

Comment

The following detailed comments on the Brewster-Girvan paper were received from a CRNM Associate. They represent the views of the writer and not the official view or position of the CRNM. They have been edited for posting. References are made to the points as numbered in the Brewster-Girvan paper (see above). The writer's comments are in italics.

On Point 1.1 (WTO Compatibility vs. 'Development Compatibility')

It is true that there are no established definitions and methodology for calculating WTO compatibility but there is long practice and the hard fact that one is operating in a legal environment and some respect has to be paid to Art XXIV to which all members have subscribed. The ACP have tried to introduce more de jure flexibility in Art XXIV to get longer transition periods and a lower percentage for "substantially all trade" but at the end of the day because of the opposing forces which included more developing countries than developed countries and uncertainty as to whether one can really legally improve Art XXIV, the vast majority of countries including the ACP seem to have come to the position that it is better to stay with the status quo and see how far one can stretch it.

It is easy for each country or region to introduce new criteria and claim more flexibility but at the end you will be faced with an examination which could possibly lead to a legal challenge. The two criteria you introduced sound elegant in terms of development but at the end of the day you still have to say how they translate into an acceptable percentage of trade, tariffs and sectors in terms of Art XXIV. I am positive that CAR countries have taken all these criteria on board in their longer transition periods and exclusions because they are self-evident in terms of protection in these states. Stakeholders would have certainly brought them to the attention of governments.

The onus on you at this stage is to get to the ground and show where they have not sought SDT treatment for the sectors and products that are covered by the criteria that you mention. You also have to indicate what should be in the various time baskets and what should be excluded and finally what is a reasonable SAT for WTO compatibility that you believe the WTO membership would buy. As I understand it so far the CAR offer and negotiating position have more flexibility than that found in any FTA between the North and South and it goes beyond the most flexible which is the EU-RSA TDCA in terms of SAT and number of tariff lines that go over 10 years as well as exclusions. All of this is in sync with the arguments that Small Economies have made in the WTO about Art XXIV and in my view I see no incompatibility with what you suggest and what the region is insisting on. I therefore fully agree that the region should insist on a new interpretation of SAT that has more flexibility for SVEs.

I am not clear as to how you benchmark in an agreement on liberalization in terms of its impact. I am also not clear as to the added value of doing this especially when up front you calculate the transition periods needed and you put in place the necessary safeguards. I am however open to suggestions on this and I shall read the piece you suggested.

Finally, I think your contribution has value in terms of making the EU more aware of the need for more flexibility for SVEs under Art XXIV which by the way the EU was the first to recognize in the WTO but not to extent that SVEs wanted.

On Point 1.2 (Removal of domestic trade-distorting subsidies on Agricultural products).

There is no way of dealing with domestic support outside of the WTO as it has to be negotiated and applied multilaterally. This is why Brazil and Argentina came out of the FTAA and decided to try and settle this matter first in the WTO before pursuing further an FTAA. As for export subsidies, CAR is not like RSA where a countervailing measure could be agreed upon. Many CAR states enjoy cheaper food as a result of these subsidies and are not happy to see them go. The WTO is leaning towards an agreement on the phasing out of these subsidies. It may be better for this course to be pursued and to make some provision in the interim for those that may be affected by these subsidies to keep high tariffs and use safeguards. I do not think the EU would have a problem with this as already they have agreed to phase out export subsidies in AG in the WTO.

On Point 1.3 (Proposal for a special regime for customs revenue dependent states)

In the first place it should be noted that CARIFPRUM has tried to accommodate the OECS in terms of this revenue question and the OECS have gotten a fair amount of space in terms of exemptions, longer transitions, etc. It should also be stated that over the last 15 years almost every regional and international financial organization has been involved in fiscal reform in the OECS with a view to reducing dependence on trade taxes in the context of global liberalization. Success has been varied to the extent that this is not a very serious problem for all OECS states. The OECS countries are also moving to non-trade tax systems based on the McIntyre study which clearly showed how feasible this is some three or four years ago. The EU along with the WTO and other agencies are committed to assisting the OECS and it is expected that reasonable provision will be made for more assistance along these lines in any agreement. As to whether this should be quantifiable, I have my doubts since it is not possible upfront to determine the full impact of liberalization in a context of fiscal reform and flexible approaches must to be adopted along the way.

Finally I should mention that many of the ODCs in the OECS are already being phased out as they are temporary in terms of WTO commitments.

On Point 4.1 (Absence of specific EC commitments on development support in the Draft Legal Text.)

The point about commitments being binding is shared by all ACP regions as they are more specific and make the EU legally accountable. I am not party to these talks but I remember

in the WTO AFT negotiations this same issue arose and what was revealed by the OECD was that binding commitments cannot be offered since each country has to go to its parliament every year where finance is concerned. Aid offers including all ODA and the billions offered to Africa recently are only pledges made by the political leadership at the time which they hope to get Parliaments later on to accept. They have no guarantees but each year as the Minister of Finance brings his budget to Parliament and provides the annual aid allocation, it is only then that there is certainty. This means that all aid is just a pledge and the Member States and EC Commission work each year to ensure that it is met knowing full well that there is always the possibility that they may not get it.

In addition, even if it was possible to bind aid, binding commitments would directly suggest that we are opening our markets legally in return for some money which de facto may be the case but which legally is bad since it ties us even further beyond the FTA and WTO commitments. Critics would suggest that CAR was pressured to liberalize because of the financial resources.

In the light of the above while I would like to see more precision, a continuous insistence on binding commitments that involve dispute settlement appears a non-starter. We have had a long relationship of thrust with the EU on this since 1975 and in spite of the delays, etc, the EU has delivered. I believe we may need to look at this squarely in the end.

