

Overview of Article 37(4) Reviews of the EPA Negotiations

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Discussion Paper No. 81

October 2007



EUROPEAN CENTRE FOR DEVELOPMENT POLICY MANAGEMENT
CENTRE EUROPÉEN DE GESTION DES POLITIQUES DE DÉVELOPPEMENT

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Preliminary remarks

This paper aims to provide an overview and summary of the Article 37(4) reviews of the EPA negotiations which took place at the level of each EPA negotiating region. According to the Cotonou Agreement, the review exercise was to be conducted in 2006. While the process was formally initiated in July 2006, the results of the formal joint review were only adopted at the joint ACP-EU Council in May 2007.

This paper should be seen as a reference document, informing on a process that took place in the context of the EPA negotiations a few months before 31 December 2007, the deadline set for the conclusion of the negotiations.

The views expressed are those of a number of key stakeholders in each region, but may not reflect the official position of the region.

This paper was written by Eoghan Duffy, Franziska Jerosch, Davina Makhan and Enrique Valerdi, under the editorial guidance of Sanoussi Bilal, Kathleen Van Hove and Francesco Rampa.

Abbreviations

ACP	African, Caribbean, Pacific
AfT	Aid for Trade
ATPC	African Trade Policy Centre
BLNS	Botswana, Lesotho, Namibia and Swaziland
BNS	Botswana, Namibia and Swaziland
CAP	Common Agricultural Policy
CARICOM	Caribbean Community and Common Market
CARIFORUM	Forum of the Caribbean ACP States
CEMAC	Economic and Monetary Community of Central Africa (Communauté Économique et Monétaire de l'Afrique Centrale)
CET	Common External Tariff
COMESA	Common Market for Eastern and Southern Africa
CPA	Cotonou Partnership Agreement
CRIP	Regional Indicative Programme for the Caribbean
CSME	CARICOM Single Market and Economy
CSO	Civil Society Organisation
CTH	Change in Tariff Heading
DRC	Democratic Republic of Congo
DSU	Dispute Settlement Understanding
EAC	East African Community
EBA	Everything but Arms
EC	European Commission
ECDPM	European Centre for Development Policy Management
ECCAS	Economic Community of Central African States
ECOWAS	South African Development Community
EDF	European Development Fund
EIB	European Investment Facility
EPA	Economic Partnership Agreements
ESA	Eastern and Southern Africa
EU	European Union
FFA	Fisheries Framework Agreement
FTA	Free Trade Agreement
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GP	Government procurement
GSP	Generalised System of Preferences
IP	Intellectual property
JTWG	Joint Technical Working Group
LDC	Least developed countries
MAT	Mozambique, Angola, Tanzania
NAMA	Non-agricultural Market Access
NSA	Non-state Actors
PACER	Pacific Agreement on Closer Economic Relations
PACP	Pacific ACP
PACPS	Pacific ACP States
PIFS	Pacific Islands Forum Secretariat
REC	Regional Economic Communities
RIP	Regional Indicative Programme
RNF	Regional Negotiating Forum
RoO	Rules of origin

ROPPA	Réseau des Organisations Paysannes et des Producteurs Agricoles de l'Afrique de l'Ouest
RPTF	Regional Preparatory Task Forces
SA	South Africa
SACAU	Southern Africa Confederation of Farmers Organisation
SACU	Southern African Customs Union
SADC	Southern African Development Community
SME	small and medium enterprises
sps	sanitary and phytosanitary measures
TBT	Technical Barriers to Trade
TDCA	Trade, Development and Co-operation Agreement
TORs	terms of reference
Tralac	Trade Law Centre for Southern Africa
TRIPS	trade-related aspects of intellectual property rights
UNECA	United Nations Economic Commission for Africa
WAEMU	West African Economic and Monetary Union (UEMOA)
WTO	World Trade Organization

1 Introduction

The European Union (EU) and the African, Caribbean, Pacific (ACP) group of countries started negotiating a new trade regime in 2002 with the intention of concluding Economic Partnership Agreements (EPAs) by the end of 2007. Regional-level negotiations on EPAs between the EU and six ACP regional configurations have been formally underway for about 2-3 years. Some regions have made considerable advances on the substantive trade negotiations, while other regions stumbled on principles and fundamental issues with the European Commission (EC), which has made progress more difficult.

In this context, Article 37(4) of the Cotonou Partnership Agreement (CPA) mandates the parties to undertake a formal and comprehensive review of the EPA negotiations during 2006. These reviews are meant to assess the progress made, identify the outstanding issues and challenges, and make suggestions for the way forward.

1.1 Article 37.4 Review: six regions, different processes, several studies and one conclusion

On 25 May 2007, the ACP-EU Council of Ministers adopted the 'formal and comprehensive review' of the planned Economic Partnership Agreements (EPAs) required under Article 37.4 of the Cotonou Agreement "to ensure that no further time is needed for preparations or negotiations". Such a Review is a joint document endorsed by the parties at all ACP-EU levels, based on six region-specific joint EC-ACP reviews (included as annexes to the overall Review).

The process resulting in the region-specific EC-ACP reviews was different for the six regional configurations negotiating an EPA, with differing degrees of consultation, involvement of various stakeholders, as well as the number of official and independent studies undertaken. In all but one configuration (Caribbean), the region-specific joint review was preceded by an internal one, officially mandated by and conducted for the ACP governments alone. In the cases of the Pacific region, Eastern and Southern Africa (ESA), and the Southern African Development Community (SADC), independent consultants prepared such regional assessment studies. In Western Africa the internal EPA review was undertaken jointly by the Economic Community of West African States (ECOWAS) and the West African Economic and Monetary Union (WAEMU). Commissions have been working with the individual states of the region. In three regions (ECOWAS, SADC, Caribbean) non-state actors, mostly farmers' organisations, also conducted their own independent assessment. For Africa, a continental review was also prepared, commissioned by the ACP Secretariat and conducted by the African Trade Policy Centre (ATPC) of the United Nations Economic Commission for Africa (UNECA). This was the only formal internal regional assessment in the case of the Economic and Monetary Community of Central Africa (CEMAC).¹

The regional level internal reviews differ in terms of quality, areas of focus and degree of stakeholder participation. Some reports include very comprehensive and detailed discussions of both the content and process of EPA, such as major bottlenecks, negotiating structure weaknesses, capacity building needs, preparedness of individual countries for negotiations. Others only focus on either the content (e.g. contentious items) or the process (e.g. lack of ownership). Some regional reviews are thorough studies resulting from interviews with negotiators and multi-stakeholders consultations, as well as analysis of official documents, press statements, and newspaper articles. Others are based on less articulate analyses, for instance a questionnaire circulated to some actors involved in the negotiations. In terms of participation and

¹ All review documents are listed in the References section.

representativeness, region-specific reviews vary from simple exchanges of views between regional negotiators to a consultative process with specific governmental and non-state actors workshops at both national and regional levels.

As described in the sections below (covering the six EPA regions separately), the extent to which the formal joint ACP-EC reviews at regional level incorporate key messages from the ACP internal reports differ from one region to another. In some cases, certain elements were left out. This may be due to the fact that the joint documents prepared with EC negotiators aimed at feeding into one Review at an all-ACP-EU level, assessing concisely the overall status of EPA negotiations through a single report. Indeed, different processes in six regions, with several studies of a different nature conducted by different actors, still led to one conclusion. Although it is recognised that the negotiations are generally behind schedule, the final joint Review concludes that despite some problems and a need to expedite negotiations in certain areas, the parties are committed to “concluding negotiations by the end of 2007 as stated in the Cotonou Agreement”.

1.2 A lost opportunity?

Taking into account the controversy generated by EPAs and their possible impact since the start of the negotiations in 2002 and 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 moment in the EPA process, with the parties thoroughly stocktaking progress and indicating precisely what, if anything, should change in the negotiations. The Review, on the contrary, does not seem to have had any impact on the overall EPA process. It could be argued that this was a lost opportunity.

The impression is that many, both on 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. There appears to have been little thinking about the strategic use of the review process which in fact received very marginal attention in public debates and the media, and apparently on the negotiating tables as well. The key message of the ACP-EU review report endorsed by the Joint Council of Ministers in May and following press statements is a confirmation, despite some delays, of the preparedness and willingness to conclude EPA negotiations by the end of the year. Considering the degree of controversy still surrounding EPAs, among the general public and at the technical negotiation level, as well as the remaining uncertainty regarding how many (if any) of the six negotiating configurations will conclude an agreement by the December 2007 deadline², it seems that since the adoption of the Review the EPA process went on with ‘business as usual’.

Both parties missed an opportunity to turn the review exercise and the concerns brought to the fore into an action plan to try to resolve the problems of process and substance encountered in the previous four years of negotiations. Since 2002 the ACP countries have repeatedly voiced concern about capacity constraints to be able to effectively negotiate and implement the EPAs, areas of fundamental differences with the EC and the ability to conclude a development-friendly EPA by the end of 2007 deadline. These bottlenecks were hardly reflected in the formal all-ACP joint Review. The joint regional reviews annexed to the all-ACP document also mostly concentrate on the substance of the negotiations and make little reference to the process.

² See, for example: ‘EPA Negotiations Update’, in: Trade Negotiations Insights, Vol.6, No. 5, September 2007, <http://www.acp-eu-trade.org/tni>

While the final review confined itself to mentioning only the major constraints so far, the regional internal assessments did include more details as well as suggestions on the way forward. Most of them 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.

The Review offered a good opportunity to identify specific actions to address such problems. It seemed unrealistic, for instance, with the short time remaining, that substantial progress could be made on all outstanding issues, such as market access offers, accompanying measures and the financial resources necessary to reinforce ACP capacity. The parties could have concentrated on more realistic goals and identified new road maps for what could be achieved concretely in 2007 and beyond. The parties further missed the chance to formally ask for additional time as a conclusion of the review process. In terms of the process, the parties could have referred to the fact that very few members of parliaments of ACP countries have been consulted during EPA negotiations, despite the fact that they will be asked to ratify any agreement.

The negotiating parties have most likely missed an important opportunity to make the EPA review 'comprehensive' and practically useful, but there are important elements which have emerged from this stock-taking exercise which could still help to guide the negotiations in the difficult months ahead. The following sections discuss the process and the substance of the EPA reviews for each of the six EPA configurations.

2 The all-ACP view

The overarching message from the review processes seems to be that the EPA negotiations have been extremely challenging, in terms of both process and substance. As a result, there has been only limited substantive progress in most negotiations. An extension beyond the deadline of 31 December 2007 appears to be necessary in many regions to be able to satisfactorily conclude the negotiations. The Caribbean region is perhaps the only exception to this.

A few broadly common factors explaining the problems and delays in the EPA negotiations can be derived from the review process of the various regional negotiations:

Development issues

Negotiators and stakeholders from all ACP regions have serious concerns regarding the 'development dimension' of the EPAs. They hold that if an EPA is to promote development in the ACP regions, this objective must permeate all aspects of the EPA agreement and that the EPA must be accompanied by appropriately arranged financial support to address supply-side constraints. The ACP side also calls for measures to mitigate the adjustment costs of an EPA. In several regions, particularly Central Africa and Eastern and Southern Africa, the requirement for prior development of production and trading capacities has become a fundamental point of disagreement in the EPA negotiations.

The EC reluctance to discuss these issues in the EPA negotiating sessions has created tension and frustration with the ACP. In particular the EC has required that the issue of development financing in support of an EPA be addressed, not in the EPA negotiations themselves, but through the Regional Preparatory Task Forces (RPTF), which are supposed to link the EPA negotiations with the programming of EC development finance. To date, the RPTFs have not proven to be the most effective tools for the ACP regional groups to elaborate and get commitment on the development support aspects of an EPA.

Capacity constraints

In terms of conducting the negotiations, at regional and national level the ACP face the challenges of a range of institutional and technical capacity constraints. Apparently, these constraints have not been sufficiently addressed under the EPA process, specifically in terms of the provision of funding and time for building negotiating capacity. As a result, pressing forward with substantive issues in negotiations will continue to be difficult and is likely to result in an unsatisfactory articulation and defence of interests on the ACP side. Lack of capacity has also hampered effective consultation and involvement in the EPA process of civil society and the private sector in the ACP regions, a fact which also hinders the ACP negotiating positions.

Regional Integration

While the EPAs are supposed to foster regional integration, the approach on issues related to regional integration in negotiations is presenting serious problems for many of the ACP regions conducting the EPA negotiations. These issues include:

- EC proposals for tariff harmonisation and liberalisation which cut across or pre-empt existing regional integration initiatives;
- a lack of consideration of the complexity and importance of the existing regional integration efforts; and
- pressure 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.

Added to these cross-cutting issues, the reviews of the EPA negotiations point out a range of region-specific problems and disagreements which hamper progress in the negotiations.

3 The ESA-EU EPA negotiations review process

3.1 Background

Several documents have fed into the Article 37.4 review of the EPA negotiations for the East and Southern African (ESA) region.

A continental review was commissioned by the ACP Secretariat and conducted by the African Trade Policy Centre of UNECA (ATPC, 2007). It was realised on the basis of face-to-face discussions and a questionnaire distributed to a variety of stakeholders, including trade officials of governments, trade committees of parliaments, chambers of commerce, private sector representatives and non-state actors. Part of this review was conducted at the ESA Regional Negotiating Forum (RNF) in November 2006. 38 ESA respondents took part in the survey.

The ESA region also commissioned a team of consultants to produce an independent EPA review (Premium Consulting, 2007). Completed in December 2006, the document was discussed and approved at the ESA RNF level. A consultation gave civil society the opportunity to provide input into the process. Trade officials and non-state actors were consulted in all countries except Eritrea and Djibouti, as well as representatives from regional and continental organisations.

