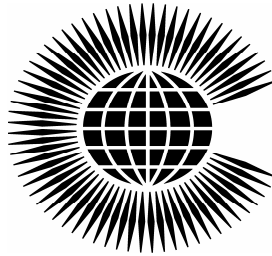




Overseas Development
Institute



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ACP–EU Economic Partnership Agreements Final Report

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List of acronyms

ACP	African, Caribbean and Pacific (group of countries)
AoA	(WTO) Agreement on Agriculture
BLNS	Botswana, Lesotho, Namibia and Swaziland
CARIFORUM	Caribbean Forum
CEMAC	Communauté Economique et Monétaire de l'Afrique Centrale
CET	common external tariff
CSO	civil society organisation
DFQF	duty- and quota-free (market access)
EAC	East African Community
EC	European Community
ECOWAS	Economic Community of West African States
EDF	European Development Fund
EIB	European Investment Bank
EPA	Economic Partnership Agreement
ESA	Eastern and Southern Africa
EU	European Union
FFA	Fisheries Framework Agreement
FTA	free trade agreement
GATT	General Agreement on Tariffs and Trade
IMF	International Monetary Fund
IPR	intellectual property rights
LDC	least developed country
MFN	most-favoured-nation
NTB	non-tariff barrier
ODI	Overseas Development Institute
PACP	Pacific ACP
PACPTOM	Pacific ACP Trade Officials Meeting
PPP	Public Private Partnership
PTA	Preferential Trade Agreement
QR	quantitative restrictions
RoO	rules of origin
SACU	Southern African Customs Union
SADC	Southern Africa Development Community
SDT	special and differential treatment
SMEs	small- and medium-sized enterprises
SPS	sanitary and phytosanitary standards
TAC	total allowable catch
TBT	technical barriers to trade
TDCA	(EU–South Africa) Trade, Development and Co-operation Agreement
TRIPs	trade-related aspects of intellectual property rights
UEMOA	Union Economique et Monétaire Ouest Africaine
WTO	World Trade Organization

Summary and recommendations

This reports analyses what were believed to be the latest versions of Economic Partnership Agreement (EPA) texts in each of the six negotiating regions at the time the reports was written¹. It provides a factual snapshot that negotiators can use to help plan their strategy. The key details are to be found in the body of the report which identifies areas of agreement and disagreement on important aspects of the EPA text. As will become clear below, there remain huge gaps in the areas on which text has to be agreed. Because of this there can be no possibility that the report provides ‘an overview’ of the ‘characteristics of EPAs’ based on these documents – still less an economic assessment of their potential impact. These are (lengthy) tasks that cannot even be begun until more details have been agreed between the parties. None the less, in addition to the context-specific findings to be found in the body of the report, a number of more general findings have also emerged and are flagged in this initial section.

How close to an agreement?

One of the most important findings of the consultants is that all the texts are very far from what would be found in a ‘normal’ trade agreement covering the EPA areas. Undoubtedly, a great deal of work is happening in the regions. So the picture painted by these texts is already out of date either in terms of the level of agreement reached between the parties or, at least, in terms of the preparations that some parties have made.

For this reason, there will be areas in which rapid progress could be made were there to be a meeting of minds between the parties on disputed provisions. But rapid progress is only possible in some areas – and this has substantial implications for what can be agreed between now and the end of 2007.

Two types of (related but different) outstanding areas

The issue

An important distinction must be drawn between issues on which:

1. a resolution depends primarily on political decisions, and those that
2. require a significant technical input in addition to any political decisions.

By definition, the first can be resolved as soon as the political decision makers in each party can reach an agreement. The duration of this process cannot be judged through objective analysis from the outside such as is provided by this report.

The second, though, requires a more predictable minimum time. This is related to the scale of technical tasks to be discharged. Disagreements over point 1 may mean that the time required for point 2 takes longer than the minimum – but it cannot take less.

This distinction is not the same as the one between a ‘goods only EPA’ (which the Commission has said is all it needs by end 2007) and a text covering additional policy areas. Within both the goods and the non-goods section there are some areas of principle and other

¹ Events are moving very rapidly, partly because some groups and states have developed their positions further than is apparent from the texts analysed. Where known, some updating is provided of the position as evidenced by the texts analysed.

of technical detail. So the question remains: technically, what is the minimum time required to complete all the details even on a 'goods only' text?

The findings

None of the texts reviewed contains the detailed annexes, required in any agreements of this nature, to give effect to the decisions of principle embodied in the main text. In one case there exist some elements of some annexes, but no substantial detail; and in all other cases details are entirely absent in the key areas.

In most trade agreements one would measure the minimum time required to complete these annexes in months (at best) and if there are any political issues, in years. This applies *a fortiori* to EPAs which have the ambition to be development agreements as well. Even if annexes exist, their absence in the draft texts indicates that they have not been agreed. Evidently, therefore, it is simply not possible to move from where we appear to be at the present time to fully developed accords similar to the EU's norm by the end of the year.

Additionally to the technical difficulties to finalise the negotiations one needs to consider that ACP negotiators need to get the mandate from all member states before submitting or accepting an offer. Given the capacity constraints within ACP this procedure is a further burden to meet the extremely tight deadline.

Possibly the most worrying aspect of this disconnect between the task ahead and the time available is the impact that attempted 'shortcuts' would have on regional integration. The most time consuming part of agreeing liberalisation schedules in groups that do not already have a comprehensive common external tariff applicable to all members is that of ensuring regional coherence. It is hard enough for countries A and B each to decide on a liberalisation schedule that serves its national interests; it is very much harder to agree either a common schedule or even schedules that are separate but take account of their neighbours interests as well as their own. Setting an unrealistically fast pace risks the issue of regional coherence being trampled under foot in the rush to 'complete on time'.

The recommendation

It is recommended that African, Caribbean and Pacific (ACP) Ministers consider:

- ◆ challenging the Commission to give an example of any trade agreement the European Union (EU) has negotiated that has progressed from the status of most EPA texts to a conclusion in less than two months; it is believed that none exist;
- ◆ alerting EU member states, business and civil society organisations (CSOs) that meeting the deadline the Commission seeks to impose is technically impossible; and that
- ◆ without a change in stated policy the current Commission will be the first in EU history to raise tariffs across the board.

A more modest 'interim' agreement

The issue

This leaves open the question of whether or not it is technically feasible by end 2007 to achieve more modest agreements that could be initialled. These would agree all or most of the main principles but leave some details for further negotiation.

Whether or not it is desirable for parties to initial such agreements before every last detail has been agreed is not something that is considered in this report. The report is a purely factual comparison of existing texts. The issue for the report is whether it appears to be feasible (if parties were to consider it desirable).

The findings

Only one of the texts reviewed is currently in a form that would appear to make it feasible to initial an (almost) complete central document by the end of the year. This is the European Community–Caribbean Forum (EC–CARIFORUM) joint text. Many technical details would remain to be negotiated, but if the parties decided that it would be desirable to do so it would appear to be technically feasible to complete the task within this time-frame.

None of the other texts is yet in the same position. It is not possible to judge from an external review of this kind how close the parties are to reaching a political agreement on the outstanding areas. Because of this lack of knowledge, the report cannot rule out the feasibility of reaching a stage at which parties would have before them a document that could be initialled (subject to further negotiation) were this to be considered desirable. But, by the same token, the current drafts do not demonstrate that it is feasible to do so.

The recommendation

It is recommended that ACP Ministers:

- ◆ draw to the attention of EU member states, business and CSOs that it is not necessarily technically feasible even to complete by the end of the year a limited, interim agreement that could be initialled; and that they also
- ◆ explain that the Commission is not facilitating this process because it is still pushing for provisions in some agreements that it has agreed not to include in others.

Learning from each other

The issue

This second recommendation is derived from another very important finding of the report. This concerns the extent to which negotiators in one region can profit from advances made in other areas. Since five out of the six negotiating groups are (currently) working to texts that follow similar formats, it is fairly easy to see cases where the EU position in one is different from its position in another. Since this could be valuable intelligence for the ACP, the key areas are highlighted in Section 2 of the report.

The findings

There exist big differences between the draft texts in terms of the demands being made by the EU. What appears to have happened is that the EU has conceded ground in negotiations in those regions where agreed text in a certain area is more advanced, but it is still making the same, initial unamended demands in other cases. In other words, the Commission is delaying agreement of texts by failing to offer to all regions (if they wish it) the positions it has agreed after negotiation to adopt in others.

This must have the effect of making the overall negotiation process longer than it would otherwise have been. There are both ‘negative’ and ‘positive’ differences. The former cover cases where the EU’s own suggested text for one region does not include provisions that could be useful for the ACP but where such provisions have been included (presumably at

ACP insistence) in other agreements. For example the EU has agreed agricultural safeguard clauses with two regions but not (yet) with the others.

