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What happened to the Cariforum-EU EPA?

David Jessop

Remember the Economic Partnership Agreement (EPA) signed in Barbados in October 2008?

Despite the huge regional controversy that ensued after it was agreed, it is now almost impossible to find anything in the public domain about its present status, despite the fact that some of the deadlines for implementation have already passed.

In reality the EPA has hardly progressed. Instead, inter-regional rivalries, personality clashes, the recession, a lack of commitment by some governments, widespread doubts about neo-liberalism fuelled by the global economic crisis, and a stalled regional integration process, have all impeded progress towards implementation.

Central to the process moving forward is the formation of four EPA institutions and in particular the Joint Cariforum EU Council of Ministers, without which the approval of the key EPA working groups and procedures cannot be agreed, or regional funding drawn down.

Although a first joint Council of Ministers meeting was expected to take place in December 2009 or early 2010 there is little sign of it being convened in the immediate future. This is principally because fundamental differences have still not been resolved between Caricom and the Dominican Republic.

These centre on the desire of the latter to see the institutional arrangements for the EPA be delivered by a body more dynamic and representative of the wider region than Caricom. It is also a reflection of the Dominican Republic's desire to have Caricom extend to it regional preference in line with

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Editorial

What happens after a trade deal is signed? In theory, governments get down to the work of implementing the agreement. But in the case of the Cariforum-EU Economic Partnership Agreement, not much seems to be happening. Why does this matter? In part because the EU is in the process of forming free trade agreements with countries in Latin America, explains David Jessop, the Director of the Caribbean Council. In our lead article this month, Mr. Jessop warns that any competitive advantage currently enjoyed by Cariforum countries may soon diminish unless governments move more quickly.

Our next article offers advice for those countries still engaged in the EPA negotiations. A long standing point of concern for developing country exporters is the system of EU standards for protecting health and safety, also known as sanitary and phytosanitary (SPS) measures. In particular, it has been argued that the EU's food-safety regime can present unnecessary barriers to trade. However, according to Martin Doherty, Head of Research with the international trade consultancy Cerrex Limited, the EPAs present an opportunity to address this problem. Using the fisheries sector as an example, he demonstrates how new provisions in the EPAs can clarify areas of ambiguity in the WTO Agreement on Sanitary and Phytosanitary Measures, and thus help ensure that SPS measures do not unnecessarily interfere with ACP trade to the EU.

The EPAs also offer a chance to promote innovation and technology transfer, argues our next contributor, Ruth L. Okediji, a professor of law at the University of Minnesota. She points out that the EPAs have so far taken a standard approach to intellectual property rights based on the provisions of the WTO's TRIPS agreement. But Professor Okediji suggests that if the ACP countries are to benefit from greater access to innovative technology, the EPAs need to take more proactive steps. This is because structural issues have prevented many developing countries from experiencing developmental gains from their IP commitments. By taking an "active" approach to IP rules, including concrete pledges of financial and technological assistance, the EPAs can help address these pitfalls.

Turning from the EPA negotiations to the WTO, Mário Jales, a PHD candidate at Cornell University, offers fresh insights into one of the most sensitive issues in the Doha Round negotiations – the trade rules applied to cotton. Summarizing his recent research on the effects of a trade deal in cotton, he concludes that the Doha Round can have a positive impact of world cotton prices, benefitting developing country exporters. Yet this hinges on ambitious reductions in cotton subsidies – a key sticking point in the negotiations, so far.

Our final guest feature addresses the issue of food aid, another topic in which African countries have been active at the WTO. Here there is a need to ensure that emergency food aid flows to countries in need, but that it doesn't undermine local agricultural production. Hilton Zunckel, a director with the South African trade law practice Trade Law Chambers, argues that achieving this balance requires strong voices from the African continent. Unfortunately, however, food-aid recipients have been excluded, or have provided little input, in some key food-aid related fora and treaties.

As always, the editorial team at ECDPM and ICTSD welcomes feedback or offers to contribute articles. These can be directed to Damon Vis-Dunbar at *dvisdunbar@ictsd.ch.*

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News and publications
In brief

European Commission adopts support package for ACP banana producing countries

The European Commission has formally proposed a €190 million support package for ACP countries to help offset the impact of a WTO trade deal on bananas. The 17 March announcement by the European Commission follows the so-called Geneva Agreement on Trade in Bananas – a December 2009 deal between the EU, Latin American countries and the United States that ended a long dispute about the preferential access granted to ACP banana exporters to the EU market. The €190 million "Banana Accompanying Measures" (BAM) will provide support for investments aimed at boosting competitiveness; encouraging economic diversification; and addressing broader social, economic and environmental impacts. The money will go to ten main ACP banana-exporting countries: Belize, Cameroon, Côte d'Ivoire, Dominica, Dominican Republic, Ghana, Jamaica, Saint Lucia, Saint Vincent and the Grenadines and Suriname.

Details of EU FTAs with Colombia and Peru revealed

New details have emerged about the trade deals that the EU initialed with Colombia and Peru in February, and which are set to be signed by heads of state at a summit in Madrid in May. In the case of Peru, 95 percent of the country's agricultural products and 99.3 percent of all Peruvian exports will enter the EU duty free once the trade deal takes effect. In return, Peru will fully liberalise 80 percent of the industrial products that it imports from the EU. Colombia, meanwhile, has promised to eliminate tariffs on 65 percent of the same products. Colombia expects that the deal will increase its exports in sectors such as leather goods, textiles and garments, plastics, glassware and fishery products. For its part, the EU will get preferential treatment for a number of its exports to Colombia, including processed pork products, liquor, milk powder, cheese, cars, capital goods, intermediate goods and some inputs. Even with the bulk of the hard-fought negotiations behind them, Peru, Colombia and the EU could still hit a few bumps on the road ahead. Even after the agreement has been signed by heads of state, lawmakers in each country must approve the deal before it comes into force.

EU holds conferences on trade and development

The European Commission convened a conference on 16 March to discuss how to maintain the effectiveness of the EU's General System of Preferences (GSP), which grants preferential tariffs to developing countries. European Trade Commissioner Karel De Gucht announced at the conference that the European Commission is launching a public consultation on the GSP, which will feed into proposal to the European Parliament and Council on an updated GSP regulation. Presentations made by experts and background documents from the EU Trade Policy towards Developing Countries conference are available at *http://trade.ec.europa.eu/doclib/press/index.cfm?id=512*

Intellectual Property Rights book explores development link

A new book offers insights into the international regime governing intellectual property rights (IPRs), an area in which developing countries have come under pressure to reform and to become more vigilant regarding the protection and enforcement. Focused on three themes – development, sustainable development and diversity – and featuring contributions from a wide-range of experts, *Intellectual Property and Sustainable Development: Development Agendas in a Changing World* considers a number of new and emerging IP issues from a development perspective. Case studies from Africa, Asia, and Latin America examine the impact of IP on the pharmaceutical sector, the protection of life forms and traditional knowledge, geographical indications, access to knowledge and the role of competition policy. The challenges developing countries face in the TRIPS-Plus world are also addressed. The book is the result of the work and initiatives undertaken by ICTSD in recent years and brings together a selected number of papers produced by recognized experts in the field of IP and development, as well as those written by rising and promising scholars and policy-makers.

More information is available at *http://ictsd.org/i/trade-and-sustainable-development-agenda/71019/*

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the EPA's requirement that all signatories are granted no worse treatment on tariffs than they extend to the EU. This is problematic for some in the Anglophone Caribbean who see Caricom's larger neighbour as an economic threat, despite having agreed to the language in the EPA.

At other levels too, progress has been painfully slow.

The EPA implementation unit in Caricom is only just coming into being with support from the Caribbean Development Bank-administered CART Fund through which Britain's bilateral aid for trade commitments under the EPA are managed; while the road map for EPA implementation remains under discussion between the EC and Caricom.

