPAs was to liberalise trade, and any flexibility that allowed tariffs to rise after the agreements were signed would be antithetical to that vision. From the point of view of EU exporters, the effect of a standstill would also be to provide valuable security that tariff rates would not rise during the transition period or thereafter, including for goods that had been excluded from liberalisation (where these are not explicitly exempted from the clause).

Cons

Standstill provisions are not needed as a baseline for tariff liberalisation. This can instead be achieved through establishing start rates within the tariff schedules themselves (for example choosing baseline rates or reference dates), and these need not necessarily be the rates applied when the agreement enters into force.

Recently some commentators have also highlighted how this provision could have some unforeseen consequences: a number of governments, in response to very high food prices, reduced import duties and in some instances even set them at zero.⁴⁶ At this moment in time therefore the strict application of this provision which fixes applied duties at the levels in force upon entry into force of the agreement, could result in freezing exceptionally low import duties.⁴⁷

There may be a need therefore to review of standstill commitments where they exist and even to adopt the approach favoured in the Caribbean EPA and the Israeli-EU

⁴⁵ Articles 14 of ESA-EU, 13 of EAC-EU, 23 of SADC-EU, 15 of Ghana-EU, 14 of Pacific-EU interim EPAs, and Article 16 and Annex III of the CARIFORUM-EU EPA; see Appendix 3 for an summary.

⁴⁶ For specific examples see CTA (2008).

⁴⁷ Goodison, P. Remarks at the ACP-EU Joint Parliamentary Assembly, Committee on Economic Development, Finance and Trade Meeting, Brussels, Belgium, 10 September 2008.

preliminary agreement (which establish in annexes line by line the basis on which tariff reduction commitments will be made) or that of Cameroon, EAC and SADC (which limit standstill to the goods being liberalised). In the case of the Israeli-EU agreement this establishes the base line for tariff reductions somewhere between the applied and bound tariff levels.

There is also a need to allow future modifications to tariff offers to take account of the future need to harmonise tariffs as the regional integration programme evolves. Implementation of a regional common external tariff (CET) in particular will require States to progressively adjust and align their tariffs. The standstill clause should provide for such flexibility in order to avoid conflict or incoherence between the EPA and the customs union programme.

A further consideration in the amendment of the standstill clause is to ensure that the trade defence provisions are effective. Bilateral safeguard duty rates, for example, should be able to go beyond the rate that tariffs are bound at under the EPA (ActionAid, ChristianAid and Oxfam, 2008).

Potential flexibilities

Although the European Commission initially refused to renegotiate EPA standstill clauses those with Côte d'Ivoire and Ghana have been amended (see Chapter 5) and the ESA has, however, informed the EC that the region is working on draft amendments to the standstill clause. More recently the EC has stated it is 'open to discussion' on the EAC's standstill clause in the process of working towards a full EPA. Both sides have therefore agreed to formulate new standstill articles in the comprehensive EPA.

WTO compatibility does not require the inclusion of a standstill clause in the EPA (Bartels, 2008a). The flexibility permitted in some regions indicates that the EU has room to manoeuvre on this issue and the same flexibility could be extended to the other regions. The limited flexibility shown in the CARIFORUM, SADC and Pacific interim EPAs standstill clauses – to products not subject to tariff liberalisation commitments – is not easily explained in objective terms, with distinctions between ACP regions raising questions about the consistency and coherence of EU policy. The standstill clauses could be re-drafted to exclude food and other products where tariffs have been temporarily reduced. The interim EPAs and the CARIFORUM EPA contain a number of provisions intended to promote regional integration, including exemptions from certain general obligations. The relationship between the standstill clause and

the provisions on regional integration could also be clarified by the addition of a rule, drawing on Article XXIV:5 of the GATT, to exempt implementation of a CET among ACP States provided that the CET is “not on the whole higher ... than the general incidence of the duties.”

4.3 *Export taxes*

Duties and restrictions on exports – though far less common than ordinary import duties and charges – are applied by some ACP countries on a limited number of goods, for a variety of reasons. Export taxes and restrictions are most commonly applied to ‘agricultural products, fishery products, mineral and metal products, and leather, hides and skin products’.⁴⁸

Although used by ACP countries, export duties are more commonly associated with larger, middle-income developing countries with natural resource wealth and more developed trade policies. While most attention is focused on export duties, restrictions can also include export licenses and quotas. The WTO does not prohibit the use of export taxes, although Article XI:1 of the GATT contains a general ban on the use of other forms of export restriction or prohibition.⁴⁹

Pros: Arguments for discipline on export taxes

The EC argues that export taxes restrict the supply of raw materials to its industries. In recent months the EC has made a proposal for an EU Strategy on Raw Materials.⁵⁰ In brief there are three parts to the strategy:

⁴⁸ Recent data on the use of export taxes is fairly difficult to find, although a study by (Piermartini, 2004) for the WTO notes that the following ACP countries made use of them during the period 1995-2002: Benin (diamonds, precious stones and metals, cocoa beans and crude oil), Botswana, Namibia, Lesotho (rough, unpolished diamonds), Ethiopia, Kenya (fish and timber), Uganda (coffee), Guinea, Côte d'Ivoire (rough timber, plywood, coffee, raw cocoa, cola nuts and uranium ores and concentrates), Mali (gold, fish), Mozambique (cashews), Gabon (manganese, un-squared tropical woods), Cameroon (logs, transformed forestry products), Ghana (cocoa, gold, bauxite, manganese, certain processed timber and jet aviation fuel), Madagascar (raw logs and processed wood products), Solomon Islands (logs, fish), Papua New Guinea and Fiji (gold and sugar), Dominican Rep, St Kitts and Nevis, Antigua and Barbuda.

⁴⁹ The general rule in GATT Article XI:1 is subject to a number of exceptions to the prohibition in Article XI:1, such as Articles XI:2(a) (shortages of foodstuffs and other essential products) and XX (general exceptions). The CARIFORUM EPA and the interim EPAs have provisions that are equivalent to GATT Article XI:1, but not exceptions in Article XI:2 nor the full range of general exceptions that are contained in Article XX.

⁵⁰ European Commission. European Commission proposes new strategy to address EU critical needs for raw materials. Press release. 4 November 2008. <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/08/1628>

- (i) Using Free Trade Agreements (FTAs) to enforce commitments on reduction of export restrictions;
- (ii) Using WTO accession agreements for same; and
- (iii) Raising awareness and cooperation on these issues in all relevant international arenas such as the G8 and OECD as well as in 'strengthened strategic dialogues' with the US and Japan.

In the context of EPAs the EC has argued that elimination of export taxes and restrictions is necessary to meet the GATT Article XXIV requirement for eliminating barriers on 'substantially all trade', which covers export as well as import measures. It has also been argued that export taxes are counter-productive, pointing out that ACP countries should do everything possible to increase their exports. Indeed, economic theory would suggest that export taxes are no less distortionary than import taxes. Export taxes and licensing regimes have also often been associated with encouraging rent-seeking behaviour in a number of developing countries.

The recent use of export taxes and restrictions during the aforementioned food crisis were widely criticised by developed countries and many developing countries, as well as by many international agencies including the United Nations Food and Agriculture Agency and the World Food Programme.

The EC's position to limit the use of export taxes is not specific to EPAs. In 2006, the EC also made a proposal at the WTO (European Communities, 2008) for new rules on export taxes in the context of the negotiations on Market Access for Non-Agricultural Goods (NAMA), arguing that the Doha Round mandate unquestionably calls for this issue to be covered in any new trade deal. The EC paper, revised in 2008 following objections from some developing countries, proposes new restraints that would have WTO members list their export taxes and bind them below specified levels.

Notwithstanding its general disapproval of export restrictions, the EC has recognised that developing countries may need flexibility in this area. In the EPAs specifically it has made several concessions in allowing different ACP regions either transition periods for phasing out the taxes (CARIFORUM), 'grandfather clauses' which stipulate that existing export taxes may remain, and scope for new export taxes where the ACP party can demonstrate that they are necessary for the fiscal solvency of the State (PACP), currency stability (EAC), or the development of infant industries or protection of the environment (most texts). In most cases ACP countries must show that the export taxes are justified in terms of achieving the goal in question, and are in some

cases are subject to EU approval and joint monitoring. However, the terms of many of the exceptions to the general rule prohibiting export taxes may make the exceptions difficult to apply in practice, particularly where clauses give an effective veto to the EU party.

The key features of the provisions on export taxes contained in the different EPA texts are summarised in Appendix 3.

Cons: Arguments for the use of export taxes⁵¹

Several ACP countries are opposed to provisions limiting the use of export taxes as a matter of principle, and for the sake of preserving their policy space. Traditionally, export taxes have been used as a means of *revenue support*.⁵² Export taxes may also assist in the transparent *management* of minerals, forestry and other resources, for example for purposes of stabilising government revenues or *protecting the environment*; export taxes are not, however, the sole way of achieving this goal.

A more controversial use for export taxes has been to apply them as either an *industrial or export diversification policy*, for instance encouraging producers to add value to unprocessed goods. In this sense export taxes can have a similar effect to subsidies, which would be allowed under an EPA, but are not always affordable in poor countries. Export taxes have furthermore been seen as a countervailing measure to tariff escalation applied in the tariff regimes of developed countries, which have the opposite effect of making imports of raw commodities more expensive in comparison with finished products. For the developing countries, revenues from export taxes may also be 'ring-fenced' and used for further development of the industry.⁵³ In a similar way, export taxes can be used for the opposite purpose of *export diversification* into other sectors altogether.⁵⁴ By using export taxes or restrictions effectively to discriminate against traditional exports, governments can try to induce producers to expand into other industries, perhaps again in combination with other policies (for example, export credit guarantees).

⁵¹ For a fuller summary of the arguments for and against the use of export taxes generally in developing countries, see Piermartini (2004) and South Centre (2006).

⁵² A number of ACP countries – such as Burundi and Guinea – which still rely on export taxes for a significant part of their government revenues.

⁵³ CTA (2008) cites the success of the Namibian meat processing industry.

⁵⁴ Economists also use the terms 'horizontal' diversification to describe shifts between sectors. Industrial diversification is also referred to as both 'vertical' or 'downstream' diversification.

Export taxes have also been used at various times by countries to pursue the goal of *macroeconomic stability* by influencing variables such as the exchange rate and rate of inflation, or similarly to stabilise *export earnings*, or to counter the effects of ‘*Dutch disease*’. Finally, export taxes have also been used to lower prices of essential goods, particularly food items, by restricting their export. The use of export taxes has become increasingly common as a result of the recent global ‘food crisis’.

In general export taxes are rarely the ‘first-best’ policy option, but have been used as a policy instrument where alternatives are expensive, unavailable or difficult to implement. Regardless of the EC proposal at the WTO, at the present time there is no consensus at the multilateral level on the issue of export taxes and they are not (or not yet) regulated within its rules, other than to ensure that the taxes do not discriminate between destination countries. Leaving aside the arguments for and against their existence, there are some questions as to whether provisions on export taxes are necessary for completion of a WTO-compatible free trade agreement. Focusing specifically on the policy implications, a good case for restraints in the EPA can be made from a development perspective, though ACP negotiators argue that the use of export taxes that facilitate economic development should not be prohibited and the flexibilities contained in the EPA agreements do not go far enough in providing the policy space that they seek.

Potential flexibilities

As with other provisions, some ACP regions may feel that something may be gained by ‘importing’ features from other EPA texts (as outlined in Appendix 3), as offered under the GAERC conclusions of May 2008 (though, as noted above, only in the context of negotiations towards full EPAs). This would imply that export taxes on products might be permitted in an EPA where the export of a product was subject to an export tax at the time the EPA enters into force, or the export tax is intended to generate or improve the collection of government revenue, protect the environment, or diversify production or develop greater value-added production within a country. Flexibility might be given for existing export taxes to be increased. A general ban on export taxes may also lead to an ACP State being in breach of its obligations under another international agreement, in particular an international commodity agreement. The risk of a conflict is greater where an EPA does not contain the same general exceptions for goods as are contained in the GATT, in particular GATT Article XX(h).⁵⁵

⁵⁵ See section 2.10 below; for a general discussion, see also Lunenburg (2009).

As well as extending the scope of activities under which the use of export taxes is approved, the scope of exceptions could be made clearer, and made available without the prior approval of, or extensive review by, all parties. The definition of what constitutes an export tax itself could also be made clearer, as this can be difficult to define. Legal uncertainty and burdensome administrative processes would significantly reduce the value of any exceptions. The EPAs make provision notification of measures and regular consultation and dialogue between the parties. A provision on export taxes therefore might be designed to require only the notification of new export taxes before such taxes are implemented.

Another potential solution might be to leave export taxes to be agreed in a multilateral setting at the WTO. The WTO is arguably the best place for disciplines on export taxes, since a partial or 'second best' solution – applied only in limited bilateral trade – could in practice and under certain conditions lead to further distortions in global supply chains through trade diversion.⁵⁶

4.4 *National treatment principle in goods*

National treatment is a central principle of WTO law and is found in the three main WTO agreements, namely GATT, GATS and TRIPS. The national treatment obligation found in the goods chapters of the EPAs is similar to that found in GATT Article III. The principle in both the WTO and the EPA texts requires parties to treat imported goods no less favourably than goods produced domestically. The purpose is to enable domestic and imported products to compete on equal terms after the imported goods have crossed the border. All ACP countries that are WTO members are already obliged to implement this principle, thus the issue should only be of concern to non-WTO members. The main concern in the EPAs however is that some of the exceptions to the principle that provide flexibility for developing countries in the WTO have not been incorporated into the EPAs.

⁵⁶ For example if ACP countries removed export taxes on animal hides, while Brazil and Argentina retain theirs, the leather industries in Brazil and Argentina would benefit from an increased supply of cheaper inputs while the leather industry in the ACP States might see their supplies rise in price. Though trade diversion is also an issue for tariff reductions on imports, in that event it can be addressed (at least partially) by any government wishing to do so through a policy of unilateral tariff liberalisation. For export taxes it may be the case that trade diversion may only be avoided – the playing field can only be levelled – if it is agreed by all countries to lift their export tariffs at the same time, and such a solution can only be achieved at the WTO.

The national treatment principle in the GATT does not apply to government procurement, which allows governments to enter into contracts for the purchase of domestic products on a preferential basis. GATT Article III:8(a) excludes government procurement from the scope of the national treatment obligation in Article III. The WTO Agreement on Government Procurement includes a national treatment provision, but this is a plurilateral agreement to which no ACP States are party and only one is an observer (Cameroon). Only WTO members that have signed up to the agreement have to implement this provision. The texts of CARIFORUM, ESA, EAC, CEMAC, Ghana and the Pacific, state “The provisions of this Article [on national treatment] shall not apply to laws, regulations, procedures or practices governing public procurement.” The SADC EPA is the only EPA text not to include an exception for government procurement. A high level technical meeting on EPAs organised by the Commonwealth Secretariat in cooperation with the ACP secretariat in April 2008 suggested that the EPAs should make reference to the national treatment provisions in the GATT to remove the uncertainty as to its scope (Commonwealth Secretariat, 2008).

More controversial is whether ACP EPA signatories can continue to subsidize industries or can introduce new subsidies. The WTO recognises that the subsidies may be a legitimate policy tool, but contains rules that limit their use in cases likely to lead to significant distortions in international trade. The rules applicable to trade in goods are primarily set out in the Agreement on Subsidies and Countervailing Measures (ASCM) and the Agreement on Agriculture (AoA). Therefore the GATT allows for the payment of subsidies to domestic producers provided that they do not violate the ASCM or the AoA.

The national treatment provision in the text of the ESA (as in the Pacific interim EPAs), following GATT Article III:8(b), provide: “The provisions of this Article shall not prevent the payment of subsidies or the granting of tax incentives for the purpose of developing industries to national producers, including payments to national producers derived from the proceeds of internal taxes or charges applied consistently with the provisions of this Article and subsidies implemented through governmental purchases of national products.” Significantly, there is no definition of a subsidy.

Under the WTO, developing countries which need to support the establishment of an industry through subsidies, can invoke the provisions of GATT Article XVIII:C to notify WTO members to initiate consultations. The developing country is then allowed to take measures which are inconsistent with GATT provisions further to consultations and subject to certain restrictions. The GATT therefore allows exceptions to the national treatment principle in order to promote domestic infant industries (Japan Ministry,

2006). The text of the ESA interim EPA also provides that the EPA Committee may decide to authorise a Signatory ESA State to depart from the national treatment provisions to promote the establishment of domestic production and protect infant industries. The development needs of Signatory ESA States and, in particular, the special needs and concerns of ESA LDCs are to explicitly be taken into account. However, while useful, any derogation requires the agreement of all parties, which may not be forthcoming when needed. ESA is the only region to have secured a list of provisional time-bound derogations attached as an Annex in its EPA text. This option should be extended to the other EPA regions.

However, whilst subsidies may be given to domestic producers in all EPA texts, the exports from ACP States may still be subject to countervailing duties, i.e. if the subsidy has the effect of lowering the price of the good when it enters the EU market, and as a result causes or threatens to cause injury to EU industries producing like products, countervailing duties may be applied.⁵⁷

4.5 *Free circulation of goods and regional preference*

Provisions on the free circulation of goods and 'regional preference' are included in those EPA texts that refer to regions rather than individual countries (i.e. Côte d'Ivoire and Ghana). Although they have been linked by some negotiators because they both raise issues about regional integration, they are separate and distinct issues: the clauses on free circulation of goods stipulate that EU goods are only taxed once on entry to any ACP region, while the regional preference clauses stipulate that any advantage granted to the EU, in tariff reductions or in any other area covered, must also be granted to partners within the same region.

Free circulation of goods

The clauses in the EPA and interim EPA texts on the free movement or circulation of goods stipulate that EU goods are only taxed once, upon entry to any ACP region. The clauses are reciprocal – the same applies to ACP goods entering the EU – although (as with other clauses) it could be argued that this reciprocity is rather 'unequal', since the challenges of implementation and compliance fall entirely on the ACP side, with the clause merely reflecting what already happens on the EU side.

57 The EPA: Fact vs. Fiction: Issue no3, Caribbean Regional Negotiating Machinery.

In the African (as in the Pacific) texts – with the exception of those that refer to individual countries rather than a regional grouping – this principle is clear:

‘Customs duties shall be levied only once for goods originating in the EC [European Community] Party or in the SADC EPA States in the territory of the other Party.’⁵⁸

The qualification to this principle is that in all cases the texts allow the possibility of a ‘duty drawback’ procedure, whereby any duty already applied is repaid when the good leaves the first country, to be paid again (potentially at a higher rate) in the second country. Such procedures are commonplace under normal trading circumstances, though cumbersome for importers. However, where countries either (a) do not apply a common external tariff (or in the context of an EPA, a common schedule of tariff reductions) for a given good; (b) have not liberalised trade within themselves; or (c) where there is no compensatory mechanism within a region to distribute duty revenues, the procedures continue to be necessary to prevent countries from losing out on duty revenues that should, in theory, be theirs because duties were paid in one country but the goods were consumed in another. In the case of (a) above, where different duty rates are applied by different countries, free intra-regional movement of goods would also lead to trade deflection.

Pros

Notwithstanding the points above on the necessity of duty drawback procedures in usual circumstances, the key argument in favour of such provisions is one of efficiency. In general, the potential efficiency gains for an importer of being able to avoid complicated duty drawback procedures are large in ACP countries, where crossing borders can add significant time and cost delays, and where corruption at borders is sometimes also a possibility. The interim EPAs already provide for the removal of import tariffs for 80 per cent of EU goods to ACP countries, and where tariff schedules within a region are similar, such that tariffs across all countries will fall to zero for a good by the end of the transition period. This would in itself imply that an EU-produced good could move freely around the region without incurring further tariffs. Any additional provisions in an EPA that allow EU exporters to avoid at least some of these procedures would add significant value (and provide greater advantages over importers from non-signatories) to other commitments in the text. Beyond such narrow considerations however, there are overwhelmingly strong development reasons why reducing both

⁵⁸ SADC-EC Interim EPA, Article 27.

tariff and non-tariff barriers between ACP countries would be good for development. The clause should, in theory, lead ACP countries to increase their efforts to achieve the objective of free circulation of goods within their region, for both for EU and regionally-produced goods; the EPA is arguably not the place however for commitments on such internal matters.

Cons

The case against the clause however is that, as already indicated, it may undermine choices in individual countries' liberalisation schedule, in terms of transitional periods and excluded goods – although the exceptions may make such objections redundant. Beyond this, the clause may be difficult to implement, especially during transition periods, and add an unnecessary complication to the ongoing process of regional integration. Sensitivities are particularly acute in the SADC region because of the SACU customs union, where SACU members receive the vast majority of imports via South Africa.

In contrast to most of the interim EPA texts (even after the 2008 revisions), the CARIFORUM provision differs significantly from that in other texts, turning mandatory language into a 'best endeavour' commitment:

'The Parties recognise the goal of having customs duties levied only once on originating goods imported into the EC [European Community] Party or into the Signatory CARIFORUM States. Pending the establishment of the necessary arrangements for achieving this goal, the Signatory CARIFORUM States shall exercise their best endeavours in this regard. The EC [European Community] Party shall provide the technical assistance necessary for the achievement of this goal'.⁵⁹

Furthermore, the text initialled by the ESA countries appears to have no similar provision on the free movement of goods. Therefore, based on the principle that any ACP region can 'import' more flexible provisions that they find in other texts, there would appear to be no reason why any ACP region would feel obliged to include one. Given the potentially beneficial effect of the clause in focusing regional integration efforts, there is also scope instead for designing provisions on a region-by-region basis, taking account of the state of integration in each region, on a voluntary basis.

In seeking areas of potential flexibility, it is interesting to note that the CARIFORUM EPA text includes transition periods of between three and five years for the clause to take

⁵⁹ CARIFORUM-EC EPA Article 18.

effect specifically in terms of commitments between the ‘more developed countries’ and ‘lesser developed countries’, and those with Dominican Republic and Haiti. Some commentators believe that the regional preference clause does, and should, apply only to scheduled commitments, rather than all of the rules in the EPA. Clarification of this understanding within the text could reduce concerns about the clause. As with the clause on free circulation of goods, a voluntary or a ‘best endeavour’ model, or a simple reaffirmation of existing regional agreements in the EPA, might help solve the problem.

Regional preference

Clauses on ‘regional preference’ in EPA texts stipulate that any advantage granted by an ACP country to the EU under the agreement – in terms of tariff liberalisation but essentially also covering all other areas of the text – should be automatically passed on to other members of the ACP region itself. Article 238:2 of the CARIFORUM-EU EPA, for example, provides that “Any more favourable treatment and advantage that may be granted under this Agreement by any Signatory CARIFORUM State to the EC [European Community] Party shall also be enjoyed by each Signatory CARIFORUM State.” While there has been some suggestion that the scope of the clause is limited only to liberalisation schedules for goods and services, this is not mentioned in the text, which appears to be fairly unambiguous in its application to all parts of the agreement.

Pros

By contrast, the European Commission argues that the clause ensures that the EPA does not undermine regional integration, which would be the case if a country granted the EU more favourable rights within a country compared to those of regional partners. It can also be argued that such clauses will foster greater efforts towards regional integration itself, ensuring that commitments which are not currently being honoured within respective regional integration agendas will now be taken more seriously (although it is again questionable whether an EPA is the place for this).

Cons

Some observers have pointed out that while EU support for regional integration might be desirable, the regional preference clause does not so much support as direct the course that integration should take in each ACP region. The potential breadth of

coverage of a comprehensive EPA could eliminate the ability of a region to innovate and develop an approach to regional integration that best meets its economic and political needs and responds to its capacity constraints. The EPA would govern and prescribe the content and form of the regional integration process of ACP regions, especially in areas such as SPS or trade facilitation (and, where applicable, services and investment, intellectual property and government procurement) where there may not yet be a binding agreement between members of a region. A third party (the EU) having direct control over regional integration has given rise to concerns about sovereignty and legitimacy. Outside of tariffs and quotas, it will often be difficult to determine whether one set of policy measures grants more favourable treatment than another. The effect of the clause may be to force ACP region integration to take place in accordance with a particular EU-inspired model, which may not always be the best approach to regional integration (for political and economic reasons) in the ACP.⁶⁰ A longer-term effect may be to undermine domestic and international political processes in the ACP, which are essential for effective regional cooperation: arguably, effective regional integration needs to grow organically, from the ground up.

4.6 *Safeguards and infant industry provisions*

In all of the interim and full EPA texts, the issues of safeguards and infant industry protection are treated together in the chapter on ‘trade defence instruments’. This is despite arguably some major differences between traditional safeguards – which are usually associated with dealing with temporary import surges occurring as a result of liberalisation of some other area – and the principle of infant industry protection, which relates more to a policy choice by a government to protect a certain industry for a limited period of time to achieve a degree of competitiveness.

Safeguards

The EPA and interim EPAs contain provisions dealing with multilateral and bilateral safeguards. With regard to the former, the EPA and interim EPAs preserve the right for the EU and ACP States to apply multilateral safeguard measures (and antidumping and countervailing duties) in accordance with the requirements of the WTO. The EC has also stated that it *may* not apply multilateral safeguards to products originating

⁶⁰ The classic reference is Rodrik (2007); for a discussion on the EU as a model of regional integration, see also Bilal (2005).

in ACP States in some of the agreements – this commitment only applies during the first five years of the EPA.⁶¹

By contrast bilateral safeguards (which also include the infant industry safeguards discussed below) set out a framework under which either party may suspend its tariff liberalisation obligations in certain circumstances, namely when goods enter into the other party:

‘...in such increased quantities and under such conditions as to cause or threaten to cause:

‘(a) serious injury to the domestic industry producing like or directly competitive products in the territory of the importing Party, or;

(b) disturbances in a sector of the economy, particularly where these disturbances produce major social problems, or difficulties which could bring about serious deterioration in the economic situation of the importing Party, or;

(c) disturbances in the markets of agricultural like or directly competitive products or mechanisms regulating those markets’.⁶²

In all cases a procedure for approving and monitoring the safeguard is envisaged, and a maximum length of time for safeguards is also stipulated. Notwithstanding the joint processes, the application of safeguards can effectively be done unilaterally. Safeguards may be applied for longer by ACP states – generally twice as long as the EU – although the EU’s ‘outermost regions’ are treated the same as the ACP countries. The exact periods vary between EPAs, with provisions for the Pacific being the longest.

61 Many free trade agreements provide for the elimination of the use of safeguard measures on trade between the parties to the agreement, which has raised a number of questions about WTO compatibility of the use of multilateral safeguard measures, not all of which have yet been addressed by the WTO Appellate Body.

62 For instance, see Article 21 of the ESA-EC Interim EPA Text.

Infant industry provisions

Questions of whether or how governments should protect infant industries are widely debated in trade theory. In the interim EPA texts, several restrictions are imposed on provisions specifically dedicated to infant industries, making them in fact more akin to traditional safeguards:

- In all cases, tariffs may only be increased in response to a significant surge in the quantity of EU imports
- Such a surge in EU imports must either cause – or threatens to cause – serious injury to an infant industry that has already been established.
- The safeguard may only be applied as long as disturbance persists, and is subject to regular monitoring.
- In any event, the total length of time for which this safeguard may be applied is limited initially (to eight years in total, for all regions except the Pacific).

In addition such infant industry clauses are also subject to a ‘sunset provision’, meaning that they are only available for use within 10 years (or in other cases up to 20 years) of the entry into force of the interim EPA.⁶³ For industries which could emerge in the future after the end of that period – perhaps as a result of new technology or growing demand, just as the biofuel industry, for instance, has only become viable in recent years – governments must fall back on more general provisions which are unlikely to provide them with effective instruments. In this sense it is clear that the clauses have been designed to act as limited safeguards to defend against import surges during liberalisation, rather than as more flexible instrument of trade policy that might be more readily be associated with text-book discussions of infant industry protection.

Pros

The EC acknowledges the need for safeguards for ACP States in the EPAs to prevent unforeseen negative outcomes that might occur as a result of liberalisation. During the course of negotiations it was argued that the provisions on bilateral and multilateral safeguards and elsewhere adequately cater for any such eventuality.

⁶³ It is unclear from the clauses whether all infant industry protection must terminate at the specified date or whether it is sufficient that the period of protection commenced before the sunset date. If the former is the correct interpretation, it may only be possible to grant the infant industry protection in the first few years after some of the EPAs enter into force.

The main arguments of the EC in limiting the scope of flexibility in the area of safeguards and infant industry provisions focus on the need for the WTO-compatibility. They point out that the provisions on safeguards link with other clauses in the goods chapter to form a 'package' which must, overall, meet the requirement for liberalisation of 'substantially all trade'. Hence too much flexibility on safeguards and infant industries threatens the scope of flexibility elsewhere, particularly in the level of tariff liberalisation, where there is already scope for ACP countries to schedule sensitive goods in their exclusion baskets. The EC also make the point that in many texts there are additional provisions akin to safeguards, for the modification of tariff schedules in the event of serious difficulties, though this may relate more to fiscal difficulties than difficulties in a sector or industry, and modification is subject to the agreement of all the parties. Beyond the need for flexibility there are strong arguments that infant industry policies – as with policies promoting import-substituting industrialisation – did not work during the post-independence period in ACP countries, although other developing countries may have had more success.

Cons

Some commentators have identified some limitations in the safeguard clauses. Firstly, many important terms are not defined, arguably allowing for the use of safeguards with minimal justification. The concept of "serious injury" is undefined but is derived from the WTO and ACP states fear that its interpretation may be influenced by the GATT Article XIX and the WTO Safeguards Agreement and their strict interpretation by the Appellate Body. More importantly, it appears that the EU imported the concept of a 'disturbance' to a market or a regulatory mechanism from the European Community GSP Regulation, which uses the term 'serious disturbance' (Council of the European Union, 2005 art 22). In terms of the 'trigger' for the safeguards to be applied, the EPA contains the WTO concept of 'such increased quantities' that 'cause or threaten to cause' one or several types of effect, but there are no particular volume or price triggers (CTA, 2008). Prices are arguably the more important factor in many agricultural goods, for example. Moreover, data on import volumes may be collected less rigorously in developing countries than data on import values and prices. By implication, ACP states fear that the safeguard as it is currently designed may be difficult for most of them to make effective use of, nullifying its existence without, *inter alia*, improvements in monitoring trade flows and new legislation.⁶⁴

64 For a discussion, see also Berthelot (2009), Kwa (2008), and Pitschas (2008).

With regard to multilateral safeguards, the ACP have argued that, in practise, preservation of the rights of the parties to apply them – as well as to take antidumping and countervailing measures – is in practice only a right only for the EC and possibly a very few ACP States. The complexity of the WTO rules and requirements for WTO-compatibility mean that the vast majority of ACP States will not have the existing legislation, or the financial or technical capacity to apply such measures. There is only a very remote possibility that exports from an ACP State could cause injury to an industry in the European Community, while many industries in ACP States could be injured by exports from the EU. Despite the unequal risk of injury, the European Commission insisted that European Community antidumping and countervailing measures had to apply to the ACP States in the same way as all other countries, such as China, India and the United States.

With regard to the infant industries provision, the ACP has argued that the conditions attached to the infant industries safeguard render the provision inappropriate for their purposes. For example, the fact that tariffs may only be increased in response to a significant surge in EU imports means that infant industry protection cannot be provided in situations where trade flows remain constant. Nor could an industry be protected where there was a surge in non-EU imports, while EU imports remained constant. As it stands, the clause may not allow for new industries to be established using protective tariffs, since an industry which did not yet exist could not be threatened with serious injury by an import surge. Finally, while the regular monitoring envisaged in the provision of infant industry protection is essential, the inability to provide certain protection for a specified period of time may mean the provision will not provide an adequate incentive for private investment.

In addition to points on general safeguards above, ACP negotiators have highlighted two particular problems in relation to the clause on infant industries. The first point of contention is that these clauses do not actually provide their countries with the ability to establish an actual infant industry from scratch. Tariffs may be increased only in response to an increase in the volume of imports, not because of any policy choice by an ACP government to pursue a comparative advantage in a particular new industry.

Equally worrying for the ACP is that the provisions on infant industry inexplicably expire after 15 or 20 years. In principle there is no reason to assume that increases in demand for new products – one of the main reasons for setting up infant industries – will only occur in the next twenty years, after which innovation will cease. Therefore, according to this argument, policies to promote infant industries should be available at any point in time.

One additional point to make in connection with infant industry provision is that there is a linkage to the ongoing process of regional integration in the ACP. For smaller countries, it is unlikely that, on their own, they will have sufficient market size to be able to create efficient industries. However, the fact that in many (though not all) ACP regions the removal of trade barriers to create regional markets is itself in the early stages, it is arguable that there is potential for regionally-competitive industries to emerge. Being able to shield such industries from competition outside the region for a while at this particular point in time may be an important part of the regional integration process itself. While infant industry clauses may have had shortcomings in the past does not establish that the policy could never work. Arguably, the reporting and monitoring provisions of an EPA could be adapted to reduce the risk of policy failure without eliminating policy options for the ACP States.

Potential flexibilities

Both the SADC and PACP regions are understood to have made proposals for separate infant industry clauses in their respective negotiations. As with other clauses, the provisions on infant industries are a clear test of the level of discipline required *versus* 'policy space' allowed in EPAs, and as such provide an important test of recent promises for increased flexibility for the ACP. One option would be to take a new approach to such provisions in the text, perhaps creating a separate clause based on whether industries were deemed viable prospects – allowing for temporary protection, but subject to criteria to limit the promotion of inefficient industries.

More limited options would include amending the current EPA texts. One priority for ACP negotiators is likely to be a deletion of the expiry or 'sunset' clauses in the text to allow for infant industries to be established, albeit within the limited safeguard approach of existing texts. Another option for increasing flexibility within this framework would be to allow other regions to import the most flexible provisions, found in the PACP text (allowing for 15 years) into other EPA texts.

4.7 *Most favoured nation*

The basic principle for the MFN clause is simple: following the EPA, should any ACP country or grouping conclude a free trade agreement with any developed country or any other (i.e. non-EU) country or grouping which is a

major trading economy,⁶⁵ then any more favourable treatment provided to that developed country or major trading economy must also be passed on to the EU. The same applies in reverse: the MFN clause is a symmetrical restriction of policy space in the sense that both parties are obliged to extend to the other improvements in treatment. It may be argued that the EU is exempt from this obligation because it has already granted DFQF to the ACP EPA states. But the MFN principle does not only apply to tariffs: it applies to all measures covered by the chapter in which it is to be found. To quote the phraseology in the European Community–ESA text, the clause applies to ‘... the subject matter covered by this Chapter ...’ (Article 16). The chapter covers a range of subjects; Article 13, for example, covers RoO. It would appear, therefore, that were the EU to offer less constraining origin rules in a future agreement with a non-ACP state it would have to extend these to the ACP. The chapter also covers safeguards and standstill.

Concerns have been expressed that if, for example, an ACP country only liberalises 80 per cent of tariff lines with the EU under its interim EPA, but then liberalises 90 per cent with another trading partner under another FTA, in principle, it would need to pass on the extra tariff liberalisation benefits to the EU as well. Even if the ACP State liberalised only 80 per cent of its tariff with the third country, if the tariff lines were different from those liberalised to the EU, the ACP State may be required to liberalise the additional tariff lines with the EU, i.e. over 80 per cent of tariff would then be liberalised with the EU. The precise scope of the MFN clauses (and hence its potential value to the ACP party) varies between the IEPAs. It is interesting to note also that in the CARIFORUM EPA, the obligation to provide MFN treatment extends to services and investment, but not the temporary movement of natural persons (i.e. GATS modes 1 to 3, but not GATS mode 4).⁶⁶ For the areas that it covers, the MFN clause therefore essentially ensures that the ACP countries cannot discriminate against the EU in future agreements, and vice versa.

Beyond the basic principle there are various caveats which restrict the circumstances under which the clause applies. The first one is that in most cases only FTAs (a term that is undefined – see below) with developed or ‘major trading’ countries are covered. Agreements with the objective of regional integration that involve the harmonisation

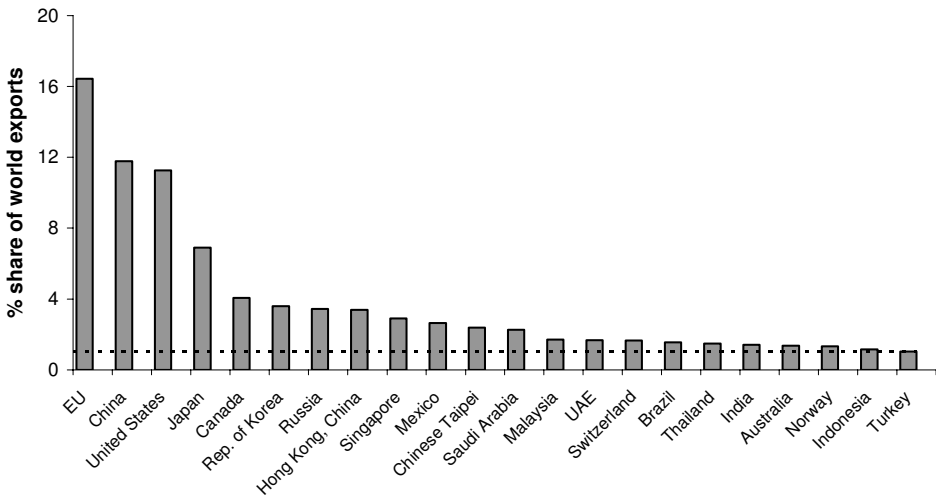
65 ‘Major trading economy’ means any developed country, or any country accounting for a share of world merchandise exports above 1 percent, or any group of countries accounting collectively for a share of world merchandise exports above 1.5 percent in the year before the entry into force of the preferential trade agreement in question.

66 CARIFORUM-EU EPA, articles 19, 70 and 79.

of policies are also exempt. The mechanism for transferring benefits is not automatic in every case: in the case of the CARIFORUM text, for example, a decision must be taken jointly about whether to deny the EU any benefits to which it was entitled (although there are no criteria established for doing so, so it remains to be seen how this would work in practice). The scope of what provisions are covered is also apparently different between the full and interim EPAs that have been negotiated. A summary of the differences in the provisions is provided in Appendix 3.

The term ‘major trading economy’ is defined in most texts as either countries having a percentage share of world trade greater than 1 per cent, or regions with a share of greater than 1.5 per cent.⁶⁷ As shown in Figure 1, such a distinction would include agreements with the three powerhouse developing economies of India, Brazil and China (though the absence of any definition of an FTA has led some to point out that that the MFN clause might not apply in the case of agreements with these countries, if they were notified to the WTO under the Enabling Clause).

Figure 1: Leading exporters in world merchandise trade



Legend: --- = 1 per cent of world exports

Source: WTO

⁶⁷ These figures exclude trade within the EU.

When groups of countries are taken, the 1.5 per cent threshold here would cover the important negotiating blocs of MERCOSUR and ASEAN, meaning that any additional concessions made under any free trade agreements with those groups by the ACP party would also need to be passed on to the EU under the MFN obligation in the EPAs, and vice versa.

Pros

The EC has justified the inclusion of the clause in all of the EPAs as being necessary to ensure that they are treated fairly, or rather to avoid the unacceptable position that they would be treated worse than their competitors, given that the EU is providing duty-free quota-free access to all ACP products. This argument is not, however, is not applicable to trade in services or investment. EU Development Commissioner Louis Michel apparently also linked the clause to the provision of development assistance:

“The European Commission and our member states provide 56 percent of all development assistance in the world. It is difficult to say that Europe should let our partner countries treat our economic adversaries better than us. We are generous but not naïve”.⁶⁸

The EC has also pointed out that the clause may constrain partners with whom ACP regions negotiate in future, in terms of limiting their requests, in the knowledge that any concessions that they gain will also have to be passed on the EU. Opinion is divided on this matter however: while some ACP negotiators emphasise this constraining effect within future FTA negotiations, others argue that this is wishful thinking.

Cons

Some ACP negotiators have pointed out that the MFN clause represents a departure from the development goals of the EPA – since the agreements were supposed to be centred on ACP rather than EU interests – and have therefore questioned the EC’s motives for its inclusion. The fact that the MFN clause in the CARIFORUM EPA covers treatment of goods, services and investment – but not temporary movement of labour – somewhat reinforces this perception.

68 See Louis. M. 2008. Q&A: ‘We Are Generous but Not Naïve. Interview with IPS, 11 January. www.ipsnews.net/news.asp?idnews=40762

Some ACP have also argued that the MFN clause places an unacceptable constraint on their ability to pursue independent trade relations with third countries, and as such is an unacceptable curb on their sovereignty. In effect, the MFN clause ties their hands in negotiating with other countries and regions, since they are unable to offer them anything that could confer any trade advantage over the EU. The effect may be to discourage ACP States from taking steps to become more integrated into the global economy.

Some ACP negotiators have also argued that the clause also undermines 'South-South' cooperation, specifically under the 'Enabling Clause' at the WTO (given the absence of any definition of an FTA in the EPAs). The Enabling Clause was established to legitimise the principles under which unilateral preference schemes were granted by developed to developing countries, and to allow lower thresholds for liberalisation in agreements between developing countries. The question of whether or not agreements notified to the WTO under the Enabling Clause rather than under Article XXIV are 'FTAs' goes to the heart of the controversy over the extent to which the MFN clause will directly affect intra-developing country trade agreement.

Among the ACP regions themselves, one argument emphasised by the EC in favour of including MFN clauses is that they guarantee that all ACP regions will be treated equally, so that any region or country signing an agreement now will not be relatively worse off if another region manages later to negotiate extra concessions. However this also implies that it is now impossible for the EU to discriminate in favour of more economically disadvantaged ACP regions within the EPAs than more advanced ones (rather than, for example, under EBA). It could be argued that regions like ESA or ECOWAS which consist mainly of LDCs should expect more flexibility in terms of market access than other more developed regions (like the Caribbean), and that as such the MFN clause goes against the development principles of the EPAs themselves.

Finally, with regard to the actual implementation of the clause, some ACP negotiators have highlighted an important ambiguity in the definition of what constitutes 'more favourable treatment', affecting the conditions under which tariff concessions made to third parties need to be passed on. Under one interpretation, a future FTA that liberalises the same overall amount of trade (or less) as the EPA cannot represent one that provides more favourable treatment, and so concessions need not be passed on. However at the level of individual product tariff lines, some goods may be liberalised under the second agreement that were excluded from liberalisation under the EPA – leading to a second interpretation that 'more favourable treatment' is in fact being

provided at the level of specific products, even if the overall incidence of liberalisation is lower. Clearly, it is the interpretation that actually prevails in any dispute which will determine the extent to which the MFN clause could potentially have important implications for the specific industries in the ACP States. Nonetheless, the uncertainty itself may cast a shadow over any negotiations that ACP countries enter into with third parties.

Potential flexibilities

From an initial position that an MFN clause is 'inevitable', it has been suggested that through taking the best elements of the various interim EPA clauses (summarized in Appendix 3), a more favourable solution could be reached (Lunenborg, *forthcoming*).

In addition, in order to dispel any confusion with regard to 'South-South' trade, the text could make clear that agreements notified to the WTO under the enabling clause would not be affected by the clause. It would also be relatively easy to agree language that cleared up the ambiguity over the definition of 'more favourable treatment' for tariff concessions, as mentioned above.

Another way in which the MFN clause could be modified to take into account some ACP concerns would be for the clause to assess 'more favourable treatment' based on a broader set of criteria than those it contains. As noted above, in its current form the scope of the MFN provision is limited to the chapter on trade in goods. If the total balance of an agreement could be considered, for example, this might go some way towards meeting the objections of the ACP. There is some common sense in looking at trade agreements as a balanced 'package' of measures, rather than trying to assess only the costs and benefits of particular sections or focusing on the treatment of each individual tariff line in two trade agreements.

Finally, flexibility might be enhanced by amending the MFN clause so that it does not provide for the automatic granting of any more favourable treatment to the EU, but instead provided for consultations with a view to determining whether and how any more favourable treatment should be provided to the EU. This is already the practice in some trade agreements to which ACP states are party. For example, if the third country provided the ACP State with greater benefits under the trading arrangement than the EU, the EU may need to negotiate the terms on which that more favourable treatment should be provided to the EU.

4.8 *Non-execution clause*

The issue of the ‘non-execution clause’ relates to the preservation of the power of the parties, in practice, the EU, to take various actions under Articles 11b, 96 and 97 of the Cotonou Agreement, even if the actions are inconsistent with the trade or trade-related commitments made under the EPA. Within the framework of the original Cotonou Agreement, these clauses allowed the EU to suspend its commitments under the Cotonou Agreement where an ACP State failed to respect human rights, democratic principles and the rule of law.⁶⁹ This clause has been invoked following a *coup d’état* or flawed electoral processes, in Zimbabwe in 2001 and Fiji in 2007, for example. In these cases, aid but not trade preferences were suspended by the EC.⁷⁰ While economic sanctions are generally incompatible with the trade liberalisation provisions of the GATT, economic sanctions for gross human rights violations may be permitted in exceptional circumstances. The exception clauses in the EPAs preserve the rights of parties to apply economic sanctions in at least as broad a range of circumstances as permitted under the WTO.

It should be emphasised that neither side in the negotiations denies the importance of the protection of human rights or good governance.

Pros

The European Commission argues that the inclusion of Articles 96 and 97 are necessary merely to maintain the *status quo* of what was agreed under the Cotonou Agreement, which covers trade issues as well as development assistance. It is worth noting that the Cotonou Agreement, and therefore any agreement of development financing and the right of the EU to suspend either the Cotonou Agreement or the EPA, will expire with the Cotonou Agreement in 2020.

Cons

The ACP is concerned that this provision could provide a basis for the EU to invoke unilateral trade sanctions for political violations. The ACP position since the inception of negotiations has been that the non-execution clause should not apply to EPAs and should be confined to political cooperation because of the adverse impact that

⁶⁹ For an extensive review and discussion, see Mackie and Zinke (2005), Hazelzet (2005), Mbangu (2005) and Bradley (2005).

⁷⁰ See Bartels (2008b).

sanctions on one country could have on regional trade and integration, particularly if the country concerned is a key trading partner or an outlet for landlocked neighbouring countries.

It has also been argued that because the principles for the negotiation of EPAs are based on Article 37 of the Cotonou Agreement, no reference should be made to Articles 11, 96 or 97 (ACP Secretariat, 2007b). To avoid any doubt, the ACP regions should include an exception clause in the final provisions which states that “For the avoidance of doubt, articles 11, 96 and 97 of the Cotonou Agreement will not apply to EPAs”. The EC would however retain the ability to suspend development assistance under the Cotonou Agreement for failures to respect human rights and democratic principles, as well as the right (and obligation) to take action under the United Nations Charter.

The Caribbean called for the inclusion of a non-execution clause which would allow suspension of Caribbean commitments if EU support was not forthcoming and, therefore, ensure proper sequencing of capacity building, regional integration and trade liberalisation. The CARIFORUM EPA and the interim EPAs do recognise that incomplete or imperfect implementation of the EPA may be the result of capacity constraints in the chapters on development cooperation and dispute settlement. These provisions, however, do not create any legal binding obligation on the EU either to provide resources or a defence further to failure to implement an EPA.

4.9 Rules of origin

In any trade agreement, the rules of origin (RoO) define the ‘nationality’ of goods, thereby establishing which goods qualify for preferential treatment. While identifying the origin of goods is relatively simple in the case of raw materials and commodities – which are usually ‘wholly obtained’ from one country – it is more difficult in the case of goods that have been manufactured using inputs sourced from more than one country. Given that many high-value exports fall into the latter category, reform of the RoO was one way in which promote the development of ACP industries, particularly in areas where they were seen as too restrictive.

A RoO regime however also needs to be balanced. On the one hand, where restrictive RoO prevent sourcing from outside the FTA partners – effectively limiting suppliers to the EU and ACP region – they can be used either to ‘lock-in’ existing supply chains

or even to act as barriers that prevent otherwise potentially competitive industries from emerging. On the other hand, where RoOs are too lax this will simply lead to trans-shipment, whereby almost-finished goods are imported into an ACP country, undergoing minimal value-adding before being exported duty-free to the EU. Finally, a RoO regime needs to be administratively simple, especially since the administrative burden of fulfilling the requirements of the regime are private sector operators. It has been alleged (though this is controversial) that the value of preferential access conferred by a trade agreement has been less than the cost complying with the RoOs (a situation which gets worse as the preferences are eroded by other unilateral liberalisation or other agreements, for example, in the WTO). Unless the rules are not transparent and easy to comply with, and provide certainty for investors, the investments required to take advantage of them will not be forthcoming. Compliance costs are likely to be a greater issue for small producers in developing countries.

After a complicated set of negotiations on them, the rules of origin arrived at in the EPAs are essentially the same as those in the Cotonou Agreement, with some improvements in the agricultural and textiles sectors (see Chapter 6) Earlier on in the negotiations the ACP countries recognised the desirability of having common rules of origin across all the EPA agreements, so as to enable trade incremental value-adding – known as ‘cumulation’ – across different regions. As such it was envisaged that new rules would be agreed during the ‘first phase’ of negotiations at the all-ACP level from 2002-04. However this was not possible, due to differences between ACP regions on the issue, combined with an apparent lack of willingness on the part of the EC to make commitments during the early stages of negotiations.

Pros

The EC tabled a draft position on RoO reform in March 2007 based on a new methodology that set a minimum percentage of local ‘value addition’ to imported raw materials. However the position was later withdrawn because of difficulties in getting EU-wide approval, and replaced with an approach based on the existing rules – known as ‘Cotonou-plus’ – in July 2007. Noting time pressures for concluding the agreements, the EC rightly pointed out that by defining which goods qualified for preferential access under the EPA when compared with normal applied rates, the reform of RoO only mattered for those goods where such preferences existed and remained significant. In the end reforms were limited to a selection of products in the textiles and agricultural sectors, although these were also areas where ACP

preferences were greatest. In the textiles sector, the ‘double transformation’ rule – requiring for example that clothes were manufactured from yarn rather than fabric, thereby undergoing two separate transformations – was relaxed (see Chapter 6).⁷¹

Cons

While some ACP countries (especially LDCs that initialled agreements) saw improved market access in the new RoO, others expressed disappointment at the scope of the changes, seeking to ensure that an early review of the rules took place after entry into force of the interim EPA or in the context of comprehensive EPA negotiations.

A major long-term objective of the ACP has been *simplification* of the RoO regime which, in the EPAs as in the Cotonou Agreement, run to some 170 pages of complex, product-specific rules. Such complexity they argue often increases the *compliance cost* of the meeting the rules, lessening the value of the preferential market access on offer, and thereby acting as a deterrent to private sector investors. Both the World Bank⁷² and the Blair Commission report (Commission for Africa, 2005) have called for a simplification of the rules, for example a simple ‘change in tariff heading’ procedure or a threshold of 10 per cent ‘value addition’ in ACP countries (though one problem associated with the latter is that thresholds are subject to currency fluctuations, creating unpredictability for producers about whether goods will be accepted or not).

Another idea put forward by some ACP regions has been for asymmetric RoO – higher thresholds for EU goods than for ACP goods. In theory there is perhaps no reason why rules of origin regimes should be the same for the ACP and EU exports, although it is less clear what practical impact asymmetric RoO will have in preventing EU imports from qualifying for preferential access to ACP markets. Some commentators have argued that in most cases they are likely to meet the defining criteria, but whether or not this is true (given Europe’s deep integration in global value chains) has not been tested empirically. Perhaps more relevant is the limited capacity of ACP customs authorities to challenge the originating status of EU goods, which would require them to have sophisticated knowledge of where and how each product was made.

⁷¹ For the Pacific, a new set of rules defining originating fish for processed goods – allowing fish to be sourced from anywhere in contrast to earlier, highly restrictive rules – was seen as a major concession on the part of the EU that was specifically limited to this region.

⁷² Hoppe (2007). See also work by Paul Brenton on this issue.

Apart from the issue of cumulation between ACP regions (see Chapter 6) there are the rules dealing with cumulation with South Africa, and those allowing cumulation with other developing countries. In light of its position as a competitive producer of many goods, the Cotonou Agreement set out a long list of products for which cumulation with South Africa was not allowed. A crucial point here, relevant also for other provisions in the interim EPA RoO, is the difficulties encountered in meeting the necessary administrative arrangements for cumulation with South Africa to take place. In the interim EPAs, cumulation with non-parties requires coming to an agreement on administrative arrangements in customs areas, the exact nature of which is not defined in the text and which could prove fairly difficult to negotiate. Even if South Africa were to sign an IEPA there would remain the problem that its RoO are set out in the TDCA, and are different from those in the SADC EPA.

Finally, ACP negotiators have highlighted the issue of cumulation with ‘neighbouring developing countries’, as well as overseas territories of the EU. In the EPA RoO, there is a clause which allows ACP countries to treat materials sourced from other developing countries as ‘their own’, which could potentially be a major source of flexibility depending on the countries involved. The developing countries, however, are limited to neighbouring developing countries and those (such as Egypt) in pre-existing regional trade agreements with EPA states listed in an annex to the rules, and again the conditions needed in order to benefit may prove difficult to meet in practice.

4.10 *Other contentious issues*

While this Chapter has focused on the issues that have been most contentious in many, if not all the ACP regions, there remain a significant number of other issues where the EU and one or more ACP region have expressed concerns, although some questions are arguably more ‘technical’ than others. Given that at the end of 2007 most of the negotiations were towards interim EPAs rather than final EPAs, it is likely that the parties to the negotiations may have focused less attention on the details of the institutional and general provisions than might otherwise have been the case. Problems in these areas may loom larger as the negotiations near conclusion. Individually, these issues are unlikely to prevent the conclusion of an EPA, but collectively they may present an obstacle.

Listed below are *some* provisions that may be uncertain or unusual in the CARIFORUM EPA or the interim EPAs or that are perceived to have inequitable effects by one or

more of the ACP regions, and where there may be a tension between the provisions and the stated development objectives of the EPAs. As such, the issues should not be seen as simply contentious between the parties to the negotiations, but raise issues of coherence in EU policy making. While not all such issues are covered here, the objective of this Chapter is to illustrate the different issues that have arisen and highlight the potential need for greater reflection.

- *Administrative Cooperation:* The CARIFORUM EPA and the interim EPAs permit the suspension of trade preferences, inter alia, in cases where one party has made a unilateral finding of 'irregularities' and 'failure to provide administrative cooperation'⁷³. These concepts are not well-defined, which creates uncertainty for governments and traders. The loose language and scope for unilateral termination of trade preferences also creates the impression that the trade ACP-EU relationship is not moving to a truly contractual basis, but will remain one where the EU grants significant trade preferences to ACP States but retains a high degree of unilateral control over those preferences.
- *General Exceptions:* The general exceptions contained in the CARIFORUM EPA and the interim EPAs are based on equivalent provisions in GATT Article XX and GATS Article XIV, but omit some of the WTO exceptions, in particular equivalents to GATT Article XX(h)-(j)⁷⁴. The eliminated exceptions (on international commodity agreements, essential materials, and products in short supply) may be of value to some ACP States. The change means that the EPA reduces the policy space of the ACP States, eliminating the flexibilities available under the WTO.
- *Security Exceptions:* By contrast, the security exceptions in the CARIFORUM EPA and the interim EPAs are broader than the security exceptions in the WTO⁷⁵. Even if a case can be made that the WTO exceptions are too narrow, whether in light of the subject matter of the EPA or changing international conditions, the current provisions provide almost no limit on the actions, that may be justified on 'security related' grounds, which would otherwise be inconsistent with the EPA. The provision would permit a party to manufacture an exception in a broad range of circumstances which creates uncertainty for governments and traders.

⁷³ See, for example, CARIFORUM-EU EPA Article 20.

⁷⁴ See, for example, CARIFORUM-EU EPA Article 224.

⁷⁵ See, for example, CARIFORUM-EU EPA Article 225.

- *Tax Exceptions:* The tax exceptions in the CARIFORUM EPA and the interim EPAs⁷⁶ are broader than the equivalent exceptions in the WTO. Some of the provisions may have been inspired by bilateral investment treaties, others by a desire to deal with what the OECD refers to as 'harmful tax practices'. However, it would be possible for a party to manufacture an exception for virtually any tax-related practice under this provision. The tax exception is also included in other provisions calling for cooperation and dialogue on tax practices⁷⁷ and in some of the draft EPAs requiring acceptance of EU defined good tax practice. Harmful tax practices are dealt with in other fora. It is not clear why these issues should be also dealt with in an EPA, which is a trade agreement. Nor it is clear that the EPA should seek to reduce the policy space of ACP States on such an important matter as taxation systems, through a short (and rather opaque) article in a trade agreement, without full consideration of the consequences and public consultation in each of the ACP States.
- *Incorporation of International Instruments:* Similar concerns may also arise from the incorporation of international instruments (as opposed to EU documents) into the EPAs by reference. Regardless of how important the policy is, or how much all of the parties wish to cooperate (for example, on the suppression of illegal financing activities), more thought needs to be given to whether a trade agreement with all that it entails is the appropriate instrument to pursue, police and security interests, for example.
- *Dispute Settlement:* The introduction of binding dispute settlement procedures into the WTO was seen to be of value to smaller states. However, experience in the WTO has shown that, except in exceptional circumstances, small developing countries like the ACP States do not avail themselves of the opportunity. The lack of legal and financial resources to analyse a situation and submit a dispute prevents most developing countries from using the dispute settlement system. Small countries are also wary of bringing disputes because the usual remedy - the right to suspend trade concessions - is likely to cause economic harm to the complainant country and fail to motivate the defendant to comply with the agreement. The EPAs and the interim EPAs do not address these issues. The EPAs are complex agreements. The drafting is also, in parts, not as clear as it could be. There is a risk that only the EU will be able to enforce the EPAs.

⁷⁶ See, for example, CARIFORUM-EU EPA Article 226.

⁷⁷ Cariforum EPA, arts 22 and 236.

- *Institutional Issues and Monitoring:* The CARIFORUM EPA gives the EPA Ministerial Council broad powers to make decisions to implement the EPA that are binding on the parties.⁷⁸ The draft EPAs contain similar provisions. While a broad decision-making power may be necessary, the provision may raise different concerns in the EU and the ACP region. Without the same level of institutional development as the EU an open-ended decision-making procedure may create concerns about the ‘democratic deficit’ and the accountability of trade ministers to their parliaments and people.
- *Compliance with Objectives:* The final illustrative example is article 233:5 of the CARIFORUM EPA, which states that “The Parties or the Signatory CARIFORUM States as the case may be shall adopt any general or specific measures required for them to fulfil their obligations under this Agreement and shall ensure that they comply with the objectives laid down in this Agreement.” The draft EPAs contain similar provisions. This provision, in particular the obligation on the parties to ensure that they comply with the objectives of the Agreement, may have been inspired by Article 10 of the European Community Treaty. However, the different institutional and legal context (intra-EU relations versus ACP-EU relations), as well as the breadth of the subject matter covered by the EPA, raise doubts about the appropriateness of this provision. It creates great uncertainty about the obligations that the parties have accepted, which is compounded by the tension between the multiple stated and implicit objectives of the EPA.

