# Oxfam International Concerns With Initialled 'Interim EPA' Texts

Friday, 07 December 2007

**Summary**

Over the past two weeks, a number of "*Interim Economic Partnership Agreements*" (Interim EPA) have been initialled between the European Commission (EC) and a number of African, Caribbean and Pacific (ACP) countries[1]. Such agreements were initiated by the EC in an effort to provide a legal framework for the continuation of European trade preferences for ACP exports despite the expiry, at the end of 2007, of the WTO Waiver in favour of the EU-ACP Cotonou Partnership Agreement (CPA).

As the end of year deadline for negotiations has drawn nearer the EC has continued to ignore both suggestions for alternatives and calls for more negotiating time, and instead threatened to raise tariffs on January 1st 2008 on exports from any ACP country that has not initialled an Interim EPA. This has placed unacceptable pressure on ACP negotiators and governments. As a result, many ACP countries, particularly those with larger trade with the EU, have been forced to lower their expectations regarding what EPAs could deliver and have been pressed to secure any agreement that will provide continued market access. **This has meant that many of the interim agreements concluded were negotiated in a hurry and only a handful of their provisions were actually negotiated**.

The coverage of these agreements is very wide and disciplines are more stringent than required under WTO rules. The structure and several of the conditions of these agreements actually undermine the original objectives of EPAs and, in this sense, empty EPAs of their developmental promise. **While the EC has portrayed the interim agreements as soft, not very binding and flexible agreements, the provisions detailed in these agreements create a large number of binding obligations for ACP governments and require a number of reforms. The implementation of reforms or disciplines is often tied to specific deadlines and non compliance with the terms of the agreements could be sanctioned through a dispute settlement mechanism.**

ACP countries are committing to liberalise up to 97% of imports from Europe, with almost all liberalisation occurring within 10 to 15 years, and are freezing tariffs from the first day of implementation. The safeguards fail to provide adequate protection for agriculture and fragile industries. Trade policy space is virtually eliminated. In addition, ACP countries are obliged to negotiate on areas such as services and investment, and prohibited from giving more preferential treatment to third countries such as China or Brazil. Whilst ACP countries are required to make such high levels of concessions, Europe makes no binding commitments on critical issues such as improving rules of origin, addressing its subsidies, or increasing development assistance.

**Oxfam International calls on European Governments to act urgently and:**

- Refrain from further putting pressure on ACP countries to initial agreements
- Put in measures to ensure no ACP country will be left worse off if an agreement is not initialled by the end of December 2007. This can be done by either allowing all ACP countries to benefit from the regulation, or provisionally providing GSP+ to all non-LDCs ACP countries, as Nigeria has requested.
- Agree to renegotiate key elements of those agreements that have been initialled, in view of the haste in which they were concluded

[1] At the time of analysis, agreements of that type have been signed with all five countries of the East African Community (EAC), Zimbabwe, Seychelles, Lesotho, Swaziland, Botswana, Mauritius, Papua New Guinea, and Fiji

## Areas Of Critical Concern For Development

Outlined below are the areas that Oxfam International regards as of deepest concern for development. We recommend these provisions are renegotiated as a matter of urgency:

### 1. Scope and Pace Of ACP Market Opening

The EC agreed in principle to accept offers of tariff liberalisation from ACP countries of 80% over 25 years. However, in these Interim agreements, tariff elimination starts from the entry into force of the agreement (2008) and the elimination of other barriers (export taxes) is not always gradual, and may have to be implemented as early as 2008. Moreover, only a marginal share of trade volume is subject to long implementation periods for tariff elimination. Even for least developed countries the pace of liberalization is very fast.

For example:

- In the SADC EPA 86% of Botswana, Lesotho and Swaziland's liberalisation will take place over two years; only 3 tariff lines are given a 10 year transition period; no products are allowed periods of anything approaching 25 years.
- For Mozambique, an LDC, there will be liberalisation of 80.5%, most of which is also to take place upon immediate entry into force of the agreement (currently only 12% of Mozambique's trade is at zero percent).
- In the EAC (East African Community, which includes four LDCs) EPA, 82% of the EU imports will be liberalised. Of this, 62% will be liberalised after 2 years (51% of this is currently at zero percent), and 80% after 15 years; only a final 2% of trade is liberalised over a period of more than 15 years.

