

FACT SHEET N°7

MARKET ACCESS FOR TRADE IN GOODS IN ECONOMIC PARTNERSHIP AGREEMENTS (EPAs)

SYNOPSIS

This Fact Sheet Nb.7 overviews market access provisions related to the liberalisation of merchandise trade under the *Interim* Economic Partnership Agreements (EPAs) that were initialed in the end of 2007 between the EU and 35 countries in Africa, the Caribbean and Pacific (ACP).

It is part of a series of Fact Sheets designed to improve stakeholders' understanding of the legal, economic and developmental implications of specific provisions in the texts agreed to as well as to suggest options for improvement, particularly for the ACP countries and regions which are in the process of finalizing an EPA text.

February 2008
Geneva, Switzerland

This South Centre Analytical Note is produced by the South Centre Trade for Development Programme to contribute to the better participation of developing countries in trade and development negotiations.

It has been financially supported by **OXFAM International**, but do not necessarily reflect Oxfam campaign positions.

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I. INTRODUCTION

1. Over the last days of 2007, thirty-five African, Caribbean and Pacific (ACP) countries have accepted to initial Economic Partnership Agreements (EPA), with the European Union (EU). Except for the agreement concluded by Caribbean countries, which is a *comprehensive EPA*, in the sense that it covers a wide range of trade topics, all other agreements are partial, covering mostly provisions related to the liberalisation of trade in goods only. The latter also contain a sometimes detailed agenda for the further negotiation of additional trade areas. For this reason, these EPAs were described as an *interim* or first step towards full EPAs¹.

2. Both the comprehensive CARIFORUM EPA and all interim EPAs which were initialled are Free Trade Agreements (FTAs) or, legally speaking, Regional Trade Agreements (RTAs) in the sense of article XXIV of GATT. As such, they are primarily concerned with the conditions for the reciprocal liberalisation of EU-ACP trade. All initialled texts contain, in fact, detailed provisions regarding the elimination of customs duties on trade in goods between the EU and the ACP parties. The texts were accompanied by Annexes which contain the liberalisation schedules of the EPA parties', that is, a calendar for the reduction of tariffs on specific tariff lines. Most texts also contain provisions related to non-tariff barriers (e.g. technical standards) and trade remedies (e.g. safeguard measures).

3. Finally, the CARIFORUM comprehensive text also contains detailed provisions regarding the liberalisation of trade in services, and investment and disciplines related to current payments and capital movement, electronic commerce, competition, innovation and intellectual property, public procurement, environment and labour protection. These non-core aspects were not fully spelt out in the interim agreements, but were the object of a mandate for further negotiations.

4. This Fact Sheet comments on these texts and annexes and assesses the extent to which they have utilised flexibilities contained in WTO Agreements as

¹ Regarding the EU understanding of the "two step" EPAs and for a general assessment of these agreements, see, for instance, "EPA State of play and considerations for the way forward", South Centre (2008). Available at <http://www.southcentre.org/TDP/newpublistothers.htm>.

well as on the priorities identified under regional integration schemes. Examples are often derived from the text initialled by CARIFORUM countries, since that is the only comprehensive (and more definitive) text initialled to date.

II. STRUCTURE AND FEATURES RELATED TO TRADE IN GOODS IN INTERIM EPAS

5. Provisions related to the liberalisation of trade in goods constitute the core of FTAs or RTAs. Such provisions should detail which specific products will be liberalised or which will not (scope or coverage), provide guidance about how to identify products benefiting from preferential access (rules of origin), enumerate which trade barriers should be removed (e.g. customs duties applied to imports or exports, non-tariff measures, etc.), and provide a timeline for reforms (implementation period). These measures constitute the core of FTAs and are needed to assess the compatibility between a RTA and WTO rules, which require RTAs to lead to the liberalisation of (i) “*substantially all trade*” among RTA partners (ii) over a “*reasonable length of time*”.²

6. Several agreements may, in addition, identify measures that can be taken to revert or prevent detrimental impacts related to the liberalisation process (e.g. safeguard measures). Finally, other areas of cooperation (e.g. trade facilitation), regulation (intellectual property), or trade (e.g. trade in services) may be included depending on the parties’ interests. The inclusion of any of these non-core areas is strictly not necessary to ensure the compliance of an RTA with the WTO. Actually, whenever these areas are included, relevant WTO disciplines must be taken into account (e.g. GATS in the case of trade in services).³

7. Despite significant differences in the content of interim EPA texts that were initialled over the last hours of 2007, there are significant similarities among the structure of these agreements (1). In fact, both interim and the CARIFORUM comprehensive EPAs detail the conditions for the reciprocal liberalisation of EU-ACP trade (2) as well as some rules and disciplines (3). However, while conformity with WTO rules was a mandated objective and parameter of EPA negotiations, it would seem that few or none of the texts initialled incorporate to the fullest possible extent the flexibilities afforded by WTO rules.

A. Scope and contents of EPA provisions related to trade in goods

8. The sections related to trade in goods in the various EPA texts only diverge on a limited number of aspects since all follow the same template, based

² For a discussion about EPAs, GATT art.24 and the key elements of WTO compatibility, please refer to: “*Fact Sheet N°1 Understanding the EPAs*”, South Centre (2007). Available at: <http://www.southcentre.org/TDP/newpublistothers.htm>

³ On the linkages between EPA negotiations on trade in services and WTO rules, see: “*Fact Sheet N°5: Demystifying trade in services: a strategic guide for ACP EPA negotiators*”, South Centre (2007) Available at: <http://www.southcentre.org/TDP/newpublistothers.htm>

on the structure of a classical FTA. Both the scope and content of these provisions underscore the *WTO-plus* character of EPAs. For instance, the contents of the CARIFORUM text, which is the most developed of all texts initialled comprise:

- a. An obligation to progressively reduce and eliminate customs duties or any other form of tax or surcharge imposed on the importation of specific tariff lines (products) according to an agreed timeline;
- b. Regulations regarding trade defence instruments (multilateral anti-dumping and safeguard measures and a EPA bilateral safeguard mechanism);
- c. A prohibition of certain trade-restrictive non-tariff measures, such as export taxes, quantitative restrictions and export subsidies;
- d. Measures to enhance access of CARIFORUM goods to the EU, particularly through greater cooperation in the field of conformity to technical barriers to trade and sanitary and phyto-sanitary measures;
- e. Regulations regarding customs administration and trade facilitation as well as areas for cooperation with regard to both topics.

9. Of the items enumerated above, only (a) is a requirement for compatibility with WTO norms. The other areas ((b) to (e)) may be justified by the pursuit of other EPA developmental or commercial objectives. In addition to these broad areas, several additional specific provisions were included in interim EPAs. Some of these provisions have attracted considerable criticism, all the more so since they were not needed from the exclusive viewpoint of WTO compatibility:

- Standstill clause: By virtue of this clause, tariff rates applicable to EU imports have to respect fixed maximum rates, that is, not be increased, even before they are reduced or eventually eliminated. Fixed tariff rates must be applied as from the date of entry of EPAs (called *base rates*). While WTO norms require tariff liberalisation over a reasonable length of time, it contains no obligation to maintain duties at a predetermined rate before their reduction or elimination;
- Prohibition or standstill of export taxes: Obligation to eliminate existing export taxes (CARIFORUM text), or to refrain from increasing the volume of taxation or from imposing additional export taxes (freeze, common in other interim EPA texts). In the case of the CARIFORUM EPA text, export taxes must be eliminated within 3 years of signature of the agreement. In other texts, export taxes may be applied if the presence of exceptional circumstances can be demonstrated (Ivorian and Ghanaian texts) for a limited period of time if authorised by an EPA Council (EAC text) or after consultations with the EC (SADC and Cameroonian texts);
- Free movement of goods: Concerns a requirement that EU imports be subject

to import duties only once, by the government of the country where the goods will be consumed. While this provision should not surprise where it appears in texts concluded by the EC with another common market or custom union, it could prove more problematic for regions that have not yet reached integration of their internal markets. The risk is that EU products circulate freely in EPA regions whereas local products still do not. While the obligation is couched as an objective in the CARIFORUM text (Caribbean countries will exercise their best endeavour in that respect), it is a formal obligation in all others (African governments must reimburse duties if paid more than once). All agreements foresee cooperation in this area.