What money there is to support the preparatory process from the European Development Fund (EDF) through the 10th EDF will be channelled through the bureaucratic and slow disbursing regional and national mechanisms controlled from Brussels. However, since the funds intended for the delivery of the regional EPA programme require a meeting of the Joint Council to first set the direction, nothing practical can happen in this respect until Cariforum's institutional problems are resolved.

Just as problematic is the fact that additional aid for trade funds from EU member states look unlikely to materialise so that the much vaunted EU promise of discretionary bilateral EPA support seems set to come only from Britain and Germany.

At a national level only Barbados, the Dominican Republic and Jamaica have set up EPA implementation units. Antigua is expected to do so soon, with external support, while in the Bahamas this process is only just beginning following their delayed signing of the EPA. What is happening elsewhere is far from clear.

As for the regional private sector, there is a sense that for the most part, it is waiting for something to happen or information or leadership to come from government. In the region, in sectors other than services and newer specialist manufacturing of niche products, there is the same disinterest in accessing the EU market that has existed for years.

External investors also seem less than enthused by the new arrangement.

Even before the global recession took hold, regional fragmentation, economic instability and a lack of long-term direction made most Caribbean economies other than the Dominican Republic, Trinidad and perhaps Barbados of limited attraction to major external investors in sectors other than tourism. Much the same was and is true of interest among exporters in Europe in the market opening the Caribbean has committed itself to, other than in relation to the region's larger economies.

All of which would seem to suggest that any economic value the EPA may have to the region is likely to be confined to the region's wealthier nations – the Dominican Republic in particular – or any nation that can seriously develop their services sector and new high value manufacturing industries.

“All of this is also happening as the Caribbean is negotiating with Canada a free trade agreement that is more than likely to be an EPA equivalent in most respects and could well cause turmoil if it also turns out not to have a quantifiable development dimension.”

This might not matter too much given that the currently weak appetite in Europe and the Caribbean for developing new business and the absence of any foreseeable progress in the Doha Round.

However, EPA implementation coincides with Europe negotiating bi-regional trade agreements with the nations of Latin America as a part of a broader set of association agreements. The first of these is expected to be concluded in May with the Andean nations of Peru and Colombia; then with Central America; and in time with Mercosur. The effect will be to give

these nations similar levels of access to the EU market as the Caribbean and cause the Caribbean to find itself before long in competition with nations that have business communities that are significantly more aggressive than those of the Anglophone Caribbean.

All of this is also happening as the Caribbean is negotiating with Canada a free trade agreement that is more than likely to be an EPA equivalent in most respects and could well cause turmoil if it also turns out not to have a quantifiable development dimension.

Deciding who is to blame for this sorry state of affairs is not simple. It was the European Commission that forced the EPA on a far from mature integration process and Caribbean Governments that agreed to measures that did not match regional economic or political reality. The danger now is that the longer the region prevaricates, the greater the likelihood is that neighbours in Latin America will eclipse any new opportunities that may exist for the Caribbean in Europe.

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EPA fisheries talks: An opportunity to tackle sps measures

Martin Doherty

Although the scope of food safety measures affecting fish products has emerged as an area of great concern to the European Union's former colonies now negotiating economic partnership agreements with their biggest export market, the negotiations hold promise for improvement.

Fish is the most internationally traded food commodity, with tropical shrimp among the most valuable products. In addition to their value in trade, fisheries-related activities provide an important source of employment, export revenue and food security to many African, Caribbean and Pacific (ACP) countries. Internationally, fisheries represent one of the few sectors in which their participation in world trade is increasing, with the EU accounting for nearly 75 percent of the bloc's fishery exports.

The greater presence of sanitary and phytosanitary (SPS) issues on the international trade scene has been driven by the increasing awareness and concern for food safety among European consumers, particularly relating to the presence of chemical residues and various carcinogenic additives in food. This has been exacerbated by repeated 'food alarms' and, to a certain extent, by the European Commission's efforts to tighten and harmonise the EU's food safety regime, developed in a piecemeal fashion over forty years.

Although the six ACP regional groupings still involved in economic partnership agreement (EPA) negotiations with the EU are worried that the new trading arrangements – slated to replace the unilateral preferences granted by their erstwhile colonial masters – might negatively affect their fisheries sectors, the negotiations present an opportunity, as well as a threat.

A number of SPS issues have been the cause of recurring problems in EU-ACP trade, but despite considerable discussion over the years between standard setters like the EU and standard takers like the ACP, little satisfactory resolution has been achieved. The fact that the EPAs are a negotiating rather than discussion forum provides a means to overcome this impasse and obtain valuable clarifications and commitments from the EU. This would not only be of service to the fisheries sector in ACP countries – given that the SPS Agreement addresses specific risks rather than specific products, all ACP products covered by the SPS Agreement would benefit.

What Can Be Done?

Since the European Union's right to protect its citizens from potentially harmful food cannot be challenged, attention should be placed on the implementation of the measure rather than on the basic principle. This involves looking at what the EU is doing and identifying whether it complies with the WTO Agreement on Sanitary and Phytosanitary Measures. The agreement contains areas of ambiguity that allow the EU to introduce measures that, while not at variance with the wording of the treaty, can nevertheless arguably be viewed as being contrary to the underlying intention, i.e. not to interfere unnecessarily with international trade.

Precautionary Import Bans

According to SPS Article 5.7, WTO Members may adopt temporary precautionary bans to prevent the introduction of risks when sufficient scientific evidence is absent. The problem here does not lie with the provision, but rather the agreement's silence on the steps that need to be taken by a country that has lost international market access because trading partners have invoked this provision.

Greater clarification is required on how long is 'temporary' and on the quantity and type of scientific evidence that is deemed sufficient. The damage caused by temporary bans in the fish sector is well recorded, and in many instances such harm could have been alleviated had mechanisms existed that either helped remedy the fault or allowed scientific evidence to be produced that disproved the basis for the ban itself.

The EPAs represent an opportunity for the introduction of greater certainty about how long is 'temporary' and on the quantity and type of scientific evidence that is deemed sufficient, for example by including the following text:

"Where a temporary or precautionary ban is implemented under the provisions of article 5.7 of the WTO SPS Agreement, it must be accompanied by a specific duration clause. In addition, in the case of countries affected by any such measure having inadequate technical resources to provide the necessary information to dispute and/or remedy the alleged problem, the issuer of the ban will offer assistance sufficient to resolve the issues within an agreed timeframe."

Setting a Regulatory Ceiling

The SPS agreement sets a regulatory floor but not a ceiling. WTO Members are committed to both the international harmonisation of SPS measures, and the mutual recognition of measures employed by other countries. With respect to mutual recognition, a Member is committed, in principle, to granting equivalence to the SPS measures adopted by an exporting country "if the exporting Member objectively demonstrates to the importing Member that its measure achieve the importing Member's appropriate level of sanitary or phytosanitary protection" (Article 4.1).

The problem is that, while the agreement sets minimum requirements for WTO-consistent SPS measures, nothing prevents countries from adopting regulations that are considerably more stringent. Therefore, the question arises whether there is a level of sanitary standards that importing countries cannot legitimately expect potential exporting members to achieve.

It could be argued that in exercising their right to require higher than international norms, importing countries also incur an associated obligation to provide a higher than normal level of scientific evidence with regard to the level of extra safety and associated benefits

actually being achieved. In this respect, EPA negotiators could consider the following text:

> "Where a country seeks to establish a safety measure which requires meeting higher than international norms, it must submit in advance the following data for consideration
>
> • A level of scientific and other evidence that is higher than would normally be put forward to justify a SPS measure. This would include reference and explanation as to why international norms are inadequate in the particular circumstances under review.
>
> • A cost benefit analysis which clearly sets out the savings (benefits) resulting from the measure; as well as the estimated costs (financial and economic) of implementation likely to be imposed on the recipients required to comply.
>
> In the event that the measure is introduced and the recipient countries have financial and/ or technical difficulties in complying, then the issuer will supply sufficient assistance to improve the recipient country's capacity to a correspondingly acceptable level."

