

**WEST AFRICA EPA NEGOTIATIONS:
PRELIMINARY COMMENTS ON THE EC "DRAFT
EPA TEXT FOR WEST AFRICA"**

SYNOPSIS

On 04 April 2007, the European Commission has proposed a draft text for the negotiation of an Economic Partnership Agreement (EPAs) between governments of the European Union and of West Africa. The draft constitutes an unilateral proposal by the European Community and has not been agreed to by West Africa. This note comments on a selection of the most salient aspects of that text and its implications for West African countries.

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WEST AFRICA EPA NEGOTIATIONS: PRELIMINARY COMMENTS ON THE EC "DRAFT EPA TEXT FOR WEST AFRICA"

INTRODUCTION

1. On 04 April 2007, the European Commission has proposed a draft text for the negotiation of an Economic Partnership Agreement (EPAs) between governments of the European Union (EU) and of West Africa (ECOWAS and Mauritania)¹. The draft is a detailed document although several sections, some of which are fundamentally important, are yet to be completed.
2. This note comments on a selection of the most salient aspects of that text and its implications for West African countries.
3. It is worth mentioning, however, that the text constitutes an unilateral proposal by the European Community and that it has not been agreed to by West Africa. Neither has there been agreement that the text should constitute the common negotiating base for further discussions. As a matter of fact, ECOWAS has put forward its own negotiating framework text, which now needs to be accepted by the EC for it to be filling in.

II. STRUCTURE AND SCOPE OF THE PROPOSED EPA

4. The most glaring feature of the text proposed by the EC² is that its structure is heavily unbalanced towards rules elements: it comprises almost exclusively provisions concerning trade-related rules and their enforcement, but no provisions regarding the sequencing, pacing and extent of tariff and non-tariff liberalisation (the relevant annexes are yet to be completed). Similarly, it includes only very few, if any at all, concrete content on the cooperation sections. Finally, the EU proposal for liberalisation on trade in services and for rules on investment and electronic commerce are yet to be completed.
5. It is not totally surprising that some elements are missing from the EC proposal, as they amount to some of the most controversial aspects of the EPA negotiations and an unilateral request from the EC could have led to a further deterioration of the EC relationship with West African negotiators. Moreover, the approach followed by the European Commission in its first draft text confirms that one of the primary interests of the EC in the EPA negotiations is the

¹ Draft as submitted on 04 April 2007 by the European Commission: "Draft EPA text for West Africa".

² The communication accompanying the text itself affirms that the EC has utilized a similar framework in its negotiations with CARIFORUM.

promotion of a framework of trade-related rules through trade agreements.

6. This strategy would allow the EU to set a precedent for future trade negotiations with other countries and the fact that smaller, ACP countries have accepted such regulatory frameworks would amount to compelling evidence that larger countries ought to do the same. Moreover, it would give the EU a constant competitive advantage in markets which apply an intricate set of trade rules and standards aligned to those of the EU.

7. A comprehensive analysis of the EC's interests in the region – particularly relating to market access – cannot be made until other areas of the agreement are complete such as the schedules of tariff reduction and elimination (including the number and enumeration of products excluded) and the EC request on trade in services.

8. Another marked feature of the proposed draft text is that its scope is extremely large. In addition to the liberalisation of trade in goods (elimination or reduction of tariff and non-tariff barriers), the text proposes binding disciplines on several areas, some of which are quite weakly related to trade, including:

- a. Customs administration and cooperation;
- b. Harmonisation of technical norms and measures at the regional level;
- c. Environmental policy;
- d. Social policy;
- e. Personal data protection;
- f. Establishment (investment) (to be completed);
- g. Liberalisation of and regulatory framework for trade in services (to be completed)
- h. Liberalisation of capital flows;
- i. Competition;
- j. Intellectual Property;
- k. Public (government) procurement;
- l. Cooperation, exchange of information and some obligations on fiscal (tax) policy;

9. There are numerous consequences of such a broad scope. The first is that it confirms that the proposed Economic Partnership Agreements would be “WTO-plus”. This is quite obvious since the EPA constitutes a Free Trade Agreement (FTA) and one of the primary motivations for concluding a FTA is to seek greater market access than that obtained through Most Favoured Nation (MFN) treatment. This entails “going beyond” what is already required under multilateral rules and agreeing to greater liberalisation than otherwise required multilaterally.