In the case of 'positive differences', some regions have successfully resisted the inclusion in the EPA text of clauses that the EU supports but which may be contentious. In five cases, for example, the EU wants texts which will require its ACP partner to grant it any improved access terms that it negotiates with other significant trading partners (developed or developing). This so-called MFN clause is rejected by all ACP regions. The same applies to the 'standstill clause', currently found in one draft text, which 'locks-in' the tariffs currently applied for all items excluded from liberalisation.

When it comes to the liberalisation schedules, it appears that the EC has repudiated its original position according to which EU-ACP liberalisation can take up to 25 years. Thus, a liberalisation schedule of 12 years is envisaged for SADC and of 14 for CEMAC.

The recommendations

The consultants recommend strongly that:

- ◆ each region study what has been achieved in other regions in order to identify the least onerous requirements that the EU has accepted;
- ◆ Ministers draw the attention of EU member states, business and CSOs to cases where:
 - the EU is still pushing for the inclusion in some EPAs of provisions that it has not included in any other trade agreements that it has agreed not to include in some EPAs;
 - as well as cases where the Commission seems merely to be advancing narrow mercantilist interests that are not supported by any mainstream branch of trade theory.

1. Introduction

1.1 Objectives and methodology

This report compares the current draft texts of the EPAs that the EC has been negotiating with the ACP regions since 2004. It aims to facilitate communication between the six ACP negotiating groups.

Written in early November, with the deadline for signing EPAs that the EC has announced it will apply less than three weeks away,² many ACP governments are under extreme pressure: from their exporters who fear losing their current preferential market access and push signing an EPA, and from domestic producers, parliamentarians, and civil society actors who fear increased competition from EU goods and services and the loss of ‘policy space’ when including trade-related issues and reject EPAs in their current form. This study aims to give guidance about the *status quo* of negotiations by:

1. Reflecting the EPA process at a particular point in time for all six ACP regions in order to understand the state of play within each configuration;
2. Assessing prospects and implications of the single provisions that have been negotiated. This includes trade in goods, rules of origin (RoO), trade defence, trade in services, trade-related issues, dispute settlement procedure, the institutional set-up and development cooperation.
3. Providing policy recommendations by comparing the provisions negotiated in the single chapters between the six regions and identifying those that are believed to reflect ACP goals on economic growth and sustainable development best.

The analysis is based on the EPA draft texts for each region, some of which were provided by the Commonwealth Secretariat (ComSec) and some of which were received by the Overseas Development Institute (ODI) from other sources. They are believed by the consultants and the ComSec to be the latest available versions. In those cases where a document covers only the views of one party, the consultants have also analysed, as far as available, the most recent draft submitted by the other party.

1.2 The source documents

The following documents have been used in this analysis.

1. Working Document: Economic Partnership Agreement between the CARIFORUM States, of the one Part, and the European Community and its Member States, of the other Part, Draft 15 October 2007;

This is a joint EC–CARIFORUM document that mirrors the latest agreement reached between the parties.

- 2a. Economic Partnership Agreement between Eastern and Southern Africa Countries on one Part and The European Community and its Members on the other Part, First Draft (*no date*).

² The EC is pushing hard to sign EPAs (or ‘first stage agreements’) before the Lisbon EU–Africa Summit in early December. The deadline for signature named in the late-October Communiqué is 19 November 2007. For CEMAC, 30 November was named as date of signature by the Commission.

- 2b. Draft Joint Texts: Economic Partnership Agreement between Eastern and Southern Africa Countries on one Part and The European Community and its Member States on the other Part, Draft joint texts, July 2007.

The first text was submitted by Eastern and Southern Africa (ESA) to the EC. When comparing the institutional setting and certain articles of the draft with other EC drafts it appears, however, that the text also comprises EC input (which suggests that the ESA text is not a 'first draft' as stated in the title). The second text is the EC's response to ESA submitted in July 2007. Since the ESA text (to which we refer as 'ESA text' throughout the report though it might also cover EC views) has some chapters that were deleted in the joint July draft, both texts will feed into the analysis.

While this report was being written, the ESA group split up into the EAC group (Kenya, Tanzania, Uganda, Burundi and Rwanda), the CMMS group (Comoros, Madagascar, Mauritius, and Seychelles) and the LDC group (all remaining ESA countries). It is foreseen that EAC will submit a joint market access offer under the EAC customs union framework. CMMS and the LDC group intend to submit country-specific market access offers. It is, however, reported that EAC and the group of LDCs continue negotiating under the ESA framework for the other areas covered by an EPA.

- 3a. Economic Partnership Agreement between the SADC Group of States, of the one Part, and the European Community and its Member States of the other Part (draft EC consolidated proposal – each Party reserves its right to submit further changes to this text).

- 3b. Economic Partnership Agreement between the Southern African Development Community EPA Signatory States and the European Community and its Member States. SADC EPA Draft Agreement consolidated on the 04th October 2007 by the Secretariat.

EC-SADC have not yet submitted their joint proposal. According to the consultants' knowledge, two different drafts exist, which the parties are currently negotiating, with the objective of submitting a joint draft within the next few weeks. The parties, however, largely agreed on a joint text for technical barriers to trade (TBT)/sanitary and phytosanitary standards (SPS) on 29 August 2007.

- 4a. Agreement establishing an Economic Partnership Agreement between the Pacific Members of the African, Caribbean and Pacific Group of Countries, of the One Part, and European Community and its Members States, of the Other Part (Revised in light of comments received at PACPTOM meeting in Nadi on 13-15 June 2006.

- 4b. EC Working Document: Economic Partnership Agreement between the Pacific States, of the one Part, and the European Community and its Member States, of the other Part (*no date, received August 2007*);

It is the understanding of the consultants that the Pacific ACP (PACP) submitted its draft to the EC over a year ago but did not receive responses to most of its requests. Negotiations continued on technical matters but not on the legal text. Only in August 2007 did the EC submit its proposal. In light of the expiring deadline it is reported that the parties are now working on an interim agreement that leaves several chapters of the EPA to be negotiated in 2008. It is the understanding of the consultants that this interim agreement will be based on the EC draft proposal currently under discussion.

5. EC Working Document: Economic Partnership Agreement between the West African States, ECOWAS and UEMOA, of the one Part, and the European Community and its Member States, of the other Part, 04 April 2007.

This document was submitted by the EC and does not include West African input. It is the understanding of the consultants that West Africa has rejected the document and proposed an alternative text. It is, however, unknown whether such a text yet exists. In a letter from the Economic Community of West African States (ECOWAS) and the Union Economique et Monétaire Ouest Africaine (UEMOA) to the European Commission of 5 October 2007, the West African configuration asked for an extension of the World Trade Organization (WTO) waiver. This request was, however, rejected by the Commission in their response dated 11 October. Peter Mandelson and Louis Michel propose instead a 'minimum market access in goods' as discussed in Section 2.2. It is reported that Côte d'Ivoire and Ghana will submit separate market access offers to the EC. However, no further details have yet emerged.

6. Document de Travail Confidentiel accord te Partenariat économique entre la Communauté Européenne et ses Etat Membres, d'une Part, et les Etat de l'Afrique Centrale, d'autre Part.

This text was submitted by the EC to the Central African region in May 2007. It is not known whether a Central African draft has been submitted. However, the consultants have picked up the region's proposals for trade in goods and service liberalisation from internal CEMAC documents.

In sum, the report analyses (a) a joint CARIFORUM text; (b) a joint ESA text (plus ESA positions formulated in its earlier draft); (c) two separate texts for SADC and PACP; and (d) EC positions for West Africa and Central Africa. For SADC and PACP, where two different drafts exist, the report and the table clearly indicate whether the respective position is a SADC/PACP or an EC one. The same applies for Central African positions obtained from official CEMAC documents.

1.3 Structure of the report

The analysis of the report follows the structure of the joint EC–CARIFORUM EPA draft, as this is the most extensive text where both parties are agreed on all points except those that are flagged as being areas of actual or potential disagreement or where there are gaps because neither side has yet stated its position. The main titles discussed are as follows:

- ◆ trade in goods (trade liberalisation offers, RoO, most-favoured nation (MFN) clause, administrative provision, trade defence, non-tariff barriers (NTBs), customs and trade facilitation, fisheries, and TBT and SPS);
- ◆ trade in services and trade-related issues (competition, innovation and intellectual property, public procurement, environment, social aspects, and protection of personal data);
- ◆ dispute avoidance and settlement procedures;
- ◆ general and final provisions, institutions and the *status quo* of the annexes;
- ◆ development cooperation and finance.

Before moving into the details, however, the report provides a tabular overview and draws out some key similarities and differences between the six negotiating regions.