The report, which recommended a three year extension of the deadline for completion of all areas of the negotiations, was used as a basis for the initial discussions between the Common Market for Eastern and Southern Africa (COMESA) Secretariat and EC officials. This position was subsequently changed at the joint ministerial level and discussions were later guided by the conclusions of the Ministers who had agreed to focus on a few of the issues being negotiated.

The joint review was endorsed by the Joint Council of Ministers in Brussels, on 25 May. The independent and continental reviews highlighted the differences between ESA and the EC in their approaches and expectations regarding the process of the review, as well as concerns about the preparatory process of the negotiations. The joint review focused more on the substance of the negotiations. Some of the concerns raised in the independent and continental review were however taken into account in the joint review.

3.2 Process of the negotiations

All review documents recognise that the negotiating structure, established by the ESA ministers in December 2003, allowed for a large involvement of various stakeholders at national and regional level. Effective participation was however limited, as described below.

The internal and continental reviews further found that the negotiating structure has been instrumental in moving the ESA EPA agenda forward, with the region taking strong leadership in the negotiations.

Detailed work on the main issues for negotiations led to a draft EPA text in which ESA gave priority to the development dimension of the EPA and on building and consolidating ESA regional markets. The first text-based negotiations were held in September 2006.

With regard to the Joint Road Map agreed upon in February 2004, the review documents concur that while some substantial progress was made, the ESA-EC EPA negotiations are generally behind schedule.

The independent and continental reviews highlighted fundamental problems relating to the process of the negotiations and that ESA countries are generally unprepared for the completion of the EPA negotiations. There are concerns about the effectiveness of the consultations and preparations in terms of equipping the negotiators to be able to deal effectively with the EC when negotiating on the multiplicity of complex issues that have to be addressed. The following factors, relating to both the negotiating structures and strategies, were found to have fundamentally hampered faster progress in the negotiations:

- At national level, effective preparation for the EPA negotiations has been limited due to institutional, financial and capacity problems. As a result, the public has not been made sufficiently aware and there is limited understanding and a general hostility towards EPAs. Key stakeholders, such as parliamentarians, have not been effectively involved in the EPA process both at national and regional levels;
- Although there have been some arrangements for non-state actors (NSA) to participate in the negotiations at national and regional levels, it was felt that more could be done to facilitate the consultation and involvement of non-state stakeholders at the various stages of the negotiations;
- In terms of countries' participation, there is also concern that only a few countries are driving the negotiating process and setting the priorities;
- The lack of technical skills and familiarity with the issues, and sometimes awareness, on the part of key negotiators at national and regional levels has hindered the successful conduct of the negotiations;
- The information flow from the regional to the national level is poor;
- Effective preparation at the regional level was also prevented by the lack of available and sufficient funds. As a result, dedicated ESA sessions on key issues were missed or skipped;
- The EC's intransigence or non acceptance of the development dimension, and the delay in responding to ESA proposals.

The joint review does not elaborate on the process of the negotiations but focuses on the scope and status of the negotiations. It mentions, however, that among the other challenges that the region will have to tackle in order to successfully complete the negotiations are limited negotiating capacity and flaws in the negotiating strategy, as well as differences in the level of ambition and expectations from the EPA among ESA members.

3.3 State of play

The scope of the agreement has been broadly agreed but progress on the substance of the negotiations has been limited, as shown by some measure of consensus on a number of issues and divergence of opinions in many other areas.

- **Development**

The outcome of the EPA negotiations on this aspect will determine the success or failure of the EPA negotiations. It is also where the main divergences with the EC lie.

The development cluster is the key priority for the ESA region, which sees it as a cross-cutting, sectoral and separate issue to the various negotiation clusters. The region specially emphasised the need to address supply-side constraints, which is integrated in all the key intervention areas. The question of financing EPAs remains the most contentious issue in the negotiations, as reported in all the reviews.

When the independent and continental reviews were conducted in December 2006, there had been no progress in the development cluster of the ESA-EC EPA negotiations, as the ESA region

was awaiting the EC's detailed reply to its proposals tabled in September 2006.

The joint review indicates that the EC has agreed to use the text on development cooperation submitted by ESA as the basis for negotiations. In terms of approach, the parties agreed it should focus on development objectives while the specific projects and programmes in the ESA text would be taken to the regional development matrix for inclusion under the 10th European Development Fund (EDF) or other donor programmes.

Both the independent and joint reviews indicate the EC's concern about the development chapter mainly containing EC commitments and very little on ESA commitments, especially on regional integration as a tool for development.

- **Agriculture**

ESA has proposed a separate chapter on agriculture with emphasis on the need to support agriculture and food security. The region wants to put on the table the situation of net food importing ESA countries, subsidies and the preservation of benefits obtained under the Everything but Arms (EBA) initiative. ESA also calls for the benefits under commodity protocols to be safeguarded and guaranteed, taking into account the special legal status of the Sugar Protocol consistent with the Cotonou Partnership Agreement (CPA).

When the independent and continental reviews were conducted, the EC had not responded to the ESA position. It is, however, reported in these documents that it had already indicated its reluctance to discuss common agricultural policy (CAP) reforms or the issue of commodity protocols under the EPA.

The joint review indicates that the EC can accept asymmetry but wants to maintain the possibility of using safeguards in the agricultural sector. It also indicates that the treatment of goods covered by the commodity protocols will be defined in the context of the negotiations on market access.

- **Market access for goods**

ESA wants to ensure sufficiently long transitional periods that encourage meaningful development and the gearing up of ESA countries.

The continental review points out that the ESA region still needs to agree internally on a number of key issues pertaining to market access (common external tariff (CET), a regional list of sensitive products, rules of origin (RoO), safeguards, sanitary and phytosanitary measure (SPS) and technical barriers to trade (TBT)).

The independent review indicates that the EC rejected the ESA demand to exempt least developed countries (LDCs) from any tariff liberalisation under an EPA, arguing that the level of liberalisation by the ESA countries, the transitional period and list of sensitive products were subject to negotiation.

The joint review reports there has been some progress in mutual understanding on most of the issues at stake, though it does not provide clear answers to ESA's concerns. For instance, it is reported that both parties agree on the scope and extent of the liberalisation on both sides. World Trade Organization (WTO) compatibility will be ensured, but with flexibility and asymmetry for ESA and the possibility of taking into account a few sensitive products for the EC.

Progress is also reported on the inclusion of a review clause pertaining to market access. However ESA insists on a development benchmark approach which is not mentioned in the joint review. An

indirect reference can be found, however, in the review clause on tariff liberalisation. Major divergences exist regarding the scope of such a clause. While ESA want to link the review of tariff liberalisation to development, the EC wants the review to be based on timeframes.

- **Rules of origin (RoO)**

ESA's proposal calls for a simplification of the rules of origin and for the strengthening of its capacity to comply with EU market requirements. From the independent review it appears that the EC is pushing for the use of the value-added criterion, whereas ESA is proposing cumulation and wholly-obtained criteria.

- **Fisheries**

All reviews concur that there has been commendable progress on fisheries compared with other clusters.

After a discussion on whether the EPA should contain a Fisheries Framework Agreement (FFA), consensus has been reached on some principles of a fisheries chapter. A common working document has been drafted, based on a text prepared by ESA.

The main principles agreed are the necessity for a sustainable utilisation of fishery resources for development and stronger cooperation to bring added value to the fisheries sector in the region. It was further stressed in the joint review that there was a need for policy coherence among and between EC policies and ESA sectoral policies.

The main points of divergence are reported to be the additional financial support, as well as some remaining proposals concerning access to the resources which are to remain in the bilateral fisheries agreement.

The joint review does not however respond to the divergences highlighted in the independent and continental review, namely on the rules of origin, development aspects, SPS and capacity building components.

- **Services**

When the independent and continental reviews were conducted there was no ESA agreement on the principles, objectives and scope for cooperation with the EC on this cluster. In fact, it was reported that only a few ESA countries were pushing for opening up the sector, while the EC was asking for full liberalisation.

The joint review indicates that ESA is working on its regional framework on trade in services which will serve as a basis for its proposal on services within an EPA. The EC is reported to have submitted its proposal and positions to ESA.

- **Trade-related issues**

The two parties diverge in their approach to negotiations on this cluster. The EU is described in the independent review as being more demanding than what has been agreed in the context of the Doha negotiations and in the CPA, and is calling for the liberalisation of the so-called Singapore issues (government procurement, investment, competition and trade facilitation). ESA's mandate is to emphasise the need to build adequate legal and institutional capacities and therefore secure the benefits for COMESA's overall integration programme, before any negotiation with the EC.

The joint review indicates that negotiations on intellectual property rights, competition policy and investment have not progressed satisfactorily. ESA tabled detailed texts to its European counterpart which focuses exclusively on development cooperation to support ESA in these

sectors, while the EC's focus is on making rules. However, on customs and trade facilitation, it is reported that ESA's text contains the main elements that both sides would like to see in the EPA, the objective being the promotion of trade facilitation and the development and regional integration of EPA countries, while maintaining effective customs control. This should be achieved by strengthened cooperation between the parties in a number of related areas.

- **Sanitary and phytosanitary measures (SPS) / Technical Barriers to Trade (TBT)**

The parties are looking for language which re-assures ESA that support will be available for the implementation of these chapters, while remaining compatible with the legal and financial framework of the Cotonou Agreement.

3.4 Development aspects

The continental and internal reviews point to strong divergences between the EC and the ESA on the actual definition of development, which have hampered progress in the negotiations.

It is reported, however, that by offering to insert review clauses, the EC has agreed to respond to ESA's concern that there is no guarantee that the CPA will be renewed when it expires in 2020, while EPAs are for an indefinite period.

- **Regional Integration**

While the continental review stressed that perceptions at national level are that there is no coherence between the EPAs and the regional integration processes of the EPAs, the joint review states that by sharing the same objective of integrating the regional economy into the global economic system, COMESA's integration process and EPA commitments have the potential to coexist and support each other.

The joint review acknowledges some of the points and concerns raised in the other reviews, notably that:

- The COMESA regional integration agenda is experiencing difficulties;
- EPA has provided some stimulus for further integration, pushing the ESA region to deal with the various problems relating to integration within COMESA;
- The pace of further integration should not jeopardise the integration process and the established regional integration road map should be the driving force of this process;
- There are concerns that the pressure being exerted on the regional integration process through EPAs is leaving little space to focus on these internal factors and provide time for suitable solutions to be found.

The independent and continental reviews are more explicit about the fact that trade liberalisation must be in step with regional integration processes in order to achieve the development dimension for the ESA region. For the region, asymmetry should be guided by development benchmarks, with flexibility and equitable rules.

- **Regional Preparatory Task Force (RPTF)**

From its inception in May 2004, the RPTF was to serve as a mechanism for addressing the EPA developmental elements identified in the Cotonou Agreement, such as capacity-building, supply-side constraints and other developmental programmes of the regional integration agenda. While it is not a decision-making body, it is involved in the necessary preparations for the negotiations.

However, the continental review indicated that there were concerns that the RPTF had

overstepped its mandate and terms of reference by discussing issues in detail. At the same time, there is also a realisation that the RPTF in the ESA region has a different mandate than in other regions and there is a need for harmonisation in order to bring the development matrices into better alignment with the negotiations.

• **Financing of EPAs**

All reviews concur that the financing of EPAs is one of the most contentious issues in the negotiations.

According to the independent and continental reviews, the availability of funds for the preparation and the timely conclusion of the negotiating process has been limited, both at national and regional levels. The region has made a strong case for additional resources to cover EPA adjustment-related costs and has emphasised the need for improved access and delivery of available resources. In terms of implementation, the ESA is calling for an Adjustment facility to be set up, through which budget support would be provided to the ESA countries over and above the resources available under the EDF.

The joint review indicated that both parties have agreed that the use of the Cotonou Agreement instruments, and in particular the 10th EDF Regional Indicative Programme (RIP), for EPA support will constitute a joint priority.

The parties agreed to mobilise additional resources from EU Member States and where appropriate other donors, including through the Aid for Trade (AfT) package. Both parties recognised the importance of regionally owned mechanisms, such as the COMESA Fund to channel resources for financing EPA related costs, as well as to coordinate support for the implementation of the EPA in a timely and efficient manner.

• **Other issues**

For the ESA region, it was pointed out in the independent and continental reviews that the suspension of the Doha Round was an impediment to the conclusion of the EPA negotiations, particularly with regard to the issue of compatibility. The ESA countries fear that commitments under the EPAs will be WTO-plus and some are suggesting that an extension of the WTO waiver should be considered an option.

Another key issue to be resolved is the question of the legality of the ESA as a regional entity able to enter into binding commitments.

3.5 Outstanding issues

The joint review comprises a list of measures recommended by ESA to help in the completion of the negotiations, which were also highlighted in the independent review. They include: integration of EPA activities into national trade policy; strengthening the technical capacity of the ESA group; coordination with other regions; improving information flow; improving the negotiating capacity; and improving the funding of EPA-related activities.

Other issues to be addressed according to the independent and continental reviews are:

- The need to facilitate better and more effective participation of non-state actors in the EPA negotiation and implementation processes;
- The issue of the ESA configuration (overlapping membership and coherence of EPA negotiations with ESA regional integration processes).

The independent and continental reviews also revealed that there was increased perception in the region that the negotiations would miss the timeframe set out in the roadmap, as pertinent and strategic issues vital for the development of the ESA region remained un-addressed. In this respect, the independent review suggested that three more years were needed for the region to fully complete the negotiations.

