

CONCORD Cotonou Working Group Briefing Paper

## EU ultimatum brings EPA negotiations to conclusion

*The 1 October 2014 deadline has not missed its effect. In the past months West-Africa, Southern Africa and the EAC concluded regional negotiations, while Fiji notified provisional implementation of its interim EPA and Cameroon ratified its interim EPA.*

*In doing so ACP countries have chosen to avoid disruption of existing exports and/or damage to their regional integration efforts.*

### Two interim EPAs maintained

By ratifying or provisionally implementing their interim EPAs, Cameroon and Fiji joined the ranks of Papua New Guinea, Zimbabwe, Seychelles, Madagascar and Mauritius. They too are implementing the un-amended and contested interim EPAs that they initialled at the end of 2007. And all six are cut of from the regional configurations that they set sail with at the beginning of the EPA negotiations.

It is here that the failure of the EU to deliver on its promises it most felt. EPAs were supposed to foster regional integration; they were supposed to take the development interests and the political choices of the ACP countries at heart. But the refusal to revise the initialled interim EPAs in 2008 and to envisage alternatives to EPAs; the high market access demand and other rigid positions of the EU have prevented regional solutions.

The so-called “Central African” interim EPAs has been signed in 2009 by Cameroon only and has already been approved by the European parliament on 13 June 2013. It was ratified by Cameroon on 25 July. The text has been published in the EU's Official Journal in 2009:

<http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=OJ:L:2009:057:TOC>

The so-called “Pacific” interim EPA has been signed in 2009 by Papua New Guinea and Fiji only and has been approved by the European Parliament on 19 January 2011. Fiji notified provisional implementation on 17 July. The text of the agreement has been published in the EU's Official Journal:

<http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=OJ:L:2009:272:TOC>

Both “regional” interim EPAs contain an accession clause permitting the other countries from the region to join. The clause in the “Central African” EPA permits the negotiation of amendments to accommodate country specific issues; the “Pacific” EPA does not foresee this. Countries can only accede by tabling a tariff liberalisation schedule. It would seem unacceptable if Central African or Pacific countries that would still be interested in an EPA would be left with no other choice than to accede to agreements that only one or two countries have agreed to without any further negotiations to revise the contentious issues that were identified at the end of 2007.

As a result of the ratification and the notification of provisional implementation, the European Commission has added Cameroon and Fiji again to the list of ACP countries that are offered preferential market access under Market Access Regulation (MAR) 1528.

### Three new regional EPAs initialled: West-Africa, Southern Africa and EAC

Three new regional EPAs have been initialled: with West-Africa on 30 June, Southern Africa on 15 July and the Eastern African Community on 16 October. These new regional EPAs will replace the interim EPAs which were initialled at the end of 2007. Indeed none of the countries that initialled in 2007 wanted to confirm or ratify their interim EPAs. Instead they have insisted on renegotiating several unsatisfactory provisions that the European Commission had written into the interim EPA. At the same time West Africa has been trying to replace the two bilateral interim EPAs with Ghana and Ivory Coast with a single regional agreement.

In legal terms countries that initialled in 2007 have since 1 October 2014 lost the preferences based on the interim EPAs. At the same time these preferences have been (will be) returned to them on the basis of the new regional EPAs. As the process to do this takes at least two months, Kenya that initialled the new EAC EPA together with the other EAC states on 16 October lost its MAR1528 preferences on 1 October and will only receive them again in January 2015. In the meantime Kenyan exports to the EU are facing standard GSP tariffs which are less advantageous.

It is unclear what the effects will be of this situation. In September Eastern African press mentioned that the European Commission had offered to reimburse European importers for the increased tariffs paid if the region would initial the new EPA before 1 October.

The new EPAs have not been signed yet. For this they first need to be legally scrubbed and examined by the governments of the EU and ACP countries involved. On the EU side the agreements need to be translated in the more than twenty official languages used in the EU. This work seems to be done for the West-African EPA which has been posted in the online

document register of the EU Council: <http://data.consilium.europa.eu/doc/document/ST-13263-2014-ADD-1/en/pdf>. For the Southern African and EAC EPA this work will only be completed in the second half of 2015.