2. Overview

The following table provides a comparative summary of the state of play in each of the EPA negotiation regions. There is a column for each region and rows for all of the main areas of discussion. Whilst it lacks detail, the abbreviated summary facilitates a comparison of what is happening in each of the negotiation regions.

The use of italics in the table indicates that the source for the information is not one of the draft texts listed in the Appendix but another authoritative document. The prefixing of a provision by 'EC' or the name of the ACP negotiating group indicates a proposal made by the indicated party that is not a jointly agreed position (as far as is known). Where there exist known disputes over certain provisions, this is indicated.

As there exists only one full, agreed text it is not possible to point definitively to areas of common agreement, partial agreement or major disagreement between the six EPAs. But the comparison made possible by the abbreviated treatment in the following table is very instructive in two areas.

2.1 Severity of EU demands

In the following cases, the EU's texts are demanding more onerous commitments from their partners than Europe appears to have accepted in other agreements. The cases are as follows.

1. **Time-frame:** though the EC has formerly agreed to a flexible interpretation of Art. XXIV WTO and announced that ACP liberalisation can take up to 25 years, it has taken a much stricter approach in the present drafts, stating 12 years for SADC and 14 years for CEMAC.
2. **MFN clause:** the EU is demanding this in five EPAs (and all ACP countries are disputing it) but appears not to be insisting on it in the ESA text.
3. **Sanctions for administrative non-cooperation:** the EU is pushing for this in the case of CARIFORUM and PACP but appears not to be doing so in ESA and SADC.
4. **Duration of safeguard protection:** the EU has conceded a maximum duration of eight years for CARIFORUM and Pacific but is pushing for three years for SADC and West Africa.
5. **Pre-emptive safeguards:** the EU has agreed to allow these for a maximum of 200 days in the cases of CARIFORUM and PACP but is pushing for a limit of 120 days in SADC and West Africa.
6. **Agricultural safeguard:** the EU has agreed to these for CARIFORUM and PACP but appears to be resisting them for SADC and West Africa.
7. **Quantitative safeguard restriction:** in all cases where there is an EU text on safeguards it permits quantitative restrictions (QRs), but whereas for CARIFORUM there are no restrictions, in the case of SADC and West Africa QRs are limited to 5 percent of the total value of industrial imports, whilst for PACP the limit is 15 percent.
8. **Common regional standards:** the EU has agreed a text with CARIFORUM that does not require the ACP to develop common standards, but it is pressing for this in all the other regions (except ESA for which the relevant text has not yet been drafted).
9. **Competition Bills:** in CARIFORUM, SADC and West Africa the EU has accepted a five-year transition period for the implementation of national competition bills but is pushing for three years in ESA and four years in CEMAC.

Summary of key provisions in the EPA texts

<i>Status quo</i>	<u>CARIFORUM</u> Joint text (with some areas of disagreement and some gaps).	<u>PACP</u> There is no joint EU-PACP text, but where the more recent EU text is the same as the earlier PACP text, we assume there is agreement.	<u>ESA</u> Joint text exists but most areas not yet agreed or chapters not yet drafted.	<u>SADC</u> Two separate texts (but joint texts exist on TBT and SPS).	<u>Central Africa</u> EC draft only with no Central African input.	<u>West Africa</u> EC draft only with no West African input.
I. Trade in goods						
1. Customs duties						
Regional liberalisation	Unknown (CF aims for SDT for lesser developed countries).	Unknown (but several countries will not join).	Yes (after 10 years moratorium).	Disputed (EC aims for common SADC EPA offer based on the TDCA. Non-SACU members shall be able to make exceptions to tariff elimination commitments).	Yes (foreseen).	Unknown.
Time-frame	<i>EC: 15 years Cariforum: 25 years.</i>	No indication.	EC: to be discussed. ESA: 25 years (based on the COMESA CET; LDCs shall be excluded). Separate EAC offer based on the EAC CET under preparation.	Not yet agreed (EC aims to build on TDCA: 12 years).	No indication in text; remains disputed: 25 years (CEMAC)/ 14 years (EC).	No indication.
Scope/exclusion basket	<i>EC: 80 percent plus 20 percent in 20-25 years. Cariforum: up to 80 percent in 25 years.</i>	No indication.	No indication.	No indication.	No indication in text; remains disputed.	No indication.
Liberalisation details ACP	No (in text or annex).	No (in text or annex); PACP proposes a positive-list approach.	Yes (in text but product categories are not defined).	EC: Yes (based on EC proposal to use the TDCA liberalisation schedule).	No (in text or annex).	No (in text or annex).
Review of tariff concessions	EC: in case of serious difficulties for 1 year but not beyond the maximum transition period. CF: 2 years.	In case of serious difficulties for 1 year but not beyond the maximum transition period (disputed).	Disputed (ESA/EC have separate offers listed).	Not yet outlined.	Yes (in case of serious difficulties for 1 year but not beyond the maximum transition period).	Yes (in case of serious difficulties for 1 year but not beyond the maximum transition period).
Standstill provision	No.	Yes (disputed).	Unknown (appeared in ESA draft but not in joint EC-ESA draft).	No.	No.	No.
Liberalisation details EC	Yes, partly. Rice: DFQF from 2010 on; sugar offer not finalised yet.	No (EU still working on sugar offer).	No.	No.	No.	No.

Status quo	CARIFORUM Joint text (with some areas of disagreement and some gaps).	PACP There is no joint EU-PACP text, but where the more recent EU text is the same as the earlier PACP text, we assume there is agreement.	ESA Joint text exists but most areas not yet agreed or chapters not yet drafted.	SADC Two separate texts (but joint texts exist on TBT and SPS).	Central Africa EC draft only with no Central African input.	West Africa EC draft only with no West African input.
Rules of origin	<u>Cotonou+</u> : cumulation with EU FTA countries; derogation from existing RoO to develop new industries for at least 5 years.	No provisions yet.	No provisions yet (ESA envisages two sets of RoO: ESA/EC).	No text yet (EC envisages unspecified 'differentiation' between South Africa and other SADC EPA states, at least for agriculture).	No provisions yet.	No provisions yet.
Rules of origin details (excluding fisheries)	Partially: Protocol is defined but supplementary annexes are missing.	No.	No.	No.	No.	No.
Rules of origin review	Yes (EC 3 years/CF 5 years).	Yes (EC 3 years/PACP 5 years).	No provisions.	No provisions.	No provisions.	No provisions.
MFN clause	Yes (disputed).	Yes (disputed).	No.	Yes (disputed).	Yes.	Yes.
Sanctions in case of failure to provide administrative cooperation	Yes: temporary suspension of preferences in cases of repeated failure (disputed).	Yes: temporary suspension of preferences in cases of repeated failure (disputed).	No.	EC and SADC: no provisions.	Unknown (EC text on administrative cooperation not yet outlined).	Unknown (EC text on administrative cooperation not yet outlined).
2. Trade defence						
ACP exclusion from GATT/AoA safeguards	Yes (limited to 5 years with option of extension).	Yes (limited to 5 years with option of extension).	Chapter not yet drafted.	No.	Chapter not yet drafted.	Unknown (No EC text yet).
Quantitative safeguard restrictions	No.	Total value of imports that are subject to safeguards is limited to 15% of industrial products from the other Party.	Chapter not yet drafted.	EC: total value of imports that are subject to safeguards is limited to 5% of industrial products from the other Party. SADC: EC may not impose safeguards <i>vis-à-vis</i> SADC EPA states.	Chapter not yet drafted.	Total value of imports that are subject to safeguards is limited to 5% of industrial products from the other Party.
Maximum safeguard protection	8 years (but only applicable in the first 10 years).	EC: 8 years (applicable only in the first 15 years); disputed.	Chapter not yet drafted.	EC 3 years/SADC 8 years.	Chapter not yet drafted.	3 years.
No new safeguards for a product that has been previously subject to safeguards	Yes, for 1 year.	Yes, for 1 year.	Chapter not yet drafted.	Yes, for 1 year	Chapter not yet drafted.	Yes, for 1 year.
Pre-emptive safeguards	Yes (max. 200 days).	Yes (max. 200 days).	Chapter not yet drafted.	Yes (EC max. 120 days/SADC max. 200 days).	Chapter not yet drafted.	Yes (max. 120 days).