The joint review recognised the delay as per the roadmap, but indicated that the parties have resolved to give the negotiations a fresh political impetus to keep to the agreed timetable and ensure that all necessary measures are taken to guarantee a smooth transition beyond 2007 and in order to avoid any disruption to ESA-EU trade. They also affirmed their commitment to conclude the negotiations provided that all outstanding issues are fully addressed.

ESA and the EC have set the following as necessary conditions:

- To define jointly EPA accompanying measures and the necessary resources for the financing of EPA-related adjustment costs and effective implementation of the EPA
- To engage in the substance of the negotiations on the development cooperation chapter and on market access
- To expedite negotiations on the basis of the draft text submitted by ESA and EC proposals.

4 The SADC-EU EPA negotiations review process

4.1 Background

Members of the Southern African Development Community (SADC) configuration are involved in a web of regional trade agreements. South Africa (SA) and BLNS (Botswana, Lesotho, Namibia and Swaziland) have formed the Southern African Customs Union (SACU). Two SADC EPA members (Angola and Swaziland) also belong to the Common Market of Eastern and Southern Africa (COMESA), while Tanzania also belongs to the East African Community (EAC), which became a customs union in 2005. South Africa, as member of the SACU, has a bilateral trade agreement with the EU, the Trade, Development and Co-operation Agreement (TDCA), and, until recently, had an observer status in the EPA negotiations. SA is now officially an active negotiating party to the SADC EPA negotiations.

Other SADC Members will negotiate an EPA under other regional configurations. However, the SADC-EPA group has decided to keep the door open for any other SADC member that may wish to join the negotiations at a later stage.

In the last year a number of reviews have been conducted which fed into the Joint review: The Trade Law Centre for Southern Africa (tralac) was contracted to do an internal review for the SADC region which was presented in January 2007 to SADC EPA senior officials. Based on this review the formal Article 37(4) SADC-EC joint review was concluded in May 2007. Furthermore two independent reviews have been conducted. Firstly, a continental review was commissioned by the ACP Secretariat and conducted by the ATPC (ATPC, 2007). This review is based on interviews with SADC delegations during the Regional Negotiating Forum held in November 2006 as well as a questionnaire distributed among governmental and non-governmental stakeholders: 25 SADC respondents took part in the survey. The report was considered by Ministers of Trade in Addis Ababa. Secondly, a review of the implication of EPAs for small scale farmers in the SADC region, represented by the Southern Africa Confederation of Farmers Organisation (SACAU), was published in November 2006 (Chiwandamira, 2006).

Whereas the internal review is very comprehensive and provides a detailed discussion of main bottlenecks, like the negotiation structure, capacity building needs, preparedness for negotiations and legal issues, followed by comprehensive conclusions and recommendations, the Joint review confines itself to mentioning the main constraints. Not surprisingly, due to the delay in negotiations, both reviews hardly deal with the substance of the negotiations that have been re-launched recently. However, while the internal review, which was conducted before the official response of the EC, mentions the challenge of finding common ground between the various SADC EPA states if South Africa were to be part of the EPA configuration, surprisingly the joint review does not respond to this issue.

4.2 Process of the negotiations

The SADC group made a 'Framework Proposal for EPA Negotiations between SADC and the EU' in March 2006 and asked for the inclusion of South Africa as a full participant in the SADC EPA configuration. SADC has resisted continuing negotiations until the European Commission presented its formal response.

In February 2007 the EU Council of Ministers formally responded to the SADC proposal and

accepted that South Africa be included in the SADC EPA negotiation³. In their response the European Council also agreed to streamline the EPA negotiations with the TDCA review and confirmed that both processes should be merged into one single process, when appropriate. The acceptance of South Africa as a full negotiating member of the SADC EPA configuration means that all members of the Southern African Customs Union are now included in a single EPA configuration.

The adoption of the EU reply re-launched the negotiation process that was effectively on hold through all of 2006, as SADC awaited the EU reply. Negotiations are far behind schedule and still blocked on fundamental issues.

In addition to the suspension of negotiations in 2006, several fundamental factors have hampered progress in the negotiations:

- **Sub-optimum negotiation configuration**

All reviews indicate that the configuration of the SADC group presents challenges due to the wide diversity in terms of development between SADC members (South Africa, LDCs, non-LDCs). Through the overlapping memberships, SADC countries are involved in a duplicated process of integration which hinders the possibility of finding compromises, and leads to a lack of coherence between the EPA agenda and regional integration processes. According to both, the internal and the Joint review, the negotiation structure and the allocation of responsibilities to member states has not worked very well.

- **Lack of preparation and capacity to negotiate**

The internal review found that SADC countries have been able to agree on the main modalities but voiced concern about the lack of a thorough assessment of national needs and priorities and an economic or welfare assessment of the impact of the EPA.

According to all the reviews, limited negotiating capacity (financial and human resources) hinders the success of negotiations. ACP countries claim that capacity challenges will come to the fore if trade-related issues are put on the agenda. In addition, new capacity challenges will arise through the implementation of legal agreements.

The internal and joint documents further attest to inadequate capacity within the SADC negotiation structure at all levels and point out that the technical and administrative capacity of the EPA Unit⁴ is weak and has to be 'significantly' improved. They further note that the EPA process has not been effectively embedded in national policy processes in the individual SADC countries.

The internal review indicates that due to a lack of capacity at national level the participation by officials is not consistent over time. Furthermore, negotiators get very little preparatory briefing before meetings and participation by member states in regional preparatory meetings was not always at the appropriate (senior) level.

- **Lack of involvement from NSA**

The continental review claims that civil society organisations (CSOs) find it difficult to procure the information they require to effectively monitor the EPA negotiations. They further lack the awareness and sufficient human and other resources to play an active role in the EPA process.

³ http://ec.europa.eu/trade/issues/bilateral/countries/southafrica/pr140207_en.htm

⁴ The EPA Unit at the SADC Secretariat was established to coordinate SADC EPA negotiations. It does not have a negotiation mandate but should provide technical support to the negotiators.

The internal document also highlights that the participation of civil society and private sector in the negotiations varies between the member states. In some countries NSA lack capacity and the coordination among themselves and with their governments is not sufficiently developed to facilitate engagement on EPA matters.

The need to involve the private sector has been strongly emphasised in all reviews.

The farmer review further found that farmers in the region are, in general, not aware of the details of the ongoing EPA negotiations and the majority of farmer organisations do not have the financial or technical capacity to participate in the EPA process.

4.3 State of play

Progress in nearly all chapters is far behind schedule and negotiations are still blocked on the fundamental issues.

- **Market access for goods**

The NAMA (non agricultural market access) Technical Report has been completed by the region and communicated to the other member states but no responses have been received to date.

In the framework proposal BNS countries offered reciprocity to the EU considering the TDCA as the basis for tariff negotiations but asked for adjustments to accommodate sensitive products and consideration of the special status of Lesotho. The MAT (Mozambique, Angola, Tanzania) countries should not offer reciprocity due to their status as LDCs.

In its response the EC rejected SADC's request to grant non-reciprocal duty free quota free access to the EU market to MAT countries in a contractual form on the grounds that it is not WTO compatible. Due to South Africa's level of development and competitiveness, the EC further insisted on different treatment for South African exports vis à vis BLNS exports.

SADC expressed concern about using the TDCA as a basis for market access for the MAT countries as this would not respond to their special needs as LDCs. It also pointed out that differentiating between South Africa and the BLNS countries would undermine SACU as a customs union.

However, in April 2007 the EU offered market access consisting of duty-free and quota-free treatments for all ACP imports (thus also for non-LDCs). This offer will apply from entry into force of the EPAs, with a phase-in period for rice and sugar which, however, will not be valid for South Africa, where a number of globally competitive products will continue to be subject to import duties.

It is thus still unclear how the different levels of development of countries within the SADC group can be taken into account without undermining regional integration. Recent developments show however that MAT may engage in a reciprocal trade arrangement in the context of the EPA.

- **Rules of origin**

The SADC EPA group aims for simplified and more liberal rules of origin to secure greater access to EU markets.

According to the internal review, the process on RoO has been hindered by the delayed response from the EC. All SADC countries have identified key product lines for export to the EU and

highlighted possible difficulties with their chosen product lines. This was seen as an important first step in the process of drafting a RoO protocol. It is however unclear when substantive negotiations will commence. The review further claims that there was a lack of experienced officials dealing with RoO issues and that the relevant Ministries and Departments indicated the need for capacity building and studies in the area.

It was agreed that RoO will be negotiated at an all-ACP level. However, having a non-ACP country now formally on board will make it difficult for the SADC region to find a common agreement.

- **Standards**

Product standards have been one of the major concerns for SADC countries.

According to the joint review joint technical reports on SPS and TBT were completed and adopted.

The former review claims that SADC countries face major challenges in addressing SPS, especially in relation to the export of products such as fish, horticulture, beef/veal and other products for human consumption. Capacity building in these respective areas should thus be part of the EPA package.

- **Trade-related issues**

SADC claims to have limited institutional and negotiating capacity to negotiate the so-called Singapore Issues and therefore does not want to include them in a binding manner in an EPA which may be subject to dispute settlement. Furthermore, the SADC EPA group has voiced concern about engaging in negotiations since the region has no common policies in this area. They further argue that the focus on trade-related issues should be on capacity building, not on entering into new commitments with the EU at this time.

The EC maintains that trade-related issues are important for the sustainable development dimension of the EPA and would contribute to deeper regional integration. Consequently the EC has refused to leave services and trade-related issues off the negotiating agenda.

The internal review argues that the inclusion of trade-related issues in the negotiations will most likely delay the negotiations and reduce the chances of reaching a timely agreement.

4.4 Development aspects

- **Regional Integration**

The acceptance of South Africa as a full member of the SADC EPA configuration means that all members of the Southern African Customs Union (SACU) are now included in a single EPA configuration. However the problem of overlapping membership remains and is enhanced by SADC's formal decision in October 2006 to deepen regional integration and formalise the SADC free trade agreement (FTA) by 2008, and have a customs union established by 2010, with a membership that goes far beyond the SADC EPA group.

In the road map it was agreed that negotiations should be closely linked to the ESA EPA negotiations. According to the internal review, the flow of information between the two configurations has been weak.

Concerns about a lack of coherence between the EPA process and the broader SADC regional integration agenda, were raised in the internal as well as the Joint review.

- **Regional Preparatory Task Force**

A RPTF was set up in 2005 to bolster the strategic link between the EPA negotiations and development cooperation. The RPTF work plan was only approved in July 2006. As in other regions, agreement on the issue of development funding has not been reached. While the SADC region asks for significantly enhanced financial support and capacity building, the EU refuses to negotiate additional financial development support under EPA.

The internal review claims that the establishment of the RPTF and its work plan has taken place after the preparatory phase of the negotiations that it was intended to support.

The Joint review recommends a thorough study of implementation capacity and an action programme on how to identify specific needs. The capacity building and assistance initiatives should be part of the RPTF agenda.

- **Financing of EPAs**

Various EDF programmes, focussing on trade and RI, have been implemented in the SADC region, but these funds are not specifically earmarked for EPA negotiations.

According to the internal review some national ministries enjoy the services of technical advisors appointed in the context of development assistance programmes. The assistance of these advisors has been regarded as having a positive impact on the preparations. Furthermore these experts have been seen as generally well informed about developments elsewhere and have access to publications and documentation. However, some governments were opposed to the involvement of outside experts

The Joint review highlights the lack of both financial and technical resources to support EPA negotiations and states that the regional EPA support facility has not been adequately used due to "a variety of reasons".

Both reviews indicate that EC support at national level has been insufficient, especially as allocated funds have not yet been released and made available. According to the internal review, funding for capacity building and preparations for the negotiations remains problematic, which is mainly due to cumbersome reporting requirements, time-consuming procedures and a lack of information about procedures. Secured access to development assistance to support capacity building in the private and public sectors will thus be necessary, while RI support measures will require separate assistance. Furthermore, the need for more resources to bring stakeholders from the private sector on board was strongly emphasised.

Whereas the internal review calls for development assistance to be structured as part of the EPA and be linked to its implementation, the Joint review notes that capacity building will be needed to implement EPAs and "that a link to EPA-related assistance to be addressed through development cooperation instruments should be part of the EPA". With regard to adjustment costs the need for a clear development package has been mentioned, without saying, however, through which channels this assistance should be delivered.

According to the internal review there is a growing perception that EPAs will be more about trade and WTO compatibility than about development and capacity building needs. This aspect may be in danger of being eroded and of not getting the central position it deserves.

The former review strongly emphasises the need for the EU to address adjustment costs that will arise in the SADC region as a result of trade liberalisation. The review adds that there have been attempts to quantify and specify the costs but there is still no agreement on these figures.