⁷⁸ See, for example, CARIFORUM-EU EPA Article 229.

PART 2

The IEPAs liberalisation commitments



5. The ACP liberalisation commitments

ODI

The first part of this chapter considers how best to assess the main IEPA texts which set out the rules under which goods trade between the parties to the agreement will henceforth be conducted. It argues that the potential impact of these rules can only really be understood in detailed country-level analysis.

This rest of the chapter provides a detailed analysis of each of the IEPAs that focuses primarily on the liberalisation schedules accepted by each ACP state noting *inter alia* any changes to the liberalisation schedules that have been agreed during 2008. To complement this review of the flexibility shown during the 2008 negotiations it also provides a summary of any amendments made to the main text and annexes between early 2008 and early 2009. It deals with four specific questions in relation to the national-level liberalisation commitments entered into by ACP states. These are:

- the product coverage of liberalisation and its relative impact on sectors;
- the speed of tariff liberalisation (and the front/back loading of products/sectors);
- the relative importance and broad composition of the exclusion lists;
- the impact on hypothetical government revenue.

One important factor to bear in mind is that these questions relate only to the removal of tariffs – and only tariffs. But tariffs are not the only trade taxes that are applied in some states and taxes are not the only government interventions in trade. The IEPAs also cover other trade-related taxes and interventions. But a key feature of such policies is that they are not necessarily transparent: opinion may differ over whether or not a certain charge is a trade-related tax or merely cost recovery, which underlines the potential importance of dispute settlement.

5.1 *The IEPA main texts*

Interpreting the main texts

The main texts set out the rules and principles that will apply to commercial relations between the parties. An important point to note is that the scope of these rules is limited

only as specifically indicated in each text. If an ACP state has, for example, excluded a certain product from its liberalisation schedule it is not required to remove the tariff on that item. But this does not exempt the product from any other rule in the IEPA, e.g. on the prohibition of QRs or the removal of any other trade-related tax or charge paid by importers. Only if the main text provides explicitly that a quantitative restriction or trade-related tax can remain in place for some or all of the goods in a country's exclusion basket is it exempted from any general prohibitions. In other words, the exclusion basket does not necessarily take completely 'out of play' a country's most sensitive goods.

Consequently the main texts need very careful scrutiny but, as explained above, not only are they lengthy and complex but also their impact will depend on the relationship between the precise wording (and how it is interpreted) with the exact circumstances in which they might be actioned. Partly for this reason, the provisions on dispute settlement are very important. The impact of the IEPA will depend on what is actually done to implement it – and occasions may arise in which one party believes that the IEPA text requires actions that are different from those that the other party has actually taken. It is these cases that dispute settlement procedures may have a substantial influence on, given that there is much ambiguity in the text.

As explained more fully in the next sub-section, therefore, analysis of the implications arising from the main texts is best done at a country level. This can identify IEPA rules that conflict with the current or planned future practice of the country concerned. And, having done so, it can then assess the economic and development implications of either abandoning current (or planned) practices or of amending them so that they are in an IEPA-compliant form.

The three analytical problems

Three examples, two related to food security (an area of considerable public interest) and one to the controversial 'MFN clause' illustrate the issues. All three involve several analytical difficulties but each illustrates particularly well one of three generic problems. The first illustrates a 'problem of scope': whilst the nature of the commitment is clear it is difficult to foresee how frequently it might limit the freedom of manoeuvre of countries. The second illustrates a 'problem of interpretation': whether or not a particular clause is valuable depends not only on how it is interpreted but also on how other clauses are applied. The third illustrates a 'problem of options': it is clear how the provision might constrain certain actions but not whether or not the constraint can be sidestepped or its desirability.

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Problems of scope

At the end of February 2008 Tanzania imposed an export ban on agricultural commodities in the face of a domestic shortage of cereals. Whilst such a ban is legal under its IEPA which – uniquely – permits the ACP parties to impose QRs on the export of food in cases of domestic food shortage for the preservation of food security, it would be illegal under the others (if the EC does not agree). Such a ban imposed in the future by a signatory of any other IEPA would be a contravention of the terms of the agreement and, potentially, result in penalties being imposed under the dispute settlement provisions.

What this report can do is to identify the fact that only one IEPA has provisions allowing an export ban, but this goes only so far. There may be some other areas where the IEPA text restricts policy space that have been overlooked because they are covered by very general clauses, the implications of which are only apparent in relation to very specific country circumstances now and in the future. Country-level analysis of the IEPAs has indicated several cases in which apparently anodyne and standard provisions on NTBs may cause serious problems in relation to the control of imports not from the EU but from regional partners. This is because restrictions that do not exist in relation to trade with the EU and most other countries have been mutually agreed within regional schemes as part of the checks and balances accompanying liberalisation. How many other cases of seriously constraining policy space restriction have been overlooked? The recent history of WTO dispute settlement is replete with examples of how countries have discovered that provisions in the Uruguay Round texts they agreed in the confident expectation that current policies complied have turned out to require policy to be changed. The answer is that only country-level analysis will identify all such cases and only time will tell whether or not apparently serious restrictions are actually enforced vigorously.

Even when the existence of a potential issue has been noted, it is only the start of the enquiry. Does the ability to prohibit exports actually matter? The Tanzania ban is reported to have had no impact because there are no surplus stocks to be exported. If there are problems with existing intra-regional trade measures are there other potential ways in which the same objectives can be achieved by alternative, IEPA-legal measures?

Problems of interpretation

The second issue relates to provisions in the IEPAs on pre-emptive safeguards. The Cameroon, Ghana and Côte d'Ivoire IEPAs (and that of CARIFORUM) allow the countries to impose pre-emptive safeguards to limit imports in defence of food security. The EAC, ESA and SADC texts make no such provision.

Whilst this report can draw attention to this difference, it cannot demonstrate its operational importance which will be influenced by several other key factors.

- *Legal interpretation:* do the food security safeguard clauses actually add freedom of manoeuvre to the more general pre-emptive safeguard provisions in all of the IEPAs, or are they merely a public relations feature emphasising that the provisions apply to food security as well as to all the other justifiable triggers?
- *Administrative interpretation:* this is related to another imponderable – if a pre-emptive safeguard is imposed by an ACP state, how will the terms (in either the food security or the general clauses) be interpreted if the case goes to dispute settlement? Both the food security and the general pre-emptive safeguard clauses limit action to 200 days, so there is no difference on this point. And phraseology such as is found in the ESA general clause would seem to cover food security as well as other issues: measures can be taken where imports cause 'or threaten to cause ... disturbances in a sector ... particularly where these ... produce major social problems ... or ... the markets of agricultural like or directly competitive products ...' (Article 21:2).
- *Political demand:* this leads in turn to the most fundamental question: why have African countries not used WTO safeguards in the past? If the answer is either that full MFN tariffs provide sufficient protection or that the WTO procedures are too unwieldy, the IEPA provisions could be operationally important. Because countries are removing MFN tariffs on some agricultural goods from a substantial exporter it is more likely that food security safeguards might be needed, and the pre-

emptive provisions of the IEPAs appear to be much easier to apply. If, by contrast, the reason is that governments either are unaware of the problem or choose in favour of cheaper food for consumers rather than higher prices for producers, the pre-emptive safeguard clauses are irrelevant.

Problems of ‘options’

A feature of the EPAs that has attracted much attention is the ‘MFN Clause’ (see Chapter 3) which is in all of the IEPAs, although the SADC, CARIFORUM, and PACP texts make provision for possible ‘mutually agreed’ exemptions. It requires any tariff preferences granted to other ‘major trading economies’ (defined as economies accounting for a share of world merchandise exports above 1%) automatically to be granted to any party of the IEPA. It has been criticised for constraining future ACP FTAs with emerging economies like India or China.⁷⁹

Chapter 3 explains the areas of ACP concern. In providing an analytical commentary on these the report can make a number of clear observations. These include the fact that such a clause is unique for the EU: it is not to be found in its FTAs with South Africa, Mexico, Chile or, as far as the authors are aware, in any other EU trade agreement. On the other hand as explained in Chapter 3 the MFN clause is a symmetrical restriction of policy space in the sense that both parties are obliged to extend to the other improvements in treatment.

But simply establishing these features does not answer the question of how powerfully it will limit ACP freedom of manoeuvre, since this also depends on other, unpredictable factors. These include the following.

- Will any future ACP–South trade agreements be notified to the WTO under Article XXIV and described as ‘free trade agreements’; the parties would appear to have the option of presenting them under the Enabling Clause as preferential accords, in which case as explained in Chapter 3 there is some uncertainty over whether the MFN clause would apply?
- In any negotiations with an industrialised country (for which the Enabling Clause is not an option) will the MFN clause constrain ACP options (by increasing the adjustment costs of any ‘concessions’) or expand them (by helping the country

79 See for instance Dièye and Hanson (2008) and Rumpf (2008) for a Namibian perspective.

to defuse unwanted demands since the exporters of the *demandeur* will have to share any gains with those from the EU)?

- Is the option that is forgone, of restricting improved access granted to another industrialised country, economically advantageous (because it minimises adjustment costs) or disadvantageous (because it causes trade diversion)?

Provisions on some contentious issues

Although such considerations make it sensible for most of the main text analysis to be done at a detailed country level, this sub-section deals briefly with three aspects of the texts in relation to the contentious issues flagged in Chapter 3. Provisions that are specific to one or two agreements appear to defuse some of the contentious issues, and some of these have been agreed during 2008.

On the contentious issue of standstill CEMAC has provision to halt tariff reduction unilaterally for a maximum period of one year, and the ‘standstill clause’ phrasing in the EAC and SADC IEPAs applies only to those products subject to liberalisation (and not to all trade). During 2008 there have been other changes to the standstill provisions. The IEPAs with Côte d’Ivoire and Ghana have been amended (to allow changes to accommodate a regional tariff) and the Ghana IEPA now includes a new Annex (II) allowing the country to introduce an additional levy on imports of 0.5% of the cost, insurance and freight (c.i.f.) value until the end of 2017. This fee has ‘the objective of generating funds to stimulate the export sector and support trade in general’.

All the African IEPAs allow for the temporary introduction/increase of export duties in ‘exceptional circumstances’ following ‘joint agreement’ with the European Community (EAC) or ‘consultations’ (CEMAC, Ghana, Côte d’Ivoire and SADC). The ESA IEPA was amended in 2008 to include a completed annex listing exceptions from the general prohibition on export duties and quantitative restrictions (QRs) in the main text. However, only two countries (Seychelles and Zambia) appear to have registered exceptions. Unless this is an example of where the texts on the Council website are incomplete it raises the question whether or not the other countries apply such policies or whether they have failed (accidentally or by design) to list them. Evidence from the 2008 WTO *Trade Policy Reviews* for Mauritius and Madagascar suggests that both countries apply additional import/export charges and QRs (WTO, 2008a, 2008b). Côte d’Ivoire also appears to have abstained from its right to develop a list of products

for which export taxes are allowed as foreseen in the IEPA initialled at the end of 2007. The final version does not make any reference to such an Annex.

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 IEPA texts (e.g. for infant industry protection or in case of public finance difficulties). Additionally, Ghana and Seychelles registered a list of products for which discriminatory fees and charges are allowed for a period of ten years.

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.

5.2 *Methodology for analysing liberalisation schedules*

The liberalisation schedules of the initialled IEPAs run to many thousands of lines using a variety of versions of the nomenclature (see Box 10). This report provides a very detailed analysis of the African IEPAs but, necessarily, it provides only a foundation for many detailed country- and issue-specific studies that now need to be conducted. The lengthy EPA negotiation process has spawned many studies of the potential impact of the new regimes but all of them necessarily had to make assumptions on the terms of the agreements. They now need to be reassessed with 'real data' within the framework provided by this report.

Data issues

Because it covers all aspects of broad, very detailed agreements for which data are not always clear or transparent, cases have arisen in the original report and since then where the Overseas Development Institute's (ODI) findings differ from those of other analysts, including the negotiators. All such cases that have been brought to ODI's attention have been followed up, and in none has the ODI data or analysis been seriously challenged. But a great deal depends upon the 'small print' of the analysis. The findings reported are believed to be accurate – given the caveats inherent in the data that have been used and the assumptions that have had to be made. Most of the key assumptions related to specific findings are detailed in the relevant tables. Some of the most important general issues concerning specific country schedules are given in Appendix 1.

Box 10. The nomenclature for liberalisation

All of the goods liberalisation commitments made in the IEPAs have been expressed in terms of the system used to classify all the goods that are traded internationally. This is known as the Harmonised Commodity Description and Coding System (HS). It has been developed and is maintained by the World Customs Organization. Since its inception in 1988 it has undergone three major revisions (in 1996, 2002 and 2007 – known respectively as H1, H2 and H3). It is supported by well-defined rules to maintain uniformity and is currently used by more than 200 countries.

The Harmonised System

Under the HS, all traded goods are grouped within a legal and logical structure comprising:

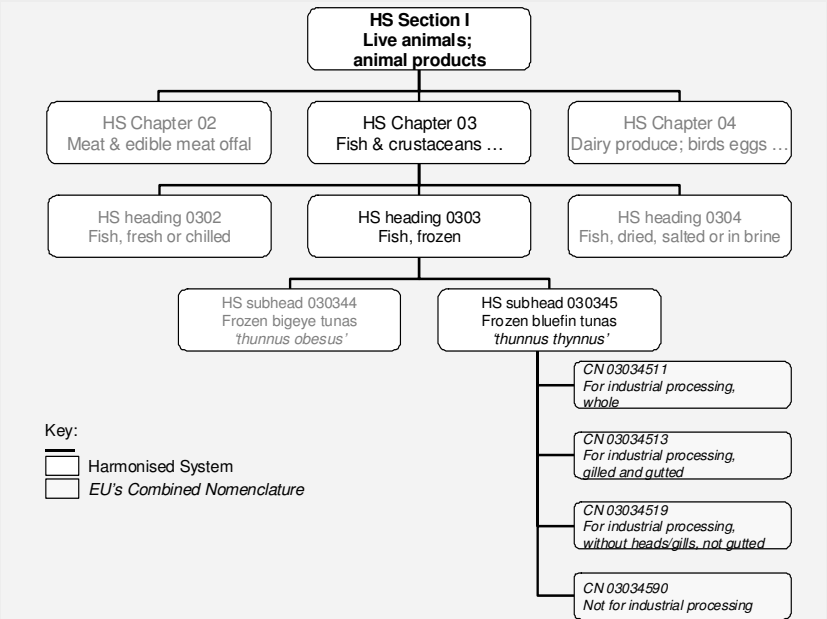
- 21 broad Sections: e.g. I – live animals; animal products;
- 96 2-digit Chapters: e.g. 03 – fish and crustaceans, molluscs and other aquatic invertebrates;
- c. 1,200 4-digit headings: e.g. 0303 – fish, frozen;
- c. 5,000 6-digit sub-headings: e.g. 030245 – frozen bluefin tunas ‘thunnus thynnus’.

Six digits is the maximum level of disaggregation under the HS, but most countries routinely add a further two or four digits in order further to differentiate goods. This is done entirely at national level; there is no requirement for uniformity (and none should be assumed should countries happen to append the same extra digits). The EU’s extension of the HS to the 8- or 10-digit level is known as the Combined Nomenclature (CN). The figure on next page gives an illustrative example of the EU’s full HS/CN hierarchy for frozen bluefin tuna.

The tariff reduction commitments in the IEPAs are expressed in terms of the statistical codes either at the 6-digit level (in which case the goods in question can be identified precisely from the HS) or at the nationally determined 8-digit level. For example, using the products in the figure above, a country might indicate that it is liberalising HS 030344 (frozen bigeye tunas) in five equal annual instalments between 2011 and 2015, and HS 030345 (frozen bluefin tunas) in five equal annual instalments between 2016 and 2020.

Problems

If the country has no national 8-digit sub-classifications within these two HS6 product groups (or if it levies identical tariffs on all such sub-groups) it is straightforward to identify the value of trade that will be affected by the liberalisation and the relative scale of the ‘shock’. The value of imports and the tariff levels prior to the IEPA can be identified either from figures in the IEPA document or, if there are none, from an appropriate database.



But difficulties can arise if the country applies different tariffs on 8-digit sub-categories, or if the version of the HS used in the IEPA is not the same as the one used to classify pre-IEPA import values and tariffs, or if some 8-digit items of HS 030344 are liberalised in, say, 2011–15 whilst others are liberalised in 2016–20. In all such cases the team has provided its best estimate of the impact of the IEPA changes – and the judgements it has made are detailed in the notes to the relevant tables.

- Notes:
- (a) Countries that have adopted the HS are not permitted to alter in any way the descriptions associated with a heading or a sub-heading, nor can the numerical codes be altered.
 - (b) Numbered 1–97; there is currently no Chapter 77 (which is reserved for possible future use).
 - (c) The exact number varies according to the version of the HS.

Defining the 'IEPA effect'

A methodological issue that needs to be flagged to avoid misunderstanding concerns the definition of the effects arising from the IEPA rather than from other causes. In seven of the twelve tariff schedules covering Africa, liberalisation commitments are expressed not in relation to the current applied tariffs but in relation to what is believed to be an agreed common external most-favoured-nation (MFN) tariff of the customs union to which the countries belong.

Since the countries concerned have committed themselves to establish a CET, any changes from the *status quo* needed to reach the agreed levels are defined in this report not as an 'IEPA effect' but as a 'customs union effect'. In the case of Cameroon, for example, changing the current tariff on a product of, say, 20% to a previously agreed CEMAC CET of 10% is a consequence of the country's decision to join the CEMAC customs union. It is only any further cuts in the tariff to 0% that is an 'IEPA effect': an additional element of liberalisation that is not required to be a member of CEMAC but is required to be a member of the IEPA.

At the same time it is important to consider the combined customs union and IEPA effects to understand the challenges facing countries. We have adopted a pragmatic approach according to the country/region in question. Both Ghana and Côte d'Ivoire appear to us from the documents supplied to have set their liberalisation in relation to the current applied tariffs, so the issue of a CET does not arise. In Cameroon the reductions appear to be set in relation to a CET – but the base (CET) tariff shown is the same as the country's maximum MFN tariff for all except 276 of the 5,224 lines in the schedule. The differences are sufficiently small for the two to be assumed at this level of analysis to be identical. In the case of EAC, sufficient progress has been made towards a customs union for it to be appropriate to take the 'customs union' effect as given. This is not the case with ESA, some of the signatories of which have not signed up to the COMESA customs union. Moreover, it is clear that the agreements reached so far on the COMESA customs union are being interpreted differently by members. In all cases except Comoros (for which there are no tariff data in the United Nations Conference on Trade and Development's Trade Analysis and Information System (UNCTAD's TRAINS)) we have shown the changes from recent MFN tariffs as well as from the CET. The 'SADC IEPA' is not a regional agreement in any serious sense of the term and so the point of comparison is with current applied tariff rates.

Presenting the results

Because only two West African and one Central African states have signed IEPAs, they are treated here as separate countries. The other states are dealt with in their regional group but important differences between the commitments of the various signatories to a particular agreement are flagged.

As explained in Chapter 1, three or four standard tables (depending on the specific circumstances) are provided for each country analysed: an overview of the whole liberalisation schedule; an overview of the goods that are being excluded from liberalisation; sectoral details of the exclusions; and, where a country's timetable makes this appropriate, details of the first tranche of liberalisation. In addition some guidance is provided on the potential effects of the liberalisation on government revenue in each country. Both the sectoral details of the exclusion basket and the concept of hypothetical revenue deserve further explanation as does the description of products in the tables (see Box 11).

5.3 *Cameroon*

The IEPA between the European Community and 'Central Africa' (covering only Cameroon) was initialled on 17 December 2007 and signed on 15 January 2009. The revised version of the IEPA on the Council website is dated 16 October 2008. The IEPA has not changed much in content between the version initialled and that which has been signed. The Articles have been renumbered and throughout the text small editorial changes have been made. The biggest changes are as follows.

- A Council Decision replaces the Declaration of the Negotiators as the first page. The Council Decision foresees that the IEPA shall be signed and provisionally implemented pending the completion of the 'full EPA' negotiations.
- The structure and text for Title 8 (General and Final Provisions) has been partly changed (Table 5).

Box 11. Important considerations when interpreting the country data

Sectoral distribution of excluded goods

As there are too many excluded items for it to be feasible to provide a detailed analysis of the goods concerned, a broad indication is provided by data on the distribution of excluded goods according to relative number of excluded items in each HS chapter. But because the number of items varies substantially between chapters this relative league table' must be interpreted with care. In the case of Cameroon, for example, the three chapters with the largest number of items excluded by Cameroon are textiles and clothing – but this is partly because these chapters contain many more HS sub-heads than does, for example, Chapter 26 (ores, slag and ash) which also features in Cameroon's exclusion basket. One cannot infer necessarily, therefore, that textiles and clothing have been relatively more protected than ores, slag and ash without taking the extra step of identifying the proportion of sub-heads in each chapter that are excluded.

Hypothetical revenue

The fiscal impact of the IEPA liberalisation will depend upon:

- how much revenue is currently collected from these tariffs (taking account of any exemptions or errors in collection);
- whether the IEPA provokes trade diversion so that goods currently imported from other sources (on which tariffs will not be reduced) are diverted in future to EU sources (so that the loss of tariff revenue is increased);
- the relative importance currently of tariff revenue in total government financing (including aid); and
- the level, incidence and collection rate (relative to tariffs) of any alternative taxes that government introduces to replace the lost tariffs.

Any serious analysis of the revenue impact of the IEPAs will need to take into account all of these factors. The first one would tend to result in the estimated revenue loss being lower than would otherwise be expected, whilst the second would have the opposite effect. Whether or not any loss has a significant impact on the level or distribution of government expenditure depends critically on the relative importance of tariffs as a



source of income. And, of course, some countries (especially island economies) may find it perfectly feasible to institute alternative non-tariff taxes that are collected on imports.

As requested in the terms of reference, we have calculated for each country the 'hypothetical revenue loss' that will result from the removal of tariffs, which is a very approximate initial calculation of the relative scale and speed of the fiscal effect*. It is obtained by applying the tariff (where known) to the value of imports in the reference year(s) in order to produce the 'hypothetical revenue' currently being collected. In other words, if imports are € 100 and the tariff is 15%, the hypothetical revenue is € 15. This assumes that collection is 100% efficient and that there are no rebates, which is unrealistic. It also assumes that all tariffs are known, which is not always the case. These two 'errors' will work in opposite directions. One will produce a figure for current hypothetical revenue (and hence the figure for EPA-induced revenue loss) that is the maximum possible figure and is almost certainly overstated, but by an unknown amount. The other will overlook some revenue that is currently being collected (assuming that the 'missing tariffs' are positive). Unless there are sharp differences in the collection rate between products (e.g. because of a duty exemption on some goods) the figures for the relative speed of tax loss should not be inaccurate. It is probably more important, therefore, to take account of whether the fiscal shock will come sooner or later rather than its absolute 'hypothetical' level. Since the creation of alternative revenue systems will take time, any indication that the shock will be relatively early is important.

Moreover, slower liberalisation could create an intermediate increase in tariff revenue which will be very brief (if it occurs at all) with fast revenue loss. The intermediate increase could occur as very high tariffs (which constrain imports to low levels) are reduced by degrees allowing imports to rise (and yield more tax revenue). But by the end of the liberalisation period, tariffs will by definition be zero and so no further revenue can be collected. Where appropriate given country circumstances we provide two figures on revenue loss: the total (in the values relevant to the reference year) that will occur by the time that the liberalisation schedule is fully complete; and the equivalent figure for the loss by the end of the first tranche of liberalisation.

* No account is taken of the potential revenue effects from removing para-tariffs given the absence of data on their extent.



Product descriptions

The product descriptions in the text tables sometimes appear to be cut off in the middle. This is often because the formal descriptions in the tariff schedules may be very long and in cases where accurate abbreviation is hard it is not attempted in order not to mislead. Inserting the full description would make the tables very long, hindering comprehension. And in some cases the full description is not available since the COMTRADE data base provides only the first 240 characters of a description. By supplying the full HS code, readers are able to check on the precise coverage of each category by reference to the tariff schedules.

- A document dated 15 June 2007 outlining Central African requirements for capacity building and upgrading activities has been added as Annex I. As in the ESA Development Matrix, the document outlines comprehensively Central African development needs including infrastructure, agriculture, fisheries, industrial development, regional integration, business development, institutional development etc.). There are no binding financial commitments that go beyond what had been agreed under the EDF.

**Table 5. Changes to the Central African (Cameroon) IEPA
(December 2007 – October 2008)**

	Initialled Central African IEPA (version 18 Dec. 2007)	Central African IEPA on Council website dated 16 Oct. 2008
Declaration of negotiators	IEPA shall be initialled by 31 Dec 2007 at the latest and provisionally implemented from 1 January 2008 for the EU and 1 June for Central Africa; Protocol on RoO shall be completed by March 2008; if Gabon fails to initial by 31 Dec 07 the relevant provisions will be amended; Central African countries have to apply to join the IEPA at later stage.	Removed
Council Decision	Non-existent	'Stepping stone' EPA between the European Community and Central Africa (incl. Cameroon) shall be signed and provisionally be implemented pending the completion of negotiations towards a full EPA.
Title 3, Article 8 (old)/Article 39 (new): Regional integration	The relevant Committees will give particular attention to assess the extent to which initiatives related to the cooperation requirements have been launched.	Removed.
Title 5: Article 6 (old)/Article 53 (new): Relations to other forestry agreements	Timber trade will be covered in tandem with other relevant agreements.	Specification of tandem agreements: Convention on International Trade in Endangered Species Wildlife and Endangered Flora (CITES) and FLEGT Action Plan of the European Union (Forest Law Enforcement, Governance and Trade).
Title 8: General and Final Provisions	No provisions.	Article 92: Establishment of EPA Committee within 3 months after signature of the IEPA; decisions are made by consensus
	Article 9: Observers: Chad, Congo Rep, CAR, Sao Tomé, and Equatorial Guinea can participate in all meetings of the EPA until their accession.	Removed.
Appendix IB: priority products for exports to the EU		Wood was inserted as additional priority product
Annex I: Development Matrix	Mentioned as Annex but not part of the IEPA.	Document that outlines Central African requirements for capacity building and upgrading activities, dated 15 June 2007
Annex II: EU liberalisation schedule	Mentioned as Annex but not part of the IEPA.	DFQF with phase-in periods for sugar and rice; no extra sugar quota for 2008/09.
Protocol 1 on Mutual Administrative Cooperation	Mentioned as Annex but not part of the IEPA.	Outlines coordination and cooperation in customs matters.

The timetable

Cameroon is one of those countries that has established its liberalisation schedules by reference to a CET – which is assumed to be that of CEMAC. The broad pattern of its liberalisation is shown in Table 6. Liberalisation will not commence until the start of 2010, giving Cameroon a further year to make any necessary amendments to its current tariff schedule to bring it into conformity with the CEMAC CET.

Table 6. Summary of Cameroon market access schedule

	# lines	Import value (average, 2005–6) ^a		Base tariff ^b			
		US\$000	Share of total	Min.	Max.	Simple average	Trade-weighted average
Total trade in HS 1–97		1,031,689	100%				
Goods to be liberalised by 1 January:							
2013	1,631	253,148	24.5%	0	30	9.8	8.1
2017	971	250,815	24.3%	5	30	12.1	11.1
2023	1,405	311,408	30.2%	5	30	25.8	16.4
Excluded goods:	1,217	216,317	21.0%	5	30	25.4	22
	5,224	1,031,689	100%				
<i>Note:</i> (a) No import data are provided with market access schedule. Cameroon's imports from EU25, as reported by Cameroon to the United Nations (UN) Commodity Trade Statistics (Comtrade) database, have been used. These are available for only two recent years (2005 and 2006), so the average figures above are for these two years only. (b) 'Tarifs maximum appliqués au 31/12/2007 CEMAC', as shown in market access schedule.							

Liberalisation is moderately back loaded in the following senses. First, the basket of products to be liberalised in the final tranche accounted for a higher proportion of Cameroon's imports from the EU in 2005–6 than did the goods in either of the two preceding tranches. Second, both the simple average tariff and the trade-weighted average of the products to be liberalised are higher in the later than the earlier tranches.

At the same time, Cameroon will experience some very early effects. Even the first tranche includes liberalisation of some high-tariff items. Moreover, products accounting for almost half of Cameroon's imports from the EU in 2005–6 will be fully liberalised within 10 years.

Exclusions

Cameroon's exclusion basket accounted for 21% of imports from the EU in 2005–6. Of the 1,217 sub-heads that have been excluded (see Table 7) less than one-third are agricultural products. Although almost two-thirds are items which currently face the highest CET tariff (of 30%), the country is also excluding a small number of goods that face very low tariffs at present.

Table 7. Summary of Cameroon exclusions

Excluded items	# lines
Total	1,217 at HS6 sub-head level
Covered by WTO Agreement on Agriculture	354
In highest applicable tariff band	798 = 30%
Tariff 10% or more	409
Tariff less than 10%	10
Duty free	—

A broad indication of the distribution of excluded goods according to major product groups is given in Table 8, which is presented in declining order of the relative number of excluded items in each HS chapter (see Box 10 for issues of interpretation). The three chapters with the largest number of items excluded by Cameroon are textiles and clothing. Processed agricultural goods and light manufactures also feature prominently. In at least one case (coffee and tea – HS Chapter 9) Cameroon is excluding goods in which the EU would not appear to have an obvious supply capacity (since it excludes for example instant coffee, to be found in Chapter 21).

Table 8. Broad composition of Cameroon exclusions

HS2	Description	Share of total ^a
52	Cotton	10.4%
62	Articles of apparel and clothing accessories, not knitted or crocheted	9.4%
61	Articles of apparel and clothing accessories, knitted or crocheted	8.5%
03	Fish and crustaceans, molluscs and other aquatic invertebrates	5.2%
55	Man-made staple fibres	4.6%
02	Meat and edible meat offal	4.1%
63	Other made-up textile articles; sets; worn clothing and worn textile articles; rags	3.9%
07	edible vegetables and certain roots and tubers	3.8%
20	preparations of vegetables, fruit, nuts or other parts of plants	3.2%
44	wood and articles of wood; wood charcoal	3.2%
60	Knitted or crocheted fabrics	2.9%
15	Animal or vegetable fats and oils and their cleavage products; prepared edible fats; animal or vegetable waxes	2.8%
11	Products of the milling industry; malt; starches; inulin; wheat gluten	2.2%
40	Rubber and articles thereof	2.1%
16	preparations of meat, of fish or of crustaceans, molluscs or other aquatic invertebrates	1.9%
04	Dairy produce; birds' eggs; natural honey; edible products of animal origin, nesoi	1.7%
22	beverages, spirits and vinegar	1.7%
39	Plastics and articles thereof	1.7%
54	Man-made filaments	1.7%
58	special woven fabrics; tufted textile fabrics; lace; tapestries; trimmings; embroidery	1.7%
09	Coffee, tea, maté and spices	1.6%
48	paper and paperboard; articles of paper pulp, of paper or of paperboard	1.6%
33	Essential oils and resinoids; perfumery, cosmetic or toilet preparations	1.5%
19	preparations of cereals, flour, starch or milk; pastrycooks' products	1.3%
34	Soap, organic surface-active agents, washing preparations, lubricating preparations, artificial waxes, prepared waxes, polishing or scouring preparations, candles and similar articles, modelling pastes, 'dental waxes' and dental preparations with a basis of plaster	1.3%
76	aluminium and articles thereof	1.2%
71	natural or cultured pearls, precious or semi-precious stones, precious metals, metals clad with precious metal, and articles thereof; imitation jewellery; coin	1.1%

68	Articles of stone, plaster, cement, asbestos, mica or similar materials	0.9%
94	furniture; bedding, mattresses, mattress supports, cushions and similar stuffed furnishings; lamps and lighting fittings, nesoi; illuminated signs, illuminated name-plates and the like; prefabricated buildings	0.9%
18	Cocoa and cocoa preparations	0.8%
17	Sugars and sugar confectionery	0.7%
24	Tobacco and manufactured tobacco substitutes	0.7%
51	Wool, fine or coarse animal hair; horsehair yarn and woven fabric	0.7%
21	miscellaneous edible preparations	0.7%
26	Ores, slag and ash	0.7%
38	miscellaneous chemical products	0.7%
64	Footwear, gaiters and the like; parts of such articles	0.7%
08	edible fruit and nuts; peel of citrus fruits or melons	0.6%
12	oil seeds and oleaginous fruits; miscellaneous grains, seeds and fruit; industrial or medicinal plants; straw and fodder	0.6%
32	tanning or dyeing extracts; tannins and their derivatives; dyes, pigments and other colouring matter; paints and varnishes; putty and other mastics; inks	0.5%
53	Other vegetable textile fibres; paper yarn and woven fabrics of paper yarn	0.5%
57	Carpets and other textile floor coverings	0.5%
13	Lac; gums, resins and other vegetable saps and extracts	0.4%
59	impregnated, coated, covered or laminated textile fabrics; textile articles of a kind suitable for industrial use	0.3%
82	Tools, implements, cutlery, spoons and forks, of base metal; parts thereof of base metal	0.3%
10	Cereals	0.2%
25	Salt; sulphur; earths and stone; plastering materials, lime and cement	0.2%
49	Printed books, newspapers, pictures and other products of the printing industry; manuscripts, typescripts and plans	0.2%
50	Silk	0.2%
14	vegetable plaiting materials; vegetable products nesoi	0.2%
69	Ceramic products	0.2%
05	Products of animal origin, nesoi	0.1%
06	Live trees and other plants; bulbs, roots and the like; cut flowers and ornamental foliage	0.1%
23	Residues and waste from the food industries; prepared animal fodder	0.1%
27	mineral fuels, mineral oils and products of their distillation; bituminous substances; mineral waxes	0.1%
36	explosives; pyrotechnic products; matches; pyrophoric alloys; certain combustible preparations	0.1%
46	manufactures of straw, of esparto or of other plaiting materials; basketware and wickerwork	0.1%
56	Wadding, felt and nonwovens; special yarns; twine, cordage, ropes and cables and articles thereof	0.1%
65	headgear and parts thereof	0.1%
66	umbrellas, sun umbrellas, walking-sticks, seat-sticks, whips, riding-crops and parts thereof	0.1%
70	Glass and glassware	0.1%
73	Articles of iron or steel	0.1%
79	Zinc and articles thereof	0.1%
83	miscellaneous articles of base metal	0.1%
96	miscellaneous manufactured articles	0.1%
<i>Note:</i>		
(a) Number of excluded lines within HS chapter as a proportion of total number of excluded lines.		

The first tranche

At the other end of the scale are the goods that Cameroon will be liberalising in its first tranche. These are summarised in Table 9. The table lists all items with a CET of 30%, plus all those with lower positive tariffs that were imported from the EU in 2005–6 to a value of \$1 million or more. It is improbable that tariffs of 10% or lower could prove to be such a strong barrier that imports have been kept well below their ‘natural level’. Hence, if goods were not imported in the recent past (and many of them were not imported at all or at very low levels) it is reasonable to suppose either that a demand for them does not exist in Cameroon or that the EU is not a competitive supplier. The same reasoning applies (albeit with less force) to tariffs of between 10 and 20%.

**Table 9. Summary of Cameroon first-tranche liberalisations
(2010-1 January 2013)**

HS6	Covered by AoA?	Description	Tariff ^a	Average imports 2005-6 (\$000) ^b
All items with tariff of over 20%				
010110	Yes	pure-bred breeding horses and asses	30	5
010611	Yes	live primates	30	0
010612	Yes	live whales, dolphins and porpoises 'mammals of the order cetacea' and	30	-
010619	Yes	live mammals (excl. primates, whales, dolphins and porpoises 'mammals of the	30	-
010620	Yes	live reptiles 'e.g. snakes, turtles, alligators, caymans, iguanas, gavials and	30	-
051110	Yes	bovine semen	30	4
071410	Yes	Fresh, chilled, frozen or dried roots and tubers of manioc 'cassava', whether or	30	-
071420	Yes	sweet potatoes, fresh, chilled, frozen or dried, whether or not sliced or in the	30	-
071490	Yes	Roots and tubers of arrowroot, salep, jerusalem artichokes and similar roots and	30	2
330620		yarn used to clean between the teeth 'dental floss', in individual retail packages	30	0
370610		cinematographic film, exposed and developed, whether or not incorporating	30	0
370690		cinematographic film, exposed and developed, whether or not incorporating	30	12
370710		sensitising emulsions 'for photographic uses'	30	8
Items with 20% tariff and imports of \$1 mn or more				
847290		Office machines, n.e.s.	20	1,709
852990		Parts suitable for use solely or principally with transmission and reception	20	7,339
853620		automatic circuit breakers for a voltage <= 1.000 v	20	1,855
Items with 10% tariff and imports of \$1 mn or more				
252010		gypsum; anhydrite	10	1,478
271312		petroleum coke, calcined	10	1,495
271320		petroleum bitumen	10	1,046
281511		sodium hydroxide 'caustic soda' solid	10	1,358
281512		sodium hydroxide 'caustic soda' in aqueous solution 'soda lye or liquid soda'	10	6,049
281820		aluminium oxide (excl. artificial corundum)	10	11,789
282612		fluoride of aluminium	10	2,939
292910		Isocyanates	10	1,996
380210		activated carbon (excl. medicaments or deodorant products for fridges, vehicles	10	1,004
842481		agricultural or horticultural mechanical appliances, whether or not hand-	10	1,326
843139		Parts of machinery of heading 8428, n.e.s.	10	1,523
847149		Data-processing machines, automatic, digital, presented in the form of systems	10	1,258
847150		processing units for automatic data processing machines, digital, whether or not	10	2,286
847160		Input or output units for digital automatic data-processing machines, whether or	10	1,421
847330		Parts and accessories of automatic data-processing machines or for other	10	1,025
847490		Parts of machinery for working mineral substances of heading 8474, n.e.s.	10	1,306
848340		gears and gearing for machinery (excl. toothed wheels, chain sprockets and	10	1,444
848490		Sets or assortments of gaskets and similar joints, dissimilar in composition, put	10	1,036
850421		Liquid dielectric transformers, having a power handling capacity <= 650 kva	10	1,609
850423		Liquid dielectric transformers, having a power handling capacity > 10.000 kva	10	2,913
850434		transformers having a power handling capacity > 500 kva (excl. liquid dielectric	10	1,152
850440		Static converters	10	1,874
854460		electric conductors, for a voltage > 1.000 v, insulated, n.e.s.	10	1,934
871690		Parts of trailers and semi-trailers and other vehicles not mechanically propelled,	10	1,938
901580		instruments and appliances used in geodesy, topography, hydrography,	10	2,620
Notes:				
(a) 'Tarifs maximum appliqués au 31/12/2007 CEMAC', as shown in market access schedule.				
(b) As reported by Cameroon to the UN's Comtrade database. Only two years' recent data (2005 and 2006) are available.				

Given this, Table 9 probably gives a reasonably realistic picture of the positive-tariff items in which EU imports may increase as the first tranche of liberalisation is implemented. Only nine of the 41 products in the table are agricultural (in the sense that they are covered by the AoA). And none was imported in significant values (if at all) in 2005–6. All have a CET at the highest level (of 30%). Because this is relatively high (and the pre-existing Cameroonian applied tariff could be even higher) it is not impossible that imports have been kept at artificially low levels. On the other hand, the products concerned do not appear to be ones in which either the EU is a major exporter or there is likely to be competitive production in Cameroon. This picture is reinforced by the non-agricultural items in the list. A number of these appear to be production inputs rather than direct competitors with Cameroonian production.

Hypothetical revenue loss

In the case of Cameroon the total hypothetical loss (in 2005–6 values) over the full implementation period is \$99 million. Of this \$20 million will be ‘lost’ during the first tranche of liberalisation. Although the majority of the loss occurs later in the implementation period the early ‘revenue shock’ is greater than the early ‘adjustment shock’. Although the tariffs on the early tranche liberalisation are relatively low, they generate (as might be expected) disproportionately high hypothetical revenue. Cameroon will lose 21% of its hypothetical tariff revenue on imports from the EU during the first six years of implementation (and this will be additional, of course, to any loss that occurs by virtue of Cameroon adopting the CEMAC CET).

5.4 Côte d’Ivoire

The IEPA between the European Community and Côte d’Ivoire was initialled on 7 December 2007 and signed on 26 November 2008. Côte d’Ivoire must notify the EPA Committee about its ‘priority products’ for exports in the EU by the end of February 2009, as well as its competent sanitary and phytosanitary (SPS) standard authorities (Chapter 4, Appendices I and II).

The standstill clause has been revised by incorporating the potential need to revise the CET in the light of an ECOWAS CET. However, tariff amendments need to be jointly agreed (by the EPA Committee) and the ‘general incidence’ resulting from such tariff changes should not be higher than the country’s liberalisation commitments *vis-à-vis* the European Community.

The initialled IEPA foresaw that Côte d'Ivoire could apply export taxes on a range of products to be listed in Annex III. But this annex had never been developed and the new version of the IEPA has removed the relevant provision in Article 16 and the declaration by Côte d'Ivoire of its intention to develop Annex III by the end of February 2008 (Table 10).

Table 10. Changes to the Côte d'Ivoire IEPA (December 2007 – July 2008)

	Initialled Côte d'Ivoire IEPA (version 6 Dec. 2007)	Signed Côte d'Ivoire IEPA on Council website dated 10 July 2008
Article 15: Standstill clause	No tariff increases/ introduction of new tariffs	No tariff increases/ introduction of new tariffs. Exception: an ECOWAS CET is established until the end of 2011; tariff changes are subject to joint decision (EPA Committee).
Article 16: Export taxes	Export taxes as stipulated in Annex III are allowed.	Provision removed.
Policy Statement of EPA negotiators	Parties reaffirm their commitment to strengthen economic and trade relations;	Removed.
	emphasise the importance of the IEPA to avoid trade disruption; commit on the continuation of negotiations beyond trade in goods in a West African framework; commit to continue negotiations on (a) revised RoO; (b) relations with outermost EU regions; and (c) regional integration of other UEMOA/ECOWAS members. The parties agree to revise the IEPA tariff liberalisation schedule in the light of regional integration processes.	
Policy Statement on development cooperation	Parties shall use the financial means of the Cotonou Agreement. The European Community is committed to support the productive sector in CI, to assist with fiscal challenges of the EPA, to assist with the implementation of the EPA (incl. SPS, trade facilitation and trade defence). Sector reforms shall be supported by Stabex/Flex funds	Removed.
Declaration of Côte d'Ivoire on Annex III: exemptions from export taxes	Côte d'Ivoire will notify before the end of February 2008 those products subject to an export tax. On this basis Annex III shall be developed no later than 31 March 2008.	Removed.

Two policy statements that formed part of the initialled IEPA text have been removed in the final version. The first outlined the relevance of the IEPA to avoid trade disruption for the Ivorian party as well as parties' commitments to continue the negotiations beyond trade in goods and by incorporating other *Union Economique et Monétaire Ouest Africaine* (UEMOA)/ECOWAS members. The second declaration was on development cooperation and covered the EU's intention to contribute significantly to the absorption of the net tax impact of the EPA and to support reforms related to the implementation of the EPA – within the financial means provided under the

Cotonou Agreement.⁸⁰ The Ivorian party agreed to calculate the net fiscal impact of the IEPA on the basis of a computable general equilibrium model. EU financial and technical support was further envisaged in the areas of productive capacities, agricultural sector reforms, SPS compliance and infrastructure. However, no binding financial commitments beyond those already agreed were made.

Table 11. Summary of Côte d'Ivoire market access schedule

	# lines	Import value (average, 2004–6) ^a		Tariff (as shown in market access schedule)				
		US\$000	Share of total	Min.	Max.	Simple avg.	Trade-weighted avg. ^b	# lines on which based
Total trade in HS 1-97		2,301,953	100%					
of which, total in 16 codes not listed in schedule ^c		3,528	0.2%					
Goods to be liberalised:								
Already duty free	72	130,968	5.7%	0	0	0	0	68
1 July 2009	56	384,951	16.7%	5	20	8.4	20.0	54
1 Jan. 2010	927	40,925	1.8%	5	20	6.3	6.0	900
1 Jan. 2011	1,082	250,508	10.9%	5	20	12.2	8.7	1,008
1 Jan. 2012	956	329,775	14.3%	5	20	6.4	6.3	917
1 Jan. 2013	362	239,489	10.4%	5	20	15.0	7.4	317
1 Jan. 2016	78	44,014	1.9%	5	20	5.4	5.1	71
1 Jan. 2017	150	67,910	3.0%	5	20	10.3	10.5	144
1 Jan. 2018	991	122,182	5.3%	5	20	19.9	19.9	951
1 Jan. 2021	30	71,982	3.1%	5	5	5.0	5.0	26
1 Jan. 2022	65	118,194	5.1%	10	10	10.0	10.0	24
1 Jan. 2023	239	36,572	1.6%	5	20	19.9	20.0	213
Excluded goods:	640	460,954	20.0%	5	20	15.6	13.6	515
Totals	5,648	2,298,425	99.8%					5,208
Notes:								
(a) No import values are included in the market access schedule. Côte d'Ivoire's imports from EU25 2004–6, as reported by Côte d'Ivoire to the UN's Comtrade database, have been used. As the schedule is at national tariff line (NTL) (10-digit) level and the trade data are at HS 6-digit sub-head level, where two or more lines fall within the same HS6 sub-head, the value of imports in that sub-head has been attributed to the line (or one of the lines) scheduled for the latest liberalisation (or for exclusion, if applicable).								
(b) Calculated by multiplying the import value by the tariff for each item, then totalling the results for all items, and dividing this total by total import value for all items. The number of lines on which the tariff so derived is based is lower than the number of lines in the schedule partly because of missing trade data for the codes in the schedule which are not in H2, and partly because the value of each sub-head is included only once (see note a).								
(c) In addition to the 16 H2 sub-heads which appear in the trade statistics but not in the schedule, there are a further 17 codes which appear in the schedule but not in the trade statistics (because they were not valid in the period 2004–6). Three of these ceased to be valid in 1995 and ten in 2001, a further three did not become valid until 2007, and one appears never to have been a valid HS code.								

The timetable

Côte d'Ivoire's liberalisation schedule was amended during 2008. The start date has been put back by 18 months until 1 July 2009 (six months before Cameroon) but not much else has changed (Table 11). In the original schedule some 60% of imports were

⁸⁰ The original wording is 'Pour répondre aux préoccupations de la Côte d'Ivoire, la CE s'engage ... à contribuer dans des proportions significatives à l'absorption de l'impact fiscal net de l'APE, en pleine complémentarité avec les réformes fiscales, et à appuyer les réformes liées à la mise en oeuvre des règles prévues dans l'Accord, dans le cadre des instruments financiers de l'Accord de Cotonou, en s'appuyant sur des mécanismes appropriés.'

to be liberalised by end 2012, with completion during 2022 (the same as Cameroon), and this is still the case. The share of imports excluded from liberalisation is also unchanged at 20%. The main difference is that the schedule now has annual tranches of liberalisation until 2013 and then mainly annual tranches thereafter, whereas the original had just three multi-year tranches. Thus liberalisation remains heavily front loaded, with less than 10% of imports scheduled for tariff cuts after 1 January 2018, but is now much more tightly specified than was previously the case.

Exclusions

The basket of goods to be excluded from any liberalisation accounted for 20% of the country's imports from the EU in 2004–6 (and is largely unchanged from the list in the original IEPA). Of the 640 items, just over one-third are agricultural and almost two-thirds face the highest current tariff of 20% (Table 12). A further 29% currently face a tariff of 10% or more, with the rest facing positive duties of less than 10%. Textiles account for the largest proportion of exclusions (Table 13), but vehicles (presumably for revenue purposes) are also important, as are a number of agricultural goods. It is worth noting, though, that as for Cameroon, the exclusions appear to include goods in which the EU would not appear to have an obvious supply capacity. The second-‘highest’ agricultural chapter in the list is HS 9 – yet instant coffee is found in Chapter 21, which is also on the exclusion list.

Table 12. Summary of Côte d'Ivoire exclusions

Excluded items	# lines
Total	640 at NTL (10-digit) level
Covered by WTO Agreement on Agriculture	226
In highest applicable tariff band (20%)	390
Tariff 10%	183
Tariff 5%	67
Duty free	—

The first tranche

One consequence of the much tighter specification (compared to the original) of what is to be liberalised and when is to increase the *apparent* shock of the initial July 2009 liberalisation tranche. The trade-weighted average tariff of the items to be liberalised is 20% – significantly higher than in the following six tranches. Of the 56 items to be liberalised (Table 14), 12 have a tariff of 20% – implying that there could be a significant, early shock. But in practice the shock may not be so great: in only two of the 12 were

Table 13. Broad composition of Côte d'Ivoire exclusions

HS2	Description	Share of total ^a
52	Cotton	21.1%
71	natural or cultured pearls, precious or semi-precious stones, precious metals, metals clad with precious metal, and articles thereof; imitation jewellery; coin	7.8%
87	vehicles other than railway or tramway rolling-stock, and parts and accessories thereof	7.8%
15	animal/vegetable fats and oils and their cleavage products; prepared edible fats; animal/vegetable waxes	6.6%
54	man-made filaments	5.9%
09	coffee, tea, maté and spices	5.6%
02	meat and edible meat offal	4.1%
27	mineral fuels, mineral oils and products of their distillation; bituminous substances; mineral waxes	3.8%
18	cocoa and cocoa preparations	3.1%
20	preparations of vegetables, fruit, nuts or other parts of plants	3.0%
22	beverages, spirits and vinegar	2.8%
61	articles of apparel and clothing accessories, knitted or crocheted	2.3%
04	dairy produce; birds' eggs; natural honey; edible products of animal origin, nesoi	1.7%
60	knitted or crocheted fabrics	1.6%
01	live animals	1.4%
38	miscellaneous chemical products	1.4%
39	plastics and articles thereof	1.4%
24	tobacco and manufactured tobacco substitutes	1.3%
73	articles of iron or steel	1.3%
07	edible vegetables and certain roots and tubers	1.1%
17	sugars and sugar confectionery	1.1%
40	rubber and articles thereof	1.1%
48	paper and paperboard; articles of paper pulp, of paper or of paperboard	1.1%
58	special woven fabrics; tufted textile fabrics; lace; tapestries; trimmings; embroidery	1.1%
63	other made-up textile articles; sets; worn clothing and worn textile articles; rags	1.1%
10	Cereals	0.8%
25	salt; sulphur; earths and stone; plastering materials, lime and cement	0.8%
85	electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles	0.8%
12	oil seeds and oleaginous fruits; miscellaneous grains, seeds and fruit; industrial or medicinal plants; straw and fodder	0.6%
21	miscellaneous edible preparations	0.6%
03	fish and crustaceans, molluscs and other aquatic invertebrates	0.5%
11	products of the milling industry; malt; starches; inulin; wheat gluten	0.5%
53	other vegetable textile fibres; paper yarn and woven fabrics of paper yarn	0.5%
56	wadding, felt and nonwovens; special yarns; twine, cordage, ropes and cables and articles thereof	0.5%
33	essential oils and resinoids; perfumery, cosmetic or toilet preparations	0.2%
49	printed books, newspapers, pictures and other products of the printing industry; manuscripts, typescripts and plans	0.2%
69	ceramic products	0.2%
96	miscellaneous manufactured articles	0.2%
Note:		
(a) Number of excluded lines within HS chapter as a proportion of total number of excluded lines.		

there any significant imports 2004–6 (either from the EU or from any other source), and for one of them the average 2004–6 level was a mere \$3,000. Although high, a 20% tariff is unlikely to have presented such an insurmountable barrier as to have suffocated imports for which a latent demand existed. The probability, therefore, is that they are goods not consumed in Côte d'Ivoire. This reasoning applies with even greater force to a further two items which face a 10% tariff, but are not imported. All

the other positive tariff items being liberalised in mid-2009 face a 5% tariff, and total imports were of only \$68,000.

The only significant item being liberalised in 2009 appears to be tanks and armoured fighting vehicles! These face a 20% tariff and imports from the EU in the base period totalled \$384.9 million. Of the other goods being liberalised in the first four years (covering the whole of the original first tranche) that have been imported to a value of \$1 million or more in the recent past, five are agricultural (see Table 15). The table includes only those items that have been imported in sufficient values to give a reasonable probability that they are items that the EU can supply and that Côte d'Ivoire demands. Several of the agricultural products would appear to be items that might compete with domestic producers. In addition to the items covered by the AoA, Côte d'Ivoire will be liberalising six fish items which could well be directly or indirectly competitive with domestic food supplies. Many of the non-agricultural products, though, appear to be intermediate inputs into production.

Table 14. Summary of Côte d'Ivoire first-tranche liberalisations (2008–2012)

NTL code	Covered by AoA?	Description	Tariff ^a	Average imports 2004–6 (\$'000) ^b
Items with 20% tariff and imports of \$1 mn or more^c				
1602500000	Yes	Prepared or preserved meat or offal of bovine animals (excl. sausages and	20	1,254
2005400000	Yes	Peas 'Pisum Sativum', prepared or preserved otherwise than by vinegar or	20	1,038
2106901000	Yes	Food preparations, n.e.s.: No description at level 8	20	13,493
2522200000		Slaked lime	20	1,514
3208901000		Paints and varnishes based, incl. enamels and lacquers, on synthetic	20	1,172
7307990000		Tube or pipe fittings, of iron or steel (excl. cast iron or stainless steel	20	1,028
8205590000		Hand tools, incl. glaziers' diamonds, of base metal, n.e.s.	20	1,010
8205900000		Sets of two or more tools of the sub-heading of heading 8205	20	1,185
8413110000		Pumps fitted or designed to be fitted with a measuring device, for dispensing	20	1,017
8414800000		Air pumps, air or other gas compressors and ventilating or recycling hoods	20	1,241
8710000000		Tanks and other armoured fighting vehicles, motorized, whether or not fitted	20	384,900
9005800000		Monoculars, astronomical and other optical telescopes and other	20	4,225
9013100000		Telescopic sights for fitting to arms; periscopes; telescopes designed to form	20	3,432
9616100000		Scent sprays and similar toilet sprays, and mounts and heads therefor (excl.	20	1,349
Items with 10% tariff and imports of \$1 mn or more				
0303420000		Frozen yellowfin tunas 'Thunnus albacares'	10	24,922
0303430000		Frozen skipjack or stripe-bellied bonito 'Euthynnus -Katsuwonus- pelamis'	10	8,268
0303490000		Frozen tunas of the genus 'Thunnus' (excl. Thunnus alalunga, Thunnus	10	1,396
0303500000		Frozen herrings 'Clupea harengus, Clupea pallasii'	10	1,123
0303740000		Frozen mackerel 'Scomber scombrus, Scomber australasicus, Scomber	10	1,328
0303790000		Frozen freshwater and saltwater fish (excl. salmonidae, flat fish, tunas,	10	11,463
1108120000	Yes	Maize starch	10	1,396
3215190000		Printing ink, whether or not concentrated or solid (excl. black ink)	10	1,394
3302100000	Yes	Mixtures of odoriferous substances and mixtures, incl. alcoholic solutions,	10	8,824
3404900000		Artificial waxes and prepared waxes (excl. chemically modified lignite wax	10	1,275
3811210000		Prepared additives for oil lubricants containing petroleum oil or bituminous	10	3,110
3819000000		Hydraulic brake fluids and other prepared liquids for hydraulic transmission	10	1,102
3920100000		Plates, sheets, film, foil and strip, of non-cellular plastics, not reinforced,	10	1,558

NTL code	Covered by AoA?	Description	Tariff ^a	Average imports 2004–6 (\$000) ^b
3920200000		Plates, sheets, film, foil and strip, of non-cellular polymers of ethylene, not	10	2,421
4011100000		New pneumatic tyres, of rubber, of a kind used for motor cars, incl. station	10	1,672
4011990000		Pneumatic tyres, new, of rubber (excl. having a 'herring-bone' or similar	10	1,417
4803000000		Toilet or facial tissue stock, towel or napkin stock and similar paper for	10	1,163
4809200000		Self-copy paper, whether or not printed, in rolls of a width > 36 cm or in	10	1,029
4821100000		Paper or paperboard labels of all kinds, printed	10	1,675
7010901100		Carboys, bottles, flasks, jars, pots, phials and other containers, of glass, of a	10	6,791
7304491000		Tubes, pipes and hollow profiles, seamless, of circular cross-section, of	10	1,118
8207190000		Rock drilling or earth boring tools, interchangeable, and parts therefor, with	10	26,090
8409990000		Parts suitable for use solely or principally with compression-ignition internal	10	1,241
8414900000		Parts of : air or vacuum pumps, air or other gas compressors, fans and	10	1,922
8481800000		Appliances for pipes, boiler shells, tanks, vats or the like (excl. pressure-	10	4,159
8484900000		Sets or assortments of gaskets and similar joints, dissimilar in composition,	10	1,228
8535290000		Automatic circuit breakers for a voltage >= 72,5 kV	10	1,260
8543890000		Electrical machines and apparatus, having individual functions, not specified	10	1,674
8906900000		Vessels, incl. lifeboats (excl. warships, rowing boats and other vessels of	10	1,303
9028300000		Electricity supply or production meters, incl. calibrating meters therefore	10	1,174
Notes: (a) 'Rate 2008', as shown in market access schedule. (b) As reported by Côte d'Ivoire to the UN Comtrade database. (c) There may be other items in the first liberalisation tranche with tariffs in this band, but they fall within HS6 sub-heads which also have components in later liberalisation tranches (or on the exclusion list). Because the trade data are available only at HS6 level, the full value of imports in any HS6 sub-head has been attributed to the latest tranche into which any of its components fall (or to the exclusion list if applicable); hence no values are recorded in this, earliest, tranche.				

Hypothetical revenue loss

By the end of the implementation period Côte d'Ivoire could face hypothetical revenue losses of \$196 million (41% higher than on the original schedule). These will be even more heavily front loaded than was the case with the original schedules: 71% would be lost by 1 January 2013 and a full 39% by 1 July 2009.

5.5 Ghana

The IEPA between the European Community and Ghana was initialled on 13 December 2007. The main text of the final version published on the Council website hardly differs from the initialled version except for a slight modification of the standstill clause (incorporating the revision of the CET in light of regional arrangements). However, relevant changes have been made with respect to the Annexes (Table 15).

In Annex II, outlining the rough parameters of Ghana's liberalisation schedule, the gradual liberalisation of 'Group A' products in five tranches (2009–13) has been replaced

by the requirement to liberalise all products in the group by 1 January 2013. Moreover, Annex II now makes provision to introduce an additional levy on imports of 0.5% of the c.i.f. value up to end 2017.

