

## CONCORD Cotonou Working Group Briefing Paper

<b>EPA's, the next steps</b>
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The EU-ACP Joint Parliamentary Assembly is to vote yet another resolution on the negotiations of Economic Partnership Agreements (EPAs). This time the resolution is supposed to be forward looking: what are the possible next steps to bring the EPAs to a satisfactory conclusion?

The resolution comes at the moment when the EU has found it necessary to drop a brick by adopting an end date for the preferential market access offered to ACP countries that have initialled (interim) EPAs at the end of 2007. Countries that will not have taken “necessary steps towards ratification” of an EPA by 1 October 2014 will lose these preferences based on Market Access Regulation (MAR) 1528/2007.

This may push countries to accept unsatisfactory agreements to secure these preferences. However while the value of these preferences has been eroded over time alternatives to EPAs remain possible.

### **The revision of MAR1528 is final: the deadline is 1 October 2014. How and when will this take effect?**

In spite of all the objections from ACP countries and civil society, the European Parliament and the Council of the EU endorsed the decision amending MAR1528/2007 (respectively on 16 April and 13 May 2013) setting the deadline at 1 October 2014. This decision is now final and will be published in the Official Journal and come into force within a matter of days<sup>1</sup>.

As a result the following countries that according to the amended regulation “*have not taken the necessary steps towards ratification of their respective agreements*” are taken of the list of countries that receive preferential market access on the basis these agreements and MAR1528/2007: **Botswana, Burundi, Cameroon, Comoros, Ivory Coast, Fiji, Ghana, Haiti, Kenya, Lesotho, Mozambique, Namibia, Rwanda, Swaziland, Tanzania, Uganda and Zambia**. On 1 October 2014 they will lose the preferential market access provided by MAR1528 unless they have by that time taken “*necessary steps towards ratification*”. In that case the European Commission can add them to the list again. In other words these countries will not be taken off the list on 1 October 2014; they have been taken off already, but they can be put back.

Note that except for Botswana and Namibia which will face the highest possible (MFN) tariffs as a result of the parallel reform of the EU's GSP, general preferences will remain available: “Everything but Arms” preferences, which are similar to the MAR1528 preferences, for the least-developed countries (Burundi, Comoros, Haiti, Mozambique, Lesotho, Rwanda, Tanzania, Uganda and Zambia) and less advantageous GSP preferences for the non-LDCs Cameroon, Ivory Coast, Fiji, Ghana, Kenya, and Swaziland (Kenya may also easily obtain GSP+, see below).

The above enumeration (in bold) of countries losing market access is very telling: it includes one country that has signed a full EPA: Haiti. Except Haiti no other Caribbean country is mentioned, yet so far only 7 Caribbean ACP countries have ratified the CARIFORUM EPA<sup>2</sup>. The other countries mentioned have initialled interim EPAs; eight of those have also signed the initialled EPAs, the others have not. Mauritius and Madagascar are not mentioned even if they have not ratified their interim EPA.

The conclusion is that the measure to take away MAR1528 preferences affects both interim and full EPAs; both signed and initialled interim EPAs, while on the other hand preferences are maintained for countries that have or have not ratified (interim) EPAs. The key to understanding this is “*notification of provisional implementation*”. Countries that have notified provisional implementation to the EU are considered to have taken “*necessary steps towards ratification*” and continue to benefit from the preferential market access offers by MAR1528. So this is what the countries taken of the list are supposed to do between now and 1 October 2014 if they want to get the MAR1528 market access back: either ratify an (interim) EPA or notify provisional application.

But perhaps there are other “*necessary steps towards ratification*” that can be taken, like the official decision by a government to request its parliament to give consent to the EPA? In order to avoid surprises and arbitrariness the EU has to provide clarity to the ACP countries on what exactly it will consider “*necessary steps towards ratification*”.

### **The problems of ratifying interim EPAs and the difficulty of negotiating development friendly EPAs**

During the debates on the revision of MAR1528 the Commission has asserted that 1) only eight non-LDCs will be affected as the LDCs will continue to enjoy EBA; 2) that it suffices to ratify the interim EPAs to avoid problems; and 3) that the deadline concerns only the signature of interim EPAs and not of full EPAs. These assertions are somewhat disingenuous.

1) The eight non-LDC countries that will lose the current preferences are part of ACP regions. Putting pressure on them to ratify the interim EPAs means putting pressure on the whole regions and including the LDCs, pushing them to abandon their EBA status and to reciprocate.