Socio-economic Factors in Risk Assessment

The SPS Agreement permits Members to establish SPS measures based on scientific evidence, as well as on broader assessments of risk such as relevant economic factors, including:

- The potential damage in terms of loss of production/sales in the event of entry, establishment or spread of the disease or pest;
- The costs of control or eradication in the territory of the importing Member;
- The relative cost-effectiveness of alternative approaches to limiting risks (Art. 5.3).

Although trade agreements traditionally avoid these types of assessments due to the subjectivity associated with measuring them, the SPS Agreement recognises that imported risks to human, animal and plant safety and health are likely to have a significant socio-economic impact. However, the question remains about how socio-economic assessments can be incorporated into the legitimate justifications based on sufficient scientific evidence. None of the international scientific organisations referred to by the WTO (Codex, etc.) provide much scope for socio-economic assessments.

For the EPAs to be effective, clarification must be obtained on precisely what the SPS Agreement allows the EU to do, and the limitations and obligations that may be cited by ACP countries where specific measures are considered to exceed what is necessary for the adequate protection of health. Without such clarification, these non-tariff barriers will continue to hinder both regional integration and any increased inter- and intra-regional trade.

As a general observation, the SPS provisions in the EPA chapters fall short of making provision for the post-EPA negotiations era. There appears to be an insufficient attempt to allow the recipients to prioritise capacity-building assistance from the EU, and for the establishment of mechanisms to ensure that any such commitments are in fact fulfilled in specified terms of finance, technical assistance and time.

"For the EPAs to be effective, clarification must be obtained on precisely what the SPS Agreement allows the EU to do."

Targeted Capacity-building

Spurred by its own need for fish from third countries when stocks are dwindling at home, the EU has a comprehensive framework of assistance designed to promote eligible imports from the fisheries sector. Less well addressed is the need for assisting the private sector in moving up the value chain through the development of processed multi-products.

This not only requires assistance in meeting SPS regulations, but also the creation of a more enabling business environment within which entrepreneurs in the fisheries industry can develop as they have done in other product sectors. Targeted funding under the umbrella of an EPA and focusing on the potential for establishing regional product identity should be considered by negotiators looking to both assist fisheries stakeholders and achieve some progress towards the development aims of the EPAs.

It would be useful, for example, to assist the small and disconnected inland fisheries to produce commercially viable volumes for export and intra regional trade. This could be achieved through the development of 'community fishery centres', which would offer small-scale fisheries cold storage and commercial marketing services. This could also be useful in tackling problems relating to the traceability and origin of fish coming from scattered sources. Under its fisheries agreements, the EU has contributed to making various fish processing establishments in ACP countries SPS-compliant. This has served the twin aims of helping these countries export to the EU, as well as the development of local economies.

Nevertheless, these establishments can suffer from a shortage of product to process when EU fleets carry their entire locally caught catch back to Europe for processing. As such, developing countries should consider requesting the EU to contribute a percentage of the catch of any EU-registered vessel to establish or enhance the processing capacity in the country where the fish was caught.

While the development aims of the succession of Lomé conventions that preceded the EPA negotiations were never fully achieved, the economic partnership agreements represent an opportunity for reassessing what was done in the past and identifying what can be done to avoid a similar failure in the future.

Author
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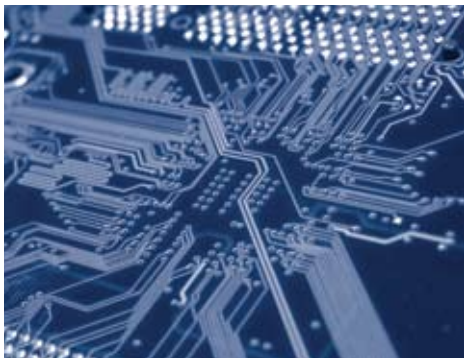
Innovation and technology transfer: Prospects under the EU-ACP EPAs

Ruth L. Okediji

Despite the indisputable role of innovation in productivity growth (and thus in enhancing development prospects), access to new technologies by developing countries (DCs) and least developed countries (LDCs) remains one of the most contested areas of international economic regulation. The persistent and deepening "innovation divide" between industrialized nations, where most research and development investment (R&D) occurs, and the African, Caribbean and Pacific (ACP) countries who rely primarily on imports of technology to enhance domestic supplies of technical knowledge, suggests that existing global policies directed at promoting technology diffusion and increasing access to technical knowledge have been wholly inadequate.



Like most other free trade agreements (FTAs), the EPAs address innovation exclusively through formalized rules of intellectual property (IP) protection and in terms that view the creative enterprise as a by-product of the free movement of goods and services across borders. The standard assumptions from the free trade context of what might loosely be called a global innovation policy include the following: i) lower barriers to the entry of goods and services promote competition and encourage R&D investments by firms; ii) trade surpluses will generate income for investment in aid and capital to reinvest in local and regional markets; and iii) the competitive environment resulting from an open trade regime will stimulate productivity of small and medium enterprises (SMEs) and encourage local innovation.

As scholars have pointed out, however, many of these assumptions are untested under the regulatory environments that prevail in most ACP countries. While foreign firms historically have enjoyed technological gains under conditions of liberalized trade, evidence of any substantial positive innovation and technological impact on ACP countries is far from established. Significant constraints on the scope and flexibility of ACP countries to implement domestic policies more conducive for technological catch-up and imitation are inherent in the global IP system pursuant to the TRIPS Agreement. Notwithstanding, most free trade agreements are structured along these classic assumptions, with no proven basis to suggest that the negotiated frameworks in fact support access to technology, facilitate technology transfer or stimulate domestic innovation.

As such, long-standing technology and innovation deficits in DCs and LDCs are treated as symptoms of market failures attributed to, among other things, low levels of FDI, weak or non-existent domestic absorptive capacity for new technical knowledge and low rates of capital accumulation. Rarely do recent free trade agreements incorporate any provisions or principles that address the structural pitfalls common to DCs and LDCs that have adopted IP laws but have yet to experience any development gains as a result. Nor do these agreements reflect any possibility that protection for IPRs, as linked to innovation and technology transfer, may occasion costs that should be offset by balancing the obligations imposed on DCs and LDCs with principles that secure the primacy of the social welfare objectives underlying IPRs.

For sure, the TRIPS Agreement recognizes the "underlying public policy objectives of national systems for the protection of intellectual property, including developmental and technological objectives"[1]; however, it imposes no legal obligation on member countries to implement norms that can secure those objectives. The Agreement acknowledges the importance of technology as an essential development input, but offers no framework to evaluate the efficacy of the mandatory rules in enhancing access to knowledge-based goods.[2] And while it grants rights to members to implement domestic policies and laws to promote basic development interests, including measures to address market distortions caused by abuses of IPRs,[3] this comes with political and economic costs that often are too high for ACP countries to bear, either for fear of retaliation from developed countries or for lack of domestic capacity to take advantage of these provisions.

Technology and IP Provisions in the EPAs

The pivotal question, then, is how to make IPRs relevant to the development agenda reflected in the Cotonou Agreement and stated in the objectives of the specific EPAs. At a minimum, the obligations pertaining to IPRs should not impede prospects for domestic innovation in ACP countries or exacerbate the innovation divide.

Ceding National Policy Space

Like other regional FTAs, the EC-CARIFORUM EPA has incorporated IPR provisions that largely mirror the substantive obligations of the TRIPS Agreement. Despite the fact that Article 46 of the Cotonou Agreement explicitly acknowledged the development dimension of IPR protection, EC negotiators have in some cases attempted to include obligations that extend even beyond those required by the TRIPS Agreement. These so-called "TRIPS-plus" provisions generally require ACP regions to strengthen particular IPRs beyond the minimum standards established by the TRIPS Agreement.[4] In addition, a provision may qualify as "TRIPS-plus" if it expands the scope of subject matter coverage beyond those disciplines recognized by the TRIPS Agreement. For example, in the area of copyright, Article 143 of the EC-CARIFORUM EPA imposes on the CARIFORUM the obligation to comply with the standards set forth in the World Intellectual Property Organization (WIPO) "Internet Treaties" – the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT).