The Export Development and Investment Fund (EDIF) Levy is backed by The Export Development and Investment Fund Act 582 of 2000. It is imposed on all imports at the rate of 0.5% CIF with the objective of generating funds to stimulate the export sector and support trade in general. This levy is not included in the base duties listed in the liberalisation schedule hereafter. The Ghanaian Party may maintain this levy until the 31st December 2017 and shall therefore eliminate it on the 1st January 2018 at the latest Cooperation in respect to financial adjustment in Article 8 of this Agreement shall also apply to the elimination of this levy.

Ghana has also added an ‘inspection fee’ of 1% of the c.i.f. value to the list of import fees and charges. This inspection fee has been charged since 2001 and has been notified to the WTO (WTO, 2008c: 22).

Table 15. Changes to the Ghana IEPA (December 2007 – July 2008)

	Initialled Ghana IEPA (version 19 Dec. 2007)	Ghana IEPA on Council website dated 10 July 2008
Article 15: Standstill clause	No tariff increases/ introduction of new tariffs	No tariff increases/ introduction of new tariffs. Exception: an ECOWAS CET is established until the end of 2011; ‘general incidence’ of new tariffs should not be higher than Ghana’s liberalisation commitments towards the EU.
Annex II: Ghana’s liberalisation schedule	Group A products (‘poverty alleviation related goods’) are gradually liberalised in five tranches from 2009–13	Group A product liberalisation to be completed by 1 January 2013.
	No provision.	An additional import levy of 0.5% of the c.i.f. value can be imposed until 31 Dec 2017.
Annex III: List and fees of other import charges	Empty.	Inspection fee of 1% of c.i.f. value.

The timetable

Ghana revised its liberalisation schedule during 2008. Although the end date for the first tranche of liberalisation is unchanged (2013), none of the tariffs that must be removed by then exceed 5% whereas under the original schedule they ranged up to a maximum of 233% with several at 20% (although the trade-weighted average was only marginally higher at 6.6%). The end date for completion of the liberalisation (2022) remains the same (Table 16) but the proportion of imports excluded from liberalisation

has increased from 20% to 25%.⁸¹ The other main change has been to split the middle of the three tranches in the original into two and to bring forward to this middle period some of the liberalisation originally scheduled for the final phase. Goods accounting for over one-third of Ghana's imports from the EU (all currently facing a 10% tariff) will be liberalised during 2016, but liberalisation of all of the highest tariff items (20%) is deferred until the two final years. Two-thirds of imports will be duty free within eight years.

Table 16. Summary of Ghana market access schedule

	# lines	Import value (average, 2004–6) ^a		Tariff until 31 December 2012 ^b				
		US\$000	Share of total	Min.	Max.	Simple avg.	Trade-weighted avg. ^c	# lines on which based
Total trade in HS 1-97		1,521,631	100%					
Goods to be liberalised:								
Already duty free	174	210,896	13.9%	0	0	0	0	169
from 1 Jan. 2013	821	132,620	8.7%	5	5	5	5	798
from 1 Jan. 2015	1,002	120,074	7.9%	5	5	5	5	961
from 1 Jan. 2017 (starts 1 Jan. 2016)	1,098	550,614	36.2%	10	10	10	10	1,029
from 1 Jan. 2021 (starts 1 Jan. 2019)	54	42,926	2.8%	10	10	10	10	51
from 1 Jan. 2022 (starts 1 Jan. 2019)	1,242	83,862	5.5%	20	20	20	20	1,217
Excluded goods:	1,038	380,640	25.0%	5	20	18.3	16.9	999
Totals	5,429	1,521,631	100%					5,224
Notes:								
(a) No import values are included in market access schedule. Although Ghana has reported to Comtrade its imports from the EU in 2005 and 2006, because of known anomalies in the figures for 2005 at least, mirror data from Comtrade on EU exports to Ghana have been used. The schedule contains all 5,224 subheads in the 2002 version of the HS – plus a further 205 which ceased to be valid in 2001, and for which there are therefore no import values.								
(b) As given in the market access schedule.								
(c) Calculated by multiplying the import value by the tariff for each item, then totalling the results for all items, and dividing this total by total import value for all items. Only items for which 2004–6 import value data were available were included.								

Exclusions

Of the 1,038 items that will be excluded from liberalisation 31% are agricultural (Table 17). The great majority (85%) are in the highest tariff band (substantially more than in the original schedule) and six goods that are currently duty free but were anomalously in the original have been removed. The most frequently excluded product group is plastics (maybe to protect domestic manufacturers), followed by fish, meat and processed vegetables (Table 18). Other light manufactured goods are also prominent.

⁸¹ There is a discrepancy between the text and the schedule: the former says that liberalisation ends on 31 December 2022 but the latter shows that everything is duty free 'from 1 Jan. 2022'.

Table 17. Summary of Ghana exclusions

Excluded items	# lines
Total	1,038 at HS6 sub-head level
Covered by WTO Agreement on Agriculture	338
In highest applicable tariff band (20%)	884
Tariff 10%	105
Tariff 5%	49
Duty free	—

Table 18. Broad composition of Ghana exclusions

HS2	Description	Share of total ^a
39	plastics and articles thereof	7.1%
03	fish and crustaceans, molluscs and other aquatic invertebrates	6.2%
02	Meat and edible meat offal	5.8%
20	preparations of vegetables, fruit, nuts or other parts of plants	5.4%
48	paper and paperboard; articles of paper pulp, of paper or of paperboard	4.7%
68	articles of stone, plaster, cement, asbestos, mica or similar materials	3.6%
70	glass and glassware	3.6%
15	animal/vegetable fats and oils and their cleavage products; prepared edible fats; animal/vegetable waxes	3.3%
85	electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles	3.2%
40	rubber and articles thereof	2.8%
90	optical, photographic, cinematographic, measuring, checking, precision, medical or surgical instruments and apparatus; parts and accessories thereof	2.6%
16	preparations of meat, of fish or of crustaceans, molluscs or other aquatic invertebrates	2.5%
69	ceramic products	2.3%
84	nuclear reactors, boilers, machinery and mechanical appliances; parts thereof	2.3%
73	articles of iron or steel	2.1%
94	furniture; bedding, mattresses, mattress supports, cushions and similar stuffed furnishings; lamps and lighting fittings, nesoi; illuminated signs, illuminated name-plates and the like; prefabricated buildings	2.1%
22	beverages, spirits and vinegar	2.0%
95	toys, games and sports requisites; parts and accessories thereof	2.0%
96	miscellaneous manufactured articles	1.9%
37	photographic or cinematographic goods	1.8%
01	live animals	1.7%
19	preparations of cereals, flour, starch or milk; pastrycooks' products	1.6%
44	wood and articles of wood; wood charcoal	1.6%
11	products of the milling industry; malt; starches; inulin; wheat gluten	1.5%
61	articles of apparel and clothing accessories, knitted or crocheted	1.5%
76	aluminium and articles thereof	1.4%
04	dairy produce; birds' eggs; natural honey; edible products of animal origin, nesoi	1.3%
33	essential oils and resinoids; perfumery, cosmetic or toilet preparations	1.3%
08	edible fruit and nuts; peel of citrus fruits or melons	1.2%
10	Cereals	1.2%
12	oil seeds and oleaginous fruits; miscellaneous grains, seeds and fruit; industrial or medicinal plants; straw and fodder	1.2%
42	articles of leather; saddlery and harness; travel goods, handbags and similar containers; articles of animal gut (other than silkworm gut)	1.2%
56	wadding, felt and nonwovens; special yarns; twine, cordage, ropes and cables and articles thereof	1.2%
82	tools, implements, cutlery, spoons and forks, of base metal; parts thereof of base metal	1.2%
21	miscellaneous edible preparations	1.1%
13	Lac; gums, resins and other vegetable saps and extracts	1.0%
18	cocoa and cocoa preparations	0.9%
63	other made-up textile articles; sets; worn clothing and worn textile articles; rags	0.9%

HS2	Description	Share of total ^a
25	salt; sulphur; earths and stone; plastering materials, lime and cement	0.8%
34	soap, organic surface-active agents, washing preparations, lubricating preparations, artificial waxes, prepared waxes, polishing or scouring preparations, candles and similar articles, modelling pastes, 'dental waxes' and dental preparations with a basis of plaster	0.8%
32	tanning or dyeing extracts; tannins and their derivatives; dyes, pigments and other colouring matter; paints and varnishes; putty and other mastics; inks	0.7%
17	sugars and sugar confectionery	0.6%
36	explosives; pyrotechnic products; matches; pyrophoric alloys; certain combustible preparations	0.6%
46	manufactures of straw, of esparto or of other plaiting materials; basketware and wickerwork	0.6%
87	vehicles other than railway or tramway rolling-stock, and parts and accessories thereof	0.6%
23	residues and waste from the food industries; prepared animal fodder	0.5%
24	tobacco and manufactured tobacco substitutes	0.5%
59	Impregnated, coated, covered or laminated textile fabrics; textile articles of a kind suitable for industrial use	0.5%
74	copper and articles thereof	0.4%
89	ships, boats and floating structures	0.4%
35	albuminoidal substances; modified starches; glues; enzymes	0.3%
49	printed books, newspapers, pictures and other products of the printing industry; manuscripts, typescripts and plans	0.3%
51	wool, fine or coarse animal hair; horsehair yarn and woven fabric	0.3%
83	miscellaneous articles of base metal	0.3%
06	live trees and other plants; bulbs, roots and the like; cut flowers and ornamental foliage	0.2%
07	edible vegetables and certain roots and tubers	0.2%
14	vegetable plaiting materials; vegetable products nesoi	0.2%
38	miscellaneous chemical products	0.2%
45	cork and articles of cork	0.2%
58	special woven fabrics; tufted textile fabrics; lace; tapestries; trimmings; embroidery	0.2%
67	prepared feathers/down and articles made of feathers/down; artificial flowers; articles of human hair	0.2%
71	natural or cultured pearls, precious or semi-precious stones, precious metals, metals clad with precious metal, and articles thereof; imitation jewellery; coin	0.2%
97	works of art, collectors' pieces and antiques	0.2%
47	pulp of wood or of other fibrous cellulosic material; recovered (waste and scrap) paper or paperboard	0.1%
57	carpets and other textile floor coverings	0.1%
93	arms and ammunition; parts and accessories thereof	0.1%
Note: (a) Number of excluded lines within HS chapter as a proportion of total number of excluded lines.		

The first tranche

Ghana will be liberalising 821 items with a positive tariff by 2013. Since all of these face a 5% tariff there is no reason to expect a major adjustment shock in this period.

Hypothetical revenue loss

This initial focus on low-tariff items has not accentuated early revenue loss, as may often be the case. Over the full implementation period Ghana's loss of hypothetical revenue is some 8% lower than was calculated in relation to the original schedule (at \$89 million), but the share attributable to the first tranche is much lower (at only 7.5% compared to 29% for the original schedule).

5.6 EAC

The EAC IEPA was initialled on 27 November 2007. A more recent version of the EAC IEPA text was published on the European Community website almost a year later, on 8 November 2008 (COM(2008) 522 final/2). The two versions are identical except for some restructuring and editorial changes. No article had been changed in content or language.

The regional implications and timetable

EAC's market access schedule was amended during 2008 and the following analysis uses full schedules made available to the consultants in January 2009. As explained in Chapter 2, EAC is the only African region in which all signatories have identical schedules. These are all based on reductions from what is described in the schedule as 'the MFN rate'.⁸²

The schedule contains a summary table plus four parts:

- Annex IIa: items to be liberalised in 2010;
- Annex IIb: items to be liberalised 2015–23;
- Annex IIc: items to be liberalised 2020–33;
- Annex IId: exclusions.⁸³

Although the first 'liberalisation' tranche, covering two-thirds of imports, must be completed by 2010 (Table 19) all of the items in it face a zero MFN tariff and so, as in the original schedule, none of the countries is required to start removing any positive tariffs until 2015. Any liberalisation before that date required to achieve the 'MFN rate' set out in the schedule needs to be judged, therefore, as a 'customs union effect' rather than an 'EPA effect'.

The second tranche (2015 to 2023) covers the bulk of the remaining imports to be liberalised (in terms of their share of imports), so that only a small share of trade remains to be liberalised during the final tranche to 2033. In other words, countries have 24 years from the date they attain their agreed CET rates (and 26 years from 2008)

⁸² Which is assumed in this report to be the agreed CET to which all EAC states have committed to adhere.

⁸³ These are the liberalisation dates shown in the schedule; Annex II of the IEPA text (p.40) does not give dates (but relates tariff reductions to the number of years after entry into force). The assumption must be, therefore, that the IEPA comes into effect early this year.

to complete the IEPA liberalisation process. Even though the majority of items that are to be liberalised will have their tariff removed over the next 15 years, this makes the EAC IEPA the one with the longest transition period.

Table 19. Summary of EAC liberation

	# lines	Imports from EU ^a	
		Value (US\$)	Share
Annex IIa(2010)	1,950	1.615.331.216	65.4%
Annex IIb (2015-23)	1,129	361.011.102	14.6%
Annex IIc (2020-33)	960	64.864.376	2.6%
Annex IId (exclusions)	1,390	428.818.834	17.4%
Total	5,429	2.470.025.527	100.0%
in total no. of different HS6 sub-heads	5,224 ^b		
Notes: (a) As shown in the market access schedule. (b) The market access schedule is in the 2002 version of the HS, which contains 5,224 sub-heads. However, the 5,224 sub-heads covered in the schedule do not correspond exactly to the 5,224 in HS 2002. The schedule contains two codes not valid in HS 2002: <ul style="list-style-type: none"> • 560190 (which appears never to have been a valid HS code); and • 930100 (which ceased to be valid in 2001). And it does not contain two sub-heads which are part of HS 2002: <ul style="list-style-type: none"> • 392112 – plates, sheets, film, foil and strip, of cellular polymers of vinyl chloride, unworked or merely surface-worked or merely cut into squares or rectangles; • 631090 – used or new rags, scrap twine, cordage, rope and cables and worn out articles thereof, of textile materials. The value of imports in these latter two codes could therefore not be included in the analysis of the EAC country schedules.			

Hypothetical revenue loss

Since none of the countries will liberalise any positive-duty tariff during the first tranche Table 20 indicates the proportion of hypothetical revenue that will be lost by the end of the second tranche. In other words, the impact indicated in the table will not be fully felt until 2023, giving countries a relatively long time to adjust. But by that time all countries will have had to put in place alternative revenue sources since they will have lost a significant part of their tariffs on imports from the EU. Because the

Table 20. Hypothetical revenue loss in EAC countries

Country	Hypothetical revenue (\$000) on:		2nd tranche share
	all items being liberalised	2nd tranche items	
Burundi	3,767	2,915	77.4%
Kenya	49,572	31,467	63.5%
Rwanda	4,835	2,652	54.9%
Tanzania	24,876	16,607	66.8%
Uganda	12,639	8,394	66.4%

figures in Table 23 are with respect to changes from the CET they are wholly an ‘EPA effect’ and are additional to any ‘customs union effect’.

Specific country effects

Although the liberalisation schedule is the same for each country, its impact is determined by the level and distribution of imports from the EU in the recent past. Obviously, countries that import from the EU large quantities of items that will be liberalised earlier in the IEPA process will face a more rapid adjustment shock than those that do not.

A flavour of the potential non-revenue adjustment effects (for domestic producers and consumers) in each of the countries is provided in Tables 21–25, which provide for each of the EAC countries information on the number and value of the goods to be liberalised in each of the tranches (and to be excluded from liberalisation) as well as the ‘MFN rate’ stated in the IEPA for these goods. In all cases countries have to start removing positive tariffs on a significant proportion of imports during the second phase. The trade-weighted tariff for the items to be liberalised in the second tranche is almost identical for each of the five states because there are only five items out of the 1,129 covered with an MFN tariff that is not 10% (with all of these exceptions being 25%).

Table 21. Summary of Burundi market access schedule

	# lines	Import value (average, 2004–6) ^a		MFN tariff ^b			
		US\$000	Share of total	Min.	Max.	Simple average	Trade-weighted average
Total trade in HS 1–97		85,698	100%				
Of which, in codes listed in the EAC schedule		85,640	99.9%				
in codes missing from the EAC schedule ^c		58	0.1%				
Goods to be liberalised in:							
2010	1,950	35,572	41.5%	0	0	0	0
2015–2023	1,129	29,092	33.9%	10	25	10.1	10.0
2020–2033	960	3,410	4.0%	25	25	25.0	25.0
Excluded goods:	1,390	17,566	20.5%	10	100	24.8	23.7
	5,429	85,640	99.9%				
Notes: (a) The market access schedule lists total EAC import values for each item, but not those for each of the individual countries. Because of the disparity (in terms of years and nomenclature) in the availability of data reported to Comtrade by the EAC countries, data reported by EU25 on their exports were used to mirror EAC imports. Where more than one line in the market access schedule is covered by a single HS6 sub-head, the full value of the individual countries’ imports in that sub-head has been attributed to the occurrence in which the largest all-EAC imports are shown in the schedule. (b) As shown in the market access schedule. (c) See Table 19, note (b).							

Table 22. Summary of Kenya market access schedule

	# lines	Import value (average, 2004–6) ^a		MFN tariff ^b			
		US\$000	Share of total	Min.	Max.	Simple average	Trade- weighted average
Total trade in HS 1–97		1,214,717	100%				
Of which, in codes listed in the EAC schedule		1,214,469	99.98%				
in codes missing from the EAC schedule ^c		248	0.02%				
Goods to be liberalised in:							
2010	1,950	610,498	50.3%	0	0	0	0
2015-2023	1,129	314,330	25.9	10	25	10.1	10.0
2020-2033	960	72,418	6.0%	25	25	25.0	25.0
Excluded goods:	1,390	217,223	17.9%	10	100	24.8	27.5
	5,429	1,214,469	99.98%				
Notes: (a) The market access schedule lists total EAC import values for each item, but not those for each of the individual countries. Because of the disparity (in terms of years and nomenclature) in the availability of data reported to Comtrade by the EAC countries, data reported by EU25 on their exports were used to mirror EAC imports. Where more than one line in the market access schedule is covered by a single HS6 sub-head, the full value of the individual countries' imports in that sub-head has been attributed to the occurrence in which the largest total EAC imports are shown in the schedule. (b) As shown in the market access schedule. (c) See Table 19, note (b).							

Table 23. Summary of Rwanda market access schedule

	# lines	Import value (average, 2004–6) ^a		MFN tariff ^b			
		US\$000	Share of total	Min.	Max.	Simple average	Trade- weighted average
Total trade in HS 1–97		109,453	100%				
Of which, in codes listed in the EAC schedule		109,445	99.99%				
in codes missing from the EAC schedule ^c		8	0.01%				
Goods to be liberalised in:							
2010	1,950	49,561	45.3%	0	0	0	0
2015-2023	1,129	26,520	24.2%	10	25	10.1	10.0
2020-2033	960	8,731	8.0%	25	25	25.0	25.0
Excluded goods:	1,390	24,634	22.5%	10	100	24.8	29.3
	5,429	109,445	99.99%				
Notes: (a) The market access schedule lists total EAC import values for each item, but not those for each of the individual countries. Because of the disparity (in terms of years and nomenclature) in the availability of data reported to Comtrade by the EAC countries, data reported by EU25 on their exports were used to mirror EAC imports. Where more than one line in the market access schedule is covered by a single HS6 sub-head, the full value of the individual countries' imports in that sub-head has been attributed to the occurrence in which the largest total EAC imports are shown in the schedule. (b) As shown in the market access schedule. (c) See Table 19, note (b).							

Table 24. Summary of Tanzania market access schedule

	# lines	Import value (average, 2004–6) ^a		MFN tariff ^b			
		US\$000	Share of total	Min.	Max.	Simple average	Trade-weighted average
Total trade in HS 1–97		639,035	100%				
Of which, in codes listed in the EAC schedule		638,974	99.99%				
in codes missing from the EAC schedule ^c		61	0.01%				
Goods to be liberalised in:							
2010	1,950	320,784	50.2%	0	0	0	0
2015-2023	1,129	165,956	26.0%	10	25	10.1	10.0
2020-2033	960	33,077	5.2%	25	25	25.0	25.0
Excluded goods:	1,390	119,158	18.6%	10	100	27.9	27.9
	5,429	638,974	99.99%				
Notes:							
(a) The market access schedule lists total EAC import values for each item, but not those for each of the individual countries. Because of the disparity (in terms of years and nomenclature) in the availability of data reported to Comtrade by the EAC countries, data reported by EU25 on their exports were used to mirror EAC imports. Where more than one line in the market access schedule is covered by a single HS6 sub-head, the full value of the individual countries' imports in that sub-head has been attributed to the occurrence in which the largest total EAC imports are shown in the schedule.							
(b) As shown in the market access schedule.							
(c) See Table 19, note (b).							

Table 25. Summary of Uganda market access schedule

	# lines	Import value (average, 2004–6) ^a		MFN tariff ^b			
		US\$000	Share of total	Min.	Max.	Simple average	Trade-weighted average
Total trade in HS 1–97		319,695	100%				
Of which, in codes listed in the EAC schedule		319,633	99.98%				
in codes missing from the EAC schedule ^c		62	0.02%				
Goods to be liberalised in:							
2010	1,950	167,288	52.3%	0	0	0	0
2015-2023	1,129	83,739	26.2%	10	25	10.1	10.0
2020-2033	960	16,981	5.3%	25	25	25.0	25.0
Excluded goods:	1,390	51,625	16.1%	10	100	24.8	26.4
	5,429	319,633	99.98%				
Notes:							
(a) The market access schedule lists total EAC import values for each item, but not those for each of the individual countries. Because of the disparity (in terms of years and nomenclature) in the availability of data reported to Comtrade by the EAC countries, data reported by EU25 on their exports were used to mirror EAC imports. Where more than one line in the market access schedule is covered by a single HS6 sub-head, the full value of the individual countries' imports in that sub-head has been attributed to the occurrence in which the largest total EAC imports are shown in the schedule.							
(b) As shown in the market access schedule.							
(c) See Table 19, note (b).							

Exclusions

The proportion of imports that is being excluded from liberalisation for the region as a whole is around 17–18%. The IEPA schedule states that 17.4% of imports are excluded (see Table 26), and our calculations based on mirror data on average imports in 2004–6 put the figure at 18.2%. But this varies between countries (because they import different things). Using our calculations (on 2004–6 imports) the range is from a low for Uganda (of 16.1%) to a high for Rwanda (of 22.5%). One-quarter are agricultural products (Table 27) and all are goods with an MFN rate of 10% or more. Clothing figures prominently in the exclusion basket (Table 30), followed by other light manufactures.

Table 26. Summary of EAC exclusions

Excluded items	# lines
Total	1,390 at HS6 sub-head and 8-digit national-tariff-line levels
Covered by WTO Agreement on Agriculture	349
Tariff unknown	—
In highest applicable tariff band	5 = 100%
Tariff 10% or more	1,385
Tariff less than 10%	—
Duty free	—

Table 27. Broad composition of EAC exclusions

HS2	Description	Share of total ^a
62	articles of apparel and clothing accessories, not knitted or crocheted	8.7%
61	articles of apparel and clothing accessories, knitted or crocheted	8.1%
39	plastics and articles thereof	5.8%
48	paper and paperboard; articles of paper pulp, of paper or of paperboard	5.7%
52	Cotton	5.5%
55	Man-made staple fibres	4.5%
63	other made-up textile articles; sets; worn clothing and worn textile articles; rags	4.0%
07	edible vegetables and certain roots and tubers	3.5%
20	preparations of vegetables, fruit, nuts or other parts of plants	3.5%
44	wood and articles of wood; wood charcoal	3.2%
94	furniture; bedding, mattresses, mattress supports, cushions and similar stuffed furnishings; lamps and lighting fittings, nesoi; illuminated signs, illuminated name-plates and the like; prefabricated buildings	2.3%
87	vehicles other than railway or tramway rolling-stock, and parts and accessories thereof	2.2%
70	glass and glassware	2.2%
04	dairy produce; birds' eggs; natural honey; edible products of animal origin, nesoi	2.0%
58	special woven fabrics; tufted textile fabrics; lace; tapestries; trimmings; embroidery	1.9%
73	articles of iron or steel	1.9%
09	coffee, tea, maté and spices	1.9%
22	beverages, spirits and vinegar	1.9%
54	Man-made filaments	1.8%
64	footwear, gaiters and the like; parts of such articles	1.8%
08	edible fruit and nuts; peel of citrus fruits or melons	1.7%
02	meat and edible meat offal	1.6%
16	preparations of meat, of fish or of crustaceans, molluscs or other aquatic invertebrates	1.4%
19	preparations of cereals, flour, starch or milk; pastrycooks' products	1.4%

HS2	Description	Share of total ^a
21	miscellaneous edible preparations	1.3%
33	essential oils and resinoids; perfumery, cosmetic or toilet preparations	1.3%
42	articles of leather; saddlery and harness; travel goods, handbags and similar containers; articles of animal gut (other than silkworm gut)	1.3%
15	animal or vegetable fats and oils and their cleavage products; prepared edible fats; animal or vegetable waxes	1.2%
17	sugars and sugar confectionery	1.2%
34	soap, organic surface-active agents, washing preparations, lubricating preparations, artificial waxes, prepared waxes, polishing or scouring preparations, candles and similar articles, modelling pastes, 'dental waxes' and dental preparations with a basis of plaster	1.2%
69	ceramic products	1.2%
56	wadding, felt and nonwovens; special yarns; twine, cordage, ropes and cables and articles thereof	1.0%
57	carpets and other textile floor coverings	0.9%
11	products of the milling industry; malt; starches; inulin; wheat gluten	0.9%
68	articles of stone, plaster, cement, asbestos, mica or similar materials	0.8%
83	miscellaneous articles of base metal	0.8%
24	tobacco and manufactured tobacco substitutes	0.7%
03	Fish and crustaceans, molluscs and other aquatic invertebrates	0.6%
10	Cereals	0.6%
76	aluminium and articles thereof	0.6%
85	electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles	0.6%
32	tanning or dyeing extracts; tannins and their derivatives; dyes, pigments and other colouring matter; paints and varnishes; putty and other mastics; inks	0.5%
40	rubber and articles thereof	0.5%
72	Iron and steel	0.5%
96	miscellaneous manufactured articles	0.5%
18	cocoa and cocoa preparations	0.4%
25	salt; sulphur; earths and stone; plastering materials, lime and cement	0.4%
35	albuminoid substances; modified starches; glues; enzymes	0.3%
45	Cork and articles of cork	0.2%
49	printed books, newspapers, pictures and other products of the printing industry; manuscripts, typescripts and plans	0.2%
60	knitted or crocheted fabrics	0.2%
82	Tools, implements, cutlery, spoons and forks, of base metal; parts thereof of base metal	0.2%
23	residues and waste from the food industries; prepared animal fodder	0.1%
28	inorganic chemicals; organic or inorganic compounds of precious metals, of rare-earth metals, of radioactive elements or of isotopes	0.1%
36	explosives; pyrotechnic products; matches; pyrophoric alloys; certain combustible preparations	0.1%
01	Live animals	0.1%
06	Live trees and other plants; bulbs, roots and the like; cut flowers and ornamental foliage	0.1%
14	vegetable plaiting materials; vegetable products nesoi	0.1%
27	mineral fuels, mineral oils and products of their distillation; bituminous substances; mineral waxes	0.1%
38	miscellaneous chemical products	0.1%
46	manufactures of straw, of esparto or of other plaiting materials; basketware and wickerwork	0.1%
66	umbrellas, sun umbrellas, walking-sticks, seat-sticks, whips, riding-crops and parts thereof	0.1%
Note:		
(a) Number of excluded lines within HS chapter as a proportion of total number of excluded lines.		

5.7 ESA

The ESA IEPA text was initialled on 28 November 2007 by Seychelles and Zimbabwe, on 4 December 2007 by Mauritius and on 11 December 2007 by Comoros and Madagascar. Zambia joined the ESA IEPA in September 2008, and this was announced by the EC on 1 October 2008.⁸⁴

⁸⁴ See: European Commission. Zambia joins Economic Partnership Agreement with EU. EPA Flash News, 1 October 2008. http://trade.ec.europa.eu/doclib/docs/2008/october/tradoc_140806.pdf

The version of the agreement initialled on 4 December 2007 is almost identical to the most recent version published on the European Council website (table 28), but it is known not to be complete in all details. Annex II on permissible quantitative restrictions, for example, is currently blank but the team understand that lists of entries have been circulated and agreed. One small change to the version on the web site is the definition of the ESA parties. This was kept blank in the initialled version because some countries that wanted to join had failed to submit trade in goods liberalisation schedules that met EC requirements by December 2007.

Annex III, which defines ESA states' exceptions on export duties and national treatment (NT) requirements (from Articles 15 and 18) has now been completed. As noted above, most countries appear not to have submitted entries into the Annex even though some appear clearly to apply additional import/export charges and QRs.⁸⁵

Table 28 Changes to the ESA IEPA (December 2007 – December 2008)

	Initialled ESA IEPA (version 4 Dec. 2007)	ESA IEPA on Council website dated 16 Dec. 2008
Article 61: Definition of parties	Definition of contracting ESA States is kept empty.	Comoros, Madagascar, Mauritius, Seychelles, Zambia, and Zimbabwe are named as contracting ESA States.
Annex II: List of ESA States taking commitments under Chapter II (trade in goods liberalisation)	No ESA states taking commitments under Chapter II were defined.	Comoros, Madagascar, Mauritius, Seychelles, Zambia and Zimbabwe are named as ESA States taking commitments under Chapter II.
Annex III: ESA States exceptions on duties, taxes on exports, NT on internal taxation and regulation	Annex III was empty.	Exceptions on NT: Seychelles Exceptions on export duties: Zambia

Seychelles is the only country that has requested an exception to NT on internal taxation and regulation, thus, keeping its right to apply price controls on imports as stipulated in its 'Trade Tax Act of 1992' for ten years. Zambia is the only country that registered exceptional treatment for its export duties on cotton seeds and cotton; copper ores, copper mattes and copper waste; and zinc, aluminium, steel and ferrous

⁸⁵ Madagascar levies an additional import charge on sugar, wheat and meslin flour, and chemical matches. The charge differs among import sources and is levied to protect domestic industries (WTO, 2008a: 35). Moreover, the country levies charges between 1.5% and 4% of the free on board (f.o.b.) value on export products, such as fisheries, forestry and wood products, mining products and processed products. It also prohibits the export of rough or semi-finished wood (Ibid.: 40-41). Mauritius applies an import duty on tea and tea products up to 20% of c.i.f. value. It is also reported that the application of excise duties differs for some imported and domestically produced goods, such as alcohol, cement and tobacco (WTO, 2008b: 44). Some imports such as milk and canned food products, certain plastic and rubber articles, articles containing asbestos, rough diamonds, and electrical apparatus are subject to non-automatic licensing requirements (Ibid.: 47).

waste.⁸⁶ The application of Zambian export duties on these products is not limited in time by the IEPA.

The regional implications and timetable

Five ESA states initialled an IEPA with the same text at the end of 2007. They are Comoros, Madagascar, Mauritius, Seychelles and Zimbabwe. Although all of them also established their liberalisation schedules in relation to the COMESA CET, the details of their liberalisation and of their exclusion baskets are different. They represented, therefore, something of a hybrid with a ‘common regional’ set of rules but different liberalisation regimes.

During 2008 Zambia also initialled the common IEPA text of the other five, meaning that six out of the 11 countries in the ESA negotiating group have now done so. But its liberalisation schedule is completely different with no reference to a CET and different start and end dates. Consequently, whilst the ESA IEPA has been treated as a single entity when analysing features of the main text (Chapter 2), it has to be treated as five partly and one completely different country cases in this Chapter. The next subsection repeats the comparison of the schedules for the five original signatories (which has not seriously been challenged during the past year) and is followed by one that assesses the hypothetical revenue implications for all six countries (including Zambia). This is followed by country-specific sub-sections. For all five original initiallers (except Comoros for which data are lacking) the tables show each country’s autonomous, pre-CET tariff.⁸⁷ This allows readers to make an assessment of the relative scale of the ‘customs union’ and the ‘EPA effects’.

In all cases, the phasing of liberalisation is made in relation to the product groups established by COMESA for its CET: raw and capital (for which the agreed CET is to be zero); intermediate (with an agreed CET of 10% when the customs union is fully implemented); and final (with a CET of 25%). This has important implications for the impact of the IEPA on COMESA. Although the COMESA members agreed that the CET should be set at different levels for these groups, they never agreed a formal definition that allocated each item in the nomenclature to one or other group. The IEPA schedules have made this specific link – but it is far from clear that ‘raw and capital’ or ‘intermediate’ or ‘final’ are defined in the same way in each country’s schedules. Take

86 As provided under Ninth schedule (Section 72A), Export Tariff, Amendment Act 2008, Zambian Customs and Excise Act Chapter 322.

87 In 2006 in the case of Madagascar, Mauritius and Seychelles, 2003 in the case of Zimbabwe.

the cases of chromium and thallium waste and scrap, which are treated differently by all five countries:

- Comoros indicates that they are CET Class A (raw), and has them with raw/capital goods in the first liberalisation tranche;
- Madagascar indicates that they are Class 3 (final) but it includes them in tranche 2 (intermediate goods);
- Mauritius indicates that they are Class 3 (final), but has included them in tranche 1 (raw/capital goods);
- Seychelles doesn't use the same codes, but appears to indicate that analogous ones are CET Class B (intermediate) and has them in tranche 2;
- and Zimbabwe indicates that thallium waste is Class B (intermediate) and includes it in tranche 2, but that chromium waste is Class C (final) and includes it in tranche 3.

A selective check has been made of the countries' schedules to determine whether or not this is an isolated, one-off case of incompatible definitions. It is not. There are, in fact, 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. Table 29 gives the incompatible definitions that have been used in the IEPA schedules for a selection of goods to illustrate the point.⁸⁸ This may make eventual agreement on a common, customs-union-wide set of tariffs more difficult.

⁸⁸ An additional confusion is that the goods categorised under these headings are not necessarily always those that the casual observer would expect. The Mauritius IEPA, for example, classifies air filters for vehicle engines as capital goods.

Table 29. Items with the largest number of different classifications being liberalised by original five ESA countries

Code	Description	ESA country	CET classification in country's schedule	Liberalisation tranche
400942	Tubes, pipes and hoses, of vulcanised rubber (excl. hard rubber), reinforced or otherwise combined with materials other than metal or textile materials, with fittings	Comoros	Intermediate	2
		Madagascar	Final	3
		Mauritius	Capital	1
		Seychelles	Part intermediate, part final	2 & 3
		Zimbabwe	Final	3
491199	printed matter, n.e.s.	Comoros	Intermediate	2
		Madagascar	Final	3
		Mauritius	Raw	1
		Seychelles	Part intermediate, part final	2 & 3
		Zimbabwe	Final	3
702000 892141	articles of glass, n.e.s.	Comoros	Intermediate	2
		Madagascar	Final	3
		Mauritius	Raw	1
		Seychelles	Part intermediate, part final	2 & 3
		Zimbabwe	Final	3
811299	articles of hafnium 'celtium', niobium 'columbium', rhenium, gallium and indium, n.e.s.	Comoros	Intermediate	2
		Madagascar	Final	3
		Mauritius	Capital	1
		Seychelles	Part intermediate, part final	2 & 3
		Zimbabwe	Final	3
853910	sealed beam lamp units	Comoros	Capital	1
		Madagascar	Intermediate	2
		Mauritius	Final	3
		Seychelles	Part raw & capital, part intermediate	1 & 2
		Zimbabwe	Capital	1
853949	ultraviolet or infra-red lamps	Comoros	Capital	1
		Madagascar	Final	3
		Mauritius	Intermediate	2
		Seychelles	Part raw & capital, part final	1 & 3
		Zimbabwe	Final	3

In all cases liberalisation occurs in three tranches which relate broadly speaking to the COMESA CET categories although, Seychelles and Zimbabwe apart, countries put a few items from other CET classes into their liberalisation tranches. Putting these minor variations aside, raw materials and capital goods are liberalised first in a single year (although the actual year varies). The other two groups are liberalised in two overlapping tranches with the one on intermediate goods normally (but not always) being completed before the one on final goods. Tariffs are not reduced by equal annual instalments during these two tranches (as is the case in some other IEPAs) but in four or five specified years. There will be tariff cuts in 2013, 2014, 2016, 2017, 2020 and 2022. EPA-induced liberalisation will take place, therefore, over ten years, but since it will not begin until 2013 the effective period is 15 years from now. During the first five years (2008–12), though, countries must accommodate their current tariffs to the COMESA CET level.

Hypothetical revenue loss

There are differences between the hypothetical revenue losses of all the countries (Table 30). In the case of the five original initialisers, with their broad similarities in the liberalisation timetable and schedules, these differences arise largely from the pre-existing level and balance of imports from the EU. This also applies in the case of Zambia but, in addition, its revenue calculations are also affected by its different liberalisation schedule. Potentially, all the countries will experience substantial revenue losses in the first tranche – but in the case of Mauritius and Seychelles this impression is probably misleading since sales tax will replace tariffs as a revenue source. Taking this into account, Madagascar faces the highest absolute revenue loss, with Zambia and Zimbabwe affected to broadly the same degree.

Table 30. Hypothetical revenue loss in ESA countries

Country	Hypothetical revenue (\$000) on:		1st tranche share
	<i>all items being liberalised</i>	<i>1st tranche items</i>	
Comoros	3,508	n/a ^a	n/a ^a
Madagascar	32,643	13,631	42%
Mauritius	18,074	3,858	21%
Seychelles	142,874	141,748	99%
Zambia	12,710	4,706	37%
Zimbabwe	14,531	6,906	48%
<i>Note:</i>			
(a) The absence of pre-IEPA tariff data makes it impossible to calculate hypothetical revenue loss for Comoros.			

Comoros

The TRAINS database does not list MFN tariffs for Comoros so it is unclear how far current tariffs will have to be reduced in order to reach the agreed CET. All of the items in the first tranche of liberalisation (2013) have CETs of zero (Table 31). It has until 2014, therefore, which is the first year for the other two tranches, to begin ‘EPA induced’ liberalisation.

Table 31. Summary of Comoros market access schedule

	# lines	Average import value 2004–6 ^a		CET ^b			
		US\$000	Share of total	Min.	Max.	Simple average	Trade-weighted average
Total trade in HS 1–97		31,786	100%				
Goods to be liberalised in:							
2013	1,456	6,837	21.5%	0	0	0	0
2014-2022 (reductions in 2014, 2017, 2020, 2022)	2,496	7,956	25.0%	10	10	10	10
2014-2022 (reductions in 2014, 2016, 2018, 2020, 2022)	1,157	10,848	34.1%	0	25	24.98	25
Excluded goods:	93	6,145	19.3%	Not given in schedule			
	5,202	31,786	100%				
Notes:							
(a) As included in the market access schedule.							
(b) As included in the market access schedule (for all but the 93 excluded lines). No MFN tariffs are available in TRAINS for Comoros. There are preparatory periods for the CET to be achieved: these are 5 years (2008–12) for raw and capital goods (to be liberalised in 2013) and 2008–13 for the rest.							

The exclusion basket accounted for 19.3% of Comoros imports from the EU in 2004–6. Two-thirds of the excluded items are agricultural (Table 32). But the absence of any information on either MFN or CET tariffs for the other items means that the information provided for other countries on the exclusion list table has not been possible for Comoros. Not all of the agricultural goods excluded are items that the EU can necessarily supply (Table 33). Chapter 9, for example, which is listed third in Table 33, does not include instant coffee – and the EU is obviously not a producer of unprocessed coffee and tea.

Table 32. Summary of Comoros exclusions

Excluded items	# lines
Total	93 86 at HS6 sub-head level, 7 at NTL 8-digit level – falling into 87 HS6 sub-heads
Covered by WTO Agreement on Agriculture	63
In highest applicable tariff band	?
Tariff 10% or more	?
Tariff less than 10%	?
Duty free	?

No MFN tariffs available for Comoros, and no CET tariffs shown in the market access schedule for excluded items

Table 33. Broad composition of Comoros exclusions

HS2	Description	Share of total ^a
08	edible fruit and nuts; peel of citrus fruits or melons	17.2%
02	meat and edible meat offal	9.7%
09	coffee, tea, maté and spices	9.7%
03	Fish and crustaceans, molluscs and other aquatic invertebrates	8.6%
87	vehicles other than railway or tramway rolling-stock, and parts and accessories thereof	8.6%
33	essential oils and resinoids; perfumery, cosmetic or toilet preparations	7.5%
07	edible vegetables and certain roots and tubers	5.4%
16	preparations of meat, of fish or of crustaceans, molluscs or other aquatic invertebrates	5.4%
30	pharmaceutical products	5.4%
22	beverages, spirits and vinegar	4.3%
04	dairy produce; birds' eggs; natural honey; edible products of animal origin, nesoi	3.2%
05	products of animal origin, nesoi	3.2%
11	products of the milling industry; malt; starches; inulin; wheat gluten	2.2%
15	animal/vegetable fats and oils and their cleavage products; prepared edible fats; animal/vegetable waxes	2.2%
20	preparations of vegetables, fruit, nuts or other parts of plants	2.2%
25	Salt; sulphur; earths and stone; plastering materials, lime and cement	2.2%
10	Cereals	1.1%
24	tobacco and manufactured tobacco substitutes	1.1%
62	articles of apparel and clothing accessories, not knitted or crocheted	1.1%
<i>Note:</i>		
(a) Number of excluded lines within HS chapter as a proportion of total number of excluded lines.		

All of the items being liberalised in the first tranche face a CET of zero. But the absence of MFN tariff data has also made it impossible to identify what changes Comoros will need to make to current tariffs in order to achieve this CET rate.

Madagascar

Although Madagascar has in each of the liberalisation tranches some items for which its recent MFN duties have been zero, they also all contain other items that have faced tariffs of up to 20% (Table 34). There is a modest progression over the implementation period from the trade-weighted average tariff of 10.4% for the goods to be liberalised in 2013 to one of 13.3% for goods in the two tranches ending in 2022, but this is insufficient to indicate any discernible back loading. On the contrary, the items that will be liberalised in 2013 accounted for 37% of the country's imports from the EU in 2004–6, implying a sharp front loading given the similarity of trade-weighted tariffs.

Table 34. Summary of Madagascar market access schedule

	# lines	Average import value 2004–6 ^a		MFN 2006 ^b					CET ^c
		US\$000	Share of total	Min.	Max.	Simple average	Trade-weighted average ^d	# lines on which based ^e	
Total trade		355,538	100%						
Goods to be liberalised in:									
2013	1,297	131,563	37.0%	0	20	10.6	10.4	1,151	0
2014–2022 (reductions in 2014, 2017, 2020, 2022)	2,445	92,779	26.1%	0	20	11.6	11.5	2,303	10
2014–2022 (reductions in 2014, 2016, 2018, 2020, 2022)	1,127	62,739	17.6%	0	20	17.7	13.3	1,066	25
Excluded goods:	575	68,457	19.3%	0	20	18.5	17.7	574	Not shown in schedule
	5,444	355,538	100%					5,094	
Notes: (a) As given in the market access schedule (for all but 108 of the lines). (b) MFN tariffs could not be identified (from the 2006 Madagascar tariff schedule in TRAINS) for 263 lines in the market access schedule (accounting for 0.03% of the average value of imports 2004–6). (c) The CET rate is included in the market access schedule (other than for the 575 excluded lines). There are preparatory periods for the CET to be achieved: these are 5 years (2008–12) for raw and capital goods (to be liberalised in 2013) and 2008–13 for the rest. (d) Where a range of tariffs applies to different items within the HS6 sub-head, the highest has been used. (e) i.e. number of lines for which both MFN tariff and import value are known.									

Some 19.3% of imports are excluded altogether from liberalisation, and just over two-thirds of these are agricultural (Table 35). The majority of items (87%) face the highest CET (of 20%). Bizarrely, though, as with Ghana some items that are duty free are also being excluded from liberalisation. The agricultural exclusions are, in the main, goods for which the EU is a plausible supplier of items that would compete directly or indirectly with local farmers (Table 36).

Table 35. Summary of Madagascar exclusions

Excluded items	# lines
Total	575 at HS6 sub-head level
Covered by WTO Agreement on Agriculture	341
In highest applicable tariff band	500 = 20%
Tariff 10% or more	57
Tariff less than 10%	12
Duty free	6

Table 36. Broad composition of Madagascar exclusions

HS2	Description	Share of total ^a
02	meat and edible meat offal	9.6%
07	edible vegetables and certain roots and tubers	8.0%
20	preparations of vegetables, fruit, nuts or other parts of plants	7.8%
39	plastics and articles thereof	7.0%
03	Fish and crustaceans, molluscs and other aquatic invertebrates	6.8%
52	Cotton	6.4%
04	dairy produce; birds' eggs; natural honey; edible products of animal origin, nesoi	4.5%
22	beverages, spirits and vinegar	3.7%
08	edible fruit and nuts; peel of citrus fruits or melons	3.5%
16	preparations of meat, of fish or of crustaceans, molluscs or other aquatic invertebrates	3.3%
19	preparations of cereals, flour, starch or milk; pastrycooks' products	3.1%
15	animal or vegetable fats and oils and their cleavage products; prepared edible fats; animal or vegetable waxes	3.0%
11	products of the milling industry; malt; starches; inulin; wheat gluten	2.8%
17	sugars and sugar confectionery	2.6%
33	essential oils and resinoids; perfumery, cosmetic or toilet preparations	2.4%
21	miscellaneous edible preparations	2.1%
73	articles of iron or steel	2.1%
34	soap, organic surface-active agents, washing preparations, lubricating preparations, artificial waxes, prepared waxes, polishing or scouring preparations, candles and similar articles, modelling pastes, 'dental waxes' and dental preparations with a basis of plaster	1.9%
42	articles of leather; saddlery and harness; travel goods, handbags and similar containers; articles of animal gut (other than silkworm gut)	1.7%
48	paper and paperboard; articles of paper pulp, of paper or of paperboard	1.7%
18	cocoa and cocoa preparations	1.6%
24	tobacco and manufactured tobacco substitutes	1.6%
09	coffee, tea, maté and spices	1.4%
76	aluminium and articles thereof	1.2%
85	electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles	1.2%
32	tanning or dyeing extracts; tannins and their derivatives; dyes, pigments and other colouring matter; paints and varnishes; putty and other mastics; inks	0.9%
94	furniture; bedding, mattresses, mattress supports, cushions and similar stuffed furnishings; lamps and lighting fittings, nesoi; illuminated signs, illuminated name-plates and the like; prefabricated buildings	0.9%
27	mineral fuels, mineral oils and products of their distillation; bituminous substances; mineral waxes	0.7%
35	albuminoidal substances; modified starches; glues; enzymes	0.7%
56	wadding, felt and nonwovens; special yarns; twine, cordage, ropes and cables and articles thereof	0.7%
63	other made-up textile articles; sets; worn clothing and worn textile articles; rags	0.7%
10	Cereals	0.5%
54	Man-made filaments	0.5%
96	miscellaneous manufactured articles	0.5%
25	Salt; sulphur; earths and stone; plastering materials, lime and cement	0.3%
36	explosives; pyrotechnic products; matches; pyrophoric alloys; certain combustible preparations	0.3%
44	wood and articles of wood; wood charcoal	0.3%
64	footwear, gaiters and the like; parts of such articles	0.3%
12	oil seeds and oleaginous fruits; miscellaneous grains, seeds and fruit; industrial or medicinal plants; straw and fodder	0.2%
13	lac; gums, resins and other vegetable saps and extracts	0.2%
23	residues and waste from the food industries; prepared animal fodder	0.2%
38	miscellaneous chemical products	0.2%
46	manufactures of straw, of esparto or of other plaiting materials; basketware and wickerwork	0.2%
49	printed books, newspapers, pictures and other products of the printing industry; manuscripts, typescripts and plans	0.2%
55	Man-made staple fibres	0.2%
72	Iron and steel	0.2%
79	Zinc and articles thereof	0.2%

Note:
(a) Number of excluded lines within HS chapter as a proportion of total number of excluded lines.

None of the items being liberalised in 2013 is an agricultural product (Table 37) and two of the three of those that currently face a tariff of 20% are not necessarily competitive for domestic production. One item, though, may cause problems: this is 'worn clothing'.

Table 37. Summary of Madagascar first-tranche liberalisations (2013)

HS6	Covered by AoA?	Description	Tariff ^a	Average imports 2004–6 (\$000) ^b
Items with 20% tariff and imports of \$1 mn or more				
630900		Worn clothing and clothing accessories, blankets and travelling rugs, household	20	1,542
870210		Motor vehicles for the transport of >= 10 persons, incl. driver, with compression-	20	2,414
940600		Prefabricated buildings, whether or not complete or already assembled	20	1,432
Items with 10% tariff and imports of \$1 mn or more				
841869		Refrigerating or freezing equipment and absorption heat pumps (excl.	10	1,056
842230		Machinery for filling, closing, sealing or labelling bottles, cans, boxes, bags or	10	1,438
842940		Self-propelled tamping machines and road rollers	10	1,686
842951		Self-propelled front-end shovel loaders	10	2,530
842952		Self-propelled mechanical shovels, excavators and shovel loaders, with a 360°	10	1,658
843810		Bakery machinery and machinery for the industrial preparation or manufacture	10	1,002
843880		Machinery for the industrial preparation or manufacture of food or drink, n.e.s.	10	1,369
847141		Data-processing machines, automatic, digital, comprising in the same housing	10	1,914
847160		Input or output units for digital automatic data processing machines, whether or	10	1,139
847290		Office machines, n.e.s.	10	8,297
847420		Crushing or grinding machines for solid mineral substances	10	1,138
847982		Mixing, kneading, crushing, grinding, screening, sifting, homogenizing,	10	1,059
847989		Machines and mechanical appliances, n.e.s.	10	1,025
850211		Generating sets with compression-ignition internal combustion piston engine	10	1,349
850213		Generating sets with compression-ignition internal combustion piston engine	10	2,705
851750		Apparatus for carrier-current line systems or digital line systems, for line	10	1,156
853710		Boards, cabinets and similar combinations of apparatus for electric control or	10	1,215
870120		Road tractors for semi-trailers	10	2,015
870421		Motor vehicles for the transport of goods, with compression-ignition internal	10	6,003
870422		Motor vehicles for the transport of goods, with compression-ignition internal	10	5,829
870423		Motor vehicles for the transport of goods, with compression-ignition internal	10	2,116
870590		Special purpose motor vehicles (other than those principally designed for the	10	2,232
880230		Aeroplanes and other powered aircraft of an unladen weight > 2,000 kg but <=	10	6,107
Notes:				
(a) Maximum MFN 2006, obtained from TRAINS database. No tariffs are available for 64 codes in this tranche which are not listed in the 2006 tariff schedule (61 of which came into existence only in 2007).				
(b) As given in the market access schedule.				

Mauritius

Mauritius's first tranche of liberalisation is to be completed in 2008 (rather than 2013 as specified in all the other ESA schedules. Not all of these goods had been liberalised in 2006, the latest year for which tariff data are available (Table 38). Since the country has announced its intention to be 'a duty-free island' (and to use sales taxes instead

of tariffs to collect revenue from consumption), this will presumably not pose any 'additional' EPA-induced problems for it. This group of products accounted for one-quarter of imports from the EU in 2004–6. Since only 4.4% of imports are being excluded altogether, the great bulk of imports (71% in total) will be liberalised between 2013 and 2022.

Of the 185 items that have been excluded from liberalisation, accounting for only 4.4% of the value of Mauritius imports from the EU, one half are agricultural goods and 58% currently face the highest tariffs, which are *ad valorem* rates of 30% or specific duties (Table 39). Again, there is a group of products that currently face zero tariffs that are being excluded from liberalisation. The main excluded items are processed foods and light manufactures, for all of which cheaper EU imports might compete with domestic production (Table 40).

Table 38. Summary of Mauritius market access schedule

	# lines	Average import value 2004–6 ^a		MFN 2006 ^b					CET ^c
		US\$000	Share of total	Min.	Max.	Simple average	Trade-weighted average ^d	# lines on which based ^e	
Total trade		865,330	100%						
Goods to be liberalised in:									
2008	1,398	212,155	24.5%	0	30 or spec.	2.7	1.8	1,322	0
2013–2017 (reductions in 2013, 2014, 2015, 2017)	2,541	251,961	29.1%	0	30 or spec.	1.5	1.2	2,411	10
2013–2022 (reductions in 2013, 2015, 2018, 2020, 2022)	1,257	363,328	42.0%	0	30 or spec.	7.2	3.1	1,009	25
Excluded goods:	185	37,887	4.4%	0	30	23.1	23.4	175	Not shown in schedule
	5,381	865,330	100%					4,917	

Notes:

- (a) As given in the market access schedule (for all but 9 of the lines).
- (b) MFN tariffs could not be identified (from the 2006 Mauritius tariff schedule in TRAINS) for 279 lines in the market access schedule (accounting for 0.6% of the average value of imports 2004–6).
- (c) The CET rate is included in the market access schedule (other than for the 185 excluded lines). There is a preparatory period for the CET to be achieved for intermediate/final goods of 2008–12.
- (d) Where a range of tariffs applies to different items within the HS6 sub-head, the highest has been used.
- (e) i.e. number of lines for which both MFN tariff and import value are known.

Table 39. Summary of Mauritius exclusions

Excluded items	# lines
Total	185 at HS6 sub-head level
Covered by WTO Agreement on Agriculture	93
Tariff unknown	2
In highest applicable tariff band	108 = 30% or specific duty
Tariff 10% or more	66
Tariff less than 10%	—
Duty free	9

Table 40. Broad composition of Mauritius exclusions

HS2	Description	Share of total ^a
20	preparations of vegetables, fruit, nuts or other parts of plants	20.0%
39	plastics and articles thereof	9.2%
94	furniture; bedding, mattresses, mattress supports, cushions and similar stuffed furnishings; lamps and lighting fittings, nesoi; illuminated signs, illuminated name-plates and the like; prefabricated buildings	9.2%
48	paper and paperboard; articles of paper pulp, of paper or of paperboard	8.6%
02	meat and edible meat offal	5.9%
34	soap, organic surface-active agents, washing preparations, lubricating preparations, artificial waxes, prepared waxes, polishing or scouring preparations, candles and similar articles, modelling pastes, 'dental waxes' and dental preparations with a basis of plaster	5.9%
17	sugars and sugar confectionery	4.3%
16	preparations of meat, of fish or of crustaceans, molluscs or other aquatic invertebrates	3.2%
32	tanning or dyeing extracts; tannins and their derivatives; dyes, pigments and other colouring matter; paints and varnishes; putty and other mastics; inks	3.2%
15	animal or vegetable fats and oils and their cleavage products; prepared edible fats; animal or vegetable waxes	2.7%
19	preparations of cereals, flour, starch or milk; pastrycooks' products	2.7%
22	beverages, spirits and vinegar	2.7%
33	essential oils and resinoids; perfumery, cosmetic or toilet preparations	2.7%
42	articles of leather; saddlery and harness; travel goods, handbags and similar containers; articles of animal gut (other than silkworm gut)	2.7%
72	Iron and steel	2.7%
04	dairy produce; birds' eggs; natural honey; edible products of animal origin, nesoi	2.2%
21	miscellaneous edible preparations	2.2%
73	articles of iron or steel	2.2%
01	Live animals	1.1%
06	Live trees and other plants; bulbs, roots and the like; cut flowers and ornamental foliage	1.1%
09	coffee, tea, maté and spices	1.1%
11	products of the milling industry; malt; starches; inulin; wheat gluten	1.1%
87	vehicles other than railway or tramway rolling-stock, and parts and accessories thereof	1.1%
40	rubber and articles thereof	0.5%
46	manufactures of straw, of esparto or of other plaiting materials; basketware and wickerwork	0.5%
70	glass and glassware	0.5%
83	miscellaneous articles of base metal	0.5%

Note:

(a) Number of excluded lines within HS chapter as a proportion of total number of excluded lines.

A large number of the goods that were to be liberalised in 2008 faced 30% tariffs in 2006 (Table 41). But many of these were imported either in very low quantitative values or not at all. This applies particularly to the 23 agricultural items. The rest appear to be industrial inputs and the objective of tariffs well may have been revenue generation.

Table 41. Summary of Mauritius first-tranche liberalisations (2008)

HS6	Covered by AoA?	Description	Tariff ^a	Average imports 2004-6 (\$000) ^b
All items with tariff of over 20%				
010310	Yes	pure-bred breeding swine	30	-
010391	Yes	live pure-bred swine, weighing < 50 kg (excl. pure-bred for breeding)	30	-
010392	Yes	live pure-bred swine, weighing ≥ 50 kg (excl. pure-bred for breeding)	30	-
010599	Yes	live domestic ducks, geese, turkeys and guinea fowls, weighing > 185 g	30	-
020630	Yes	fresh or chilled edible offal of swine	30	0
020641	Yes	frozen edible livers of swine	30	-
020649	Yes	edible offal of swine, frozen (excl. livers)	30	0
020725	Yes	frozen turkeys of the species domesticus, not cut into pieces	30	40
020726	Yes	fresh or chilled cuts and edible offal of turkeys of the species domesticus	30	4
020727	Yes	frozen cuts and edible offal of turkeys of the species domesticus	30	115
020727	Yes	frozen cuts and edible offal of turkeys of the species domesticus	30	-
020732	Yes	fresh or chilled ducks, geese and guinea fowls of the species domesticus, not	30	3
020733	Yes	frozen ducks, geese and guinea fowls of the species domesticus, not cut into	30	1
020734	Yes	fresh or chilled edible fatty livers of ducks or geese of the species domesticus	30	34
020734	Yes	fresh or chilled edible fatty livers of ducks or geese of the species domesticus	30	-
020735	Yes	fresh or chilled cuts and edible offal of ducks, geese or guinea fowls of the	30	12
020736	Yes	frozen cuts and edible offal of ducks, geese or guinea fowls of the species	30	45
021011	Yes	hams, shoulders and cuts thereof of swine, salted, in brine, dried or smoked,	30	3
021012	Yes	bellies 'streaky' and cuts thereof of swine, salted, in brine, dried or smoked	30	0
021019	Yes	meat of swine, salted, in brine, dried or smoked (excl. hams, shoulders and cuts	30	187
240110	Yes	tobacco, unstemmed or unstrapped	30	-
240120	Yes	tobacco, partly or wholly stemmed or stripped, otherwise unmanufactured	30	-
240130	Yes	tobacco refuse	30	-
491199		printed matter, n.e.s.	30	477
702000		articles of glass, n.e.s.	30	61
840732		spark-ignition reciprocating piston engine, of a kind used for the propulsion of	30	2
840733		spark-ignition reciprocating piston engine, of a kind used for vehicles of chapter	30	0
840734		spark-ignition reciprocating piston engine, of a kind used for vehicles of chapter	30	66
840820		compression-ignition internal combustion piston engine 'diesel or semi-diesel	30	149
840999		parts suitable for use solely or principally with compression-ignition internal	30	2,633
841311		pumps fitted or designed to be fitted with a measuring device, for dispensing	30	112
841330		fuel, lubricating or cooling medium pumps for internal combustion piston engine	30	477
842123		oil or petrol-filters for internal combustion engines	30	584
842131		intake air filters for internal combustion engines	30	329
850710		lead-acid accumulators of a kind used for starting piston engine 'starter	30	300
850720		lead acid accumulators (excl. spent and starter batteries)	30	159
851110		sparkign plugs of a kind used for spark-ignition or compression-ignition internal	30	116
851120		ignition magnetos, magneto-dynamos and magnetic flywheels, for spark-ignition	30	2
851130		distributors and ignition coils of a kind used for spark-ignition or compression-	30	38
851140		starter motors and dual purpose starter-generators of a kind used for spark-	30	72
851150		generators of a kind used for internal combustion engines (excl. magneto	30	100
851190		parts of electrical ignition or starting equipment, generators, etc. of heading	30	130
851220		electrical lighting or visual signalling equipment for motor vehicles (excl. lamps	30	168
870899		parts and accessories, for tractors, motor vehicles for the transport of ten or	30	1,999
930111		artillery weapons 'e.g. guns, howitzers and mortars', self-propelled	30	-
930119		artillery weapons 'e.g. guns, howitzers and mortars', not self-propelled	30	-
930120		rocket launchers; flame-throwers; grenade launchers; torpedo tubes and similar	30	-
930190		military weapons, incl. sub-machine guns (excl. artillery weapons, rocket	30	-

HS6	Covered by AoA?	Description	Tariff ^a	Average imports 2004–6 (\$000) ^b
930630		cartridges and parts thereof for smooth-barrelled shotguns, revolvers and pistols	30	8
Items with 15% tariff and imports of \$1 mn or more				
392690		Articles of plastics and articles of other materials of heading 3901 to 3914, n.e.s	15	3,219
853690		Electrical apparatus for switching electrical circuits, or for making connections to or in electrical circuits, for a voltage ≤ 1,000 V (excl. fuses, automatic circuit breakers and other apparatus for protecting electrical circuits, relays and other swit	15	1,348
Notes: (a) Maximum MFN 2006, obtained from TRAINS database. No tariffs are available for 74 codes in this tranche which are not listed in the 2006 tariff schedule (72 of which came into existence only in 2007). (b) As given in the market access schedule.				