- MFN clause: Under this provision, EPA parties must extend to each other, on a tariff line level, any more favourable treatment conceded to any other developed or major developing country⁴ in the context of a future FTA. The clause only concerns trade in goods (i.e. concessions made on investment or trade in services are not covered). Because the clause would require the extension to a developed country (the EU) of trade benefits exchanged among developing countries (an ACP EPA party and another developing country), some have argued that this obligation is incompatible with the spirit of certain WTO norms (the Enabling Clause⁵) and detrimental to South-South trade integration;
- Non tariff measures and technical standards: Generally, the texts reaffirm the principles of the WTO TBT and SPS agreements, particularly transparency obligations, and mandate cooperation (financial and non financial) to improve the capacity of ACP producers and governments with relation to technical standards. Most texts promote, as a long term goal, the harmonisation of standards with those of the EU, whenever possible, and some (SADC) consider the possibility of discussing mutual recognition agreements. The SADC text also identifies priority products for greater cooperation regarding SPS measures (Appendix I:B) Moreover, some countries have utilised the EPA platform to promote greater regional cooperation and integration in this area, promoting harmonisation (Cameroonian text) or collaboration among national and regional standardisation and accreditation authorities (CARIFORUM EPA);

B. Market access offers: how much market opening, over how much time

10. The WTO-plus nature of interim EPAs and the CARIFORUM

⁴ The clauses only covers developing countries who are major trading economies, defined as developing countries whose share of world merchandise exports is above 1% in the year before the entry into force of a new FTA. Developing countries whose share of merchandise exports was above 1% in 2005 are: China; Hong Kong, China; Korea, Singapore; Mexico; Taipei, China; Saudi Arabia; Malaysia; Brazil; United Arab Emirates; and Thailand. India's share was slightly below 1%. (Table I.5 at page 17 of *International Trade Statistics Report*, WTO, 2006).

⁵ Paragraph 2(c) of this WTO Decision regarding "Differential and more favourable treatment, reciprocity and fuller participation of developing countries" allows developing countries to exchange commercial preferences among themselves without having to extend these to a developed country.

comprehensive EPA is further confirmed by the level of liberalisation in trade in goods promoted under these agreements. As a matter of fact, flexibilities available under the WTO as well as with relation to the establishment of national market access offers do not seem to have been fully utilised.

i. EU market access offer

11. In accordance with its April 2007 offer to ACP countries engaged in the EPA process, the European EPA market access offer provides full access to all ACP imports as from the date of signature of the agreements. This equals the market access conditions of non-LDC ACP countries (for whom only Cotonou treatment was available) to that of LDC countries (for whom full market access was granted under the Everything But Arms (EBA) preferential scheme). This represents a slight improvement of market access vis-à-vis the conditions of the Cotonou Agreement particularly regarding bananas, beef and veal, dairy products, wheat and cereals, as well as fruits and vegetables⁶.

12. Improved market access conditions are to be implemented provisionally (pending signature and ratification) as from the entry into force of the EPA (1 January 2008).

13. Nonetheless, transitional measures apply to sugar and rice (Table 1). These measures concern basically a longer liberalisation period, and, in the case of sugar, an import surveillance mechanism and specific, automatic safeguards.

Table 1: Transitional measures for Rice and Sugar, CARIFORUM	
Rice	
- Customs duties on Rice (HS1006) will be reduced as from 2010 (2 years moratorium)	
- Customs duties on Rice in the husk (paddy or rough, HS 1006 1010) will be eliminated as from entry into force.	
- Tariff rate quotas at zero duty were agreed to during the transition period:	2008: 187,000 tonnes
	2009: 250,000 tonnes
Sugar	
- Confirmation of the termination of the Sugar Protocol by 30 September 2009	
- Duty rates on cane or beet sugar (HS1701) will be entirely liberalised by 1 October 2009	
- In addition to the allocations of the Protocol, additional tariff rate quotas at zero duty will be opened for 2008/2009:	60,000 tonnes ⁷ , of which
	30,000 for the Dominican Republic

⁶ EC Market access offer in EPAs. Available at: http://ec.europa.eu/trade/issues/bilateral/regions/acp/mao040407_en.htm

⁷ For comparison purposes, allocations of 15,000 tonnes to the EAC, and 10,000 to Papua New Guinea were also opened. Cameroon, Ivory Coast and Ghana were not allocated tariff rate quotas.

- The import of several sugar products will be monitored until September 2015 to ensure that these restrictions are not circumvented.

Source: Annex 1 of the CARIFORUM EPA text

14. It is worth noting that, despite these improvements in market access conditions, the EC, as it had argued during EPA negotiations, has refused to roll-over the benefits of the three Agricultural Protocols of the Cotonou Agreement under the EPAs. As a result, the conditions that will prevail for exports of cane sugar⁸, beef⁹ and bananas under the EPAs are actually less favourable than that which had been established by Cotonou.¹⁰

ii. ACP market access offer

15. On the ACP side, liberalisation to EU imports is progressive, that is, tariff rates will be reduced gradually and eventually eliminated over time. There are, however major variations regarding the timeframe for the completion of the tariff elimination process. While most regions will eliminate tariffs on products covered by the EPA within 15 years, the Cariforum and EAC countries will complete the process in 25 years. Papua New Guinea seems to have chosen to complete tariff elimination by the entry into force of the agreement (2008) (Table 2).

Table 2: Market access commitments

EPA Agreement	Volume of EU imports liberalised	Tariff elimination implementation period
Cariforum	87%	25 years
East Africa Community	82%	25 years
Cameroon	80%	15 years
Comoros	80%	15 years
Madagascar	80%	15 years
Mauritius	96%	15 years
Seychelles	98%	15 years
Zimbabwe	80%	15 years
Fiji	81%	15 years

⁸ Beneficiaries of Protocol 1 on sugar were: Barbados, Fiji, Guyana, Jamaica, Kenya, Madagascar, Malawi, Mauritius, Swaziland, Tanzania, Trinidad and Tobago, Uganda and Congo PR.

⁹ Beneficiaries of Protocol 2 on beef and veal were: Botswana, Kenya, Madagascar, Namibia, Swaziland, and Zimbabwe.

¹⁰ For an assessment of the consequences of the denunciation of the Sugar Protocol, please refer to "The Reform of the EU Sugar Sector: Implications for ACP Countries and EPA negotiations", South Centre (2007). Available at: <http://www.southcentre.org/TDP/newpublistagricultural.htm>

SACU countries	86%	15 years
Mozambique	81%	15 years
Ghana	81%	15 years
Ivory Coast	81%	15 years
Papua New Guinea*	88%	First day of implementation

Source: "EU-ACP EPAs: state of play and key issues for 2008", EC Staff Working Paper (2008). * Information for Papua New Guinea from "EPA negotiations: where do we stand?" ECDPM (2008)

16. Most regions have divided tariff lines into generally 3 (EAC, Ivorian and Ghanaian texts) or more groups (EAC, CARIFORUM) ranging from least sensitive to most sensitive and have phased in the implementation of tariff elimination accordingly. Some regions have obtained a moratorium (or grace period) of one (Ghana) or two years (EAC) before tariff reductions start. Differentiated timelines to start and complete the tariff reduction process reflect the perception ACP negotiators had of the sensitiveness of specific products. Agricultural and processed agricultural products were generally treated as sensitive. A delayed and progressive duty elimination process is intended to provide ACP producers with sufficient time to prepare for increased competition.

17. It must be noted, moreover, that ACP countries or regions having initialled an interim text do not seem to have extensively utilised the option of "back-loading" tariff elimination concessions, that is, the option of meeting commitments only at the end of the prescribed periods. In fact, tariff elimination is staged through a time-bound schedule (Box 1 for the EAC). The bulk of liberalisation under all agreements will be undertaken fairly soon: Seychelles, Ivory Coast, and EAC countries will liberalise more than 60% of their trade within the next 10 years while SACU countries, Mozambique, and Papua New Guinea will liberalise about 80% of their trade in only two years.