10. However, the extent to which the EC-proposed is WTO-plus is quite impressive, as can be seen from a comparison between WTO provisions and EC-

proposed obligations (Annex 1 to this note). The EPA as proposed by the EC would require West African countries to adopt, implement and ensure enforcement of far-reaching rules, which either are not covered under WTO Agreements (e.g. Investment, Government Procurement) or which would increase the stringency of obligations currently required under the WTO agreements (e.g. market access elements such as tariff elimination and the proposed prohibition of export taxes).

III. THE COSTS OF IMPLEMENTATION OF THE EC TEXT

11. A fundamental and direct consequence of the large scope of the proposed West African EPA relates to the costs of implementation of the proposed agreement. Costs can be split into two categories. The first relates to the costs that governments, the society and the economy as a whole may incur and which flow from the implementation of the EPA requirements. These can be referred to as adjustment costs and include, for instance, the likely loss of government fiscal revenue due to the elimination of import duties and export taxes. The second type of costs concerns the costs of actually setting up new institutions, enacting new legislation or reforming existing legislation, monitoring implementation through various governmental agencies, enforcing specific obligations, participating in dispute resolution, etc.

12. A full consideration of the first type of costs depends on the final contours of the EPA and is directly linked to the level and pace of liberalisation expected under the EPA. The faster the pace and wider the scope of trade liberalisation, the greater the challenges to which West African productive sectors and employment will be subject to. However, a liberalisation scenario cannot be drawn from the EC text.

13. Nonetheless, the second type of costs relating to the “domestication” of the reforms, legislations and institutions required under the EPA are already foreseeable – although not quantifiable – from the text proposed by the EC, and are likely to be very substantial. This is so particularly because many provisions proposed by the EC build on the premise that – and would indeed require that – both parties have a strong administrative capacity to implement, manage, and enforce the EPA obligations. The provisions require changes that can be quite far-reaching to existing legislation (e.g. fiscal policy) or the enactment of several new areas of legislation (e.g. environmental policy).

14. Furthermore, the proposed text also creates several detailed administrative obligations which could be quite draining for resource-poor West African countries such as, for instance obligations to provide information or data on a timely manner. This also includes obligations to set up authorities or bodies with

specific attributions, such as a Competition authority, and specifies the deadlines for establishment of such bodies (5 years in the case of competition).

15. Moreover, the text includes a clear overriding obligation to “*adopt any general or specific measures required [...] to fulfil their obligations under this Agreement*” (Part VI, art. 1(5)). This obligation, together with a vast and wide-ranging set of obligations as well as with a detailed dispute settlement mechanism, provide for a very wide set of obligations, which could prove extremely challenging for West African governments. This is even more so as the text does not specify what the EU contribution – technical or financial – would be to assist countries of the region to meet these obligations.

IV. DEVELOPMENT, COOPERATION AND AID

16. While development has been repeatedly defined as a fundamental engine of the EPA negotiations, the EC-proposed text reflects a narrow understanding of how the EPA can contribute to its realisation. Development is the heading of one article which does not contain any specific obligation and merely affirms that EPA parties will “*continuously monitor the operation of the Agreement [...], to cooperate in order to maximise the benefits [...] deriving from their Partnership and to consult each other promptly over any problem arising*” (“Sustainable Development”, Part I, Chapter I, art.3).

17. The text seems to reflect the vision that the developmental gains from the EPA will come precisely (and solely) from the proper application and enforcement of the provisions of the Agreement. That view is corroborated from the fact that development cooperation is drafted in broad terms, aiming at the implementation of the Agreement (Part I, Chapter I, art.8). This lack of meaningful or concrete proposals for cooperation contrasts with the overall objectives of the Agreement, which were set in ambitious terms: support regional integration, foster sustainable and people-centred development, promote the gradual integration of West Africa into the world economy, etc.