Seychelles

Seychelles, like Comoros and Madagascar and unlike Mauritius, has its first IEPA commitments in 2013. But in some cases it will need to reduce very high tariffs (in 2006) to meet the CET target. Table 42 shows that this customs union effect far outweighs the EPA one. The trade-weighted average tariff for goods that will be liberalised by 2013, to reach the CET of zero percent, was 104.1% in 2006. Whilst some items had zero applied tariffs, others had rates of up to 200%. Further cuts from current levels are required for the subsequent tranches (which bring tariffs below the level needed for the CET), but the trade-weighted average of these tariffs is much lower than those included in the first tranche.

Table 42. Summary of Seychelles market access schedule

	# lines	Average import value 2004–6 ^a		MFN 2006 ^b					CET ^c
		US\$000	Share of total	Min.	Max.	Simple average	Trade-weighted average ^d	# lines on which based ^e	
Total trade		224,557	100%						
Goods to be liberalised in:									
2013	1,492	139,380	62.1%	0	200	5.8	104.1	1,246	0
2013-2017 (reductions in each year)	2,606	33,824	15.1%	0	200	1.4	0.7	2,103	10
2013-2022 (reductions in each year)	1,390	45,789	20.4%	0	200 or Scr/lt 10	11.1	2.4	1,213	25
Excluded goods:	131	5,563	2.5%	0	225 or SR/lt 170	116.4	79.3	104	Not shown in schedule
	5,619	224,557	100%					4,666	

Notes:

- As given in the market access schedule (for all but 17 of the lines).
- MFN tariffs could not be identified (from the 2006 Seychelles tariff schedule in TRAINS) for 926 lines in the schedule – largely because the tariff schedule is in H0 (1988), and the market access schedule in HS 2002/2007. These 926 lines accounted for 5.8% of the average value of imports in 2004–6.
- The CET rate is included in the market access schedule (other than for the 131 excluded lines plus 26 others). There are preparatory periods for the CET to be achieved: these are 5 years (2008–12) for raw and capital goods (to be liberalised in 2013) and 2008–13 for the rest.
- Where a range of tariffs applies to different items within the HS6 sub-head, the highest has been used.
- i.e. number of lines for which both MFN tariff and import value are known.

Only 2.5% of the value of Seychelles imports from the EU in 2004–6 is excluded from any liberalisation. But their 2006 trade-weighted average tariff was high at 79.3%. Some 37% of them are agricultural products (Table 43) and most face a tariff of 10% or more. There are a number of duty-free items in the list as well. Apart from fish, the exclusions appear primarily to be related to revenue generation rather than domestic protection (Table 44).

Table 43. Summary of Seychelles exclusions

Excluded items	# lines
Total	131 at HS6 sub-head level
Covered by WTO Agreement on Agriculture	49
Tariff unknown	15
In highest applicable tariff band	5 = 225% (1) or SR/lt 170 (4)
Tariff 10% or more	100
Tariff less than 10%	5
Duty free	6

Note: Tariff breakdowns assume that all specific duties equate to 10% or more *ad valorem*.

Table 44. Broad composition of Seychelles exclusions

HS2	Description	Share of total ^a
87	vehicles other than railway or tramway rolling-stock, and parts and accessories thereof	19.8%
03	Fish and crustaceans, molluscs and other aquatic invertebrates	15.3%
22	beverages, spirits and vinegar	14.5%
43	furskins and artificial fur; manufactures thereof	8.4%
24	tobacco and manufactured tobacco substitutes	6.9%
02	meat and edible meat offal	6.1%
32	tanning or dyeing extracts; tannins and their derivatives; dyes, pigments and other colouring matter; paints and varnishes; putty and other mastics; inks	4.6%
40	rubber and articles thereof	3.8%
09	coffee, tea, maté and spices	3.1%
69	ceramic products	3.1%
16	preparations of meat, of fish or of crustaceans, molluscs or other aquatic invertebrates	2.3%
27	mineral fuels, mineral oils and products of their distillation; bituminous substances; mineral waxes	2.3%
07	edible vegetables and certain roots and tubers	1.5%
08	edible fruit and nuts; peel of citrus fruits or melons	1.5%
53	other vegetable textile fibres; paper yarn and woven fabrics of paper yarn	1.5%
70	glass and glassware	1.5%
83	miscellaneous articles of base metal	1.5%
39	plastics and articles thereof	0.8%
44	wood and articles of wood; wood charcoal	0.8%
85	electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles	0.8%

Note:

(a) Number of excluded lines within HS chapter as a proportion of total number of excluded lines.

Because so many of Seychelles's initial tranche of liberalised products currently face high tariffs they are listed in full in Table 45 (as a consequence of which the table is long). Tariffs of 100% or 200% are sufficiently large plausibly to form an insuperable barrier to imports, so that the fact that trade has been low is not necessarily an indication of

a lack of demand or supply capacity. Many are fish products and the high tariffs are linked to support for the domestic canning industry. But Seychelles is able, to an even greater extent than Madagascar and Mauritius, to substitute domestic sales taxes for tariffs since such a large proportion of the goods consumed are imported.

Zambia

The Zambian schedules were completed in 2008, well after the others from ESA, and are substantially different. The schedule starts from Zambia's 2008 MFN tariffs (with no mention of a CET, unlike in other ESA schedules). And the liberalisation tranches are not the same as for the other ESA countries which, despite small variations, start liberalisation in 2013 and complete it in 2022. The Zambia schedule specifies the tariff payable in every year from 2009 to 2023 inclusive for all the goods that are to be liberalised – which is set at the MFN level in every year 2009–13 (Table 46).

Table 45. Summary of Seychelles first-tranche liberalisations (2013)

HS6	Covered by AoA?	Description	Tariff ^a	Average imports 2004–6 (\$000) ^b
All items with tariff of over 20%				
030211		fresh or chilled trout 'salmo trutta, oncorhynchus mykiss, oncorhynchus clarki,	100	-
030212		fresh or chilled pacific salmon 'oncorhynchus nerka, oncorhynchus gorbuscha,	100	0.3
030219		fresh or chilled salmonidae (excl. trout 'salmo trutta, oncorhynchus mykiss,	200	0.03
030221		fresh or chilled lesser or greenland halibut 'reinhardtius hippoglossoides, atlantic	100	-
030222		fresh or chilled plaice 'pleuronectes platessa'	100	0.2
030223		fresh or chilled sole 'solea spp.'	100	-
030229		fresh or chilled flat fish 'pleuronectidae, bothidae, cynoglossidae, soleidae,	200	-
030231		fresh or chilled albacore or longfinned tunas 'thunnus alalunga'	200	-
030232		fresh or chilled yellowfin tunas 'thunnus albacares'	200	-
030233		fresh or chilled skipjack or stripe-bellied bonito	200	0.04
030239		fresh or chilled tunas of the genus 'thunnus' (excl. thunnus alalunga, thunnus	200	-
030240		fresh or chilled herrings 'clupea harengus, clupea pallasii'	100	-
030250		fresh or chilled cod 'gadus morhua, gadus ogac, gadus macrocephalus'	100	-
030261		fresh or chilled sardines 'sardina pilchardus, sardinops spp.', sardinella	100	0.02
030262		fresh or chilled haddock 'melanogrammus aeglefinus'	100	-
030263		fresh or chilled coalfish 'pollachius virens'	100	-
030266		fresh or chilled eels 'anguilla spp.'	100	-
030270		fresh or chilled fish livers and roes	100	-
030321		frozen trout 'salmo trutta, oncorhynchus mykiss, oncorhynchus clarki,	100	-
030322		frozen atlantic salmon 'salmo salar' and danube salmon 'hucho hucho'	100	5
030331		frozen lesser or greenland halibut 'reinhardtius hippoglossoides', atlantic halibut	100	-
030332		frozen plaice 'pleuronectes platessa'	100	-
030333		frozen sole 'solea spp.'	100	-
030339		frozen flat fish 'pleuronectidae, bothidae, cynoglossidae, soleidae,	200	-
030341		frozen albacore or longfinned tunas 'thunnus alalunga'	200	-
030342		frozen yellowfin tunas 'thunnus albacares'	200	-
030343		frozen skipjack or stripe-bellied bonito 'euthynnus -katsuwonus- pelamis'	200	-

HS6	Covered by AoA?	Description	Tariff ^a	Average imports 2004-6 (\$000) ^b
030349		frozen tunas of the genus 'thunnus' (excl. thunnus alalunga, thunnus albacares,	200	70,303
030360		frozen cod 'gadus morhua, gadus ogac and gadus macrocephalus'	100	0.01
030371		frozen sardines 'sardina pilchardus, sardinops spp.', sardinella 'sardinella spp.'	100	-
030372		frozen haddock 'melanogrammus aeglefinus'	100	-
030373		frozen coalfish 'pollachius virens'	100	-
030376		frozen eels 'anguilla spp.'	100	-
030377		frozen sea bass 'dicentrarchus labrax, dicentrarchus punctatus'	100	-
030378		frozen hake 'merluccius spp., urophycis spp.'	100	-
030380		frozen fish livers and roes	100	0.4
030551		dried cod 'gadus morhua, gadus ogac, gadus macrocephalus', whether or not	50	-
030559		dried fish, salted, not smoked (excl. cod and other fillets)	50	-
030561		Herrings 'clupea harengus, clupea pallasii', salted or in brine only (excl. fillets)	50	0.1
030562		cod 'gadus morhua, gadus ogac, gadus macrocephalus', salted or in brine only	50	-
030563		anchovies 'engraulis spp.', salted or in brine only (excl. fillets)	25	0.3
030613		frozen shrimps and prawns, whether in shell or not, incl. shrimps and prawns in	100	25
030619		frozen crustaceans, fit for human consumption, whether in shell or not, incl.	50	1
030623		shrimps and prawns, whether in shell or not, live, dried, salted or in brine, incl.	100	-
030751		live, fresh or chilled octopus 'octopus spp.', with or without shell	25	-
040110	Yes	milk and cream of a fat content by weight of <= 1%, not concentrated nor	50	1
040120	Yes	milk and cream of a fat content by weight of > 1% but <= 6%, not concentrated	50	0.2
040700	Yes	birds' eggs, in shell, fresh, preserved or cooked	200	516
050100	Yes	human hair, unworked, whether or not washed or scoured; waste of human hair	25	-
050210	Yes	pigs', hogs' or boars' bristles and waste of such bristles	25	-
050290	Yes	badger and other brush making hair and waste thereof	25	-
050300	Yes	horsehair and horsehair waste, whether or not put up as a layer, with or without	25	3
050400	Yes	guts, bladders and stomachs of animals (other than fish), whole and pieces	25	-
050510	Yes	feathers used for stuffing and down, not further worked than cleaned, disinfected	25	-
050590	Yes	skins and other parts of birds, with their feathers or down, feathers and parts of	25	-
050610	Yes	ossein and bones treated with acid	25	-
050690	Yes	bones and horn-cores and their powder and waste, unworked, defatted,	25	-
050710	Yes	ivory, unworked or simply prepared, its powder and waste (excl. cut to shape)	200	-
050790	Yes	tortoiseshell, whalebone and whalebone hair, horns, antlers, hooves, nails,	200	-
060410	Yes	mosses and lichens for bouquets or for ornamental purposes, fresh, dried, dyed,	100	-
060491	Yes	foliage, branches and other parts of plants, without flowers or flower buds,	100	-
060499	Yes	foliage, branches and other parts of plants, without flowers or flower buds,	100	-
070511	Yes	fresh or chilled cabbage lettuce	25	25
070519	Yes	fresh or chilled lettuce (excl. cabbage lettuce)	25	0.3
070930	Yes	fresh or chilled aubergines 'eggplants'	25	1
080440	Yes	fresh or dried avocados	50	3
080450	Yes	fresh or dried guavas, mangoes and mangosteens	50	3
080720	Yes	fresh pawpaws 'papayas'	50	0.03
090111	Yes	coffee (excl. roasted and decaffeinated)	50	1
090112	Yes	decaffeinated coffee (excl. roasted)	50	59
090300	Yes	Mate	50	-
091050	Yes	Curry	100	0.1
230910	Yes	dog or cat food, put up for retail sale	50	-
631010		used or new rags, scrap twine, cordage, rope and cables and worn-out articles	25	0.01
631090		used or new rags, scrap twine, cordage, rope and cables and worn out articles	25	3
840731		spark-ignition reciprocating piston engine, of a kind used for the propulsion of	25	0.1
840732		spark-ignition reciprocating piston engine, of a kind used for the propulsion of	25	-
840733		spark-ignition reciprocating piston engine, of a kind used for vehicles of chapter	25	-
840734		spark-ignition reciprocating piston engine, of a kind used for vehicles of chapter	25	1
840790		spark-ignition reciprocating or rotary internal combustion piston engine (excl.	25	1
840890		compression-ignition internal combustion piston engine 'diesel or semi-diesel	25	19

HS6	Covered by AoA?	Description	Tariff ^a	Average imports 2004–6 (\$000) ^b
871000		tanks and other armoured fighting vehicles, motorised, whether or not fitted with	100	-
There are no items with a tariff of 10–20% and imports of \$1 mn or more				
Notes:				
(a) Maximum MFN 2006, obtained from TRAINS database. No tariffs are available for 242 codes in this tranche which are not listed in the 2006 tariff schedule (which is in the 1988 version of the nomenclature). A further two items in this tranche are listed in the market access schedule without any codes at all.				
(b) As given in the market access schedule.				

Hence, the first tariff cuts do not need to be made until 2014, when the tariffs on 858 items (all with an MFN of 5%) must be removed. A second phase of liberalisation (1,784 items with a 15% MFN) starts in 2017 with a reduction to 10%, followed by further reductions in 2020 (to 5%) and 2023 (to zero). The final phase of liberalisation (of 1,562 items with a 25% MFN) starts in 2019, with 5% reductions annually to 2023. It is not stated when in the year the reductions take effect. It is understood that each required tariff reduction will be made at the time of the annual budget, in the first trimester of the year.

There are 414 exclusions, with MFN tariffs of 0 to 25% (Table 47). Over one-third are agricultural goods. The majority (70%) face the highest current tariff and a further 26% face a 10% tariff. Paradoxically, though, three items are currently duty-free. As is explained in Chapter 2, the exclusion of a product from liberalisation does not mean that it is excluded from all IEPA rules. On the contrary, all the other rules apply. Since one standard rule is to exclude any quantitative import restrictions (unless specifically allowed, e.g. on grounds of protecting public morals), the validity of the prohibition mentioned in Column 3 of Table 47 will depend entirely on whether or not the Statutory Instruments listed in the table meet the criteria established elsewhere in the IEPA. It is understood that Zambia is confident it has listed all the relevant measures in the lists that will eventually find their way into Annex II, but since this is currently blank in the Council website version of the IEPA it has not been possible to verify this.⁸⁹

⁸⁹ Since the ESA IEPA includes a 'standstill clause', the exclusion of these items from liberalisation would appear also not to offer the government the opportunity to increase tariffs at some point in the future (unless this, too, is covered by agreed provisions that have not yet found their way into the Council website text).

Table 46. Summary of Zambia market access schedule

	# lines	Average imports 2004–6 ^a		MFN 2008 ^b			
		\$000	Share of total	Min.	Max.	Simple avg.	Trade- weighted avg. ^c
Total trade^d	5,964	451,692	100%				
Goods to be liberalised:							
already duty free	1,346	220,957	48.9%	0	0	0	0
in 2014	858	94,123	20.8%	5	5	5	5
2017–23 (reductions in 2017, 2020 & 2023)	1,784	31,199	6.9%	15	15	15	15
2019–23 (in equal annual instalments)	1,562	13,295	2.9%	25	25	25	25
Excluded goods:	414	92,119	20.4%	0	25	21.5	14.9
	5,964	451,692	100%				
Notes: (a) As given in the market access schedule (for all but one of the lines). (b) As given in the schedule. Unlike the other ESA signatories, no CET rates are given in the schedule. (c) Calculated by multiplying the import value by the MFN tariff for each item, then totalling the results for all items, and dividing this total by total import value for all items. (d) This is the total of the import values included in the schedule. However, items in 14 HS6 sub-heads (in the 2007 version of the HS, used in the schedule) are not listed in the schedule. It is understood that these codes will be added to the schedule at a later date. According to data reported by Zambia to the UN's Comtrade database for 2007 (which is the only year for which data are available in the same version of the HS as the schedule), there were no imports in any of the missing sub-heads.							

Table 47. Summary of Zambia exclusions

Excluded items	# lines
Total	414 At 8-digit national-tariff-line level
Covered by WTO Agreement on Agriculture	151
In highest applicable tariff band (25%)	288 (of which 1 subject to 'Prohibition under Statutory Instrument No. 141 of 1996 The Environmental Protection')
Tariff 15%	109 (of which 2 subject to 'Prohibition under Statutory Instrument No. 20 Of 1994 The Environmental Protection', and 3 subject to 'Seasonal export quotas/prohibitions under Chapter 421, Control of Goods Act of 1954')
Tariff 5%	14 (of which 1 subject to 'Prohibition under Statutory Instrument No. 141 of 1996 The Environmental Protection')
Duty free	3 (all subject to 'Prohibition under Statutory Instrument No. 20 Of 1994 The Environmental Protection')

Clothing and textiles, various machinery and light manufactures, as well as agricultural foods are the most frequently listed exclusions (Table 48).

Table 48. Broad composition of Zambia exclusions

HS2	Description	Share of total ^a
62	articles of apparel and clothing accessories, not knitted or crocheted	15.7%
84	nuclear reactors, boilers, machinery and mechanical appliances; parts thereof	9.2%
85	electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles	8.5%
04	dairy produce; birds' eggs; natural honey; edible products of animal origin, nesoi	7.0%
87	vehicles other than railway or tramway rolling-stock, and parts and accessories thereof	6.3%
61	articles of apparel and clothing accessories, knitted or crocheted	6.0%
15	animal or vegetable fats and oils and their cleavage products; prepared edible fats; animal or vegetable waxes	5.8%
20	preparations of vegetables, fruit, nuts or other parts of plants	5.6%
40	rubber and articles thereof	5.3%
63	other made-up textile articles; sets; worn clothing and worn textile articles; rags	3.6%
02	meat and edible meat offal	3.1%
19	preparations of cereals, flour, starch or milk; pastrycooks' products	2.9%
09	coffee, tea, mat+ and spices	2.7%
16	preparations of meat, of fish or of crustaceans, molluscs or other aquatic invertebrates	2.2%
73	articles of iron or steel	2.2%
94	furniture; bedding, mattresses, mattress supports, cushions and similar stuffed furnishings; lamps and lighting fittings, nesoi; illuminated signs, illuminated name-plates and the like; prefabricated buildings	2.2%
21	miscellaneous edible preparations	1.4%
22	beverages, spirits and vinegar	1.2%
29	organic chemicals	1.2%
10	Cereals	1.0%
11	products of the milling industry; malt; starches; inulin; wheat gluten	1.0%
17	sugars and sugar confectionery	1.0%
69	ceramic products	1.0%
07	edible vegetables and certain roots and tubers	0.5%
14	vegetable plaiting materials; vegetable products nesoi	0.5%
36	explosives; pyrotechnic products; matches; pyrophoric alloys; certain combustible preparations	0.5%
08	edible fruit and nuts; peel of citrus fruits or melons	0.2%
12	oil seeds and oleaginous fruits; miscellaneous grains, seeds and fruit; industrial or medicinal plants; straw and fodder	0.2%
24	tobacco and manufactured tobacco substitutes	0.2%
26	ores, slag and ash	0.2%
27	mineral fuels, mineral oils and products of their distillation; bituminous substances; mineral waxes	0.2%
33	essential oils and resinoids; perfumery, cosmetic or toilet preparations	0.2%
37	photographic or cinematographic goods	0.2%
39	plastics and articles thereof	0.2%
49	printed books, newspapers, pictures and other products of the printing industry; manuscripts, typescripts and plans	0.2%
64	footwear, gaiters and the like; parts of such articles	0.2%
82	tools, implements, cutlery, spoons and forks, of base metal; parts thereof of base metal	0.2%
Note:		
(a) Number of excluded lines within HS chapter as a proportion of total number of excluded lines.		

Zimbabwe

Like the other ESA countries apart from Mauritius and Zambia, Zimbabwe's first tranche of liberalisation is in 2013 (Table 49). But its other two tranches begin a year later than the norm (in 2015) and, unusually, the liberalisation of final goods is completed one year earlier than that for intermediate goods.

Again as with the other countries, the COMESA CET for the products to be liberalised in 2013 is zero but recent Zimbabwean tariffs on some goods have been much higher than this level. The trade-weighted average MFN tariff in 2003 for the goods to be liberalised in 2013 was 12%. Since 45% of the country's imports from the EU in 2004–6 fall into this category the impact could be significant. The highest trade-weighted average, though, is for the final goods which will not be fully liberalised until 2022.

Zimbabwe is excluding from liberalisation a basket of commodities which accounted for about one-fifth of its imports from the EU in 2004–6. Only a relatively small number of these are agricultural products (Table 50). And only two fall clearly into the highest tariff band. But since a full 38% of the items that are excluded have an unknown tariff it is not possible to draw any firm conclusions on the extent to which exclusions will mitigate the adjustment effects of the IEPA. Three-quarters of those items for which the tariff is known have a rate of 10% or more. But 13 excluded items are totally duty free. Textiles, clothing and light manufactures head the list of excluded goods (Table 51).

Table 49. Summary of Zimbabwe market access schedule

	# lines	Average import value 2004–6 ^a		MFN 2003 ^b					CET ^c
		US\$000	Share of total	Min.	Max.	Simple average	Trade-weighted average ^d	# lines on which based ^e	
Total trade		129,292	100%						
Goods to be liberalised in:									
2013	1,480	58,021	44.9%	0	60	13.0	12.0	1,468	0
2015–2023 (reductions in 2015, 2018, 2021, 2023)	1,882	19,027	14.7%	0	80	12.4	8.8	1,881	10
2015–2022 (reductions every year)	1,149	26,215	20.3%	0	100	28.4	23.0	1,068	25
Excluded goods:	716	26,029	20.1%	0	100	23.7	42.4	447	Not shown in schedule
	5,227	129,292	100%					4,864	

Notes:

- (a) As given in the market access schedule.
- (b) MFN tariffs could not be identified (from the 2003 Zimbabwe tariff schedule in TRAINS – the most recent available) for 363 lines in the schedule (accounting for 1% of the average value of imports 2004–6).
- (c) The CET rate is included in the market access schedule (other than for the 716 excluded lines plus 1 other). There are preparatory periods for the CET to be achieved: for raw and capital goods (to be liberalised in 2013) this is 5 years (2008–12); for the rest the schedule says 6 years, but then gives dates of 2008–15 for intermediate goods (to be liberalised 2015–23) and 2008–14 for final goods (to be liberalised 2015–22).
- (d) Where a range of tariffs applies to different items within the HS6 sub-head, the highest has been used.
- (e) i.e. number of lines for which both MFN tariff and import value are known.

Table 50. Summary of Zimbabwe exclusions

Excluded items	# lines
Total	716 at HS6 sub-head level
Covered by WTO Agreement on Agriculture	68
Tariff unknown	269
In highest applicable tariff band	2 = 100%
Tariff 10% or more	350
Tariff less than 10%	82
Duty free	13

Table 51. Broad composition of Zimbabwe exclusions

HS2	Description	Share of total ^a
52	Cotton	18.0%
62	articles of apparel and clothing accessories, not knitted or crocheted	16.5%
61	articles of apparel and clothing accessories, knitted or crocheted	16.2%
82	Tools, implements, cutlery, spoons and forks, of base metal; parts thereof of base metal	5.6%
40	rubber and articles thereof	4.1%
70	Glass and glassware	4.1%
64	footwear, gaiters and the like; parts of such articles	3.9%
87	vehicles other than railway or tramway rolling-stock, and parts and accessories thereof	3.2%
71	natural or cultured pearls, precious or semi-precious stones, precious metals, metals clad with precious metal, and articles thereof; imitation jewellery; coin	2.8%
57	carpets and other textile floor coverings	2.5%
85	electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles	2.5%
22	beverages, spirits and vinegar	2.4%
69	ceramic products	2.2%
90	optical, photographic, cinematographic, measuring, checking, precision, medical or surgical instruments and apparatus; parts and accessories thereof	2.0%
04	Dairy produce; birds' eggs; natural honey; edible products of animal origin, nesoi	1.7%
10	Cereals	1.1%
11	products of the milling industry; malt; starches; inulin; wheat gluten	0.8%
41	Raw hides and skins (other than furskins) and leather	0.8%
84	nuclear reactors, boilers, machinery and mechanical appliances; parts thereof	0.8%
18	cocoa and cocoa preparations	0.7%
39	plastics and articles thereof	0.7%
48	paper and paperboard; articles of paper pulp, of paper or of paperboard	0.7%
21	miscellaneous edible preparations	0.6%
32	tanning or dyeing extracts; tannins and their derivatives; dyes, pigments and other colouring matter; paints and varnishes; putty and other mastics; inks	0.6%
34	Soap, organic surface-active agents, washing preparations, lubricating preparations, artificial waxes, prepared waxes, polishing or scouring preparations, candles and similar articles, modelling pastes, 'dental waxes' and dental preparations with a basis of plaster	0.6%
88	aircraft, spacecraft, and parts thereof	0.6%
96	miscellaneous manufactured articles	0.6%
15	Animal or vegetable fats and oils and their cleavage products; prepared edible fats; animal or vegetable waxes	0.3%
17	Sugars and sugar confectionery	0.3%
24	tobacco and manufactured tobacco substitutes	0.3%
35	albuminoid substances; modified starches; glues; enzymes	0.3%
38	miscellaneous chemical products	0.3%
47	Pulp of wood or of other fibrous cellulosic material; recovered (waste and scrap) paper or paperboard	0.3%

HS2	Description	Share of total ^a
68	articles of stone, plaster, cement, asbestos, mica or similar materials	0.3%
76	aluminium and articles thereof	0.3%
83	miscellaneous articles of base metal	0.3%
08	edible fruit and nuts; peel of citrus fruits or melons	0.1%
09	Coffee, tea, maté and spices	0.1%
27	mineral fuels, mineral oils and products of their distillation; bituminous substances; mineral waxes	0.1%
33	essential oils and resinoids; perfumery, cosmetic or toilet preparations	0.1%
37	photographic or cinematographic goods	0.1%
55	Man-made staple fibres	0.1%
56	wadding, felt and nonwovens; special yarns; twine, cordage, ropes and cables and articles thereof	0.1%
63	Other made-up textile articles; sets; worn clothing and worn textile articles; rags	0.1%
73	articles of iron or steel	0.1%
89	Ships, boats and floating structures	0.1%
<i>Note:</i>		
(a) Number of excluded lines within HS chapter as a proportion of total number of excluded lines.		

The list of items to be liberalised in 2013 which had recent MFN tariffs in excess of 20% is so long that in Table 52 it has been necessary to aggregate them to the HS 2-digit level. Just over one-third of the chapters which include some items with tariffs exceeding 20% are agricultural products, and in some cases (such as dairy produce, cereals and oil seeds) it is entirely possible that EU imports would compete with domestic production. Given the former sophistication of Zimbabwean industry it is also probable that some of the non-agricultural items that will be liberalised in 2013 are competitive with imports from the EU. However, in the light of the recent economic problems of Zimbabwe it is far from clear how great domestic production will be by 2013.

Table 52. Summary of Zimbabwe first-tranche liberalisations (2013)

HS2	# HS6 items aggregated	Covered by AoA?	Description	Tariff ^a	Average imports 2004–6 (\$000) ^b
Aggregation of all (326) items with tariff over 20%					
01	16	Yes	live animals	30	46
02	50	Yes	Meat and edible meat offal	40	0.4
03	30		fish and crustaceans, molluscs and other aquatic invertebrates	40	0.01
04	3	Yes	dairy produce; birds' eggs; natural honey; edible products of animal origin,	40	0.1
05	9	Yes	products of animal origin, nesoi	40	4
07	39	Yes	edible vegetables and certain roots and tubers	40	2
08	42	Yes	edible fruit and nuts; peel of citrus fruits or melons	40	1
09	1	Yes	coffee, tea, maté and spices	40	0.1
10	1	Yes	Cereals	25	4,853
12	3	Yes	oil seeds and oleaginous fruits; miscellaneous grains, seeds and fruit;	40	-
63	2		other made-up textile articles; sets; worn clothing and worn textile articles;	25	84
71	1		natural or cultured pearls, precious or semi-precious stones, precious	25	-
73	12		articles of iron or steel	40	46
76	2		aluminium and articles thereof	40	3
84	36		nuclear reactors, boilers, machinery and mechanical appliances; parts	40	1,985

HS2	# HS6 items aggregated	Covered by AoA?	Description	Tariff ^a	Average imports 2004–6 (\$000) ^b
85	35		electrical machinery and equipment and parts thereof; sound recorders and	60	3,264
86	10		railway or tramway locomotives, rolling-stock and parts thereof; railway or	25	1
87	11		vehicles other than railway or tramway rolling-stock, and parts and	40	370
89	3		ships, boats and floating structures	25	1
90	10		optical, photographic, cinematographic, measuring, checking, precision,	40	156
91	3		clocks and watches and parts thereof	25	2
94	1		furniture; bedding, mattresses, mattress supports, cushions and similar	25	34
95	2		Toys, games and sports requisites; parts and accessories thereof	40	1
96	1		Miscellaneous manufactured articles	30	0.002
97	3		works of art, collectors' pieces and antiques	40	10
Items with 15% tariff and imports of \$1 mn or more					
100640		Yes	Broken rice	15	2,087
847149			Data-processing machines, automatic, digital, presented in the form of	15	1,620
847160			Input or output units for digital automatic data processing machines, whether	15	1,119
Items with 10% tariff and imports of \$1 mn or more					
843143			Parts for boring or sinking machinery of sub-heading 8430.41 or 8430.49,	10	1,196
<i>Notes:</i>					
(a) Maximum MFN 2003, obtained from TRAINS database. No tariffs are listed for 12 codes in this tranche.					
(b) As given in the market access schedule.					

Regional coherence

The incoherence in IEPA schedules that may cause the most fundamental problems for the eventual implementation of a COMESA CET are those related to exclusions. If one COMESA state is removing a tariff on one good but it is being retained in full by its neighbour the two states cannot have a CET on imports from the EU. Since the prime reason for excluding an item is that it is considered very sensitive (for revenue raising or protectionist reasons) the second state is unlikely to be happy autonomously to remove its tariff, whilst the first is prevented its IEPA obligations from achieving parity by increasing its tariff.

Table 53 summarises the overlap (or lack of it) between the exclusion lists of all six states. Not a single product is being excluded by all six states and only a trivial number by as many as four. The vast majority are being excluded by only one state or by two. In other words there is almost total regional incoherence.

Table 53. Summary of ESA exclusions

	HS6 sub-heads	
	Number	Proportion
# HS6 sub-heads which are excluded by any country^a	1,473	100%
of which: excluded by 6 countries	-	0%
excluded by 5 countries	6	0.4%
excluded by 4 countries	19	1%
excluded by 3 countries	102	7%
excluded by 2 countries	318	22%
excluded by 1 country only	1,028	70%
Note: (a) All countries' exclusions except Zambia's are set at HS6, except for 7 of Comoros's (five of which fall into HS 330129, one into 330190 and one into 870831). 1,386 of the excluded codes are currently valid. 83 (five of Comoros's, 16 of Madagascar's, eight of Mauritius's, seven of Seychelles's and 51 of Zimbabwe's) are in codes which are not now valid. Four of Comoros's exclusions are in 6-digit codes which don't appear ever to have been valid in the HS. Zambia's 414 excluded lines fall within 385 HS6 sub-heads, 361 of which are entirely excluded from liberalisation. The remaining 24, however, also contain elements which Zambia is liberalising. This is not reflected in this table (which 'counts' all 385 sub-heads).		

On the other hand, the fact that all the initialisers other than Zambia and Zimbabwe are island economies means that the need for a complete CET is less serious than it would be between physically contiguous mainland states. All goods entering the island will do so through an air or seaport, where checks will be needed to sort regional from extra-regional goods. So incompatible tariffs need not be such an additional barrier to trade as would be the case with mainland states.

It is hard to know how to conclude on ESA. The initial impression of the liberalisation schedules is that the group is in several respects in a midway position between the West/Central African signatories on the one hand and EAC on the other. Unlike Ghana, Côte d'Ivoire and Cameroon, the commitments of the ESA states are not wholly unrelated but neither are they as closely linked as those of EAC. Moreover, unlike EAC a substantial number of regional integration scheme members are not currently parties to the IEPA. The trade policy differences between members and non-members of an IEPA are considerably greater than those between the members (disparate though their commitments are). It is entirely possible, therefore, that new obstacles to the COMESA customs union have been thrown up by the IEPA as a result of the split between initialisers and non-initialisers, the over-hasty forcing of precise definitions of products subject to the COMESA CET, and incoherent exclusion lists.

5.8 SADC

The SADC IEPA was initialised on 23 November 2007 by BLNS and on 12 December 2007 'provisionally' by Namibia. Since then it has been modified twice. The first modification

(finalised on 19 May 2008) was largely a restructuring and cleaning process without significant changes.⁹⁰ It is understood that this document was regarded as the basis for continued negotiations towards a comprehensive EPA by all parties.

Table 54. Changes of the SADC IEPA (November 2007 – September 2008)

Topic	Relevant contents	SADC IEPA initialled 23 Nov. 2007	SADC IEPA jointly revised 19 May 2008	SADC IEPA on Council website dated 18 Sept. 2008
Statement of Chief negotiators	Continued negotiations to be concluded no later than 31/12/08 Provisional application from 1 July 2008 on.	Yes	Yes	Statement has been removed
Preamble	South Africa is part of the SADC EPA	Yes	Yes	Removed
Article 2: Principles	TDCA shall be implemented complementary	Yes	Yes	Removed
Article 4: Regional integration	Reference to the TDCA	Yes	Yes	Removed
Article 21.3: Rules of origin (RoO)	Products originated in SA shall be subject to specific cumulation provisions to which particular attention shall be given when reviewing the agreement	Yes	Yes	Removed
Article 26: Customs duties on EU products	SADC EPA treatment of products originating in the European Community party	Joint SACU treatment Annex III (specification of treatment) is empty	Joint SACU treatment Annex III (specification of treatment) is empty	Separate SACU treatment (SA is excluded)
Article 28: MFN clause	South Africa was <i>de facto</i> excluded from MFN treatment	Yes	Yes	Reference to SA has been removed
Article 103	Relations with the Cotonou Agreement and the TDCA	Yes	Yes	Reference to TDCA has been removed
Annex 3	SACU/BLNS liberalisation schedule	Customs duties applicable on imports into the SACU member states of product originating in the European Community	Customs duties applicable on imports into the SACU member states of product originating in the European Community	Customs duties applicable on imports into BLNS of product originating in the European Community
Statement by Namibia	Namibia initialled the EPA on the understanding that its concerns would be addressed in the ongoing negotiations	No statement included	Yes	Yes

⁹⁰ The most relevant change (which is also understood to be disputed) is the removal of the single SADC IEPA states in several Articles (such as administrative cooperation and technical barriers to trade). While the initialled text often refers to 'the parties and the SADC EPA States, as the case may be', the 19 May text refers largely to 'the parties' (though not consistently throughout the document). Arguing that the SADC IEPA is not a single legal party that can act collectively, the ANSA group would like to see consistent reference to the single SADC IEPA states.

However, the document circulated by the Commission via the European Council to the EU member states for ratification on 18 September 2008 (COM(2008) 562 final) differs from the 19 May document (see Table 54). All references to South Africa and the TDCA have been deleted.

South Africa has consistently made known its dissatisfaction with the changes to the 19 May text which it had not authorised. Namibia as well as Angola (which still forms part of the SADC EPA negotiation group) have also raised concerns about the IEPA.

A major concern is the change of Article 26 (customs duties on products originating in the European Community). The removal of South Africa from the IEPA means that the BLNS countries now have a different liberalisation schedule *vis-à-vis* the EU than does South Africa under the TDCA, though the practical implications are expected to be minor since more than 90% of BLNS imports enter SACU via South Africa and so effectively pay the TDCA tariff. None the less, the political implications may be significant. South Africa has emphasised the importance of concluding one legal agreement between SACU and the EU in order to consolidate the former. In a letter sent to the European Council in early January 2009 the group re-emphasised the importance of South Africa being part of the IEPA and warned that signing the IEPA in its current form would create additional trade policy divisions within the region.

The Commission counters that it was South Africa's decision not to initial the IEPA. Moreover, SACU's two trade regimes with the EU would be aligned once the full EPA will be concluded. It therefore seeks the signature and ratification of the SADC IEPA by all contracting parties.

Other major concerns expressed by the 'ANSA sub-group' (Angola, Namibia, South Africa) with respect to the contents of the SADC IEPA are as follows.

- *Infant industry protection* (Article 24.2/3 and Article 34.1(b)). The infant industry protection (IIP) provisions in all the IEPA texts are reactive and restricted in time. ANSA would like to see an active IIP provision based on the provisions of Article XVIII of the GATT and Article 26 of the 2002 SACU Agreement. The SACU Agreement foresees the application of additional duties on imports for up to 8 years in order to build-up new industries, a provision that can be applied indefinitely.

- *Rules of origin (RoO)* (Article 21/Protocol 1). BLNS cannot source freely from its custom union partner South Africa due to cumulation restrictions on some products.
- *Prohibition of new export taxes* (Article 24). ANSA argues that export taxes have been used successfully as tool for increased value added processing, e.g. in the leather, meat and diamond industry. They want the ability of IEPA members to introduce or increase export taxes to be maintained.
- *Free circulation of goods* (Article 27). The fact that South Africa has not yet joined the IEPA raises a question mark over the free circulation of EU imports within SACU. Outside the SACU no joint customs regime exists so that the collection and re-distribution of customs duties would not be possible. The EC has emphasised that this article is necessary to avoid double taxation of its exports within the SADC EPA and intends to table practical modalities how to implement the provision so that it has this effect.
- *Removal of non-tariff barriers (NTBs)/QRs* (Articles 35 and 36). ANSA argue that this article is in conflict with Article 29 of the 2002 SACU Agreement which allows BLNS to protect themselves from South African competition for 'emergent agriculture and related agro-industries'.

In addition the sub-group is seeking more time and flexibility to negotiate trade in services and trade-related issues in order to take full account of the ongoing regional integration process. Angola has also requested increased flexibility on the EC's demand for reciprocity and additional development funds taking account of its status as an 'LDC emerging from conflict'.

Group membership

As indicated in Chapter 2, the countries of SADC are now split into four groups: initialisers of the SADC-minus IEPA; initialisers of the ESA IEPA; one initialiser of the EAC IEPA; and non-initialisers. This section covers only the four IEPA signatory members of SACU – BLNS – and Mozambique.

Box 12. Comparing the IEPA and TDCA

There are major differences between the BLNS schedules and those in the TDCA for two reasons.

1. Whereas the BLNS schedules are established by reference to HS 2007, those of the TDCA use the 1996 version of the HS or earlier.
2. The TDCA has a 'negative list' whereas BLNS (like all the other African IEPAs) have a 'positive list'. Under the former, any product not specifically listed in the schedules is liberalised on the entry into force of the agreement. In the latter, the agreement lists what is to happen to each and every item; if an item is not listed, no agreement has been made on making changes to the status quo.

As a result of these two differences, as many as 56% of the codes listed in the BLNS IEPA are not listed in the TDCA. This makes it impossible to determine from these two documents alone the exact overlap between the agreements. Further guidance has been obtained by comparing the BLNS IEPA provisions with the tariff applied in 2007 by South Africa on imports covered by the TDCA (according to the tariff schedule available in the UNCTAD TRAINS database). Under the TDCA South Africa agreed to liberalise in four tranches: on entry into force, in 2003, in 2005 and in 2012. In other words, all the liberalisation that South Africa is required to make under the TDCA has either already happened or will not happen until 2012.

Hence, any commitment made by BLNS to liberalise before 2012 an item that faced a positive TDCA tariff in 2007 must involve, by definition, a more rapid tariff removal than South Africa is required to make. In addition, BLNS have agreed to liberalise some goods after 2012. In cases where these will be liberalised by South Africa in 2012, the effect is to allow BLNS (de jure if not de facto) to liberalise more slowly than does South Africa. But if the items are goods on South Africa's exclusion list, the BLNS will have agreed to liberalise products that their partner has not agreed to liberalise fully. Unfortunately, observance of applied tariffs in 2007 does not indicate which of these two possibilities applies. This is the area in which the problems of relating the BLNS and TDCA commitments are likely to have the greatest operational significance.

BLNS have committed to liberalise in three tranches that end before or by 2012 as well as in a further four tranches, all of which begin before 2012 but end afterwards. Because of the changes in the nomenclature, and the fact that the schedule is partly at 4-digit, partly at 6-digit and partly at 8-digit levels, it is not always possible to be certain how many of the items listed in each tranche faced positive tariffs in 2007. But it is clear that there does exist some ‘earlier-than-TDCA’ liberalisation.

One of the most contentious unresolved issues is the relationship between the IEPA and the TDCA. Were BLNS to become IEPA signatories whilst South Africa stays outside there would be two SACU tariff regimes for imports from the EU. This would give rise to political, legal and technical challenges. Although the third of these is probably the least important, it is the only one that can be dealt in a study such as this. Whether or not two tariff regimes is tenable technically depends partly on the extent of the difference. An effective customs union assumes at least an *almost common* external tariff. The European Community, for example, did not have a comprehensive CET covering all goods until 1992. But if the differences become substantial problems of tax-avoiding trade diversion and barriers to internal trade will start to become more serious.

A key task, therefore, is to establish the scale of the differences in the liberalisation schedules agreed by the four SACU initialisers under the IEPA and by South Africa in the TDCA, and how soon will they emerge. The answers will determine how great a barrier the IEPA has created to regional integration among signatories and between them and non-signatories. For reasons explained in Box 12 it is not straightforward to compare the IEPA and the TDCA, but a sufficiently good picture can be obtained for the comparison in the next sub-section.

BLNS and TDCA liberalisation

Table 55 provides analogous information for BLNS to that provided on the other IEPA signatories above. Because no agreement has yet been achieved on any changes to the IEPA initialled at the end of 2007 (see Chapter 2) the tables still refer to an initial tranche of liberalisation taking place in 2008.

The table has two sets to show the tariff *status quo* because this is different for Botswana, Lesotho and Swaziland (BLS) on the one hand and for Namibia on the other.

Currently goods originating in the EU are treated in one of two ways according to the country through which they first enter SACU. Those goods that enter SACU via the territory of Botswana, Lesotho, South Africa or Swaziland are subject to the tariffs specified in TDCA. Those goods that enter via Namibia have been charged the MFN tariff set out in the SACU CET. But Namibia has not applied 'top-up' duties to EU-originating goods that enter its territory via another member and have paid a lower TDCA tariff than would have been the case had they been imported direct (and nor have BLS done so).

In other words, BLS are already applying the TDCA and will see tariffs fall further only to the extent that the IEPA brings forward tariff cuts in the TDCA or extends them to products excluded from the TDCA. Namibia, by contrast, will experience a change in the tariff on all goods imported directly from the EU that face IEPA liberalisation.

The great bulk of BLNS imports (by value) will either be liberalised by 2012 or are, as with the TDCA, industrial products subject to partial liberalisation. Almost three-quarters of imports are to be liberalised in the first tranche (set as '2008' in the initialised version of the text) and by 2012 the liberalisation process will have been completed (as far as it goes) on 87% of the countries' imports. Just 5.8% of goods are excluded from liberalisation altogether.

By 2012, therefore, the import policy of BLNS with respect to the EU is likely to be very similar to that of South Africa under the TDCA (although because of product classification problems noted above it is not possible to be absolutely certain that everything that BLNS will liberalise by 2012 is identical to what South Africa will liberalise under the TDCA). Just 67 items will be liberalised after 2012 (by 2018) and between them they account for only 1.5% of BLNS imports from the EU. A further four items will be 'frozen at 2007 TDCA tariff rates'. None is imported in significant values at the present. The corresponding tables for each of the four BLNS states are provided in Appendix 2. These show that Swaziland is the principal destination for the goods which will not be liberalised until 2011–2015.

Table 55. Summary of BLNS market access schedule

Tariff range	# lines	Import value 2007 (a)				TDCA tariff ^b (Botswana, Lesotho, Swaziland)				MFN tariff ^c (Namibia)			
		€000	Share of total	Min.	Max.	Simple avg. ^d	Trade-weighted avg. ^{3a} & # lines on which calculated	Min.	Max.	Simple avg. ^d	Trade-weighted avg. ^{3a} & # lines on which calculated	Min.	Max.
Total trade in HS 1-97		366,107	100%										
Goods to be liberalised in:													
2008	4,161	271,746	74.2%	0	30	or spec	0.1	0.03	3,127	0	55	Or spec.	1.9
2008-10	21	524	0.1%	6.3	60.48	or spec	15.2	8.7	16	10	96	Or spec.	24.1
2008-12	1,326	48,035	13.1%	0	60.48	or spec	9.4	8.9	908	0	96	Or spec.	15.3
2008-14	2	0	0.0%	25	25	or spec	25.0	0	2	25	25	or spec.	25.0
2008-17	16	13	0.0%	15.75	25	or spec	24.4	0	13	25	25	or spec.	25.0
2011-15	46	5,464	1.5%	0	20	or spec	11.4	10.6	38	5	40	or spec.	22.7
2011-18	3	42	0.0%	15.75	15.75	or spec	15.8	15.8	3	25	25	or spec.	25.0
Goods not being fully liberalised:													
Partial liberalisation ¹	831	17,002	4.6%	0	31	or spec	12.9	16.0	739	0	43	or spec.	24.9
Frozen at 2007 TDCA rate ²	4	223	0.1%	12.6	17.01	or spec	14.8	0	2	20	27	or spec.	23.5
Excluded goods ³	177	21,192	5.8%	0	96	or spec	20.9	6.1	123	0	96	or spec.	21.3
Goods for which the treatment is not clear from the schedule ⁴	80	1,867	0.5%	0	20	or spec	5.1	9.4	56	0	40	or spec.	10.0
	6,667	366,107	100.0%						5,027				5,016

Notes:

- (a) No import data are included in the market access schedule. Because the schedule is in the 2007 version of the HS, and because only Namibia has reported 2007 trade to the UN's Comtrade database, EU data on EU27 exports to BLNS in 2007 from Eurostat's COMEXT database have been used to mirror imports. Because the schedule is partly at 8-digit NTL level and partly at HS6/4, items within a given HS6 sub-head may fall into two or more liberalisation tranches, or be split between liberalisation and exclusion. Wherever this is the case, the import value (which is at HS6 level) for the full HS6 sub-head has been attributed to the latest liberalisation tranche or, where some items within it are to be liberalised and others not, to the exclusion list.
- (b) 2007 'Preferential tariff for European Union countries' from South Africa's schedule in UNCTAD's TRANS database. Where no preferential rate is shown for an item, it has been assumed that the MFN rate applies. Tariffs were unobtainable for 8 of the lines in the schedule which are in codes no longer valid in 2007.
- (c) 2007 MFN duties (applied) from South Africa's schedule in UNCTAD's TRANS database. Tariffs were unobtainable for 8 of the lines in the schedule which are in codes no longer valid in 2007.
- (d) *Ad valorem* tariffs only. Where a range of tariffs applies to different items within an HS6 sub-head, the highest has been used in these calculations. Where the given tariff is, e.g., '10% or 100c/kg', the 10% *ad valorem* has been used.
- (e) Calculated by multiplying the import value by the max. AV tariff for each item (specific duties are not taken account of), then totalling the results for all items, and dividing this total by total import value for all items. Only items for which both an AV tariff and the import value are known are included in the calculation. In most of the cases where import data are 'missing', this is because the value applying to each HS6 sub-head has been 'counted only once'.
- (f) i.e. goods categorised as Industry List 5, on which tariffs will be reduced but not removed.
- (g) i.e. goods categorised as List 5, regime 1.
- (h) i.e. goods categorised as Agriculture List 4 or Industry List 6.
- (i) A list of these items can be found in Appendix 2, Table A2.6.

By 2012, therefore, the import policy of BLNS with respect to the EU is likely to be very similar to that of South Africa under the TDCA (although because of product classification problems noted above it is not possible to be absolutely certain that everything that BLNS will liberalise by 2012 is identical to what South Africa will liberalise under the TDCA). Just 67 items will be liberalised after 2012 (by 2018) and between them they account for only 1.5% of BLNS imports from the EU. A further four items will be ‘frozen at 2007 TDCA tariff rates’. None is imported in significant values at the present. The corresponding tables for each of the four BLNS states are provided in Appendix 2. These show that Swaziland is the principal destination for the goods which will not be liberalised until 2011–2015.

BLNS exclusions

Table 56 summarises the exclusion basket of BLNS, which accounts for 10.5% of the value of BLNS imports from the EU. Once again, figures are given separately for BLS on the one hand and Namibia on the other. Most items face tariffs of over 10% (and up to a possible 96%) but as with many other IEPA signatories, there are some items on the list that are currently duty free. Clothing, textiles, motor vehicles, and a wide range of agricultural and manufactured goods make up the bulk of the list (Table 57).

Table 56. Summary of BLNS exclusions^a

Excluded items	# lines	
Total	1,012	
Covered by WTO Agreement on Agriculture	105	
	Botswana, Lesotho, Swaziland	Namibia
Specific duty only	9	11
In highest applicable tariff band	6 = 450c/kg with a maximum of 96% ^b	6 = 450c/kg with a maximum of 96% ^b
Tariff 10% or more	736	887
Tariff less than 10%	194	44
Duty free	67	64
<i>Notes:</i>		
(a) As shown in the BLNS summary tables, ‘exclusions’ include goods to be only partially liberalised, goods whose rates are to be frozen at the 2007 TDCA rate, and goods explicitly excluded from liberalisation.		
(b) This is assumed to be the highest applicable tariff – although it is possible that some of the other specific duties are in fact higher.		

Table 57. Broad composition of BLNS exclusions

HS2	Description	Share of total ^a
52	Cotton	11.7%
62	articles of apparel and clothing accessories, not knitted or crocheted	11.0%
61	articles of apparel and clothing accessories, knitted or crocheted	9.3%
55	Man-made staple fibres	8.5%
54	Man-made filaments	7.4%
60	knitted or crocheted fabrics	5.8%
87	vehicles other than railway or tramway rolling-stock, and parts and accessories thereof	5.0%
02	meat and edible meat offal	4.3%
58	special woven fabrics; tufted textile fabrics; lace; tapestries; trimmings; embroidery	3.9%
59	impregnated, coated, covered or laminated textile fabrics; textile articles of a kind suitable for industrial use	3.7%
63	other made-up textile articles; sets; worn clothing and worn textile articles; rags	3.7%
27	mineral fuels, mineral oils and products of their distillation; bituminous substances; mineral waxes	3.5%
64	footwear, gaiters and the like; parts of such articles	2.7%
40	rubber and articles thereof	2.2%
51	wool, fine or coarse animal hair; horsehair yarn and woven fabric	2.1%
57	carpets and other textile floor coverings	2.1%
42	articles of leather; saddlery and harness; travel goods, handbags and similar containers; articles of animal gut (other than silkworm gut)	1.9%
53	other vegetable textile fibres; paper yarn and woven fabrics of paper yarn	1.9%
04	dairy produce; birds' eggs; natural honey; edible products of animal origin, nesoi	1.4%
16	preparations of meat, of fish or of crustaceans, molluscs or other aquatic invertebrates	1.3%
11	products of the milling industry; malt; starches; inulin; wheat gluten	1.2%
84	nuclear reactors, boilers, machinery and mechanical appliances; parts thereof	1.2%
98	[No description]	0.9%
17	sugars and sugar confectionery	0.6%
56	wadding, felt and nonwovens; special yarns; twine, cordage, ropes and cables and articles thereof	0.5%
10	Cereals	0.4%
29	organic chemicals	0.4%
21	miscellaneous edible preparations	0.3%
28	inorganic chemicals; organic or inorganic compounds of precious metals, of rare-earth metals, of radioactive elements or of isotopes	0.3%
83	miscellaneous articles of base metal	0.3%
19	preparations of cereals, flour, starch or milk; pastrycooks' products	0.2%
68	articles of stone, plaster, cement, asbestos, mica or similar materials	0.2%
70	glass and glassware	0.2%
23	residues and waste from the food industries; prepared animal fodder	0.1%
39	plastics and articles thereof	0.1%
94	furniture; bedding, mattresses, mattress supports, cushions and similar stuffed furnishings; lamps and lighting fittings, nesoi; illuminated signs, illuminated name-plates and the like; prefabricated buildings	0.1%
Note:		
(a) Number of excluded lines within HS chapter as a proportion of total number of excluded lines.		

The first BLNS tranche

Table 58 lists all the items that the countries will liberalise this year and which face *ad valorem* tariffs of 20% or more and/or specific duties. All are fish and none is covered by the TDCA, which does not at present have a fisheries dimension. Consequently, from the start of implementation BLNS will have IEPA tariffs that are sharply lower than those being applied by South Africa for these goods.

Given that almost three-quarters of the imports will be liberalised immediately on implementation, the list is relatively short – but it covers only the items that will be liberalised by *all four* countries. There is a longer list for Namibia (in Appendix 2, Table A2.5), reflecting the fact that it, alone, has not been applying the TDCA tariff rates. In other words the additional high-tariff products on which Namibia will liberalise are those that are necessary to bring its current regime on imports from the EU into line with the TDCA; it is only the additional reductions that all four BLNS countries have to make going beyond what has already been undertaken under the TDCA that are listed in Table 58.

Table 58. Summary of BLNS first-tranche liberalisations

Code	Description	Applied MFN 2007 ^a	
		AV (%)	Specific
<u>All items with tariff of over 20% (or a specific duty)</u>			
030311	sockeye salmon (red salmon) (oncorhynchus nerka)	25	
030322	Atlantic salmon (salmo salar) and danube salmon (hucho hucho)	25	
030411	swordfish (xiphias gladius)	25	
030412	toothfish (dissostichus spp.)	25	
03042190	Other	25	
03042290	Other	25	
03049190	Other	25	
03049290	Other	25	
160411	Salmon		6c/kg
16041210	Frozen	25	25% or 200c/kg
16041290	Other		6c/kg
16041310	sprats (sprattus sprattus) in oil, in airtight metal containers		2,4c/kg net
16041315	sardinella (sardinella spp.), in airtight metal containers		2,4c/kg net
16041380	Other, frozen	25	25% or 200c/kg
16041390	Other		6c/kg
16041410	Frozen	25	25% or 200c/kg
16041490	Other		6c/kg
16041510	Frozen	25	25% or 200c/kg
16041520	In airtight metal containers, not frozen		6c/kg
16041590	Other		6c/kg
160416	Anchovies	25	
16041920	horse-mackerel (trachurus trachurus), in airtight metal containers, not frozen		6c/kg
16041990	other		6c/kg
16042010	fish paste	25	16,5c/kg with a maximum of 25%
16042030	other anchovies	25	
16042040	other sardines (pilchards) (sardinops spp.), mackerel and horse-mackerel (trachurus trachurus), in airtight metal containers		6c/kg
16042090	other		6c/kg
16043010	caviar	30	
16043020	caviar substitutes	27	
16051080	other, in airtight metal containers		5,5c/kg
16051090	Other		5,5c/kg
16052080	Other, in airtight metal containers		5,5c/kg
16052090	Other		5,5c/ka

Code	Description	Applied MFN 2007 ^a	
		AV (%)	Specific
16053090	Other	30	
16054080	Other, in airtight metal containers		5,5c/kg
16054090	Other		5,5c/kg
16059020	Other molluscs, in airtight metal containers		5,5c/kg
16059030	Other molluscs		5,5c/kg
16059040	Other aquatic invertebrates, in airtight metal containers		2,75c/kg
16059090	Other		2,25c/kg
There are no items with a tariff of 10–20% in which any BLNS country had imports from the EU in 2007 of €1 mn or more			
<i>Note:</i>			
(a) None of the items is covered by the TDCA.			