4.5 Outstanding Issues

Despite the delay in the negotiations, both parties have agreed to strive to conclude an EPA by the end of 2007. Thus, there are a number of urgent issues to be addressed if negotiations are to be concluded in time:

- According to the joint review, inadequate preparation for negotiations, the lack of sufficient progress on substantial issues and capacity constraints of SADC EPA members states and the EPA Unit are key bottlenecks in the success of the negotiations. There is thus need for an improvement in the technical and human resources to be able to effectively participate in negotiations.
- It is commonly agreed that the immediate challenge is to unlock funds to assist the negotiations, to obtain technical expertise for analytical work and for the negotiations themselves.
- According to the internal review an assessment should be made of the responsibilities allocated to member states. SADC member states should further provide a status report on their work programmes and identify their specific capacity needs to be urgently addressed. There is also a need for empirical studies and impact assessments.
- Both parties agree that specific capacity building and assistance initiatives for subsequent implementation should be a major part of the RPTF agenda and should be incorporated in capacity building initiatives supporting negotiations.
- The farmer review highlights the need to address the issue of food security in the EPA process and calls for the protection of vulnerable groups. Therefore a list of sensitive products should be developed.
- The review further calls for the consultation of farmers during the EPA process. To brief farmers about EPA and solicit their input the review recommends conducting sensitisation and awareness workshops throughout the region.
- According to the continental review it will be necessary for CSOs to organise themselves better to be able to get more involved in the EPA process.
- Both the internal and joint reviews claim that the EPA process has not been effectively embedded in national policy processes in SADC. A key task will be to obtain coherence between the EPA process and broader development policy processes.
- All reviews mentioned the difficulties of concluding EPAs in time. However, only the farmer review specifically asks for additional time. The continental review highlights the need for any additional time to be clearly linked with actions that will be undertaken during the extension.
- Both parties have agreed to develop a new work programme for negotiations and revisit the Joint Road Map so that the negotiations can focus on a realistic and achievable agenda in the coming ten months

A number of additional issues are highlighted in the internal review:

- Even if negotiations were concluded by end of 2007, the agreements must still be ratified before a new arrangement enters into force. This might take a considerable period of time and may delay implementation of the agreement.
- There is growing concern about the implications for Botswana, Namibia and Swaziland (BNS) if EPAs are not concluded in time and non-reciprocal market access of the ACP to the EU market runs out. While the LDCs and SA have their own trade regimes (TDCA and EBA), the only legal alternative for BNS countries will be the Generalized System of Preferences (GSP). According to the internal review there have been requests for an urgent study on the implications of not signing an EPA with the aim of preparing a fallback position in the event that an EPA is not in place or agreed on in January 2008.
- The review further recommends that a new work schedule is prepared with clear allocations of responsibilities. Parties shall further agree on a cut-off point for negotiations. Plans to expedite

negotiations might be necessary. The negotiation agenda should include implementation and the necessary assistance.

- Given that all SACU states are now in the SADC EPA configuration it is important to determine how the SACU Secretariat will be involved.
- Further capacity building needs will arise as EPAs will automatically fall under the Dispute Settlement Understanding (DSU) of the WTO. Dispute resolutions have not been on the agenda of the negotiations so far and should be addressed with the aim of identifying a proper strategy to address the capacity building needs of the private and public sectors in terms of this issue.
- A formal review mechanism in order to revisit the text and address problems that occur during implementation should be part of the EPA.
- There should be a formal decision on how to deal with the current delay.
- If additional matters are negotiated it will be necessary to negotiate the agreement in stages, which will be beneficial in terms of the SADC countries' low capacity to implement and negotiate the agreement.

Whereas the internal review, which was conducted before the official response of the EC, mentions the challenges of finding common ground between the various SADC EPA states if the SADC EPA is linked to the TDCA, the joint review surprisingly does not refer to this issue. Is it not clear yet whether it is foreseen that other SADC members will accede to the TDCA or whether a new agreement will be negotiated. The difficulties of concluding one agreement for the whole SACU EPA group which is composed of LDCs, Non-LDCs and SA will, in any event, remain a major challenge.

5 The ECOWAS-EU EPA negotiations review process

5.1 Background

EPA negotiations were launched on October 6th 2003 between the EU and the Economic Community of West African States (ECOWAS), including all the countries of West Africa without Cape Verde and including Mauritania⁵. Of these 16 African countries, only Nigeria, Côte d'Ivoire and Ghana are not LDCs.

Several reviews were produced for the West African region. At the end of 2006, the ECOWAS region produced a Joint West African EU EPA review (WA review), which was jointly prepared by the Commissions of ECOWAS and WAEMU in collaboration with the States of West Africa (ECOWAS–UEMOA, 2006). The document was submitted to the Ministerial Monitoring Committee of 28-30 November 2006. An independent review was also prepared by the ROPPA (*Réseau des Organisations Paysannes et des Producteurs Agricoles de l'Afrique de l'Ouest*), as a contribution to the formal review and highlighting the views and positions of farmers' organisations in the region, and presented at the same meeting (ROPPA, 2006).

The ECOWAS review proposal was further submitted to EC high officials and chief negotiators, as well as the Presidents of the ECOWAS and WAEMU. Discussions on this document with the EU took place in December 2006 and January 2007 in Ouagadougou (technical and high officials meeting) and in February 2007 in Brussels (meeting of Chief Negotiators and finalised at a technical level in agreement with the recommendations of the Chief Negotiators). All categories of actors (including civil society and the private sector) were involved in the process at both national and regional levels. The main modifications were: (i) the description of the perceptions of the process by the different actors on both the African and European sides, (ii) the list of outstanding issues, and (iii) the need for a deferment of the deadline. Following on from these modifications, the EU-ACP Joint Review as provided for in Article 37.4 of the Cotonou Agreement was adopted at the Joint Council of ACP and EU Ministers on 25th May 2007.

With regard to the other African regions, there is also a section in the continental review conducted by the African Trade Policy Centre (ATPC–UNECA) based on a questionnaire distributed to 15 West African governmental and non-governmental stakeholders.

According to the different reviews, many issues remain unresolved, but the EU-ACP Joint Review of May 2007 states that both parties have agreed on the way forward. Regarding the deadline, both parties reaffirm their commitment to conclude by the end of December if, prior to that, the programmes accompanying the EPAs and their financing by the EU are defined, the calendar for market access will be formulated and the text of the agreement elaborated.

5.2 Process of the negotiations

On 4 August 2004 the parties signed a Road Map in Accra, specifying the areas, process and modalities for the negotiations, an indicative schedule, and a strategy to conclude an EPA. The road map focuses on three major axes: (i) deepening the integration process in West Africa; (ii) improving competitiveness and capacity building; (iii) preparation and effective implementation of the EPA. The road map outlined three phases for the negotiations to be carried out. In the first phase (September 2004 to September 2005) priorities were to be identified for trade and economic

⁵ Cape Verde opted out in October/November 2006 and Mauritania is not an ECOWAS member.

regional integration and for a programme to upgrade and enhance competitiveness. During the second phase (September 2005 to September 2006), the overall EPA architecture was to be drawn up and proposals made for a draft agreement on trade-related issues. And in the final phase (September 2006 to December 2007) the actual negotiations on trade liberalisation for goods and services would take place and the EPA concluded.

While the regional review highlighted the need for an extra three years to conclude the EPA negotiations, a joint declaration from a meeting held in Brussels on 5 February 2007 reaffirms the willingness of the West African Ministers and the EU Trade and Development Commissioners to conclude EPA negotiations by the end of the year⁶. The ACP-EU joint report also reaffirmed this willingness. Ministers agreed to begin the next phase of negotiations and adopted all outstanding technical reports from the preparatory stage of the EPA negotiations.

On the basis of the conclusions from different joint thematic working groups, both parties identified the main building blocks for the architecture of the agreement:

- Establishing a FTA for goods and liberalisation of services (progressive/flexible and asymmetric for West Africa)
- Rules of origin
- Trade defence instruments and safeguard measures
- Trade facilitation and administrative cooperation
- SPS and technical norms
- Intellectual property and innovation
- Mechanisms of dispute settlement

Despite the advances on the EPA Reference Framework, both the joint and WA review point out that divergences remain on improving market access, financing accompanying measures to the EPA and on investment, competition, public procurement, labour standards and the environment. But, as stated in the joint review, the parties agreed to start work on the EPA text at technical level while continuing work on the Reference Framework.

According to both the WA and the joint review, three years down the negotiations road, both parties have agreed on a series of issues:

- Adoption of the joint road map, and adoption of the reports from technical working groups on the free trade area, customs union and facilitation of exchanges, normalisation, quality and related services, SPS measures, TBTs, intellectual property and trade in services. Adoption of the report on the reference framework of the EPA and adoption of a joint report on productive sectors.
- Setting up three joint technical working groups to lead the second phase of negotiations.
- Inclusion of a revision clause allowing the results of the Doha round to be captured in the EPA should these be more favourable than the positions taken within an EPA between West Africa and the EU.
- EU support for the creation of a special regional EPA fund, the implementation and management of which will be defined by West Africa
- The EU will contribute to finance the losses in tariff revenues due to internal liberalisation.

However, divergences remain, namely:

- Both the WA review and the ATPC survey state that there are disagreements on the

⁶ Although at the meeting of the ACP-EU Joint Parliamentary Assembly (JPA) on 20-22 March 2007, Nigeria's representatives questioned how realistic the deadline is, given the extent of work pending before conclusions can be reached.

development dimension of the EPA and the link between trade and development.

- The three reports highlight divergences in the setting up of complementary or additional resources to offset the adjustment costs that EPA implementation will involve. West Africa wants the EU to cover the net fiscal impact linked to the liberalisation, whereas the EU is willing to contribute to offsetting that impact. According to the joint review, the parties agreed to define together the methods to calculate that impact
- The negotiations on competition policy and investment have not progressed so far. The EU wants to include issues like public procurement, the environment and labour standards in the EPA, whereas the West African region is not willing to consider these issues.
- The level of market access that the EU will offer.

5.3 State of play

• Market access for goods

In the road map, both parties agreed to negotiate market access for goods during the third phase of the negotiations (September 2006 to December 2007). The first working group is in charge of the preparation of market access offers for goods and services. The second working group contributes to the drawing up of a calendar of liberalisation for sensitive products. Work should proceed in three stages: (i) determination and structure of the basic data for the negotiation, (ii) creation of a database to determine the liberalisation schedule, and (iii) negotiation of tariff offers.

According to the joint review, the offer of West Africa will be based on the necessary flexibility regarding the needs of the region in relation to the transitional period and asymmetry with respect to the pace of tariff dismantlement, as well as on a categorisation of the sensitivity products.

The offer by the EU will guarantee the *acquis* of the Cotonou Agreement and of the Everything but Arms (EBA) initiative, thereby offering as large an access as possible to the EU for African goods and taking into consideration the interests of the region.

• Trade in services

In the joint review both parties reaffirmed their belief that services are key to development, bringing about benefits for the whole of the economy, including agriculture, and recognised the need for progressive liberalisation. The EU recognised the efforts West Africa has made in this area and both parties agreed on a way forward:

- Both parties will prepare an offer and a request for liberalisation.
- Both parties recognise the West African need to make integration efforts in the services sectors covered by ongoing programmes (telecommunications, financial services, transport, education, health) or to be defined in the EPA.
- Both parties noted the special and differential treatment for liberalisation of services provided for in the Cotonou Agreement and the need to take into account the dispositions of GATS. In particular Article V rules that any agreement must cover a wide range of sectors allowing flexibility in favour of developing countries and take into account the goals of regional integration. Both parties also recognise the importance of safeguarding measures to prevent distortion in the event of threat of serious damage.
- The EPA must include cooperation on services between the two regions as well as at the regional West African level. Support for the sector is needed to tackle the market rigidities, the low level of exports in services and the weak technical capacities and human resources of the regulatory bodies and institutions.

• SPS Measures and Standards

The joint review refers to a report of technical working group 2 which describes the state of play, the regional perspectives and provides some recommendations.

The report acknowledges the importance of SPS measures and recommends an analysis by product, at both intra- and bi-regional level, to identify all the obstacles in order to agree on an approach for the top priority products and sectors for West Africa. The group made a first, indicative list of products which may be affected by SPS regional or bi-regional measures.

After examining the normative weaknesses and existing programmes in the region, the group recommended that West Africa step up its involvement in the international system of normalisation and metrology, and that the RPTF examine the needs, mainly for technical expertise and laboratories. It also formed a list of objectives, such as setting up a legal framework in this area and local inspection services, creation of internationally recognised bodies in the region, and the introduction of a joint consultative committee and an information system on TBTs and SPS rules in the EPA.

The experience gained by means of the Quality Programme in WAEMU will serve as a basis for a programme to cover the whole ECOWAS area.

• Trade-related areas

Both the WA and the joint review highlight various divergences in trade-related areas:

- The opening of negotiations on competition and investment has been identified as a major area of divergence. Both parties however consider these issues very relevant to the enhancement of regional integration in the West Africa region. The joint review highlights that ECOWAS has elaborated a common framework for investment and competition for the whole region, with the aim of attracting foreign and regional investment and securing free competence.
- The parties do not yet agree on the inclusion of new non-road map issues, such as government procurement, labour standards and the environment, as suggested by the EC.

Regarding intellectual property rights, the joint review states that the parties recognise the importance of the harmonisation of rules and their implementation in West Africa. West African countries are party to two regional agreements on intellectual property: the Bangui Agreement and the Lusaka Agreement. The thematic working group has made recommendations to reinforce the capacity of the structures in charge of implementing these agreements. Both parties opted for a pragmatic and progressive agreement and identified the priorities: protection of phyto-genetic resources and traditional knowledge, geographical denominations, combating piracy and counterfeiting, and issues regarding public health.

5.4 Development aspects

• Development

Both parties agree that the EPA is a commercial instrument at the service of development, aimed at reinforcing the regional integration of West Africa and fostering trade between West Africa and Europe. The WA review nevertheless mentions the differences in perception with respect to the development dimension within the EPA and the link between trade and development as a main area of disagreement. Modalities to cover the adjustment costs and the provision of additional and/or supplementary resources to offset these costs have also been a major area of divergence. It has been agreed in principle that the loss of customs revenue arising from liberalisation under the EPA, as well as from domestic liberalisation will be included within the EPA.