Box 1: EAC - Phasing of tariff reductions and elimination

2010	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033
Reductions to Group 1 (<i>least sensitive tariff lines</i>) ~ approx. 64% of mutual trade																			
Free																			
Reductions to Group 2 (<i>moderately sensitive tariff lines</i>) ~ approx. 80% of mutual trade																			
- 20%	30%	40%	50%	60%	70%	80%	90%	Free											
Reductions to Group 3 (<i>most sensitive tariff lines</i>) ~ approx. 82% of mutual trade																			
					- 05%	10%	15%	20%	30%	35%	40%	45%	50%	60%	70%	80%	90%	Free	

18. Given the time pressure weighting on negotiators, however, the rationale for gradual liberalisation of sensitive products was not always based on dynamic policy objectives, such as economic diversification and establishment of new industries. Priority was given typically to static considerations, such as the need to protect fiscal revenues or specific commercial sensitivities, particularly in the agriculture sector (Table 3). The CARIFORUM liberalisation schedule seems to be an exception to this since exclusions were, at least in part, motivated by the subsidisation of some agricultural products in Europe (e.g. meat, sugar, olive oil) and others by the desire to protect the regional market for local production (e.g. furniture).

Table 3: Examples of products excluded and rationale

EPA Region	Exclusions	Rationale
Cariforum ¹¹	<ul style="list-style-type: none"> - Raw meat and processed meat products, fresh and processed fish products, dairy products, fresh vegetables, tropical fruits and fruit juices, coffee, rice, olive oil, sugar, chocolate, processed cereal products, beverages (soft drinks and spirits) - Some chemical products (paints and varnishes, essential oils, cosmetic products, soaps, shampoos, dentifrice) - Articles of paper - Articles of apparel and clothing and some textile products - Iron and still products - Furniture 	
Central Africa - Cameroon	<ul style="list-style-type: none"> - agricultural goods - non agricultural processed goods 	<ul style="list-style-type: none"> - existing or infant industry - maintenance of fiscal revenues
EAC	<ul style="list-style-type: none"> - agricultural products - wines and spirits - wood based paper - textiles and clothing, footwear, chemicals, plastics, glassware 	<ul style="list-style-type: none"> - infant industry
ESA - Seychelles	<ul style="list-style-type: none"> - meat, fisheries, beverages, tobacco, leather articles, - glass and ceramics, - vehicles 	<ul style="list-style-type: none"> - sensitive products - infant industries
ESA - Zimbabwe	<ul style="list-style-type: none"> - products of animal origin, cereals, beverages - paper, plastics and rubber, - textiles and clothing, footwear, - glass and ceramics, - consumer electronic goods - vehicles 	
ESA - Mauritius	<ul style="list-style-type: none"> - live animals and meat, edible products of animal 	

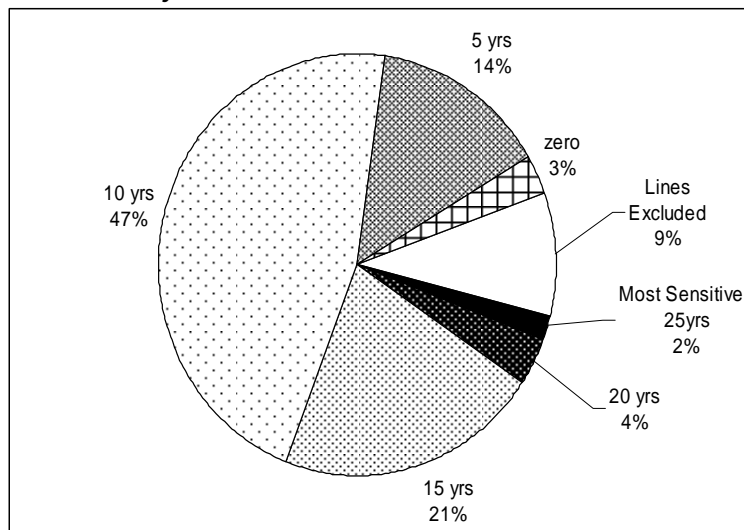
¹¹ CARIFORUM exclusion list:
http://www.crn.org/documents/ACP_EU_EPA/epa_agreement/Exclusions_List_Agreed_by_Principal_Negotiators.pdf

	<ul style="list-style-type: none"> origin, fats, edible preparations and beverages, - chemicals, plastics and rubber, - articles of leather and fur skins, - iron and steel, - consumer electronic goods 	
ESA - Comoros	<ul style="list-style-type: none"> - goods of animal origin, fish, beverages, - chemicals and vehicles 	
ESA Madagascar	<ul style="list-style-type: none"> - meat, fish, products of animal origin, vegetables, cereals, beverages - plastics and rubber, articles of leather and fur-skins, paper and metals 	
PACIFIC - Papua New Guinea	<ul style="list-style-type: none"> - agricultural and forestry products - non agricultural processed goods 	<ul style="list-style-type: none"> - infant industry - maintenance of fiscal revenues
PACIFIC - Fiji	<ul style="list-style-type: none"> - agricultural and forestry products - non agricultural processed goods 	<ul style="list-style-type: none"> - infant industry - maintenance of fiscal revenues
SACU countries and Mozambique	<ul style="list-style-type: none"> - agricultural goods - some processed agricultural goods 	<ul style="list-style-type: none"> - infant industries - sensitive products
West Africa - Ivory Coast	<ul style="list-style-type: none"> - agricultural goods - non agricultural processed goods 	<ul style="list-style-type: none"> - existing or infant industry
West Africa - Ghana	<ul style="list-style-type: none"> - agricultural goods - non agricultural processed goods 	<ul style="list-style-type: none"> - maintenance of fiscal revenues

Source: Agreements initialled (CARIFORUM) and EC update on EPAs (Dec 2007)

19. However, it should also be noted that longer implementation periods are not useful unless governments are able to support vulnerable sectors in order to

Box 2: CARIFORUM EPA - Tariff elimination schedule, by number of tariff lines



Timeline for liberalisation	2008	2013	2018	2023	2033
Value of imports (%)	52.8	56	61.1	82.7	86.9
Tariff lines (%)				85.1	90.7

level-up their competitiveness. In this sense, it could have been useful to link the progressive liberalisation of specific sectors to a review according to agreed benchmarks, as ESA countries had proposed. Interim EPAs, however, contain very few and weak provisions regarding support to vulnerable sectors.

20. Under all EPA texts, an additional group of

products was entirely excluded from liberalisation commitments. Typically, however, these exclusions lists were not as large as they could have been under WTO rules. In the CARIFORUM, for instance, only 9% of tariff lines were exempted from any tariff reduction commitment (Box 2).

21. As far as the scope of liberalisation is concerned (Table 6), it is clear that all texts followed the EU's interpretation of art. XXIV of GATT, whereby parties to a RTA have to liberalise 90% of their mutual trade. Texts used the flexibility offered by the EC to calculate that proportion of trade through the average of trade liberalised by both parties. Consequently, since the EU has liberalised 100% of imports from the ACP (after the transitional arrangements for sugar and rice), ACP countries could liberalise roughly 80% of their imports from the EU, so that the resulting average of mutual trade is approximately 90%. Most EPAs, have, however, prescribed higher levels of liberalisation (close to 90% in the Caribbean).