Mozambique: the broad picture

Unlike BLNS, Mozambique's commitments are not linked to the TDCA and can be analysed in the same way as for all the other African states and Tables 59–62 provide analogous information. There does exist one difference, though, between the approach of the Mozambique agreement and the others, and this concerns the exclusions from liberalisation. The Mozambique agreement does not provide a positive list of exclusions. Rather, it lists the 2,138 8-digit national tariff lines (falling into 2,084 separate HS6 sub-heads) which will be liberalised. The items that will be excluded must be inferred by comparing this list with Mozambique's full 2007 tariff schedule:⁹¹ any code in that which is not included in the schedule is assumed to be excluded from liberalisation. When these 'exclusions' codes are 'added' to the IEPA schedule, it brings the number up to 5,377 lines, falling into the 5,224 HS6 sub-heads of HS 2002.

The Mozambique liberalisation schedule was subject to continuing negotiations during 2008. As a result, there are several changes from the version included in the IEPA that was initialled at the end of 2007. The first tranche of liberalisation has been put back from 2008 to 2009, which is reasonable enough given the lapse of time, and substantially increased.⁹² Some 2,109 lines (85 of them – accounting for almost 16% of total import value – already duty free) are to be liberalised on entry into force before 1 January 2009 (Table 59). They account for 70.5% of imports⁹³ which compares to a requirement in the original schedule to liberalise only 50.8% of imports in the first tranche. The second tranche of liberalisation has also been increased compared to

⁹¹ Taken from UNCTAD's TRAINS database.

⁹² The 2007 version of the schedule indicated that the 2018 tranche was to be liberalised by 1 Jan. 2018 and the '2008' tranche on entry into force. The latest version supplied to the team includes no text so it is possible that this has changed, but the team have no reason to suppose that it has and so the assumption is that the first tranche is still effective on entry into force and the second will be effected by 1 January of 2023 i.e. in practical terms by the end of 2022. There is no indication either in the latest schedule or in the text accompanying the last version that there is to be any phasing-down prior to the specified dates – i.e. it is possible that, following the first tranche of liberalisation, no further tariff cuts are needed until 31 December 2022.

⁹³ In 2005 according to the import figures stated in the schedule.

the original schedules (from 2.6% of imports to 11%) but deferred from 2018 to 2023, bringing it into line with several other African IEPAs.

The increase in both tranches of tariff removal has been accommodated by reducing the share of imports that are excluded from liberalisation. We infer (from their absence in the list of items to be liberalised) that some 3,239 national tariff lines are excluded. In terms of the number of goods this is only a small decrease (of 29) from what was missing from the original schedule. But according to the data in the schedule it represents a large fall in the proportion of trade that is excluded: down from 37.8% to 18.5%.⁹⁴ Since no source for import values is given in the schedule it is not possible to check why such a small fall in the number of exclusions should result in such a large decrease in the proportion of trade that is excluded.⁹⁵

Table 59. Summary of Mozambique market access schedule

	# lines	Import value 2005		MFN tariff ^a			
		US\$000	Share of total	Min.	Max.	Simple average	Trade-weighted average ^c
Total trade in HS 1–97^b		266,305	100%				
Goods to be liberalised:							
2009	2,109	187,809	70.5%	0	20	9.2	5.2
2023	29	29,169	11.0%	2.5	20	8.1	6.2
Excluded goods:^d	3,239	49,326	18.5%	0	20	11.1	n/a
	5,377	266,305	100%				
Notes:							
(a) As given in the market access schedule, augmented by data from TRAINS – see note (d).							
(b) As given in the market access schedule – but see note (d).							
(c) Calculated by multiplying the import value by the tariff for each item, then totalling the results for all items, and dividing this total by total import value for all items. This was not possible for excluded items – see note (d).							
(d) The market access schedule lists only the 2,138 items to be liberalised. The number of items being excluded, and their codes, were identified by comparing the market access schedule with Mozambique's 2007 tariff schedule: any code in the latter which is not included in the former has been assumed to be being excluded. A total import value for these excluded items was derived by subtracting the value of imports of the goods listed in the schedule from the total value of imports also shown in the schedule. Because this gives only a total figure for all exclusions (with no detail on imports in the individual items), it is not possible to calculate a trade-weighted average tariff.							

Mozambique exclusions

These 'apparent exclusions' are summarised in Table 60, with more detail provided in Table 61. Some 41% of the excluded items face tariffs of 20% (the highest level) but almost 60% face tariffs of less than 10%. As many as 33 of the items inferred to be excluded are already duty free. The HS chapter summary of the exclusions in Table 61

⁹⁴ The schedule contains import values from the EU (for 2005 in US\$) – but only for items being liberalised, not the exclusions. However, it also includes a summary which gives the full value of imports from the EU. It has been assumed, therefore, that the difference between this total and the total for the listed items being liberalised, is the value of imports in excluded items.

⁹⁵ About half of the value fall might be due to the methodology used in our analysis of the original data.

shows that they include industrial inputs (chemicals, iron and steel), together with various items for which exclusion aims to protect domestic production (clothing, fish, vegetables, and processed agriculture), plus items such as vehicles for which tariffs are probably revenue raising.

Table 60. Summary of Mozambique exclusions

Excluded items	# lines
Total	3,239 at 8-digit NTL level, falling into 3,162 HS6 sub-heads
Covered by WTO Agreement on Agriculture	585
In highest applicable tariff band	1,319 = 20%
Tariff 10% or more	—
Tariff less than 10%	1,887
Duty free	33

Table 61. Broad composition of Mozambique exclusions

HS2	Description	Share of total ^a
29	organic chemicals	9.2%
72	iron and steel	5.1%
28	inorganic chemicals; organic or inorganic compounds of precious metals, of rare-earth metals, of radioactive elements or of isotopes	4.7%
52	Cotton	4.0%
62	articles of apparel and clothing accessories, not knitted or crocheted	3.6%
61	articles of apparel and clothing accessories, knitted or crocheted	3.6%
73	articles of iron or steel	3.3%
03	fish and crustaceans, molluscs and other aquatic invertebrates	3.0%
87	vehicles other than railway or tramway rolling-stock, and parts and accessories thereof	2.5%
55	man-made staple fibres	2.3%
25	salt; sulphur; earths and stone; plastering materials, lime and cement	2.2%
38	miscellaneous chemical products	2.0%
70	Glass and glassware	1.8%
07	edible vegetables and certain roots and tubers	1.8%
63	Other made-up textile articles; sets; worn clothing and worn textile articles; rags	1.7%
84	nuclear reactors, boilers, machinery and mechanical appliances; parts thereof	1.7%
27	mineral fuels, mineral oils and products of their distillation; bituminous substances; mineral waxes	1.7%
71	natural or cultured pearls, precious or semi-precious stones, precious metals, metals clad with precious metal, and articles thereof; imitation jewellery; coin	1.6%
02	Meat and edible meat offal	1.6%
20	preparations of vegetables, fruit, nuts or other parts of plants	1.6%
15	animal or vegetable fats and oils and their cleavage products; prepared edible fats; animal or vegetable waxes	1.5%
96	miscellaneous manufactured articles	1.5%
68	articles of stone, plaster, cement, asbestos, mica or similar materials	1.4%
81	Other base metals; cermets; articles thereof	1.4%
32	tanning or dyeing extracts; tannins and their derivatives; dyes, pigments and other colouring matter; paints and varnishes; putty and other mastics; inks	1.4%
95	toys, games and sports requisites; parts and accessories thereof	1.2%
94	furniture; bedding, mattresses, mattress supports, cushions and similar stuffed furnishings; lamps and lighting fittings, neso; illuminated signs, illuminated name-plates and the like; prefabricated buildings	1.2%
26	ores, slag and ash	1.1%
37	photographic or cinematographic goods	1.1%
51	Wool, fine or coarse animal hair; horsehair yarn and woven fabric	1.1%
33	essential oils and resinoids; perfumery, cosmetic or toilet preparations	1.0%
64	footwear, gaiters and the like; parts of such articles	1.0%
08	edible fruit and nuts; peel of citrus fruits or melons	1.0%
12	oil seeds and oleaginous fruits; miscellaneous grains, seeds and fruit; industrial or medicinal plants; straw and fodder	1.0%

HS2	Description	Share of total ^a
04	dairy produce; birds' eggs; natural honey; edible products of animal origin, nesoi	1.0%
60	knitted or crocheted fabrics	0.9%
41	raw hides and skins (other than furskins) and leather	0.9%
11	products of the milling industry; malt; starches; inulin; wheat gluten	0.8%
23	residues and waste from the food industries; prepared animal fodder	0.8%
16	preparations of meat, of fish or of crustaceans, molluscs or other aquatic invertebrates	0.8%
34	soap, organic surface-active agents, washing preparations, lubricating preparations, artificial waxes, prepared waxes, polishing or scouring preparations, candles and similar articles, modelling pastes, 'dental waxes' and dental preparations with a basis of plaster	0.8%
54	man-made filaments	0.8%
69	ceramic products	0.8%
86	railway or tramway locomotives, rolling-stock and parts thereof; railway or tramway track fixtures and fittings and parts thereof; mechanical (including electro-mechanical) traffic signalling equipment of all kinds	0.7%
74	copper and articles thereof	0.6%
85	electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles	0.6%
93	Arms and ammunition; parts and accessories thereof	0.6%
09	coffee, tea, maté and spices	0.6%
58	special woven fabrics; tufted textile fabrics; lace; tapestries; trimmings; embroidery	0.6%
05	products of animal origin, nesoi	0.6%
22	beverages, spirits and vinegar	0.6%
40	rubber and articles thereof	0.6%
01	live animals	0.5%
21	miscellaneous edible preparations	0.5%
47	pulp of wood or of other fibrous cellulosic material; recovered (waste and scrap) paper or paperboard	0.5%
53	Other vegetable textile fibres; paper yarn and woven fabrics of paper yarn	0.5%
88	aircraft, spacecraft, and parts thereof	0.5%
91	clocks and watches and parts thereof	0.5%
35	albuminoidal substances; modified starches; glues; enzymes	0.4%
48	paper and paperboard; articles of paper pulp, of paper or of paperboard	0.4%
75	nickel and articles thereof	0.4%
17	sugars and sugar confectionery	0.4%
13	lac; gums, resins and other vegetable saps and extracts	0.4%
39	plastics and articles thereof	0.4%
65	headgear and parts thereof	0.4%
90	optical, photographic, cinematographic, measuring, checking, precision, medical or surgical instruments and apparatus; parts and accessories thereof	0.4%
44	Wood and articles of wood; wood charcoal	0.3%
10	Cereals	0.3%
43	furskins and artificial fur; manufactures thereof	0.3%
31	Fertilisers	0.3%
14	vegetable plaiting materials; vegetable products nesoi	0.2%
24	tobacco and manufactured tobacco substitutes	0.2%
50	Silk	0.2%
67	prepared feathers and down and articles made of feathers or of down; artificial flowers; articles of human hair	0.2%
36	explosives; pyrotechnic products; matches; pyrophoric alloys; certain combustible preparations	0.2%
66	umbrellas, sun umbrellas, walking-sticks, seat-sticks, whips, riding-crops and parts thereof	0.2%
89	Ships, boats and floating structures	0.2%
92	musical instruments; parts and accessories of such articles	0.2%
97	works of art, collectors' pieces and antiques	0.2%
06	live trees and other plants; bulbs, roots and the like; cut flowers and ornamental foliage	0.2%
59	impregnated, coated, covered or laminated textile fabrics; textile articles of a kind suitable for industrial use	0.2%
57	carpets and other textile floor coverings	0.2%
83	miscellaneous articles of base metal	0.2%
56	wadding, felt and nonwovens; special yarns; twine, cordage, ropes and cables and articles thereof	0.1%
79	zinc and articles thereof	0.1%
76	aluminium and articles thereof	0.1%
78	lead and articles thereof	0.1%
80	tin and articles thereof	0.1%

HS2	Description	Share of total ^a
18	cocoa and cocoa preparations	0.1%
30	pharmaceutical products	0.1%
45	cork and articles of cork	0.1%
46	manufactures of straw, of esparto or of other plaiting materials; basketware and wickerwork	0.03%
Note: (a) Number of excluded lines within HS chapter as a proportion of total number of excluded lines.		

The first Mozambique tranche

Table 62 summarises the products in the first tranche of liberalisation. Because such a large proportion of imports is to be liberalised in this first, immediate tranche, the table presents data aggregated to HS chapter level as the only practical way to present such a long list. The product groups in which the largest number of items will be liberalised are (in declining order): electrical machinery (HS 85), paper and paperboard (HS 48), optical etc. equipment (HS 90), plastics (HS 39), clocks and watches (HS 91), manmade filaments (HS 54), fruit and nuts (HS 08), woven fabrics (HS 58), and leather articles (HS 42).

Table 62. Summary of Mozambique first-tranche liberalisations (2009)

HS2	# 8d items aggregated	Covered by AoA?	Description	Imports from EU 2005 (\$000)
Aggregation of all (555) items with tariff of 20%^b				
02	10	Yes	meat and edible meat offal	14
07	1	Yes	edible vegetables and certain roots and tubers	0
08	24	Yes	edible fruit and nuts; peel of citrus fruits or melons	36
09	12	Yes	coffee, tea, maté and spices	16
10	4	Yes	Cereals	0
12	3	Yes	oil seeds and oleaginous fruits; miscellaneous grains, seeds and fruit; industrial or medicinal plants; straw and fodder	-
17	2	Yes	sugars and sugar confectionery	86
18	6	Yes	cocoa and cocoa preparations	67
19	16	Yes	preparations of cereals, flour, starch or milk; pastrycooks' products	980
20	4	Yes	preparations of vegetables, fruit, nuts or other parts of plants	6
22	10	Yes	beverages, spirits and vinegar	816
24	1	Yes	tobacco and manufactured tobacco substitutes	-
25	1		salt; sulphur; earths and stone; plastering materials, lime and cement	11
32	1		tanning or dyeing extracts; tannins and their derivatives; dyes, pigments and other colouring matter; paints and varnishes; putty and other mastics; inks	150
35	1		albuminoidal substances; modified starches; glues; enzymes	20
36	1		explosives; pyrotechnic products; matches; pyrophoric alloys; certain combustible preparations	-
39	29		plastics and articles thereof	1,115
40	17		rubber and articles thereof	1,244
42	20		articles of leather; saddlery and harness; travel goods, handbags and similar containers; articles of animal gut (other than silkworm gut)	124
43	2		furskins and artificial fur; manufactures thereof	-
44	6		wood and articles of wood; wood charcoal	23
46	4		manufactures of straw, of esparto or of other plaiting materials; basketware and wickerwork	1
48	37		paper and paperboard; articles of paper pulp, of paper or of paperboard	256

HS2	# 8d items aggregated	Covered by AoA?	Description	Imports from EU 2005 (\$000)
49	7		printed books, newspapers, pictures and other products of the printing industry; manuscripts, typescripts and plans	131
50	2		Silk	0
51	2		wool, fine or coarse animal hair; horsehair yarn and woven fabric	-
53	3		other vegetable textile fibres; paper yarn and woven fabrics of paper yarn	-
54	25		man-made filaments	74
55	19		man-made staple fibres	1
56	1		wadding, felt and nonwovens; special yarns; twine, cordage, ropes and cables and articles thereof	0
57	18		carpets and other textile floor coverings	40
58	22		special woven fabrics; tufted textile fabrics; lace; tapestries; trimmings; embroidery	13
59	1		impregnated, coated, covered or laminated textile fabrics; textile articles of a kind suitable for industrial use	-
60	14		knitted or crocheted fabrics	26
62	1		articles of apparel and clothing accessories, not knitted or crocheted	12
63	3		other made-up textile articles; sets; worn clothing and worn textile articles; rags	147
73	2		articles of iron or steel	291
74	4		copper and articles thereof	2
76	4		aluminium and articles thereof	102
78	1		lead and articles thereof	0
79	1		zinc and articles thereof	3
80	1		tin and articles thereof	-
82	18		tools, implements, cutlery, spoons and forks, of base metal; parts thereof of base metal	64
83	10		miscellaneous articles of base metal	63
84	19		nuclear reactors, boilers, machinery and mechanical appliances; parts thereof	1,123
85	80		electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles	1,527
87	1		vehicles other than railway or tramway rolling-stock, and parts and accessories thereof	38
89	4		ships, boats and floating structures	3
90	34		optical, photographic, cinematographic, measuring, checking, precision, medical or surgical instruments and apparatus; parts and accessories thereof	173
91	29		clocks and watches and parts thereof	87
92	16		musical instruments; parts and accessories of such articles	9
96	1		miscellaneous manufactured articles	1
There are no items with a tariff of 10% or more				

As a result of its IEPA liberalisation Mozambique will lose hypothetical revenue of \$11.6 million. Unsurprisingly, given the front loading of the liberalisation, 85% of this loss will take place in 2009.

Regional coherence

As in ESA, the SADC schedules show considerable incoherence. There is a strong similarity between the BLNS commitments and those of South Africa under the TDCA, but very little between these and the Mozambique regime. This is demonstrated most clearly by comparing the exclusion lists of the two regimes, that for BLNS and that for Mozambique (Table 63). After taking account of non-reconcilable differences in the nomenclatures used in the schedules (see table notes), just one-fifth of the items are being excluded by both parties.

Table 63. Summary of SADC-minus exclusions^a

	HS6 sub-heads	
	Number	Proportion
# comparable HS6 sub-heads which are excluded by either party^b	3,114	100%
of which:		
excluded by both BLNS and Mozambique	643	21%
excluded by one party only	2,471	79%
<i>Note:</i>		
(a) The 1,012 BLNS items excluded from full liberalisation are at a mixture of 8-digit NTL level (289) and HS6 (723), falling into 869 different HS6 sub-heads. Of these, 97 also contain elements which are to be liberalised. The Mozambique market access schedule is entirely at 8-digit NTL level, and does not list exclusions. These have been identified from the Mozambique tariff schedule as 3,239 NTL codes falling into 3,162 different HS6 sub-heads, 22 of which also contain elements which are being liberalised.		
(b) This includes only HS6 sub-heads which were valid in both 2006 and 2007. Since the BLNS market access schedule is in HS 2007, and the Mozambique schedule in HS 2002, there are a number of incomparable codes. The BLNS exclusions include 21 codes which came into existence only in 2007 (and which therefore cannot appear in the Mozambique schedule), whilst the Mozambique exclusions include 252 codes that ceased to be valid at end 2006 (which cannot appear in the BLNS schedule). Thus, whilst a total of 3,388 different HS6 sub-heads are included in the two parties' exclusion lists, only 3,114 of these are 'comparable'.		

6. Provisions on ACP exports

6.1 *EU treatment of exports from IEPA signatories*

EPAs have provided a very unusual example of trade negotiations, which commonly involve all parties agreeing broadly similar improvements in the access to their markets they offer to exports from their partners. But most ACP exports could already enter the EU duty free under the trade provisions of the Cotonou Agreement. The only improvement the EU could offer was the removal of those few tariffs that remained, which is what it is doing with the DFQF provisions for IEPA members – and to amend the RoO, which has been done to a limited extent with more change planned for the future.⁹⁶

The scope of DFQF

Under an autonomous decision taken by the Council in December 2007 the EU has removed from January 2008 all tariffs and quotas on imports from countries that have initialled IEPAs except for sugar and rice, for which DFQF is being phased in (European Council, 2007). This regime will remain in force until superseded by similar provisions in each IEPA as they come into force. The transition for sugar will involve three-phases for non-LDCs but some of the details still have to be agreed.

1. January 2008–September 2009: continuation of the Sugar Protocol, with ‘additional market access’ for beneficiaries.
2. October 2009–September 2015: DFQF for non-LDC ACP subject to an ‘automatic volume safeguard clause’ and, for processed agricultural products with high sugar content, an ‘enhanced surveillance mechanism in order to prevent circumvention of the sugar import regime.’
3. October 2015 onwards: DFQF for non-LDC sugar exports, subject to a ‘special safeguard clause’.

In the case of rice, DFQF for the varieties exported by the ACP will begin in 2010.

⁹⁶ This section builds on an ODI study of DFQF funded by DFID at the end of 2007 (Stevens, Meyn and Kennan, 2009).

In absolute terms the immediate gains will be relatively small, but this is because the *status quo ante* was already liberal. For some countries the principal export benefit of IEPAs is less the new opportunities offered by DFQF than the retention of previous levels of access which, in January 2008, the EU controversially withdrew from non-signatories (see Chapter 2).

DFQF will have four types of actual or potential effect. First, and most immediate, is the re-distribution of the import tax that the EU formerly levied on imports. This will be transferred from the EU to elements in the ACP export supply chain (retailers, importers, shippers, exporters, producers). To the extent that any accrues to ACP producers or exporters it will make exports more profitable.

Second, if the revenue transfer induces importers to shift purchases away from less preferred sources towards the ACP, there could also be an increase in the volume of ACP exports. It may also enable them to increase their supply of competitive products without substantial new investment.

Third, by removing some very high tariff barriers DFQF might make it commercially feasible, for the first time, for ACP countries to export to the EU products that they already supply competitively to other markets.

The fourth effect could be the most substantial, but is also the most difficult to predict. If DFQF induces increased supply from ACP states (e.g. as a result of new investment or shifts between products) there could be wide-ranging effects both in terms of foreign exchange earned and in knock-on effects for the rest of the economy.

Which countries will gain from DFQF?

As of January 2008 35 ACP states have been accorded DFQF treatment for most of their exports. The greatest change has been for the 26 states that are not LDCs. LDCs already have DFQF under the EU's EBA initiative of 2001, which will be fully phased in by 2009. The only way in which their export situation will change is if the IEPA RoO provide more opportunities than do the EBA ones.

Table 64. The countries exporting goods affected by DFQF

Non-LDC ACP exporter	No. of different goods	Value of exports 2006 (€000)
Mauritius	20	270,382
Cameroon	10	175,975
Côte d'Ivoire	16	146,382
Dominican Republic	21	111,436
Guyana	6	111,196
Fiji	1	105,792
Jamaica	17	85,052
Swaziland	15	81,065
Belize	4	67,854
Namibia	5	54,870
Zimbabwe	16	39,742
St Lucia	2	24,006
Botswana	3	23,712
Suriname	13	21,332
Trinidad and Tobago	9	18,288
Barbados	6	16,575
Ghana	24	13,940
St Vincent/Grenadines	1	11,249
Kenya	28	10,685
Dominica	6	8,624
Congo	2	5,513
Antigua and Barbuda, Bahamas, Gabon, Marshall Islands, Nigeria, Seychelles		<€ 1 million each
Total		1,405,255
<i>Source:</i> Calculated from data obtained from Eurostat COMEXT database.		

Some €1.4 billion of EU imports is affected immediately (Table 64). Although this is equivalent to just 2% of total EU imports from all non-LDC ACP states in 2006, the immediate gains for some items may be large, and for some countries could be relatively important especially in the longer term if they are able to increase supply of the affected goods, and once DFQF is fully implemented.

Table 64 lists the ACP countries that stand to gain from DFQF; it is presented according to the value and number of the affected exports, although this is not a proxy for the relative gains each country might make. Those in italics have not yet initialled EPAs and so will be affected only if they do so in future, but all of the ACP states with the greatest immediate interest in DFQF have signed; only those with more limited interests have not done so. Some €1.40 billion of existing exports from countries that have already initialled IEPAs have been affected already by DFQF (and this would rise to €1.41 billion if all non-LDCs signed).

Most non-LDC states gain from DFQF and a significant number of export products are covered: of the 26 that have signed IEPAs, six have exports affected by DFQF of over

€100 million and for a further 13 affected exports are over €10 million. Ten signatory countries will see an improvement in access to the EU market for over ten of their current exports.

Tariff saving gains from DFQF

The biggest tariff-saving gains will arise from the removal of those tariffs that are very high – but not so high as to stifle ACP exports altogether or keep them at low levels. The goods for which the removal of EU import taxes will be greatest are listed in Table 65. It shows that the removal of import taxes will inject a significant amount (€12.7 million in 2006) into the ACP supply chain.

Table 65. Products eligible for greatest static DFQF gains

HS/CN	Description	Non-LDC ACP exports 2006 (€000)	Hypothetical duty paid in 2006 (€000)
ex 1006	Rice	29,651	4,041
08061010	Fresh table grapes	28,075	3,959
ex 0201/2	Beef	50,507	2,611
ex 0805	Citrus fruit	17,869	599
ex 07	Some fresh vegetables (i.e. tomatoes, onions, leeks, cauliflower, broccoli, kohlrabi, chicory, carrots, turnips, spinach, salad vegetables (excl. lettuce), sweetcorn, manioc, arrowroot/salep)	6,124	384
ex 19	Preparations of cereals	1,733	338
23023010	Wheat bran	493	244
18069070	Preparations containing cocoa for making beverages	1,174	220
ex 11	Flour of cereals or roots and tubers	917	132
ex 0808/9	Apples, pears, plums	815	77
15091090	Olive oil	248	77
04022119	Milk and cream of a fat content > 11% but <= 27%, unsweetened	87	23
ex 2007/9	Fruit jams and juice	194	19
08119011	Tropical fruit and nuts	60	5
22042185	Wine	97	4
12129920	Sugar cane	186	3
21069059	flavoured or coloured sugar syrups	124	0.5
Total		138,354	12,737

Source: Trade: Eurostat COMEXT database. Tariffs: UNCTAD TRAINS database, UK Tariff 2007, EC Taric Consultation online.

The goods at the top of the table are rice, grapes and beef, followed by citrus fruit and vegetables. These are the ones that have faced high tariffs but have been exported by the ACP at moderate (or greater) levels. Lower down the table are a number of processed foods that are currently exported at only modest levels but which could become more important particularly if DFQF is accompanied by supporting actions (see below).

Increased sales of current exports from DFQF

Table 65 does not give the full picture of the potential gains, and the case of sugar illustrates why this is so. It does not appear in the table because the ACP pay no tariff; but this is because the EU import regime is very illiberal, not because it is liberal. Normal tariffs are so high that imports are commercially viable only if they fall within a fixed, duty-free quota. Gains from DFQF will arise only when the quotas are formally removed in 2009 *and* if the new safeguards are applied lightly *and* if a country is able to supply more sugar competitively (at a time when EU prices are falling). But if all three happen, some countries (e.g. Guyana) stand to gain substantially.

A similar rationale applies to goods facing high tariffs that have been exported in very small volumes or not at all: will the removal of tariffs unlock the gates to ACP exports or is the main problem that countries have limited supply potential? The question is easiest to answer in cases where an ACP country already exports to markets other than the EU. The existence of exports to non-EU markets but not to Europe could be due to differences in taste, transport costs, standards or other factors that will not be affected by DFQF. But, in cases where pre-DFQF tariffs have been very high, it could also indicate that the ACP are able to supply Europe competitively but have so far been prevented by protectionism from doing so. By improving the commercial attractiveness of the EU market compared to the others, DFQF could result in a diversion of trade from the ACP's existing markets to Europe. If it happens it would be to the gain of the ACP (since exports will be diverted only if EU prices are higher). Potentially it could also involve costs for any countries that currently export the same goods to Europe (either because they previously enjoyed more preferential access than did the ACP or because they are sufficiently competitive to sell to the EU despite the protection). Their exports might be displaced by the, now cheaper, ACP goods.

The answer suggested by the ODI study on DFQF is that neither the favourable effect for the ACP nor the unfavourable one for their competitors is likely to occur on a large scale. In most cases, the countries that compete with the ACP on the EU market for these goods also have favourable access. For over half of the goods that will be affected by DFQF some of the ACP's major competitors have FTAs with the EU. Although none offers complete DFQF, restrictions on imports into Europe are very detailed (often relating to specific varieties or seasons), so only a case-by-case analysis will show whether or not an ACP country has gained a competitive advantage as a result of joining an IEPA.

Consequently it does not appear likely that there will be a sudden diversion of EU imports towards ACP suppliers. Nor is it likely that the ACP will start to export to the EU goods that they currently sell in other markets. Most of these fall broadly into the same product categories as those already being exported to the EU. It is more likely, therefore, that DFQF will allow the ACP to export a wider range of items within the same broad product groups as currently feature in their basket than immediately to re-direct entirely new products to the European market.

Boosting supply capacity

Apart from the immediate revenue gain, therefore, the long term impact of DFQF will be determined by whether or not it provokes an increase in export supply from the ACP. In turn, this may require increased investment. The most likely candidates are meat other than beef and its products, grapes, rice and, possibly, citrus. All are agricultural because the ACP have long received DFQF for industrial goods – provided that they meet the RoO (see below).

There could also be scope to increase exports of processed foods (especially those containing sugar once quotas are lifted – provided the remaining safeguards are unconstraining), but this will depend largely on how far the current RoO are amended during the continuing EPA negotiations. Critics have long alleged, and the EU Commission has recently accepted, that some rules are unduly onerous and prevent the ACP utilising the tariff preferences that exist on paper. Previously a concern primarily in relation to manufactures, DFQF extends these concerns into processed foods. In many cases the current rules do not allow an ACP state to process raw materials that are imported (unless they have been produced in another member of the same IEPA or the EU).

It seems improbable that many ACP countries will be able to increase substantially their production of all the basic raw materials that go into processed food products (or that their IEPA partners can do so). Moreover, if supply capacity of the raw inputs is constrained it may also be questionable whether it would make sense on food security grounds to use them for processed exports rather than unprocessed domestic consumption. But there could be scope, were the RoO to be amended, to undertake value-added processing that would use some locally sourced raw materials together with some imported inputs.

DFQF will bring some valuable immediate gains from the redistribution of the revenue that until the end of 2007 accrued to the EU as import tax, but it needs to be built on to bring longer-term benefits by enabling an increase in ACP supply. 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 to developing countries and should ensure that part of this enhances the utilisation of DFQF by removing obstacles to production and export, such as poor infrastructure and other physical or institutional deficiencies.

Recent history indicates that new trade preferences granted to the ACP have been quite quickly extended by the EU to other suppliers. The competitive advantage of DFQF is likely to be eroded in the same way. Whilst the speed and breadth of this erosion is a matter for speculation, it would be optimistic to expect the benefits to last for much more than a decade. DFQF has opened up a window of opportunity, but it is time bound. To benefit fully from the opportunities both ACP and EU countries will need to take further action. The former must engage without delay in necessary reforms and adjustments of their economies. And there is now an onus on the EU and its member states to provide positive assistance to help countries make the most of it.

Rules of origin

What has been agreed in the IEPAs so far about the RoO, and what further improvements are needed to take account of the points made above about the possibilities for increased supply of some new exports?

The African IEPAs provide for 'Cotonou plus' rules to apply; although not specified explicitly in texts it is understood that they will take effect once the IEPAs are signed. These rules are to be reviewed and replaced by a new set after either three years (SADC, CEMAC, Ghana and Côte d'Ivoire), five years (CARIFORUM and PACP) or at the same time as a comprehensive EPA (EAC and ESA).

There are three practical problems with assessing the impact of any improvements to the RoO:

- (1) for some countries it is not clear whether or not new rules have yet been agreed;
- (2) for those IEPAs where there are new rules it is unclear whether they have yet been applied;
- (3) and even if they have been applied, trade data for 2008 are not yet available, so it is not possible to assess their effects on ACP exports.

The IEPAs in which it is unclear whether new rules have yet been agreed are CEMAC, Côte d'Ivoire and Ghana. The versions of the texts currently on the European Council website all set deadlines for agreeing the new rules that have passed. So it is unclear whether the deadlines have been missed and the rules are still under review or whether the versions of the texts on the Council website are not the latest.

The December 2007 Council Regulation that has applied DFQF autonomously to the countries initialising IEPAs included its own RoO. These are to apply until superseded by those incorporated into an IEPA when it is 'either provisionally applied, or enters into force, whichever is the earlier' (Article 4). These RoO incorporate some of the improvements to be found in the new IEPA rules. The provisions on woven clothing, for example, allow non-originating fabric to be used in some cases. These bring the EU rules for clothing into conformity with those under the US Africa Growth Opportunity Act derogation for lesser developed countries which allow the use of non-originating fabric and have done so much to boost African exports. This change is understood to have been influential in Lesotho's decision to initial the SADC IEPA. There are also some improvements on fisheries that are understood to be considered valuable, especially by Seychelles.

But in at least one respect the provisions are more restrictive than either the CPA or the new IEPAs. This area of restrictiveness in the 'temporary' RoO (that apply between the end of the CPA trade regime and the implementation of the IEPAs) concerns cumulation – and it appears to have caused some commercial problems. It is reported that Kenya has experienced difficulties when attempting to export blended tobacco to the EU using inputs from Zambia and Democratic Republic of Congo (DR Congo). Its relevant trade in tobacco is identified in Table 66. and the relevant CPA origin rules (identical to those in the December 2007 Council Regulation) in Table 67.

Table 66. Kenya's trade in tobacco products (2005–7)

Partner	Flow	HS 2002	Description	Value (\$000)		
				2005	2006	2007
DR Congo	Import	240120	tobacco, partly or wholly stemmed or stripped, otherwise unmanufactured	10,515	11,178	9,917
Zambia	Import	240120	tobacco, partly or wholly stemmed or stripped, otherwise unmanufactured	71	2,551	220
Total tobacco imports from DR Congo and Zambia				10,586	13,729	10,137
EU25	Export	240110	Tobacco, unstemmed or unstrapped	379	14	206
		240120	tobacco, partly or wholly stemmed or stripped, otherwise unmanufactured	4,990	6,956	10,311
		240130	Tobacco refuse			173
		240220	cigarettes, containing tobacco	1	4	19
		240310	smoking tobacco, whether or not containing tobacco substitutes in any proportion	1		
		240399	chewing tobacco, snuff and other manufactured tobacco and manufactured tobacco substitutes, and tobacco powder, tobacco extracts and essences			193
Total tobacco exports to EU25				5,369	6,974	10,902
Source: UN Comtrade database						

Source: UN Comtrade database.

Table 67. CPA RoO for tobacco products

HS heading No.	Description of product	Working or processing carried out on non-originating materials that confers originating status
ex Chapter 24	Tobacco and manufactured tobacco substitutes; except for	Manufacture in which all the materials of Chapter 24 used must be wholly obtained
2402	Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes	Manufacture in which at least 70% by weight of the unmanufactured tobacco or tobacco refuse of heading No 2401 used must already be originating
ex 2403	Smoking tobacco	

Kenya's exports to the EU are accorded originating status (and hence eligibility for preference) only if manufactured from originating tobacco. Before 2008, Kenya's imports from Zambia and DR Congo satisfied this requirement since they were produced in these two countries and the CPA allowed full intra-ACP cumulation. The EAC IEPA will also allow full ACP cumulation *when it comes into effect*. Article 4 of the EAC IEPA RoO provides that '... products shall be considered as originating in an EAC Partner State if they are obtained there, incorporating materials originating in the Community, in the other ACP States, in the OCTs or in the other EAC Partner States ...'. The new rules also define 'other ACP states' as 'all the ACP States in the exception of the EAC Partner States' (Article 1:o). This implies that the use of inputs originating in Zambia (which is in a different IEPA) or DR Congo (which is in none at present) will not render Kenya's exports to the EU non-originating so long as these two countries remain members of the ACP group (which presumably they will at least until the CPA expires).

Under the December 2007 Council regulation, though, full ACP cumulation is not permitted. Annex 2 Article 2 defines as the 'ACP States' with which cumulation is permitted only those countries that have initialled IEPAs (and are listed in Annex 1). Neither Zambia nor DR Congo are listed – hence cumulation with them is not permitted. Now that Zambia has initialled the ESA IEPA it has, presumably, been added to the list, but DR Congo will still not be there. There is some suggestion that Madagascar's initialling of the ESA IEPA may have been influenced by the need to avoid similar problems when cumulating clothing with Mauritius.

6.2 *EU treatment of exports from non-EPA signatories*

The affected countries

All but three African non-signatories are LDCs. There were some reports in early 2008 of temporary disruption to exports (e.g. in Zambia) whilst exporters adjusted to the different documentation requirements required for EBA, but presumably these will be short-lived. The three non-LDC states are Congo, Gabon and Nigeria, and from January 2008 they have faced either GSP tariffs or MFN tariffs in the case of items not covered by the standard GSP.

Appendix 5 gives full details of the impact on exports from Congo, Gabon and Nigeria of this change in tariff status and this is summarised in Table 68 below, which focuses on the goods which have experienced the greatest tariff increase. The two right-hand columns identify which of the three non-LDC, non-initialling states exports the item and the tariff revenue that the EU *would have collected* during 2008 had exports been at the same level as in 2006. Obviously, exports may have declined (especially for sugar) as a result of the imposition of standard GSP or MFN tariffs, and the EU's import data for 2008 will need to be studied when available, but this figure is a helpful guide to the relative importance of the affected goods since it combines data on the value of exports and the extent of the tariff increase.

The table confirms the expectation that, whilst these countries were not heavily dependent on Cotonou preferences, they have exported some vulnerable items. Apart from sugar, the most affected goods are plywood, shrimps and cocoa butter. Whilst only 1.2% of Nigeria's 2006 exports were affected by the tax increase, for Gabon the share was as high as 6% and for Congo it was 3.5%. Some of the newly imposed tariffs are low, but others are either specific duties (which often implies a high barrier) or *ad valorem* tariffs of up to 14.9%.

Table 68. African exports subject to greatest tariff increase

EU CN code	Short description.	Max. increase in tariff Jan. 2008	Agg. exports to EU 2006 ^a (€000)	Countries affected	Max. increase in duty (€000)
17011110	raw cane sugar, for refining	33.9 €/100 kg	5,512	Congo	3,362
11062090	flour etc. of roots and tubers of heading 0714	29.2 €/1000 kg net	103	Nigeria	4
12129920	sugar cane, fresh, chilled, frozen or dried	0.8 €/100 kg	170	Nigeria	1
19019099	food preparations of flour etc. or of milk etc. n.e.s.	4.1% + agricultural component	119	Nigeria	5 ^b
24011010	flue-cured virginia type tobacco, unstemmed or unstripped	14.9% max. 24 €/100 kg	823	Congo	81 ^c
24012010	partly or wholly stemmed or stripped flue-cured virginia type tobacco	14.9% max. 24 €/100 kg	2,995	Congo	262 ^c
24013000	tobacco refuse	3.9% max. 56 €/100 kg	299	Congo	12 ^c
64022000	footwear with outer soles and uppers of rubber or plastics	11.9%	263	Nigeria	31
03037981	frozen monkfish 'lophius spp.'	11.5%	359	Gabon	41
03042094	frozen fillets of saltwater fish	11.5%	839	Nigeria	96
07099090	fresh or chilled vegetables, other	8.9%	489	Nigeria	44
07129090	dried vegetables and mixtures of vegetables	8.9%	127	Nigeria	11
44121310	plywood with at least one outer ply of: dark red meranti, light red meranti, white lauau, sipo, limba, obeche, okoume, acajou d'afrique, sapelli, virola, mahogany "swietenia spp.", palissandre de rio, palissandre de para or palissandre de rose	6.5%	19,181	Congo, Gabon	1,247
87032490	motor cars and other motor vehicles, used	6.5%	239	Nigeria	16
52081296	plain woven fabrics of cotton	6.4%	410	Nigeria	26
18031000	cocoa paste	6.1%	2,016	Nigeria	123
18032000	cocoa paste, wholly or partly defatted	6.1%	2,098	Nigeria	128
22021000	waters, incl. mineral and aerated, with added sugar, sweetener or flavour	6.1%	793	Nigeria	48
22029010	non-alcoholic beverages, not containing milk, milk products and fats derived therefrom	6.1%	136	Nigeria	8
76012091	unwrought secondary aluminium alloys, in ingots or in liquid state	6%	794	Nigeria	48
03061310	frozen shrimps and prawns of the pandalidae family	4.2%	114	Nigeria	5
03061340	frozen deepwater rose shrimps 'parapenaeus longirostris'	4.2%	5,866	Congo, Gabon	246
03061350	frozen shrimps of the genus 'penaeus'	4.2%	42,073	Gabon, Nigeria	1,767
03061380	frozen shrimps and prawns, other	4.2%	11,510	Congo, Gabon, Nigeria	483
18040000	cocoa butter, fat and oil	4.2%	32,113	Nigeria	1,349
44121400	plywood with at least one outer ply of non-coniferous wood or other tropical wood	3.5%	774	Congo, Gabon	27
52051200	single cotton yarn, of uncombed fibres	3.2%	216	Nigeria	7
52052200	single cotton yarn, of combed fibres	3.2%	119	Nigeria	4
52053200	multiple 'folded' or cabled cotton yarn, of uncombed fibres	3.2%	1,946	Nigeria	62
55032000	staple fibres of polyesters, not carded, combed or otherwise processed for spinning	3.2%	7,956	Nigeria	255
41071990	leather of bovine or equine animals	3%	385	Nigeria	12
03074918	frozen cuttle fish 'sepia officinalis' and 'rossia macrosoma'	2.8%	602	Gabon, Nigeria	17
16051000	crab, prepared or preserved	2.8%	107	Nigeria	3
03061490	frozen crabs	2.6%	4,444	Gabon, Nigeria	116
78011000	unwrought lead, refined	2.5%	367	Nigeria	9
78019100	unwrought lead, containing by weight antimony as the principal other element	2.5%	235	Nigeria	6
78019999	unwrought lead	2.5%	284	Nigeria	7
41051010	skins of sheep or lambs, in the wet state, unsplit	2%	1,928	Nigeria	39

EU CN code	Short description.	Max. increase in tariff Jan. 2008	Agg. exports to EU 2006 ^a (€000)	Countries affected	Max. increase in duty (€000)
41053091	skins of sheep or lambs, in the dry state, unsplit	2%	5,315	Nigeria	106
41053099	skins of sheep or lambs, in the dry state, split	2%	2,942	Nigeria	59
41062110	skins of goats or kids, in the wet state, unsplit	2%	11,110	Nigeria	222
41062190	skins of goats or kids, in the wet state, split	2%	155	Nigeria	3
41062290	hides and skins of goats or kids, in the dry state, whether or not split	2%	7,396	Nigeria	148
69091900	ceramic wares for chemical or other technical uses	1.5%	248	Nigeria	4
85299081	parts suitable for use solely or principally with television cameras, receivers of radio-telephonic or radio-telegraphic signals, or for radio or television	1.5%	150	Gabon	2
Notes: (a) Aggregate of affected exports of €100,000 or more by Congo, Gabon and Nigeria in 2006 – see Appendix 5. (b) Plus 'agricultural component'. (c) Calculated on the <i>ad valorem</i> tariff without taking account of unit price.					

PART 3

The Way Forward



7. Options on the way forward and challenges to be expected

ECDPM

Concluding comprehensive EPAs is the stated aim of all the parties in the current negotiations, as outlined in Chapter 2. However, given past experience as outlined above, this goal may not be as easy to achieve as hoped and a different outcome of the negotiation process may be envisaged. Section 7.1 discusses the available options, ranging from concluding full EPAs over adopting the initialled interim agreements as permanent solutions (possibly joined by additional countries), to opting for one of several alternative trade regimes. The salient features of these different scenarios are summarised in Tables 69.

Section 7.2 examines some general issues related to the regional scope of EPAs, while Section 7.3 addresses the specific options and challenges in each of the negotiating regions.

7.1 Available trade regimes

Moving towards full Economic Partnership Agreements

The logic of the European Commission, which has so far been followed by the ACP countries, is as follows: based on the provisions of the Cotonou Agreement, the objective of the negotiations is, and has always been, to conclude full EPAs.⁹⁷ Towards the end of 2007, this goal appeared to be achievable in the Caribbean. Other regions, however, were not yet in a position to come to a comprehensive agreement.

Faced with the expiry of the WTO waiver covering the preferences under the Cotonou Agreement, a solution needed to be found in order to extend the negotiation period and to safeguard access to the EU market for ACP products for non-LDCs, while respecting

⁹⁷ In this context note that there is no agreed definition of the range of areas to be covered by a 'full' EPA. Hence, the scope of such agreements may differ between regions.

commitments made at the WTO. This situation led to the idea of concluding preliminary agreements, either based on what had already been agreed at the present state of negotiations (as in the Pacific) or based on a new text covering mainly market access in goods (as in Central and West African countries). In line with the latter approach, new texts were drafted by the European Commission for some interim agreements; these agreements are meant to be replaced by full EPAs based on comprehensive jointly negotiated texts by the end of 2008.

The interim agreements initialled in November and December 2007 have been conceived as ‘stepping stones’ (European Commission, 2007b) towards wider agreements. Accordingly, ongoing negotiations towards full EPAs are a central element in the interim agreement approach. The EC aims to include provisions on trade in services as well as on trade-related issues (such as investment, competition, government procurement, trade facilitation and intellectual property rights, the environment and social aspects) in comprehensive EPAs. In line with the rendezvous clauses contained in all interim agreements, negotiations towards full EPAs are expected to address these areas in 2008 (see Chapter 2).⁹⁸

However, several ACP countries have been reluctant to take on firm commitments on services or on some trade-related issues, and these are not required in order to comply with WTO rules. Hence, the degree of detail of any such provisions in the full EPAs to be concluded remains to be determined. Furthermore, in principle, it is possible to include varying degrees of commitment on services and trade-related issues by different members of the region within one full regional EPA, though deeper integration in these areas may ultimately require common regional undertakings.

The CARIFORUM-European Community EPA, being the only full EPA signed so far, has been partly used as a point of reference for negotiations in other regions. Nevertheless, comprehensive EPAs are likely to differ between regions to take account of the specific situation in each configuration.

Given that some interim agreements were largely drafted by the European Commission, there will also be a need to ensure that the full EPAs appropriately reflect the interests of both parties. In this context, it will ultimately depend on a political decision by the negotiators whether and to what extent the provisions of the interim deal will be

⁹⁸ For all interim agreements except ESA and EAC, the rendezvous clauses contain the deadline of end 2008.

incorporated into a comprehensive agreement.⁹⁹ The range of options in this respect can be summarised in three different scenarios. An interim agreement that has been signed and notified to the WTO can be:

- superseded by a full EPA, which contains an entirely new text (possibly building on negotiations prior to the conclusion of the interim agreement);
- taken as a basis to construct the text of a full EPA, modifying some provisions as necessary, e.g., by drawing on agreements reached in other regions (see Box 6);
- used as a building block for a full EPA, retaining the existing provisions without re-negotiation and adding new ones covering additional areas not yet covered by the interim deal.

The differences between these approaches are subtle and the approaches adopted may vary between regions. Ensuring regional ownership and full understanding of the consequences of any deal is likely to be a key argument for altering or replacing the text of the interim agreement.

Modifications to the market access schedules contained in the interim agreements are legally possible even after notification to the WTO, provided that both parties agree that the liberalisation commitments continue to comply with the ‘substantially all trade’ criterion of Article XXIV of GATT¹⁰⁰ and that the new schedules are re-notified to the WTO. Such adjustments will generally become necessary when moving from interim agreements at the country or sub-regional level to full regional EPAs, in order to harmonise liberalisation commitments within a region. The analysis in Part A clearly indicates that significant changes may be required to existing texts and, especially, schedules.

Identifying a common tariff liberalisation schedule acceptable to all regional partners is likely to be a difficult process, particularly if this schedule is to be based on what was

99 In Central Africa, for example, the parties have agreed to base future negotiations on joint texts drawn up prior to the conclusion of the interim agreement with Cameroon, which is largely based on an European Commission draft. Accordingly, the interim agreement should be entirely substituted by a new text.

100 The EC interpretation of ‘substantially all trade’ used in the interim agreements is a liberalisation by the ACP of at least 80% of imports from the EU within 15 years.

signed by an individual country in its interim agreement. For example, the composition of the exclusion lists of Côte d'Ivoire and Ghana differ (see Sections 5.4 and 5.5); by extending the same selection of sensitive products to all members of the negotiating group, exclusions at the regional level amount to much more than the 20% acceptable to the European Commission.

Therefore, either the European Commission has to show unprecedented flexibility by lowering the threshold to less than 80% of trade liberalisation (which ECOWAS, but also several other ACP negotiators and experts have been calling for), or some products must be excluded from their individual country list of sensitive products to accommodate those of regional partners (which might not be well received by the private sector in those countries that have concluded interim deals).

Interim agreements as a permanent solution

Even though the interim agreements are intended to be temporary solutions and contain rendezvous clauses to continue negotiations towards full EPAs, it may be the case that future negotiations do not result in an EPA being concluded. In which event an interim deal could become the full agreement. As the interim agreements constitute WTO-compatible arrangements on trade in goods, this scenario could occur if the EC does not manage to convince ACP countries of the benefits it sees in negotiating provisions on issues which go beyond safeguarding market access in goods. Countries currently exporting under the GSP or EBA could further seek to join an existing interim agreement.

Alternative trade regimes

While concluding a full EPA is the goal all parties have committed to, there are other trade regimes that could be applied instead of an EPA.¹⁰¹ In the first place, this is the EU's GSP, comprising the standard GSP, the special incentive arrangement for sustainable development and good governance (GSP+) and the EBA initiative. LDCs have duty and quota-free access to the EU market under EBA while the standard GSP available to non-LDCs offers less generous market access conditions compared to those under an EPA or to the preferences under the Cotonou Agreement which applied until December 2007. Market access under GSP+ is more favourable than under the standard scheme; however not all products are covered by GSP+ and participation in the scheme requires

¹⁰¹ See Bilal, and Rampa, 2006.

Box 13. Interim texts cast in stone?

With regard to the challenge of moving from interim and often, country-specific texts, to full regional EPAs, the immediate issue concerns the status of the interim agreements. The European Commission had suggested that these agreements should be open to alteration. Indeed, some interim deals, such as those in Central and West Africa, contain explicit provisions to allow adjustment at the regional level, while others, such as Namibia's, contain annexed declarations for amendments. The plan is for interim deals to form the basis of full EPAs, subject to changes and additions negotiated in 2008 or beyond. But the extent to which these interim deals can be revised remains to be determined. Declarations by the then European Trade Commissioner Peter Mandelson indicated that he did not want to re-open and re-negotiate interim deals. This has raised two main points of concern.

First, some ACP negotiators have been able to extract better concessions or more favourable deals than others. While it would not make sense for all EPAs to be the same, given their need to reflect specific national and regional interests, the European Commission should not seek to discriminate against certain ACP countries or groupings. Thus, it would seem appropriate that any ACP country or region that so desires, should be allowed to import any provision agreed to by the EU in another interim or full EPA, into its own final EPA.

Second, most interim deals were concluded in haste and therefore modifications should be permitted after re-negotiation. More importantly, some of the texts for interim deals were tabled by the European Commission just a few weeks (as was the case for ESA and EAC) and in some cases even a few days (Cameroon, Ghana and Côte d'Ivoire) before the deadline for conclusion. These proposals did not reflect prior negotiations with the regional groupings concerned, and only marginal fine-tuning was agreed on.

At the time, the Commission's argument was that these Agreements were primarily aimed at safeguarding EU market access and that negotiations would continue in 2008. Several countries concluded deals on this principle, taking into account strategic political and economic considerations, without having the correct technical assessment and input needed. Should the European Commission refuse any request to reconsider some provisions, it would be a fatal blow to the notion that EPAs are based on an equal partnership.

the ratification and implementation of a number of international conventions. (For comprehensive information on the EU GSP, see Appendix 6.)

These trade regimes are potentially attractive options for ACPs that decide against concluding an EPA. Theoretically, even some of those countries that have initialled interim agreements might go back to one of these options if negotiations towards full EPAs fail or if initialled agreements are not signed and ratified. However, this will certainly entail a loss of market access to the EU for non-LDCs, a cost that may not be economically and politically acceptable to many of those ACP countries (ODI, 2007). Hence, for those countries that are party to an interim deal, either concluding a full EPA or at least keeping the interim solution would seem to be more likely scenarios.

Multilateral liberalisation by the ACP as a complement to concluding EPAs would reduce potential trade diversion effects. An option would thus consist in inducing ACP countries to reduce their tariff in the multilateral framework in exchange for DFQF market access to the EU (Hoekman, 2005).¹⁰² Another option that has been suggested is partial liberalisation by the ACP towards the EU in return for DFQF access to the EU market.¹⁰³ This is currently inconsistent with WTO rules (notably Article XXIV of GATT and the Enabling Clause). Thus, in order to gain the approval of WTO members for an exception or a change of rules, the story goes, the ACP would need to offer multilateral tariff reduction by the ACP. However, it is unlikely that other WTO members would agree to a change in rules that would allow such systemic exemption to the MFN principle. Besides, competitors of the ACP in the EU market have no interest in improved access to ACP markets through multilateral liberalisation as compensation for allowing EU preferences to the ACP.

¹⁰² Note that LDCs ACP countries, which already benefit from DFQF access to the EU under EBA, would have no such incentive.

¹⁰³ See Messerlin, A. and Delpeuch, C. 2007. EPAs: A Plan 'A+', Groupe d'Economie Mondiale (GEM), Sciences Po, Paris, 18 November. http://gem.sciences-po.fr/content/publications/pdf/messerlin_delpeuch_EPAs26112007.pdf summarised in Guinan, and Sechler, 2007.

Table 69a. Options for the way forward: Possible trade regimes under an EPA

EPA	
	Narrow (interim) EPA
Nature of the agreement:	Full EPA <ul style="list-style-type: none">Comprehensive WTO-compatible FTA, covering trade in goods and in services, as well as trade-related issues (e.g. investment, competition, public procurement, intellectual property rights, the environment and social aspects)Gives the ACP-EU trade regime the legal certainty of a bilateral agreement (contrary to unilateral preferences)
Market access in goods:	<ul style="list-style-type: none">Duty and quota-free (DQF) access to the EU market for ACP for all products, with transition periods for sugar and riceImproved RoOOpening up of ACP markets to imports from the EU
Services and trade-related areas:	<ul style="list-style-type: none">Possible liberalisation of trade in services and provisions on trade-related issues
Regional dimension:	<ul style="list-style-type: none">Regional coverageRequires harmonised liberalisation commitments on trade in goods within the regionAble to include varying degrees of commitment on services and trade-related issues
Development:	<ul style="list-style-type: none">Includes provisions on development cooperation (no binding financial commitment yet)Perception of having access to additional development financing from the EU
Agreements concluded:	<ul style="list-style-type: none">Only one full EPA concluded so far (Caribbean); but official aim of all ACP regional groupings negotiating an EPA

Table 69b. Options for the way forward: Possible trade regimes under the EU Generalised System of Preferences

	EU GSP		
	Standard GSP	GSP+	EBA
Nature of the trade regime:	<ul style="list-style-type: none"> Unilateral trade preferences granted by the EU to developing countries meeting certain vulnerability criteria based on an EU Council regulation¹ 	<ul style="list-style-type: none"> Unilateral trade preferences granted by the EU to developing countries meeting certain vulnerability criteria and political criteria, based on an EU Council regulation² 	<ul style="list-style-type: none"> Unilateral trade preferences granted by the EU to LDCs based on an EU Council regulation³
Market access in goods:	<ul style="list-style-type: none"> Preferential market access to the EU market for ACP countries equivalent to market access for other developing countries, with higher tariffs than under an EPA and under previous Cotonou preferences Cotonou preferences Limited coverage, some goods (e.g. sugar,⁴ bananas and rice) are not included in GSP and have to be exported under MFN conditions Most favourable market access regime available to non-LDCs in the absence of an EPA or interim agreement GSP RoO are currently more restrictive than RoO under an EPA, but are expected to be reviewed in 2008 No additional opening up of ACP markets to imports from the EU 	<ul style="list-style-type: none"> Preferential market access to the EU market for ACP countries with higher tariffs than under an EPA and under previous Cotonou preferences, but lower tariffs than under the standard GSP Limited coverage, some goods (e.g. sugar, bananas and rice) are not included in GSP+ and have to be exported under MFN conditions GSP RoO are currently more restrictive than RoO under an EPA but are expected to be reviewed No additional opening up of ACP markets to imports from the EU 	<ul style="list-style-type: none"> DFOF access to the EU market for ACP for all products with transition periods for sugar and rice, i.e. similar to the market access offer under EPAs GSP RoO are currently more restrictive than RoO under an EPA but are expected to be reviewed in 2008 No additional opening up of ACP markets to imports from the EU
Services and trade-related areas:	<ul style="list-style-type: none"> No liberalisation of trade in services and no commitments on trade-related issues 	<ul style="list-style-type: none"> No liberalisation of trade in services and no agreement on trade-related issues 	<ul style="list-style-type: none"> No liberalisation of trade in services and no agreement on trade-related issues
Application to ACP countries:		<p>Timeframe for entering the GSP+ scheme:</p> <ul style="list-style-type: none"> new regulation adopted by the EU in 2008, for 2009-2011 period request to benefit from 1 January 2009 had to be submitted by 31 October 2008, list of beneficiaries was published in December 2008 requests to benefit from 1 July 2010 have to be submitted by 30 April 2010 <p>Compliance of ACP countries with the eligibility criteria</p> <ul style="list-style-type: none"> Economic criteria: Currently all African and Pacific non-LDC ACP countries except South 	<ul style="list-style-type: none"> Many ACP LDCs have decided not to initial an interim agreement and have been exporting under EBA since 1 January 2008 <ul style="list-style-type: none"> some may decide to retain these preferences and not opt for an EPA other LDCs may decide to join a regional EPA in order to safeguard regional integration and to benefit from provisions other than market access in goods⁵

¹ See the provisions in force until 31 December 2008 : (Council of the European Union, 2005) and the proposal for the period 2009-2011: (European Commission, 2007c).

² Ibid

³ Ibid

⁴ Ibid

⁵ For sugar, the sugar protocol annexed to the Coton ou Agreement will apply until 30 September 2009 to those ACP countries that hold quotas under this arrangement.

Zambia first initialised the ESA framework agreement in 2008 in order to benefit from provisions on fisheries and development cooperation. However, it later initialised a market access offer with the EC on 30 September 2008 to participate also in the trade in goods part of the agreement.

	<p>Africa meet the vulnerability criteria for GSP+ (European Commission, 2007a).</p> <ul style="list-style-type: none">• Political criteria: According to the GSP regulation for the period 2009-2011, countries are required to have ratified and effectively implemented all 27 conventions to be included in the list of GSP+ beneficiaries. As of November 2007, Seychelles and Ghana were eligible based on having ratified the required conventions.⁶ <p>Potential application:</p> <ul style="list-style-type: none">• For non-LDC ACP countries without an EPA or interim agreement, GSP+ would offer better market access conditions than the standard GSP currently applied (3 African countries and 7 Pacific Island States)• For non-LDC ACP countries that initiated an interim agreement, GSP+ may be an option should the negotiations towards full EPAs fail or if the interim EPA were not to be signed and ratified	
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⁶ Furthermore, there is a precedent (El Salvador) for applying GSP+ preferences provisionally for a grace period of 14 months during which the required conventions are to be ratified and implemented (Bartels, 2007b).