The West Africa region formulated a programme to enhance competitiveness and undertake the necessary upgrading. The internal proposal refers to paragraph 44 of the Road Map, in which both parties agreed to formulate and commence, during the first phase, the implementation of the competitiveness enhancement and upgrading programme. The WA review further states that the WA region has identified six areas for improvement of competitiveness and upgrading for enterprises. The identified areas will be developed in the form of activity programmes which will require the use of technical and financial assistance:

- Restructuring and upgrading of existing production apparatus
- Expansion of the production base and the improvement of productivity
- Capacity building for the private sector and civil society
- Development of the legal and judicial environment of businesses
- Improvement and reinforcement of the quality and capacities of financial intermediation
- Improvement and enhancement of basic infrastructures.

• Regional Integration

ECOWAS has officially been a free-trade area since 1 January 2000, yet many barriers block trade within the region, as well as the intra-regional circulation of persons and capital. The WAEMU has been a customs union since January 2000 and, although certain aspects have still to be consolidated, it is a monetary union and is on its way to becoming a common market.

All reports highlight that one of the most crucial challenges is the harmonisation and convergence of the two regional integration initiatives, so that ECOWAS can emerge as the sole regional body. The joint review states that regional integration is the main objective of ECOWAS, and the EPA should support and guide the process, as provided for in the Cotonou agreement. The authorities of the region stressed the importance of deepening regional integration as a strategy for economic development, based on the creation of a vast common market with common policies in areas such as transport, production, monetary control, etc. as well as social, cultural and political integration.

The joint review highlights that:

- To ensure the implementation of this strategy, ECOWAS and WAEMU set up a Joint Technical Secretariat to facilitate collaboration within the framework of the EPA negotiations.
- The ECOWAS Executive Secretariat be turned into a Commission in order to increase its efficiency and facilitate the implementation of its decisions by member states, by strengthening its supranationality.
- A number of member states have set up their “National Transport and Transit Facilitation Committees” in compliance with the recommendations of ECOWAS.
- Both organisations are working to achieve the ECOWAS customs union by 1 January 2008. In this respect, it was agreed that the four-scale Common External Tariff (CET) of WAEMU would be the basis for the ECOWAS CET. The seven ECOWAS countries that are not WAEMU (save Cape Verde and Liberia) have already integrated the CET within their financial rules. The joint report states the importance of protecting the productive and service sectors against bad practices through the setting up of complementary mechanisms alongside the CET. The advances made by WAEMU on safeguarding and antidumping measures could be applied to the whole ECOWAS region.

• Regional Preparatory Task Force

Since it was set up in August 2004, the RPTF has met twice in plenary, and meets regularly at Secretariat level. The RPTF has also met with the development partners and a national and regional capacity building programme was put in place under the 9th EDF RIP and the Trade.Com programme.

The joint review states that the RPTF identified finance and facilitated the implementation of the majority of the negotiators' recommendations. Further, the report says that the RPTF has not encountered problems regarding resources. Of 44 recommendations made by the negotiators, it has identified financial resources for 35.

However, only 14 have begun implementation so far. Both reviews stress that implementation difficulties can be explained by the delay in the start-up of the different programmes of 9th EDF RIP. The all-ACP programmes are not directly managed by the regions, thus complicating the access to resources and the due consideration of the region's needs. The weak participation of national actors in the activities of the RPTF must also be noted.

• **Financing of EPAs**

The EU made resources available to support EPA negotiations and help deepen regional integration. Principally, the 9th EDF RIP, focused on deepening regional integration and facilitating exchanges and transport. The region has benefited from other ACP Programmes.

The joint review comments that the European Commission confirmed its willingness to support the EPA by substantially increasing 10th EDF RIP resources, but it also recognizes the need to mobilize resources from other partners in order to better meet the needs of the EPA. The EC also agreed that it would be willing to contribute to a regional development EPA fund to support implementation, if the region were to establish such a mechanism.

The WA proposal mentions, as main areas of disagreement, the differences in perception in respect of the inclusion of the development aspect in the EPA, the link between trade and development, and the modalities for covering the different adjustment costs.

Both the WA proposal and the joint review note that implementation of the recommendations is experiencing delays due to bureaucracy and the complex nature of EDF procedures.

5.5 Outstanding Issues

The joint review highlights what remains to be done, namely:

- Analysis of sensitive products, of what impact EU rules of origin may have on the improvement of market access for West Africa, and the impact which the EPA may have on social employment policies.
- Definition and implementation of the ECOWAS CET in the customs union of West Africa and determination of common protection mechanisms for the production and services sectors.
- Setting up and implementation of an EPA special regional fund.
- Formalisation and implementation of commercial surveillance instruments at regional level.
- Regional harmonisation of SPS, metrology, normalisation and certification policies.
- Elaboration and implementation of a plan to harmonise customs procedures and interconnection of customs IT systems.
- Reinforcement and support of negotiating structures, mainly the RPTF, the support technical committee, the thematic working groups, as well as national EPA negotiating committees and regional negotiating structures. Also, capacity reinforcement in human resources of ECOWAS and WAEMU on commercial policies and negotiation.
- Setting up an EPA monitoring mechanism (which should define the bodies responsible for implementation and monitoring, as well as the cooperation between the institutions deemed necessary for the agreement to work properly).
- Definition and implementation of a regional and national campaign to raise awareness and

- provide information on regional integration.
- Adoption of legal texts on investment and competition policy at regional level.
 - Elaboration of a regional policy to protect intellectual property rights.
 - Creation of an observatory on competitiveness in West Africa.

Besides these issues, the WA review also mentions the following:

- Formulation and implementation of programmes to improve competitiveness at regional level (for each programme an implementation period should be defined).
- Determination of border protection measures.
- Need to use the preparatory period for capacity building in the public and private sectors of African countries, including measures to enhance competitiveness.
- Need to ensure that the EPA is better aligned to the development strategy of the region. The link between aid and trade is fundamental for the WA region. The practical means of integrating the development dimension into the EPA remains to be defined.

The WA review emphasises the need for the indicative calendar of the road map to be revised and suggested postponing the deadline of end 2007 for concluding the negotiations. It noted that the West African states will need an additional three years to finalise the negotiations. The ATPC report equally expressed serious concerns about the deadline. However, as mentioned before, the joint EC-ACP review does not make reference to the need for additional time and reaffirms the commitment to conclude the negotiations by 31 December 2007.

6 The CEMAC-EU EPA negotiations review process

6.1 Background

THE CEMAC-EU EPA negotiations include, on the African side, the Economic and Monetary Community of the Central African Countries (CEMAC), formed by Cameroon, The Central African Republic, Gabon, Equatorial Guinea, Chad and the Republic of Congo, plus Sao Tome and Principe, which signed a trade agreement with CEMAC in December 2004, and the Democratic Republic of Congo, which joined the Central Africa configuration at the end of 2005, although it is not a member of CEMAC but of the Economic Community of the Central African States (ECCAS), as well as COMESA and SADC. At the technical level the negotiations are jointly prepared by the secretariats of CEMAC and ECCAS.

Negotiations were formally launched on 4 October 2003, and on 16 July 2004 the countries of Central Africa and the EU agreed on a joint road map. Effective negotiations began considerably late and continue to be affected by significant delays on many issues. The joint review mentions that the ratification of the EPA might need a relatively long period of time⁷.

Only the continental review commissioned by the ACP Secretariat and conducted by the ATPC, was fed into the review exercise for Central Africa (ATPC, 2007). It was drawn up on the basis of bilateral discussions which the UNECA had with the Central African countries' delegations and respondents, as well as with the regional economic communities of the region. In all only 18 people were interviewed for this survey. There was no further internal review, unlike in the other regions (except CARIFORUM). The consolidated Cotonou Agreement Article 37.4 joint review report was presented to the JMTC in May 2006.

According to these two different reviews (joint and continental), the principal issue that needs to be agreed upon for negotiations to progress is how to address Central Africa's capacity constraints and how to finance EPA implementation. The Central African region has made a strong case for securing additional resources to offset the costs of EPA implementation, and expects flexibility and consideration in the treatment of this question by the European Commission. The ATPC review also draws attention to a major concern regarding the deadline. All the stakeholders interviewed agreed that this deadline for concluding the agreement could not be met under the current position.

6.2 Process of the negotiations

The CEMAC-EU EPA is behind schedule with regard to the agreed road map. Many issues still need to be agreed upon and several differences remain between both sides. There is huge concern among all the stakeholders on the Central African side about the deadline of December 2007 for the conclusion of negotiations.

The road map implementation was to be carried out in three phases:

1 - Reinforcement of regional integration and enhancement of competitiveness, by examining the various issues relevant to achieving regional integration (customs union, SPS norms, TBTs, investment, etc.) and ways of enhancing competitiveness.

⁷ ACP-EU Council of Ministers, ACP-EU EPA Negotiations, Article 37.4 Review, 31 May 2007, p43.

2 - Global architecture of projects on agriculture, fisheries, development and trade, all key sectors to Central Africa, where the two parties identified a project on the basis of the Agreement. However, they diverge considerably on many issues and this phase has not been properly concluded. Central Africa argues that it will not continue to the next phase of negotiations on market access unless the issue of reinforcement of production capacities is settled. On 6 February 2007 both parties agreed to complete the second phase and, in parallel, begin immediately with the third.

3 - Negotiations on liberalisation and concluding the EPA. This phase is delayed, due to lack of agreement between both parties on how to follow through and the unfinished previous phase. While the EU wishes to proceed immediately, Central Africa believes that the second phase should be entirely finished before moving on.

There are several factors that have hampered faster progress:

- **Delay in beginning the negotiations and the region's lack of preparation to negotiate and implement an EPA:**
 - Negotiations began after a two year delay as the road map was established late; thus, civil society and the private sector joined rather late, which hampered their involvement, and the creation of a group on 'capacity building' (the 5th group), deemed key by the African side, took a lot of time.
 - The large economic disparities and serious infrastructural constraints in the region, alongside insufficient resources to conduct the negotiations adequately.
 - Concerns about regional integration; the ATCP review found that regional integration was the major outstanding issue (89% of the responses). For 56% of the stakeholders surveyed the current configuration is not coherent with the actual regional integration process. This, and lack of commitment to build a regional market, has been noted at the negotiations.
- **Divergence in key issues between both parties:**
 - The EU and Central Africa have a different take on key points, such as the regional integration process, addressing the supply side constraints and the development dimension of the EPA. Without a commitment on these issues, it will be very difficult for the parties to move on.
 - The ATCP review states that many countries in Central Africa would rather wait for an improvement in Article XXIV of the General Agreement on Tariffs and Trade (GATT), before rushing ahead with signing an EPA.

6.3 State of play

A draft structure for the future EPA has been developed with broad agreement from both parties. Yet many of the divergences that emerged during the second phase remain unresolved.

- **Structure and scope of the Agreement**

Broad consensus has been reached on most of the draft structure and its key concepts: (1) regional integration objectives and actors, (2) investment framework, (3) competition policy, (4) public procurement rules, (5) capacity reinforcement, (6) trade in goods, (7) trade in services, (8) trade-related areas and (9) institutional issues.

Central Africa wants the EPA to include chapters on reinforcement of the productive sector, analysing objectives, impact and mechanisms, with a focus on agriculture, fisheries and industry; the value chain, infrastructure development, the environment and natural resources, mining and energy and other areas of cooperation. The EU considers that these issues are already covered by

the Cotonou agreement and it would not be necessary to duplicate them. Central Africa highlights that they might as well be included in the EPA so as to be precise about them and reinforce them where needed and remarked that some dispositions in the Cotonou agreement are duplicated by the EU (articles 11, 96 and 97 on the political dimension). The EU stated it was disposed to include the chapters on fisheries, the environment, agriculture and forestry.

- **Market access in goods**

Negotiations on bilateral trade liberalisation for goods and services are taking place now, under phase three (September 2006 to December 2007), which should lead to the conclusion of an EPA.

Trade in goods: The joint report highlights that, in agreement with article XXIV of GATT, a reduced level of liberalisation would be proposed for Central Africa, which would be in line with the economic, social and environmental constraints of the region. It also mentions the setting up of safeguard measures. This is linked to Central African concerns about the serious fiscal consequences that opening up would entail, since tariffs represent a very important source of revenue for the government, making up from 28% to 65% of national budgets.

Both parties also agreed that the future EPA will have measures to facilitate exchanges and customs cooperation.

Services: Both parties recognise that services are key to fostering development and can render advantages to all sectors of an economy. It was therefore decided that a progressive liberalisation of services in Central Africa must be implemented. All the priority sectors for the liberalisation of services will be included in the EPA. As the Cotonou Agreement recognises the importance of a special and differentiated treatment for services, both parties agreed that an asymmetric approach towards the liberalisation of services in Central Africa will be provided for in the EPA. It will be necessary to eliminate discriminative measures and negotiate reciprocal agreements for a large range of sectors, taking into consideration the development needs of Central Africa and the possibility of transitional periods where needed.

- **Sanitary and phytosanitary measures**

Central Africa has linked this to the reinforcement of capacity, stating that the development of infrastructures will help set up laboratories to carry out quality controls in order to improve consumer protection in the region and enhance access to Europe for certain products that need to meet the requirements of SPS European rules.

- **Trade-related issues**

Already during the first phase of the negotiations both parties agreed that the EPA would include dispositions on competence, investment and public procurement, since these are key to helping foster development and deepen regional integration, as well as to comply with WTO rules and create a transparent framework. It is also widely recognised that the special and differentiated treatment and asymmetry in favour of Central Africa will be taken into consideration in these areas.

- **Capacity reinforcement**

It is here that the negotiations stalled. CEMAC has stressed that reinforcement of production capacities and additional resources to offset costs spiralling as a result of EPA implementation are key issues in the negotiations. Talks on the productive sector have made progress, and Central Africa has prioritised the following areas: improvement of the business environment, financial mechanisms for small and medium-sized enterprises and the building of basic infrastructure to reduce production costs.