Table 4: Regional vs. National market access offers, Select Countries¹²

Country	Value of imports that needed to be liberalised to meet a 80% average		EPA initialled
	Regional list	National list	
Cameroon	60.9	39.1	80%
Comoros	84.6	15.4	80%
Madagascar	74.3	25.7	80%
Mauritius	78.2	21.8	96%
Seychelles	79.5	20.5	98%
Zimbabwe	63.8	36.2	80%
Fiji	66.3	33.7	81%
Mozambique	38.9	61.1	81%
Ghana	82.4	17.6	81%
Ivory Coast	69	31	81%
Papua New Guinea	68.4	31.6	88%

Source: *ACP Tariff policy space in EPAs*, ODI (2007). Products excluded from liberalisation were those presenting tariff peaks and highest applied tariff rates

¹² In the study "*ACP Tariff policy space in EPAs*", Stevens and Kennan have shown that the degree of liberalisation from the ACP needed to meet an average of 90% of trade liberalised under EPAs varied from one ACP country or region to another. This is so because it depends on the terms of trade between the EU and ACP regions or countries. Since the benchmark for liberalisation is an average of value of trade to be opened up, the greater the trade surplus a region or country has with the EU the smaller the share of its imports it must liberalise to reach 90% of trade liberalised (and conversely, the greater the trade deficit the higher the share of imports that must be liberalised). The study showed that countries generally had more leeway in establishing their exclusion lists when they submitted national - not regional - lists. The methodology assumed that the most sensitive tariff lines were those which presented the highest applied rates. In practice, nonetheless, governments may have chosen to exclude other tariff lines, explaining some of the differences shown in Table 4. Given the magnitude of the differences, nevertheless, it is clear that individual ACP countries have not fully utilised the flexibility they had under national exclusion lists.

22. In this sense, it is worth noting two points. First that the ACP Group had submitted a proposal to the WTO negotiations on rules asking for a more flexible reading of WTO rules related to RTAs. Some negotiators had, in fact, mentioned that not more than 60 or 70% of imports should be liberalised under the EPAs and that the tariff implementation period should extend beyond 20 years¹³. Second, one of the motivations for signing interim EPAs at the national – not regional – level was that individual market access offers could provide greater flexibility, that is, require fewer liberalisation commitments to meet the EU’s 90% average reading of WTO rules (Table 4). Countries do not seem, nevertheless, to have utilised either of these flexibilities.

C. Other provisions related to trade in goods: safeguard measures

23. As noted above, in addition to provisions related to the elimination of import duties, EPAs also contain a number of provisions regulating other aspects of market access and trade in goods. These comprise aspects of trade restrictions and export taxes, rules of origin¹⁴, standards, trade facilitation, and trade remedies (all agreements initialled foresee recourse to multilateral anti-dumping and safeguard measures as well as to an EPA-specific safeguard mechanism). Among these areas, one that is particularly relevant and determines the ease with which ACP governments will be able to take action in case the implementation of EPAs leads to detrimental consequences is safeguard measures.

24. While the inclusion of a safeguard mechanism in EPAs is not required from the strict viewpoint of WTO compatibility, it is an essential element of the agreements given the economic and trade asymmetries that oppose the EU to ACP countries. EPA texts initialled in 2007 contain two possibilities: recourse to multilateral safeguard mechanisms (WTO¹⁵) and to an EPA-specific safeguard mechanism. Having regard to the negligible utilisation of WTO provisions regarding safeguard measures by small developing countries¹⁶, the importance of an adequate EPA-specific mechanism cannot be overstated. It is therefore important that an EPA safeguard clause be simple to access and administer, couched in language that covers the wide range of circumstances which ACP countries may face and that it does not impose too cumbersome requirements on ACP users.

Table 5: Synopsis of an EPA Safeguard Clause, CARIFORUM text
(Emphasis added)

¹³ See, for instance, “EPA Negotiations: African Countries Continental Review”, UNECA-ATPC (December 2006).

¹⁴ There is now a wide understanding in the EPA debate that rules of origin are a central element having an impact on market access conditions. That analysis, however, is beyond the scope of this Fact Sheet.

¹⁵ GATT Art. XIX, WTO Agreement on Safeguards, and Art.5 of the WTO Agreement on Agriculture.

¹⁶ Not a single safeguard measure has been notified to the WTO by an ACP EPA country over the past ten years. *WTO Secretariat announces latest statistics on safeguards actions*, WTO News Item, 7 November 2007. Available at: http://www.wto.org/english/news_e/news07_e/safeg_nov07_e.htm

Justification	Measure	Procedure	Conditions	Overseeing Body
Imports cause or threaten to cause: - serious injury to the domestic industry producing like or directly competitive product - sectoral disturbances, particularly if they trigger <i>major</i> social problems or <i>serious</i> economic deterioration - disturbances in agricultural markets - threat or disturbances to an infant industry (recourse limited to next 10 years) - difficulties in the availability of or access to foodstuffs <i>and</i> major difficulties	(a) suspension of tariff reduction (b) increased customs duty to the MFN level bound at the WTO (c) introduction of tariff quotas	- Examination by both parties - If no decision was arrived at after 30 days, the importing party may impose a safeguard measure - Notification is required - Monitoring - Exceptional circumstances: measures taken for up to 180 (EC) or 200 days without following procedures where <i>'delay would cause damage'</i> .	- Obligation to consider alternative <i>solutions</i> - Safeguard duties must not exceed what is "necessary to remedy or prevent the serious injury or disturbances" (Necessity & proportionality principles) - Applied for 2+2 (EU) or 4+4 years (CARIFORUM) - Extensions only in exceptional circumstances, upon commitment to their gradual elimination - If over 1 year must contain clear elements progressively leading to their elimination	- CARIFORUM-EC trade and development committee - EPA Council (ESA and EAC) - Trade Committee (Papua New Guinea) - Comité APE (Ivory Coast) - EPA Committee (Ghana) - Comité APE (Cameroon) - Implementation Committee (SACU + Mozambique)

25. In this respect a number of restrictions, conditions or limitations of the mechanism proposed are worth highlighting. The clause specifically:

- Imposes the obligation to consider alternative "*solutions*" to a problem (not remedies). This places the burden on ACP governments to demonstrate which alternative options were considered and why they were discarded;
- Creates cumulative conditions, such as in 2(b), which requires the existence of disturbances in a sector *and* the threat of "*major*" social problems or "*serious*" economic deterioration;
- Limits recourse to the safeguard clause for the protection of infant industries

- to the next 10 years only and this limitation is not subject to specific consultations at the end of the period to assess the appropriateness of extending the availability of this rationale for invoking the clause;
- Limits the notion of infant industry to existing industries (however incipient). However, it is clear that it does not cover a case where imports are delaying or hindering the development of an industry which still does not exist (a concept akin to that of material retardation under WTO anti-dumping rules).
 - Imposes unnecessary hurdles to have recourse to safeguard measures in case of difficulties related to the availability of or accessibility to food (food security). In fact, cumulative conditions require problems of “*availability*” of food and that the occurrence or threat of “*major difficulties*”;
 - Limits safeguard measures to an increase in the import duty only to the level of the WTO bound MFN rate. While that is logical (since it is a bilateral safeguard, not multilateral) this could seriously restrict the remedy that EPA safeguard measures can provide in specific circumstances, particularly after the MFN reduction negotiated under the WTO Doha Round are implemented;
 - Requires measures applied for over one year to contain “*clear elements*” leading to their phase out (e.g. a schedule for the elimination of a measure and return to the agreed EPA import duty rate). This obligation may prove burdensome since they have to be negotiated and agreed to by both parties.

26. It is interesting to note that the EU has reserved itself recourse to a much more powerful safeguard mechanism for sugar products. In fact, paragraph 6 of Annex 1 concerning transitional measures for the liberalisation of sugar imports to the EU identifies the specific circumstances which may justify the imposition of a safeguard measure. By stipulating the level of fall in the price of sugar in the EU market and by requiring a price fall to occur over only two consecutive months, the Annex creates conditions for an automatic trigger of safeguard measures. While the mechanism remains very circumscribed (few tariff lines), what should be noted is that this level of certainty in corrective measures is unmatched by the general safeguard mechanism available to CARIFORUM or other ACP countries.

27. In the context of the WTO Agricultural negotiations, a large group of developing countries, including the ACP, have insisted on the need to introduce a Special Safeguard Mechanism (SSM) as part of a revised Agreement on Agriculture. The need for such a mechanism for developing countries has been recognized by all WTO Members and its incorporation in a revised Agreement has already been secured.