Status quo	CARIFORUM Joint text (with some areas of disagreement and some gaps).	PACP There is no joint EU-PACP text, but where the more recent EU text is the same as the earlier PACP text, we assume there is agreement.	ESA Joint text exists but most areas not yet agreed or chapters not yet drafted.	SADC Two separate texts (but joint texts exist on TBT and SPS).	Central Africa EC draft only with no Central African input.	West Africa EC draft only with no West African input.
Agricultural safeguard	Yes (pre-emptive safeguards for agriculture and fisheries; linked to food security); trigger not yet drafted.	Yes (but not specified yet).	Chapter not yet drafted.	EC: No. SADC: Yes (trigger volumes and price not yet defined).	Chapter not yet drafted.	No.
3. Non-Tariff Measures						
Abolition of NTBs and quantitative measures	Prohibition of any import or export restrictions other than customs duties and taxes – notwithstanding anti-dumping/counter-vailing measures.	Prohibition of any import or export restrictions other than customs duties and taxes – notwithstanding anti-dumping/counter-vailing measures.	EC: Prohibition of any import or export restrictions other than customs duties and taxes – notwithstanding anti-dumping/counter-vailing measures. ESA: elimination of NTBs within 1 year; set-up monitoring and elimination mechanism.	EC: Prohibition of any import or export restrictions other than customs duties and taxes – notwithstanding anti-dumping/counter-vailing measures. SADC: text to be provided.	Prohibition of any import or export restrictions other than customs duties and taxes – notwithstanding anti-dumping/counter-vailing measures.	Prohibition of any import or export restrictions other than customs duties and taxes – notwithstanding anti-dumping/counter-vailing measures.
Subsidies	No new/increased agricultural subsidies; EU to phase out agricultural export subsidies.	No new/increased agricultural subsidies (disputed); EU to phase out agricultural export subsidies.	No provisions yet (ESA draft: EU to phase out export subsidies but no commitments for ESA).	No provisions.	No new/increased agricultural subsidies; both parties to phase out agricultural subsidies in line with WTO commitments.	No new/increased agricultural subsidies; EU to phase out agricultural export subsidies.
4. Customs and Trade Facilitation						
Single administrative document	Yes (review after 3 years).	Yes (review after 5 years).	Chapter not yet drafted.	EC and SADC: yes.	Yes.	Yes.
Development of common regional standards	No.	Yes (common legislative procedures are envisaged; regular follow-up on <i>status quo</i>).	Chapter not yet drafted.	EC and SADC: yes (harmonise customs legislation, procedures and requirements).	Yes (developing standardised requirements, procedures, and documents).	Yes (developing standardised requirements, procedures, and documents).
Common institutions	Yes (Special Committee on Customs and Trade Facilitation).	Yes (Special Committee on Customs and Trade Facilitation), not yet agreed.	Chapter not yet drafted.	EC and SADC: yes (Sub-Committee on Customs and Trade Facilitation).	Yes (Special Committee on Customs and Trade Facilitation and Special Committee on Rules of Origin).	Yes (Special Committee on Customs and Trade Facilitation).
5. Fisheries						
Access agreement	No.	Yes (5% of TAC has to be reserved for EC), phrasing of chapter is disputed.	No draft joint text. ESA text foresees the creation of a Fisheries Framework Agreement with reference to bilateral agreements.	No.	No.	No.

<i>Status quo</i>	CARIFORUM Joint text (with some areas of disagreement and some gaps).	PACP There is no joint EU–PACP text, but where the more recent EU text is the same as the earlier PACP text, we assume there is agreement.	ESA Joint text exists but most areas not yet agreed or chapters not yet drafted.	SADC Two separate texts (but joint texts exist on TBT and SPS).	Central Africa EC draft only with no Central African input.	West Africa EC draft only with no West African input.
6. Technical Barriers to Trade and Sanitary and Phytosanitary Standards						
Scope	WTO obligations and cooperation commitments; development of joint mechanism for coordinating cooperation; agreed <i>ad referendum</i> .	WTO obligations and cooperation commitments; non-WTO members shall be informed about WTO regulations; development of joint mechanism for coordinating cooperation; an annex for SPS priority sectors and products shall be developed.	TBT: chapter not yet drafted (ESA draft on TBT was very extensive and foresaw development of joint mechanism for coordinating cooperation and developing common views). SPS: WTO obligations and cooperation commitments; developing an annex for SPS priority products/ sectors.	Joint text: a) Parties agree on collaboration and to establish capacity building programmes; b) an annex for SPS priority sectors and products shall be developed; c) an early-warning system for SPS change shall be introduced.	WTO obligations and cooperation commitments; development of joint mechanism for coordinating cooperation still to be defined; 'priority products' to meet technical regulations; agreement on SPS 'priority products' to meet technical regulations (annex outstanding).	WTO obligations and cooperation commitments; development of joint mechanism for coordinating cooperation and developing common views; agreement on SPS 'priority products' to meet technical regulations (annex outstanding).
Common institutions	No.	No.	TBT: chapter not yet drafted (ESA draft: Sub-Committee on Standards). SPS: yes (Joint Committee on Sanitary and Phytosanitary Measures).	Yes (Joint Committee on Sanitary and Phytosanitary Measures). TBT: foreseen (provisions yet to be drafted).	No.	No.
Regional approach	Partly (endeavour to harmonise regulations, standards and procedures based on international standards; capacity building and technical cooperation; build up centres of expertise).	No (but collaboration between regional authorities).	TBT: chapter not yet drafted (ESA draft: yes, working towards regional approach). SPS: yes (by harmonising legislation/ regulations and testing methods/standards)	Limited (promote intra-regional harmonisation of measures with international standards).	Limited (regional and EC–CA cooperation to identify dangerous products, improve transparency of TBT/SPS, improve public health).	Limited (harmonise norms and measures at regional level).

Status quo	CARIFORUM Joint text (with some areas of disagreement and some gaps).	PACP There is no joint EU-PACP text, but where the more recent EU text is the same as the earlier PACP text, we assume there is agreement.	ESA Joint text exists but most areas not yet agreed or chapters not yet drafted.	SADC Two separate texts (but joint texts exist on TBT and SPS).	Central Africa EC draft only with no Central African input.	West Africa EC draft only with no West African input.
II. Trade-related issues						
1. Services						
<i>Status quo</i>	Compromise text under preparation: CF will accept standstill provision + improve transport, tourism and PC offer; EU will improve tourism and Mode 4 offer.	Compromise text under negotiation. It is understood that service negotiations will continue in 2008.	Chapter not yet drafted.	Disputed. EC aims to include GATS-compatible service offer; SADC rejects opening of its service market and opts for intra-regional harmonisation. Liberalisation of services towards EU shall be discussed after 5 years; individual SADC countries might submit individual liberalisation offers.	Chapter not yet drafted (reciprocal offers have been exchanged but no joint agreement yet: CA is asking for more generous Mode 4 conditions).	Chapter not yet drafted.
Rules of origin services	Not yet agreed. CF aims for generous definition of CF firm to attract third country investors.	Not yet agreed.	Chapter not yet drafted.	–	Chapter not yet drafted.	Chapter not yet drafted.
MFN clause	Yes (disputed).	Yes (disputed).	Chapter not yet drafted.	–	Yes, foreseen (disputed).	Chapter not yet drafted.
Standstill provision	Yes.	Unknown.	Unknown.	–	Unknown.	Unknown.
Annexes	Exist and are currently under preparation.	Unknown.	No.	–	No.	No.
2. Investment and capital movement						
Progressive liberalisation of investment	No.	Yes (and commitment to bring legal investment framework in line with international regulations); disputed.	Chapter not yet drafted (ESA draft: no provisions).	EC: yes (and commitment to bring legal investment framework in line with international regulations). SADC: no (limited to cooperation).	No.	No.
Free movement of capital relating to direct investment	Yes.	Yes.	Chapter not yet drafted (ESA draft: yes).	EC: yes. SADC: text to be prepared.	Yes.	Yes.
Safeguards in case of balance of payment difficulties	Yes (in line with WTO and IMF regulations); <i>CF scrutiny reserve</i> .	Yes (in line with WTO and IMF regulations), disputed.	Yes (in line with WTO and IMF regulations).	EC: yes (but not exceeding 6 months). SADC: text to be prepared.	In case of monetary and/or political difficulties safeguard may be applied (but not exceeding 6 months).	Yes (in line with WTO and IMF regulations and limited to 6 months).