18. According to the text, developmental cooperation can take “*financial and non-financial forms*”. While there are few proposals for concrete forms of non-financial cooperation (e.g. exchange of experience and best practices), the text carefully omits any mention of financial cooperation. This is in line with the European Commission’s argument that aid should be externalised. That is, that financial aspects relating to the EPA should be discussed separately, through, *inter alia*, the Regional Preparatory Task Force (RPTF), a Regional EPA Fund, Aid for Trade, and discussions for the programming of the next European Development Fund (EDF).

19. In addition, the EC-proposed text carefully avoids referring explicitly to or directly integrating these instruments into the West African EPA. Most areas of

cooperation are framed as best endeavour clauses only and seldom do they propose specific or concrete action.

20. One case in point is the enumeration of “*Upgrading of the competitiveness of productive sectors in West Africa concerned by the EPA*” (Part I, Ch.1, art.4) as one possible area for partnership. As a matter of fact, this heading concerns a long standing demand from West African negotiators in the EPA debate. It relates to the fear that West African economies would not be able to appropriate benefits from a reciprocal trade deal with Europe unless their productive capacity is enhanced as to meet the needs and requirements of European importers. The proposed article, nonetheless, merely states that the “*Parties underline their will*” to promote competitive capacity “*through the various existing instruments at their disposal*”. In other words, the article limits cooperation to a best endeavour clause (“*will*”) and carefully avoids committing anything specific or new in that respect.

21. This assessment is, of course, subject to the text being further elaborated and having new areas of cooperation included, particularly under the various issue-specific “*cooperation*” articles, which for the moment are mostly empty.

V. REGIONAL INTEGRATION

22. That same narrow vision of how developmental benefits may flow from the West African EPA appears with relation to regional integration. The text creates a set of obligations aimed at the liberalisation of West African markets, both in favour of other West African countries and for the benefit of the EU. However, given the current state of integration of West African countries, there is a real risk that the Agreement will generate better conditions for products from Europe rather than for those from West Africa. This would be exacerbated by the lack of economic complementarities and poor level of physical integration of West African economies.

23. One example in point is the obligation proposed by the EC text that West African countries must “*undertake to harmonize norms and measures at regional level*” (Part II, Ch.5, art.7). This places a broad implementation burden exclusively on West African governments to harmonize the existing different national technical regulations, standards and conformity assessment procedures as well as their sanitary and phyto-sanitary measures. The text simply assumes that creating that obligation will suffice to provide incentives for West African governments to accomplish that goal. And, as for the rest of the text, the non implementation or non enforcement of this obligation by the region’s governments could be questioned in the context of a dispute brought to an EPA dispute settlement mechanism.

24. Moreover, as an implicit acknowledgement that harmonization of standards and regulations at the regional level will be difficult to achieve (at least

in the short time), the EC also requests West African governments to accept equivalence of standards among themselves. In other words, in absence of a common regional regulation, an EU product would have to comply with the regulations of only one importing country in the region. Once accepted into one country, the EU product “shall” have access to the other markets of the region “without any further restriction or administrative requirement” (Part II, Ch.5, art.7(2)).

25. This would inevitably place European products at a more advantageous position than like local products. In an attempt to avoid undermining local producers, the EC text adds that “West African States shall ensure that” products from the EU will not have more favourable treatment than those of West African origin (Part II, Ch.5, art.7(3)). In other words, it is incumbent on West African states to (i) harmonise their regulations or, failing that, (ii) grant facilitated market entry to EU products and, in addition, (iii) ensure this does not discriminate against the region’s own products.

26. As a consequence, instead of acting as a catalyser of regional integration, the EPA proposed by the EC could increase the region’s dependence on the EU market. This could translate into trade diversion from the region in favour of the EU and could strengthen the hubs and spoke effect of trade between West Africa and the EU.

