



**CONCORD Cotonou Working group
Briefing paper**

A step backwards? The EU's new two-step approach to EPAs

1. What is the issue?

In 1999, at the end of the negotiations for the Cotonou Agreement, the EU and the ACP countries agreed to negotiate "Economic Partnership Agreements" (EPAs) by 31 December 2007. On that basis the EU asked and obtained a new waiver from the WTO to continue the preferential market access of the Lomé Agreements for the ACP countries until the same date. As a result, if the EPA negotiations do not conclude on time, the preferential market access of the ACP countries will end, unless measures are taken to prevent this.

At the end of 2006-beginning of 2007 ACP regions and the African Union carried out a review of the EPA negotiations, as foreseen by art.37.6 of the Cotonou Agreement. The regional reviews showed that many issues were still outstanding and some regions concluded that more time was needed than originally foreseen.

Moving the deadline however requires measures to extend the current ACP market access to the EU. How could this be done? By requesting the WTO for an extension of the deadline? Or by replacing the Lomé-Cotonou preferences by an improved GSP+ (an EU non-reciprocal market access regime for developing countries that comes close to the present preferential regime)? Or could the negotiations be accelerated, by increasing the efforts, relaxing the negotiating positions or narrowing the scope of the negotiations?

2. What is the EU proposing?

Fast Forward. The European Commission has always insisted that extending the deadline is out of the question. The Commission has also always rejected the idea of non-reciprocal alternatives to EPA. Throughout the past years the Commission has maintained that since none of the ACP countries has ever officially stated that it "was not in a position to enter into an EPA", it was not obliged to examine and work out non-reciprocal alternatives to EPA (as foreseen by art.37.6).

When the conclusions of the EPA review and the requests for extension of the deadline became known the Commission reacted by making detailed calculations of what not signing EPAs at the end of the year would cost the ACP countries. Indeed, for the Commission the only alternative that the ACP could expect is to fall back on the Everything but Arms regime (EBA) for the least developed countries (LDCs) and the Generalised System of Preferences for the non-LDC countries. EBA offers the LDCs duty-free-quota-free (DFQF) market access to the EU; the GSP offers only partial DFQF and contains a number of import duties that are higher than under the current Lomé/Cotonou market access for ACP countries. As a result key exports from non-LDC ACP countries would be hard hit and even brought to a halt.

Early 2007 the Commission invited the ACP regions to Brussels to discuss the EPA review and adopt joint conclusions. As a result, the joint conclusions mentioned no extension of the deadline and all six contained promises to increase the negotiating efforts in order to meet the deadline. However, only the Caribbean and the Central African region promised to conclude negotiations by the end of the year. The other regions made concluding conditional on the content of the negotiating result, in particular the market access provisions and the development and cooperation dimension. The joint conclusions were confirmed in May 2007 by the EU Council and the Joint EU-ACP Council.

Since the spring of 2007 the EPA negotiations efforts have increased tremendously. The Commission has tried to push the negotiations forward by tabling extensive draft texts for various chapters of the proposed EPAs, in particular on the non-goods issues: services and investment, competition, government procurement, intellectual property rights, movement of capital, data protection, etc. In most of the ACP regions however these drafts were not accepted as negotiating documents as they failed to take ACP interests and needs into account and mostly reflected "made in Brussels" approaches and EU interests. The EU drafts therefore did not do much to move the negotiations forward.

Two-step approach. Over the summer it became clear to the Commission that apart from the Caribbean, no comprehensive EPA containing all the issues desired by the EU would be concluded in time. The Commission began to think of "framework agreements", which would contain trade in goods (necessary

to assure the continuation of ACP market access to the EU) and then a number of other issues that would be ready, preferably services/investment and development. On other issues the framework agreement could still contain key principles, a negotiating calendar and (firm) commitments to continue to negotiate these in 2008. The Commission however continued to insist that goods agreements needed to be signed or that otherwise ACP countries would be confronted with GSP tariffs from 1 January 2008 onwards. The Commission also made it clear that the less the framework EPA would contain, the less the ACP countries would be endowed with aid.

The GSP threat did not impress West Africa that concluded on 5 October that it would not be in a position to conclude even an agreement on the liberalisation of goods, and that an extension of the deadline was needed. However the threat made an impact on individual non-LDC ACP countries that in the face of difficulties to come to common regional positions, began to consider signing individual or sub-regional agreements to secure the continuation of their exports to the EU.

On 23 October the European Commission presented its Communication on the negotiations formalising what it called a two-step approach: individual countries, sub-regions or regions are proposed to sign "interim agreements" on goods and whatever issues that would be ready, leaving other issues for later. A built in calendar will however make sure that negotiations will continue and comprehensive EPAs will be signed. Countries that fail to sign such interim agreements will fall back on EBA and GSP.

3. Key concerns

The Commission's new two-step approach at last formally recognises that comprehensive EPAs are not possible before the end of the year. It confirms that the EU has failed to convince ACP countries of the benefits to be gained from the comprehensive EPAs as currently proposed. This recognition has however come late and the prolonged insistence on comprehensive EPAs has taken energy away from the real issues. The two-step approach fails to live up to the Cotonou commitment to offer ACP countries, which are not in a position to sign EPAs, non-punitive or Cotonou equivalent alternatives. The two-step approach fails to recognise that the major difficulty in many regions lies in the identification on the regional level of sensitive products and in the formulation of common regional goods offers. The possibility for individual countries of sub-regional groupings to sign interim agreements exacerbates this difficulty and threatens to undermine regional integration efforts.

The continued threat to only offer GSP is pushing ACP countries to sign agreements, not because they believe they will contribute to their sustainable development, but simply to avert an immediate disruption of trade. In order to push the LDC ACP countries, who have a fall back option under EBA, the Commission makes its market access offer on extra sugar quota conditional upon signing an EPA or interim agreement. The Commission also continues to use the GSP threat to obtain firm commitments that the other issues which the EU insists upon will be negotiated. ACP countries recognise the importance of services, investment etc; but do not necessarily agree with the (liberalisation) approach that the Commission is trying to impose.

The Commission's two-step approach does also not resolve the key issues of rules of origin, preference erosion and safeguards. They risk to leave out decisions on the "value added" or "change in tariff heading approach" to rules of origin; or measures to assist ACP countries in producing more value added products that can target new markets to compensate for preference erosion in the market for basic raw materials; or concrete commitments on assisting the ACP countries to improve their productive capacities in general; properly worked out safeguards against highly competitive or subsidised EU agricultural products for which the EU is seeking market access.

4. Recommendations to the JPA

The members of the Concord Cotonou Working Group call upon the Joint Parliamentary Assembly:

- **to insist that the EU**
 - **offers Cotonou equivalent and non-punitive alternatives for those ACP countries that are not in a position to sign EPAs or interim agreements at the end of this year;**
 - **does not undermine regional integration by signing sub-regional agreements;**
 - **does not impose negotiations on services and trade related issues;**
 - **seeks agreement in the WTO to allow the whole of the EPA negotiations more time in stead of splitting issues and regions; and to insert the principle of special and differential treatment into GATT art.24 to allow more flexibility in bilateral agreements with developing countries;**
 - **offers a substantial development package beyond EDF funds to improve productive capacities of poor and women workers, producers and traders in ACP countries ensuring an enabling policy framework for value added production of goods.**
- **to reassert democratic governance and the role of parliamentarians in the EPA negotiations by clearly demanding ratification before the entry into force.**