Status quo	CARIFORUM Joint text (with some areas of disagreement and some gaps).	PACP There is no joint EU-PACP text, but where the more recent EU text is the same as the earlier PACP text, we assume there is agreement.	ESA Joint text exists but most areas not yet agreed or chapters not yet drafted.	SADC Two separate texts (but joint texts exist on TBT and SPS).	Central Africa EC draft only with no Central African input.	West Africa EC draft only with no West African input.
3. Competition						
Implementation of national competition bills	Yes (within 5 years).	Yes (no time-frame yet agreed).	Chapter not yet drafted (ESA draft: yes, within 3 years).	EC: yes (within 5 years). SADC: no provisions.	Yes (within 4 years).	Yes (within 5 years).
Regional approach	No.	No.	Chapter not yet drafted (ESA draft: partly, implementation of COMESA Regional Regulation is envisaged).	EC: partly (technical assistance for SADC Competition Authority envisaged). SADC: no provisions.	Unknown.	No.
Public enterprise provisions	Yes. No discrimination allowed after 5 years; discrimination possible if necessary for the existence of public enterprise. Sectoral rules might exclude public enterprises from non-discrimination principle. (Implementation Committee needs to be informed.)	Yes. No discrimination allowed after 5 years (disputed); discrimination possible if necessary for the existence of the public enterprise.	Chapter not yet drafted (ESA draft: no provisions).	EC: yes. No discrimination allowed after 5 years. SADC: no provisions.	Yes. No discrimination allowed after 5 years.	Yes. No discrimination allowed after 5 years.
4. Innovation and IPR						
Scope	Extensive: trademarks, GI, industrial design, genetic resources (<i>not yet agreed</i>). Haiti largely excluded from IPR. CF would like to see a more flexible interpretation regarding countries' compliance by 2014 and the regional approach.	Limited to joint cooperation activities; <u>but</u> : chapter on IPR not yet developed.	Chapter not yet drafted.	EC: extensive provisions: trademarks, GI, industrial design, genetic resources ... Section applies to all SADC EPA countries. Compliance by 2014 required. SADC: no commitments beyond TRIPs.	Chapter not yet drafted.	Extensive: trademarks, GI, industrial design, genetic resources ... Section applies to all ECOWAS EPA countries. Compliance by 2014.

Status quo	CARIFORUM Joint text (with some areas of disagreement and some gaps).	PACP There is no joint EU-PACP text, but where the more recent EU text is the same as the earlier PACP text, we assume there is agreement.	ESA Joint text exists but most areas not yet agreed or chapters not yet drafted.	SADC Two separate texts (but joint texts exist on TBT and SPS).	Central Africa EC draft only with no Central African input.	West Africa EC draft only with no West African input.
5. Public procurement						
Scope	Positive-list approach (annex yet to be developed): several exemptions from non-discrimination (like limited-tendering); linked to technical assistance and 5 years transition; review every 3 years.	Chapter not yet drafted.	Chapter not yet drafted.	EC: positive-list approach (annex yet to be developed): several exemptions from non-discrimination (like limited-tendering); review every 3 years. SADC: publication of laws and regulations and joint cooperation.	Chapter not yet drafted.	Positive-list approach (annex yet to be developed): several exemptions from non-discrimination (like limited-tendering); review every 3 years.
6. Environment						
Scope	Parties shall seek to adopt and implement international standards if no national/regional environmental standards exist.	EC: parties shall seek to adopt and implement international standards if no national/regional environmental standards exist.	Chapter not yet drafted.	EC: parties shall seek to adopt and implement international standards if no national/regional environmental standards exist. SADC: text to be provided.	Parties shall seek to adopt and implement international standards if no national/regional environmental standards exist. SDT is discussed.	Parties shall seek to adopt and implement international standards if no national/regional environmental standards exist.
7. Social aspects						
Scope/Institutions	International standards if no national/regional standards exist. Prohibition on enhancing trade by lowering social/labour standards. Consultative Committee monitors the implementation; a Committee of Experts may examine compliance with ILO standards.	EC: international standards if no national/regional standards exist. Prohibition on enhancing trade by lowering social/labour standards. Consultative Committee monitors the implementation; a Committee of Experts may examine compliance with ILO standards.	Chapter not yet drafted.	EC: international standards if no national/regional standards exist; prohibition on enhancing trade by lowering social/labour standards. SADC: text to be provided.	International standards if no national/regional standards exist; prohibition on enhancing trade by lowering social/labour standards.	International standards if no national/regional standards exist; prohibition on enhancing trade by lowering social/labour standards.
8. Personal data protections						
Scope	Creation of legal and regulatory regimes to protect personal data.	EC: creation of legal and regulatory regimes to protect personal data.	Chapter not yet drafted.	Creation of legal and regulatory regimes to protect personal data.	Chapter not yet drafted.	Creation of legal and regulatory regimes to protect personal data.
Time-frame	7 years.	No time-frame outlined.	Chapter not yet drafted.	No time-frame outlined.	Chapter not yet drafted.	No time-frame outlined.

Status quo	CARIFORUM Joint text (with some areas of disagreement and some gaps).	PACP There is no joint EU–PACP text, but where the more recent EU text is the same as the earlier PACP text, we assume there is agreement.	ESA Joint text exists but most areas not yet agreed or chapters not yet drafted.	SADC Two separate texts (but joint texts exist on TBT and SPS).	Central Africa EC draft only with no Central African input.	West Africa EC draft only with no West African input.
9. Good governance in the tax and financial area						
Scope/status quo	Currently no provisions. CF fears that chapter hampers fiscal incentives as tool to attract FDI and don't want to share information on investors with EU.	EC: improve effectiveness of tax collection and avoid undue business taxation; and international cooperation in taxing and transparency.	No provisions.	Improve effectiveness of tax collection and avoid undue business taxation; and international cooperation in taxing and transparency.	Foreseen but not yet outlined.	Foreseen but not yet outlined.
VIII. Dispute avoidance and settlement						
Scope/status quo	Extensive and detailed procedures that follow largely EU proposal; <i>not yet agreed.</i>	Extensive and detailed procedures that follow largely EU proposal; <i>not yet agreed.</i>	Extensive and detailed procedures; EC proposal (ESA draft did not show provisions on dispute settlement)	EC and SADC proposal are largely similar	Extensive and detailed procedures	Extensive and detailed procedures
Temporary remedies in case of non-compliance	Yes.	Yes.	Yes.	EC: Yes. SADC: no provisions.	Yes.	Yes.
IX General and final provisions						
Scope/status quo	Appoint coordinator to ensure effective implementation; regional preference (disputed); balance of payment restrictions limited (disputed).	Appoint coordinator to ensure effective implementation (disputed); regional preference (disputed); balance of payment restrictions limited (disputed).	Appoint coordinator to ensure effective implementation; regional preference; balance of payment restrictions limited.	EC and SADC: appoint coordinator to ensure effective implementation. EC: regional preference; balance of payment restrictions limited. SADC: no provisions.	Appoint coordinator to ensure effective implementation; regional preference.	Appoint coordinator to ensure effective implementation; regional preference; balance of payment restrictions limited.
Accession of other ACP states possible at later stage	No provisions.	Yes (subject to decision by Joint EPA Council).	Yes (subject to joint decision of the Council of Ministers).	EC: yes (foreseen but no provisions yet). SADC: yes (subject to joint decision of Council).	No provisions.	No provisions.

Status quo	CARIFORUM Joint text (with some areas of disagreement and some gaps).	PACP There is no joint EU-PACP text, but where the more recent EU text is the same as the earlier PACP text, we assume there is agreement.	ESA Joint text exists but most areas not yet agreed or chapters not yet drafted.	SADC Two separate texts (but joint texts exist on TBT and SPS).	Central Africa EC draft only with no Central African input.	West Africa EC draft only with no West African input.
Review of the EPA	Yes. Government procurement (every 3 years). RoO (EC after 2 years/CF 5 years). Customs and legislative procedures (every 3 years). Competition policy (after 6 years). CF exclusion from GATT/AoA safeguards (after 5 years). Arbitration panel ruling and cooperation and implementation of the agreement shall be reviewed periodically.	Yes. Customs and legislative procedures (every 3 years). RoO (EC after 2 years/PACP 5 years). PACP exclusion from GATT/AoA safeguards (after 5 years; disputed). Investment liberalisation (not yet specified). Review of arbitration panel ruling. Periodic review of the implementation of the agreement.	Yes. Regular reviews of the exclusion basket and the annexes that define ESA's priority products for SPS/TBT support. Review of progress towards achievement of the development benchmarks and on regional integration (every 5 years). Review of arbitration panel ruling.	Yes. EC: trade liberalisation (every five years); investment liberalisation (periodically); government procurement (after 5 years); environmental and social chapters and arbitration panel ruling. SADC: overall review after 5 years; further reviews may be mutually agreed.	Yes. Joint Implementation Committee meets annually to review implementation of agreement. Arbitration panel ruling and environmental and social chapters shall be reviewed (no timing).	Yes. Joint Implementation Committee meets annually to review implementation of agreement. Government procurement (every 3 years). Arbitration panel ruling and environmental and social chapters shall be reviewed (no timing).
X. Institutional provisions						
Scope/status quo	<u>Outlined and largely agreed:</u> Joint Council; Joint Implementation Committee Joint Development Committee; Joint Parliamentary Committee; Joint Consultative Committee (EC reserve); Special Committee on Customs Cooperation (not yet outlined).	<u>No institutional outline yet:</u> Joint Council; Implementation Committee; Special Committee on Customs and Trade Facilitation; Joint EPA Consultative Committee Committee of Experts.	<u>EC, not yet outlined:</u> Joint EPA Council; Joint EPA Implementation Committee; Joint Committee on Sanitary and Phytosanitary Measures. <u>ESA, not yet outlined:</u> Joint Committee on Trade Related Issues (incl. three sub-committees on customs/RoO, standards, and SPS); Association Council; Joint (Fisheries) Committee; Diverse Funds and Implementation Facilities.	<u>EC, not yet outlined:</u> Joint EPA Council; Joint EPA Implementation Committee; Joint EPA Development Committee; Joint EPA Parliamentary Committee; Joint EPA Consultative Committee; Committee on Trade Cooperation; Special (Sub-)Committee on Customs and Trade Facilitation; SPS Committee. <u>SADC, outlined:</u> Joint EPA Council; Joint EPA Cooperation Committee; Sub-Committee on Customs and Trade Facilitation.	<u>Outlined:</u> Joint EPA Council; Joint EPA Implementation Committee; Joint Parliamentary Committee; Joint EPA Consultative Committee; Joint Development Committee. <u>No institutional outline yet:</u> Special Committee of Customs and Trade Facilitation; Special Committee on Rules of Origin.	<u>Outlined:</u> Joint EPA Council; Joint EPA Implementation Committee; Joint EPA Development Committee; Joint EPA Parliamentary Committee; Joint EPA Consultative Committee.