28. WTO Members have already defined key features of such mechanism. One fundamental element agreed to is its automaticity, meaning that the importing developing country does not need to prove injury or the existence of any other circumstances before invoking the mechanism. Given the asymmetries

that oppose the ACP and EU negotiating, administrative and investigative capacity, automaticity is a fundamental element that ensures the simplicity and accessibility of a safeguard mechanism.

29. In addition, the WTO Special Safeguard Mechanism will be available for use exclusively by developing countries. By contrast, access to the special agriculture safeguard (Article 5 of the Agreement on Agriculture), which currently exists, is set to expire for developed countries, including the EU.

30. Elements of the WTO SSM proposal by developing countries at the Doha round could be usefully included in the EPAs without compromising the compatibility of these agreements with WTO rules. On both these counts, automaticity of the safeguard measure and asymmetrical application would be useful for many of the ACP countries, especially taking into account the large disparities in the conditions of the agriculture sector in the ACP countries and the European Union. ACP countries may thus consider introducing such a mechanism in the EPAs, to the extent that the product coverage of the agreements includes agricultural products.

III. ANALYSIS OF SELECTED DEVELOPMENTAL IMPLICATIONS

31. The level of market openness required by EPAs, the inclusion of specific provisions related to trade in goods, as well as the fact that several agreements were initialled with individual countries (as opposed to regions) could result in serious implementation and adjustment challenges for ACP governments and productive sectors. The implementation of the texts initialled is likely to have a direct impact particularly over:

- a. Fiscal revenues;
- b. Policy space available for ACP governments to promote public policy objectives such as economic diversification, the promotion of new industries, and food security;
- c. The capacity of ACP countries to pursue regional economic integration objectives

32. As a result, the implementation of EPA texts could not only lead to detrimental or unforeseen negative consequences for the development of ACP states, but could actually negate the developmental objectives these texts uphold.

A. Losses of Fiscal Revenue

33. There is a reasonable level of awareness about the possible financial consequences that tariff elimination under the EPA could have on resource poor

ACP governments who are particularly dependent on customs duties¹⁷. The EC has, in the course of negotiations, come to acknowledge these difficulties and has offered to cooperate, through financial or non-financial instruments, to absorb the “*net fiscal impact*”¹⁸ of EPAs. The difficulty for ACP negotiators in this respect has consisted of:

- a. how to identify and protect the most sensitive tariff lines which are sources of fiscal revenue and how to assess the volumes of aid and the magnitude of reforms needed in order to formulate specific requests to the EU;
- b. how to sequence fiscal reforms and tariff elimination, so that the fiscal base and tax regime of ACP governments is broad enough and sustainable to absorb smoothly the shortfalls in the collection of customs duties during the tariff reduction and elimination process; and,
- c. how to lock in the availability of financial and non-financial cooperation instruments in the EPAs in order to balance the ACP time-bound compulsory tariff elimination process with the EU’s best endeavour commitments regarding assistance.

34. The extent to which the initialled EPA texts respond to these preoccupations varies. While the issue of fiscal impact of EPAs is explicitly acknowledged, the actual treatment given to the problem is less than satisfactory. First, with respect to the first point (a), the CARIFORUM text includes a few noteworthy palliative measures:

- CARIFORUM countries have established their calendar for tariff reductions and elimination that takes into account the fiscal sensitivity of tariff lines for the countries of the region;
- The elimination of border instruments which are important from a fiscal point of view is progressive. Not only through a 25-year period for import duties, but also through a limited (3 years) period for the elimination of export taxes. Moreover, CARIFORUM countries have obtained a 10-year exemption for the application of certain taxes imposed on imports (different from import duties) as long as such taxes were already applied on the date of signature of the EPA and as long as these are applied to all imports (not only the EU’s);
- The level of customs duties agreed to under the EPAs (standstill clause) may be altered upon approval by the CARIFORUM-EC Trade ad

¹⁷ For a detailed analysis of the fiscal impact that EPAs could have, please refer, for instance, to “*EPA Fact Sheet 3: Trade liberalisation and the difficult shift towards reciprocity in the EPAs*”, South Centre, (2007). Available at: <http://www.southcentre.org/TDP/newpublistothers.htm>

¹⁸ See, for instance, the declaration of EU-West Africa Chief Negotiators Meeting on the point, where the EC agrees “*to significantly contribute to absorb the net fiscal impact resulting from EPA liberalization in full complementarity with fiscal reforms*”, Available at: http://trade.ec.europa.eu/doclib/docs/2007/february/tradoc_133250.pdf

Development Committee upon request from the poorest Caribbean Members¹⁹. It must be noted, however, that this creates a flexibility concerning the rate of a specific import tariff, but it does not comprise the possibility of further extending the time period for tariff reductions;

35. Second, however, the texts initialled at the end of 2007 establish no formal link between fiscal reforms and tariff reductions (point (b)). ACP governments having initialled an agreement need to, presumably, utilise the 1 or 2 year moratorium before tariff reductions start and the subsequent years of phased-in reductions to undertake the necessary reforms. Two elements would have significantly improved EPA texts in this respect:

- A clause , either subject to the procedures established by the EPA safeguard mechanism or separate from it, allowing the possibility of suspending the tariff liberalisation schedule with respect to fiscal-sensitive tariff lines when important fiscal shortfalls are foreseen;
- A general conditional staged liberalisation schedule, incorporating the need to attain clear developmental benchmarks before moving to a successive stage of liberalisation. This type of mechanism had been evoked by some ACP regions but has been included in none of the texts concluded.

36. Finally, and perhaps most striking, the language used for financial or non-financial assistance to support fiscal reforms is very limited and creates no clear obligation on the EU. Such “best endeavour” or non binding language contrasts with the clear obligations weighing on the ACP regarding the elimination of tariffs, other charges or fees, and export taxes. In the Caribbean text, for instance, capacity and institution building to improve tax management is clearly identified as a priority for

Box 3: Cooperation on fiscal matters, CARIFORUM EPA text

Part I - Article 8 (ii): Cooperation Priorities
The provision of assistance for capacity and institution building for fiscal reform in order to strengthen tax administration and improve the collection of tax revenues with a view to shifting dependence from tariffs and other duties and changes to other forms of indirect taxation;

Part II, Title 1, Chap.1 - Article 14: Cooperation

1. *The Parties recognize the importance of cooperation in order to strengthen tax administration and improve the collection of tax revenues.*

2. *Subject to the provisions of Article 7 of Part I of this Agreement, the Parties agree to cooperate, including by facilitating support, in the following areas:*

- (a) *technical assistance in the area of fiscal reform with a view to shifting dependence from tariff and other duties and charges to other forms of indirect taxation; and*
- (b) *capacity and institution building in regard to the measures outlined in (a) above*

¹⁹ Antigua and Barbuda, Belize, Dominica, Grenada, Guyana, Haiti, Saint Lucia, Saint Vincent and the Grenadines and Saint Christopher and Nevis (Part II, Title I, Chapter I, Art. 9).

cooperation (Part I, art. 8), but the article that spells out the modalities of that cooperation (Part II - Title 1, Chapter 1 - Article 14) limits the scope of cooperation to technical assistance only and general capacity building measures (arguably, for instance, an exchange of information regarding best practices). That language seems to exclude financial assistance, such as, for instance, temporary budget support.

37. This is also worrying since empirical experience has demonstrated that even after fiscal reforms governments are generally unable to recover the totality of resources previously collected through tariffs²⁰.