While such obligations may be facially neutral, there are hidden costs associated with even ostensibly beneficial provisions. Any increased breadth of subject matter

covered by the IPR provisions of EPAs reduces the discretionary policy space that could be used to promote initiatives directed solely at domestic innovators in ACP countries. The more policy space is taken over by EPA-based obligations regarding IPRs, the less ACP countries can act unilaterally for the benefit of local firms.

Passive versus Active Technology Obligations

Currently, the EPA framework for innovation and technology transfer consists of good faith commitments to cooperate in the area of research, innovation and technology transfer.[5] Like the TRIPS Agreement, these commitments do not impose any legal obligations on the EC to adopt policies that improve prospects for technology transfer, nor do they recognize existing normative principles that could stimulate access to technology in ACP states. At best, the EPA provisions appear neutral with regard to the question of innovation and access to technology in ACP countries.

The role of EPAs in promoting technological diffusion and enhancing innovation capacity in ACP regions is essential to whether these agreements can materially affect sustainable development gains. Some impact studies demonstrate that on the whole, ACP countries have much more at stake than the EC with respect to trade disparities.[6] If ACP exports to the EU are likely to be less competitive, and estimated tariff losses are as significant as projected, the loss in income for most countries will have a direct impact on domestic investments in technology and innovation.[7]

To offset the economic consequences of trade diversion that is anticipated as a result of the EPAs, ACP countries must diversify and build up the competitiveness of domestic markets. This process requires access to technology and strengthening domestic capacity to incorporate new techniques and processes in productive activities. Currently, none of the technology provisions in the EPAs provides a basis for ACP countries to experience positive welfare gains over what currently prevails under the TRIPS Agreement. Technical assistance, financial assistance and other levers such as transitional periods could mitigate the short-term costs of the passive technology obligations currently in the EPAs. A possible consideration is that funding approximate to losses in tariff revenue could be contributed to a fund to support access to technology for SMEs in ACP countries, as well as other assistance directed at supporting innovation. However, long-term solutions require significantly different substantive and institutional arrangements to secure sustainable access to technologies for development goals.

Improving Prospects for Access to Technology and Innovation under the EPAs

The multilateral system for the protection of IPRs already recognizes important exceptions and limitations necessary to address the provision of public goods, most notably in the area of public health and education. The EPAs provide an opportunity to incorporate these access norms in the free trade environment, while also adopting special concessions to reduce or eliminate the transaction costs associated with utilizing the mechanisms designed for the benefit of ACP countries. Ultimately, access to technology must be considered a basic development goal; unless the EPAs establish a viable legal framework with complementary mechanisms that facilitate convergence between the welfare goals of IPRs and those of the free trade regime, the innovation deficit will outlast (and eventually overwhelm) any gains possible from a liberalized economy.

Conclusion

From access to health and education to climate change mitigation and adaptation, innovation and new technologies play a crucial role in achieving the increasingly diverse array of economic development goals. The ongoing EPA negotiations offer an opportunity within the unique context of an historical relationship between the EC and ACP countries to address a critical source of economic growth by adopting provisions that encourage access to technology on terms consistent with the multilateral IP system, and with the aspirations of the Cotonou Agreement. In contrast to other FTAs, the EC-ACP EPAs should go beyond mere formal acknowledgement of the essential role of technology in accomplishing development-related goals. Instead, the technology-related provisions of the EPAs should enable an environment in which access to technology and strengthening the domestic innovation capacity of ACP states constitutes a material part of the EC's investment in the development process.

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Notes

1 See Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299; 33 I.L.M. 1197 (1994) [hereinafter TRIPS Agreement], pmbl

2 See id., art. 7.

3 See id., art. 8.

4 See, e.g., EC-CARIFORUM EPA, arts. 143, 147,151-163

5 See, e.g., EC-CARIFORUM EPA, arts. 135-138, 142.

6 See, e.g., Lionel Fontagne, David Laborde & Cristina Mitaritonna, An Impact Study of the EU-ACP Economic Partnership Agreements (EPAs) in the Six ACP Regions, CEPII-CIREM, April 2004, at 21-23, available at http://trade.ec.europa.eu/doclib/docs/2008/march/tradoc_138081.pdf (last visited Sep. 7, 2009).

7 Id. See also Michael Gasiorek & L. Alan Winters, What Role for the EPAs in the Caribbean?, 27(9) THE WORLD ECONOMY 1335 (2004).

Potential impacts of alternative policy reform scenarios on the world cotton market

Mário Jales

The WTO Doha Round could have a significant positive impact on world cotton prices and contribute to the expansion of cotton production and exports in developing countries. However, the likelihood of such an outcome is highly dependent on the depth of the subsidy reductions adopted by WTO members. The poor record of internal policy reforms in key subsidizing countries and the failure of the US to comply with recommendations from the WTO Dispute Settlement Body (DSB) highlight the importance of multilateral trade negotiations in addressing the profound distortions that characterize the world cotton market.

Cotton has proved to be one of the most politically sensitive issues in the Doha Round. Substantial subsidies provided by developed countries have continued to depress world prices and undermine the viability of otherwise competitive producers in the developing world. Cotton-exporting West African countries in particular have championed reform of the existing system. Collectively known as the Cotton Four (C-4), Benin, Burkina Faso, Chad and Mali have denounced the deleterious effects of cotton subsidies on poverty and food security and called for the establishment of a mechanism to phase out support for cotton. Nevertheless, due to little concrete engagement by subsidizing countries, the issue has languished.

In parallel to the efforts to address cotton subsidies through the Doha negotiations, countries have also sought to reduce trade distortions through the WTO's Dispute Settlement Body (DSU). The *US Upland Cotton*[1] dispute initiated by Brazil has led to significant developments in WTO jurisprudence on subsidies in general, as well as specific findings about the illegality of various US cotton subsidies under existing WTO rules. Meanwhile, unilateral domestic policy reforms in the EU and US have had limited if any impact on world cotton markets. The 2003-04 reform of the EU Common Agricultural Policy (CAP) changed the guaranteed minimum price for cotton to a mix of coupled and allegedly decoupled payments.[2] In the US, the 2008 Farm Bill kept cotton subsidies largely unchanged, indicating an unwillingness to comply with the DSB panel rulings or the mandates from the Hong Kong Ministerial Declaration.[3]

Recent research commissioned by the International Centre for Trade and Sustainable Development (ICTSD), the co-publishers of *TNI*, assesses the likely implications for exporting and importing countries from a trade deal in cotton. The study estimates the price, production and trade effects of reforming cotton subsidies and tariffs under alternative scenarios, with a primary focus on the WTO Doha Round. For each scenario, the model simulates the prices and quantities that would have obtained in a base year had the policy reforms implied by the given scenario been retroactively applied to that year. Simulations cover ten base years (1998-2007) that not only provide a wide variance in prices and subsidy levels but also reflect recent trends in supply and demand.