Table 69c. Options for the way forward: Possibilities of ACP multilateral liberalisation

Multilateral liberalisation by the ACP		
	In addition to an EPA	In addition to further limited liberalisation by the ACP towards the EU
Nature of the trade regime:	<ul style="list-style-type: none">Multilateral tariff reduction by the ACP in addition to asymmetric reciprocal liberalisation under an EPA (Hoekman, 2005) and (Messerlin, and Delpeuch, 2007).	<ul style="list-style-type: none">Multilateral tariff reduction by the ACP in addition to asymmetric reciprocal liberalisation under an incomplete EPA (further liberalisation by the ACP but not necessarily complying with GATT Article XXIV, whereas the EU grants DFQF to ACP products)¹Does not strictly comply with current WTO rules, i.e. implementation depends on acceptance by other WTO members. These would have to agree to the EU granting preferences to the ACP in return for some reduction of MFN tariffs by the ACP (and limited reciprocal liberalisation), instead of reciprocal liberalisation of substantially all trade consistent with Art. XXIV of GATT
Expected consequences:	<ul style="list-style-type: none">Reduce trade diversion effects of an EPAReduce administrative costs (as ACP do not need to survey RoO on those imports for which MFN tariffs are equal to tariffs applied on goods from the EU)	<ul style="list-style-type: none">Reduce trade diversion effects of an EPALower the percentage of imports from the EU into the ACP markets liberalised under an EPA (depending on acceptance by other WTO members in return for offering some reduction in MFN tariffs)

¹ The aim of the latter would be to reduce the liberalisation by the ACP towards the EU under an EPA; see Messerlin, and Delpeuch, 2007 summarised in (Guinan, and Sechler, 2007).

7.2 Regional scope of agreements

Strengthening ACP regional integration has been defined as a key objective of EPAs. Accordingly, the aim of EPA negotiations has been to conclude agreements at the regional level. However, as interim agreements have been initialled with sub-regions 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 (as presented in Box 14). Moreover, 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.

Box 14 presents possible consequences related to choices made in term of the regional scope of any agreement.

Box 14. 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 initialising 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 RoO to avoid trade deflection.

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, as explained in Chapter 2 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 RoO 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.

7.3 Possible scenarios for the African negotiating regions

Negotiations towards full EPAs have continued in 2008 and 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.¹⁰⁴ 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 RoO), and may have no appetite to pursue a broader trade-related agenda. Apparently, this is the current position of Senegal, where President Wade has repeatedly called for a development partnership agreement to replace the EPA initially proposed.

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.

Possible scenarios for West Africa

The West Africa-European Community 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 (signed on 26 November 2008) and Ghana. Nigeria, being another non-LDC in the region, did not initial an interim agreement and

¹⁰⁴ See Dr. Bernal, R. Declarations. Jamaica Gleaner News, 4 January 2008. <http://jamaica-gleaner.com/gleaner/20080104/business/business4.html>

has been exporting to the EU under the GSP regulation since 1 January 2008. A request by Nigeria to enter the GSP+ scheme was not granted by the European Commission because Nigeria had not ratified all required conventions.¹⁰⁵

Since the beginning of 2008, the West Africa EPA grouping has clearly indicated its commitment to concluding a full and regional EPA by June 2009, though this deadline is most likely to slip again. The region also confirmed that the interim agreements of Côte d'Ivoire and Ghana would be superseded by a regional EPA. In line with this, negotiations have continued at regional level in 2008 and 2009.

To meet the objective of a regional EPA, 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.¹⁰⁶ The region is detailing its approach in an EPA Development Programme (*Programme de l'APE pour le Développement - PAPED*).

While the region has confirmed that the interim agreements will be superseded by a comprehensive regional EPA, 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. An essential part of this process consists of aggregating national lists of sensitive products into a single regional exclusion list. This has proven challenging and discussions have stretched throughout 2008 and into 2009. 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'. Côte d'Ivoire and Ghana already rushed through such a process at the end of 2007. But their market access offers differ (see Sections 5.4 and 5.5).¹⁰⁷ And, as mentioned in

¹⁰⁵ According to the EC decision, the request was not granted because Nigeria had not ratified the United Nations Convention on the Prevention and Punishment of the Crime of Genocide, see (European Commission, 2008b).

¹⁰⁶ 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'.

¹⁰⁷ As highlighted in Chapter 5, the Côte d'Ivoire and Ghana lists of sensitive products differ in their scope and their approach. The first has adopted a positive approach while the latter has opted for a negative one.

Section 7.1, 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 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 35% has been proposed by Nigeria, with the support of many non-state actors in the region.¹⁰⁸ This request was approved by ECOWAS ministers of trade and finances (Ministerial Monitoring Committee) after extended discussions in November 2008, though at the lower rate of 35%.

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? Accordingly, the adoption of the fifth band 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. This would contradict though 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 July 2009 for Côte d’Ivoire under the terms of its interim agreement, Côte d’Ivoire may have to re-impose tariffs on EU imports to accommodate the new liberalisation schedule of a full regional EPA which would replace its interim agreements sometime

108 For a more detailed discussion of this particular issue, see Ukahoa (2008) and Hub rural (2008).

in 2009 or beyond.¹⁰⁹ Here, a further consideration to bear in mind is whether such country 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.

Further, in a 'worst-case scenario' in terms of regional integration, negotiations might neither arrive at a regional solution at ECOWAS nor at UEMOA level. In this case, the two interim agreements adopted by Cote d'Ivoire and Ghana would remain permanent solutions. As a consequence, this would either require UEMOA members to unilaterally implement the liberalisation schedule of Cote d'Ivoire towards the EU or it would endanger the application also of the UEMOA CET.

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 appears to be equally challenging:

¹⁰⁹ This would also run counter to the standstill clause imposed by the EC in all its interim agreements.

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 possibility of concluding a narrow regional EPA, focusing mainly on goods, with a possible inclusion of trade-related issues subject to *rendezvous* clauses. In addition, special attention should be granted 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.

Progress has been made during 2008 on all of the issues described above. Nevertheless, continued efforts will be needed to identify 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.

Possible scenarios in Central Africa

The Central African region is facing the challenge of defining a common regional position after an interim agreement between an individual country, Cameroon, and the EU was initialled in December 2007 (which was signed in January 2009). 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-European Community 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.¹¹⁰ 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.¹¹¹ 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 2008, 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

¹¹⁰ In the case of Cameroon, however, the differences between the CET and maximum MFN tariffs are small (see Section 5.3).

¹¹¹ Gabon submitted a request to enter the GSP+ scheme, which was not granted by the EC because Gabon had not ratified the International Labour Organisation Convention concerning Minimum Age for Admission to Employment No138; cf. European Commission (2008c).

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 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.

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. Six countries have initialled the ESA agreement, but with separate schedules for liberalisation (Comoros, Madagascar, Mauritius, Seychelles, Zambia 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) which have been exporting to the EU under the EBA initiative since January 1st 2008 (see Chapter 6).¹¹²

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 (see Chapters 2 and 5). 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. 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. Accordingly, EAC countries participate in ESA meetings, but they nevertheless hold separate EAC-EC negotiations in parallel. It is expected that countries signing the ESA text (including liberalisation schedules on trade in goods and services) will be in a position to do so by the end of 2008, while countries signing the EAC text are aiming for July 2009.¹¹³ In addition, At a Tripartite Summit in October 2008, COMESA, SADC and EAC further decided to harmonise their trade arrangements with the view to a common free trade area (COMESA-EAC-SADC, 2008). While it is too early to tell whether and when

¹¹² It should be noted that while Zambia has initialled the interim ESA EPA text in 2007, a market access offer was agreed upon with the EU only in September 2008. Accordingly, from 1st January 2008, Zambia was temporarily exporting to the EU under the EBA regime and was included in the EPA market access regime only in December 2008.

¹¹³ Some observers have indicated that it is unlikely that this difference in the timing for completion of the EPA negotiations will have an impact on the integration efforts at a broader level. Indeed, this deadline does not appear to be binding, nor will it lead to possible sanctions if it is missed, but it is rather an estimate of the time needed to complete the negotiations. The European Commission has however recently expressed its concerns over the slow pace of the negotiations towards a comprehensive EPA in Africa and warned that African countries might face a situation similar to that of December 2007 should the negotiations not pick up. In this respect, timely coordination and harmonisation between ESA and the EAC will be key to avoid any negative impact.

this will materialise, 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.

In this respect, the scenario officially expected for the ESA region would be the successful conclusion of a comprehensive ESA-European Community 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 (Appendix 3, Table A3.2). However, the fact that ESA countries tabled separate individual market access offers does serious concern (see Chapters 2 and 5), which could prevent the formation of a customs union in COMESA.¹¹⁴ 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.

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

¹¹⁴ A Common External Tariff has already been agreed upon and the region aims to launch the COMESA customs union by the end of 2008.

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 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.

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',¹¹⁵ 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:

¹¹⁵ Mbeki, T. State of the Nation Address of the President of South Africa. The Citizen, 8 February 2008. www.citizen.co.za/index/article.aspx?pDesc=58071,1,22

- (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 (see Section 5.8).
- (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.

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',¹¹⁶ but has not initialled the interim agreement. Namibia is party to the interim agreement and has strong interest in access to the EU market in goods. On the other hand, 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.

Under SACU, the conclusion of an EPA by those countries that have initialled the interim agreement is possible with the consent of South Africa. A refusal to give this consent, however, might put the existence of SACU in question. The extent and the urgency of

¹¹⁶ European Commission. Joint Declaration of the EC-SADC EPA Ministerial Meeting, Gaborone, Botswana, 4 March 2008. EPA Flash News, 7 March 2008. http://www.acp-eu-trade.org/library/files/EC-SADC_EN_040308_EC_Joint-declaration.pdf

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 (see Section 5.8).

In response to this issue, the EC in December 2008 made a proposal to align the TDCA tariff liberalisation schedule with the BLNS schedule under the interim EPA, in order to safeguard coherence of tariffs within SACU. The proposed deal consists of a revision of the TDCA, involving market access concessions both on the side of the EU and of South Africa.

Angola, Namibia and South Africa (ANSA) in a letter sent to EU member states in January 2009 welcomed the tariff alignment proposal by the EC for recognising the issue but considered the suggested solution to be inadequate. Outlining fundamental concerns with the provisions of the interim agreement, ANSA called for a delay in signing the interim EPA (proposed by the EC to take place in February 2009) in order to allow more time to address all outstanding concerns. The aim of such an approach would be to conclude one EPA in which all members of the negotiating group participate, rather than following the two-step approach of signing an interim agreement first, to be followed by a comprehensive EPA.¹¹⁷

While the EC has expressed its willingness to show flexibility to safeguard regional integration in SACU, it remains to be seen how EU member states and the EC react to the demand to postpone signature of the interim EPA. Unless a compromise is found quickly, the signing of an interim agreement could potentially lead to serious divisions among members of the SADC EPA negotiating group, putting into question the conclusion of a comprehensive EPA, and leading to the dismantlement of SACU.

¹¹⁷ With respect to WTO compatibility, ANSA argued that BNLS were de facto already giving reciprocal market access to the EU by applying the TDCA tariffs (being members of SACU).

Key lessons:

- Comprehensive regional EPAs should be the primary goal of the ongoing negotiations, in line with the commitment that has been expressed on all sides.
- Agreements at the regional level should reflect the common interest of all members of the region. Accordingly, the thematic scope of any agreement should be adjusted to what is feasible in each region.
- If a country chooses not to take part in a regional EPA, it should not be pressured to join but should have the freedom to opt for an individual or sub-regional agreement or for an alternative trade regime, such as one of the schemes available under the GSP regulation.
- In deciding whether or not to conclude an EPA, each country should consider the economic and social costs and benefits of signing an EPA, as well as the cost of disrupting regional integration incurred by not joining a regional agreement or through signing an agreement with the EU that does not include the majority of the countries in the region.
- There is a crucial need to ensure ownership and awareness of the expected positive and negative consequences of any agreement by all parties.

8. Aid for Trade modalities

ECDPM

Throughout the entire period of EPA negotiations, the availability of EU financial support to accompany implementation of the agreement has probably been the most contentious issue of all. The ACP regions, in particular, requested that firm legal EU guarantees for development resources additional to the EDF, form part of the agreed EPA. Despite the recognition by all parties that without accompanying measures and development support there is a risk that the EPAs will not deliver on their development promise,¹¹⁸ the EU member states have refused to negotiate development resources as part of EPAs,¹¹⁹ let alone accept guarantees of any kind in the legal texts. In 2007 the European Commission finally accepted the possible inclusion of a 'development chapter' in EPAs. However, this has not covered European commitments on development resources. Instead, compromises were made on rather vague pledges to increase development resources spent on trade-related sectors within the existing frameworks (captured in different ways by non-binding articles or annexes to the various EPA legal texts), based on two main arguments. First, that ACP-EU aid relations are already regulated under the CPA and channelled through EDF, and EPAs only replace the trade chapter, not the whole Cotonou Agreement. Second, that aid should not be used as bait for the conclusion of EPAs.

The EU decided that the needs arising from EPAs should be dealt with as part of the 2007 'EU Aid for Trade Strategy', an overall framework aimed at 'delivering an effective response to countries own trade-related priorities' in favour of all developing countries. This Strategy commits the EU member states and the European Commission to spending collectively € 2 billion per year on trade-related assistance, a rather limited part of the wider AfT agenda, from 2010. To take account of the specific weaknesses and needs of ACP countries, in parallel to the conclusion of EPA negotiations, the EU made a commitment that around 50% of the increase in trade-related assistance as part of this Strategy will go to the ACP, on the basis of policy and programming

¹¹⁸ Mandelson, P. *et al.* (2007). Market access without aid for trade is like putting a plate of food in front of a man while withholding the knife and fork. Europe's aid for trade pledge. *Diario Noticias*, 16 October. http://ec.europa.eu/commission_barroso/mandelson/speeches_articles/artpmo43_en.htm

¹¹⁹ The mandate that the European Commission received from the European Council to negotiate EPAs does not include the negotiation of development cooperation, which is a separate, though related, aspect of the ACP-EU partnership. The Cotonou Agreement deals with trade and aid relations in the two separate parts.

decisions at country and regional levels. In practice, compared to current spending, this should bring an annual increase of € 300-400 million for trade-related assistance in ACP countries and regions.¹²⁰

Although it is only one year since the formal adoption of the Strategy, it is clear that implementing it and achieving concrete results is a difficult and complicated process. While the European Commission has maintained a fairly clear view about how work will progress, EU member states continue to raise questions about the exact type of coordination needed for an effective response, the most effective ways of delivering AfT, and the process for reaching agreement with ACP countries on AfT programmes. The approach agreed by the EC and EU member states – and the current focus of attentions – is for the elaboration of coordinated ‘regional packages’ for each ACP region, although a number of questions remain about what packages will consist of, how EU member states will contribute, and how they will work with other potential other already programmes being delivered or planned.

In terms of the response of ACP regions there have been some similarities in the approach, yet also some important differences. The Caribbean Forum (CARIFORUM) – the only region so far to have signed a comprehensive EPA – has looked to base its aid for trade plans on the commitments that have been made in the EPA text. West Africa and Central Africa have made strong linkages between the EPA and related ‘development support’, while the Eastern and Southern Africa regions is currently looking to move from a basic AfT identification exercise to a more strategic approach. The Pacific region has tried to tailor its approach to encourage wide participation of donors beyond the EC. Though the focus of the EU AfT strategy is on ACP regions, within each region there are also challenges with coordinating with national processes, where a great deal of work is also being done.

In general, most EU donors emphasise that AfT is not necessarily a new phenomenon, but has been delivered in the past in the context of a range of aid programmes – although there is still potential to learn from past mistakes. By contrast, the perception on the ACP side often is still to see AfT as representing something new or additional in terms of a work agenda and in terms of resources, to the extent that clear differences of expectations on AfT still persist.

¹²⁰ See Council of the European Union. (2007). Council agrees EU strategy on aid for trade. Press release. 15 October. <http://register.consilium.europa.eu/pdf/en/07/st13/st13873.en07.pdf>

Alongside the need for additional resources, ACP negotiators and several actors in ACP and European countries also reiterated the long-standing need to further improve the value, quality and effectiveness of the EU AfT and, in particular, the predictability and timeliness of EDF resources. Many aspects of the EDF delivery set-up require improvements and the ACP regions have sought firm legal EU commitments to fully exploit the potential of the aid effectiveness principles reiterated in the (2005) Paris Declaration: ownership, alignment, harmonisation, coordination and mutual accountability. Furthermore, in terms of aid quality and the effectiveness of delivery modalities, the current EPA texts do not go beyond best-endeavour language and joint declarations attached to the agreements recognising the importance of more and better AfT to accompany EPAs.

While access to more and better aid resources is not and should not be made conditional upon signing a trade agreement, it is true that specific needs will arise for those countries that have (or will) sign an EPA. For them it is crucial that implementation of the EU AfT Strategy not be delayed relative to the implementation of an EPA. Though formally these are separate processes, coordination and coherence must be ensured in 2008 between programming in bilateral donors' headquarters, EDF disbursements, implementation of current EPA (interim) agreements, and the conclusion of negotiations for comprehensive EPAs.

In the following sub-sections, we will refer to *aid for trade modalities* to encompass more than just EPA-related development support. The observations and suggestions on the quantity and quality of trade-related aid are aimed at making trade work for development, regardless of whether the ACP beneficiary country involved is a signatory to an EPA or not.

8.1 *Scope and levels of Aid for Trade*

The EU has to overcome a number of challenges to ensure effective delivery of its AfT. In terms of quantitative commitments, the EU member states will be in the spotlight as they will have to increase their trade-related assistance to € 1 billion by 2010 (i.e. 50% of the EU collective commitment which should come from EU member states aid budgets). The European Commission is on safe territory due to the already negotiated 10th EDF (approx. € 23 million during 2008-2013). Together with the 9th EDF, the 10th EDF will provide the EC's part of the AfT commitment (mainly through Country and Regional Strategy Papers). The EC's 2008 Aid for Trade Monitoring Report noted

that although many member states report that they are working towards the 2010 target and made assessments of their potential contribution, only some have so far announced a clear national target for meeting the TRA commitment. For example the UK has committed to reach £100 million (€ 120 million) per year by 2010. In the face of the current economic downturn, it appears possible that some member states may not meet their commitments on TRA under the EU Aft Strategy.

Therefore, the only legally guaranteed EU Aft so far, including development support for EPA implementation, will come through the intergovernmental (9th and 10th) EDF(s), managed and implemented by the European Commission on behalf of EU member states (see Box 8). This is the only source of new Aft that has been programmed (according to ACP needs). In particular, the EDF Regional Strategy Papers/Regional Indicative Programmes (RSP/RIPs) focus on trade-related support and regional integration, and the nominal value of the financial envelopes for the RIPs in the 10th EDF has increased considerably. While most National Indicative Programmes (NIPs) were agreed upon in the course of 2007, the programming of RIPs was completed in 2008 to take account of the preliminary results of EPA negotiations.

Box 15. EDF programming instruments

Country and Regional Strategy Papers (CSPs and RSPs) are the main strategic frameworks for the programming of EU assistance to ACP countries and offer guidelines for allocation and implementation of EDF funds in different intervention areas. These papers set out the political guidelines for the implementation of cooperation policies and are instruments for directing, managing and reviewing European Community assistance programmes, including on trade. The funds attached to the CSPs and RSPs are disbursed through multi-annual programming (in five-year cycles) in NIPs and RIPs. NIPs and RIPs specify the focal and non-focal sectors of assistance and the indicative allocation of resources. The ACP authorities responsible for NIP and RIP implementation are the National and Regional Authorising Officers (NAOs and RAOs). In many national or regional assistance programmes, considerable funds have been explicitly reserved for TRA (and increasingly so with EPA negotiations). As an example, the RIP for the West African region (ECOWAS and UEMOA) and NIP for Tanzania under the 9th EDF (2002-07) are outlined below.

- ECOWAS RIP – (total €235 million), focus on regional integration and trade:
 - o support related to building ECOWAS customs union: €118m;
 - o transport facilitation: €82m.

- Ongoing programmes:
 - o UEMOA regional integration Programme d'Aide à la Recherche Industrielle (PARI): €65m;
 - o accreditation, standardisation, quality for private sector programme: €15m.
- Tanzania NIP – (total €355 million), areas of support:
 - o transport infrastructure (roads): €116m (40%);
 - o basic education: €43.5m (15%);
 - o macro-economic support: €98.6m (34%);
 - o other programmes (governance, non-state actors and reserve): €31.9m (10%).

Open questions remain both with respect to scope and levels of Aid for Trade, which are addressed in more detail in the following section.

Scope: uncertainties about what type of trade-related support

The scope of AfT also depends on what type of assistance is considered as 'trade-related'. The WTO AfT Task Force¹²¹ chose a broad definition of the scope of AfT interventions, and its recommended six categories are increasingly used in all AfT debates:

- (1) support for trade policy and regulations;
- (2) trade development;
- (3) trade-related infrastructure;
- (4) building productive capacity;
- (5) trade-related adjustment;
- (6) other trade-related needs.¹²²

In recent years, most donors have reported only on their AfT efforts in the first two categories only, classified in the Joint WTO/OECD Database that concentrated on trade-related technical assistance and capacity building (TRTA/CB). Inclusion of the other categories in the AfT debates has led to a discussion in the donor community on how precisely to distinguish between them and report the different assistance activities.¹²³

¹²¹ The Task Force on AfT was established by the Director General of the WTO at the request of WTO members. Its given mandate was to make a recommendation to the Director General on how to operationalise AfT and on how AfT might contribute to the development dimension of the Doha Round negotiations.

¹²² Whereby the last three categories shall only be reported 'when these activities have been explicitly identified as trade-related priorities in the recipient country's national development strategies, such as the PRSP' (WTO, 2006).

¹²³ For a discussion on AfT definitions and categories in the ACP-EU case, see part I of Martí and Rampa (2007).

The EU decided that its AfT Strategy will cover the wider AfT agenda and adopted the six WTO categories. It is now time to deliver on this, starting with clarification on definitions and reporting of different categories, since the exact scope of trade-related support, whether for EPA implementation or other trade reforms, will also significantly affect the volumes available for AfT programming in each country and region. Uncertainties still remain on the actual scope of European AfT, given that the €2 billion commitment included in the Strategy is only for first two categories while there is no clear financial allocation for the others ('additional AfT resources from the EU will be spent on trade-related infrastructure, building productive capacity, trade-related adjustment and other trade-related needs') (Council of the European Union. 2007b). The distinction between categories 2 and 3 is also rather artificial, as it is often difficult to predict how much and when a productive capacity building activity will contribute to national market development and eventually international trade flows.

TRTA/CB categories 1 (support for trade policy and regulations) and 2 (trade development) alone are likely to be insufficient to adequately respond to the trade-related needs of partner countries. Timely support for trade reforms in the ACP together with development resources to help adjust to and foster the necessary economic transformation as well as to enhance domestic capacities to produce and market goods competitively, will be crucial. This is important if all ACP countries are to be able to actually take advantage of improved trading opportunities, and in the case of EPA, fully benefit from enhanced regional trade opportunities and the market access to Europe based on the DFQF offer by the EU.

Support for trade-related infrastructure (3) and building productive capacity (4) is particularly important to address 'supply-side constraints', the obstacles to efficient production and trade that are a general feature of the ACP economies. From landlocked Zambia, for instance, it costs more to transport a tonne of maize to neighbouring Tanzania than it costs to send the same tonne of maize from Tanzania to Europe or the United States. In most European and American ports, it takes a day to clear a container through port. In many African ports, it takes weeks. Overall, bottle necks for regional trade are often even more constraining than those for trade overseas. There are countless examples of serious supply-side constraints. When exporting many ACP agricultural producers lack the technical and financial capacity to be able to meet the EU's health and safety standards. Importantly, when defining the scope of AfT interventions, to have an impact on poverty reduction EU and ACP countries should target not only the well-established export sectors, but also support entrepreneurial activity at every level, including small and medium-sized business associations and

marginalised groups such as small-scale farmers and women's groups.

The last category of AfT, trade-related adjustment (5), will also be very important as it refers to supporting developing countries in adapting to changes in domestic, regional and international markets due to liberalisation. The removal of protective trade barriers in the ACP will, apart from creating opportunities, also expose domestic industries to more regional and global competition and could cause fundamental economic restructuring and loss of jobs. Moreover, it is likely to lead to a significant loss of government revenues as the collection of duties constitutes a considerable part of many ACP countries' total income. Replacing revenues from duties by other tax income sources will require considerable institution building efforts. The example in Table 70 below gives a rough idea of the magnitude of expected 'adjustment costs' of EPA. Rather than focusing on the direct economic effects on an EPA (on trade flows, revenues, prices, production, investment, etc.) these estimates attempt to give a first impression on the order of magnitude of the costs of adjustments programmes that may be required to fully take advantage of the potential benefits of an EPA. Four categories of key adjustments are identified: those related to the necessary fiscal adjustments and reforms to compensate for the loss of tariff revenues,¹²⁴ trade facilitation and export diversification that EPAs should entail, production and employment adjustments, and skills development and productivity enhancement needed to take advantage of new EPA opportunities. These are rough ex ante estimates that would need to be further refined, specified per country and compared to benefits that can accrue from regional trade opportunities and increased exports to the EU market.¹²⁵

¹²⁴ Hence, these fiscal adjustment costs cannot be compared to numerous estimates on the loss of tariff revenues due to an EPA.

¹²⁵ For more details, also on the estimation methodology, see C. Milner 'An assessment of the overall implementation and adjustment costs for the ACP countries of Economic Partnership Agreements with the EU', in Grynberg, and Clarke (2006).

Table 70. Estimated adjustment costs by region (million of Euros)¹²⁶

Region	Fiscal Adjustment	Export Diversification	Employment Adjustment	Skills/Prod. Enhancement	Total Adjust. Costs
Pacific ^(a)	210	175	82	175	642
CEMAC ^(b)	270	257	153	200	880
ECOWAS ^(c)	955	712	422	700	2789
ESA	825	752	415	695	2687
SADC	340	261	217	255	1073
Cariforum ^(d)	375	199	140	210	924
Gross Total	2,975	2,356	1,429	2,235	8,995

Notes:

(a) excludes Cook Islands, Nauru, Niue and Tuvalu, for which data were not available for earlier analysis

(b) plus São Tomé & Príncipe

(c) plus Cameroon and Chad

(d) plus Dominican Republic, but excluding Cuba and Antigua and Barbuda

(e) Somalia is excluded from the above groupings, but was included in earlier analysis

In terms of EPA negotiations and the possible scope of EPA-related support, some of the interim and other agreements initialled in 2007 make explicit reference to Aft priorities either in the main text or in annexes (see Appendix 3 for more details). The comprehensive agreement between CARIFORUM and the EU, for instance, lists in its development chapter Aft priority areas (that are further articulated in individual chapters): a) building of human, legal and institutional capacities to comply with the commitment of the EPA; b) fiscal reform and improved customs collections; c) promoting the private sector; d) investment promotion and diversification; e) enhancing technological capabilities, research and innovation; and f) trade infrastructure development. However, lists of priorities and joint declarations by the parties attached to the agreement will not automatically lead to programming of actually available resources (see following sub-section). In the case of the Caribbean region, it also remains unclear to what extent the cooperation activities mentioned are likely to materialise (Meyn, *et al.* 2009).

All Aft categories should be specifically taken on board not only in the Country and Regional Strategy Papers for EDF disbursement but also in the EU member states bilateral programmes through which the EU Aft Strategy will be implemented in the years to come. There is an urgent need for more clarity on the actual Aft scope for each ACP country and region. In the case of EPAs, for some, like CARIFORUM, it will be about moving from listing priorities to actual programming; for others, like the EAC and Pacific regions, there will be room in 2008 also to discuss further with European counterparts the scope of potential trade-related development support. The onus is

126 Source: Ibid.

largely on the ACP countries, since most of them have yet to mainstream trade into national and regional development plans, before effectively articulating AfT needs and demands based on a realistic set of priorities. On the EU side too, much remains to be done. Until funds are transferred to the beneficiary country, commitments on AfT categories remain empty boxes.

Levels: the EDF is not enough

Another major challenge in the implementation of the EU AfT Strategy relates to the volumes that will be available for ACP countries on a predictable and timely basis. Two dimensions are at stake: what AfT levels the beneficiary ACP country can count on in programming for coming years (given all other non trade-related development needs); and the volumes that will actually flow into the country at the time when they are needed (considering the serious time lags that usually separate aid programming from disbursement).

In terms of **predictable levels** available for the years to come, one thing is clear: the EDF cannot be the only source of AfT. For both EPA signatories and non-EPA states, the EDF also addresses other development programmes on health, education, water, rural development and other areas. On many occasions, ACP governments have expressed their concern that the strengthening of TRA within existing aid frameworks may lead to the neglect of other priority areas. Especially since the nominal increase in EDF, often used by the EU to counter such arguments, is negligible when adjusted for inflation. Between the 4th and the 9th EDF the nominal increase was 348%, but if 1975 is taken as a base year, the increase is only a mere 16% (Grynberg, and Clarke, 2006). An indication of the relative importance of AfT compared to *non* trade-related interventions as shown by the current choices made by the ACP comes from the 2007 programming of the EDF NIPs. As shown in Table 71, very few AfT programmes can be detected as part of the focal sectors identified in the 31 NIP documents available for African ACP countries.

At national level, where most AfT needs will be addressed, governments choose to allocate funds outside the AfT categories (with the partial exception of transport infrastructure relevant for regional integration). This table thus also shows that EDF cannot be the only envelope to address all AfT needs of ACP countries. A final aspect of the issue of predictability of AfT, as already mentioned, will be the way the different

categories of AfT (and respective volumes) are defined, calculated and reported.¹²⁷ In Table 71, for instance, are the NIP programmes in the areas of ‘rural development’ and ‘human resources development’ (shaded rows), outside the conventional AfT categories, going to address AfT needs? Or rather those which only support food security and education projects? And are they going to be reported as AfT? It is not the objective of this study to specify AfT needs of the ACP, but what clearly emerges here is that EDF will not cover them all. It is necessary to estimate AfT needs in all the different categories combined at country and regional levels to identify where the gaps are and fill them with fresh new funding from European and other sources.

Many of the RIPs under the 10th EDF do allocate a major part of EDF funds available at the regional level to activities related to regional integration and trade, which are expected to support the implementation of EPAs. However, this may not be sufficient to meet ACP needs.

The call for a clear and urgent indication of what *other* amounts of AfT will be available under the EU AfT strategy, and especially for the ACP countries that will soon start implementing EPAs, is confirmed by the fact that government revenue from one existing source (tariffs) is certain to fall and in some cases may fall quickly. Although it is in some ways the easiest cost of the IEPAs to forecast, even the task of putting an accurate figure on tariff revenue loss is problematic but, as explained in Chapter 5 (Box 11) data on hypothetical revenue loss, whilst necessarily ‘hypothetical’ provide a broad indicator of the scale and, most importantly, the pace of loss. For this reason the data from the county sections of Chapter 5 is brought together in Table 72. Even allowing for a wide margin of error, substantial AfT resources will be needed just for this particular category of trade-related support, either in the form of direct replacement of import revenues (e.g. via budget support) or through fiscal reforms (and strengthening of administration systems) needed to offset the loss of government funds from tariff reductions, both on intra regional imports and, in the context of EPAs, on imports from the EU.

Finally, the issue of **timely disbursement** of funds should be addressed as it significantly affects the actual availability of AfT volumes by recipient countries. The EDF record of delays between aid programming and disbursement, shown in Table 73, is not encouraging in this respect (Grynberg and Clarke, 2006). And it reinforces the argument that more clarity

¹²⁷ In OECD and WTO, directives have already been agreed about the CRS codes that should be used for reporting on the Aid for Trade categories Trade-related technical assistance and Capacity Building (including trade development), Infrastructure and Building Production Capacity. However, accurately reporting under the agreed codes remains a serious challenge.

is needed on what resources (additional to EDF) will be available, and by when, for ACP countries as part of the EU AfT Strategy commitment that in the range of 50% of the planned increase in EU trade-related assistance will be available for the ACP.

Table 71. 10th EDF NIPs for 31 African countries: number of focal sectors covering AfT needs ¹²⁸

		African region				
		Central	Western	Eastern & Southern	Southern	Total
WTO AfT Categories	Trade-related adjustment	0	0	1	0	1
	Building productive capacity	1	0	0	0	1
	Trade-related infrastructure ^a	1	2	6	1	10
	Trade development; support for trade policy and regulations; other trade-related needs ^b	1	1	1	0	3
Other possible AfT categories	Rural development	1	1	3	2	7
	Human resources development	0	0	0	2	2

Notes:

(a) All programmes included in these NIPs refer to regional transport infrastructure; basic national infrastructure is not included in this category (see footnote 134).

(b) These three WTO AfT categories have been merged here since the only matching programmes were defined as (unspecified) 'support to regional integration' (which could fall under each of the three).

Table 72. Summary of 'hypothetical revenue' loss in EPA countries

Country	Hypothetical revenue (\$000) on:		1st tranche share
	All items being lib.	1st tranche items	
ESA			
Comoros	3,508	n/a	n/a
Madagascar	32,643	13,631	42%
Mauritius	18,074	3,858	21%
Seychelles	142,874	141,748	99%
Zambia	12,710	4,706	37%
Zimbabwe	14,531	6,906	48%
Central and Western Africa			
Cameroon	99,220	20,472	21%
Côte d'Ivoire	196,320	76,983	39%
Ghana	88,761	6,631	7%
EAC		2nd tranche items	2nd tranche share

¹²⁸ This table derives from the authors' own analysis of the document : European Commission. Sommet Europe Afrique de Lisbonne: Signature des documents de stratégie pays et programmes indicatifs nationaux 10^{ème} FED. Press release (MEMO/07/559). Bruxelles, 9 décembre 2007. <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/07/559&format=HTML&aged=o&language=FR&guiLanguage=en>. Note also that in the OECD/CRS database for the period 2002-2005, more than 30 percent of the ODA that was provided by the European Commission qualified as Aid for Trade. To have a clearer picture, further analysis is required.

Country	Hypothetical revenue (\$000) on:		1st tranche share
	All items being lib.	1st tranche items	
EAC		2nd tranche items	2nd tranche share
Burundi	3,767	2,915	77%
Kenya	49,572	31,467	63%
Rwanda	4,835	2,652	55%
Tanzania	24,876	16,607	67%
Uganda	12,639	8,394	66%

Table 73. Funds allocated and spent during each five-year financing cycle (million euros)

EDF assistance package	Funds allocated during the five-year envelope (nominal value)	Real value of envelope (1975 base year)	Disbursements in the five years to which the envelope was allocated (nominal value)	Percentage of total allocation disbursed in the five years to which it was allocated (nearest percent)
4th EDF (1975–80)	3,390	2,696	1,454.5	43
5th EDF (1980–85)	5,227	2,586	2,041.0	39
6th EDF (1985–90)	8,400	3,264	3,341.6	40
7th EDF (1990–95)	12,000	3,514	4,417.9	37
8th EDF (1995–2000)	14,625	3,463	2,921.6	20
9th EDF (2000–07)	15,200	3,131	4,239.0	28

The urgency of timely disbursement of AfT resources also emerges from the last column of Table 72. For most of the EPA signatories, the largest share of the revenue impact of the EPA liberalisation will materialise over a short period of time. Significant government revenue shocks can be expected during the first or second phase of the tariff reduction period, with obvious consequences on the urgent need for AfT to address them.

Key lessons:

- The EU decided that EPA-related needs should be addressed through the ‘EU Aid for Trade Strategy’ in favour of all developing countries. How to move from pledges to delivery by EU bilateral donors in regional AfT packages is expected to be defined in 2009, hence the only legally guaranteed EU’s AfT currently available, including for EPA, is through the EDF.
- Uncertainties remain on actual scope of EU AfT, given that the €2 billion commitment in the Strategy is only for TRTA/CB. There is no financial allocation for other categories of AfT, such as to adjust to economic transformations or to produce and market goods competitively (crucial in the case of EPAs to benefit from enhanced market access to Europe).

- All AfT categories should be taken on board concretely in the Country/Regional Strategy Papers for EDF disbursement and in the EU MS bilateral programmes through which the EU AfT Strategy will be implemented in the years to come.
- In terms of volumes available for the ACP on a predictable and timely basis, the EDF cannot be the only source of AfT. There is preliminary evidence that AfT needs will go beyond what is available in the EDF, and that at national level the EDF is being programmed for developmental needs other than trade-related.
- Hence transparency is needed on what resources/by when will be available for each country as part of the AfT Strategy. This is particularly urgent for the EPAs initialled so far, since the lists of priorities/joint declarations annexed to the agreements will not necessarily lead to the disbursement of required volumes and scope of support (considering that the only secure resources are limited to EDF and that serious delays occur between programming and disbursement of aid).

8.2 *Quality of Aid for Trade and effective delivery mechanisms*

In addition to increased financial (quantitative) resources, the success of AfT initiatives will depend on whether the ACP and the EU can improve the delivery (quality) of AfT. Importantly, at the overall policy-level, the AfT Strategy builds on all existing commitments in this direction, namely Millennium Development Goal (MDG) attainment, policy coherence, enhanced division of labour and the Paris Declaration on Aid Effectiveness (based on a demand-driven approach). However, as with the volumes and scope of AfT, little is known of what improving AfT effectiveness means in practice. The risk is that the AfT fashion and pledges will not be matched by reality.

ACP governments emphasise that the current development support mechanisms under the CPA are not adequate to face the development challenges of integration into the world economy, starting with the EPAs. Improving mechanisms and procedures for delivering assistance is therefore as important as providing an appropriate level of support. Preparation of concrete, bankable proposals, mainstreamed in Poverty Reduction Strategy Papers (PRSPs) and supported by all relevant actors in ACP countries, timely disbursement of funding and well prepared, effective delivery of assistance will affect the capacity of ACP countries to implement EPAs and any other trade agreements.

The following paragraphs address issues related to what the Paris principles could mean for AfT (and EPAs). There is now a window of opportunity to use these aid effectiveness processes (involving both EU and ACP countries) to make AfT delivery channels more efficient and effective.

Ownership of AfT strategies and policies by partner countries. First of all it is up to the ACP countries and regional organisations to identify AfT priorities based on political choices and sound analysis of existing bottle necks, opportunities and required poverty reduction efforts. However, EU donors' procedures and practices are not conducive to full ownership.¹²⁹ In the case of EDF in particular, effective and broad participation in defining demands on the ACP side and the depth of needs assessment are questionable, as often only a few officials in the NAO/RAO offices know and participate fully in the programming process (EUROSTEP, 2006). In the case of European Community AfT activities, consultations are mainly conducted with government agencies and regional organisations and rarely with private sector and civil society stakeholders (ADE, 2004). The problem is aggravated by the fact that the NAO is generally located at the treasury or at planning ministries, and there is usually little or no involvement of the trade ministry in mainstreaming the EDF process as part of the PRSP.

When deciding on how to deliver on their AfT commitments, EU donors should consider devoting part of the AfT funds to strengthening ownership, especially in the early stages of the process. Resources could support both capacity building in the ACP to design AfT demands and the domestic processes of mainstreaming owned AfT strategies and programmes in PRSPs.

Lack of ownership risks making improvements in other dimensions of aid management useless and progress in addressing such systemic weakness should be monitored as part of the aid delivery processes. For instance, ownership of EPA-related development cooperation by ACP would be reflected by the number of countries and RECs that effectively implement EPA-related integration and trade liberalisation strategies, and on the emphasis placed on joint programming of all cooperation instruments (including the non-EDF EU and ACP country's budget instruments).

Alignment of donors with the partner countries' development strategies and instruments. Alignment will relate to (i) policy alignment, i.e. decisions on allocation and programming of AfT on the basis of national and regional policies (see ownership);

129 For a thorough discussion see Mackie (2006).

and (ii) the use of nationally and regionally owned instruments for the delivery of AfT. Nationally owned instruments through which trade-related development support may be delivered could include instruments such as budget support, infrastructure programmes, trade facilitation schemes, income support programmes, price support in agriculture, SME Funds, Road Funds, National Development Banks, commercial private sector funding schemes, etc. Regionally owned instruments¹³⁰ could be mechanisms such as the COMESA Fund¹³¹ or the EAC Partnership Fund, as well as the Pan African instruments established through the African Development Bank, etc. EPA-specific mechanisms, or the establishment of EPA-specific windows within existing instruments, may be the preferred option for those countries who have or will sign an agreement.

Harmonisation among donors. The broader the scope of AfT interventions, the more important proper articulation, definition and reporting of the different initiatives will be. To be effective, all AfT activities by different donors and agencies within a single country should be designed in a holistic manner and under a coherent framework. Hence the importance of basing future AfT interventions on a careful analysis of what is already on the table. This also reveals the key role of coordination among different implementing agencies and actors, including harmonisation of the practices, procedures and requirements of various donors for an optimal connection with the beneficiary country's PRSP.

Managing for results and strengthening mutual accountability. Both parties should commit to monitor AfT. This would strengthen mutual accountability and should be ensured by the institutional provisions of the AfT programming frameworks. Building a monitoring mechanism into programming cycles to implement the EU AfT Strategy (including EPA-specific programmes) would provide tools to evaluate both parties' progress in mobilising adequate AfT support. Monitoring should both be quantitative and qualitative as well as continuous (in the case of EPAs, for example, it should last throughout the entire period of the Agreement). Monitoring and evaluation provisions within AfT frameworks should, apart from indicators like Doing Business performance, also lock-in the responsibility of both donors and recipients for the sustainable mobilisation and effectiveness of the resources. Establishing joint

¹³⁰ For details on regional funds are available, see Braun-Munzinger (2009).

¹³¹ The COMESA Fund was established to deepen and accelerate the COMESA regional integration process by supporting the efforts of Member States in undertaking economic reforms related to economic integration and facilitating the development of trade-related regional infrastructure. The COMESA Fund, with its two specific components 'Infrastructure Fund' and 'Adjustment facility', became operational in November 2006.

indicators on progress, for example, would emphasise this mutual responsibility in AfT implementation, including the effectiveness of the development cooperation institutions. The example of the EDF monitoring system could serve as a model, with annual operational reviews, mid-term reviews and end-of-term reviews. In practice, in the case of EDF, the mid-term review also provides an opportunity to adjust intervention strategies and the corresponding financial resource allocations based on an assessment of both needs and performance. This would be very important given the continuously evolving nature of AfT needs.

There is widespread consensus that **the effectiveness of AfT**, including from the EU, falls well below the above benchmarks, as identified in the Paris Declaration.¹³² European Community aid, in particular, is hampered by inadequate delivery modalities and procedural bottlenecks leading, in many instances, to poorly timed and inefficient implementation of assistance programmes (Martí, and Rampa, 2007). In most cases this depends on the general nature of EDF management. But in certain cases the problem is aggravated by the fact that the assistance is urgently required and its effectiveness time-bound, being related to trade negotiations, trade reforms and economic adjustment in recipient countries.

However, there are signs of improvement in the quality of EU aid, due to internal processes to review aid management. Lessons for future AfT initiatives could be drawn from the ongoing internal reforms in Europe aimed at increasing aid effectiveness and, in particular, experience of ACP-EU cooperation.¹³³ Specific ideas on PRSP based aid decision-making and procedural simplification, use of recipient countries' institutions and public finance management rules, aid modalities which facilitate more predictable and flexible programming, as well as better coordination and complementarity among donors could all be utilised.

The division of labour between donors is particularly important in the context of the EU AfT Strategy, given the multiple donors and possible areas of intervention involved, as well as the different comparative advantages in different assistance areas by different donors. Division of labour should be based on a careful assessment of such advantages. A donor should be able to delegate responsibility for carrying out its aid programme in a particular area to another donor that is better placed to do the job. For instance, the EC is better equipped to manage programmes which contain

¹³² For a comprehensive discussion, see OECD (2007).

¹³³ For an overview of the ongoing EU processes to improve aid effectiveness see section 5 of Martí and Rampa (2007).

large investment components than programmes that depend on processes (i.e. trade governance, capacity building, etc.), so the latter could be left to other EU donors with better performance in these areas (ERO, 2006). Implementation of the EU AfT Strategy should include, in line with the requirements by the ACP country concerned, as a prerequisite, a diagnostic exercise to determine which donor should focus on which part of the AfT package in each ACP region and country. As in the ongoing discussions between EU member states and the European Commission, this also entails a joint financial agreement favouring the harmonisation of procedures around a 'country system'.

A final general dimension in the quest to make AfT delivery channels more effective and efficient relates to finding the right institutional framework and process for dialogue to move towards enhanced effectiveness. In the case of EPAs, RPTFs outside but closely linked to the formal setting of EPA negotiations were set up to facilitate this process. Comprising development officials and experts from both the EU and the ACP region concerned, their aim was to 'cement' the strategic link between the EPA negotiations and development cooperation. In particular, they should have contributed with ideas for cooperation activities, helped with the identification of sources of assistance required for EPA-related capacity building and facilitated the efficient delivery of such support. However, the RPTFs did not perform as expected. There is a need to evaluate the reasons why, and re-assess their functioning, including the role played in this by various European Commission services, EU member states, other donors, and the private sector. A short term effort should be made by the European Commission and the EU member states to clarify the causes of the malfunctioning of the RPTFs, this in order to avoid that the same unsatisfactory result will be reproduced at the upcoming national and regional meetings that are planned in the new WTO Aid for Trade Road Map.

In terms of **the ACP countries and the EU AfT Strategy**, little is known on the delivery channels to implement it. What is known today is only that the European Commission has indicated that the preferred channel for disbursing EDF resources in this context would be 'regionally owned mechanisms' (based on Contribution Agreements, as was done recently with the COMESA Fund). There is a need for a comparative analysis and assessment of the existing options to deliver AfT in each of the six ACP regions. A number of questions need to be answered soon, including about the added value of different mechanisms (regional funds,¹³⁴ national level instruments, etc.) in terms

¹³⁴ See discussion in Braun-Munzinger (2009).

of their ability to generate more production capacity, infrastructural development, national, regional and global trade, aid effectiveness, ability to leverage additional public and private funding, specific opportunities for financing interventions under each of the five AfT categories, and so forth.

The same uncertainties remain also with regard to EPA-related support, despite the fact that certain chapters of EPA texts refer to improved aid modalities. The CARIFORUM EPA¹³⁵ and the interim agreements for CEMAC, SADC, Ghana and Côte d'Ivoire explicitly aim to set up regionally managed development financing mechanisms. However, there are no legal guarantees that this will happen, nor indications on the timeframes (with the exception of the Caribbean with a timeline of 2 years) or on what resources will be available to support the complex establishment process. In the PACP, EAC, and ESA agreements there is nothing on institutions or funds, or delivery modalities for AfT. This leaves PACP in the cold as EAC and ESA benefit from the COMESA Fund that is in the process of becoming operational (see Annex 2b for more details on the content of development chapters in current EPAs).

Finally, EPA texts also vary substantially in terms of possible institutions overseeing AfT implementation. ESA texts are possibly the most advanced, as the agreement aims to establish a joint development committee (which shall remain flexible to adapt to national and regional needs) to monitor the implementation of the development cooperation arrangements. Moreover, it is explicitly envisaged that this cooperation will be based upon the ESA Development Strategy and that an ESA Development Matrix will be developed.

Key lessons:

- Improving mechanisms/procedures for delivering AfT assistance is as important as providing an appropriate level of support, and effectiveness will determine the capacity to implement EPAs and any trade reform.
- Given that the AfT Strategy builds on the EU commitments for improving quality of aid in line with the Paris Declaration, there is now a window of opportunity to use aid effectiveness processes to: strengthening ownership of AfT strategies by ACP;

¹³⁵ A Caribbean Development Fund was created under CARICOM in 2008 and is currently in the process of becoming fully operational. It may also be used to channel EPA support from the EU; however, a number of details will need to be clarified, in particular to ensure that all EPA signatories will be eligible for funding.

harmonising donors' practices and aligning them to partner countries' own delivery instruments; managing AfT for results towards mutual accountability.

- European Community aid effectiveness is hampered by procedural bottlenecks, but internal processes to review aid management are generating improvements. Ideas for more effective EU AfT could be borrowed from there on: aid decision-making devolution/procedural simplification; use of recipient countries' institutions/management rules; aid modalities facilitating more predictable and flexible programming; better coordination/complementarity among donors. Division of labour between EU donors will be particularly important for AfT.
- Little is known on the modalities to implement the AfT Strategy and there is urgent need for comparative analysis of existing options to deliver AfT in each of the 6 ACP regions. A number of questions should soon be answered, including with regard to the added value of different mechanisms (regional funds, national-level instruments, etc.) and, for EPAs, the reasons why RPTF did not work as expected and ways to improve their functioning,
- Certain chapters of initialled EPAs refer to setting up regionally managed development financing mechanisms as improved aid modalities. However there are no legal guarantees that this will happen.

8.3 *The way forward: windows of opportunity in 2009*¹³⁶

The foregoing sections offer a number of suggestions for a way forward to implement EU AfT, in terms of the scope and levels of AfT, as well as the quality and effectiveness of its delivery. The following suggestions apply to all ACP countries and their AfT needs, independently of their signature on an EPA. When a distinction is made it refers to the text of a possible agreement, and the observations are common to all the scenarios presented in Chapter B3 (interim, full EPA or alternative trade arrangements).

Improving demand and supply of AfT

The current attention to AfT in the context of EPAs presents a window of opportunity for improving the programming as well as the management and delivery of AfT. **On**

¹³⁶ For a recent discussion, see also Lui (2008).

the demand side, to avoid ‘business as usual’, governments, the private sector and NGOs from the ACP regions and countries should ‘drive’ the process and pro-actively contribute to ensuring the EU AfT Strategy is operational and effective. Following the design of national and regional AfT strategies and the identification of priority sectors of intervention, there is a need for:

- (1) stocktaking of existing AfT programs in ACP countries, mainstreamed as part of PRSPs and supported by government budgets;
- (2) stocktaking of existing regional AfT programs, supported from ACP countries’ budgets;
- (3) stocktaking of existing European Community and EU member states AfT support in each region. A base-line analysis of AfT in CSP/RSP (2002-2007 and 2008-2013 EDF and OECD CRS data) should be compared with existing EU strategies, policies and funding with the purpose of identifying possible ways in which to enhance EU division of labour and thus bring about more effective AfT to the benefit of partner countries and regions;
- (4) identification of gaps (both in overall financing needs and sectoral aid allocations) and the improvements needed in terms of quality and delivery instruments;
- (5) proposals on where and how the EC and interested EU member states should contribute with additional regional and bilateral AfT, including TRA;
- (6) agreement between EC and interested EU member states about better harmonised and coordinated joint delivery mechanisms for AfT and TRA;
- (7) mainstreaming additional, concrete AfT (including TRA) activities in ACP countries’ national PRSP implementation and regional programmes.

If such steps are not taken in this order there is a risk of lack of ownership on the ACP side and of some EU member states not moving because of ‘lack of clear, poverty reducing, fully owned and prioritised AfT demands’. The window of opportunity exists mainly due to the political focus on EPAs, but concrete steps are urgently needed before attention shifts to other priorities.

ACP countries and regions which aim to exploit the possibilities offered by EU AfT must take charge of it and seek to manage the various external donors, including the EU. In this respect, urgent establishment or strengthening of home-grown AfT 'vehicles' is an important criterion for effective use of AfT (see the case of the COMESA Fund, which may be replicable at national level). This means that recipient countries should also take advantage of the possibilities for alignment, harmonisation and mutual accountability embedded in the Paris Declaration on Aid Effectiveness and carefully assess different proposals for future national, regional and multilateral development support mechanisms.

Improving ownership will be crucial. This is directly related to the process and governance structure for aid decision-making, as well as the capacity of recipients to identify priorities for assistance and participate pro-actively in decision-making processes. Needs identification is a key aspect to ensure ownership in the recipient country, for better prioritisation and mainstreaming of its trade and development interests. To make AfT initiatives an owned process, the trade-related capacity of various ministries (including the NAO offices), private-sector organisations (including small and medium enterprise organisations and small-scale farmers) and other non-state actors should be strengthened and tailored towards full participation in the programming of AfT, which also involves building soft capabilities, such as organisational and networking skills. Mainstreaming of AfT programming in PRSPs should enable ACP governments to include growth and its distribution in their development plans.

However, even if there is broad agreement that it should be up to ACP countries and regions to define their aid for trade needs, there has been little attention paid to questions of what might be the best ways of undertaking such a task. Although the idea of needs assessments are often mentioned in the context of AfT, ACP regions are confronted with practical questions, such as: Given the breadth of the AfT agenda and potential projects, what should be the scope (or limit) of any needs assessment? How much detail should needs assessments extend to: suggestions for possible projects, project design, or costed proposals? How to prioritise between different areas, and incorporate strategic linkages?

One result of the lack of thinking on methodology and approach to assessing trade needs is that at various points ACP regions have been accused of producing uncostered 'wish lists'. In addition, despite the complexity of the process – of getting various studies commissioned, supporting their member countries and seeking to find agreed approaches, and liaising with donors – in most regions there are still only one or two officials working on coordinating the AfT effort at the regional level.

Related to this is the need to ensure a balance between national and regional levels of support. AfT initiatives should also encompass region-wide programmes which can be especially successful alongside regional integration. At the same time, this must avoid losing focus at the national level.¹³⁷ Strengthening the links and complementarity between the regional and country levels of interventions and identifying national and regional needs is an important step in this direction. The involvement of institutions coordinating regional integration in preparation for AfT national-level strategies would facilitate the identification of the AfT support needed by each member country to implement the regional integration reforms and commitments.

On the supply side of AfT, the ‘Paris process’ will be particularly important, based on the Paris Declaration adopted in 2005 and the Accra Agenda for Action of September 2008. Aid effectiveness (including AfT and support to EPA implementation) will thus take centre stage in the (EU) donor discussions during 2008. Preparations are already going on in various corners. Intensive technical discussions are taking place in parallel, between and within European Commission and EU member states, on implementation of the joint EU AfT strategy.

In this respect (see discussion on EDF in Section 8.1) the major uncertainties related to the actual levels and scope of AfT available for ACP countries should be solved by EU bilateral donors. What does the collective commitment that in the range of 50% of new TRA will go to ACP countries actually mean? Will every individual EU member state deliver some sort of TRA? Is there enough ACP demand for suitable TRA programmes? Will an individual donor’s share be decided according to its EDF contributions, or other criteria? Should donors that already give 0.7%ODA/GNI be expected to provide even more? And how to divide any new fresh resources among different beneficiaries? What to do about several countries in the Pacific and Caribbean regions where there is no bilateral EU aid programme? Will an extra effort for those regions be required from the European Commission? Will member states deliver TRA through common delivery instruments as with a regional fund or through the existing bilateral country (and regional) programmes?

¹³⁷ This risk is recognised by the European Commission: ‘TRA in the aggregated data for the ACP are dominated by regional and all-ACP programmes in part designed to prepare for the EPAs. There are only relatively few ACP countries that have a trade programme, even though this number is increasing reflecting increased attention for trade and development over the past few years. In contrast to the ACP countries, the share of TRA within country programmes is higher in Asia and in Latin America.’ (European Commission 2005, EC Trade-Related Assistance (TRA) – some key facts and figures. Brussels: European Commission).

First of all, classification and reporting methodologies for AfT and TRA interventions need to be clarified in detail in the early stages of programming assistance, to avoid confusion about the exact scope and amounts of the AfT actually available and any risk of a re-labelling of existing support. However, efforts should not stop here. It can be argued that in the past, relatively strong efforts have been dedicated to monitoring AfT flows and establishing indicators to assess donor initiatives, without resulting in major increases in aid commitments or any apparent major innovation in aid delivery. Hence, stronger attention will be needed on actual design and delivery of AfT activities.

The division of labour will be particularly important for AfT and TRA implementation, in particular, in terms of rationalisation of all possible different AfT interventions at various levels, as well as harmonisation of donor practices. The EU stands a relatively good chance of dividing the tasks, responsibilities and roles in this area if EU member states can overcome their reluctance to rely on other EU administrations in regions where they are not present. This will require active use of co-financing, voluntary contributions and joint implementation strategies. Apart from regional issues that are dealt with in national poverty reduction strategies, solutions for regional challenges should be supported by institutions with suitable instruments like the EU Commission. It remains to be seen whether EU bilateral donors and the EC can agree to pool their resources and thus exploit these opportunities for better division of labour for the purpose of increased aid effectiveness. Efforts to implement the joint AfT strategy probably represent the 'sector' where most progress on 'division of labour' can be seen (at least at the Brussels level), having already started before interim EPAs were concluded in 2007 and now being stepped up in parallel to the negotiations for comprehensive EPAs.

For EU member states with little experience of AfT or TRA, division of labour may lead to a 'minimal involvement scenario', in which a serious focus/shifting (from non-priorities) to only one or two ACP regions occurs with one or two sectors of AfT intervention, or the decision to channel own AfT resources into regional funds rather than bilateral aid programmes.

The importance of AfT modalities in an EPA text

While all parties acknowledged that accompanying measures and development support could reinforce the development impact of EPAs,¹³⁸ the EU member states refused to mix discussions about development assistance with EPA negotiations.¹³⁹ Two main arguments were used. First, that ACP-EU aid relations are already regulated under the CPA and channelled through EDF, and EPAs only replace the trade chapter, not the whole Cotonou. Second, aid should not be used as bait for the conclusion of less attractive EPAs.

The EU decided that one aim of the EU AfT Strategy is to support ACP regions and countries to take full advantage of increased trading opportunities and maximise the benefits of trade reforms, including those of EPAs, while the collective EU delivery of AfT does not depend on the outcome of such negotiations. The Strategy will indicate the overall share of the Community and Member States increase in TRA available for needs prioritised by ACP countries. In the context of efforts to increase the collective EU TRA to € 2 billion annually by 2010, in the range of 50% of the increase will be available for these ACP needs. Accordingly, the spending will reflect policy and programming decisions at country and region levels. A prerequisite to deliver on both TRA and wider AfT commitments is to enhance the integration of trade-related concerns into ACP national development strategies, implementation plans or national budgets. In this context, the EU indicated it will enhance its dialogue on these issues with ACP countries and other donors and financial institutions present at country level, with a view to achieving integration of trade concerns into the ACP countries' poverty reduction and development strategies by 2013.

The text of an EPA is important to increase the chances of materialising EPA-related support with appropriate levels and scope, through effective TRA delivery channels. The details of the agreements are and will continue to be an important element. The Caribbean and ESA texts should be taken as examples as they appear to be more advanced and detailed in terms of development cooperation, including some provisions for monitoring of assistance.

¹³⁸ Mandelson, P. (et al.). 2007. Market access without aid for trade is like putting a plate of food in front of a man while withholding the knife and fork. Europe's aid for trade pledge. *Diario Noticias* 16 October 2007. http://ec.europa.eu/commission_barroso/mandelson/speeches_articles/artpmo43_en.htm

¹³⁹ The mandate that the EC received from the European Council to negotiate EPAs does not include the negotiation of development cooperation, which is a separate, though related, aspect of the ACP-EU partnership. The Cotonou Agreement deals with trade and aid relations in the two separate parts. Despite in 2007 the EC finally accepted the possible inclusion of a 'development chapter' in EPAs, this has not covered European commitments on development resources.