B. Policy Space to implement development policies

38. Free trade agreement negotiations, because they aim at liberalising trade through the removal of trade barriers, necessarily entail some degree of loss of policy space (Box. 4). However, the degree to which international trade negotiations may restrict or prohibit the use of policy instruments varies from one agreement to the other. As has already been noted about the EPAs initialled in the last hours of 2007, the scope and contents of the texts encompass a level of liberalisation that goes well beyond what would have been purely required by multilateral trade rules (WTO-plus

Box 4: Policy Space: variable geometry and freedom of choice

The universe of available policy measures for development varies considerably among countries. Choices may be reduced or enhanced depending on the political, financial, human, institutional, infrastructural, and environmental resources that are domestically available. For many developing countries, limitations on these domestic resources often reduce their available policy choices. These policy choices may sometimes also be limited by various obligations deriving from international commitments

For this reason, policy space is about freedom of choice. For developing countries, it is about their freedom to choose the best mix of policies possible for achieving sustainable and equitable economic development given their unique conditions. It reflects the idea that governments should have the leeway to evaluate the trade-off between the benefits of accepting international rules and the constraints posed by such rules on the national normative capacity.

Source: *Policy Space for the Development of the South*, South Centre (2005), available at: <http://www.southcentre.org/info/policybrief/01PolicySpace.pdf>

aspect). As a consequence, the loss of policy space that the implementation of EPAs will entail is unprecedented for the ACP governments that have initialled these agreements.

39. In fact, not only do EPAs require the gradual, but complete elimination of

²⁰ Value added tax has been able to compensate for only 45-60 per cent of the revenue lost from the revenue lost from trade liberalisation in middle-income countries and only about 30 per cent of the revenue lost in low-income countries. The Least Developed Countries Report, UNCTAD (2006) at p.107.

import duties on the bulk of tariff lines (90% of lines for the CARIFORUM text). They also require the elimination (or a standstill) of export taxes and other charges. Since these measures constitute some of the most frequently used policy instruments in the implementation of economic and sectoral development policies, the EPAs place real restrictions to the regulation of trade in goods.²¹

i. Industrial development and economic diversification

40. For instance, it has been noted that the rationale for the designation of sensitive products (longer implementation periods) or exclusions lists consisted mostly of static considerations, such as the commercial sensitivity of current industries. Tariff protection (through sensitive or excluded products) was not retained for promising industrial or manufacturing sectors where production still does not exist. This means that future policies to promote the development of new productive sectors will not be able to incorporate a selective tariff protection element, typical of these policies and largely used in the past by today's developed countries²².

41. Although, tariff policy is not the only mechanism available to governments to help industrial development, it can play an important part of a government's policy strategy, particularly in resource-constrained countries where access to other instruments is scarce. For instance, ACP countries typically do not have resources to subsidise their production or to support the income of their producers. Tariffs, in contrast, are easy to establish and administer and can be effective in protecting priority sectors or products. These restrictions could be all the more significant since other instruments used to implement economic diversification and industrialisation policies (e.g. competition) could be the object of additional restrictions under EPA negotiations (under the *rendez-vous* clause).

42. In this respect, the aspects of current EPA texts regarding economic diversification generally and industrialisation in particular are a missed opportunity to tackle some of the real difficulties that ACP and especially African countries face in promoting manufacturing and value addition. Moreover, they

²¹ It can be noted, for instance, that the European insistence to prohibit or impose a freeze on the utilization of export taxes was one of the main elements which hindered Namibia from originally signing and interim EPA. For several governments, the concern over export taxes is not limited to its fiscal aspect, but also covers an important normative dimension within policies aimed at stimulating movement up the value chain. Namibia only signed the agreement after it had reserved the right not to implement it in case that prohibition is not lifted, among other things. Please see "*EPA negotiations, SADC configuration: Executive brief*", CTA (2008) for a discussion. Also refer to the *Statement by Namibian Ministry of Trade and Industry on the initialling of an interim EPA* (13 December 2007) http://www.acp-eu-trade.org/library/files/MTI_EN_131207_MTI_Media-release.pdf

²² On the selective utilisation of tariffs by developed and developing countries, see, for instance: "*Why developing countries need tariffs?*" South Centre (2005). Available at: <http://www.southcentre.org/TDP/newpublistnama.htm>

are a missed opportunity to reinforce the African Union Action Plan to accelerate Africa's Industrial Development.²³

43. It is worth underscoring that, the initialled texts will tend to reinforce the traditional terms of trade between ACP countries and the EU. In other words, the texts improve (marginally) the conditions of market access for primary agricultural commodities (e.g. sugar, rum, beef), but also increases the permeability of ACP markets to higher value added European processed or industrial products. Over thirty years of preferential tariff treatment were insufficient to foster an increase of ACP manufactured or processed exports into the EC. This reflects the fact that persisting non-tariff barriers also act as market barriers (e.g. SPS and TBT measures). It also reflects the fact that countries may simply not seize market access opportunities for lack of productive capacity, underscoring the need for targeted and specific sector or firm support policies. Nevertheless, EPA language on both non-tariff measures and on sectoral promotion is very weak. This is a source of concern not only for the overall orientation that economic development may take in ACP regions, but is also a real source of concern for less competitive producers of processed goods who could face difficulties due to greater import competition. Since a major engine for the negotiation of EPAs was to create an instrument for economic diversification, the results of the EPA could run counter to its imputed objectives.

44. In fact, it should be noted that, while the Caribbean region will need to implement its tariff reduction commitments over an extended time period, a transformation of the region's productive sector will depend from the capacity of private sector and governmental actors to promote greater competitiveness in the region before tariff elimination is due. Longer implementation periods are not useful unless governments are able to use extra time usefully. It is in this respect that easy and secure access to a safeguard mechanism is important. In addition, it could have been strategic to incorporate development benchmarks to review the impact of the EPA implementation in signatory countries. It also implies that the delivery of EU financial assistance and regional efforts to mobilise resources to modernise priority productive sectors will largely determine the usefulness of extended implementation periods.

ii. Agricultural protection and food security

45. As far as priority sectors are concerned, a major preoccupation of all ACP countries, including CARIFORUM states, had been to protect agricultural produce from European competition. This has motivated the exclusion of many, sometimes most, agricultural products from EPA schedules. Impacts on

²³ See, for instance, the specific objectives of the Action Plan which were reiterated at the African Union Summit (January - February 2008) in the AU Declaration on Africa's Industrial Development. Available at: http://www.africa-union.org/root/au/Conferences/2008/january/summit/docs/decisions/Assembly_Decisions_171-191.pdf

agriculture - and hence rural livelihood - could, indeed, be real since the agricultural sector in most ACP states operates under high production costs, lack economies of scale to compete with larger producers and, worryingly, often experience a decrease in productivity as attested by the significance of agricultural imports in total agricultural trade (table 6 for CARIFORUM countries) and by the frequency of import surges (table 7 for the ACP generally). Agricultural production and food security in Africa is of particular concern.

Table 6: Agricultural imports in total agricultural trade (average for 2001-2003), CARIFORUM countries

	Imports	Exports	Imports / Total trade ratio
	(million USD)		
Antigua and Barbuda	30	1	0.97
Bahamas	249	45	0.85
Barbados	169	71	0.71
Belize	70	118	0.37
Dominica	29	15	0.66
Grenada	35	18	0.66
Guyana	90	177	0.34
Jamaica	455	289	0.61
Saint Kitts and Nevis	41	7	0.86
Saint Lucia	69	32	0.68
Saint Vincent & Grenadines	40	27	0.6
Suriname	93	28	0.77
Trinidad and Tobago	372	193	0.66
CARICOM	1,742	1,020	0.63
Dominican Republic	798	604	0.57
Haiti	419	20	0.96
CARIFORUM	2,959	1,644	0.64
LDCs	10,208	4,734	0.68
Developing countries	157,895	154,707	0.51
<i>Source: Deep Ford, J.R., dell' Aquila, Cresenzo and Conforti, Piero. Agricultural Trade Policy and Food Security in the Caribbean. FAO, 2007</i>			

Table 7: Agricultural import surges in selected ACP countries²⁴

No of surges 1982-2003	ACP countries affected
70-79	Angola, Botswana, Cape Verde, Comoros, Democratic Republic of Congo, Dominican Republic, Ethiopia, Guinea, Haiti, Liberia, Mozambique, Papua New Guinea and Rwanda

²⁴ Import surges defined as a 30 percent deviation from 3-year moving average (first 4 rows) or calculated on the basis of WTO volume-based methodology for SSG (3 bottom rows).