However, there are still many divergences between both parties. Above all, while Central Africa considers that specific resources outside the EDF are needed to implement the EPA and help the region adapt, the EU states that these constraints should be addressed by the instruments provided for in the Cotonou agreement, and that Central Africa must better define its needs before any different financing scheme is examined.

- **Other issues**

Political dimension of the EPA: Central Africa opposes EU proposals to include references to the essential elements of the Cotonou agreement (human rights, democracy, good governance and the rule of law). In the joint report, Central Africa observed that this might eventually punish innocent people. It also indicated that if a country does not comply with its obligations in this regard, technical cooperation should not be suspended; and that all the countries in the region should not be collectively responsible for the failure of one of them.

The EU indicated that it only seeks to preserve the existing acquis of the Cotonou Agreement, and that the principle of proportionality of articles 96 and 97 eliminates the possibility of regional sanctions where one country does not comply.

Access of Central African nationals to the EU: Central Africa would like the EPA to include dispositions to facilitate and guarantee the access of its citizens to the EU via the setting up of an 'EPA visa' of limited duration for economic operators, students, trainees and civil servants on mission.

The EU believes this point has nothing to do with the negotiations and replied that it has no authority to negotiate a question that belongs to member states. However, it highlighted its willingness to launch a discussion on Mode 4 of services (temporary movement of people) within the wider framework of market access.

Need for a longer time period to lead the negotiations more effectively: Regarding the deadline of end 2007, in the Cotonou Agreement Article 37.4 joint review both parties reaffirmed their willingness to conclude the agreement within the legal period provided for in the Cotonou agreement. However, the ATPC review revealed major concern about the deadline. All the stakeholders interviewed agreed that this deadline could not be met under the current position; lack of confidence that EPAs will promote development reinforces the inadequacy of the deadline.

6.4 Development aspects

Both parties agree that EPAs are first and foremost about development. However, there are many aspects on which they diverge, with the capacity constraints and the financial measures to address them uppermost. Central Africa believes that the EPA will bring opportunities but will also have a serious negative impact, which motivates a call for measures to offset this.

- **Regional integration**

Both parties consider regional integration as necessary for Central Africa to take advantage of the EPA. By enhancing market liberalisation and improving the business climate, this could further boost the development of the region while helping to mitigate potential negative social and environmental impacts.

This is closely linked to the reinforcement of capacity and how to finance it. It is mainly in terms of capacity building that CEMAC understands regional integration as an issue in the EPA

negotiations. According to the ATCP review, CEMAC is concerned about how the EPA will help Central Africa foster its integration, and fears that, unless the capacity constraints are addressed, the opening up might undermine the regional integration process by strengthening the economic links of the different countries with the EU to the detriment of further regional integration.

The consolidation of the CEMAC customs union and its extension to Sao Tome and Principe is a central objective of the EPA negotiations. However, the regional integration process is hampered by several obstacles and challenges, both internal and external: intra-regional linkages remain limited; there is a wide range of political obstacles and administrative barriers; the persistence of double taxation; problems linked to the customs and tax regimes which have not been completely implemented; harmonised policies in trade-related areas are either non-existent or not respected in practice; lack of human and financial resources; and weak institutions and enforcement.

The Cotonou Agreement article 37.4 joint review draws attention to the Democratic Republic of Congo (RDC) adherence to the CEMAC configuration, even though it is a member of COMESA and the SADC. This creates complexities for regional integration, as the RDC is not eligible for the 9th EDF Central Africa RIP. Specific measures have been taken to ensure the smooth integration of the RDC into the Central African EPA configuration, notably to include RDC in the scope of the studies related to the EPA negotiations. Further measures will be needed to bring national administrations and NSA up-to-date.

• **Regional Preparatory Task Force**

The RPTF is the structure responsible for facilitating the implementation of the instruments of financial cooperation, translating the constraints identified during the negotiations into projects, suggesting financial resources and advising on their implementation.

As mentioned in the joint review, so far legal support and a meeting of customs experts on the interconnection of customs' administrations is all that has happened. The implementation of EDF projects to support CEMAC has suffered delays due to EDF procedures and lack of personnel. Central Africa deplores that the RPTF did not take into consideration the decisions of the negotiating committees on the computerization and interconnection of customs' administrations, having only considered the latter. The EU indicated that this project has its own line of finance and other similar actions are ongoing in other African regions. Central Africa highlighted that it is not wise to take joint actions when there are no resources for implementation.

• **Financing of EPAs**

Many of those who took part in the review process of the ATPC believe that the development dimension of the EPA has not been sufficiently taken into account. It is felt that the EC is very reluctant to discuss and conclude on development issues, or even to agree on development benchmarks. Many also believed that the road map was not precise on capacity building.

Most Central African countries are worried about the cost of reciprocity. They believe that the EU should ensure that the costs of liberalisation are compensated for through financial assistance, as well as by a better development package to make up for shortfalls in the loss of government revenues and the cost of labour market adjustments. Such support should be de-linked from market access negotiations. The EC, however, does not want to discuss this aspect before the overall institutional framework of the Agreement is established.

For Central Africa, the key questions are the reinforcement of production capacities and accompanying financial resources. The region highlighted the need for specific resources, besides the EDF, to ensure that the allocated funds are proportional to Central Africa's needs to be able to

implement the EPA. Central Africa has made clear that no agreement could be envisaged without massive intensification of human, institutional and financial capacities, and improvements in infrastructure. The joint review states that Central Africa deems the instruments provided for in the Cotonou agreement are insufficient to deal with the adjustments that the EPA will require.

The EU acknowledges the importance of the question, but remains adamant that EPA implementation does not provide for programmes of development aid different to those provided for in the Cotonou agreement, and it is through these that the reinforcement of capacity must be addressed, not through other new measures provided for in the EPA itself. The EU also drew attention to the increase in aid in the 10th EDF (2008-2013) and the necessity to determine the constraints before pronouncing on the need for finance other than the EDF. The EU also stressed the willingness of the member states, should that need be confirmed, to take complementary actions in terms of aid for trade.

The joint review states that the EU is disposed to create a regional EPA fund to address capacity and provide technical assistance for the implementation of such a fund.

6.5 Outstanding issues

- According to the ATPC review, there is a huge concern among African stakeholders that the deadline of end 2007 will be impossible to meet.
- Financing the EPA and addressing the supply-side constraints is the key issue of the negotiations. Agreement on these areas must be reached for the negotiations to move on. Indeed, Central Africa links this to all the other areas, and it seems unrealistic that progress can be made on any of them without reaching agreement on the financial resources necessary to reinforce capacity, offset negative effects of the EPAs and help implementation.
- Discussions on bilateral trade liberalisation for goods and services, investment policies, public procurement and competition areas are ongoing (phase 3, September 2006 to December 2007).
- Disagreement on the political dimension of the potential EPA must be overcome. Central Africa opposes the inclusion of human rights, democracy, rule of law and good governance considerations.

7 The CARIFORUM-EU EPA negotiations review process

7.1 Background

The Caribbean region agreed a finalised joint regional-EC review in November 2006. The report was written principally by regional negotiators based in Brussels. While the Caribbean States had no input into the exercise, the review submitted to them is quite a technical document, outlining the progress and highlighting the convergences and disagreements on substantive issues in the negotiations. The review was adopted by the joint Council of Ministers held in Brussels on 25 May 2007.

An independent mid-term review was also produced at the time of the Article 37.4 exercise by the Windward Islands Farmers Association but did not feed into the formal process (Preville, 2006). While it assesses the negotiations between the Forum of the Caribbean ACP States (CARIFORUM) and EC in light of the CARIFORUM objectives for an EPA, the report more specifically analyses the extent to which the outcome of agriculture negotiations are likely to impact on Caribbean farmers, with special reference to the Windward Islands. In that respect, the document is very different in terms of approach to the formal review.

7.2 Process of the negotiations

The joint review does not give details on either sides' experience or assessment of the process of negotiating the EPA so far. However, two points concerning the process can be noted:

Negotiations have followed the phases originally indicated in the Joint Plan and Schedule for the negotiations, which was adopted in April 2004. Furthermore, both sides have expressed, at Ministerial level, their shared political commitment to completing the negotiations in a timeframe that does not require another WTO waiver. This is reflected in the negotiating schedule for 2007. For CARIFORUM, this commitment is on condition that the EPA will be development-friendly and support the objectives of the region.

Under the EC's 'Capacity building in support of the preparation of EPAs' Programme, the Caribbean has obtained assistance at regional and national level to address technical and capacity constraints, amounting to some €3 million. Further assistance to the Caribbean EPA negotiations is foreseen in 2007 and beyond, within the Caribbean Integration Support Programme.

7.3 State of play

Grouped under four overarching headings, the major issues in the negotiations are:

- **Legal and Institutional Issues**

Structure and scope of the Agreement: There is general agreement on these issues, except on the EPA Adjustment Facility. This issue reflects the sharp disagreement on EC development financing instruments, which is detailed below (under 7.4).

Definition of the parties to the Agreement: This question is linked to the organisation and development of CARIFORUM regional integration.

CARIFORUM argues that it has neither the legal, nor policy competence to assume region-wide EPA commitments. Commitments must be assumed on the basis of the current nature of the Caribbean economic space (the free trade agreement between Caribbean Community and Common Market (CARICOM) and Dominican Republic; CARICOM Single Market and Economy (CSME), Haiti, The Bahamas).

CARIFORUM further argues that its EPA commitments must be consistent with the principles of variable geometry and differentiation, which are part of its regional integration process.

The EC considers that a common set of rights and obligations would strengthen Caribbean regional integration. It also believes that the benefits of a strengthened regional market would be held back if CARIFORUM markets remain fragmented by differentiated trade regimes.

Both sides agree to examine the EPA disciplines where commitments assumed by CARIFORUM will be region-wide or national in application.

Dispute settlement mechanism: CARIFORUM envisages its individual member states having the right to initiate and defend dispute settlement proceedings. The EC considers this approach contrary to a region-to-region agreement and to regional integration. There is broad agreement however, that the dispute settlement provisions should be flexible to allow for subject-specific variation.

Inter-relationship between EPA provisions and the Cotonou Agreement: This matter is proving a major challenge in negotiations, particularly concerning the scope of the non-execution clause and the treatment of EC development cooperation.

Because the Cotonou Agreement is time-bound (expiring in 2020), while the EPA provisions are not, CARIFORUM also seeks the insertion of a 'rendezvous clause' that commits both sides to negotiate post-Cotonou arrangements before 2020.

The EC understands that development cooperation with CARIFORUM will continue beyond 2020 and is considering how to reflect this in appropriate language in the EPA.

EPA Council: Both sides agree that there should be a Ministerial-level EPA Council mandated to implement and review the Agreement and to ensure that the EPA achieves its stated development objectives.

- **Market access in goods**

There has been little progress on issues related to tariff liberalisation.

There is disagreement on the use of base rates; the EC seeks to use applied tariffs, while CARIFORUM favours bound rates.

There is disagreement also on the path to liberalisation. The EC proposes to harmonise CARIFORUM tariffs before liberalisation, in cases where duty differentials are small or where trade is insignificant. Remaining tariff lines (accounting for 70% of CARIFORUM imports from the EU) would be treated on a case-by-case basis.

CARIFORUM holds that there is no precedent for harmonising tariffs, and that the objective should instead be to arrive at modalities for achieving eventual tariff liberalisation. CARIFORUM's approach is based on a common exclusion list and 15 national schedules of items that it will commit to zero duties at the commencement of liberalisation and schedules of products that would

be subject to phased reduction of duties.

The possibility of a transitional period of 25 years has been established for some very sensitive CARIFORUM products.

- **Agriculture & Fisheries**

CARIFORUM seeks to institute a collaborative mechanism to secure improved investment flows, value added, competitiveness and technology use in the region's agricultural and fisheries sectors. The EC, however, notes the significant volume of assistance already funnelled into the region's agriculture and the sector's lack of sustainability.

Concerning the treatment of agricultural subsidies, the EC recalled its 'double zero' approach on export subsidies (i.e. parallelism for liberalisation and application of export subsidies).

On the matter of full duty-free and quota free access to the EU market, the EC's orientation is towards improved access, although no commitment has yet been made regarding the extent of such improvements.

- **Rules of origin**

Progress in negotiations on rules of origin is constrained on both sides: for CARIFORUM, by the effort to develop an all-ACP approach; and for the EC, by the fact that its preference for a value-added criterion represents its general approach, and still subject to internal assessment.

On the substantive issues, CARIFORUM has been rejecting the value-added criteria as the sole determination of origin and seeks a modification of the current Cotonou-based rules. No agreement has been reached on issues of: cumulation; administrative requirements and procedures; and co-operation mechanisms.

Customs and trade facilitation: Negotiations are advanced and have resulted in a consensus text. Outstanding issues include the date of implementing a CARIFORUM Single Administrative Document and the nature of CARIFORUM advance binding rules.

- **Sanitary and phytosanitary measures / Technical barriers to trade**

Negotiations are advanced and remaining disagreements are now resolved 'ad referendum'.

- **Trade defence measures**

Negotiations have focused on safeguards, anti-dumping, anti-subsidies. CARIFORUM considers that adaptation to WTO rules on safeguards is warranted due to its limited chance of inflicting economic injury on the EU. This proposal remains under consideration.

- **Services & Investment**

Some level of alignment has been reached on developing a framework for both services and investment, and the constructive exchange of views makes clear that further progress can be achieved. Both parties aim to exchange offers in both services and investment in the first months of 2007.

The EC has presented the advantages for development of liberalisation in a number of important services sectors. It has also advocated the advantages of an aligned approach to services and investment through a common set of provisions and positive lists.