The EC has insisted on the inclusion of a **standstill clause** (e.g. Article 23 of the SADC EPA, Article 13 of EAC EPA, Article 14 of the PNG EPA), which is not required by WTO rules.

- In the SADC and PNG texts, the clause requires all tariffs to be frozen on products subject to liberalization, whether this liberalization is due to happen immediately, or after 20 years. This prevents countries from using tariff flexibilities allowed by their liberalisation commitments.
- In the case of the EAC and ESA texts, it is even stricter as it freezes tariffs on all trade between the parties, *whether or not these products are subject to liberalization*. As a result, even if a product is on the 'exclusion list', the tariff on this product cannot be raised after the entry into force of the agreement.

The EC has insisted on the removal of **export taxes**. Export taxes have been used for raising revenue for developing countries across the world, accounting for more than 20% of government revenue in Burundi, Sri Lanka, Mexico, Ethiopia and Guinea.[2] The Interim EPAs require the elimination of export taxes (PNG) or forbid the introduction of new taxes (EAC, SADC), with some limited carve outs.

- In the SADC text no new export taxes are to be introduced, and those existing will not be increased (Article 24) except for specific circumstances and after 'consultation with the EC Party'

The EU is insisting on eliminating these in the context of the Doha round but developing countries have not agreed. The EC's insistence on the inclusion of a clause in EPAs is a red line for Namibia, and one of the principle reasons for their non-initialling of the SADC EPA.

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[2] http://www.southcentre.org/info/Analysis/ExportTaxesAndRestrictions.pdf

Despite previous statements from the EC suggesting that **EU export subsidies** would be eliminated for those products opened by the ACP, there is no clause in either the EAC or the SADC EPA to this effect. Moreover, there are provisions that explicitly allow the EU to continue to subsidise its own products. Article 36.4 in SADC, Article 17.4 in the EAC, and Article 23.4 in the Pacific EPA are complete 'carve out' clauses from the EU's national treatment obligation with regard to domestic subsidies. The clause allows EU goods to be subsidised in the EU domestic market which not only operates as a market barrier to ACP goods exported to the EU market, but is also likely lead to a surplus of domestically subsidised products that are exported cheaply to the ACP. These factors mean that the ACP countries will face unfair competition – both in the EU market and in their own domestic markets.

The late inclusion by the EC of a **Most Favoured Nation** clause (for example, Article 28 in the SADC EPA, Article 15 in EAC EPA) is a clear offensive interest and severely undermines the scope for the ACP to make their own decisions about their market opening. This clause locks the ACP into giving the same treatment to the EU that they give to any other major trading partner such as the US, Japan, Brazil or China. This may be relevant to the Pacific ACP countries for example, because their EPA signing will trigger negotiations on PACER, the Pacific Agreement on Closer Economic Relations with Australia and New Zealand. ACP governments have strongly objected to this clause and there is no requirement in the WTO or Cotonou to include it.

Even though agreements were reached in haste, under tremendous pressure, and in many cases before impact assessments were completed, most Interim EPA texts do not include any provision for reviewing tariff liberalisation commitments. Of the texts analysed, only one (PNG) incorporates a clause for **'modification of tariff commitments'** in the 'event of serious difficulties' (Article 13).

## 2. Inadequate safeguard clauses for ACP countries

In the absence of tariffs, effective safeguards are the main policy instrument that can be used to protect the agricultural sector and existing industries from import surges, ensure food security, and nurture the development of new 'infant' industries. As currently structured, the safeguards will not provide adequate protection for ACP producers.

Texts on **bilateral safeguards** do not differ significantly from those currently available at WTO which have proved inadequate for developing countries and difficult for them to implement. They do not contain the flexibilities that the ACP and other developing countries have been calling for in the WTO, in the form of a Special Safeguard Mechanism (SSM). The Caribbean countries have proposed an automatic safeguard similar to the SSM in the EPA, but the EC has not accepted its inclusion.

- The safeguard clauses in the EAC, ESA and SADC EPA are limited by a number of onerous procedures that have impeded their effective use in the context of other trade agreements. In addition, safeguards are of limited duration and any safeguards exceeding one year 'shall contain clear elements progressively leading to their elimination at the end of the set period, at the latest.'

The Interim EPAs specifically provide for the use of **multilateral (WTO) safeguards** including the Special Agricultural Safeguard under Article 5 of the WTO Agreement on Agriculture.