I agree on monitoring and this is now standard even in the WTO with its AFT.

As regards the level of separation of development concerns and EPA consequences, I do not think there is a real fear here since we are dealing with the same EDF and same institutions. My real worry is that lack of specificity of trade development in EPA as against general development in Cotonou could cause trade development to be affected as countries seek to put every conceivable remotely-related development project under the EPA fund. We would have to accept some blame here since we have insisted on re-writing the Cotonou Agreement in the EPA with no clear distinction between the two even though this would not separate them but make much clearer the resources needed for trade development. In my view this was a way to use the Cotonou Provision more for “non-trade development needs” and to push more for additional resources for trade development. This was the WTO AFT approach.

Finally, I agree that countries that do not have development programs should establish ones as well as, as you noted, “put in place the complementary policy and governance reforms that are needed for sustainable development”. In this diverse situation, we cannot wait for all to come on board on this but certainly urge all to do so.

On point 4.2 (Development Support)

Your dissatisfaction with the EU development offer is shared by all as well as the disbursement procedures. Some of the blame for underutilization of resources is to be shared by us in this region as we take too long to elaborate regional projects and there is too much bickering among us as to “who gets what.”

I am not sure that it would make sense for CAR to develop more user-friendly and firm-friendly faster disbursement methods as this had been tried over and over in the annual NAO meetings and other fora since 1975. The EC keeps insisting that it has its own internal procedures as an aid giver to meet and since its expansion; the procedures have been toughened especially since the entry of the Nordics with their stringent accounting procedures. I would suggest that it may be more useful to look at faster disbursing forms of aid as programmable aid as against project aid.

Finally, I should mention that the emergence of higher income countries in the region (who have been graduated in other fora) is not acting in our favour especially when our ACP African colleagues have much more dire needs. It makes it harder to convince our partners of our needs.

We also need a much more discriminating approach to trade development needs in the region to get our priorities correct since many of the “emerging” countries do not have the same level of needs as the others.

On final point in 4 (Secure a roll-over of the WTO Cotonou Waiver to extend negotiations).

You agreed with the CRNM and Ministerial approach that the deadline should not limit CAR's options and you cautioned against going for an EPA-lite, a framework agreement, etc. You suggested a CAR WTO strategy to get the waiver extended. Let me state that many of us felt that this is the way the ACP should go as a group but this did not materialize. As you would have noticed two ACP regions (with I believe two more coming on board this week) have already signed off on the framework agreement. ECOWAS, the largest and most powerful ACP region and perhaps the one less dependent on Cotonou except for one or two non-LDCs in the bloc have tried this strategy on its own but to no success as yet. The EU remains steadfast in its position that at least a WTO compatible commitment in goods is essential to convince WTO members to go along with temporary (for a year) one-way EU preferences, thereby extending in a de facto manner the waiver. This is risky as many developing country guns are so pointed to the EU that I am still hoping that they may not challenge it. It is true that the time is too short for adjudication, but if they can claim loss in that year they can possibly win in a dispute settlement.

In a more general way, judging from the waiver fate (still to be accepted) of the CBI and AGOA which is mild as compared to Cotonou, it is clear that the price the EU would have to pay for any extension could be unbearable.

CAR on its own can hardly have any impact without the other ACP regions and because of horizontal treatment; the EU at this stage will not reverse its approach. In the hard world of international bargaining, one therefore has to ask whether a goods commitment at this stage would jeopardize the CAR position. For my part, and here I am speaking personally (I have no connection with these negotiations) I do not have such fears as I believe the divergence between the EU and CAR on transitions and exclusions do not seem to be that significant and CAR can reasonably get the protection it desires. I believe therefore that in the circumstances a Framework Agreement is still be a viable possibility. The goods link to the development

dimension could be a problem as I would prefer the development dimension to be finalized at the end after all is considered in some type of `single undertaking` but even here there are still possibilities.

Your caution about trading development options for market access which will soon be eroded is well noted. However, even though in general, preferences are on their way out, specific preferences on certain sensitive items as sugar, rum, rice, bananas, etc are here to stay for a long time in spite of WTO liberalization as these are sensitive products and being safeguarded by the EU. The preferences that the region can secure in an FTA for these products will no doubt give it a significant advantage which could be fully utilized once the region adjust its costs. This therefore should not be discounted.

On Point 5.1 (That the EC threat to impose GSP treatment on ACP countries if no agreement is signed by December 1 contravenes its Article 37(6) obligations under the Cotonou Partnership Agreement)

I am not sure there is much of a legal argument here about art 37(6). An equivalent trade framework that conforms to their existing situation could be interpreted in trade law to refer to one of the agreements in a particular category of trade agreements. Cotonou is among the category of unilateral trade preferences granted under the Enabling Clause and with a waiver. It is thus in the same vein as the various types of GSP. The EC could therefore argue that standard GSP is an equivalent trade framework. Furthermore, in the notes that led up to this agreement as well as in the negotiation of EPAs the EU has always made it clear that standard GSP is what is permissible as an alternative under WTO rules for non-LDCs since a waiver for the extension of Cotonou is no longer attainable.

I do not want to appear as an EC Advocate but proper discussion must be able to see both sides and draw reasonable conclusions. If this was a good legal argument I am sure that the ACP would have already pounced on it but they know that they cannot go before the WTO with this since the EU cannot legally promise something which is not under its control. and is not accepted under multilateral trade rules.

I am stating the above as a bush lawyer, of course but I am wary of writers who advance all types of arguments to strengthen the ACP case without examining them carefully. This is not helpful to the ACP.

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