<sup>1</sup> See procedural file: [http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2011/0260\(COD\)&l=en](http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2011/0260(COD)&l=en)

<sup>2</sup> See Council website: <http://www.consilium.europa.eu/policies/agreements/search-the-agreements-database?command=details&lang=en&aid=2008034&doclang=EN>

2) Ratifying interim EPAs is very problematic because the flaws that they contain. ACP countries can not be expected to ratify agreements that they have been trying to replace for more than 5 years. Ratifying the iEPAs means accepting the standstill clause, the most favoured nation (MFN) clause, the ban on export tariffs and quantitative restrictions, the weak safeguards, the EU's interpretation of GATT art.XXIV, EU's agriculture (export-) subsidies. It means accepting agreements without a binding commitment by the EU to deliver the necessary aid to implementation, or adequate dispute settlement. It would make the attempts of the ACP countries to obtain improvements on these issues even more difficult than it is now.

3) The MAR1528 deadline is of course about the termination of preferences, not about ending the negotiations; these can continue beyond 1 October 2014. But the MAR1528 deadline does seriously affect the ongoing negotiations for regional EPAs. If ACP countries do not want ratify the interim EPAs, but seek to replace them, then the ongoing negotiations must conclude soon, probably before the end of the year, because the legal scrubbing of the concluded agreements and the translation into the 22 official languages of the EU which are required before signature takes many months.

Moreover the amended MAR1528 says that when the Commission wants to put a country back on the list of countries receiving MAR 1528, the Council and the Parliament must at least be given two months to make objections. This means that in practice the deadline is 1 August 2014 (unless the Council and the Parliament inform the Commission within a shorter period that they do not object) (art.2.b.5 of the amended MAR1528).

In any case the end of 2013 is not far away, and the speed of the negotiations does not depend on the ACP alone. Negotiations have not advanced because the EU continues to insist on issues that the ACP countries do not consider as conducive to their development and often the Commission takes very long to react to ACP proposals.

The lack of time due to the short deadline undermines the negotiating position of the ACP countries and pushes them to accept the Commission's demands just to avoid new or increased tariffs on their exports to the EU. Past experiences have shown moreover that the Commission does not hesitate to add new and more demands as deadlines come closer.

### **EPAs, the next steps**

To see more clearly what the next steps should be, it is important to revisit the assertions of the Cotonou Agreement: The economic and trade cooperation between the EU and the ACP countries including the EPAs *"shall aim at fostering the smooth and gradual integration of the ACP States into the world economy, with due regard for their political choices and development priorities, thereby promoting their sustainable development and contributing to poverty eradication in the ACP countries"* (art.34). EPAs are meant to be instruments of development for the ACP countries. The EU should not use EPAs to pursue offensive economic interests like the MFN, elimination of export taxes, market access beyond what is required by the WTO, etc. ACP choices should be respected.

EPAs as they currently stand are not instruments of development. The negotiations have never been a quest for the best possible trade arrangements in the interest of the ACP countries. Instead they have been and are a mixture of an EU attempt to make ACP countries accept the EU model for free trade agreements and an ACP attempt to keep out the most problematic EU demands and to safeguard regional integration. In order to conclude this painful saga the EU should abandon its rigid positions, or as the ACP heads of state have put it in the Sipopo Declaration of December 2012: *"where technical discussions on unresolved issues have been exhausted, issues that are not germane to WTO compatibility, should be removed from the negotiations"*<sup>3</sup>.

The ACP countries should in any case not panic in the sight of the looming deadline. Instead they should assess what the EU preferences still mean in the light of 12 years of preference erosion due to the reform of EU policies and the signing of EU free trade agreements. Recent South Centre research<sup>4</sup> has indicated that fiscal revenue loss for ACP countries as a result of tariff elimination may outweigh the additional costs of increased or new tariffs faced by ACP exports in the EU as a result of the termination of ACP preferences. The South Centre has also pointed at the growing opportunities for ACP exports to their regional markets.

ACP countries should also continue to explore alternatives. In West Africa ECOWAS trade ministers in December 2011 adopted a regional solidarity fund that could compensate non-LDC members for the loss of EU trade preferences (which would in any case be less than the loss of fiscal revenue as a result of an EPA). For Kenya there is the possibility to obtain GSP+ which covers all its top 30 exports, included the much cited flower and horticulture exports. To comply with the GSP+ requirements Kenya only needs to ratify the Genocide Convention and ILO Convention 87 which are already reflected in Kenyan legal practice. GSP+ for Kenya would mean EPA relief for the whole EAC.

### **Recommendation:**

Given the short deadline imposed by the amended MAR1528 and the EU's negotiating stance on outstanding and contentious issues, new assessments of the value of EPAs must be made taking into account the current value of preferential market access to the EU and the global economic developments of the past ten years.

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

<sup>3</sup> [http://www.acp.int/sites/acpsec.waw.be/files/Final%20ACP2806512%20Rev%208%20Draft\\_Sipopo\\_Declaration.pdf](http://www.acp.int/sites/acpsec.waw.be/files/Final%20ACP2806512%20Rev%208%20Draft_Sipopo_Declaration.pdf)

<sup>4</sup> South Centre Analytical Note SC/TDP/AN/EPA/30, June 2012.