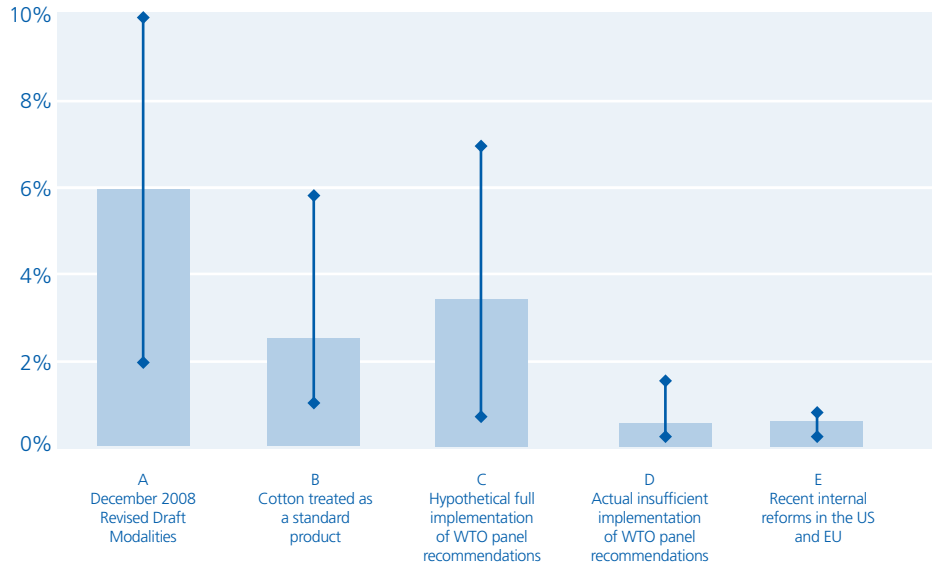
Scenarios

Five policy reform scenarios are simulated: the first two are alternative reform packages in the context of the Doha Round; the following three are benchmarks to which the potential outcomes of Doha can be contrasted.

Scenario A models the December 2008 Revised Draft Modalities.[4] It contains a number of special provisions applicable exclusively to the cotton sector. Most prominent among them are the more rigorous caps on cotton product-specific AMS and blue box support and the extension of duty- and quota-free access for cotton exports from least-developed countries (LDCs).

Scenario B is also based on the modalities draft, except that it ignores the special cotton provisions and instead subjects cotton to the general disciplines applicable to standard agricultural products. Given that the 2005 Hong Kong Ministerial Declaration established a mandate to reduce cotton subsidies "more ambitiously than under whatever general formula is agreed" for standard products, the outcome of the Doha Round must be more ambitious than Scenario B.

Figure 1: Estimated Impact of Alternative Scenarios on the Cotton World Price, 1998-2007
(bar indicates average; vertical line indicates range)



Scenario C models the hypothetical implementation by the US of the DSB recommendations in the *US Upland Cotton* dispute, namely: (i) the withdrawal of export credit guarantees and user marketing payments; and (ii) the removal of the adverse effects of marketing loan programme payments (MLP) and counter-cyclical payments (CCP).[5]

Scenario D models the insufficient measures actually taken by the US in response to the DSB recommendations. Although the US has withdrawn part of its prohibited subsidies,[6] it has done nothing to remove the adverse effects of MLP and CCP.

Scenario E abstracts from multilateral negotiations and litigations and focuses on internal reforms in the US and EU. It models policy changes introduced by both the 2008 US Farm Bill and the 2003-04 EU CAP reform.[7]

Impact on Prices

Figure 1 summarizes world price effects for each scenario. Bars indicate average impacts in 1998-2007 and arrows indicate the full range of results. Impacts are moderate to high in Scenario A, lower in Scenarios B and C, and negligible in Scenarios D and E. The substantial variance in results on a year-by-year basis is largely due to the counter-cyclical nature of a considerable share of notified cotton subsidies. Estimated price effects are highest in years with below average world prices and record high trade-distorting domestic support, such as 1999 and 2001.

Had cotton subsidies and tariffs been reduced in 1998-2007 as described in Scenario A, the world price of cotton would have increased by 6 percent on average, with a range between 2 percent and 10 percent. However, had cotton been treated as a standard product (Scenario B), the average world price increase would have been only 2.5 percent. This difference in results is mainly driven by the size of caps on US trade distorting domestic support for cotton in each scenario: US$510 million in Scenario A (US$143 in AMS and US$367 in the blue box) and US$2,240 million in Scenario B (US$1,140 million in AMS and US$1,100 million in the blue box). Since the average trade-distorting support provided to US cotton producers in 1998-2007 was US$2,248 million, it comes as no surprise that cuts in US subsidies are not very significant in Scenario B. Discarding the special cotton provisions from the modalities text would greatly reduce the potential of the Doha Round to deliver lower subsidy levels and higher world prices for cotton.

By comparison, the world price of cotton would have increased on average by 3.5 percent in 1998-2007 had the US fully implemented the DSB panel recommendations in the *US Upland Cotton* dispute (Scenario C). The limited actions actually taken by the US in response to the DSB panel recommendations (Scenario D) would have increased the world price on average by only 0.7 percent. Had recent unilateral domestic reforms in US and EU cotton subsidies applied over the entire 1998-2007 period (Scenario E), the world price would have increased by 0.7 percent on average. The EU CAP reform would have accounted for the entirety of this change. The US 2008 Farm Bill alone would have had no impact on the cotton world price.

Impact on Production

Production effects would have varied significantly across countries and scenarios. Output would have decreased in countries that undertake reductions in applied levels of subsidies and tariffs. Elsewhere, production would have increased.

In Scenario A, US and EU cotton production would have declined by 9 percent and 24 percent, respectively. In years with historically low world prices, the decline in US output would have been larger than average (15 percent). In 2001 alone, US production would have declined by 680 thousand metric tonnes, which was more than the combined production volume of the C-4 countries that year. The fall in US and EU production would have been almost fully compensated by output expansion elsewhere. On average, production would have been 2 percent higher in Australia, Brazil, the C-4 countries, Central Asia, Pakistan and Turkey, and 1 percent higher in China and India. More importantly, production value in these countries would have increased by 6-8 percent on average and 11-13 percent in years of peak subsidy levels.

The impact on production would have been significantly smaller in Scenario B. On average, production volumes would have declined by 4 percent in the US and remained unchanged in the EU. Average output expansion in the rest of the world would have been limited: 0.8 percent in Australia, Brazil, the C-4 countries, Central Asia, Pakistan and Turkey, and 0.3 percent in China and India. In Scenario C, US production would have fallen by 7 percent on average. In response, production would have increased by 1 percent in Australia, Brazil, the C-4 countries, Central Asia, EU, Pakistan and Turkey, and 0.5 percent in China and India. Scenarios D and E would have had negligible effects on production volumes across most countries. The only exception being the EU in Scenario E (output would have fallen on average by 20 percent).

Impact on Trade

Among net exporters, export volumes would have retracted in the US and increased elsewhere (Australia, Brazil, C-4 countries, Central Asia and India). The simultaneous increase in export quantities and world prices would have led to an unambiguous rise in the value of exports for all net exporters except the US. The magnitude of changes in exports would have been largest in Scenario A, moderate in Scenarios B and C, and small or negligible in Scenarios D and E. Countries with large textiles manufacturing sectors (India and Brazil) would have experienced relatively greater expansion in cotton exports.

Among key net importers (Bangladesh, China, Indonesia, Pakistan and Turkey), import volumes would have decreased in every scenario analyzed due to the expansion of domestic output and the retraction of domestic demand. Since reductions in import quantities dominate world price increases, estimated import costs would also have fallen. The magnitude of changes in imports follows the same pattern observed above for exports. EU import quantities and costs would have increased substantially in the scenarios where European production falls (A and E) and remained mostly unchanged in the other scenarios (B, C and D).

Subsidies vs. Tariffs

Virtually all benefits for cotton in the Doha Round will accrue from the reduction of subsidies. There are two reasons why market access will play a marginal role at best. First, the cotton sector already enjoys exceptionally low levels of applied tariffs.[8] Second, only two WTO members (the US and Oman) will have to reduce current applied tariffs as a result of the negotiations. All other countries either: (i) already provide duty-free access, (ii) enjoy significant tariff overhang, or (iii) qualify for tariff-cut exemptions due to their status as LDCs, very recently-acceded members or small low-income recently-acceded members.