VI. MONITORING AND EVALUATION

27. The EC-proposed text includes a detailed institutional arrangement the purpose of which would be to overview (and ensure) the implementation, application as well as the impact of the Agreement. This is a very positive feature of the EC proposal, particularly as it includes monitoring of the EPA as a built-in requirement. This is especially important since the obligations under the EPA are not time-bound, that is, the “Agreement shall be valid indefinitely” (Part VI, Art. 8(1)).

28. Institutions would create, it is hoped, greater legal certainty and a collaborative environment for the management of the Agreement. This would also allow – in principle, at least – for a review of the difficulties met during the implementation of the EPA. It could, furthermore, explore possible opportunities for further cooperation or for improving existing provisions.

29. However, the text shows a strong imbalance in favour of monitoring the “proper application” of the EPA obligations, as opposed to an assessing the consequences that these obligations may trigger. As a matter of fact, the EC text proposes institutions whose attributions would explicitly include monitoring activities:

- a. Joint EPA Council (Part V, art.1 to 3), who:

- *"shall supervise the implementation of this Agreement"*;
 - *"shall examine any major issue arising within the framework of this Agreement, as well as any other [...] question [...] affecting trade between the Parties"*;
 - shall take *"decisions [...] binding on the parties, which shall take all the measures necessary to implement them"* (but decisions shall be adopted *"by mutual agreement between the parties"*)
- b. Joint EPA Implementation Committee (Part V, art.4), who:
- *"shall supervise and be responsible for the implementation and proper application of the [...] Agreement"*
 - *"monitor the development of regional integration and of economic and trade relations between the Parties"*
 - *"monitor and assess the impact of the implementation of this Agreement on the sustainable development of the parties"*
- c. Joint EPA Development Committee (Part V, art.5), who:
- Provides assistance *"regarding development cooperation related to matters falling under this Agreement"*;
 - *"Monitor the implementation of the cooperation provisions laid down in this Agreement"*;
 - Keeps *"under periodic review the cooperation priorities set out in this Agreement"* and makes *"recommendations on the inclusion of new priorities as appropriate"*, and;
 - makes *"recommendations on trade related cooperation between the Parties"*.

30. Moreover, the Parties *"shall adopt any general or specific measures required for them to fulfil their obligations under this Agreement and shall ensure that they comply with the objectives laid down in this Agreement"* (Part VI, art. 1(5)). In addition, the *"West African Party commit to adopting and implementing policies and institutional reforms to enable and facilitate the achievement of the objectives of"* the Agreement (see, for instance, Part I, Ch.2, art.3).

31. From the language used in the text, it is not clear that monitoring would go far enough as to evaluating the socio-economic impacts of the implementation of the EPA on West Africa. On the one hand, it is clear from the text that the partial or non-application of obligations can lead to a dispute or a binding recommendation to take necessary measures. On the other hand, however, it is not clear what the monitoring or assessment of the developmental consequences of the Agreement would lead to. The text does not say what would be the consequences of, for instance, a deepening of the region's reliance on the EU as a trading partner to the detriment of trade with other countries in West Africa (trade diversion in favour of the EU).

32. Moreover, as it stands, the trade-related obligations under the text are by far more detailed and specific than the sections regarding cooperation. As a result, it is very easy to demonstrate non-application of one trade obligation, but very difficult to demonstrate that best endeavours are not being made in the field of cooperation.

33. The EC text is clear indeed in not requiring any suspension or overall review of the proposed trade disciplines or liberalisation provisions depending on the consequences of their implementation. There are, of course, few provisions for the suspension of the application of the Agreement in circumscribed instances – such as temporary restrictive trade measures in case of Balance of Payment difficulties. The text provides incentives for multi-stakeholder consultations (parliamentarians and NSAs) but those are limited to an exchange of views, that is, do not require changes to the Agreement. In addition, the text provides for the review of some areas, such as “*cooperation issues pertaining to regional integration and implementation*” (Part V, art.5(3e)), but does not specify the consequences of that review. Moreover, given the fact that all committees are composed of representatives of both West Africa and the EU, any conclusions of a review would need to be agreed to by both parties, putting West Africa at a disadvantage given the asymmetry of political and trade leverage prevailing in the EU-ACP relationship.