- In some texts the EC has agreed to exempt initially ACP exports from imposition of multilateral safeguards (SADC, EAC) but *only for the first five years*. In other texts even such limited exemption is at the EC's discretion (Papua New Guinea).

The articles that include so-called **'infant industry clauses'** are extremely deceptive in that they are, in reality, no more than ordinary safeguards by a different name. The so-called 'infant industry safeguard clauses' are heavily restricted and limited to mitigating the damage of import surges for existing sectors – not for building up new sectors. Moreover, these normal safeguards are also difficult to use, based upon ACP experience in other trade arrangements.

- The initial duration for which these clauses can be used is only 2 years in most initialled texts, although it is up to 7 years for Papua New Guinea and 12 years for LDCs in the Pacific region. Given the length of time it takes an industry to develop, there is no utility in a clause only lasting for 2 years.
- The use of these special safeguards is prohibited after 10 years (East African Community), 12 years (Botswana, Swaziland and Lesotho), 15 years (Mozambique) and in others after 20 years (Papua New Guinea). Given that the industrialisation process takes generations, to enable progressive development of industries, there should be no sunset clause for the use of this critical development tool.
- For such clauses to reflect their title they should be based on the old clause in Part IV of the EEC Treaty and the Yaoundé Conventions, which allowed an ACP country to 'retain or introduce customs duties … which correspond to its development needs or its industrialization requirements or which are intended to contribute to its budget'

Despite major problems of **food security** across the ACP, most EPA texts do not even note that trade liberalization can heighten food insecurity. The PNG EPA text is an exception, in that it acknowledges that the removal of tariffs can 'pose significant challenges' to food security. However the text is very weak as the proposed solution is 'consultation' between the parties and the possible use of bilateral safeguards as the only remedial measure (PNG Article 46).

## 3. Scope and Coverage Of EU Market Opening

The commercial gains arising from the Duty Free Quota Free offer itself are limited because of the failure of the EU to substantially improve rules or origin, the retention of transition periods on two key products (sugar and rice) and strict safeguards that limit ACP access to EU markets.

The latest EU offer on **Rules Of Origin** (Regulation COM (2007) 717 final, November 13 2007), which will be applied until a 'Full EPA' comes into force, contains only minor improvements to existing rules but even these are still disputed by several EU Member States. *However, cumulation is restricted to those ACP countries that have signed an EPA, potentially destroying production processes that span ACP countries that have not signed.*

- Significant improvements are made for textiles and clothing (Product level RoO) but these are partly undermined by provisions on value tolerance (Article 4) which are *stricter* than under Cotonou.
- The requirements for fish (Product level RoO) remain largely unchanged and continue to form a significant barrier. There are some minor improvements only applicable to the export of fish from the Pacific but in order to benefit, countries are subject to a range of administrative and reporting requirements (Article 4)
- No industrial products other than textiles and clothing have seen any change
- Unlike Cotonou, the only ACP countries that will benefit from cumulation are those that have concluded a free trade agreement (Article 2 of Title II), potentially destroying exports that rely on inputs from ACP countries that have not initialed Interim EPAs.
- Such an approach could also undermine capacities to add value between countries that are party to and those not party to an EPA, since no cumulation is allowed on rules of origin for exports under different EU preferential regimes

In the Interim EPAs, there is general language (e.g. EAC Article 12, PNG Article 8) about the need to review these rules of origin. But in terms of actual commitments, the EU is only committing to consider the possibility of offering more 'development-friendly' RoOs in the future. This is unfair on several counts: without binding agreement on RoOs, it is very difficult for the ACP to assess the worth of the EU's market access offer. In addition, as the permanent RoOs are to be negotiated in the future, after the main bulk of EPA terms have been agreed, the ACP will have much less scope to influence them.

The EU can use bilateral safeguards against ACP imports more readily than it could under Cotonou, undermining the benefits of additional market access.

- The EU regulation (Regulation COM (2007) 717 final, November 13 2007) which will apply from January 1st 2008 no longer requires 'serious disturbance' but only 'disturbance' (Article 12). This is a lesser standard than in the EC's other trade agreements (including Cotonou and GSP) and stricter than under the WTO safeguards Agreement.
- Moreover many of the provisions of the Cotonou Agreement requiring the EC, in the provision of safeguards, to limit damage to ACP countries are now missing.
- Safeguards on sugar over a set quantity are stricter than they were under the Sugar Protocol

**4. Services and Investment**

Many ACP countries have insisted that they do not want to include commitments on trade related areas. However, the EC has insisted on including commitments go beyond a 'commitment to negotiate' on services and investment as they are significant agreement of ACP countries to *liberalise* these sectors even before the terms of this liberalisation have been negotiated.