The extension by developed countries of duty-free access for cotton exports from LDCs will have little if any impact on market access opportunities for LDCs. First, all developed countries apart from the US already provide duty-free access to cotton imports at a most-favored nation (MFN) basis. Second, as US cotton consumption has plummeted in recent years, the country's share of world cotton imports has collapsed to only 0.05 percent. Moreover, US cotton quotas are consistently under-filled despite the low level of in-quota tariffs (between zero and 3 percent).

In contrast, developing countries account for nearly 95 percent of world cotton imports. Of the top fifteen developing country importers, all but China currently provide duty-free MFN access to cotton. The Doha Round will not significantly alter market access conditions in China since Beijing is likely to exempt cotton from tariff reduction and quota expansion by selecting it as a Special Product. Even if China were not to select cotton as a Special Product, the large tariff overhang would be enough to prevent any effective cut in the applied tariff.

When it comes to cotton, subsidies should be the heart and soul of the negotiations. There is an urgent need to rebalance existing trade rules that permit developed countries to highly subsidize domestic production, depress world prices, push farmers elsewhere out of production and impair prospects for economic advancement in the developing world. The adoption of ambitious domestic support reforms for cotton in the Doha Round would be a significant step towards the establishment of a fair and market-oriented trading system.

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Notes

1 Unites States Subsidies on Upland Cotton Dispute (DS267), reports available on: *http://www.wto.org/english/tratop_E/dispu_e/cases_e/ds267_e.htm*

2 Studies that are not specific to the cotton sector have suggested that EU farm operators, to a large extent, do not treat the new payments as fully decoupled (Hennessy and Thorne, 2005; Howley et al., 2009). As a result, these subsidies are believed to maintain a strong supply inducing effect on agricultural production.

3 *http://www.wto.org/english/thewto_e/minist_e/min05_e/final_text_e.pdf*

4 *http://www.wto.org/english/tratop_E/agric_e/agchairtxt_dec08_a_e.doc*

5 Since the DSB is silent regarding the exact steps that the US must take in order to remove the adverse effects of some of its subsidies, this requirement is implemented in Scenario C by limiting the combined value of MLP and CCP so that their negative impact on the world price is not greater than 2 percent.

6 This includes the elimination of user marketing payments (Step 2), the repeal of the Supplier Credit Guarantee Programme (SCGP), the termination of the Intermediate Export Credit Guarantee Programme (GSM 103) and the revision of the Export Credit Guarantee Programme (GSM 102).

7 Changes introduced by the 2008 US Farm Bill include the reduction in payment acres for direct payments, the drop in the target price for counter-cyclical payments, the decrease in storage payment rates and the introduction of a new subsidy to domestic users of cotton for all documented use of upland cotton regardless of its origin Although the farm bill officially discontinued Step 2 payments, SCGP and GSM 103 export, these policy changes are not included in Scenario E. Instead they are taken into account in Scenario D.

8 Of the 153 members of the WTO, 84 currently apply duty-free access to cotton imports, 62 apply tariffs between 0 and 10 percent, and only seven apply tariffs between 10 percent and 33 percent. Of the seven countries with tariffs above 10 percent, only Nigeria has a significantly large domestic market. The other countries are Djibouti, Gambia, Haiti, Maldives, Solomon Islands and Tonga.

An African voice to fill African mouths: Improving the international food-aid regime

Hilton Zunckel

The lingering global financial crisis has been accompanied by a less publicised but in many respects more sinister crisis in Africa – a food crisis. The severe food shortage and regulatory lag in taking corrective action has led to efforts by farmers in Southern Africa to influence the manner in which food aid is dealt with internationally. Indeed, given that a staggering 65 percent of global food aid lands in Sub-Saharan Africa, it is critically important to address its impacts on Southern African farmers through the forums available under international treaties and organisations – principally, the Food Aid Convention, the FAO and the WTO.

Food aid consists of the transfer of commodities (mainly grain), or payments close in nature, to developing countries as a form of development assistance for the provision of food. Three broad categories of food aid can be distinguished: Emergency Food Aid (humanitarian/crisis purposes); Project Food Aid (linked to development projects); and Programme Food Aid (donor government to recipient government budget support). In the broader context, food aid is also related to the concept of 'food security'.

In Africa it is crucial to prevent food aid from weakening the agricultural sector, and instead seize the opportunity of making food aid a tool that helps unlock the agricultural potential of the region to produce enough food for its people, enhances commercial capacities and creates jobs for rural people.

The WTO and food aid

The most interesting activity on food aid internationally is within the realm of the WTO. In taking the issue forward from the current position to the future Doha deal, there is consensus among WTO members that the WTO shall not stand in the way of the provision of genuine food aid. There is also consensus that what is to be eliminated is commercial displacement.

Food aid trends

The volume of food aid has declined over the past decade, with quantities decreasing from 15.1 million tons in 1999 to 5.9 million tons in 2007. This is a record low for food-aid deliveries. It has been found that the availability of food aid is high when there have been good harvests and low prices. In contrast, food aid is low when prices are high, which critically compromises the compensating role of food aid in times of food shortages. This is completely counter intuitive and indicative of the link between food aid and surplus disposal policies.

In 2007, the United States provided 44 percent of global food aid, while the European Union provided 25 percent. The EU has a milder, development orientated approach, while the United States still suffers from a legacy of politics linked to food aid and surplus disposals; admittedly, however, changes in the US approach are afoot. Ultimately, no effort to improve food aid can be considered worthy unless the United States, the biggest food aid donor, is involved. African agriculture will have to remain attuned to this in their strategies in the international fora.

The African contingent has been rather successful in having their views reflected in the negotiating texts. The African proposal distinguishes between emergency food aid and other non-emergency food aid. In emergencies they support the 'Safe Box' concept, arguing that as it will be used for emergency food aid, it should not be subject to any disciplines. With regards other forms of food aid, the African aim is to ensure that food aid does not displace commercial trade or adversely affects local agricultural production.

In addition, the WTO Decision on Net Food-Importing Developing Countries (NFIDCs) allows for poor countries to ask for assistance to improve productivity and infrastructure. However, it is unclear that any least developed countries (LDCs) or NFIDCs have really made serious requests under the Decision. This might be an opportunity for better voicing of African needs.

The international architecture

The Food Aid Convention (FAC) is arguably the primary international instrument dealing with food aid. The objectives of the FAC are firstly to contribute to global food security and only secondly to improve the ability of the international community to respond to food emergencies. While it is generally a legally well constructed treaty to administer international food aid, its Achilles' heel – the exclusion of food aid recipient countries from the treaty and a lack of transparency – requires attention.

In the FAO the Consultative Sub-Committee on Surplus Disposal (CSSD) looks to ensure that agricultural commodities that are exported on concessionary terms result in additional consumption for the recipient country and do not displace normal commercial imports. Likewise, domestic production should not be discouraged or otherwise adversely affected. Its principles, however, are not binding, and thus represent only the intent of the signatory countries. Africans are present here although their inputs seem low. This again is potentially an opportunity for greater 'voice' by African countries

A regional approach

From a regional perspective it seems that the New Partnership for Africa's Development (NEPAD) Comprehensive African Agricultural Development Plan (CAADP) initiative holds much promise in regional coordination and development action for food aid, within a wider food security and agricultural development agenda. In short, the top drivers that will influence food aid flows over the next decade are: the production of biofuels from food crops, the global economic crisis and climate change. These factors exist in tandem with developments in international law to reform the global institutional regime for food aid.

From a policy perspective, the farmers of Southern Africa have recognized that food aid cannot be a replacement for the benefits of a long-term food security strategy. In this regard, African farmers have compiled a list of policy responses and positions that they feel need to be taken up by Southern African governments and the requisite international organisations. They acknowledge the necessity for and benefit of food aid to augment their productive activities in times when circumstances outside of the control of farmers lead to a severe food shortage. However, they also wish to guard against the introduction of ill-timed and poorly targeted market-disrupting food aid into their domestic and regional markets.[1]

> "Ultimately, no effort to improve food aid can be considered worthy unless the United States, the biggest food aid donor, is involved."