Status quo	CARIFORUM Joint text (with some areas of disagreement and some gaps).	PACP There is no joint EU-PACP text, but where the more recent EU text is the same as the earlier PACP text, we assume there is agreement.	ESA Joint text exists but most areas not yet agreed or chapters not yet drafted.	SADC Two separate texts (but joint texts exist on TBT and SPS).	Central Africa EC draft only with no Central African input.	West Africa EC draft only with no West African input.
Outstanding	CF liberalisation offer. Annexes II-IX which specify RoO and set out detailed export procedures. Annexes for services and trade-related issues.	Liberalisation schedules. RoO.	Liberalisation schedules. RoO.	Liberalisation schedules. RoO.	Liberalisation schedules. RoO.	Liberalisation schedules. RoO.
XI. Development Cooperation						
Scope/attempt	No extra development chapter but technical and financial assistance is outlined in single chapters.	No extra development chapter but technical and financial assistance is outlined in single chapters; PACP proposal for areas of development cooperation yet to be submitted.	Extensive cooperation envisaged in Economic/Development Cooperation Chapter and Development and Finance Cooperation Chapter; however: provisions remain shadowy without binding financial provisions.	EC: No extra development chapter but technical and financial assistance is outlined in single chapters.	No extra development chapter but technical and financial assistance is outlined in single chapters.	No extra development chapter but technical and financial assistance is outlined in single chapters.
Institutions/Funds	No extra provisions. (Implementation of EDF and bilateral sources is monitored by Joint Council.) CF also wants adjustment support and binding commitments that go beyond EDF funds.	No extra provisions. (Implementation of EDF and bilateral sources is monitored by Joint Council.)	EC: no extra provisions. (Implementation of EDF and bilateral sources to be monitored by Joint Council.) ESA draft: Transitional Adjustment Facility; EIB Investment Facility; Infrastructure Fund; Development Fund; Debt Facility.	EC: no extra provisions. (Implementation of EDF and bilateral sources to be monitored by Joint Council.) SADC: additional funds are required; a Development Sub-Committee shall coordinate funds and oversee the implementation of development cooperation.	No extra provisions. (Implementation of EDF and bilateral sources is monitored by Joint Council.)	No extra provisions. (Implementation of EDF and bilateral sources is monitored by Joint Council.)

10. **Public enterprise provision:** the CARIFORUM text allows the possibility of discrimination for public enterprises and scope for sectoral differentiation. In PACP, too, the EU appears to have accepted the possibility of discrimination for public enterprises. But for SADC, CEMAC and West Africa it is demanding the end of all discrimination after five years.
11. **Liberalisation of investment:** there are no requirements on this in the texts for CARIFORUM, CEMAC, West Africa but the EU texts for PACP and SADC foresee progressive liberalisation and a commitment to bring the legal investment framework in line with international commitments.

2.2 Major gaps

Even in the most fully developed texts there are the following major gaps. They are defined as ‘major’ in the sense that filling them does not depend upon a political decision (which could be given quickly were both sides to reach agreement). Rather they require a significant technical input. They are as follows.

1. **Details of ACP liberalisation:** no regional text yet contains an annex listing exactly which tariffs will be reduced, when. Only the ESA joint draft includes even a summary in the main text of what the parties seem to agree should happen. However, after the de facto split of the ESA region is looks now as if EAC will submit a joint liberalisation offer based on the EAC customs union schedule. Whether CMMS will submit a joint or separate liberalisation offers is unknown. The LDC group envisages submitting individual liberalisation offers thereby trying to reach the best possible flexibility of interpreting Art. XXIV WTO for LDCs (Joint ESA-EC Conclusion, 2007).
2. **Regional liberalisation:** although some ACP states may have prepared draft liberalisation schedules (which would make it technically less time-consuming to fill the gap than may appear), there is no evidence that any region has an agreed, regionally coherent liberalisation schedule or that key provisions (such as special and differential treatment (SDT) for least developed countries (LDCs)) have been agreed. It is known that SACU has submitted a joint liberalisation offer based on the TDCA. For EAC, however, whose configuration has only emerged a few weeks ago, a joint liberalisation offer would still need to be developed.
3. **RoO:** none of the regional texts analysed yet contains a full RoO schedule and only the CARIFORUM one even has a partial Protocol. Regions may have drafted full RoO Protocols but obviously in such cases they had not reached agreement with the EU at the time the analysed drafts were completed. [One point of interest is whether there can be different RoO applying to different parties – as ESA is demanding. In the case of SADC the EU has made a demand (so far without details) for different rules to apply to exports from South Africa, at least for agriculture. This appears to accept the principle of different RoO requirements for different parties].
4. **Services:** not even the CARIFORUM text has details of any changes. Similarly, the RoO for services are not yet agreed.

3. Trade in goods

3.1 Customs duties

3.1.1 Scope and time-frame of ACP liberalisation

This is clearly a central feature of any agreement that is to be submitted to the WTO as being in conformity with Article XXIV of the General Agreement on Tariffs and Trade (GATT). For this reason an important finding of this analysis is that none of the present EPA texts has yet contain annexes where ACP countries' liberalisation schedules are outlined. For most EPAs it is still disputed whether a joint liberalisation offer will be submitted and, if so, to what extent SDT is possible.

The EC proposal of *SADC*'s liberalisation schedule, as stipulated in the present draft, is different from what SADC would like to see: it builds on the EU–South Africa Trade, Development and Co-operation Agreement (TDCA) schedule by asking for additional tariff concessions based on a negative-list approach. It foresees the progressive abolition of duties over a maximum period of 12 years. It applies to all members of the SADC EPA. Angola, Mozambique and Tanzania 'shall take exceptions to tariff elimination commitments by SADC EPA States.' SADC does not appear to agree to this approach. It is the understanding of the consultants that SADC would like to build on differentiated liberalisation offers: one for South Africa, one for Botswana, Lesotho, Namibia and Swaziland (BLNS) and one each for Angola, Mozambique and Tanzania.³ While the first two schedules would build on the TDCA, the liberalisation schedules for Angola, Mozambique and Tanzania would be independent.⁴ In this way SDT should be ensured in the SADC group.

CARIFORUM also aims to ensure SDT for lesser developed members and has to date rejected the EU's approach of submitting a joint regional offer. The parties have not yet agreed on the scope and time frame of liberalisation. While Cariforum is ready to liberalise up to 80 percent of trade within 25 years the EC now requests to liberalise 80 percent within 15 years and the remaining 20% over phasing periods of 20 and 25 years with the list of products to be exempted from liberalisation at about 6 percent.⁵

The EC proposes a negative-list approach from which lesser developed CARIFORUM members should be excluded for five years:

[EC: 2. Products originating in the EC Party shall, on their importation into the CARIFORUM States, be exempt from all customs duties within the meaning of Article 3 other than those listed in Annex CF. However, for a period of [five years] after the entry into force of this Agreement, the CARIFORUM States [other than ...] may continue to apply any such customs duties within the meaning of Article 3 other than those listed in Annex CF to any imported product originating in the EC Party, provided that these duties were applicable to this product on the date of signature of this Agreement, and that the same duties are imposed on the like product imported from all other countries. With a view to ensuring transparency such duties shall be notified to the Joint CARIFORUM-EC Implementation Committee within six months from the date of [signature CF: scrutiny reserve] of this Agreement.]