80-89	Burkina Faso, Cameroon, Republic of Congo, Madagascar, Mali, Niger, Senegal, Sudan, Togo and Uganda
90-99	Benin, Central African Rep., Mauritania, Tanzania and Zambia
100-130	Ghana, Kenya, Malawi, Nigeria and Zimbabwe
120-129	Comoros, Cote d'Ivoire, Egypt, Madagascar, Saint Lucia, Swaziland and Tuvalu
130-139	Barbados, Cuba, Malawi, Mauritania, Rwanda and Senegal
140-170	Angola, Benin, Botswana, Cameroon, Cape Verde, Rep. of Congo, Gabon, Gambia, Ghana, Haiti, Liberia, Mauritius, Papua New Guinea, Togo, Trinidad and Tobago and Zimbabwe
Source: <i>Import surges: what is their frequency and which are the countries and commodities most affected.</i> FAO (2006)	

46. Moreover, while the EU offered to eliminate export subsidies on agricultural products liberalised under EPAs, it refused to discuss domestic subsidies, which could prove equally harmful for the ACP. In the CARIFORUM EPA, nevertheless, most products heavily subsidised under the European Common Agricultural Policy (CAP) were excluded from liberalisation commitments²⁵. An exception, for instance, is skimmed milk powder, which has been excluded from the CARICOM market access offer but which will be liberalised by the Dominican Republic²⁶.

C. Regional Integration

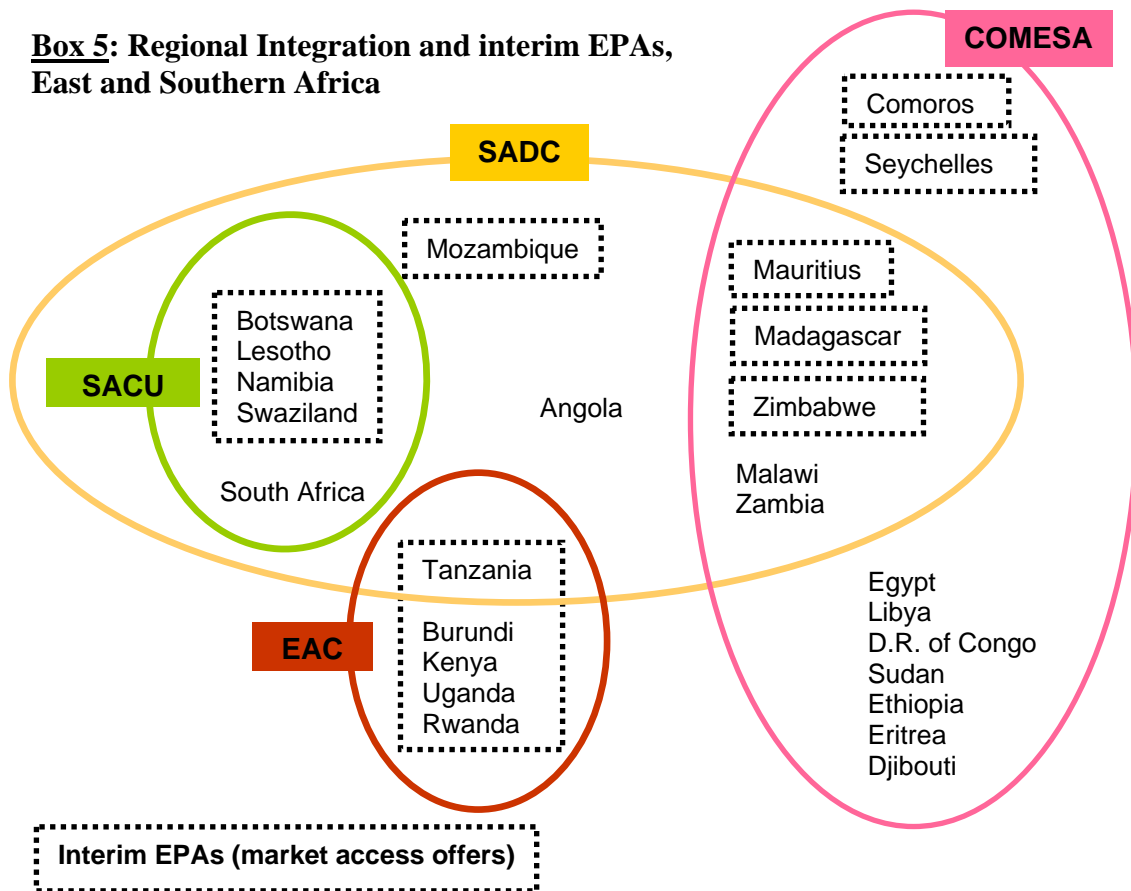
47. Notwithstanding the intention to use the EPA process as a catalysing instrument to strengthen regional economic integration processes, the conclusion of interim EPAs by individual ACP states could have the opposite effect, particularly in Africa.

48. As a matter of fact, only the EAC and CARIFORUM have maintained a coherent configuration, corresponding to ongoing integration efforts. In the case of the EAC, however, the impact of a separate interim EPA are harder to evaluate since some EAC Member States are also party to other regional integration processes, as is the case of Tanzania, who is a member of SADC, and of Burundi, Kenya, Rwanda and Uganda, who are also members of COMESA. Hence, the plans for the establishment of a common market and custom union amidst COMESA countries have been put in particular jeopardy by the finalisation of a separate agreement by EAC countries as well as by individual COMESA Member States (Box 5).

²⁵ The products subject to greatest subsidisation in Europe (Amber Box product-specific trade distorting support 2001-2002 and 2003-2004) are: Beef and white sugar followed by: butter, olive oil, apples, tomatoes, barley, skimmed milk powder and common wheat. Source: Kasteng, Jonas. *Agriculture and Development in the EPA negotiations*. Swedish Board of Agriculture, December 2006.

²⁶ Market access conditions for EU milk powder imports into the Dominican Republic were subject to a separate Appendix to Annex 2. The Appendix stipulates the liberalisation of 3 milk products through a gradual increase in tariff rate quotas by the Dominican Republic over 15 years.

**Box 5: Regional Integration and interim EPAs,
 East and Southern Africa**



49. A related consequence is that there are real chances that initialled agreements will have a direct impact on countries which have taken the decision not to initial an interim EPA with the EC. This is of course the case when regional integration plans have been affected, but also where a common market or a custom union is already in place and one member to the grouping initialled an agreement individually.

50. This was particularly the case of West and Central Africa. In West Africa, Ivory Coast initialled an interim EPA despite being a member of WAEMU (a customs union). In Central Africa, Cameroon initialled an agreement despite being a member of CEMAC. This means that, unless border controls are reinstated between members of WAEMU or CEMAC, the liberalisation schemes agreed under interim EPAs are likely to have a direct impact on neighbour countries who have decided not to initial a deal. In other words, once duties on European imports to Ivory Coast or Cameroon are reduced, European products would be able to circulate without restrictions within WAEMU or CEMAC respectively, unless other parties to these agreements are able to control imported goods at the border and collect relevant duties on goods originating in the EU. Given the porosity of borders due to smuggling, limited personnel and poor customs administration, there are real chances that EU goods will circulate freely in countries who have not signed an interim EPA.

51. In the case of CARIFORUM countries, similar problems could arise because of a few differences in the region's market access offer to the EU. In fact, while Caribbean countries have signed a single EPA, there are some divergences in the base rates agreed to by some countries, which implies that, during the implementation period, different tariff rates would be applicable to a same EU product depending on its market of entry in the Caribbean region²⁷.

52. In addition, and more problematic, are specific instances (125 tariff lines), in which products excluded from the EPAs by CARICOM countries were the object of liberalisation commitments by the Dominican Republic (Table 8). The *Agreement Establishing the Free Trade Area* between CARICOM countries and the Dominican Republic, signed on 22 August 1998, has liberalized trade in the region (with some exceptions) and contains rules of origin for products circulated in the region. This, coupled with the fact that the countries of CARIFORUM are mostly islands with reasonable customs administration capacity, reduces the probability of EU goods circulating freely despite negotiated restrictions. However, the border between the Dominican Republic and Haiti, the region's only LDC, could constitute a source of concern during the implementation period (were tariff base rates are different) or after implementation (for products excluded on one side of the border but not on the other).