CARIFORUM seeks use of the General Agreement on Trade in Services (GATS) methodology (which includes positive lists) for scheduling commitments in services. On investment, CARIFORUM seeks an agreement that covers market access, and promotion and protection of investment. It has a strong preference for negative lists in investment.

Both sides agree to insert mode 4 commitments in the EPA: CARIFORUM wants a scheme that could cover skilled and less-skilled workers. The EC has proposed 'tailor-made' solutions on mode 4 for the EPA negotiations. In this context it will take commitments on skilled service providers.

CARIFORUM also seeks a Mutual Recognition Agreement that would underpin the benefits of some mode 4 commitments. In reply, the EC has proposed specific provisions, so that the parties encourage the relevant professional bodies to provide specific recommendations. The parties could then explore the viability of specific agreements on mutual recognition.

At CARIFORUM's request, a sub-group is to be established to sharpen the developmental orientation of the negotiations on services and investment. Work will focus on how small suppliers can effectively take advantage of enhanced access to the EU market.

- **Trade-related areas**

Intellectual property (IP): The trading of counterfeit and pirated products will be addressed. Flexibilities inherent in multilateral agreements to promote both public health and rural livelihoods will be applied. Discussions have been pursued on: how to extend commitments beyond those of the TRIPS (trade-related aspects of intellectual property rights) agreement; and the relationship between IP commitments and CARIFORUM's priorities for fostering of innovation in the Caribbean.

Personal data protection: Considerable progress has been noted and is reflected in a draft consensus text which refers to the use of existing international standards, while taking into account the Caribbean's resource constraints.

Competition policy: A consensus text has been developed which would provide for cooperation between the European Commission and the CARICOM Competition Commission and the Dominican Republic competition authority (both yet to be established).

Government procurement (GP): A consensus text on transparency has been obtained with only a few outstanding issues, including: the entities to be covered by GP provisions, and the threshold above which commitments would become applicable. A difference of views remains on the merit of including market access commitments. This will be considered only when the negotiations on transparency have concluded.

Good governance: The EC's proposal on the exchange of views, the promotion of dialogue and cooperation on good governance issues remains to be considered.

Sustainable development: Negotiations on the environmental dimension are advanced. The EC is also seeking to include provisions on social aspects. CARIFORUM agrees with the inclusion of social issues such as, the right of association and the banning of child labour, and has a preference for the use of best endeavour language for such provisions.

7.4 Development Aspects

• Regional Integration aspects

Support to the Caribbean Single Market and Economy (CSME) and to the EPA process is of strategic importance for the 9th EDF Regional Indicative Programme for the Caribbean (CRIP). A €41.5 million Caribbean Integration Support Programme will be shortly implemented, over a period of three years. Funds from the Caribbean's allocation from the 10th EDF will also be assigned to regional integration and EPA-related actions.

• Regional Preparatory Task Force (RPTF)

The RPTF is intended to provide the link between the EPA negotiations and the development strategies and resource requirements of the Caribbean. In shadowing the EPA negotiations, it has examined Caribbean regional integration processes and trade and integration-related assistance programmes in the Caribbean. It also worked on producing projects for consideration in the areas of SPS, TBT, investment promotion and statistics, and financial services.

During the final phase of the negotiations, the RPTF, with the active involvement of the trade negotiators, is expected to identify the various areas that need to be addressed so as to produce meaningful EPA-related support projects. Such activities are to be deployed in accordance with the time-sensitive nature of EPA implementation.

• Financing of EPAs

Disagreement remains on EC development financing instruments for the EPA: the EC favours the 10th EDF with its existing rules and procedures; CARIFORUM favours a more expansive band of funding instruments (including the EPA Adjustment Facility) with binding commitments on delivery. Both sides, however, agree that CARIFORUM's prioritised needs with regard to EC development cooperation will be detailed in each relevant discipline of the EPA.

CARIFORUM's proposal that a development chapter should be inserted in the EPA was considered useful by the EC. This chapter could constitute four elements:

- advancing CARIFORUM regional integration;
- pursuit of sustainable development;
- cross-reference to EC development funding instruments;
- cooperation in international fora such the WTO.

7.5 Outstanding Issues

As noted, both sides aim to complete the EPA negotiations so that another WTO waiver is not required. For CARIFORUM this is conditional on the EPA meeting its development expectations and supporting its other regional objectives. Both parties acknowledge that considerable progress has been made in negotiations. However, considerable disagreements remain in a broad range of areas. In summary, the areas which now present the greatest challenges and where progress must be made if negotiations are to be concluded in the expected timeframe are:

• Legal and institutional issues

- EPA Adjustment Facility and related issues with EC development cooperation
- Nature of the parties
- Dispute Settlement Mechanism
- Inter-relationship with the Cotonou Agreement

- **Market access in goods**
 - Tariff liberalisation
 - Agriculture
 - Rules of Origin
 - Trade defence measures
- **Services and investment**
 - Scheduling of commitments in services and investment
 - Mutual recognition of professional qualifications
- **Trade-related areas**
 - Government procurement (issue of market access).

8 The PACP-EU EPA negotiations review process

8.1 Background

The Pacific ACP group of countries (PACPs) stands out from the other regions due to some unique characteristics:

- Geographical isolation: small economies and isolation are a serious comparative disadvantage (including very high transport costs).
- Marginal trade flows with the EU: except for Fiji, Papua New Guinea and Vanuatu, PACP countries have little or no trade with the EU.
- An EPA would probably only have minimal direct economic effects but important indirect effects on the region's trade relations (discussed below).
- Many Pacific Countries currently experience a period of unprecedented instability. Unrest in the Solomon Islands, social tensions in Tonga and a military coup in Fiji may have implications for the overall relationship with the EU and also affect EPA negotiations.

Several documents fed into the Article 37.4 review of the EPA negotiations for the Pacific region. The PACP Trade Ministers at their meeting in November 2006 approved the conduct by the PACP Group of its own Article 37(4) review and requested the Pacific Islands Forum Secretariat (PIFS) to facilitate such a regional assessment. The European Centre for Development Policy Management (ECDPM) was contracted to do so, with a mandate to discuss the views of PACP stakeholders on the structure, process and substance of the negotiations, their trade and development dimensions, as well as the capacity and preparedness of the region to conclude an EPA. A first written report was submitted in January 2007 (Rampa, 2007).

The review was undertaken through extensive informal consultations, specific interviews, a written questionnaire, as well as analysis of official documents, press statements, communiqués and newspaper articles. The actors consulted included PACP trade negotiators and other national government officials, experts assisting the Regional Negotiating Team (including the Forum Secretariat staff) and representatives from the private sector and civil society organisations⁸.

This report was submitted to the Pacific Island Forum Secretariat and discussed at the PACP Regional Workshop on the state of EPA for parliamentarians, non-state actors and heads of investment promotion agencies at the end of February 2007. The workshop endorsed the conclusions of the report and recommended that it be adopted as the PACP official review.

The EC sent a first draft Joint PACP-EC Article 37(4) Review report to the PIFS in early March 2007. The PIFS, on behalf of the PACP states (PACPS), incorporated comments and perspectives based on the ECDPM report. The Joint PACP-EC Review report was discussed at the Joint Technical Working Group Meeting (JTWG) in Brussels in early May with a view to expeditiously concluding the final Joint Review for consideration by the ACP-EU Council of Ministers on 25 May 2007. The all-ACP-EU Final Joint Article 37(4) Review adopted by the Council was negotiated in Brussels, involving only ACP Ambassadors, and includes the official joint PACP-EC review as an annexe.

The final Joint PACP-EC Review⁹, as well as the parts of it captured in the overall ACP-EU Art 37.4

⁸ The complete list of stakeholders consulted is available in the report. Due to limited time and resources, it was not possible to interview members of parliaments of PACP countries. See Rampa, F, **Article 37(4) Review of the Pacific ACP region EPA Negotiations**, ECDPM, January 2007, available at <http://www.acp-eu-trade.org>

⁹ Available at http://trade.ec.europa.eu/doclib/docs/2007/june/tradoc_134944.pdf

review, focuses more on the substance of the negotiations rather than on the EPA process. For this reason, a number of concerns expressed by Pacific ACP actors, captured in the internal regional review, do not feature in the final official joint document. Despite recognising the limited capacity on the Pacific side for preparing the negotiations, as well as some weaknesses in the link between national and regional priorities' representation (mainly due to logistical difficulties) (see 8.2 below), some significant problems of the EPA process were not highlighted. These included:

- the slow responses by the EC to proposals from Pacific;
- the prevalence of 'non-papers' process over actual negotiations;
- a lack of in-country support and resources to negotiate;
- serious capacity gaps at national level to complete preparatory work,
- a lack of awareness about the EPA in general;
- the threat to implement any agreed commitment.

As a result of the different focus, the internal regional assessment and the official joint review led to somewhat different conclusions (for details, see 8.5 below on outstanding issues), especially on the preparedness of the Pacific region to expeditiously conclude the negotiations and on the process forward¹⁰. Other differences between the two reviews emerge from the following sections as well.

8.2 *Process of the negotiations*

Discussions in the Joint Technical Working Groups have centred on overarching issues such as: the architecture of an EPA Agreement; the link between trade and development; and selected priority issues, such as services and investment, fisheries, rules of origin and trade in goods.

According to both reviews the negotiation process is behind schedule. The internal review further points out that the chances of concluding negotiations in time are small. This was due to the perceived lack of ownership at national level, the continued disagreements between the parties, as well as the slow responses by the EC on PACP negotiating proposals and the prevalence of informal discussion over a formal process.

The reviews highlight different internal factors that have hampered faster progress in negotiations:

• **Capacity**

The Pacific review states that all the stakeholders consulted concurred that institutional preparedness and trade-policy capacity are too weak in the Pacific for implementation of a complex agreement such as EPA.

There was general consensus between the Pacific stakeholders (government, private sector and civil society) that more time is needed to conclude the negotiations and that more capacity, especially at national level, is required both to complete preparatory work and to raise awareness and support for the EPA in general. This capacity should encompass both human resources and qualitative technical assistance for negotiations and implementation of the EPA.

¹⁰ The Joint review states that "both sides agreed *nevertheless* that negotiations must be accelerated in order to meet the deadline of the end of 2007" (page 8); while the internal assessment concludes that "both weaknesses of the overall process and the actual state of play of the PACP-EU EPA talks lead stakeholders in the Pacific to believe that the successful conclusion of negotiations by the agreed deadline looks currently unlikely" (page 2).

- **Participation in negotiations**

Findings from the internal review showed that participation of national governments in the EPA process has been reasonably satisfactory but participation of some smaller states was lacking. Some countries have not been able to articulate their position due to lack of awareness and resources.

Both reviews refer to the growing concern between stakeholders in the PACP that only a few countries in the region were driving the process and set priorities and that the reflection of national priorities in regional negotiations should be improved.

The internal document further stated that most civil society representatives expressed serious concern about a lack of meaningful consultation and transparency about the EPA, observing that it is difficult to follow progress in the negotiations as the public flow of information was limited. CSOs further noted their limited capacity to engage in negotiations and deal with the complicated technical issues involved in EPA negotiations. The participation of other stakeholders like the private sector, was also regarded as poor, both at national and regional level.

- **Distance**

One specific problem that was further highlighted in the joint review relates to the distance and time difference between the Pacific and the EU. While electronic means of communication have been used their effectiveness has turned out to be limited and the need to focus on an increased number of meetings has become obvious.

The distance between different PACP states led to difficulties of bringing together national representatives from PACP countries which limited the capacity of the PACP side to prepare its negotiations effectively.

The review further refers to unique geographical features constituting a serious obstacle to their economic development. As the region suffers from significant competitive disadvantages and stagnant economic growth, particularly due to high transport costs and low and declining investment flows, these features of the region make the Pacific EPA process peculiar and, to some extent, different from other ACP regions.

8.3 State of play

At the start of the negotiations in September 2004 in Fiji, the Pacific region and the EU adopted a Joint Road Map, outlining the principles, timing and structures underpinning the PACP-EU EPA process. The overall work programme established by PACP and EU through this Joint Road Map is behind schedule, which has been noted by both parties.

The internal review states that a number of PACP actors felt that with the EU all topics could be raised and discussed informally, but not be formally negotiated. PACP stakeholders claim that the EC deems certain negotiation areas as formally not negotiable under EPA which has hampered the success of negotiations. An additional difficulty was the slow responses by the EC to PACP proposals and the prevalence of informal discussions ('non-papers' process) over the formal process.

According to the internal document, there are still differences between individual Pacific ACP countries in terms of specific positions on certain topics, their expectations of EPA and their potential positive and negative effects, as well as the degree of interest in successfully concluding negotiations. Those countries with specific objectives in particular negotiating areas

(for instance, maintaining levels of market access to Europe for sugar) took a more active role in the negotiations and showed preparedness to offer concessions to the EU in order to achieve those objectives. The latter was also highlighted in the joint review.

In July 2006 PACP tabled informally an EPA legal draft text for further discussion with the EC. The EC agreed that Pacific's proposal could form the basis for an overall EPA structure for the region but that it would have to undergo substantial amendment before it can become a mutually agreeable EPA.

Regarding the architecture of the EPA agreement, negotiations between both parties have made some progress. Both parties have recognised the special situation and features of the Pacific region. In the Joint Declaration adopted in 1 March 2007 both parties agreed that the architecture of an EPA must reflect this while ensuring WTO compatibility and promoting the goal of progressive regional integration. In this context, the EPA between the EU and the Pacific would contain provisions in areas of interest to all PACPS as well as an annexe on trade in goods and related topics.¹¹

The joint document states that both parties agreed on a flexible structure for the EPA master agreement, which should be signed by all 14 PACP countries and will establish the principles governing the EPA relationship. The Trade in Goods Agreement (as part of an overall EPA) will only be signed by those countries actually having an interest and capacity for trading with the EC. A flexible framework for the agreement should allow any other Pacific ACP country to sign up later.