³ South Africa and the EC are still negotiating to improve the TDCA offer for both sides. BLNS are largely ready to implement the 2000 TDCA liberalisation schedule but have excluded some products from liberalisation. Currently BLNS hardly impose any tariffs on EU imports entering their territory. According to the South African Revenue Services South Africa currently collects 98.6 percent of all Southern African Customs Union (SACU) customs duties. BLNS would need to build capacity in order to tax EU imports coming into their territory via South Africa.

⁴ It has not yet finally be become clear whether Tanzania negotiates under the SADC or EAC Framework since it has not yet left the SADC EPA group.

⁵ Information obtained from an open letter from the Jamaican Ministry of Foreign Affairs and Foreign Trade, 14 November 2007.

It is not known whether this approach would be acceptable for all CARIFORUM members. What has been reported lately is that the Bahamas will not join the EPA.

Whether *PACP* will submit a joint liberalisation approach is also unknown. What has, however, been jointly agreed is that not all PACP countries will sign up to the commitments made under the trade in goods chapter of the EPA. The annex for those countries that will join is still outstanding.

In broad terms, there are strong similarities in the text on trade in goods between the documents of CARIFORUM, PACP, Central Africa and West Africa. This is:

Article 9

Customs duties on products originating in the European Community

1. Customs duties on imports of products as defined originating in European Community shall be reduced or eliminated in accordance with the provisions set out in Annex ...
2. In the event of serious difficulties in respect of imports of a given product, the schedule of customs duty reductions and eliminations may be reviewed by the Joint EPA Implementation Committee by common accord with a view to possibly modifying the time period for reduction or elimination. This review shall be subject to the understanding that the time periods in the schedule for which the review has been requested may not be extended in respect of the product concerned beyond the maximum transitional period for duty reduction or elimination provided for in Annex If the Joint EPA Implementation Committee has not taken a decision within thirty days of an application to review the timetable, the West African Party may suspend the timetable provisionally for a period that may not exceed one year.

In the case of SADC the text of the EU is clearly modelled on the TDCA, whilst that of SADC does not cover this area. In the case of ESA, the format is quite different. As far as the consultants are aware, ESA is the only region that has submitted regional liberalisation offers, which is reflected in the current negotiating draft.

ESA proposes that its tariff liberalisation offer start after a 10-year moratorium and that 'substantially all' bilateral trade be liberalised 25 years after entry into force of the EPA.

Article 14

Tariff elimination by ESA

1. Customs duties applicable to Community imports into ESA of goods listed in Annex XXX, (capital goods and raw materials), shall be abolished ten (10) years after the entry into force of this agreement .
2. Customs duties on products listed in Annex XXX (intermediate goods) shall be eliminated in accordance with the following schedule starting in year eleven (XI) so that the customs duties are completely eliminated by year twenty (XX) from date of entry into force of this agreement.

Products listed in Annex XXX (intermediate goods)

Category	Yr XI	Yr XIV	Yr XVII	Yr XX
Percentage reduction of duty	25%	50%	75%	100%

3. Customs duties on products listed in Annex XXX (finished goods) shall be eliminated in accordance with the following schedule starting in year sixteen (XVI) so that the customs duties are completely eliminated by year twenty- five (XXV) from date of entry into force of this Agreement

Products listed in Annex XXX (finished goods imports)

Category	Yr XVI	Yr XVII	Yr XVIII	Yr XIX	Yr XX	Yr XXI	Yr XXII	Yr XXIII	Yr XXIV	Yr XXV
Percentage reduction of duty	10%	20%	30%	40%	50%	60%	70%	80%	90%	100%

Subject to negotiation and to ESA CET proposal.

Article 15

Sensitive products

1. [Products in Annex ----- will be excluded from liberalisation and will be reviewed.] Subject to negotiation

ESA further aims to exempt the region's LDCs from tariff liberalisation commitments, which is rejected by the EC. Possible exceptions from tariff dismantling also appear to be disputed:

Article 16

Exceptions clause

1. [Notwithstanding provisions set out in Article 14, customs duties may be introduced or increased pursuant to the derogation as set out in Annex XXX of this Agreement.] ESA to submit a proposal
2. [[Taking into consideration the special status of the LDCs under the EBA initiative and the WTO arrangements, ESA LDC States are exempted from any reduction of tariffs.]] EC: this would undermine the objective of a FTA and ESA regional integration.

Those ESA countries which are willing to liberalise *vis-à-vis* the EU before the envisaged time-frame may do so by notifying the other members.

Article XXX

Variable geometry

Notwithstanding the provisions of article 14 on tariff liberalisation by ESA side, an ESA country willing and in a position to undertake tariff liberalisation earlier than in the prescribed time-frame in the schedule may do so subject to appropriate notification while ensuring that all necessary measures are taken to avoid trade deflection

Recently a separate offer by the Eastern African Community (EAC) has emerged, which calls into question the realisation of the ESA offer. EAC has announced its intention to enter into a separate EPA with the EU, using a list of sensitive products tariff phase-down schedule based on the EAC common external tariff (CET). 'Countries excluding the EAC would submit an ESA market access offer to the EC with sub-regional and national schedules.' (E-Comesa, 2007).

The EC draft for *Central Africa* does not include any liberalisation schedule or any annexes. However, according to an internal CEMAC note⁶ the group is ready to submit a regional offer. The Central African offer foresees liberalising 59.4 percent of bilateral trade (3,623 HS6 tariff lines)⁷ within 25 years:

⁶ 'Rapport sur les Réunions de Concertation Afrique Central' GTAD/GTSI/Texts juridique, Bruxelles, du 15 au 20 Octobre 2007.

⁷ Appears to apply to the Central African Nomenclature.

S'agissant du calendrier de démantèlement tarifaire, il est proposé qu'au cours des 25 ans, il se présenterait de la manière suivante :

- Premier groupe (libéralisation immédiate) : 2015 (1630 lignes pour 23,91% des importations de l'UE) ;
- Deuxième groupe (libéralisation lente) : 2016-2021 (965 lignes pour 20,13% des importations de l'UE);
- Troisième groupe (libéralisation très lente) : 2022-2027(1029 lignes pour 15,43% des importations de l'UE) ;
- Quatrième groupe (libéralisation au-delà de 2027) : 2028-2033 (396 lignes pour 12,27% des importations de l'UE).

Afin de compenser les pertes de recettes douanières suite au démantèlement tarifaire, le groupe a recommandé une révision de la liste des produits soumis aux droits d'accises, ainsi que la fourchette des taux applicables, pour y inclure certains produits libéralisés qui contribuaient de manière substantielle aux recettes douanières et qui ne sont pas produits dans la sous région.

Par ailleurs, il a été demandé aux pays de l'Afrique centrale de prévoir des mesures réglementant l'importation des jouets jugés dangereux.

Central Africa would like to start dismantling tariffs only from 2015 on. The period 2008–2014 should be used for preparation and capacity building and 2015–2033 for tariff elimination. Moreover, the region aims to retain an option to revise its tariff liberalisation offer should it result in unsustainable revenue losses.

The scope and timetable of liberalisation remain disputed between Central Africa and the EC. The EC is asking for 80 percent of bilateral trade to be liberalised over 14 years (including a 2-year preparation period) while Central Africa is offering a 25-year implementation period (including a 7-year preparatory phase). Central Africa considers its offer to be in line with GATT Art. XXIV and is asking for a minimum agreement to guarantee WTO compatibility while continuing negotiations:

S'agissant des dispositions sur le régime applicable après le 31 décembre 2007, il est important d'opter pour un accord avec des engagements minima, conformément aux dispositions du GATT, assorti d'une période préparatoire suffisamment longue.

Sur l'interprétation de l'article XXIV du GATT, notamment la partie concernant le degré d'asymétrie et la notion de « l'essentiel des échanges », le groupe recommande de prendre en compte les dispositions du paragraphe 5 du mémorandum d'accord sur l'interprétation dudit article. Compte tenu du niveau des Etats de la région qui comporte des PMA, des économies vulnérables, des Etats en crise, le taux de 60% est raisonnable étant donné que la partie européenne propose une ouverture de plus de 90%.

3.1.2 *Review of tariff concessions*

For CARIFORUM, PACP, West Africa and Central Africa the EC drafts foresee a limited review of the tariff concessions which shall not go beyond the maximum transitional period (as stipulated in Part II, Title I, Art. 9.2 of the EC draft for ECOWAS):

2. In the event of serious difficulties in respect of imports of a given product, the schedule of customs duty reductions and eliminations may be reviewed by the Joint EPA Implementation Committee by common accord with a view to possibly modifying the time period for reduction or elimination. This review shall be subject to the understanding that the time periods in the schedule for which the review has been requested may not be extended in respect of the product concerned beyond the maximum transitional period for duty reduction or elimination provided for in Annex If the Joint EPA Implementation Committee has not taken a decision within thirty days of an application to review the timetable, the West African Party may suspend the timetable provisionally for a period that may not exceed one year.