### **The European Commission limits MAR1528 to non-LDC countries that initialled in 2007 and sets a new expiry date**

Although West Africa, Southern Africa and the EAC each initialled the new regional EPAs on behalf of all its members the Commission has chosen to offer MAR1528 market access only to the non-LDC countries that initialled interim EPAs in 2007.

This means that in contrast to 2007 when all five EAC countries received MAR1528 market access, this time only Kenya will receive the market access; the four LDCs will fall under the Everything but Arms (EBA) regime. In West Africa only Ghana and Ivory Coast will receive MAR1528 market access; the LDCs will remain under EBA, Cape Verde under GSP+ and Nigeria under GSP etc. In spite of the initialling of the new EPAs the countries in the region are finding themselves in different trade regimes with different rules of origin that will prevent cumulation. Offering MAR1528 only to the non-LDC countries that also initialled in 2007 is a discrimination against the other countries in the region.

There does not seem to be any justification for this unless political stubbornness and the wish to maintain pressure on the ACP countries: only when the initialled EPAs are signed and ratified will the situation be normalised.

Moreover the European Commission has indicated that it will use the delegated powers conferred to it by the Council and the European Parliament in 2013 to withdraw the MAR1528 market access again if the newly initialled regional EPAs are not be ratified by 1 October 2016. For this the Commission refers to art.2.3.b of the MAR1528 which foresees the possibility of withdrawal in case ratification has not taking place within a "reasonable period of time". However in view of the fact that the CARIFORUM EPA is still not ratified after 6 years, and that the signing of the new Southern African and EAC EPAs by the EU will only take place in the second half of 2015, 1 October 2016 as a new expiry date does again not seem to leave such a "reasonable period of time".

### **27 ACP countries have chosen not to conclude EPAs**

6 countries in Central Africa, 8 countries in the former ESA region, 1 country in the Southern African region and 12 countries in the Pacific have chosen not to conclude EPAs. Most of them are LDCs, others export mainly oil or have too little trade with the EU. None see the benefit at this time to conclude EPAs on the terms of the European Union.

### **Assessment and next steps**

The countries that have concluded negotiations, or consolidated their interim EPAs did so because of the imposed deadline, i.e. in order to avoid the immediate negative effects of facing higher import taxes in Europe or to avoid that their regional integration efforts would be undermined; not because they felt that their concerns and needs have been met or that the EPA would be instrument for development.

Looking at the so-called contentious issues that were identified in 2007 (stand still, market access, MFN, export restrictions, safeguards, market access, EU agricultural subsidies, aid commitments, etc) it seems that they have in general not improved much.

In return for the maintenance of their decennia old market access ACP countries will have to gradually eliminate their import tariffs, find new fiscal revenue, face EU competition, lose policy space to protect their economies and benefit from their raw materials. They will also have to find ways to overcome the constraints that EPAs put on further African and Pacific regional economic integration.

By concluding negotiations ACP countries have avoided immediate losses, but in return they will be facing serious challenges in 5 to 10 years when the tariff eliminations will kick in. The EU has promised to help them deal with these challenges, but without making formal commitments in addition to what is provided for in the Cotonou Agreement and by the European Development Fund. But while the EPAs are forever, the Cotonou Agreement will expire in 2020. In the rapidly changing development cooperation landscape, what EU aid will there effectively come in the mid-term when EPA implementation will be most demanding?

Finally, the EPAs contain rendez-vous clauses that may lead to new negotiations that will expand the EPAs beyond the trade in goods agreements that they still are today. One can only hope that now that the threat of losing market access is gone, the ACP countries will not engage in negotiations on services, investments, intellectual property rights, competition, government procurement, data protection etc. before they have developed domestic and regional policies in these fields and used the policy space they still have in these matters to build local and regional capacities.

### **Recommendations:**

Given the fact that the ACP countries have initialled new EPAs under pressure of the 1 October deadline and in an attempt to prevent immediate harm to their exports to Europe or to their regional integration efforts, the European Parliament should not rubber stamp these agreements but call for a thorough assessment especially of the new tariff liberalisation schedules and commitments.

The Joint EU-ACP Parliamentary Assembly could join / initiate this call.

The European Commission should immediately take steps to provide MAR1528 market access to all ACP countries that initialled new regional EPAs.

*For further information, please go to <http://www.concordeurope.org>*