- In the SADC EPA there are commitments to conclude negotiations in these areas (under Article 67), even though they are not required for WTO compatibility and are in clear contravention of SADC's collective position
- In SADC signatories have been committed to 'complete' negotiations on services no later than 31 December 2008, including a *liberalisation schedule for one service sector for each participating SADC EPA State; commitment to a standstill as specified in Article V.1.b(ii) GATS, for all services sectors; agreement to negotiate progressive liberalisation with substantial sectoral coverage within a period of three years following the conclusion of the full EPA."*
- SADC signatories also commit to *negotiate an Investment chapter, taking account the relevant provisions of the SADC Protocol on Finance and Investment, no later than 31 December 2008.*
- Other countries or regions that have stressed they did not want to commit to negotiate in these areas have still had to sign up to a commitment to continue negotiating (e.g. EAC Chapter V commits parties to negotiate and links this in same chapter as Economic and Development cooperation)

**5. Regional Integration**

Precisely because interim agreements will, de facto, be applied in several ACP countries who have not made a decision to sign them, these agreements will have an inevitable detrimental impact on the regional economic integration, particularly in Africa. SACU, the oldest customs union in the world, is currently divided with 3 countries having initialled an interim agreement with the EC, one country refusing to do so (Namibia), and another one (South Africa) applying a

separate trade agreement with the EU. SADC, where a detailed plan for a common market had been established, is also severely divided. This is a blatant contradiction with some of the most prominent objectives of EPAs, and one which was thought to deliver greatest development potential: that of building upon and reinforcing regional integration.

This approach has a number of serious consequences, all of them extremely counter-productive for regional integration.

- ACP countries are now submitting separate and un-harmonised tariff liberalisation schedules, not agreed as a region, which will commit them to liberalising to the EU before they have decided what to liberalise to each other (in the case of COMESA for example).
- Since revision clauses are absent or inadequate in these EPA texts, the separate EPAs or trade regimes within a region would prevent the further integration of the region to a customs union.
- In addition to this, countries not signed up will have to impose stricter border controls to guard against EU goods entering their markets through neighbouring countries, leading to defensiveness between regional neighbours and greater barriers to regional trade
- In order to avoid this fragmentation, the only option for countries left behind by regional neighbours that have already signed an EPA, would be to join up to an agreement that has been designed by the stronger partners without their interests in mind. This would in turn leave these weaker countries unable to protect their own sensitive sectors, in cases where these differ from those of their more advanced neighbours

**6. Commitments on development**

The conclusion of interim agreements does not signify that there is a convergence of views among the ACP countries and the EU as to the instruments through which EPAs will deliver development. Several areas of interest to ACP governments are not included in the interim agreements. It is likely that, having agreed to liberalise trade in goods, ACP governments have little negotiating leverage to engage in a good faith discussion with the EC on topics of their interest. This will further accentuate the gap in political, economic and negotiating capacity that divides ACP and EC negotiators.

In this sense, it is unfortunate that development cooperation provisions, both financial and non-financial, are barely developed and often absent from the EPA. No binding link is made between the implementation of trade reforms and financial assistance from the EU. The details of development cooperation instruments (e.g. Regional EPA Funds) remain to be negotiated at a later stage. Other instruments cited (e.g. EDF) are not linked in a binding manner to the interim agreements. In fact, development assistance is explicitly excluded from the remit of the interim EPA dispute settlement mechanism.

**7. Dispute Settlement, Monitoring, Evaluation and Review Mechanism**

The detailed obligations contained in the interim agreements are subject to enforcement through a detailed dispute settlement mechanism. This reflects the European Commission's view that the agreements will only deliver development if they are entirely implemented and applied, which translates in a focus on enforcement. This contrasts with the ACP view that application and enforcement are also linked to administrative capacity, which relates to technical and financial assistance to support the implementation of reforms.

Moreover, a focus on strict enforcement can fail to deliver development benefits (e.g. poverty reduction) if not accompanied by a mechanism to monitor and evaluate the impacts of the agreement. The agreements concluded either have no provision for an evaluation of the agreement and possible review, or have only weak language in that regard.

ENDS