The policy response on food aid should focus on making the international legal architecture more friendly and participative for recipient countries, but also encourage a more proactive and participative role from regional agriculture, primarily in four ways:

1. Africans need to pursue the reform of the Food Aid Convention under the auspices of the International Grains Agreement to engineer the emergence of a mechanism for food aid recipient countries to make their voices heard under the Convention;

2. Africa must take a more active role in forums where it does currently have access, like the FAO's Consultative Sub-Committee on Surplus Disposal;

3. Africa needs to guard the textual progress to which it has successfully contributed as reflected in the current WTO draft modalities text;

4. Africa needs to question why the current WTO draft modalities text breaks the existing linkage between the WTO and the Food Aid Convention that is present in the WTO Agreement on Agriculture.

There seems to be a growing understanding that forceful words from African mouths at international forums have a direct role in filling African mouths with food in sustainable manner. In this regard the donor community needs to be encouraged to provide relief during food shortages, while guarding against the introduction of ill-timed and poorly targeted food-aid deliveries, including by allowing food-aid recipients their rightful voice in the architecture of international law in this field.

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Notes

1 In this regard readers may be interested in reading the food aid policy of the Southern African Confederation of Agricultural Unions (SACAU). The SACAU Position on Food Aid, is available at: *http://www.sacau.org/hosting/sacau/SacauWeb.nsf/SACAU%20Positions%20on%20Food%20Aid.pdf*

WTO Roundup

Brazil announces IP sanctions over cotton dispute

Brazil announced that it intends to break US patents and intellectual property rights in retaliation against Washington's failure to put an end to its illegal cotton subsidies.

On 15 March Brazil published 21 proposed intellectual property sanctions. The move follows an announcement earlier in the month of 102 US goods that are set to be hit with retaliatory tariffs as of 7 April. Brazil estimates that these tariffs on goods would have a total value of US$591 million, while the IP restrictions would be worth US$238 million.

The WTO's Dispute Settlement Body ruled in 2005 that the US cotton support programme – specifically, its direct subsidies and a loan guarantee scheme – distort the global cotton market and violate world trade rules. A subsequent compliance panel ruling found that reforms that the US had introduced had failed to bring the country's cotton subsidies in line with its obligations at the WTO.

In a final ruling last year, the global trade body officially authorised Brazil to impose retaliatory sanctions of up US$829 million, including through 'cross retaliation' – the imposition of punitive measures in a sector or under an agreement other than the sector or agreement in which the original violation occurred.

If Brazil follows through with the sanctions, it will become the first WTO member to cross retaliate against another country's intellectual property.

The new retaliatory measures include the suspension – without compensation and for a fixed period of time – of intellectual property rights on pharmaceuticals; chemicals and biotech products for agricultural use; and copyrights on music, books, and films and other audiovisual products.

The measures would also allow Brazil to authorise 'parallel imports' – that is, imports of products very similar to patented products – in the pharmaceutical and farm chemicals sectors. The Brazilian government would also be able to impose additional fees for the registration or renewal of patents and copyrights, and to confiscate a portion of the royalties that Brazilian branches of US firms send back to company headquarters.

The Brazilian government is now allowing 20 days of public consultations on the proposed new IP sanctions. A final list of cross retaliation measures will be announced at a later date.

EU quizzed on agricultural subsidies

EU agriculture policies came under scrutiny during the year's first meeting of the WTO's regular committee on agriculture. Exporting countries quizzed the EU on its subsidy spending at the 10 March gathering, including on new data on farm support recently released by the trade bloc.

Australia questioned the methods used by the EU to revise its export subsidy commitments to factor in the addition of new members, on the basis that this could lead to weaker commitments from the bloc. Successive enlargements have seen the EU grow from 15 to 27 member states since 1995; however, the WTO membership has yet to approve a new schedule of tariff and subsidy commitments for the growing bloc.

In response, the EU argued that revised commitments for export subsidies should not be calculated by simply adding the previous levels to those of its new members, since trade with many of the new states should now be classified as within the Union.

Australia, Brazil, and Thailand – three of the world's main sugar exporters – objected to the EU's recent decision to export an additional 500,000 tonnes of "out of quota" sugar, which they believe are above quota limits established by the WTO. The three states, which are involved in disputes with the EU brought to the WTO (cases DS265, DS266, and DS283), had recently condemned the EU moves, which they believe have depressed world prices. The EU maintains that the sugar is not subsidised and that the additional exports are temporary.

Australia and Canada also posed questions about how spending by the EU met the WTO's criteria for green box subsidies – support that is exempt from an overall ceiling or any cuts because, ostensibly, it does not result in more than minimal trade distortion.

Australia also queried why a number of countries are substantially behind in officially notifying their subsidy spending to the WTO, and noted in particular delays by Venezuela, Egypt, Korea, Turkey and China. Of the 153 member states, 81 countries have yet to provide data for 2004 or earlier. Australia urged members to keep this data current, inquiring about the reasons for backlogs of up to eight years for some states.

Deadlock on special safeguard mechanism

The G-33 developing country group that favours a strong special safeguard mechanism (SSM) has recently circulated five technical notes on the tool, along with a 'political' paper – although these, and related talks, have done little to break the deadlock on the issue.

Delegates from exporting countries have dismissed the G-33 submissions as being essentially "political" documents that offered "nothing new" to the discussion. They questioned G-33 claims that developing countries would find it too difficult to monitor both price and volume data to verify the co-existence of import surges and price depressions, claiming that this would be necessary in any case if countries wished to use the two types of safeguard mechanisms.

While the G-33 had sought to relax conditions on using the safeguard for small, vulnerable economies (SVEs), exporting countries argued that this discussion should take place only after there was greater clarity on the flexibilities that would be provided to developing countries as a whole.

Another new G-33 proposal focuses on "pro-rating" calculations of average import volumes by excluding months in which safeguard duties were applied. The proposal seeks to address exporters' calls for the mechanism to protect "normal trade", by underscoring the role of the rolling three-year average and the related but higher "trigger" threshold that must be breached before additional duties can be imposed.

These conditions, the group says, would allow for trade to grow while providing a means to tackle sudden import surges or a drop in prices. The G33 also argues that the exporters' focus on a limited number of "hyper growth" products is misleading, claiming instead that "double or triple digit growth rate products are not the norm, but the exception."

This information has been summarised from ICTSD's Bridges Weekly Trade News Digest.

EPA Update

Melissa Julian

Central African Ministers provide instructions to EPA negotiators

Central African ministers agreed on instructions for their negotiators in the regional EPA talks with the EU during a 22 February meeting in Doula.[1] They instructed EPA negotiators to negotiate 60 percent tariff liberalisation in goods within a transition period of 20 years (including a five-year preparatory period before liberalisation begins). Ministers also want to exclude all EU subsidised products from trade liberalisation. Safeguard measures and the use of export taxes on certain products to counter the negative effects of tariff dismantlement should also be strengthened in the EPA, agreed the ministers. Common ACP rules of origin and the possibility of cumulation with ACP and neighbouring countries will also be sought. Meanwhile, the ministers rejected the EC proposal to include Most Favoured Nation (MFN) and non-execution clauses in the EPA.

Ministers also seek legally binding rules and resources additional to existing financial cooperation to cover EPA adjustment costs.

The ministers supported Cameroon's request to delay tariff dismantlement as set out in its interim EPA until conclusion of a regional EPA agreement in order to not disrupt the CEMAC customs union. They also plan to address the concerns of Equatorial Guinea, which says it will not adhere to the EPA until 2020.

West Africa and EC continue EPA negotiations

West Africa-EU technical and senior officials met in Brussels from 18-26 March, as TNI went to press. Issues discussed included market access, rules of origin, modalities for financing the EPA Development Programme (EPADP), regional levies, the MFN clause, the non-execution clause and agricultural subsidies.