34. One flexibility that the text could provide is the possibility for one party to “*continuously monitor the operation of the Agreement*” and consult with the other party with respect to “*any problem*” arising from the operation of the agreement (Part I, Ch.I, art.3(3)). However, it is not clear what these consultations would aim at and it is not sure that a West African state would have the capacity to satisfy the European party that problems being faced can be traced directly back to the operation of the EPA. In any case, the lack of West African political leverage to request a revision of aspects of the Agreement would still be a hurdle under this possibility.

35. Finally, monitoring and evaluation are seen as a tool to ensure the strict implementation, application, and enforcement of the EPA obligations. It adds to other incentives such as binding legal language, watchdog institutions and a dispute settlement mechanism. In this sense, the EC text constitutes a shift from the collaborative and partnership language and instruments used in the Cotonou Partnership Agreement towards a more reciprocal approach, in which rights and obligations are similar for both parties.

VII. MARKET ACCESS

36. A full analysis of the market access implications of the West African EPA with the EU cannot be extrapolated from only the text proposed by the EC since

the modalities for drafting the schedules of tariff liberalisation and lists of sensitive products were not included in the text yet.

37. However, what is evident from the text is that, in addition to tariff liberalisation, the EC will seek the elimination of other measures that operate as trade barriers. That the EC is willing to discuss more than only tariff liberalisation is well known, but the extent of disciplines and measures which the EC text proposes to restrict or eliminate is quite wide. Such restrictions will have a direct impact on the region's "policy space", that is, the ability of West African governments to establish policies to promote the industrialisation or competitiveness of the region. The text restricts the use of several instruments (tariffs, export taxes, safeguards, government procurement, state enterprises, etc.) but neither creates new instruments nor does it propose a new framework for upgrading West Africa's productive capacity.

38. Restrictions include an upfront prohibition (and not restriction) of export taxes (Part II, Title I, Ch.1, art.3). The EU has likewise proposed the prohibition of export taxes and restrictions at the multilateral level, in the WTO Non Agricultural Market Access (NAMA) negotiations, where it is facing great resistance from developing countries in that respect.

39. Moreover, it can be gathered from the text that the EC is also seeking access to West African markets through a simplification of regulations, standards and other non-tariff measures (Part II, Title I, Chapter 5). This could grant the EU a competitive advantage in the region vis-à-vis other exporters, particularly owing to the proposed obligation to comply with the technical regulations of a single country in the region in order to be granted market entry to the entire region. This requirement may, in addition, lead to a competition among countries in the region for setting simple or minimum technical requirements for entry only (in order to attract imports from the EU and benefit from transit to other West African countries). While such a competition could benefit the region by simplifying and facilitating trade, it could also undermine efforts to promote health, environmental or other public policy objectives.

40. With respect to product coverage, one surprising feature of the EC text relating to merchandise trade is that "Agriculture and Fisheries" are placed under Part I "Trade Partnership for Sustainable Development" and not under Part II "Trade and Trade Related Matters". This choice of structure is confusing because it would indicate a different treatment for agricultural or fish products under the EPAs, but that indication is not corroborated or specified in other sections of the text.

41. As far as agricultural export subsidies are concerned, the text defines agricultural products as those covered by Annex I of the WTO Agreement of Agriculture, thereby excluding fish from agriculture products and reiterates the promise the EC has made in the WTO to eliminate export subsidies by 2013. The text does not link explicitly the elimination of export subsidies to the

liberalisation of agricultural imports by West Africa, failing to address concerns governments have raised about their food security status. Finally, the text is clear in limiting discussions on subsidies to export subsidies only. In other words, the EC refuses to discuss any restriction to European domestic support in the context of the EPA.

42. Last, but not least, the EC text mentions nothing about the sequencing of trade liberalisation. There are indeed no provisions to stage liberalisation or to subject the dismantlement of trade barriers to benchmarks such as industrialisation of the region, increase in intra West-African trade, export growth, etc.