According to the internal review, apart from this general agreement on the architecture of an EPA, fundamental divergences of negotiation positions remain in nearly all important areas (rules of origin, services, investment, fisheries and development cooperation). However, since the internal review was conducted in January 2007 some progress has been made and both parties have reaffirmed their efforts to conclude negotiations by the end of the year.

- **Market access for goods**

According to the joint document, preliminary indications suggest that perhaps six to eleven PACPS might sign up to a trade in goods agreement, depending on whether the rules of origin finally decided bring real opportunities for PACP exports to the EU market.

The internal review points out differences among PACP relate to the existing and potential trade flows with the EU and their degree of interest in signing a trade in goods agreement; and subsequently to the sensitivity of liberalising trade as part of an EPA. While some PACP have a relatively open regime already; for others tariff rates are still high, and therefore signing a goods agreement becomes even less attractive due to the triggering of negotiations with New Zealand and Australia.

The PACPS are in the process of designing national market access offers but emphasised the need for sufficiently long transition periods, appropriate exemptions and safeguard clauses as well as individual schedules of commitments.

Concerning EU market access, Pacific Ministers have welcomed the EC's commitment to offer duty-free and quota-free access but question the need for restrictions in the case of sensitive products. Concerning the opening of the Pacific markets, the EC agreed to apply flexibility of WTO

¹¹ EC-Pacific EPA Ministerial meeting - Brussels 1st March 2007 - Joint Declaration

rules to the full extent needed, including both the duration of the transition period and asymmetry of the timing of tariff dismantling and the coverage of liberalisation.¹²

- **Rules of origin**

Both reviews noted that there is serious disagreement between the two sides on rules of origin.

According to the joint document the PACPs have proposed a system based on a simple change of tariff heading (CTH) as the main criterion to determine origin and argue that this approach would enable PACPS to source intermediate materials from other, usually closer countries at relatively lower costs. In March 2007 the EC presented a non-paper on RoO which is based on the value-added criterion approach. The PACPS oppose this value-added approach.

- **Trade defence measures**

Discussion about trade defence instruments remains general with special emphasis on safeguards, anti-dumping, anti-subsidy measures and on a possible infant industry clause. Both sides have underlined that they see the subject of trade defence instruments as an important element in the overall structure of a trade in goods agreement. However, discussions have remained general and need to be intensified.

- **Fisheries**

The PACPs see fisheries as one of their key sectors and ask for continuation of the tariff free access, currently granted bilaterally for three Pacific ACPs, and for less restrictive rules of origin. Both sides agreed that the development of the industry and improved access for PACP fisheries products to the EC market will be important components of an EPA and to explore possible areas of convergence as a matter of priority, including a regional fisheries component as an integral part of an EPA.

According to the joint review, in January 2007 PACPS tabled a detailed legal text on fisheries market access for the EU which seeks a long-term and stable relationship with the EU tuna industry and provides a guaranteed, long-term level of access to EU flagged vessels to PACP exclusive economic zones. The EC agrees on the importance of fisheries for the Pacific and has tabled its views on key principles and areas of cooperation for discussion. It is currently preparing a reply to the latest Pacific proposal. Both parties agreed that fishery-related provisions could be linked to aid allocated for the focal sector of sustainable natural resources management, as envisaged in the draft regional strategy.

According to the joint review, it has been agreed to hold detailed technical negotiations within a subgroup of experts.

- **Services**

According to the joint review, PACPS and the EC have exchanged papers setting out the general framework on how services should be addressed within an EPA. Both are currently working on defining their offers and requests in the services sector.

Both documents concur that negotiations in services encountered serious obstacles between PACP and EU on the major offensive interest of the Pacific (mode 4).

¹² EC-Pacific EPA Ministerial meeting - Brussels 1st March 2007 - Joint Declaration

The PACP emphasised EU mode 4 concessions ('temporary movement of labour') as a crucial element in fostering their development. They proposed a quota-based approach for skilled and semi-skilled workers with a view to addressing shortages in labour supply in EU member states such as in the construction, health care and maritime sectors.

The EC wants negotiations on services to be comprehensive and conducted within the framework of GATS and states that only persons with academic qualifications can be considered in the Mode 4 context. In addition, the EC comments that Mode 4 issues fall within the competence of the member states and thus, have to be discussed with the individual EU member states. Nevertheless, according to the joint review, the EC has tabled a proposal and text on a legal framework on services and establishment as an integral part of an EPA and has agreed on the possibility of establishing a link between the EPA services provisions and EU development cooperation.

In the Joint Declaration adopted by the two sides on 1 March 2007, the EC expressed its readiness to offer the PACPS access for services including Mode 4, with a view to enabling PACPS to be genuine service providers in the EC market, consistent with their own particular circumstances and levels of development.¹³

According to the joint review it has been agreed to continue work on services in a dedicated subgroup in 2007.

- **Trade-related areas**

The EC wants to integrate a range of trade-related areas into EPA, such as: competition policies, transparency in government procurement, intellectual property rights, sustainable development clauses and trade and labour rights. The PACPs, however, do not see themselves in a position to start negotiations on most of these issues due to a lack of capacity and state that they cannot negotiate these issues in isolation from development assistance.

Investments have not been discussed much in the negotiation process so far. According to both reviews an investment chapter was included in the draft EPA text submitted to the EC in July 2006. PACP asks for the inclusion of provisions to regionalise existing investment funds (European Investment Facility (EIB), PROINVEST) and to re-organise the related institutions to better serve the development needs of small and medium enterprises (SMEs). The EC points out that EIB and CDE matters are regulated under the Cotonou Agreement and thus will not be part of the partnership agreement or re-organised. According to the joint review, discussions will need to be intensified for the negotiations to be successfully concluded.

Both parties agreed to include customs reform and trade facilitation provisions in the agreement. While the EU proposed to deal specifically with trade facilitation, the PACP stressed that trade facilitation - encompassing customs, SPS and TBT issues - should be treated as a package, rather than singling out any one particular issue.

However, the EU and the Pacific region considered competition and investment as important issues for development cooperation and have agreed to include trade facilitation measures in the agreement.

¹³ EC-Pacific EPA Ministerial meeting - Brussels 1st March 2007 - Joint Declaration

8.4 Development Aspects

• Regional Integration

According to the joint review, for EPA to be an effective tool for regional integration and to avoid a situation whereby the EU enjoys preferences beyond those available to the PACP themselves, from the EC's perspective any commitments made by PACPS towards the EU within an EPA should be extended to the other PACPS. This raises concerns for the PACPS, however, as not all of them would be equally prepared to undertake similar commitments.

While the joint proposal does not elaborate much on the process of regional integration but rather describes existing regional integration initiatives, according to the internal review, there is insufficient coherence between Pacific regional integration processes and EPA commitments. The document states that the obligations of PACP countries with other RECs and the indirect effects of an EPA will be more important than the direct impact of an EU trade agreement. Under the Pacific Agreement on Closer Economic Relations (PACER), Pacific ACPs are obliged to start negotiating free trade agreements with New Zealand and Australia as soon as they commence negotiations with another developed country, including the EU. This causes major concerns since those PACPS that sign a Free Trade Agreement with the EU will automatically trigger negotiations with New Zealand and Australia.

Both reviews refer to concerns that the pace of EPA versus regional integration may undermine regional integration.

• Regional Preparatory Task Force

The establishment of a RPTF was jointly agreed in the road map for negotiations. In 2005, terms of reference (TORs) specifying the role and functions of the RPTF were drawn up.

However, due to disagreements over the relationship between trade provisions and development cooperation discussed in the EPA framework, the RPTF has still not been established, and the PACPS point out that setting up a RPTF only makes sense if additional funding was available for EPA.

• Financing of EPAs

The internal review states that in terms of EPA preparations at regional level, there is reportedly general consensus between negotiators and government officials that the EU was financially very generous in supporting EPA negotiations (although the quality of the assistance could have been better) but stakeholders concurred that at national level much more support would have been needed.

The document further highlights the disagreement between the parties on development cooperation aspects and ways to address possible adjustment costs and other accompanying measures in the context of EPA. Whereas the PACPS' position is that additional resources beyond the 10th EDF are needed, both at regional and national levels, to implement EPA, the EC expressed its view that the needs arising from the EPA would be addressed by existing Cotonou instruments, like the European Development Fund as well as other sources.

According to the joint review, the PACPS have avoided making any commitments in the programming of the 10th EDF to support EPA implementation that would prejudice further discussions on these matters and, in particular, with regard to resource allocation and the delivery of adjustment and trade development assistance. However, they have recognised the importance

of identifying and quantifying the costs of implementing specific national projects and this is accorded high priority by the PACPS. To this end, the PIFS have been requested by PACP Trade Ministers at their meeting in November 2006 to commission a study on 'National Assessments of EPA Development Needs and Adjustment Costs for the PACPS'. The Commission also offered its assistance with drafting relevant EPA and development aid arrangements. In the EC's view, the PACPS and the EC should jointly draw up a list of prioritised projects for EPA implementation to support further development.

The joint review refers to the Joint Meeting on 1 March 2007, where the two sides agreed that, as a result of obligations and commitments entered into under the EPA, support from the EC would be necessary. At the meeting they committed to cooperate in mobilising the additional resources from EU Member States and other donors which might be needed for the preparation, implementation and success of the EPA. In an effort to enhance the effective delivery of such assistance, it was further decided to establish a regionally-owned adjustment facility to channel resources for financing EPA-related costs.

The joint document further confirms that finding an adequate solution to the issue of development support for EPA is critical to progress in all other areas of the EPA negotiations, and states that discussions between the two sides on how best to address the trade and development cooperation aspects of the EPA, will need to continue in the coming months.

8.5 Outstanding Issues

According to the internal review, due to very little progress on the substance of the negotiations and the weakness of the EPA process itself, few stakeholders believe the Pacific will be able to complete negotiations by the end of the year. It was mentioned that this will depend substantially on the agreement/disagreement dynamics and the level of ambition of the two parties, especially on rules of origin, temporary movement of labour (Mode 4 in services), investment provisions, fisheries, and development cooperation.

At the ministerial meeting that took place last March in Brussels, both sides agreed that negotiations were to be accelerated in order to meet the December 2007 deadline. This was confirmed by both reviews.

However, one major concern is highlighted in the joint document: As the overall work programme is behind schedule this implies a need to increase the pace of work, in particular in ensuring timely responses to negotiating documents already presented or still to be presented. On the other hand, excessive acceleration risks exacerbating the ownership issues and capacity constraints noted above.

According to the joint document it is envisaged that an ambitious schedule of meetings and work plan will be established for the rest of the year. Numerous meetings at technical level and two meetings at senior level would be required to meet the deadline of end of the year. It further stresses that speed of response to proposals and non-papers needs to improve and the rate of progress towards finding substantive common ground on the key negotiation issues; in particular fisheries, market access including rules of origin, services, investment and provisions relating to development cooperation has to speed up.

The internal review further highlights the following points:

- The document highlights that implementing the EPA requires establishing an effective institutional structure capable of fulfilling the challenging requirements and tasks relating to implementation and monitoring of the agreement.
- It further urges that the EC should be more responsive to some of the technical negotiating

proposals by the PACP while the PACP negotiators may have to accept some compromises in their ambitious proposal for an EPA text.

- It assumes that the deadlock in terms of the substance of the negotiations appears to be political rather than technical and thus only intervention at the highest political level will resolve the impasse. Full ministerial-level negotiating sessions between the PACP and the EU in 2007, as well as greater commitment to the EPA process by certain PACP national governments, were mentioned as key issues in moving the negotiation process forwards.
- The need for more national-level consultation to improve the legitimacy, credibility, and ownership of EPA in the PACP countries is highlighted, as well as realism with regard to the time frame bearing in mind that one year may not be sufficient to solve negotiation weaknesses and deadlock.
- According to the internal document, the capacity and preparedness of the PACP countries to both conclude negotiations by the end of 2007 and implement any new partnership agreement, are extremely weak. More time and capacity at national level are required to complete preparatory work, raise awareness and increase support for the EPA in general. The document highlights the need to address the lack of negotiating capacity on the PACP side. Furthermore, many stakeholders claim that more work is required to identify national needs for EPA implementation assistance and that institutional preparedness is too weak for implementation. Capacity building would be necessary at both regional and national levels and should include assistance not only to the public but also the private sector.
- Finally, the document points out that alternatives to EPAs will be more attractive for the PACPs than for other regions as only a few countries actually trade or have the capacity to trade with the EU and, even more importantly, countries that do not sign a free trade agreement with the EU will not trigger negotiations with Australia and New Zealand which makes any alternative trade arrangements with the EU more attractive. This issue was reportedly also stressed by many stakeholders during the consultations conducted for the review.

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The European Centre for Development Policy Management

Onze Lieve Vrouweplein 21

6221 HE Maastricht, The Netherlands

Tel +31 (0)43 350 29 00 Fax +31 (0)43 350 29 02

E-mail info@ecdpm.org www.ecdpm.org (A pdf file of this paper is available on our website)

ISSN 1571-7577

The ECDPM acknowledges the support it receives for this publication from the Ministries of Foreign Affairs in Finland, Luxemburg, the Netherlands and Sweden, the Directorate-General for Development Cooperation in Belgium, Irish Aid, the Swiss Agency for Development and Cooperation, the Instituto Português de Apoio ao Desenvolvimento in Portugal, and the Department for International Development in the United Kingdom.