For CARIFORUM it is mainly an issue of implementation of the Joint declaration on development cooperation, starting with the programming of 10th EDF Caribbean RIP (led by the European Commission); the delivery by EU member states on their 'intention to ensure that an equitable share of Member States' TRA commitments will benefit the Caribbean ACP States'; and the establishment by the CARIFORUM States of the regional development fund. Before signature, the countries that have initialled an interim EPA may seek improvements in the text and development cooperation provisions in line with the benefits achieved by other ACP regions (such as the Caribbean and ESA). For countries that did not conclude interim deals or for whom the Interim Agreement did not include a development chapter (e.g. PACP and EAC) the negotiations for a comprehensive EPA are the avenue for ensuring that their TRA needs and their preferred delivery mechanism are anchored into the legal text. Negotiators should bear in mind that the more binding the language in the agreement, the greater the likelihood of effective delivery of the needed support.

Two types of provisions are particularly important for all ACP countries. The issue of TRA and wider AfT predictability is of such fundamental relevance for EPA implementation, especially in view of sequencing trade provisions and development cooperation strategies, that it is suggested to specifically refer to the predictability aspect within the EPA text. An important element of predictability should also be the status of TRA and AfT, i.e., the part delivered through EDF, once the CPA (overarching framework for EDF programming) expires in 2020. Hence the discussion on aid modalities in 2008 should take into account that EPA implementation will go beyond current aid arrangements expiring in 2020. Secondly, the EPA text needs to reflect the parties' commitment to 'manage for results' and the proper monitoring of (i) basic quantitative indicators on commitment and disbursement levels, (ii) qualitative indicators relevant to judge Aid Effectiveness (according to the Paris Declaration and process).

A new idea: AfT Contracts?

One of the recent initiatives launched by the EC in the context of improving aid effectiveness and as part of the 'Paris process' is an enhanced form of budget support, called 'Millennium Development Goals (MDG) contracts'. The idea is to further improve the predictability and effectiveness of the budget-support (aid) modality by providing a six-year guarantee for regular financial transfers of EDF resources into the national budgets of ACP countries. Certain conditions that apply to general budget support also apply. Moreover, the ACP countries would have to sign up to efforts intended to achieve

the MDGs, and subsequent disbursements would be linked to providing evidence of progress on the MDGs.

ECDPM has suggested that a similar 'AfT contract'¹⁴⁰ could be created for ACP regions and countries which are prepared to commit to a series of trade reforms. Implementing an EPA, for instance, would constitute the required 'demonstrated efforts' towards trade reform. Evidence would be provided by the fact that EPA-related reforms are progressing. In exchange for this evidence, the EU could legally guarantee the enhanced predictability and effectiveness of trade-related budget support.

This would solve a number of the problems regarding the quantity and quality of AfT, as discussed in this section of the study, and could help to facilitate the identification of what are the appropriate levels and scope of AfT as well as ensure effectiveness of the delivery channels. An 'AfT contract' would provide the ACP regions and countries with the necessary predictability to allow them to plan and programme AfT resources as well as leverage more funding from other international donors and private sector sources (for example, by pursuing public-private partnerships). Such contracts, in particular, would be an important element and provide an incentive to join or conclude EPAs for those ACP countries that were not in a position to sign by end of 2007 because of the lack of guarantees on predictable funding to support its implementation.

Precedents exist and should be looked at when exploring the path of 'AfT contracts'. A similar concept is behind the idea of 'performance-based partnership' within the Cotonou aid framework, for example, as well as the 'incentive tranche' in the EDF rolling programming.¹⁴¹ Particular effort should be made to prevent the performance assessment being used as an instrument to enforce conditionality. Any reprogramming of aid in the context of an AfT contract should be based on the country's own policy agenda. Needs and performance parameters should be jointly identified by recipients and donors, so that the ACP governments involved can set targets in a manner which is consistent with an 'owned' policy orientation.

¹⁴⁰This idea should be developed further and ECDPM is willing to facilitate a consultative process and further research on the topic. See ECDPM, *Aid for Trade Contracts*, www.ecdpm.org.

¹⁴¹For a general discussion on performance-based partnership, see (Frederiksen, 2003). The incentive-based approach to programming was strengthened with the 10th EDF, especially in relation to initiatives to strengthen governance. When preparing new cooperation strategies with ACP countries, the Commission will propose granting 'additional financial support' – incentive tranche – to encourage countries 'adopting or ready to commit themselves to a plan that contains ambitious, credible measures and reforms' (see the European Commission Communication on Governance, August 2006).

Key lessons:

- To improve the demand side of AfT and TRA, the ACP regions/countries should proactively contribute to ensure the EU AfT Strategy is operational and effective, by: stocktaking existing EC/EU member states' AfT; identifying gaps (both in overall financing needs and sectoral aid allocations) and improvements needed in terms of delivery instruments; and proposing where and how EU member states should contribute with bilateral AfT. This requires strengthening of the trade-related capacity of various ministries and non-state actors in the ACP.
- On the supply side of AfT and TRA, the review of the Paris Declaration implementation at the high-level meeting in Accra (September 2008) will be particularly important. Division of labour is key and will require active use of co-financing, voluntary contributions and joint implementation arrangements among EC and bilateral donors.
- The text of an EPA is important to increase the chances for EPA-related support to materialise with appropriate levels/scope and through effective AfT and TRA channels. The more binding the language in the agreement, the higher the likelihood of effective delivery of the needed support. The Caribbean and ESA texts should be taken as examples as they look more advanced and detailed in terms of development cooperation, including some provisions for monitoring of assistance.
- 'AfT contracts' could be made available for ACP regions/countries prepared to commit to a series of trade reforms. In exchange for evidence on 'demonstrated efforts' by ACP to reforms, the EU could legally guarantee enhanced volumes/effectiveness of trade-related budget support. This would solve a number of the problems discussed regarding quantity and quality of TRA, provide the ACP with the necessary predictability to allow them to plan and programme AfT and TRA resources, as well as leverage more funding from other international donors and the private sector.

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Appendixes

Appendix 1. Data issues

Three generic data problems were flagged in the original report, but the most serious cases of two of them have been resolved through the availability of additional data over the past year. What remains is what we call a problem of comparability. All trade data sources contain errors: there is no single ‘magic source’ that is always superior. Since alternative sources rarely provide identical information it is normal for analysts using different sources to produce different results. Consequently, it is important to explain the choice of data sources in case the findings in this report differ from those in other documents.¹⁴²

In two cases (ESA and Mozambique¹⁴³) the IEPA schedules provide data on import values, and so these have been used.¹⁴⁴ In all other cases we have had to obtain data on imports from a third party in order to calculate the share liberalised in each tranche (and excluded) and the hypothetical revenue impact. The team’s key selection criteria for the preferred data to be used for ACP imports when analysing their liberalisation commitments were:

- data availability for several years (normally in the original report the three years 2004–6) to allow the impact assessment to be made in reference to recent average import levels rather than those for a single year;
- a uniform approach for all countries within a single regional IEPA (to maximise the intra-regional comparability of the analysis);
- a single source for the data (to maximise consistency of treatment of the raw data supplied by countries).

These criteria have resulted in the use of data from the UN’s Comtrade database, using figures meeting the first criterion that have been supplied by the ACP importing country whenever they exist – save for two exceptions noted below. In other cases,

¹⁴² Such as ‘Update: Interim Economic Partnership Agreements’, Trade Policy in Practice (19 December), DG Trade, European Commission, http://trade.ec.europa.eu/doclib/docs/2007/november/tradoc_136959.pdf.

¹⁴³ Although, as Mozambique’s schedule does not list excluded items (which have been inferred, as explained in Section 3.6, from its tariff schedule), the import value of excluded items has been derived by subtracting the value of all items which are listed in the schedule from the total import value also included in the schedule.

¹⁴⁴ Although import figures are also included in the EAC schedule, these are for the five EAC countries combined, and could not be used for the individual-country analysis in Section 5.3.

where Comtrade does not offer recent data supplied by the ACP importer, 'mirror data' from Comtrade (on the EU's reported exports to the country concerned) have been used instead.

The two exceptions are:

1. where the preferred data exist for some states in a regional group but not for others;
2. where they suffer from problems already known to the team.

It is important to use the same data source for all members of a regional group in order to ensure comparability in the analysis. To achieve this in the case of exception (1), mirror data have been used for all the countries in the group. They have also been used in the case of exception (2).

Data on ACP tariffs have been taken either from the IEPA documents or, where these are not given or are insufficient for our purposes, from UNCTAD's TRAINS database. The import and tariff data sources used for each country (and the reasons for this) are given either in Table A1.1 or in the relevant tables in Chapter 3 and Appendix 5. In all cases, again to achieve comparability, the proportion of imports covered by each tranche of liberalisation (and by the items excluded from liberalisation) has been established in relation to a country's total imports falling into HS chapters 1–97. In other words we have disregarded imports in the two miscellaneous, unclassified chapters (98 and 99), neither of which appear in the import data or the tariff schedules, on the grounds that it is not possible (by definition) to analyse the impact of liberalisation. Moreover, neither is mentioned in any of the IEPAs except for nine items with incomplete descriptions in the BLNS schedules.

Table A1.1. Base tariffs in the liberalisation schedules

Liberalisation schedule	Tariffs given in schedules	Tariffs on which average tariff calculations based
Cameroon	'Tarifs maximum appliqués au 31/12/2007 – CEMAC' (Assume CEMAC CET)	Those given in schedule
Côte d'Ivoire	'Rate 2008'	Those given in schedule
Ghana	'Until 31 December 2012'	Those given in schedule
EAC	MFN rate	Those given in schedule
BLNS	None	For Botswana, Lesotho and Swaziland: 2007 'preferential tariff for European Union countries' (or, for items not covered by the TDCA, the MFN rate) from TRAINS For Namibia: 2007 MFN schedule from TRAINS for Namibia
Mozambique	MFN tariffs	Those given in schedule; those for excluded items identified from 2007 schedule in TRAINS (NB schedule contains only items to be liberalised; exclusion basket derived from comparison of codes in liberalisation schedule with those in TRAINS MFN 2007 schedule).
Comoros	CET rate (for all except excluded items), with preparatory period to get to CET	CET rate given in schedule (no MFN schedule available in TRAINS)
Madagascar	CET rate (for all except excluded items), with preparatory period to get to CET	Max. MFN 2006 from TRAINS
Mauritius	CET rate (for all except excluded items), with preparatory period to get to CET	Max. MFN 2006 from TRAINS
Seychelles	CET rate (for all except excluded items and 26 others) with preparatory period to get to CET	Max. MFN 2006 from TRAINS (NB 2006 schedule is in HS 1988/92, so impossible to identify tariffs for over 900 items)
Zambia	MFN 2008	Those given in schedule
Zimbabwe	CET rate (for all except excluded items and 1 other) with preparatory period to get to CET	Max. MFN 2003 from TRAINS (latest schedule available)

The IEPA schedules are not always complete, in the sense that they indicate what will happen to each and every product in the nomenclature. In the original report the EAC schedule analysed was clearly missing a large number of goods. It listed goods in only 4,277 different HS6 codes, whereas the full HS nomenclature contains some 5,200. This particular problem has now been largely overcome** (and so the analysis in this report offers a significant update on the original report) but a similar (though much more limited) one applies to Zambia. The Zambia schedule contains 5,964 lines, all at 8-digit level falling within 5,038 HS6-digit sub-heads, all of them in the H3 (2007) version of HS. But not all HS3 sub-heads are included: there is nothing listed in 14 sub-heads. It is understood that these codes are to be added to the schedule at a later date, but for the present they have had to be ignored. There are also codes missing (and other anomalies)

** Although two omissions (and some other anomalies remain) –see Table 19, note (b).

in the Côte d'Ivoire schedule, explained in Table 11 (note (c)).

Another problem concerns reconciling the products listed in the schedules (for liberalisation or exclusion) with data on imports and tariffs when the former have been compiled using a different version of the HS from that used to record the most recent available data on the latter. The BLNS schedule provided the most serious case in the original report since the schedules are recorded using the 2007 version of the HS nomenclature but the most recent data on imports and tariffs available used an earlier version (2002). Consequently, some of the items imported by BLNS from the EU were not listed in its IEPA schedule (either for liberalisation or exclusion). Fortunately it has now been possible to obtain comparable import data and so the relevant sections have been revised. But a similar problem of changing HS codes has arisen and cannot be overcome when identifying the overlap between the liberalisation commitments of BLNS with those to which South Africa has already agreed.

Appendix 2. Supplementary BLNS tables

Table A2.1. Summary of BLNS market access schedule: Botswana

Tariff range	# lines	Import value 2007 ^a		TDCA tariff ^b				
		€000	Share of total	Min.	Max.	Simple avg. ^c	Trade-weighted avg. ^{c,d} & # lines on which calculated	
Total trade in HS 1-97		12,156	100%					
Goods to be liberalised in:								
2008	4,161	7,743	63.7%	0	30 or spec	0.1	0.5	3,127
2008–10	21	7	0.1%	6.3	60.48	15.2	12.6	16
2008–12	1,326	3,461	28.5%	0	60.48 or spec	9.4	7.7	908
2008–14	2	0	0.0%	25	25	25.0	0	2
2008–17	16	2	0.0%	15.75	25 or spec	24.4	0	13
2011–15	46	43	0.4%	0	20 or spec	11.4	0	38
2011–18	3	0	0.0%	15.75	15.75	15.8	0	3
Goods not being fully liberalised:								
Partial liberalisation ^f	831	766	6.3%	0	31	12.9	17.3	739
Frozen at 2007 TDCA rate ^g	4	0	0.0%	12.6	17.01 or spec	14.8	0	2
Excluded goods ^h	177	59	0.5%	0	96 or spec	20.9	15.1	123
Goods for which the treatment is not clear from the schedule ⁱ	80	76	0.6%	0	20 or spec	5.1	12.6	56
	6,667	12,156	100.0%					5,027

Notes:

- (a) No import data are included in the market access schedule. Because the schedule is in the 2007 version of the HS, and because only Namibia has reported 2007 trade to the UN's Comtrade database, EU data on EU27 exports to BLNS in 2007 from Eurostat's COMEXT database have been used to mirror imports. Because the schedule is partly at 8-digit NTL level and partly at HS6/4, items within a given HS6 sub-head may fall into two or more liberalisation tranches, or be split between liberalisation and exclusion. Wherever this is the case, the import value (which is at HS6 level) for the full HS6 sub-head has been attributed to the latest liberalisation tranche or, where some items within it are to be liberalised and others not, to the exclusion list.
- (b) 2007 'Preferential tariff for European Union countries' from South Africa's schedule in UNCTAD's TRAINS database. Where no preferential rate is shown for an item, it has been assumed that the MFN rate applies. Tariffs were unobtainable for 8 of the lines in the schedule which are in codes no longer valid in 2007.
- (c) Ad valorem tariffs only. Where a range of tariffs applies to different items within an HS6 sub-head, the highest has been used in these calculations. Where the given tariff is, e.g., '10% or 100c/kg', the 10% ad valorem has been used.
- (d) Calculated by multiplying the import value by the max. AV tariff for each item (specific duties are not taken account of), then totalling the results for all items, and dividing this total by total import value for all items. Only items for which both an AV tariff and the import value are known are included in the calculation. In most of the cases where import data are 'missing', this is because the value applying to each HS6 sub-head has been 'counted' only once.
- (e) i.e. goods categorised as Industry List 5, on which tariffs will be reduced but not removed.
- (f) i.e. goods categorised as List 5, regime 1.
- (g) i.e. goods categorised as Agriculture List 4 or Industry List 6.
- (h) A list of these items can be found in Appendix 2, Table A2.6.

Table A2.2. Summary of BLNS market access schedule: Lesotho

Tariff range	# lines	Import value 2007 ^a		TDCA tariff ^b				
		€000	Share of total	Min.	Max.	Simple avg. ^c	Trade-weighted avg. ^{c,d} & # lines on which calculated	
Total trade in HS 1-97		157,177	100%					
Goods to be liberalised in:								
2008	4,161	130,460	83.0%	0	30 or spec	0.1	0.01	3,127
2008-10	21	142	0.1%	6.3	60.48	15.2	12.6	16
2008-12	1,326	18,874	12.0%	0	60.48 or spec	9.4	8.8	908
2008-14	2	0	0.0%	25	25	25.0	0	2
2008-17	16	0	0.0%	15.75	25 or spec	24.4	0	13
2011-15	46	1,397	0.9%	0	20 or spec	11.4	7.5	38
2011-18	3	14	0.0%	15.75	15.75	15.8	15.8	3
Goods not being fully liberalised:								
Partial liberalisation ^f	831	5,494	3.5%	0	31	12.9	16.0	739
Frozen at 2007 TDCA rate ^g	4	0	0.0%	12.6	17.01 or spec	14.8	0	2
Excluded goods ^h	177	750	0.5%	0	96 or spec	20.9	6.7	123
Goods for which the treatment is not clear from the schedule ⁱ	80	46	0.0%	0	20 or spec	5.1	6.0	56
	6,667	157,177	100.0%					5,027

Notes:

- (a) No import data are included in the market access schedule. Because the schedule is in the 2007 version of the HS, and because only Namibia has reported 2007 trade to the UN's Comtrade database, EU data on EU27 exports to BLNS in 2007 from Eurostat's COMEXT database have been used to mirror imports. Because the schedule is partly at 8-digit NTL level and partly at HS6/4, items within a given HS6 sub-head may fall into two or more liberalisation tranches, or be split between liberalisation and exclusion. Wherever this is the case, the import value (which is at HS6 level) for the full HS6 sub-head has been attributed to the latest liberalisation tranche or, where some items within it are to be liberalised and others not, to the exclusion list.
- (b) 2007 'Preferential tariff for European Union countries' from South Africa's schedule in UNCTAD's TRAINS database. Where no preferential rate is shown for an item, it has been assumed that the MFN rate applies. Tariffs were unobtainable for 8 of the lines in the schedule which are in codes no longer valid in 2007.
- (c) *Ad valorem* tariffs only. Where a range of tariffs applies to different items within an HS6 sub-head, the highest has been used in these calculations. Where the given tariff is, e.g., '10% or 100c/kg', the 10% *ad valorem* has been used.
- (d) Calculated by multiplying the import value by the max. AV tariff for each item (specific duties are not taken account of), then totalling the results for all items, and dividing this total by total import value for all items. Only items for which both an AV tariff and the import value are known are included in the calculation. In most of the cases where import data are 'missing', this is because the value applying to each HS6 sub-head has been 'counted' only once.
- (e) i.e. goods categorised as Industry List 5, on which tariffs will be reduced but not removed.
- (f) i.e. goods categorised as List 5, regime 1.
- (g) i.e. goods categorised as Agriculture List 4 or Industry List 6.
- (h) A list of these items can be found in Appendix 2, **Table A2.6**.

Table A2.3. Summary of BLNS market access schedule: Namibia

Tariff range	# lines	Import value 2007 ^a		MFN tariff ^b					
		€000	Share of total	Min.	Max.	Simple avg. ^c	Trade-weighted avg. ^{c,d} & # lines on which calculated		
Total trade in HS 1-97		170,953	100%						
Goods to be liberalised in:									
2008	4,161	117,072	68.5%	0	55 or spec.	1.9	1.2	3,115	
2008–10	21	127	0.1%	10	96 or spec.	24.1	20.9	16	
2008–12	1,326	21,028	12.3%	0	96 or spec.	15.3	16.3	909	
2008–14	2	0	0.0%	25	25	25.0	0	2	
2008–17	16	12	0.0%	25	25 or spec.	25.0	25.0	13	
2011–15	46	1,550	0.9%	5	40 or spec.	22.7	8.2	38	
2011–18	3	29	0.0%	25	25	25.0	25.0	3	
Goods not being fully liberalised:									
Partial liberalisation ^f	831	10,065	5.9%	0	43	24.9	21.9	739	
Frozen at 2007 TDCA rate ^g	4	223	0.1%	20	27 or spec.	23.5	27.0	2	
Excluded goods ^h	177	19,140	11.2%	0	96 or spec.	21.3	6.8	123	
Goods for which the treatment is not clear from the schedule ⁱ	80	1,707	1.0%	0	40 or spec.	10.0	5.8	56	
	6,667	170,953	100.0%					5,016	

Notes:

- (a) No import data are included in the market access schedule. Because the schedule is in the 2007 version of the HS, and because only Namibia has reported 2007 trade to the UN's Comtrade database, EU data on EU27 exports to BLNS in 2007 from Eurostat's COMEXT database have been used to mirror imports. Because the schedule is partly at 8-digit NTL level and partly at HS6/4, items within a given HS6 sub-head may fall into two or more liberalisation tranches, or be split between liberalisation and exclusion. Wherever this is the case, the import value (which is at HS6 level) for the full HS6 sub-head has been attributed to the latest liberalisation tranche or, where some items within it are to be liberalised and others not, to the exclusion list.
- (b) 2007 'MFN duties (applied)' from South Africa's schedule in UNCTAD's TRAINS database. Tariffs were unobtainable for 8 of the lines in the schedule which are in codes no longer valid in 2007.
- (c) *Ad valorem* tariffs only. Where a range of tariffs applies to different items within an HS6 sub-head, the highest has been used in these calculations. Where the given tariff is, e.g., '10% or 100c/kg', the 10% *ad valorem* has been used.
- (d) Calculated by multiplying the import value by the max. AV tariff for each item (specific duties are not taken account of), then totalling the results for all items, and dividing this total by total import value for all items. Only items for which both an AV tariff and the import value are known are included in the calculation. In most of the cases where import data are 'missing', this is because the value applying to each HS6 sub-head has been 'counted' only once.
- (e) i.e. goods categorised as Industry List 5, on which tariffs will be reduced but not removed.
- (f) i.e. goods categorised as List 5, regime 1.
- (g) i.e. goods categorised as Agriculture List 4 or Industry List 6.
- (h) A list of these items can be found in Appendix 2, Table A2.6.

Table A2.4. Summary of BLNS market access schedule: Swaziland

Tariff range	# lines	Import value 2007 ^a		TDCA tariff ^b					
		€000	Share of total	Min.	Max.	Simple avg. ^c	Trade-weighted avg. ^{c,d} & # lines on which calculated		
Total trade in HS 1-97		25,822	100%						
Goods to be liberalised in:									
2008	4,161	16,470	63.8%	0	30 or spec	0.1	0.01	3,127	
2008–10	21	248	1.0%	6.3	60.48	15.2	6.3	16	
2008–12	1,326	4,672	18.1%	0	60.48 or spec	9.4	10.1	908	
2008–14	2	0	0.0%	25	25	25.0	0	2	
2008–17	16	0	0.0%	15.75	25 or spec	24.4	0	13	
2011–15	46	2,474	9.6%	0	20 or spec	11.4	12.5	38	
2011–18	3	0	0.0%	15.75	15.75	15.8	0	3	
Goods not being fully liberalised:									
Partial liberalisation ^f	831	677	2.6%	0	31	12.9	14.4	739	
Frozen at 2007 TDCA rate ^g	4	0	0.0%	12.6	17.01 or spec	14.8	0	2	
Excluded goods ^h	177	1,243	4.8%	0	96 or spec	20.9	5.4	123	
Goods for which the treatment is not clear from the schedule ⁱ	80	37	0.1%	0	20 or spec	5.1	7.1	56	
	6,667	25,822	100.0%					5,027	

Notes:

- (a) No import data are included in the market access schedule. Because the schedule is in the 2007 version of the HS, and because only Namibia has reported 2007 trade to the UN's Comtrade database, EU data on EU27 exports to BLNS in 2007 from Eurostat's COMEXT database have been used to mirror imports. Because the schedule is partly at 8-digit NTL level and partly at HS6/4, items within a given HS6 sub-head may fall into two or more liberalisation tranches, or be split between liberalisation and exclusion. Wherever this is the case, the import value (which is at HS6 level) for the full HS6 sub-head has been attributed to the latest liberalisation tranche or, where some items within it are to be liberalised and others not, to the exclusion list.
- (b) 2007 'Preferential tariff for European Union countries' from South Africa's schedule in UNCTAD's TRAINS database. Where no preferential rate is shown for an item, it has been assumed that the MFN rate applies. Tariffs were unobtainable for 8 of the lines in the schedule which are in codes no longer valid in 2007.
- (c) Ad valorem tariffs only. Where a range of tariffs applies to different items within an HS6 sub-head, the highest has been used in these calculations. Where the given tariff is, e.g., '10% or 100c/kg', the 10% ad valorem has been used.
- (d) Calculated by multiplying the import value by the max. AV tariff for each item (specific duties are not taken account of), then totalling the results for all items, and dividing this total by total import value for all items. Only items for which both an AV tariff and the import value are known are included in the calculation. In most of the cases where import data are 'missing', this is because the value applying to each HS6 sub-head has been 'counted' only once.
- (e) i.e. goods categorised as Industry List 5, on which tariffs will be reduced but not removed.
- (f) i.e. goods categorised as List 5, regime 1.
- (g) i.e. goods categorised as Agriculture List 4 or Industry List 6.
- (h) A list of these items can be found in Appendix 2, Table A2.6.

Table A2.5. Summary of additional a Namibia first-tranche liberalisations (2008)

Code	Description	Applied MFN 2007	
		AV (%)	Specific
020830	Of primates		8c/kg
02084010	Of whales		8c/kg
02084090	Other		8c/kg
020850	Of reptiles (including snakes and turtles)		8c/kg
060311	Roses	20	
060312	Carnations	20	
060313	Orchids	20	
060314	Chrysanthemums	20	
060319	Other	20	
060390	Other	20	
060491	Fresh	20	
070110	Seed		0,44c/kg
070190	Other		0,44c/kg
070320	Garlic	37	325c/kg with a maximum of 37%
07119020	Capers	20	
07129015	Culinary herbs		4c/kg
07139020	Skinned or split	30	
08011190	Other	25	
08011990	Other	20	
080450	Guavas, mangoes and mangosteens	35	
081210	Cherries	20	
08129090	Other	20	
090121	Not decaffeinated		6c/kg
090122	Decaffeinated		6c/kg
09019020	Coffee substitutes containing coffee		10c/kg
110210	Rye flour		1,1c/kg
11029015	Oats flour		2,75c/kg
11031910	Of oats		2,75c/kg
11032020	Of oats, in immediate packings of a content exceeding 10 kg		2,75c/kg
11042990	Other	20	
11071025	Of oats		2,75c/kg
11072025	Of oats		2,75c/kg
120810	Of soya beans	20	
120890	Other	20	
12119020	Basil, borage, hyssop, mint, rosemary, rue and sage, neither ground nor crushed		0,45c/kg
12119030	Basil, borage, hyssop, mint, rosemary, rue and sage, ground or crushed.		4c/kg
121291	Sugar beet	20	
19022010	Stuffed with meat		3c/kg
19022020	Stuffed with fish, crustaceans or molluscs		5,5c/kg
19049010	Prepared rice		5c/kg
19059010	Gluten bread	25	3,6c/kg with a maximum of 25%
19059020	Communion wafers, empty cachets of a kind suitable for pharmaceutical use, sealing wafers, rice paper and similar products	20	
19059030	Bread crumbs	20	
19059090	Other	25	
200110	Cucumbers and gherkins	20	
20019020	Onions	20	
20049010	Cabbages, cucumbers and gherkins		4,15c/kg

Code	Description	Applied MFN 2007	
		AV (%)	Specific
20049020	Peas (PISUM SATIVUM), beans (VIGNA SPP., PHASEOLUS SPP.) and lentils		4,15c/kg
20059921	Imported from Switzerland		4,15c/kg
20059922	Lentils, cucumbers and gherkins (excluding that imported from Switzerland)		4,15c/kg
20059931	Imported from Switzerland		4,15c/kg
20059932	Other		4,15c/kg
20060020	Crystallised fruits	30	30% or 7,25c/kg
200799	Other	30	30% or 4,5c/kg
20081110	Peanut butter		0,99c/kg
20081120	Ground-nuts, roasted		0,99c/kg
20081190	Other		0,99c/kg
200820	Pineapples	55	
200911	Frozen	25	
200912	Not frozen, of a Brix value not exceeding 20	25	
200919	Other	25	
200921	Of a Brix value not exceeding 20	25	
200929	Other	25	
200931	Of a Brix value not exceeding 20	25	
200939	Other	25	
200941	Of a Brix value not exceeding 20	25	
200949	Other	25	
200950	Tomato juice	25	
20098020	Vegetable juices	25	
20099010	Fruit juices	20	
20099020	Vegetable juices	25	
21011210	Mixtures of ground roasted coffee with vegetable fats	20	
21013010	Roasted chicory and other roasted coffee substitutes		9,2c/kg
21033011	Imported from Switzerland		8c/kg
21033012	Other		8c/kg
21041090	Other		3c/kg
21069067	Compound alcoholic preparations of a kind used for the manufacture of beverages (excluding those based on odoriferous substances)		154c/li
22021010	In sealed containers holding 2,5 li or less (excluding those in collapsible plastic tubes)		4,36c/li
22021090	Other		3,3c/li
22029020	In sealed containers holding 2,5 li or less (excluding those in collapsible plastic tubes and those with a basis of milk)	25	25% plus 1,04c/li
22029090	Other	25	
270750	Other aromatic hydrocarbon mixtures of which 65 per cent or more by volume (Including losses) distils at 250 °C by the ASTM D 86-method		11c/li
27079990	Other		11c/li
330300	Perfumes and toilet waters	20	
38249001	Mixtures of hydrocarbons and lubricity agents		0,183c/li
38249003	Biodiesel as defined in Additional Note 1(a) to Chapter 38		0,183c/li
38249005	Other biodiesel		0,183c/li
511190	Other	22	
59019030	Other, woven, containing more than 50 per cent cellulosic fibres	20	
59119030	Filter elements suitable for use with motorcycles	20	
611521	Of synthetic fibres, measuring per single yarn less than 67 dtex	20	
611522	Of synthetic fibres, measuring per single yarn 67 dtex or more	20	
611529	Of other textile materials	20	
611530	Other women's full-length or knee-length hosiery, measuring per single yarn less than 67 dtex	20	
611610	Impregnated, coated or covered with plastics or rubber	30	
611691	Of wool or fine animal hair	30	
611692	Of cotton	30	

Code	Description	Applied MFN 2007	
		AV (%)	Specific
611693	Of synthetic fibres	30	
611699	Of other textile materials	30	
62114110	Saris	25	
62114210	Saris	25	
62114310	Saris	25	
62114910	Saris	25	
62132010	Containing lace or embroidered on multiple needle machines, of a value for duty purposes exceeding 6,25c	30	
62139010	Of flax, containing lace or embroidered on multiple needle machines, of a value for duty purposes exceeding 6,25c	30	
621600	Gloves, mittens and mitts	30	
62171030	Printed labels and tabs	25	
62171090	Other	30	
621790	Parts	30	
631010	Sorted	20	
741820	Sanitary ware and parts thereof	20	
82119280	Other, plated with precious metal	20	
83024290	Other	20	
841810	Combined refrigerator-freezers, fitted with separate external doors	25	
841821	Compression-type	25	
841829	Other	25	
84183090	Other	25	
84184090	Other	25	
841850	Other furniture (chests, cabinets, display counters, show-cases and the like) for storage and display, incorporating refrigerating or freezing equipment	20	
84186110	Suitable for household refrigerators or freezers	25	
84189110	For household refrigerators or freezers	20	
84189120	For display counters, cabinets, show-cases or the like	20	
84512110	Laundry drying machines, tumble type, of a dry linen capacity not exceeding 7,5 kg (excluding coin-operated machines)	20	
850240	Electric rotary converters	20	
85064090	Other	20	
85065090	Other	20	
85066090	Other	20	
85392245	Other, of a power of 15 W or more and for a voltage not exceeding 260 V	20	
85392290	Other	20	
85392950	Other, vacuum type, of less than 15 W	20	
85392957	Other, of a power exceeding 200 W but not exceeding 1 000 W and for a voltage exceeding 100 V but not exceeding 260 V	20	
85392990	Other	20	
85393145	Linear (excluding mercury vapour lamps) of a length of 600 mm or more but not exceeding 2 500 mm, of a diameter of 25 mm or more but not exceeding 40 mm and of 20 W or more but not exceeding 105 W	20	
85393245	Fluorescent lamps, linear (excluding mercury vapour lamps) of a length of 600 mm or more but not exceeding 2 500 mm, of a diameter of 25 mm or more but not exceeding 40 mm and of 20 W or more but not exceeding 105 W	20	
85393945	Fluorescent lamps, linear (excluding mercury vapour lamps) of a length of 600 mm or more but not exceeding 2 500 mm, of a diameter of 25 mm or more but not exceeding 40 mm and of 20 W or more but not exceeding 105 W	20	
853941	Arc lamps	20	
85394920	Infra-red lamps	20	
87088090	Other	20	
960910	Pencils and crayons, with leads encased in a rigid sheath	20	
961700	Vacuum flasks and other vacuum vessels, complete with cases; parts thereof (excluding glass inners)	20	
Note:			
(a) Additional to the items shown in Table 59 of the main text.			

Table A2.6. Items in the BLNS market access schedule whose treatment is unclear

H.S. Code 30.09.07	As shown in BLNS market access schedule			Nature of uncertainty
	Description	Sector	Staging category	Explanatory notes
121190	Other:	Agriculture		No staging list specified
150430	Fats and oils and their fractions, of marine mammals	Fish	Not offered	Specified staging list not included in Annex 3 explanatory text
15161010	Obtained entirely from fish or marine mammals	Fish	Not offered	Specified staging list not included in Annex 3 explanatory text
160231	Of turkeys	Agriculture	List 0	Specified staging list not included in Annex 3 explanatory text
16030015	Extracts and juices of whale meat	Fish	Not offered	Specified staging list not included in Annex 3 explanatory text
22060005	Sparkling beverages	Annex VI	List 3	Specified staging list not included in Annex 3 explanatory text
292241	Lysine and its esters; salts thereof	Annex III	List 1	Specified staging list not included in Annex 3 explanatory text
29310010	O-Alkyl (including cycloalkyl) alkyl (methyl, ethyl, n-propyl or isopropyl) phosphonofluoridates	Annex III	List 1	Specified staging list not included in Annex 3 explanatory text
300310	Containing penicillins or derivatives thereof, with a penicillanic acid structure, or streptomycins or their derivatives	Industry	List 0	Specified staging list not included in Annex 3 explanatory text
330130	Resinoids	Agriculture		No staging list specified
330620	Yarn used to clean between the teeth (dental floss):	Industry		No staging list specified
38247210	Containing perhalogenated derivatives of acrylic hydrocarbons containing two or more different halogens (excluding acrylic hydrocarbons perhalogenated with fluorine and chlorine)	Industry	List 2	Specified staging list not included in Annex 3 explanatory text
410621	In the wet state (including wet-blue)	Industry	List 0	Specified staging list not included in Annex 3 explanatory text
441700	Tools, tool bodies, tool handles, broom or brush bodies and handles, of wood; boot or shoe lasts and trees, of wood	Annex III	List 1	Specified staging list not included in Annex 3 explanatory text
48025830	Other carbonising base paper	Industry	List 9	Specified staging list not included in Annex 3 explanatory text
480269	Other:	Industry		No staging list specified
491000	Calendars of any kind, printed, including calendar blocks	Annex III	List 4	Specified staging list not included in Annex 3 explanatory text
511300	Woven fabrics of coarse animal hair or of horsehair	Agriculture	List 5	Partial liberalisation, but no regime given
520621	Measuring 71.4, 29 dtex or more		List 5	Partial liberalisation, but no regime given
5305	Coconut, abaca (Manila hemp or MUSA TEXTILIS NEE), ramie and other vegetable textile fibres, nesoi raw or processed but not spun; tow, nolls and waste of these fibres (including yarn waste and garnetted stock)	Industry	List 1/6?	Staging list unclear
550110	Of nylon or other polyamides	Industry	List 0	Specified staging list not included in Annex 3 explanatory text
610721	Of cotton	Annex III	List 5	Specified staging list not included in Annex 3 explanatory text
63079020	Sanitary towels, not knitted or crocheted	Industry	List 0	Specified staging list not included in Annex 3 explanatory text
70109090	Other	Industry	List 2	Specified staging list not included in Annex 3 explanatory text
71141110	Commemorative medallions	Industry	List 0	Specified staging list not included in Annex 3 explanatory text
71141910	Commemorative medallions	Industry	List 0	Specified staging list not included in Annex 3 explanatory text
71142010	Commemorative medallions	Industry	List 0	Specified staging list not included in Annex 3 explanatory text

As shown in BLNS market access schedule					Nature of uncertainty	
H.S. Code	Description	Sector	Staging category	Explanatory notes		
30.09.07						
711510	Catalysts in the form of wire cloth or grill, of platinum	Industry	List 0		Specified staging list not included in Annex 3 explanatory text	
71159030	Crucibles of platinum; wire cloth of platinum; laboratory equipment of platinum	Industry	List 2		Specified staging list not included in Annex 3 explanatory text	
7208.40	Not in coils, not further worked than hot-rolled, with patterns in relief	Industry			No staging list specified	
740100	Copper mattes; cement copper (precipitated copper)	Industry			No staging list specified	
740200	Unrefined copper: copper anodes for electrolytic refining	Industry			No staging list specified	
830910	Crown corks	Industry			No staging list specified	
84099137	Gudgeon pins (excluding those for motor cycle engines)	Industry	List 5		Partial liberalisation, but neither regime nor schedule given	
84099960	Radiators	Industry	List 5		Partial liberalisation, but neither regime nor schedule given	
84312090	Other	Industry	List 2		Specified staging list not included in Annex 3 explanatory text	
852791	Combined with sound recording or reproducing apparatus	Industry	List 0		Specified staging list not included in Annex 3 explanatory text	
85352130	With a current rating not exceeding 1 600 A, for a voltage exceeding 24 kV (AC) but not exceeding 36 kV (AC) and a breaking capacity rating exceeding 10 000 A but not exceeding 31 500 A (excluding those with moulded casings of plastics)	Industry	List 0		Specified staging list not included in Annex 3 explanatory text	
85392145	Other, of a power of 15 W or more but not exceeding 1 000 W and for a voltage exceeding 100 V but not exceeding 260 V	Industry	List 5		Partial liberalisation, but neither regime nor schedule given	
853990	Parts	Industry			No staging list specified	
87041090	Other	Industry	List 5		Partial liberalisation, but neither regime nor schedule given	
87043170	Other (excluding off-the-road logging trucks and three-wheeled vehicles) of a vehicle mass not exceeding 600 kg	Industry	List 0		Specified staging list not included in Annex 3 explanatory text	
87083003	Disc brake pads	Industry	List 5		Partial liberalisation, but neither regime nor schedule given	
87083005	Other mounted brake linings, identifiable for use with air brakes, vacuum brakes, hydraulic air-brakes or hydraulic-vacuum brakes, suitable for use with heavy motor vehicles	Industry	List 5		Partial liberalisation, but neither regime nor schedule given	
87083009	Other mounted brake linings	Industry	List 5		Partial liberalisation, but neither regime nor schedule given	
87083011	Brake drums, of unmachined cast metal	Industry	List 5		Partial liberalisation, but neither regime nor schedule given	
87083013	Other brake drums	Industry	List 5		Partial liberalisation, but neither regime nor schedule given	
87083017	Disc brake calliper mechanisms and brake drum assemblies (excluding those identifiable for use solely or principally with tractors not being road tractors)	Industry	List 5		Partial liberalisation, but neither regime nor schedule given	
87083023	Other, of unmachined cast metal	Industry	List 5		Partial liberalisation, but neither regime nor schedule given	
87083090	Other	Industry	List 5		Partial liberalisation, but neither regime nor schedule given	
87085010	Wheel hubs (excluding those of unmachined cast metal)	Industry	List 5		Partial liberalisation, but neither regime nor schedule given	
87085020	Drive-axles, of the rigid integral housing type, with a crown wheel or ring gear of a diameter not exceeding 205 mm	Industry	List 5		Partial liberalisation, but neither regime nor schedule given	

H.S. Code 30.09.07	Description	Sector	Staging category	Explanatory notes	
87088050	Parts of unmachined cast metal	Industry	List 5	Partial liberalisation, but neither regime nor schedule given	
87088130	Parts of unmachined cast metal	Industry	List 5	Partial liberalisation, but neither regime nor schedule given	
87088215	Parts of unmachined cast metal	Industry	List 5	Partial liberalisation, but neither regime nor schedule given	
87088355	Clutch driven plates (excluding parts thereof), with an outside diameter not exceeding 300 mm	Industry	List 5	Partial liberalisation, but neither regime nor schedule given	
890110	Cruise ships, excursion boats and similar vessels principally designed for the transport of persons; ferry-boats of all kinds	Annex III	List 1	Specified staging list not included in Annex 3 explanatory text	
890399	Other	Industry	List 0	Specified staging list not included in Annex 3 explanatory text	
902219	For other uses	Industry		No staging list specified	
940592	Of plastics:	Industry		No staging list specified	
940599	Other:	Industry		No staging list specified	

Appendix 3. Summary of key provisions in the IEPA texts

Table A3.1. Summary of key provisions in the IEPA texts: CARIFORUM, CEMAC, Ghana, Côte d'Ivoire

<i>Status quo</i>	CARIFORUM	CEMAC (Cameroon)	Ghana (ECOWAS)	Côte d'Ivoire (ECOWAS)
I. Trade in goods				
1. Customs duties				
Approach	Positive list	Positive list	Positive list	Positive list
Regional liberalisation	Envisaged: individual national schedules merge to regional schedules during 25 years implementation period. CARIFORUM will exercise its best endeavour to achieve the objective to levy customs duties only once. EC will provide technical support.	No. Customs duties shall be levied only once and goods shall circulate freely.	No.	No
Review of liberalisation schedule for regional integration	SDT for the 9 lesser developed CF members possible if Joint Trade and Development Committee decides so.	Yes. If a CEMAC CET is established by 01/01/2013 at the latest the EPA Committee can revise the liberalisation schedule.	Yes, if an ECOWAS CET is established until 31 December 2011 Ghana's liberalisation commitments will be reviewed. 'General incidence' of new tariffs should remain the same.	Yes, if an ECOWAS CET is established until 31 December 2011 Côte d'Ivoire's liberalisation commitments will be reviewed. 'General incidence' of new tariffs should remain the same.
Time frame	25 years in total. EPA liberalisation starts 2011.	15 years in total. EPA liberalisation starts 2010 (Group 1: Progressive tariff abolition by 2013; group 2: Progressive tariff abolition by 2017; group 3: Progressive tariff abolition by 2023; group '5': exclusion basket)	15 years in total (product group A in 5 years, B in 10 years, C in 15 years, D is excluded from liberalisation)	15 years in total (product group A in 5 years, B in 10 years, C in 15 years, D is excluded from liberalisation)
Review of tariff concessions in case of 'serious difficulties'	Yes. In the event of 'serious difficulties' a country can raise its tariff up to the applied MFN rate up to one year. Lesser developed countries can increase tariffs for longer if the Joint Development Committee approves. The liberalisation schedule can also be revised by the Joint Trade and Development Committee but not beyond the maximum transition period.	Yes. In case of serious difficulties tariff dismantling can, if mutually agreed, but not beyond the maximum transition period. If no agreement can be reached Cameroon can stop tariff reduction for a maximum period of 1 year.	No.	No.

Status quo	CARIFORUM	CEMAC (Cameroon)	Ghana (ECOWAS)	Cote d'Ivoire (ECOWAS)
Export duties	Existing export duties have to be abolished within 3 years (Annex A provides an according list).	No new export duties shall be introduced / existing export duties increased. Temporary introduction/ increase allowed in case of environmental protection or to maintain currency value stability. EC needs to be consulted; provision will be jointly reviewed periodically.	No new export duties shall be introduced / existing export duties increased. Temporary introduction/ increase allowed in case of infant industry/ environmental protection or to maintain currency value stability. EC needs to be consulted; provision will be jointly reviewed after 3 years.	No new export duties shall be introduced / existing export duties increased. Temporary introduction/ increase allowed in case of infant industry/ environmental protection or to maintain currency value stability. EC needs to be consulted; provision will be jointly reviewed after 3 years.
Standstill provision	Yes. Build-in schedule.	Yes	Yes (except for revising the schedule in the light of regional integration)	Yes (except for revising the schedule in the light of regional integration – subject to joint decision)
DFQF for sugar and rice	Rice quota of 1 87, 000 tons in 2008 and 250,000 tons in 2009; extra sugar quota for 2008/9 of 30,000 tons for DR and 30,000 tons for all other CARIFORUM states)	No extra quota for sugar in 2008/09).	No extra quota for sugar in 2008/09).	No extra quota for sugar in 2008/09).
Rules of origin	'Cotonou plus' (Protocol I). To be reviewed within 5 years.	Cotonou plus' (established by 01/01/08). To be reviewed within 3 years.	'Cotonou plus' (established by 30/06/08). To be reviewed within 3 years.	Cotonou plus' (established by 31/07/08). To be reviewed within 3 years.
MFN clause	Yes, in principle. But CF may deny more favourable treatment if the parties jointly agree.	Yes	Yes	Yes
Sanctions in case of failure to provide administrative cooperation	Yes: temporary suspension (6 months, renewable) of preferences in cases of repeated failure and if the Joint EPA Committee could not come to a mutually accepted solution within 3 months.	Yes: temporary suspension (6 months, renewable) of preferences in cases of repeated failure and if the Joint EPA Committee could not come to a mutually accepted solution within 3 months.	Yes: temporary suspension (6 months, renewable) of preferences in cases of repeated failure and if the Joint EPA Committee could not come to a mutually accepted solution within 3 months.	Yes: temporary suspension (6 months, renewable) of preferences in cases of repeated failure and if the Joint EPA Committee could not come to a mutually accepted solution within 3 months.
2. Trade defence				
ACP exclusion from GATT/AoA safeguards	Yes (limited to 5 years with option of extension).	Yes (limited to 5 years with option of extension).	Yes (limited to 5 years with option of extension).	Yes (limited to 5 years with option of extension).
Quantitative safeguard restrictions	No	No	No	No
Safeguard instruments	Suspension of tariff reduction or increase of customs duties to applied MFN rate or tariff quotas	Suspension of tariff reduction, increase of customs duties to applied MFN rate and tariff quotas	Suspension of tariff reduction or increase of customs duties to applied MFN rate and tariff quotas	Suspension of tariff reduction, increase of customs duties to applied MFN rate and tariff quotas
Maximum safeguard protection	No time limit: not exceed what is necessary to remedy or prevent serious injury.	No time limit: not exceed what is necessary to remedy or prevent serious injury.	No time limit: not exceed what is necessary to remedy or prevent serious injury.	No time limit: not exceed what is necessary to remedy or prevent serious injury.
Pre-emptive safeguards	Yes (max. 200 days)	Yes (max. 200 days)	Yes (max. 200 days)	Yes (max. 200 days)

Status quo	CARIFORUM	CEMAC (Cameroon)	Ghana (ECOWAS)	Cote d'Ivoire (ECOWAS)
Safeguards related to food security	In case of food insecurity pre-emptive safeguards can be applied.	In case of food insecurity pre-emptive safeguards can be applied.	In case of food insecurity pre-emptive safeguards can be applied.	In case of food insecurity pre-emptive safeguards can be applied.
Maximum period to apply safeguards for infant industry protection	8 years but only within the first 10 years.	8 years but only within the first 15 years.	8 years but only in the first 10 years (with the option of extension; subject to mutual decision).	8 years but only in the first 10 years (with the option of extension; subject to mutual decision).
No new safeguards for a product that has been previously subject to infant industry protection	Yes, for 1 year.	Yes, for 1 year.	Yes, for 1 year	Yes, for 1 year
Quantitative restrictions for infant industry protection	No	No	No	No
Further provisions for infant industry protection	No.	No.	In exceptional circumstances, for revenue protection, infant industry or environmental protection Ghana can temporarily increase customs or excise duties on a limited number of products. Consultation with EC necessary. Provision shall be reviewed after 3 years. Annex III: List of products for which the application of discriminatory fees and charges will be allowed for another 10 years (extendable).	In exceptional circumstances, for protection of infant industries, in case of serious revenue losses, or to protect the environment, CI can temporarily re-introduce tariffs or taxes. Mutual agreement with the EC is necessary. Provision shall be reviewed after 3 years.
3. Non-Tariff Measures				
Abolition of para-tariffs, NTBs and quantitative measures	Prohibition of any import or export restrictions other than customs duties and taxes – notwithstanding anti-dumping/countervailing measures and safeguards.	Prohibition of any import or export restrictions other than customs duties and taxes – notwithstanding anti-dumping/countervailing measures. But: in case of public finance difficulties or environmental protection temporary customs/excise duties might be introduced if the EC agrees (periodic review).	Prohibition of import or export restrictions other than customs duties and taxes – notwithstanding anti-dumping/countervailing measures. But: - temporary introduction of customs/excise duties in 'exceptional circumstances' (see infant industry provision) - An additional import levy of 0.5% of c.i.f. value can be imposed until 31 December 2017. - Inspection fee of 1% of c.i.f. value is allowed.	Prohibition of import or export restrictions other than customs duties and taxes – notwithstanding anti-dumping/countervailing measures. But: temporary introduction of customs/excise duties in 'exceptional circumstances' (see infant industry provision)
Subsidies	No new subsidies or increased agricultural subsidies; EU to phase out agricultural export subsidies. National subsidies are allowed.	No new/increased agricultural subsidies; EU to phase out agricultural export subsidies. National subsidies are allowed.	National subsidies are allowed according to WTO regulations.	National subsidies are allowed according to WTO regulations.

Status quo	CARIFORUM	CEMAC (Cameroon)	Ghana (ECOWAS)	Cote d'Ivoire (ECOWAS)
4. Customs and Trade Facilitation				
Protocol on Mutual Administrative Assistance in Customs Matters	Yes	No	Yes	Yes
Single administrative document	Yes, envisaged. A joint review of the situation shall be carried out after 3 years.	No only coordination, cooperation and simplification of customs procedures according to international standards; assistance to implement the new RoO	No only coordination, cooperation and simplification of customs procedures according to international standards; assistance to implement the new RoO	No only coordination, cooperation and simplification of customs procedures according to international standards; assistance to implement the new RoO
Sanctions in case of administrative non-cooperation	Yes, if administrative cooperation is repeatedly refused / undue delayed the complaining party can temporarily suspend the preferences for the product(s) in question if the Joint Council/Committee has not come to a solution within 3 months. The suspension shall not exceed 6 months (renewable).	Yes, if administrative cooperation is repeatedly refused / undue delayed the complaining party can temporarily suspend the preferences for the product(s) in question if the Joint Council/Committee has not come to a solution within 3 months. The suspension shall not exceed 6 months (renewable).	Yes, if administrative cooperation is repeatedly refused / undue delayed the complaining party can temporarily suspend the preferences for the product(s) in question if the Joint Council/Committee has not come to a solution within 3 months. The suspension shall not exceed 6 months (renewable).	Yes, if administrative cooperation is repeatedly refused / undue delayed the complaining party can temporarily suspend the preferences for the product(s) in question if the Joint Council/Committee has not come to a solution within 3 months. The suspension shall not exceed 6 months (renewable).
Development of common regional standards	Yes (development of regional customs legislation; procedures and requirements is envisaged and monitored by Special Committee).	Yes (development of common customs requirements, documentation, data, border procedures, and transit requirements); implementation progress shall be closely monitored.	No (only facilitation of customs reforms within ECOWAS countries) but negotiation on trade facilitation will be continued in order to complement it into a regional framework	No (only promotion of harmonised customs legislation to enhance West African trade).
Common institutions	Yes (Special Committee on Customs Cooperation and Trade Facilitation)	No.	Yes (Special Committee on Customs and Trade Facilitation).	Yes (Special Committee on Customs and Trade Facilitation).
5. Fisheries				
Access agreement	No (no only cooperation, capacity building and technical support).	No Chapter on Fisheries.	No Chapter on Fisheries.	No Chapter on Fisheries.
6. Technical Barriers to Trade and Sanitary and Phytosanitary Standards				
Scope	WTO obligations and cooperation. Cooperation areas (improved competitiveness, support to comply with quality standards, and developing export marketing capabilities) were defined.	WTO obligations and cooperation. Cameroon has named priority products for regional harmonisation (Annex IA) and for enhanced export support (Annex IB) to improve the quality/ competitiveness of products. No common institutions. Competent authorities do not need to be communicated.	WTO obligations and cooperation; identification of 'priority products' for enhanced export support within 3 months of the signature of the IEPA	WTO obligations and cooperation; identification of 'priority products' for enhanced export support within 3 months of the signature of the IEPA
Institutions	No common institutions. Parties need to inform each other about their competent authorities.	No common institutions. Parties need to inform each other about their competent authorities (which shall be listed in Annex II, to be developed within 3 months after signature.	No common institutions. Parties need to inform each other about their competent authorities (which shall be listed in Annex II, to be developed within 3 months after signature.	No common institutions. Parties need to inform each other about their competent authorities (which shall be listed in Annex II, to be developed within 3 months after signature.

<i>Status quo</i>	CARIFORUM	CEMAC (Cameroon)	Ghana (ECOWAS)	Cote d'Ivoire (ECOWAS)
Regional approach	Yes. Objective to create harmonised SPS measures, standards and procedures; collaboration between competent authorities as well as exchange of information through regional contact points.	Yes. Objective to harmonise regional standards and other import conditions (data, procedures, documentation etc.) within 4 years.	Partly. Adopt harmonized sanitary and phytosanitary measures at regional level, based on relevant international standards.	Partly. Adopt harmonized sanitary and phytosanitary measures at regional level, based on relevant international standards..
II. Trade-related issues				
O Rendez-vous clause				
Subjects	-	A. Integration of other CEMAC countries; B. Development cooperation; C. Service liberalisation (start of negotiations: 01 January 2009 at the latest) D. Detailed provisions on payments and capital movements E. Competition policies F. Public procurement G. IPR H. Environment I. Social issues E-G: incl. joint regional provisions	Objective to conclude a comprehensive EPA with the ECOWAS region until Dec 2008 covering the following topics: a) trade in services and electronic commerce; b) investments; c) competition d) intellectual property' e) trade facilitation.	Objective to conclude a comprehensive EPA with the ECOWAS region until Dec 2008 covering the following topics: A) trade in services and electronic commerce; B) investment; C) current payments and capital movements; D) competition; E) intellectual property; F) government procurement; G) sustainable development; H) the protection of personal data J) customs and trade facilitation
Envisaged deadline of negotiations	-	01/01/2009 (trade related issues) No deadline: services	31 Dec 2008	31 Dec 2008

Status quo	CARIFORUM	CEMAC (Cameroon)	Ghana (ECOWAS)	Cote d'Ivoire (ECOWAS)
Regional approach	Yes. Objective to create harmonised SPS measures, standards and procedures; collaboration between competent authorities as well as exchange of information through regional contact points.	Yes. Objective to harmonise regional standards and other import conditions (data, procedures, documentation etc.) within 4 years.	Partly. Adopt harmonized sanitary and phytosanitary measures at regional level, based on relevant international standards.	Partly. Adopt harmonized sanitary and phytosanitary measures at regional level, based on relevant international standards...
II. Trade-related issues				
O Rendez-vous clause				
Subjects	-	A. Integration of other CEMAC countries; B. Development cooperation; C. Service liberalisation (start of negotiations: 01 January 2009 at the latest) D. Detailed provisions on payments and capital movements E. Competition policies F. Public procurement G. IPR H. Environment I. Social issues E-G: incl. joint regional provisions	Objective to conclude a comprehensive EPA with the ECOWAS region until Dec 2008 covering the following topics: a) trade in services and electronic commerce; b) investments; c) competition d) intellectual property' e) trade facilitation.	Objective to conclude a comprehensive EPA with the ECOWAS region until Dec 2008 covering the following topics: A) trade in services and electronic commerce; B) investment; C) current payments and capital movements; D) competition; E) intellectual property; F) government procurement; G) sustainable development; H) the protection of personal data I) customs and trade facilitation
Envisaged deadline of negotiations	-	01/01/2009 (trade related issues) No deadline: services	31 Dec 2008	31 Dec 2008

Status quo	CARIFORUM	CEMAC (Cameroon)	Ghana (ECOWAS)	Cote d'Ivoire (ECOWAS)
1. Services				
Scope	Commercial presence; cross border supply of services; and temporary presence of persons and businesses. E-commerce, courier, tourism, telecommunication, financial services, and maritime transport. Mode-4 is linked to the liberalisation of according sectors. Annexes that specify the commitments on investment and trade in service have not yet been developed. Commitment to enter into further negotiations on investment and trade in services within 5 years. Haiti and Bahamas are excluded from the service and investment chapters.	Chapter not yet drafted.	Chapter not yet drafted.	Chapter not yet drafted.
MFN clause	Yes, in principle. But CF may deny more favourable treatment if the parties jointly agree. Internal market agreements (Caricom Single Market Economy and FTA with DR) are excluded from MFN.	Chapter not yet drafted.	Chapter not yet drafted.	Chapter not yet drafted.
Standstill provision	No	Chapter not yet drafted.	Chapter not yet drafted.	Chapter not yet drafted.
Annexes	Outstanding.	Chapter not yet drafted.	Chapter not yet drafted.	Chapter not yet drafted.
2. Investment and capital movement				
Progressive liberalisation of investment	Yes. The implications shall be reviewed after 3 years and in regular intervals thereafter.	Chapter not yet drafted.	Chapter not yet drafted.	Chapter not yet drafted.
Free movement of capital relating to direct investment	Yes.	Chapter not yet drafted but the liberalisation of investment and capital is foreseen.	Chapter not yet drafted.	Chapter not yet drafted.
Safeguards in case of balance of payment difficulties	Yes, but not exceeding six months and in line with WTO/IMF provisions.	Chapter not yet drafted but a safeguard is foreseen.	Chapter not yet drafted.	Chapter not yet drafted.
Other provisions	Investors shall act in accordance to ILO and basic environmental standards and held liable in case of fraud.			
3. Competition				
Implementation of national competition bills	Yes, within 5 years.	Chapter not yet drafted.	Chapter not yet drafted.	Chapter not yet drafted.