It was agreed at a West African experts' workshop on 12 March in Cotonou that negotiators will table a revised market access in goods proposal that sets market opening at 69.69 percent over a period of a 25-year period. West Africa also wants the European Commission to commit to providing funds to the EPADP.[2]

EC calls on Namibia to sign interim EPA and puts forward proposals to align SADC and South Africa Trade Agreements

No EPA negotiating meetings have been held the past month. The round scheduled to be held in March was postponed due to problems in finding a mutually convenient date, and is now scheduled to be held on 27-29 April in Brussels. SACU Ministers also wrote to EC Trade Commissioner Karel De Gucht at the end of February requesting a ministerial level meeting to discuss EPAs. The EC has not yet responded to this request.

On 1–2 March, representatives of the European Commission, government and NGOs from the Southern African Development Community (SADC), and the private sector met in Maputo to discuss the state of play and potential benefits of the EU-SADC EPA.[3] Working groups discussed provisions for trade in goods, sanitary and phytosanitary standards, rules of origin, trade in services, and investment. Jacques Wunenburger, head of one of the EC EPA Units, invited Botswana, Lesotho, Swaziland and Mozambique to complete their internal procedures so that the interim EPA can enter into force. He also called on Namibia to sign the interim EPA that it initialled more than two years ago in order to conform to EU and World Trade Organization laws. Namibia has maintained that it would not sign the EPA until it has received firm commitments from the EU that it would address Namibia's concerns regarding EPA provisions it feels could threaten the country's regional integration efforts, such as the proposed MFN and export-tax provisions.

On 24 February, the EC requested EU Member States to amend the schedules of 53 tariff lines in the EU-South Africa Trade, Development and Cooperation Agreement (TDCA) to match those applied to the same EU products by Botswana, Lesotho, and Swaziland in the interim EPA. This is intended to preserve the uniformity of the Southern African Customs Union external tariff.[4]

Date set for EC-ESA Ministerial meeting to discuss EPAs

There have been no East and Southern Africa (ESA)-EC EPA negotiations over the past month. The next ESA-EC Ministerial Meeting (a joint informal meeting) is scheduled between EC Trade Commissioner Karel De Gucht and EC Development Commissioner Andris Piebalgs and some ESA Ministers on 14 April in Brussels. Eastern and Southern Africa regional leaders have requested this meeting to establish a high-level political understanding regarding contentious EPA issues before continuing with technical-level negotiations.

EAC and EC may sign Framework EPA in March

As TNI went to press, the East African Community Council of Ministers met in Arusha from 19-26 March to discuss the way forward in EPA negotiations with the EU. The meeting follows EAC-EU technical-level EPA negotiations which took place in Brussels on 23-24 February. At that meeting, experts reportedly agreed on a road map towards signing the Framework EPA at the end of March and completing negotiations for a comprehensive EPA by December.[5] Both parties agreed to work towards defining and addressing the development needs associated with the EPA, and a template for a development matrix was approved by both parties. [6] The matrix, which will include priority regional and national infrastructure projects identified for the region, is currently being completed at the regional level. The EU also agreed to contribute via the European Development Fund and Aid for Trade. The development cooperation issue has been a key demand of the EAC that has stalled the talks for nearly three years. But TNI was unable to confirm if this will be fresh money. The legal status of the development matrix is also uncertain. The EAC wants new inputs to the Framework EPA before signing, while the EC says new negotiated texts can be transferred to the eventual full EPA.

The Framework EPA would liberalise 100 percent of EU tariff lines and 82 percent of EAC tariff lines (64 percent in two years, 80 percent in 15 years and the remainder in 25 years). Trade in agricultural products, wines and spirits, chemicals, plastics, wood-based paper, textiles and clothing, footwear and glassware are excluded from liberalisation. In order to tackle these remaining outstanding issues, and those concerning export taxes and the MFN clause, the parties agreed to organise a senior-level meeting before the

end of March, but a date for this has not yet been set. Dates for a ministerial meeting have also not been established. As a result, the Framework EPA is unlikely to be signed by the end of the month.

Caribbean EPA implementation delays continue

The Conference of Caribbean Community Heads of Government adopted a Communique at their meeting on 11-12 March in Roseau which acknowledged the designation of the CARIFORUM EPA Coordinator and welcomed the establishment of the CARICOM Secretariat EPA Unit.[7] Heads urged that every effort be made to quickly convene the first meeting of the CARIFORUM-EC Joint Council. The Conference also noted that the market access concessions on bananas and rum granted by the EC in free trade agreements just concluded with Colombia and Peru should take into account existing EU commitments to the Caribbean on these products. Heads acknowledged that there is still outstanding work to consolidate implementation of the CARICOM Single Market.

Sources indicate that a draft EPA implementation plan exists, but according to the prominent regional commentator David Jessop, Executive Director of the Caribbean Council, there is little sign of the Joint Cariforum-EU EPA Council of Ministers being convened in the immediate future.[8] Until this body meets, the approval of the key EPA working institutions and procedures cannot be agreed or regional funding drawn down. The delay, according to Jessop, is principally because fundamental differences have still not been resolved between Caricom and the Dominican Republic.

Pacific

There have been no EPA negotiations with the Pacific over the past month. Pacific ACP trade officials and ministers were scheduled to be held from 23–26 March, but these have been deferred to the first week of June in Nadi in order to allow more time to complete the required preparatory work needed in fisheries, customs-related provisions and market access offers.

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Notes

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Trade Negotiations Insights

Calendar and resources

ACP-EU Events

April

27-1 19th Session of the ACP-EU Joint Parliamentary Assembly, Tenerife, Spain

13-15 2nd inter-regional seminar of the Monitoring Regional Integration Project, Brussels, Belgium

14 Joint ESA-EC informal ministerial meeting between Commissioners De Gucht and Piebalgs of the EC and ESA Ministers, Brussels, Belgium

22-23 Conference on the CARIFORUM-EU EPA One Year On: Regional Integration and Sustainable Development, Bridgetown, Barbados

26-29 East African Community Investment Conference, Kampala, Uganda

27-29 EU-SADC EPA negotiation sessions, Brussels, Belgium

27-30 Forum trade officials' and ministers' meetings on trade and trade-related issues, Pohnpei, Federated States of Micronesia

29 EU-ACP Civil Society Organisations International Seminar on EPAs, Brussels, Belgium

TBC EPA information seminar for the Caribbean region, Bridgetown, Barbados

May

3-7 Oceania Customs Annual Conference, Apia, Western Samoa

6-7 AUC EPA Negotiations Coordination meeting, Abuja, Nigeria

10-12 EPA information seminar for South Africa, Capetown, SA

13-14 Thirtieth Meeting of the CARICOM Council for Trade and Economic Development (COTED), Guyana

17 Bilateral mini-summit between the Presidency of the EU and Cariforum, Madrid, Spain

18 6th EU-Latin America and Caribbean Summit, Madrid, Spain

18-20 Lighting Africa 2010 Conference, Nairobi, Kenya

26-28 5th International Conference on ICT for Development, Education and Training (e-Learning Africa 2010), Lusaka, Zambia

31- 03/06 91st Session of the ACP Council of Ministers, Ouagadougou, Burkina Faso

TBC COMESA-EAC-SADC Tripartite Summit on regional integration (place TBC)

June

3-4 ACP-EC Council of Ministers: signing ceremony for 2nd Revision of Cotonou Agreement

TBC PACP Trade Officials and Ministers meeting on EPA, Fiji

WTO Events

April

6-8 Trade Policy Review Body — Armenia

28-30 Trade Policy Review Body — Albania

May

5-6 WTO General Council meeting

10-12 Trade Policy Review Body — China

June

1-3 Trade Policy Review Body — Malawi

21-23 Trade Policy Review Body — Honduras

Resources All references are available at: *www.acp-eu-trade.org/library*

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