Table 8: CARICOM - Dominican Republic Tariff elimination schedule, examples

	Tariff line		CARICOM		Dominican Rep.	
	HS6	Description	Implementation	Base rate	Implementation	Base rate
1	0306.13	Frozen Shrimps And Prawns	Excluded		10 years	20%
2	8450.12	Washing Machines	25 years	25%	Zero	

IV. IMPROVEMENTS AND LESSONS TO BE DRAWN

53. The EPA texts that have been initialled already by CARIFORUM countries and other twenty ACP countries create an unavoidable precedent and constitute a template for all other ACP countries engaged in the EPA negotiating process. For this reason, it is crucial that the current texts be improved as much as possible before their signature, notification to the WTO and definitive

²⁷ The Dominican Republic granted the EU similar access to that granted to the USA under the DR-CAFTA, with very few exceptions. This is equivalent to a higher degree of market openness than that offered by CARICOM countries. See for instance, the speech by Dominican Republic Ambassador to Brussels regarding the conclusion of an EPA. Available at: http://trade.ec.europa.eu/doclib/docs/2008/february/tradoc_137755.pdf

implementation. As discussed above, there are several possible changes to the texts that could significantly improve their developmental impact. This is in line with the numerous recent calls from African governments, the African Union, and ACP and European civil society groups for a revision of these texts²⁸.

54. Possible improvements include (i) eliminating measures which are not needed to ensure WTO compatibility and which are questionable from the point of view of development or regional integration; (ii) improving the text to regain policy space within the limits of WTO compatibility, and (iii) align all texts to the best terms negotiated by the EC with specific regions.

i. Elimination of detrimental provisions which are not needed for WTO compatibility

55. A non exhaustive list of clauses which are controversial from the point of view of ACP countries' development or regional integration include:

- a. Third Party MFN Clause: These clauses are not necessary and could in fact be inconsistent with the spirit of certain WTO flexibilities. If included, their scope should exclude other ACP or African countries (e.g. EAC text) or could be amended to require not automatic extension of benefits, but simply consultations about whether or not to extend more favourable treatment to each other (only for the South Africa-EC parties in the SADC text);
- b. Standstill clause: WTO rules stipulate that liberalisation should occur over a reasonable length of time, but contains no obligation that would hinder countries from back-loading their commitments or utilising selective tariff protection (within the limits of MFN rates) during the implementation period.
- c. Restrictions on export taxes: export taxes are not prohibited under WTO agreements and, despite pressure for a restriction in that sense; developing country WTO members have resisted arguing these measures are needed for their development. There is no reason why access to these instruments should be restricted under an agreement that claims to promote development and economic diversification.
- d. Free circulation: while EPAs should certainly aim at the free movement of liberalised goods between ACP and EU parties, creating obligations in that respect with binding language subject to a dispute settlement mechanism is unnecessary. These clauses can be amended to merely recall this objective (CARIFORUM text) and stress the need for greater cooperation regarding customs administration to that end.

²⁸ The African Union, for instance, called "for the review of the interim EPAs, in line with the concerns raised by African Heads of State during the Second Africa-EU Summit"; AU declaration on the EPAs. See Supra at footnote 23.

ii Improvements to regain policy space within the limits of WTO compatibility

56. The capacity of ACP governments to enact policies aimed at a modernisation and diversification of production, as well as their capacity to intervene in favour of sectors detrimentally affected by market opening rely on the availability of and accessibility to adequate policy instruments. In this respect, the following improvements could be made to current EPA texts:

- e. Recognition of public policy objectives: to justify the imposition of safeguard measures or the revision of tariff liberalisation schedules. There should be a clear recognition of objectives such as food security, infant industry protection or the development of new industries.
- f. Improvements to the EPA safeguard mechanism: given the asymmetries that oppose EU and ACP countries, obligations to consult parties or to jointly examine the need to impose safeguard measures are likely to disadvantage ACP governments or dissuade them from utilising these measures. While transparency and the progressive elimination of safeguard measures are needed, greater simplification of the language of these clauses would be welcome and entirely WTO compatible (as far as duties can be raised up to the MFN tariff rates).
- g. Back-loading: regions should explore more consistently the possibility of reducing their tariffs at the end of the implementation period, not at its beginning. Countries can also explore the possibility of rejecting yearly equal rate reductions and staging tariff elimination over longer (e.g. 5 year) periods.
- h. Staged liberalisation and benchmarking: the possibility of undertaking mid-term assessments before moving to successive stages of liberalisation can be explored. The conditional staging of liberalisation need not be incompatible with WTO rules as long as the overall implementation period is maintained.
- i. Strengthen technical and financial assistance language: while the EPA texts that were initialled recognise that technical and financial cooperation are essential elements of the EPA developmental dimension, they offer little certainty about the availability of funds for specific needs. Greater certainty entails as specific as possible an identification of needs (the CARIFORUM text contains good examples of formulation of areas for cooperation under the specific sections). Greater certainty would also entail including assistance aspects in any assessment of the EPA operation.
- j. Monitoring and evaluation: the texts that have been initialled do not include general procedures for a built-in revision of the impact of EPA implementation. Requirements regarding an assessment of

the impacts of the EPAs are essential to ensure guarantee they are development friendly. This entails the possibility of revising or suspending the application of specific clauses in case detrimental impacts are found.

iii Extend most preferential terms to all regions desiring changes to the texts

57. As has been noted, different terms were negotiated with different ACP regions, reflecting these region's diverging interests, but also as a result of the region's negotiating skills during the finalisation of texts. Before signature of EPAs, it would be desirable to grant regions and countries having initialled an interim text to review other texts with a view to harmonising certain clauses were appropriate and benefiting from more favourable terms whenever possible. Some suggested areas for improvement across all EPA texts include:

- k. Revision of tariff schedules: while agreement stipulate that no new customs duties on imports shall be applied, some include the possibility of revising tariff schedule commitments to account for specific circumstances, such as the needs of least or less developed ACP states (Cariforum EPA text) or the implementation of the Common External Tariff regime in a Customs Union (Ivory Coast and Ghana, Political Declaration of the Negotiators during the initialling of stepping stone EPA)
- l. Implementation periods: in line with the ACP WTO proposal regarding flexibilities for developing countries in the application of art. XXIV of GATT, implementation periods should extend beyond fifteen years for all regions or countries that so wish. The twenty-five year period granted to the EAC and CARIFORUM governments prove that longer periods may be useful and that the EU would defend their conformity vis-à-vis WTO rules.

V. CONCLUSION

58. The scope and extent of liberalisation of trade in goods under the EPAs is unprecedented for ACP governments, highlighting the *WTO-plus* aspect of EPAs, even with relation to the core provisions regulating trade in goods. These agreements will entail major challenges, both for governments implementing the EPA required reforms and for the private sector trying to adjust to new competition conditions. The capacity of current EPA texts, either interim or comprehensive in the case of the Caribbean region, to yield the objectives intended depend, however, on several variables outside the scope of these texts.

59. For instance, the improvement of the terms of EU-ACP through economic diversification and a higher value addition of exports depend on the capacity of the private sector to innovate towards new segments of the value chain, which in

turns require ACP governments to enact supporting policies. Similarly, the capacity of firms to utilise greater competition from European products to modernise and gain competitiveness also depends on the availability of finance, workers retraining and skills development, and governmental incentives.

60. Because of the importance of accompanying measures, including technical and financial assistance, in promoting the realisation of EPA objectives, it is unfortunate that the focus of current EPA texts is on binding market opening, not on equivalent binding assistance provisions.

READERSHIP SURVEY QUESTIONNAIRE
South Centre Analytical Note

Market Access for Trade in Goods in Economic Partnership Agreements (EPAs)

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