VIII. TRADE DEFENCE MECHANISMS

43. The flexibilities for the use of trade defence mechanisms, exclusions or temporary suspension of liberalisation are very narrowly defined. Most of the flexibilities that the text proposes are unsurprisingly very circumscribed and filled with procedural requirements and non-binding language. Building on experience with Special and Differential Treatment (SDT) at the multilateral level, and given the administrative capacity of Western African governments, such limitations are likely to constitute real hurdles for the region.

44. For instance, *"in the event of serious difficulties in respect of imports of a given product"*, a government would be able to request the Joint EPA Implementation Committee to review the schedule of tariff liberalisation of that product. The Committee *"may"* review the schedule to *"possibly"* modify the liberalisation implementation period, subject to *"common accord"* of both parties to the Agreement. In any case, an extension would concern *"a given product"* only and the new timeline for liberalisation would, in any case, not be able to stretch beyond the overall EPA tariff reduction implementation period.

45. Similarly, on safeguards, the text suggests that safeguard measures can only be taken for a *"limited duration"* (not more than 2 years, with progressive elimination after the first year) and only *"after having examined alternative solutions"*. Moreover, to access safeguard measures, governments would need to demonstrate direct causation or threat of causation of serious injury to the domestic industry, disturbances in a specific economic sector or in economic markets. In addition, safeguard measures cannot be applied to more than *"5% of total imports of industrial products"*. Finally, the Joint EPA Implementation Committee, who *"shall be notified immediately"*, must examine the problems that were invoked for the application of any safeguard measure (Part II, Title I, Ch.2, art.2).

46. The same pattern of procedural complexity is also observed with respect to a temporary suspension of tariff reductions or the adoption of trade restrictions

because of Balance of Payments (BoP) difficulties or threat of difficulties. Difficulties must be “serious” and an West African country “shall endeavour to avoid the application” of such restrictive measures. The government willing to apply such measures must enter in consultations with the other party for an analysis of the BoP situation based on assessment undertaken by the *International Monetary Fund* (IMF).

47. One important point worth highlighting is that the EC did not accept, in its proposed text, any limitation to its own right to use trade defence mechanisms against West African producers. Refraining from taking anti-dumping or safeguard measures against West African products could indeed have been one aspect of non-reciprocal treatment of African countries. Alternatively, the EC text could have proposed early warning systems or other collaborative approach to avoid trade disruptions with the region.

48. On the contrary, for some defence mechanisms, the text proposed strict adherence to minimum multilateral rules. Such cases concern arguably the instruments that the EU is likely to use. For instance, the EC reserves itself the right to impose anti-dumping duties on West African exports according to the relevant WTO rules on anti-dumping. For the benefit of West Africa, the text only suggests that “before definitive anti-dumping and/or countervailing duties are imposed, [...] the possibility of constructive remedies [...] may be considered” (Part II, Title I, Ch.2, art.1), which amounts strictly to what is already required under WTO rules from all WTO members.

IX. CONCLUSION

49. It is understood that the EC text is only an unilateral proposal from the European Commission to shape its EPA with West Africa. It is also understood that it is a first draft and a negotiating text and that hence it can be expected to change through improvements and compromises.

50. However, the text indicates the interests of the European Commission in West Africa and in this sense is a failed opportunity for the Commission to demonstrate that it engages these negotiations in a partnership spirit. Provisions of the text are indeed those traditionally found in any reciprocal Free Trade Agreement. This approach is a great departure from the collaborative and non-reciprocal language of Cotonou. Compliance with WTO norms (article XXIV of GATT) requires reciprocity in the liberalisation of trade in goods, but nothing in it requires trade-related norms and other obligations to be reciprocal too.

51. Some of the most important points discussed in this note include:

- The proposed text does not include the EU request for market access in goods in West Africa (proposed amount of trade to liberalise (scope and

depth) and the schedule (pace) of liberalisation. Similarly, it does not include the EU request for liberalisation of trade in services in the region.