<i>Status quo</i>	CARIFORUM	CEMAC (Cameroon)	Ghana (ECOWAS)	Cote d'Ivoire (ECOWAS)
Regional approach	No, only cooperation among competition authorities.	After a transitional period a joint regional competition bill is envisaged.	Chapter not yet drafted.	Chapter not yet drafted.
Public enterprise provisions	Yes. No discrimination allowed after 5 years; discrimination possible if necessary for the existence of public enterprise. Sectoral rules might exclude public enterprises from non-discrimination principle. (Trade and Development Committee needs to be informed.)	Chapter not yet drafted.	Chapter not yet drafted.	Chapter not yet drafted.
4. Innovation and IPR				
Scope	Extensive: copyrights, trademarks, GI, industrial design, patents, plant varieties, genetic resources ... Regional management and enforcement of IPR is envisaged. Penalty payments in case of infringement. Haiti has to implement the Chapter until 2021 (non-LDCs: 2014). Negotiations on protection of geographical indications shall commence not later than 2014.	Chapter not yet drafted. Negotiations on a 'series of commitments on IPR' with the objective to agree on joint regional obligations (under consideration of SDT)	Chapter not yet drafted.	Chapter not yet drafted.
5. Public procurement				
Scope	Positive-list approach (Annex I); several exemptions from non-discrimination (like limited-tendering); linked to technical assistance. Implementation period: 2-3 years and 5 years for eight lesser developed CF states and for others if no sufficient capacities have been built. Review of chapter every 3 years.	Chapter not yet drafted. Negotiations on a 'series of contingent liabilities on government procurement' including non-discriminatory procedures for a list of products and thresholds shall be agreed	Unknown whether public procurement will be negotiated.	Chapter not yet drafted.

Status quo	CARIFORUM	CEMAC (Cameroon)	Ghana (ECOWAS)	Cote d'Ivoire (ECOWAS)
6. Environment				
Scope	Parties shall seek to adopt and implement international standards if no national/regional environmental standards exist.	Chapter on the Governance of logging and trade of wood and forestry products. Implement measures to improve traceability. Establish a system of auditing and monitoring. Build and implement a framework to govern regional trade of wood and establish appropriate mechanism and legislations to ensure cooperation and legal compliance. Negotiations on further environmental provisions continue.	Unknown whether environment will be negotiated.	Chapter not yet drafted.
7. Social aspects				
Scope/institutions	International standards if no national/regional standards exist. Prohibition on enhancing trade by lowering social/labour standards. Consultative Committee monitors the implementation; a Committee of Experts may examine compliance with ILO standards	Chapter not yet drafted. Negotiations on an environmental and a social chapter shall include provisions on the level of protection and the right to regulate; regional integration and use of international standards, consultation procedures and monitoring.	Unknown whether social aspects will be negotiated.	Unknown whether social aspects will be negotiated.
8. Personal data protections				
Scope	Establish legal and regulatory administrative capacities with respect to the quality, transparency, security, right of access, restriction and sensitivity of data in accordance to international commitments. EC provides according assistance and training.	Put in place the legal and regulatory regimes to ensure protection of personal data. Independent supervisory authorities shall ensure an adequate level of protection and can apply sanctions and request compliance.	Unknown whether personal data protection will be negotiated.	Unknown whether personal data protection will be negotiated.
Time frame	7 years	No indication.	-	-
Sanctions in case of non-compliance possible	No	Yes		
9. Good governance in the tax and financial area				
Scope/status quo	Parties will foster dialogue and transparency in the area of tax policy and administration and will fight against illegal practices.	Unknown whether chapter will be negotiated.	Foster dialogue, transparency and to share best practices in the area of tax policy and administration; combat illegal financial activities.	Promote dialogue, transparency and share best practices in policy and tax administration / combat illegal financial activities

Status quo		CARIFORUM	CEMAC (Cameroon)	Ghana (ECOWAS)	Cote d'Ivoire (ECOWAS)
VIII. Dispute avoidance and settlement					
Scope/status quo		3 arbitrators decide how to settle dispute; decision is binding. Joint Trade and Development Committee establish rules of procedures and might review and amend provisions; binding procedures. List of 15 arbitrators and 5 chairpersons will be presented by Joint Trade and Development Committee within 3 months.	3 arbitrators decide how to settle dispute; decision is binding. Joint Trade and Development Committee establish rules of procedures and might review and amend provisions; binding procedures. List of arbitrators will be presented by Joint Trade and Development Committee within 6 months.	3 arbitrators decide how to settle dispute; decision is binding. Joint EPA Committee might review and amend provisions; binding procedures. List of arbitrators will be introduced by Joint EPA Committee within 3 months. Development cooperation (Chapter II) is excluded from DSB.	3 arbitrators decide how to settle dispute; decision is binding. Joint EPA Committee might review and amend provisions; binding procedures for DSB will be applied by Joint EPA Committee within 3 months.
Temporary remedies in case of non-compliance		Yes.	Yes.	Yes.	Yes.
IX General and final provisions					
Scope/status quo		Appoint coordinator to ensure effective implementation; collaboration in the fight against illegal financial activities; regional preference (1 year for more developed members. 2 years for lesser developed members and 5 years for Haiti); balance of payment restrictions; relations with Cotonou/WTO, entry into force.	Modalities for continued negotiations; del. of parties; coordination of information exchange; regional preference; duration; accession; dialogue on finance issues; combating illegal financial activities; relations with Cotonou/WTO.	Modalities for continued negotiations; del. of parties; creation of EPA Committee; entry into force; accession; dialogue on finance issues; combating illegal financial activities; relations with Cotonou/WTO.	Definition of parties; entry into force/duration, institutions, relations with other agreements, accession, dialogue on financial issues, collaboration on combating illegal financial activities; relations with Cotonou/WTO
Accession of other ACP states possible at later stage		Any Caribbean state can accede if EC agrees.	Yes (subject to decision by Joint EPA Committee)	No provisions; but it is the objective to conclude a comprehensive EPA with the West African region.	Yes (subject to decision by Joint EPA Committee)
Review of the EPA		Single administrative customs document: after 3 years; Cumulation rules: after 3 years; Investment framework: after 3 years; Competition chapter: after 6 years; Government procurement: every 3 years; RoO: after 5 years; Development cooperation: ongoing Comprehensive review after expiration of Cotonou Agreement.	Negotiations for comprehensive EPA continue in 2008.	Negotiations for comprehensive EPA continue in 2008.	Negotiations for comprehensive EPA continue in 2008.

Status quo		CARIFORUM	CEMAC (Cameroon)	Ghana (ECOWAS)	Cote d'Ivoire (ECOWAS)
X. Institutional provisions					
Scope/status quo		Joint Council Joint Trade and Development Committee Joint Parliamentary Committee Joint Consultative Committee Special Committee on Customs Cooperation and Trade Facilitation	Joint EPA Committee	Joint EPA Committee (to be established within 3 months) Special Committee on Customs and Trade Facilitation	Joint EPA Committee Special Committee on Customs and Trade Facilitation
Outstanding annexes		Annexes that specify investment and service liberalisation for CARIFORUM and the EU.	-	Annex III: List of products for which discriminatory fees and other charges are allowed. "Priority products" for a) regional harmonisation and b) enhanced export opportunities	Annex III: List of products for which discriminatory fees and other charges are allowed. "Priority products" for a) regional harmonisation and b) enhanced export opportunities
XI. Development Cooperation					
Scope/attempt		a) Building of human, legal and institutional capacities to comply with the commitment of the EPA; b) fiscal reform and improved customs collections; c) promoting private sector; d) investment promotion and diversification; e) enhancing technological capabilities, research and innovation; f) infrastructure	Productive capacities shall be improved. Priority areas: infrastructure, agriculture, fisheries and food security, improved industrial competitiveness and business climate; and deepened regional integration. Fiscal impact studies shall be undertaken and according support be provided: support to implement the forestry chapter; competition policies; IPR; and public procurement. Discussion on development cooperation shall continue in 2008.	Focus shall be on improved business climate, support to the implementation of the rules; upgrading of productive capacities; and support for fiscal adjustment.	Declaration in Annex. EU is committed to support CI's productive capacities, help to restructure income sources etc. Studies on the implications of revenue losses shall be undertaken. Support how to best implement all provisions of the agreement shall be specified in the ongoing negotiations.
Institutions/Funds		EC: no extra provisions. (Implementation of EDF and bilateral sources.) Regional Development Fund shall be created within 2 years.	EC reaffirmed its financial commitment under 10 th EDF and to identify co-financing sources. A regional fund shall be established to channel resources towards EPA signatories.	EC reaffirmed its financial commitment under 10 th EDF and to identify co-financing sources. Regional Indicative Programme of the EDF shall be channelled towards EPA signatories via a regional EPA fund.	EC reaffirmed its financial commitment under 10 th EDF and to identify co-financing sources. Regional Indicative Programme of the EDF shall be channelled towards EPA signatories via a regional EPA fund.

Table A3.2. Summary of key provisions in the IEPA texts: PACP, ESA, EAC, SADC-minus

<i>Status quo</i>	<u>PACP</u>	<u>ESA</u>	<u>EAC</u>	<u>SADC</u>
I. Trade in goods				
1. Customs duties				
Approach	Positive list	Positive list	Positive list	Positive list
Regional liberalisation	No. Customs duties shall be levied only once and goods shall circulate freely.	No. No provision that customs duties shall be levied only once in the ESA territory.	Yes. Customs duties shall be levied only once and any duty paid upon importation in an EAC Partner State shall be refunded fully when the goods leave the EAC Partner State of first importation.	Partially: BLNS Customs duties shall be levied only once and any duty paid upon importation shall be refunded in case of re-exports.
Review of liberalisation schedule for regional integration	No indication.	Yes, liberalisation schedule might be revised in light of ESA regional integration. Customs and trade facilitation and outstanding market access issues shall be negotiated in 2008.	-	Yes. BLNS and Mozambique's schedule shall merge once Mozambique introduces the HS2007.
Time frame	No indication in text (<i>Schedules: PNG immediate liberalisation; Fiji: 15 years</i>)	No indication in text. (<i>Schedules: 15 years in total; start 2013</i>).	25 years in total. Liberalisation starts 2010: EC imports into EAC with a basic duty 0 (according to the EAC CET) shall be liberalised within 2 years o EC imports into EAC with a basic duty of 10 shall be progressively abolished within 11 years (starting from year 7 on) o EC imports into EAC with a basic duty of 25 shall be progressively abolished within 25 years (starting from year 12 on)	No indication in text. (<i>Schedules: 10 years; start 2008</i>). EC suggest to merge the two annexes into a single SADC tariff schedule at the time of Moz's introduction of the HS2007
Review of tariff concessions in case of 'serious difficulties'	Yes (in case of serious difficulties. The Trade Committee by agreement may modify the duties in any manner the Parties deem appropriate).	No.	No.	No.
Export duties	Temporary allowed in exceptional circumstances (infant industry protection) subject to mutual agreement. All other export duties need to be abolished.	No new export duties shall be introduced / existing export duties increased except for those named in Annex III (Zambia is the only country that listed exceptions)	No new export duties shall be introduced / existing export duties increased. Temporary introduction / increase allowed in case of infant industry protection or to maintain currency value stability, subject to authorisation of joint Council. EPA Council reviews measures after 2 years.	No new export duties shall be introduced / existing export duties increased. Temporary introduction / increase allowed in exceptional circumstances (infant industry protection); EC needs to be consulted.

Status quo	PACP	ESA	EAC	SADC
Standstill provision	Yes (but limited to products that will be liberalised)	Yes	Yes	Yes (but limited to products that will be liberalised)
DFOF for sugar	A tariff rate quota at zero duty of 30 000 tonnes shall be opened for 2008/09	A tariff rate quota at zero duty of 75 000 tonnes shall be opened for 2008/09	A tariff rate quota at zero duty of 15 000 tonnes shall be opened for 2008/09	A tariff rate quota at zero duty of 25 000 tons for Swaziland and 12 000 tons for Mozambique shall be opened for 2008/09.
Rules of origin	'Cotonou plus' (Protocol I). To be reviewed after 5 years.	'Cotonou plus' (Protocol I). To be reviewed and redefined with the negotiation of the comprehensive EPA	'Cotonou plus' (Protocol I). To be reviewed and redefined with the negotiation of the comprehensive EPA	'Cotonou plus' (Protocol I); to be reviewed after 3 years.
MFN clause	Yes, in principle (but: where a Pacific State can demonstrate that it has been offered by a third Party a substantially more favourable treatment in goods there shall be consultations how to apply the MFN clause)	Yes	Yes	Yes
Sanctions in case of failure to provide administrative cooperation	Yes: temporary suspension (6 months, renewable) of preferences in cases of repeated failure and if the Joint EPA Committee could not come to a mutually accepted solution within 3 months.	Yes: temporary suspension (6 months, renewable) of preferences in cases of repeated failure and if the Joint EPA Committee could not come to a mutually accepted solution within 3 months.	Yes: temporary suspension (6 months, renewable) of preferences in cases of repeated failure and if the Joint EPA Committee could not come to a mutually accepted solution within 3 months.	Yes: temporary suspension (6 months, renewable) of preferences in cases of repeated failure and if the Joint EPA Committee could not come to a mutually accepted solution within 3 months.
2. Trade Defence				
ACP exclusion from GATT/AoA	Yes (limited to 5 years with option of extension).	Yes (limited to 5 years with option of extension).	Yes (limited to 5 years with option of extension).	Yes (limited to 5 years with option of extension).
Safeguard instruments	Suspension of tariff reduction, increase of customs duties to applied MFN rate and tariff quotas	Suspension of tariff reduction, increase of customs duties to applied MFN rate and tariff quotas	Suspension of tariff reduction or increase of customs duties to applied MFN rate and tariff quotas	Suspension of tariff reduction or increase of customs duties to applied MFN rate or tariff quotas
Maximum safeguard protection	No time limit: not exceed what is necessary to remedy or prevent serious injury.	No time limit: not exceed what is necessary to remedy or prevent serious injury.	No time limit: not exceed what is necessary to remedy or prevent serious injury.	No time limit: not exceed what is necessary to remedy or prevent serious injury.
Pre-emptive safeguards	Yes (max. 200 days).	Yes (max. 200 days).	Yes (max. 200 days).	Yes (max. 200 days)
Safeguards related to food security	In case of food insecurity safeguards can be applied.	No. Chapter on Agriculture will be negotiated in 2008.	No. Chapter on Agriculture will be negotiated in 2008.	No.
Maximum period to apply safeguards for infant industry protection	Up to 10 years (up to 15 years for LDCs and small island states) but only in the first 20 years.	8 years but only in the first 10 years (15 years for LDCs)	8 years but only in the first 10 years	8 years but only in the first 12 years for BNS and 15 years for LDCs (extendable by Joint Council decision)
No new safeguards for a product that has been previously subject to infant industry protection	Yes, for 1 year.	Yes, for 1 year	Yes, for 1 year	Yes, for one 1 year

<i>Status quo</i>	<u>PACP</u>	<u>ESA</u>	<u>EAC</u>	<u>SADC</u>
Quantitative restrictions for infant industry protection	Yes. Protected goods shall not increase 3% of tariff lines or 15% of import value.	No	No	No
Further provisions for infant industry protection	In exceptional circumstances, when the protection of infant industries can be defended, PACP can temporarily re-introduce MFN tariff. Mutual agreement with the EC is necessary.	Treatment of internal taxation and regulation can be discriminatory to protect infant industries (decision from the EPA Committee needed). Seychelles listed exception on NT for 10 years.	Temporary introduction/ increase of export taxes allowed in case of infant industry. EPA Council reviews measures after 2 years.	After consultation with the EC SADC EPA states may introduce temporary export taxes or charges having equivalent effect on a limited number of additional products. Council reviews measures after 3 years.
3. Non-Tariff Barriers				
Abolition of para-tariffs, NTBs and quantitative measures	Prohibition of any import or export restrictions other than customs duties and taxes (notwithstanding anti-dumping/countervailing measures). But: temporary introduction of customs/excise duties in 'exceptional circumstances' (see infant industry provision)	Prohibition of any import or export restriction other than custom duties and taxes (notwithstanding anti-dumping/countervailing measures). But: <ul style="list-style-type: none">temporary introduction of customs/excise duties in 'exceptional circumstances' (as stipulated in Annex II)Annex III: Seychelles: Exception on national treatment for 10 years	Prohibition of any import or export restrictions other than customs duties and taxes (notwithstanding anti-dumping/countervailing measures) But: <ul style="list-style-type: none">1) Temporary export restrictions to prevent critical shortages of foodstuff/infant industry protection2) Import and export prohibitions necessary to the application of standards for the classification/marketing of commodities	No new customs duties on exports or charges having equivalent effect (notwithstanding anti-dumping/countervailing measures) But: SADC countries may introduce temporary export taxes for infant industry protection purposes (after consultations with the EC)
Subsidies	National subsidies are allowed according to WTO regulations. EU to phase out agricultural export subsidies.	National subsidies are allowed according to WTO regulations.	National subsidies are allowed according to WTO regulations.	National subsidies are allowed according to WTO regulations.
4. Customs and Trade Facilitation				
Protocol on Mutual Administrative Assistance in Customs Matters	Yes	No	Yes	Yes
Single administrative document	Envisaged (review of progress after 5 years).	No (only coordination and cooperation as outlined in the Protocol on Mutual Administrative Assistance in Customs matters).	No (only coordination and cooperation as outlined in the Protocol on Mutual Administrative Assistance in Customs matters).	No (only coordination and cooperation as outlined in the Protocol on Mutual Administrative Assistance in Customs matters).

<i>Status quo</i>	<u>PACP</u>	<u>ESA</u>	<u>EAC</u>	<u>SADC</u>
Sanctions in case of administrative non-cooperation	Yes, if administrative cooperation is repeatedly refused / undue delayed the complaining party can temporarily suspend the preferences for the product(s) in question if the Joint Council/Committee has not come to a solution within 3 months. The suspension shall not exceed 6 months (renewable).	Yes, if administrative cooperation is repeatedly refused / undue delayed the complaining party can temporarily suspend the preferences for the product(s) in question if the Joint Council/Committee has not come to a solution within 3 months. The suspension shall not exceed 6 months (renewable).	Yes, if administrative cooperation is repeatedly refused / undue delayed the complaining party can temporarily suspend the preferences for the product(s) in question if the Joint Council/Committee has not come to a solution within 3 months. The suspension shall not exceed 6 months (renewable).	Yes, if administrative cooperation is repeatedly refused / undue delayed the complaining party can temporarily suspend the preferences for the product(s) in question if the Joint Council/Committee has not come to a solution within 3 months. The suspension shall not exceed 6 months (renewable).
Development of common regional standards	No.	Chapter not yet drafted.	Chapter not yet drafted.	No (only promotion of harmonised customs legislation and procedures).
Common institutions	No	Chapter not yet drafted.	Chapter not yet drafted.	Yes (Special Committee on Customs and Trade Facilitation).
5. Fisheries				
Access agreement	No Chapter on Fisheries.	No (no only cooperation, capacity building and technical support)	No (no only cooperation, capacity building and technical support)	No Chapter on Fisheries.
6. Technical Barriers to Trade and Sanitary and Phytosanitary Standards				
Scope	WTO obligations and cooperation; identification of 'priority products' for regional harmonisation and enhanced export support (Annexes IIIA/IIIB).	Chapter not yet drafted.	Chapter not yet drafted.	WTO obligations and cooperation; identification of 'priority products' for which a) harmonised standards and procedures should be developed and b) enhanced export support is needed.
Institutions	No common institutions. Competent authorities do not need to be communicated.	Chapter not yet drafted.	Chapter not yet drafted.	No common institutions. Parties need to inform each other about their competent authorities
Regional approach	Partly. Strengthened TBT/SPS cooperation among national authorities.	Chapter not yet drafted.	Chapter not yet drafted.	Partly. Strengthened TBT/SPS cooperation among national authorities

<i>Status quo</i>	<u>PACP</u>	<u>ESA</u>	<u>EAC</u>	<u>SADC</u>
II. Trade-related issues				
O <i>Rendez-vous</i> clause				
Subjects	Development cooperation and all components that are 'in line with the Cotonou Agreement'	Customs and trade facilitation: outstanding trade and market access issues; TBT/SPS/ services; competitions, investment/PSD; environment, IPR, public procurement; agriculture; current payments; good governance in tax areas; DSB; institutions, development cooperation; any other area the parties find necessary	Customs and trade facilitation: outstanding trade and market access issues; TBT/SPS/ services; competitions, investment/PSD; environment, IPR, public procurement; agriculture; current payments; good governance in tax areas; DSB; institutions, development cooperation; any other area the parties find necessary.	For all SADC EPA states except Namibia: Liberalisation schedule for one service sector per state; commitment to a standstill for services; agreement to negotiate progressive liberalisation with substantial sectoral coverage by 12/2011. Cooperation and capacity building in the service sector; Investment Cooperation and strengthening of regional capacities for competition and government procurement
Envisaged deadline of negotiations	31 Dec 2008	31 Dec 2008	31 July 2009	31 Dec 2008 (excl. services. Services: within 3 years after finalisation of full EPA)
1. Services				
MFN clause	Unknown whether services will be negotiated.	Chapter not yet drafted.	Chapter not yet drafted.	Chapter not yet drafted.
Standstill provision	-	Chapter not yet drafted.	Chapter not yet drafted.	Chapter not yet drafted.
Annexes	-	Chapter not yet drafted.	Chapter not yet drafted.	Chapter not yet drafted.
2. Investment and capital movement				
Progressive liberalisation of investment	Unknown whether investment will be negotiated.	Chapter not yet drafted.	Chapter not yet drafted.	Chapter not yet drafted.
Free movement of capital relating to direct investment	-	Chapter not yet drafted.	Chapter not yet drafted.	Chapter not yet drafted.
Safeguards in case of balance of payment difficulties	Yes (in line with WTO and IMF regulations. If, however, general disequilibrium persists parties shall review the agreement and consider measures for correction)	Chapter not yet drafted.	Chapter not yet drafted.	Chapter not yet drafted.
3. Competition				
Implementation of national competition bills	Unknown whether competition will be negotiated.	Chapter not yet drafted.	Chapter not yet drafted.	Chapter not yet drafted. "The EC Party agrees to cooperate with a view to strengthening regional capacity in these areas. Negotiations will only be envisaged once adequate regional capacity has been built."

<i>Status quo</i>	<u>PACP</u>	<u>ESA</u>	<u>EAC</u>	<u>SADC</u>
Regional approach	-	Chapter not yet drafted.	Chapter not yet drafted.	-
Public enterprise provisions	-	Chapter not yet drafted.	Chapter not yet drafted.	-
4. Innovation and IPR				
Scope	Unknown whether IPR will be negotiated.	Chapter not yet drafted	Chapter not yet drafted	Unknown whether IPR will be negotiated.
5. Public procurement				
Scope	Unknown whether government procurement will be negotiated.	Chapter not yet drafted.	Chapter not yet drafted.	Chapter not yet drafted. "The EC Party agrees to cooperate with a view to strengthening regional capacity in these areas. Negotiations will only be envisaged once adequate regional capacity has been built."
6. Environment				
Scope	Unknown whether environment will be negotiated.	Chapter not yet drafted.	Chapter not yet drafted.	Unknown whether environment will be negotiated.
7. Social aspects				
Scope/Institutions	Unknown whether social aspects will be negotiated.	Unknown whether social aspects will be negotiated.	Unknown whether social aspects will be negotiated.	Unknown whether social aspects will be negotiated.
8. Personal data protections				
Scope	Unknown whether personal data protection will be negotiated.	Unknown whether personal data protection will be negotiated.	Unknown whether personal data protection will be negotiated.	Unknown whether personal data protection will be negotiated.
Time frame	-	-	-	-
Sanctions in case of non-compliance possible	-	-	-	-
9. Good governance in the tax and financial area				
Scope/status quo	Unknown whether chapter will be negotiated.	Chapter not yet drafted.	Chapter not yet drafted	Unknown whether chapter will be negotiated.
VIII. Dispute avoidance and settlement				
Scope/status quo	3 arbitrators decide how to settle dispute; decision is binding. Joint Trade and Development Committee establish rules of procedures and might review and amend provisions; binding procedures. List of 15 arbitrators and 5 chairpersons will be presented by EPA Committee within 3 months.	3 arbitrators decide how to settle dispute; decision is binding. Rules shall follow those of the Permanent Court of Arbitration for International Organizations and States. Detailed procedures will still be defined.	3 arbitrators decide how to settle dispute; decision is binding. Rules shall follow those of the Permanent Court of Arbitration for International Organizations and States. Detailed procedures will still be defined.	3 arbitrators decide how to settle dispute; decision is binding. Joint Trade and Development Committee establish rules of procedures and might review and amend provisions; binding procedures. List of 15 arbitrators and 5 chairpersons will be presented by Joint Trade and Development Committee within 3 months.

Status quo	PACP	ESA	EAC	SADC
Temporary remedies in case of non-compliance	Yes.	No (but procedures of DSB are subject to 'rendez-vous')	No (but procedures of DSB are subject to 'rendez-vous')	Yes.
IX General and final provisions				
Scope/status quo	Modalities for the continuation of negotiations; appoint coordinator to ensure effective implementation; regional preference; relation with Cotonou/WTO; entry into force; revision clause; accession of new members	Entry into force/duration, institutions, relations with other agreements, accession.	Definition of parties; entry into force/duration, institutions, relations with other agreements; accession.	Definition of parties; exchange of information; regional preference, transparency; relations with Cotonou/TDCA/WTO and EU outermost regions; entry into force, accession.
Accession of other ACP states possible at later stage	Yes (subject to joint agreement of parties)	Any ESA state can accede; non-ESA states can accede upon approval of EPA Committee	Yes (subject to decision by Joint EPA Council)	Yes (subject to decision by Joint EPA Council)
Review of the EPA	Yes. Customs and legislative procedures (after 3 years); RoO after 5 years. Joint Trade Committee may review and amend the EPA at any time.	Negotiations for comprehensive EPA continue in 2008.	Negotiations for comprehensive EPA continue in 2008	Negotiations for comprehensive EPA continue in 2008.
X. Institutional provisions				
Scope/status quo	Joint Trade Committee (responsible for the implementation of the Agreement)	EPA Committee Customs Cooperation Committee (institutional provisions are subject to ongoing negotiations)	EPA Council Special Committee on Customs Cooperation (institutional provisions are subject to ongoing negotiations)	Joint SADC EPA Council Trade and Development Committee Special Committee on Customs and Trade Facilitation
Outstanding annexes	Priority products for TBT/SPS support (Annexes IIIA/IIIB)		RoO and the annexes that specify rules of origin and set out detailed export procedures.	RoO and the annexes that specify rules of origin and set out detailed export procedures.
XI. Development Cooperation				
Scope/attempt	Development cooperation will be discussed in ongoing negotiations.	Cooperation shall be based upon the ESA Development Strategy and an ESA Development Matrix shall be developed. Also extensive cooperation in Economic/Development Cooperation Chapter and Development and Finance Cooperation Chapter; however: provisions remain shadowy without binding financial provisions.	Development cooperation will be discussed in ongoing negotiations.	Support of SADC EPA states' trade and development policy within the SADC Framework. Cooperation on trade in goods and services, TBT/SPS (priority products), supply-side constraints etc.

<i>Status quo</i>	<u>PACP</u>	<u>ESA</u>	<u>EAC</u>	<u>SADC</u>
Institutions/Funds	No extra provisions. (Implementation of EDF)	EC: no extra provisions. (Implementation of EDF and bilateral sources to be monitored by Joint Council.)	EC reaffirmed its financial commitment under 10 th EDF.	EC reaffirmed its financial commitment under 10 th EDF for BLNS/Moz and under the TDCA for SA

Appendix 4. Comparative analysis of the IEPA texts

Provision	Least restrictive in the IEPA	Moderately restrictive in the IEPA	Most restrictive in the IEPA	Least restrictive in other EU FTA
1. Customs duties				
Regional liberalisation	PACP, CEMAC (Cameroon), Ghana, Côte d'Ivoire (regional integration envisaged but no binding provisions yet)	CARIFORUM (individual schedules will merge; SDT possible; CF will do its best to levy customs duties only once); SADC (joint approach for BLNS; individual for Moz.; schedules shall be merged)	EAC (joint approach, no SDT)	
Time frame	CARIFORUM, EAC (25 years)	CEMAC, Ghana, Côte d'Ivoire, ESA, Fiji (15 years)	SADC (10 years) PNG (immediately)	
Review of tariff concessions in case of 'serious difficulties'	CEMAC (unilateral stop of liberalisation possible for max. 1 year)	CARIFORUM, PACP (in case of serious difficulties; to be mutually agreed)	EAC, ESA, SADC, Ghana, Côte d'Ivoire (no indication)	
Export duties	Zambia: export duties listed in Annex III can be applied without time restrictions. PACP, EAC, SADC, CEMAC, Ghana, Côte d'Ivoire (temporary (re-) introduction allowed; subject to mutual agreement)	ESA (no new/higher export duties)	CARIFORUM (no new duties, existing duties to be abolished within 3 years)	
Standstill provision		PACP, SADC (limited to products that will be liberalised)	CARIFORUM, EAC, ESA, CEMAC, Ghana, Côte d'Ivoire (for all trade)	
MFN clause	CARIFORUM, PACP: (parties will consult how to apply MFN clause; Joint Council/Commission takes final decision)		EAC, ESA, CEMAC, SADC, Ghana, Côte d'Ivoire (no exception from MFN clause)	TDCA and Mexico: no provisions
Sanctions in case of failure to provide administrative cooperation			All regions/countries (temporary suspension of 6 months)	TDCA and Mexico: no provisions
<i>Summary (number of appearances in each IEPA restrictiveness column):</i>				
CARIFORUM	2	2	3	
CEMAC	3	1	3	
Côte d'Ivoire	2	1	4	
EAC	2	—	5	
ESA	0 (+Zambia 1)	2	4	
Ghana	2	1	4	
PACP	2	2 (+ Fiji 1)	1 (+ PNG 1)	
SADC	1	2	3	

Provision	Least restrictive in the IEPA	Moderately restrictive in the IEPA	Most restrictive in the IEPA	Least restrictive in other EU FTA
2. Trade protection/NTBs				
ACP exclusion from GATT/AoA safeguards	All regions/countries (5 years with the option of extension)			TDCA and Mexico: no provisions
Safeguard instruments	ESA, EAC, PACP, CEMAC, Ghana, Côte d'Ivoire (suspension of tariff reduction, increase of customs duties to applied MFN rate <u>and</u> tariff quotas)		SADC, CARIFORUM (suspension of tariff reduction, increase of customs duties to applied MFN rate <u>or</u> tariff quotas)	TDCA: no specification; measures need to be communicated to Joint Council Mexico: no specification ('appropriate measure')
Maximum safeguard protection	No time limit: not exceed what is necessary to remedy or prevent serious injury.			TDCA: periodic review by Joint Council; max. period 3 years Mexico: up to 3 years in exceptional cases
Pre-emptive safeguards			All regions: max. 200 days	TDCA and Mexico: no time restrictions
Safeguards related to food security	CARIFORUM, CEMAC, Ghana, Côte d'Ivoire (linked to pre-emptive safeguards)	PACP (not linked to pre-emptive safeguards)	EAC, ESA, SADC (no provisions yet)	TDCA: linked to pre-emptive safeguards Mexico: linked to pre-emptive safeguard and the introduction of export duties.
Maximum period to apply safeguards for infant industry protection	PACP (10 years / 15 years for LDCs and small island states) in the first 20 years	CEMAC, ESA, SADC: 8 years in the first 10-15 years (10 years for ESA, 12 years for SADC, 15 years for CEMAC and all LDCs)	CARIFORUM, EAC, Ghana, Côte d'Ivoire: 8 years in the first 10 years (extendable for G+CI)	TDCA: 4 years in the first 12 years
No new safeguards for a product that has been previously subject to safeguards	All regions: for 1 year			TDCA and Mexico: for 3 years
QRs for infant industry protection	All regions except PACP: no		PACP (protected goods shall not increase 3% of tariff lines or 15% of import value).	TDCA: Protected goods shall not increase 10% of import value
Further provisions for infant industry protection	Ghana, Côte d'Ivoire, PACP (temporary increase of customs/excise duties possible subject to mutual agreement) EAC, ESA, SADC (temporary introduction of export taxes is possible subject to mutual agreement)		CARIFORUM, CEMAC (only safeguards)	TDCA and Mexico: only safeguards
Abolition of NTBs and quantitative measures	EAC (restrictions in case of food insecurity and for commodity marketing possible) Seychelles: Exempted from NT provision for 10 years Ghana: Annex III lists products for which application of discriminatory charges is allowed for 10 years.	Côte d'Ivoire, ESA, SADC (exemptions in case of infant industry protection possible; subject to mutual agreement)	CARIFORUM (only anti-dumping/counter-vailing measures are exempted)	

Provision	Least restrictive in the IEPA	Moderately restrictive in the IEPA	Most restrictive in the IEPA	Least restrictive in other EU FTA
Maximum period for which infant industry protection is applicable	PACP (first 20 years)	CEMAC (first 15 years) SADC (first 12 years/15 years for LDCs); with option of extension) ESA (first 10 years/15 years for LDCs) Ghana, Côte d'Ivoire (first 10 years with option of extension)	EAC, CARIFORUM (first 10 years for all countries)	
QRs for infant industry protection	All texts except PACP: non-existent		PACP (safeguards may not increase on more than 3% of tariff lines or 15% of import value)	
Subsidies		All regions/countries: national subsidies allowed		Mexico: national subsidies allowed; TDCA: no provisions
Summary (number of appearances in each IEPA restrictiveness column):				
CARIFORUM	6	1	6	
CEMAC	7	3	2	
Côte d'Ivoire	8	3	2	
EAC	8	1	4	
ESA	7 (+1 Seychelles)	4	2	
Ghana	9	2	2	
PACP	7	2	3	
SADC	6	4	3	
III. Customs and Trade Facilitation¹				
Single administrative document	CEMAC, Ghana, Côte d'Ivoire, SADC (no provisions)		CARIFORUM, PACP (review of progress after 3 and 5 years respectively)	
Development of common regional standards	PACP (no provisions)	Ghana, Côte d'Ivoire, SADC (promotion of harmonised customs legislation and procedures)	CARIFORUM, CEMAC (regional customs legislation, joint procedures and documentation)	
Common institutions	PACP, CEMAC (no provisions)		CARIFORUM, Ghana, Côte d'Ivoire, SADC (Special Committee on Customs)	
Summary (number of appearances in each IEPA restrictiveness column):				
CARIFORUM	—	—	3	
CEMAC	2	—	1	
Côte d'Ivoire	1	1	1	
EAC				
ESA				
Ghana	1	1	1	
PACP	2	—	1	
SADC	1	1	1	

¹ Chapters not yet drafted for EAC and ESA.

Provision	Least restrictive in the IEPA	Moderately restrictive in the IEPA	Most restrictive in the IEPA	Least restrictive in other EU FTA
IV. TBT/NTB²				
Competent authorities	PACP, CEMAC (competent authorities are those dealing with SPS issue)	CARIFORUM, SADC (mutual information on competent authorities)	Ghana, Côte d'Ivoire (provide a list of competent authorities within 3 months after signature)	
TBT/NTB support	<u>Least specific</u> : CARIFORUM (general support, no priority products)	<u>Moderately specific</u> : Ghana and Côte d'Ivoire (support for EU export priority products within 3 months after signature)	<u>Most specific and demanding</u> : CEMAC, PACP, SADC (harmonisation of regional SPS/TBT standards for priority products; support for EU export priority products)	
Regional approach	Ghana, Côte d'Ivoire, PACP and SADC (strengthened collaboration between public and private authorities)	CARIFORUM (objective to create harmonised SPS measures, standards and procedures)	CEMAC (harmonisation of standards within 4 years)	
Summary (number of appearances in each IEPA restrictiveness column):				
CARIFORUM	1	2	—	
CEMAC	1	—	2	
Côte d'Ivoire	1	1	1	
EAC				
ESA				
Ghana	1	1	1	
PACP	2	—	1	
SADC	1	1	1	
V. Rendezvous clause				
Subjects on which negotiations continue	PACP (no specification)	SADC (some specifications: services, investment; excl. IPR)	CEMAC, EAC, ESA, Ghana, Côte d'Ivoire (very comprehensive incl. IPR).	
Deadline	EAC, ESA (31 July 2009)	CEMAC (01/01/09; no deadline for services); SADC (31 Dec 2008 but longer for services)	Ghana, Côte d'Ivoire, PACP (31 Dec 2008)	
Summary (number of appearances in each IEPA restrictiveness column):				
CARIFORUM	—	—	—	
CEMAC	—	1	1	
Côte d'Ivoire	—	—	2	
EAC	1	—	1	
ESA	1	—	1	
Ghana	—	—	2	
PACP	1	—	1	
SADC	—	2	-	

² Chapters not yet drafted for EAC and ESA.

Provision	Least restrictive in the IEPA	Moderately restrictive in the IEPA	Most restrictive in the IEPA	Least restrictive in other EU FTA
VI. Other provisions				
Safeguards in case of balance of payment difficulties ³	PACP (in line with WTO/IMF; a review and possible corrective measures are foreseen if a general disequilibrium persists)		CARIFORUM (in line with WTO/IMF; safeguards shall not exceed 6 months)	TDCA: in line with GATT/IMF; no time restrictions Mexico: in line with GATT/IMF; measures shall be 'of limited duration'
Personal data protection ⁴	CARIFORUM (7 years transitional period to establish legal and regulatory capacities)		CEMAC (immediate compliance with provisions; supervised by independent authority)	TDCA and Mexico: Cooperation to improve the level of protection according to international standards; technical assistance is provided.
Good governance in the tax and financial areas ⁵		CARIFORUM, Ghana, Côte d'Ivoire (foster dialogue and transparency; combat illegal financial practice)		TDCA: no provisions.
Dispute settlement ⁶			All regions/countries: arbitration panel shall be established within 15 days; decision has to be made after 180 days (90 days in case of emergency)	TDCA: arbitration panel shall be established within 6 months; decision has to be made after 365 days.
Temporary remedies in case of non-compliance			All regions: Yes	TDCA: no provisions
Regional preference ⁷	CARIFORUM (transitional periods for lesser developed members)		CEMAC, PACP, SADC (immediately)	TDCA and Mexico: no provisions
Review of the IEPA ⁸	PACP (review of 2 chapters; Joint Committee may review IEPA at any time)		CARIFORUM (review of 7 chapters plus comprehensive review in 2020)	TDCA: comprehensive review after 5 years.
Institutions ⁹	CEMAC, PACP (joint executive organ)	Ghana, Côte d'Ivoire (2 joint institutions) SADC (3 joint institutions)	CARIFORUM (5 joint institutions)	TDCA: joint executive organ
Summary (number of appearances in each IEPA restrictiveness column):				
CARIFORUM	2	1	5	
CEMAC	1	—	4	
Côte d'Ivoire	—	2	2	
EAC	—	—	2	
ESA	—	—	2	
Ghana	—	2	2	
PACP	3	—	3	
SADC	—	1	3	

³ CARIFORUM and PACP are to date the only regions that outlined according provisions.

⁴ CARIFORUM and CEMAC are to date the only regions that outlined according provisions.

⁵ CARIFORUM, Ghana and Côte d'Ivoire are to date the only regions that outlined according provisions.

⁶ The dispute settlement provisions in the EAC and ESA IEPAs are subject to ongoing negotiations.

⁷ CARIFORUM, PACP, SADC, and CEMAC are to date the only regions that outlined according provisions

⁸ For the other regions/countries no review clauses have yet been determined.

⁹ For EAC and ESA negotiations on the institutional set-up are ongoing.

Appendix 5. Summary of non-EPA-signatory exports subject to increased tariff from 2008

Table A5.1. Congo Republic ^a

Description		Exports to EU 2006 (€000)	Max. increase in tariff Jan. 2008	Regime	Max. duty (€000)
Total in HS 1-97		372,272			
Total of items > €100,000		368,912			
Share of items > €100,000		99.1%			
Affected exports:					
03061340	frozen deepwater rose shrimps 'parapenaeus longirostris', whether in shell or not, incl. shrimps in shell, cooked by steaming or by boiling in water	1,906	4.2%	Std GSP	80
03061380	frozen shrimps and prawns, whether in shell or not, incl. shrimps and prawns in shell, cooked by steaming or by boiling in water (excl. 'pandalidae', 'crangon', deepwater rose shrimps 'parapenaeus longirostris' and shrimps of the genus 'penaeus')	292	4.2%	Std GSP	12
17011110	raw cane sugar, for refining (excl. added flavouring or colouring)	5,512	33.9 €/100 kg	MFN	3,362
24011010	flue-cured virginia type tobacco, unstemmed or unstripped	823	14.9% max. 24 €/100 kg	Std GSP	81
24012010	partly or wholly stemmed or stripped flue-cured virginia type tobacco, otherwise unmanufactured	2,995	14.9% max. 24 €/100 kg	Std GSP	262
24013000	tobacco refuse	299	3.9% max. 56 €/100 kg	Std GSP	12
44121310	plywood consisting solely of sheets of wood <= 6 mm thick, with at least one outer ply of one the following: dark red meranti, light red meranti, white lauan, sipo, limba, obeche, okoume, acajou d'afrique, sapelli, virola, mahogany "swietenia spp.", palissandre de rio, palissandre de para or palissandre de rose (excl. sheets of compressed wood, hollow-core composite panels, inlaid wood and sheets identifiable as furniture components)'	370	6.5%	Std GSP	24
44121400	plywood consisting solely of sheets of wood <= 6 mm thick, with at least one outer ply of non-coniferous wood or other tropical wood than specified in sub-heading note 1 to this chapter (excl. sheets of compressed wood, hollow-core composite panels, inlaid wood and sheets identifiable as furniture components)	666	3.5%	Std GSP	23
Value of affected exports		12,864			
Share of affected exports in total		3.5%			
Note:					
(a) All affected exports valued at €100,000 or more in 2006.					

Table A5.2. Gabon^a

Description	Exports to EU 2006 (€000)	Max. increase in tariff Jan. 2008	Regime	Max. duty (€000)
Total in HS 1-97	607,876			
Total of items > €100,000	604,286			
Share of items > €100,000	99.4%			
Affected exports:				
03037981 frozen monkfish 'lophius spp.'	359	11.5%	Std GSP	41
03061340 frozen deepwater rose shrimps 'parapenaeus longirostris', whether in shell or not, incl. shrimps in shell, cooked by steaming or by boiling in water	3,960	4.2%	Std GSP	166
03061350 frozen shrimps of the genus 'penaeus', whether in shell or not, incl. shrimps in shell, cooked by steaming or by boiling in water	2,295	4.2%	Std GSP	96
03061380 frozen shrimps and prawns, whether in shell or not, incl. shrimps and prawns in shell, cooked by steaming or by boiling in water (excl. 'pandalidae', 'crangon', deepwater rose shrimps 'parapenaeus longirostris' and shrimps of the genus 'penaeus')	9,435	4.2%	Std GSP	396
03061490 frozen crabs, whether in shell or not, incl. crabs in shell, cooked by steaming or by boiling in water (excl. 'paralithodes camchaticus', 'chionoecetes spp.', 'callinectes sapidus', and 'cancer pagurus')	900	2.6%	Std GSP	23
03074918 frozen cuttle fish 'sepia officinalis' and 'rossia macrosoma', with or without shell	338	2.8%	Std GSP	9
44121310 plywood consisting solely of sheets of wood <= 6 mm thick, with at least one outer ply of one the following: dark red meranti, light red meranti, white lauan, sipo, limba, obeche, okoume, acajou d'afrique, sapelli, virola, mahogany "swietenia spp.", palissandre de rio, palissandre de para or palissandre de rose (excl. sheets of compressed wood, hollow-core composite panels, inlaid wood and sheets identifiable as furniture components)	18,811	6.5%	Std GSP	1,223
44121400 plywood consisting solely of sheets of wood <= 6 mm thick, with at least one outer ply of non-coniferous wood or other tropical wood than specified in sub-heading note 1 to this chapter (excl. sheets of compressed wood, hollow-core composite panels, inlaid wood and sheets identifiable as furniture components)	108	3.5%	Std GSP	4
85299081 parts suitable for use solely or principally with television cameras of sub-heading 852530, receivers of radio-telephonic or radio-telegraphic signals, or for radio or television (excl. aerials, cabinets and casings and assembled electronic circuits)	150	1.5%	Std GSP	2
Value of affected exports	36,355			1,962
Share of affected exports in total	6.0%			0.3%
Note:				
(a) All affected exports valued at €100,000 or more in 2006.				

Table A5.3. Nigeria^a

Description		Exports to EU 2006 (€000)	Max. increase in tariff Jan. 2008	Regime	Max. duty (€000)
Total in HS 1-97		10,776,962			
Total in items > €100,000		10,764,724			
Share > €100,000		99.9%			
Affected exports:					
03042094	frozen fillets of saltwater fish (excl. cod, fish of the species boreogadus saida, coalfish, haddock, redfish, whiting, ling, tuna, fish of the species euthynnus, mackerel, fish of the species orcyropsis unicolor, hake, sharks, plaice, flounder, herring, megrim, monkfish, alaska pollack, swordfish, toothfish or blue grenadier)	839	11.5%	Std GSP	97
03061310	frozen shrimps and prawns of the pandalidae family, whether in shell or not, incl. shrimps and prawns in shell, cooked by steaming or by boiling in water	114	4.2%	Std GSP	5
03061350	frozen shrimps of the genus 'penaeus', whether in shell or not, incl. shrimps in shell, cooked by steaming or by boiling in water	39,778	4.2%	Std GSP	1,671
03061380	frozen shrimps and prawns, whether in shell or not, incl. shrimps and prawns in shell, cooked by steaming or by boiling in water (excl. 'pandalidae', 'crangon', deepwater rose shrimps 'parapenaeus longirostris' and shrimps of the genus 'penaeus')	1,783	4.2%	Std GSP	75
03061490	frozen crabs, whether in shell or not, incl. crabs in shell, cooked by steaming or by boiling in water (excl. 'paralithodes camchaticus, chionoecetes spp.', 'callinectes sapidus', and 'cancer pagurus')	3,544	2.6%	Std GSP	92
03074918	frozen cuttle fish 'sepia officinalis' and 'rossia macrosoma', with or without shell	264	2.8%	Std GSP	7
07099090	fresh or chilled vegetables (excl. potatoes, tomatoes, vegetables of the allium spp., cabbages of the genus brassica, lettuces of the species lactuca sativa and cichorium, carrots, turnips, salad beetroot, salsify, celeriac, radishes and similar edible roots, cucumbers and gherkins, leguminous vegetables, artichokes, asparagus, aubergines, mushrooms, truffles, fruits of the genus capsicum or of the genus pimenta, spinach, new zealand spinach, orache spinach, chard, cardoon, olives, capers, fennel, sweetcorn and courgettes)	489	8.9%	Std GSP	44
07129090	dried vegetables and mixtures of vegetables, whole, cut, sliced, broken or in powder, but not further prepared (excl. potatoes, onions, mushrooms, truffles, sweetcorn, tomatoes and carrots)	127	8.9%	Std GSP	11
11062090	flour, meal and powder of sago and of root or tubers of manioc, arrowroot, salep, jerusalem artichokes, sweet potatoes and similar roots and tubers with a high content of starch or inulin of heading 0714 (excl. denatured)	103	29.2 €/1000 kg net	Std GSP	4
12129920	sugar cane, fresh, chilled, frozen or dried, whether or not ground	170	0.8 €/100 kg	MFN	1
16051000	crab, prepared or preserved	107	2.8%	Std GSP	3
18031000	cocoa paste (excl. defatted)	2,016	6.1%	Std GSP	123
18032000	cocoa paste, wholly or partly defatted	2,098	6.1%	Std GSP	128
18040000	cocoa butter, fat and oil	32,113	4.2%	Std GSP	1,349
19019099	food preparations of flour, groats, meal, starch or malt extract, not containing cocoa or containing cocoa in a proportion by weight of < 40%, calculated on a totally defatted basis, and food preparations of milk, cream, butter milk, sour milk, sour cream, whey, yogurt, kephir or similar goods in heading 0401 to 0404, not containing cocoa or containing cocoa in a proportion by weight of < 5%, calculated on a totally defatted basis, n.e.s. (excl. malt extract and preparations for infant food, put up for retail sale, mixes and doughs for	119	4.1% + agricultural component	Std GSP	5 (plus agricultural component)

Description		Exports to EU 2006 (€000)	Max. increase in tariff Jan. 2008	Regime	Max. duty (€000)
	preparation of bakers' wares and goods in sub-heading 1901.90.91)				
22021000	waters, incl. mineral and aerated, with added sugar, sweetener or flavour, for direct consumption as a beverage	793	6.1%	Std GSP	48
22029010	non-alcoholic beverages, not containing milk, milk products and fats derived therefrom (excl. water, fruit or vegetable juices)	136	6.1%	Std GSP	8
41051010	skins of sheep or lambs, in the wet state 'incl. wet-blue', tanned, without wool on, unsplit (excl. further prepared and pre-tanned only)	1,928	2%	MFN	39
41053091	skins of sheep or lambs, in the dry state 'crust', without wool on, unsplit (excl. further prepared and pre-tanned only, and indian hair sheep skins, vegetable pre-tanned, whether or not having undergone certain treatments, but obviously unsuitable for immediate use for the manufacture of leather articles)	5,315	2%	MFN	106
41053099	skins of sheep or lambs, in the dry state 'crust', without wool on, split (excl. further prepared and pre-tanned only, and indian hair sheep skins, vegetable pre-tanned, whether or not having undergone certain treatments, but obviously unsuitable for immediate use for the manufacture of leather articles)	2,942	2%	MFN	59
41062110	skins of goats or kids, in the wet state 'incl. wet-blue', tanned, without wool on, unsplit (excl. further prepared and pre-tanned only)	11,110	2%	MFN	222
41062190	skins of goats or kids, in the wet state 'incl. wet-blue', tanned, without wool on, split (excl. further prepared and pre-tanned only)	155	2%	MFN	3
41062290	hides and skins of goats or kids, in the dry state 'crust', without wool on, whether or not split (excl. further prepared and pre-tanned only and vegetable pre-tanned indian goat or kid hides and skins of sub-heading 4106.22.10)	7,396	2%	MFN	148
41071990	leather 'incl. parchment-dressed leather' of the whole hides and skins of bovine 'incl. buffalo' or equine animals, further prepared after tanning or crusting, without hair on (excl. of bovine 'incl. buffalo' animals with a surface area of <= 2.6 m ² '28 square feet', unsplit full grains leather, grain splits leather, chamois leather, patent leather and patent laminated leather, and metallised leather)	385	3%	Std GSP	12
52051200	single cotton yarn, of uncombed fibres, containing >= 85% cotton by weight and with a linear density of 232,56 decitex to < 714,29 decitex '> mn 14 to mn 43' (excl. sewing thread and yarn put up for retail sale)	216	3.2%	Std GSP	7
52052200	single cotton yarn, of combed fibres, containing >= 85% cotton by weight and with a linear density of 232,56 decitex to < 714,29 decitex '> mn 14 to mn 43' (excl. sewing thread and yarn put up for retail sale)	119	3.2%	Std GSP	4
52053200	multiple 'folded' or cabled cotton yarn, of uncombed fibres, containing >= 85% cotton by weight and with a linear density of 232,56 decitex to < 714,29 decitex '> mn 14 to mn 43' per single yarn (excl. sewing thread and yarn put up for retail sale)	1,946	3.2%	Std GSP	62
52081296	plain woven fabrics of cotton, containing >= 85% cotton by weight and weighing > 130 g to 200 g/m ² , unbleached, with a width of <= 165 cm	410	6.4%	Std GSP	26
55032000	staple fibres of polyesters, not carded, combed or otherwise processed for spinning	7,956	3.2%	Std GSP	255
64022000	footwear with outer soles and uppers of rubber or plastics, with upper straps or thongs assembled to the sole by means of plugs (excl. toy footwear)	263	11.9%	Std GSP	31
69091900	ceramic wares for chemical or other technical uses (excl. of porcelain or china, millstones, polishing stones, grindstones and the like of	248	1.5%	Std GSP	4

Description		Exports to EU 2006 (€000)	Max. increase in tariff Jan. 2008	Regime	Max. duty (€000)
	heading 6804, refractory ceramic goods, electrical devices, insulators and other electrical insulating fittings)				
76012091	unwrought secondary aluminium alloys, in ingots or in liquid state	794	6%	MFN	48
78011000	unwrought lead, refined	367	2.5%	MFN	9
78019100	unwrought lead, containing by weight antimony as the principal other element	235	2.5%	Std GSP	6
78019999	unwrought lead (excl. lead containing by weight antimony as the principal other element, and lead containing by weight $\geq 0.02\%$ of silver, for refining 'bullion lead', lead alloys and refined lead)	284	2.5%	MFN	7
87032490	motor cars and other motor vehicles principally designed for the transport of persons, incl. station wagons and racing cars, with spark-ignition internal combustion reciprocating piston engine of a cylinder capacity $> 3.000 \text{ cm}^3$, used (excl. vehicles for the transport of persons on snow and other specially designed vehicles of sub-heading 8703.10)	239	6.5%	Std GSP	16
Value of affected exports		126,899			4,733
Share of affected exports in total		1.2%			0.04%
<i>Note:</i>					
(a) All affected exports valued at €100,000 or more in 2006.					

Appendix 6. EU Generalised System of Preferences

Standard GSP

Under the GSP the EU unilaterally provides trade preferences to developing countries meeting certain vulnerability criteria. On this basis, the standard GSP automatically applies to all ACP countries. In the absence of an EPA or interim agreement, it is the most favourable regime available to non-LDCs, while LDCs have access to the more generous EBA scheme.

Market access conditions under the standard GSP are less favourable than under an EPA. The GSP implies increases in tariffs compared to the preferences which applied under the Cotonou agreement up to 31 December 2007. Furthermore, RoO are more restrictive than under EPAs and not all products are covered by the GSP, e.g. bananas, sugar¹⁴⁵ and rice are excluded and have to be exported under MFN conditions in the absence of an EPA or interim agreement.

GSP+

A special incentive arrangement for sustainable development and good governance under the GSP regulation (GSP+) has been suggested as an alternative to concluding an EPA for non-LDC ACP countries which would offer better market access terms than the standard GSP. Tariffs under the GSP+ scheme are lower than under the standard GSP but the RoO and the coverage of products is the same under both regimes.

Potential interest by ACP countries?

Most non-LDC ACP countries concluded interim agreements by 31 December 2007 and intend to continue negotiations towards full EPAs. For these countries, applying for the GSP+ regime could be considered as an option if negotiations towards full EPAs

¹⁴⁵ For sugar, the sugar protocol annexed to the Cotonou Agreement will apply until 30 September 2009 to those ACP countries that hold quotas under this arrangement.

fail or if initialled agreements are not signed and ratified. However, the main focus for parties to interim agreements may be expected to be on further negotiations towards concluding EPAs, which will provide more favourable access to the EU market than the GSP+.

On the other hand, three African countries (Nigeria, Republic of the Congo, Gabon) and seven Pacific countries (Cook Islands, Federated States of Micronesia, Nauru, Niue, Palau, Marshall Islands, and Tonga) have not concluded any agreement so far and have been exporting to the EU under the standard GSP regime since 1 January 2008. For these countries, the GSP+ regime may offer an opportunity to improve market access compared with the standard GSP if they decide not to join the EPAs to be negotiated on the basis of the interim agreements concluded in their respective regions. Nigeria already submitted a request to the EC asking to be included on the list of GSP+ beneficiaries.

The attractiveness of the GSP+ scheme for ACP countries could be enhanced by extending its coverage to products that are currently excluded, such as bananas, sugar and rice.¹⁴⁶

Politically, however, it may be difficult for ACP countries to apply for the GSP+ scheme and possibly advocate for an extension of its coverage while at the same time showing commitment to EPA negotiations with the EU. This reduces the likelihood of ACP countries making use of the GSP+ scheme as an alternative to an EPA.

Timeframe for entering the GSP+ scheme

According to the EC, the earliest date when an ACP country can enter the GSP+ regime is 1 January 2009, when a new GSP regulation is due to come into effect. However, opinions differ on the WTO-compatibility of this timeframe: it has been argued that in order to comply with WTO commitments, the EU is legally obliged to make the GSP+ available to new beneficiaries fulfilling the required conditions at any time.¹⁴⁷

In order to benefit from the GSP+ scheme from 1 January 2009, countries will have to comply with the procedures set out in the new GSP regulation for the period 2009–11, to be adopted by the Council of the EU in 2008.

¹⁴⁶ See Stevens (2005).

¹⁴⁷ See Bartels (2007).

A proposal for this regulation was presented by the EC on 21 December 2007 (European Council 2008a) and has been under discussion in the Council since 24 January 2008. Under the proposed regulation, a request to be admitted to the GSP+ scheme, including comprehensive information on ratification and implementation measures, has to be submitted to the EC by 31 October 2008. The EC plans to publish the list of beneficiaries by 15 December 2008.

For ACP countries to be able to enter the GSP+ scheme before 1 January 2009, the Council of the EU needs to make a decision to amend the current GSP regulation¹⁴⁸ which will allow the Commission to include additional countries on the list of GSP+ beneficiaries.¹⁴⁹ This list is currently closed until the next GSP regulation enters into force on 1 January 2009.

Compliance of ACP countries with the eligibility criteria

To be eligible for the GSP+ regime countries need to meet certain vulnerability criteria as well as ratify and implement a number of core human rights and labour rights conventions together with certain conventions related to the environment and good governance.

Economic criteria

Currently all African and Pacific non-LDC ACP countries except South Africa meet the vulnerability criteria for GSP+.¹⁵⁰

Political criteria

According to the EC proposal for the next GSP regulation for the period 2009–11, to be included in the list of GSP+ beneficiaries countries are required to have ratified and effectively implemented all 27 conventions specified in an annex to the regulation. These conventions include core human rights and labour rights UN/ILO Conventions as well as conventions related to the environment and governance principles.

Under the current regulation applicable until December 2008, beneficiary countries needed to have ratified and implemented the 16 human rights and labour conventions and at least 7 out of 11 environment and good governance conventions to enter the

¹⁴⁸ European Council (2005).

¹⁴⁹ CEC (2005).

¹⁵⁰ CEC (2007).

scheme.¹⁵¹ Beneficiaries also had to take on the commitment to ratify and implement the remaining conventions by 31 December 2008.

From November 2007, Seychelles and Ghana were eligible further to having ratified the required conventions under the current regulation.¹⁵²

Everything but Arms

The EBA initiative is a scheme under the GSP regulation targeted at LDCs. Similar to the EC market access provided under EPAs, it offers DFQF access to the EU market for all goods except arms, with transition periods for sugar and rice. However, the GSP RoO apply, which are currently less favourable than RoO under an EPA.

As EBA offers similar market access conditions as an EPA, many ACP LDCs have decided not to initial an interim agreement and since 1 January 2008 have been exporting under EBA. Some of these may opt to continue in this way if they do not consider that the anticipated benefits of signing an EPA will outweigh the expected costs. Other LDCs may decide to join a regional EPA in order to safeguard regional integration or to benefit from provisions other than market access for goods.

¹⁵¹ For current GSP+ beneficiaries, the deadline for ratification and implementation of these 23 conventions was 31 October 2005. Beneficiaries were also required to ratify and implement all 27 conventions by 31 December 2008.

¹⁵² There is also a precedent (El Salvador) for applying GSP+ preferences provisionally for a grace period of 14 months during which the required conventions are to be ratified and implemented (see Bartels, 2007).

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