- The text imposes unbalanced obligations regarding the application of the agreement: the partial or non application of a provision constitutes an infraction and makes a country liable to dispute settlement, but possible detrimental and anti-developmental consequences of the application of a measure do not constitute an infringement of the objectives of the agreement (despite explicit developmental objectives).
- The provisions related to market access extend beyond mere tariff liberalisation and impinge on several areas of government regulatory space. The text proposes restrictions or prohibitions, for instance, on the use of export taxes, safeguard measures, government procurement and public tendering, and state enterprises.
- The proposed text extends beyond what would be strictly required for compliance with WTO (i.e. merchandise trade) and covers several new trade-related areas, some of which have not even been agreed to at the multilateral level (e.g. government procurement).
- The proposed text creates very strong and far-reaching obligations for West African governments with respect to institutions and administrative capacity to be created, legislation to be enacted and enforced, rights to be protected. If not properly implemented and applied, governments of the region can be forced to do so, or to justify themselves, through an EPA dispute settlement mechanism. Nonetheless, the text is absolutely silent on the assistance the EU would provide countries of the region to help them achieve the Agreements' obligations.

ANNEX 1: BRIEF COMPARATIVE TABLE BETWEEN WEST AFRICA EPA AS PROPOSED BY THE EC AND WTO AGREEMENTS

Trade rules	WTO agreements and current Doha negotiations	EU-proposed West African EPA
Elimination of export taxes	Not required	Required (Part II, Title I, Ch.1, art.3)
Limitation of fees and other customs charges	Required (commensurate with services rendered)	Required (Part II, Title I, Ch.1, art.6)
Reciprocal extension of any preferential treatment resulting from the signature of another economic integration agreement with a third country	Not required	Required (Part II, Title I, Ch.1, art.7)
Liberalisation of customs duties	Least Developed Countries are not required to make any tariff reduction, West African non-LDCs must make limited reductions to agricultural, but not industrial, tariffs (by virtue of paragraph 6 of NAMA modalities).	Tariff reduction and elimination required but the exact modalities are yet to be completed (Part II, Title I, Ch.1, art.9).
Anti-dumping measures	Disciplines exist	The text upholds WTO disciplines without adding new obligations. Anti-dumping measures applied to West Africa cannot be challenged under the EPA dispute settlement mechanism. (Part II, Title I, Ch.2, art.1)
Safeguard clause	Disciplines exist	This section is yet to be finalised and its implications are still unclear. The procedures proposed are more detailed than those required under the WTO but the justifications for invoking the safeguard clause are broader than under the WTO. However, measures are subject to examination

		by the Joint EPA Implementation Committee. (Part II, Ch.2, art.2)
Prohibition of quantitative restrictions	Required	Required (Part II, Title I, Ch.3, art.1)
Prohibition of agricultural export subsidies	Disciplined currently, agreement to be eliminated by 2013.	Prohibits new export subsidies but requires the elimination of existing subsidies only for products being liberalised by West Africa (schedule to be completed) (Part II, Title I, Ch.3, art.3).
Customs and trade facilitation, customs valuation	Disciplines exist for customs valuation. Further disciplines are currently being negotiated.	Detailed text creating general obligations and identifying broad areas for cooperation. New disciplines, as for all other provisions of the text, would be subject to enforcement through the EPA dispute settlement mechanism. Upholds the WTO disciplines for customs valuation (Part II, Ch.4).
Technical barriers to trade	Disciplines exist (Agreements on SPS and TBT)	Upholds the relevant rights and obligations under the current WTO disciplines. Includes the objective of strengthening the capacity of West African governments to identify unsafe products. Cooperation is otherwise limited to exchange of information but the section is yet to be completed. Includes an obligation for West African states to harmonise norms and measures at the regional level. Requires equivalence of West African standards to all West African states (Part II, Ch.5).
Establishment (Investment)	No rules although foreign investment is part of GATS. The Agreement on TRIMS prohibits certain measures. Full negotiations on this topic were rejected by developing countries in 2003.	Disciplines included but to be completed (Part II, Title II).

Trade in services	Market access and disciplines (GATS)	The EU request on market access in trade in services and its proposed disciplines are yet to be completed (Part II, Title II).
E-commerce	No rules, but members discuss the issue in dedicated sessions and meanwhile continue “their current practice of not imposing customs duties on electronic transmission” (moratorium on duties).	Disciplines included but to be completed (Part II, Title II).
Liberalisation of current payments and free movement of capital	No rules	Disciplines included with a safeguard mechanism for restrictions not exceeding 6 months in “ <i>exceptional circumstances</i> ” (Part II, Title III).
Competition	No rules, although certain aspects are covered. Negotiations on this topic were rejected by developing countries in 2003.	Disciplines requiring state enterprises or monopolies to be “ <i>adjusted</i> ” in five years after entry into force of the Agreement (Part II, Title IV, Ch.1). Areas of cooperation to be completed yet.
Innovation and Intellectual Property	Disciplines exist (TRIPS)	The EC text proposes TRIPS-plus standards concerning the availability, scope, use and enforcement of intellectual property rights as well as for the ratification of WIPO treaties (Part II and III). On genetic resources, traditional knowledge and folklore, the text proposes to include Article 8(j) of the CBD and to implement the patent provisions and the CBD in a mutually supportive way, without resolving the current debate on the subject. (Part II, Title IV, Ch.2).
Public Procurement (Government)	No binding rules, except for transparency requirements. There is a plurilateral agreement on disciplines to which the EC is party. Negotiations on this topic were	The text extends beyond transparency requirements and also include disciplines on, for instance, national treatment in procurement. It contains an in-built review every 3 years. There are no areas of cooperation. (Part II,

	rejected by developing countries in 2003.	Title IV, Ch.3).
Environmental policy	No rules. Full negotiations on this topic were rejected by developing countries in 2001.	The text upholds the right of the parties to promote “ <i>high levels of environmental and public health protection</i> ”. It obliges West African states to adopt and implement international standards, guidelines or recommendations in the absence of national or regional legislation (Part II, Title IV, Ch.4, art.3). Areas of cooperation to be completed yet.
Social policy	No rules.	The text recognises members’ right to encourage high levels of social and labour standards while not for protectionist trade purposes (Part II, Title IV, Ch.5). Areas of cooperation concern awareness raising about, formulation and enforcement of relevant legislation .
Personal data protection	No rules.	The text include an obligation to establish appropriate legal and regulatory regimes (including minimum content) for the protection of personal data as well as appropriate administrative capacity to implement such regimes (Part II, Title IV, Ch.6).
Fiscal issues	No rules, although aspects of fiscal policy are covered under certain agreements.	The text includes exchange of information and experiences but includes an obligation of consultation (and possibly reform tax regimes) to avoid “harmful” international tax competition. Areas of cooperation (other than the exchange of experiences and best practices) are to be completed yet. (Part II, Title IV, Ch.7).
Dispute settlement	Includes a WTO dispute settlement mechanism	Includes a dispute settlement mechanism specific to all aspects and interpretation of the EPA with few exceptions (Part III). Parties not complying with the

		recommendations after a dispute shall make an offer for temporary compensation and may be subject to the suspension of the benefits of the Agreement.
General exceptions	Exceptions are provided for.	Generally similar to those of the WTO(Part IV).
Institutional arrangements	WTO Secretariat supports the work of several committees which monitor the implementation and application of the agreements.	Detailed proposal for the establishment of a Joint EPA Council, a Joint EPA Implementation Committee, a Joint EPA Development Committee, a Joint EPA Parliamentary Committee, a Joint EPA Consultative Committee. The attributions of each Committee range from information sharing to involvement in dispute resolution (Part V).
Restrictions due to balance of payments difficulties	Possible	Possibility of adopt of maintain restrictive measures although with greater or more detailed requirements than those under the equivalent WTO provisions.

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Comments to the EC proposed text for a West African EPA

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South Centre Feedback
Chemin du Champ d'Anier 17
1211 Geneva 19
Switzerland
E-mail: south@southcentre.org
Fax: +41 22 798 8531



**Chemin du Champ d'Anier 17
Case postale 228, 1211 Geneva 19
Switzerland**

**Telephone : (41 22) 791 8050
Fax : (41 22) 798 8531
Email : south@southcentre.org**

**Website:
<http://www.southcentre.org>**