It is reported that CARIFORUM and PACP are not happy with the phrasing of the article and would like to extend the period of suspending the liberalisation schedule. Neither the present

EC draft on SADC nor the SADC draft foresees the suspension of tariff concessions (though SADC aims to include a clause on *force majeure*).

ESA aims to link its liberalisation commitments to the achievement of development benchmarks (paragraph taken from joint EC–ESA draft):

1. Notwithstanding Article 14 (Tariff Elimination) of this agreement, in the event a specific country has not attained the development benchmarks, it may apply for the derogation of tariff reductions set out in this Title and make provisions for corrective measures
2. In the event that, after each review, the Community is not meeting its obligations under this agreement, it shall provide corrective measures]

This proposal does not appear to be acceptable to the EC, which has announced its own proposal for a review clause.

3.1.3 *Standstill*

In the EC version of the PACP draft, as well as in the first ESA draft, a so-called ‘standstill clause’ appeared, referring to the prohibition on increasing duties on products that are deferred or excluded from liberalisation.

Article 11.

Standstill

1. No new customs duties shall be introduced nor shall those already applied be increased in trade between the parties as from the date of entry into force of this Agreement.

It seems that both PACP and ESA have rejected the insertion of such a clause and that, in the case of ESA, the EU has accepted this.

3.1.4 *EU duty- and quota-free market access*

On 4 April 2007 the European Commission announced that it would offer duty- and quota-free (DFQF) market access to all products coming from EPA members. The statement indicated that this would apply from January 2008 for all goods except sugar and rice.

Official details on the arrangements for the deferred items during the transition period have not been made public and an according annex has only been developed between CARIFORUM and the EC (EC, 2007c). No details of the EU’s offer appear in any of the other texts, and so no comparison can be made. For reference purposes, the provisions in the EC–CARIFORUM text are as follows.

- ◆ Rice exports will have DFQF market access from 1 January 2010. CARIFORUM producers (which are to date the only ACP rice exporters) can export rice in husk for sowing (CN 10061010) DFQF from 1 January 2008. Transitional quotas for the other product lines have not yet been specified.
- ◆ For non-LDC ACP sugar exporters the EC (2007c) specified its DFQF sugar offer as follows:

Phase 1 (from January 2008 to 30 September 2009) will involve a continuation of the Sugar Protocol, with ‘additional market access’ for the Sugar Protocol beneficiaries. In the CARIFORUM draft text no agreement on additional quantities has been reached yet. The EC (2007c) names an additional quota of 80,000 tons for all non-LDC ACP countries that enter into an EPA.

In *Phase 2* (from 1 October 2009 to 30 September 2015) non-LDC ACP countries will be able to supply the EU market DFQF subject to an ‘automatic volume safeguard clause’. Processed agricultural products with high sugar content will be subjected to an ‘enhanced surveillance mechanism in order to prevent circumvention of the sugar import regime.’⁸ The EC named the following volume safeguard clauses:

- 1.3 million tons in 2009/10;
- 1.45 million tons in 2010/11;
- 1.6 million tons from 2011 to 2015.

However, if all non-LDC ACP imports exceed 3.5 million tons in the period 2009/10 to 2015 the EU may apply MFN tariffs (EC, 2007c: 9).

Phase 3 (from 1 October 2015 onwards) will offer DFQF market access for non-LDC sugar exports, subject to a ‘special safeguard clause’. According to the CARIFORUM text the safeguard will be applied when the EC market price of white sugar falls during two consecutive months below 80 percent of the market price.

The EU offer also stipulates that prices will be fixed only until September 2012.

According to the CARIFORUM draft, Caribbean sugar exporters will receive 80 percent of the EU intervention price until 30 September 2012. Thereafter, ‘a price information system based upon the current system would provide for transparency of the market.’

Uncertainties remain with respect to additional quotas for single EPA configurations as to the extent to which the EU’s offer will enable ACP countries to expand their sugar exports to the EU market in the coming years.

3.2 Rules of origin for goods

The RoO are an integral and very important part of the EPA and will need to be agreed upon. As stipulated in Art. 37.9 of the Cotonou Agreement, the EU aimed to present a ‘simplified’ RoO regime by 2005 upon which the EPA could have built.⁹ However, no proposal has yet been presented.

In the meanwhile the EU has proposed that the initial rules in all EPAs be based on what is currently agreed in Protocol 1 of the Cotonou Agreement, improved in any ways on which agreement can be reached before the end of this year (‘Cotonou-plus’). A review with the objective of implementing an improved, more development friendly RoO regime shall take place after the EPA has entered into force.

Whilst it is understood that the ACP are not unsympathetic to this approach, and details of the EU’s proposals (for example with respect to clothing) are widely known, none of the reviewed drafts for ESA, PACP, SADC, Central Africa or West Africa contain any proposals, let alone agreed positions. Only the EC–CARIFORUM text includes any details of ‘Cotonou-plus’ changes.

The EC–CARIFORUM text comprises a Protocol that outlines the parties’ joint view on the broad principles of the RoO. But, the supplementary supporting annexes have not yet been

⁸ According to the present CARIFORUM draft these products include marzipan, sweetened cacao powder and sugar syrup.

⁹ The Commission intended to propose a simple, uniform and development friendly RoO system based on value added. ODI research questions the feasibility of such an approach since the analysis of developing countries’ exports reveals that there is substantial variation in the value added between products and countries. The value-added thresholds used in the current RoO of the Cotonou Agreement are much higher than what is normally achieved by ACP companies (Stevens, 2006).

developed so that, for instance, the specification of cumulation and value added remains open.

From the text available it appears that EC–CARIFORUM RoO would be ‘Cotonou-plus’ with respect to the following conditions.

1. Full cumulation is allowed not only between EC and ACP inputs but also with those of neighbouring developing countries. A joint ‘Special Committee on Customs Cooperation and Trade Facilitation’ will take the relevant decisions. CARIFORUM seeks additionally to be able to use inputs from those countries with which the EU has a free trade agreement (FTA) (such as Chile, Mexico, South Africa, Israel, Northern Africa). It appears that the EC largely agrees with this approach though it seeks to exempt certain products from full cumulation provisions (but the annex that would give effect to this has not yet been developed).
2. Derogation from the RoO is possible where this is justified by the development of existing industries or the creation of new industries. It is up to the Special Committee on Customs Cooperation and Trade Facilitation’ to decide. This provision shall be valid for five years on a trial basis with the option of extension.

The EC–CARIFORUM text and the PACP draft also foresee further reviews of the RoO ‘with a view to further simplifying them in the light of the development needs’ of the respective ACP states. When such a review shall take place remains open (EC: three years; CARIFORUM and PACP: five years).

One very interesting issue is whether or not two different RoO can apply. In the case of SADC, the EC text seeks to apply two different regimes: one for South Africa and one for the other SADC EPA members. The scope of the differentiation is as yet unclear.

SECTION C

AGRICULTURAL PRODUCTS

Article 12

Definition

The provisions of this section *shall* apply to products originating in the Community and SADC EPA States covered by the WTO definition of agricultural products.

For the purpose of this section, “originating” means qualifying under Rules of Origin set out in Chapter 5 and relevant Annexe(s)...due to differentiation between South Africa and other SADC EPA States

The EU proposal could have a broader importance in the context of the draft text produced by ESA. This appears to propose two different RoO between ESA countries and the EC:

Article 23

Rules of origin

The provisions of this Agreement concerning the application of tariff preferences shall apply to products originating in one Party and exported to the other Party, in accordance with the rules of origin laid down in Annex XXX (Part 1 – EU Rules of Origin, Part 2 – ESA Rules of Origin)

This would imply that the rules applying to EU exports (to be granted originating status in ESA) would be different from the rules applying to ESA exports. As far as the consultants are aware, a different set of RoO between the exporting and the importing party would be a

novelty. But if the EU is also pushing for a similar differentiation between South Africa and other SADC states, this information needs to be fed into the negotiations.

3.3 Other provisions on goods

3.3.1 MFN clause

The EU is proposing a clause (in all regions except ESA) that is absent from earlier EU FTAs such as the TDCA. The MFN clause extends any preferences granted to other ‘major trading economies’ (defined as economies accounting for a share of world merchandise exports above 1 percent) automatically to any party of the EPA. This clause is largely rejected by ACP countries, arguing that it would constrain Preferential Trade Agreements (PTAs) or FTAs with emerging economies like India or China.¹⁰ This proposed MFN provision was recently rejected at the ACP-wide level during the Meeting of Senior Officials and Ministers responsible for EPAs which was held in Brussels from 6 – 9 November 2007.

3.3.2 Special provision on administrative cooperation

A clause on special provision on administrative cooperation can be found in the CARIFORUM (joint), PACP (EU), Central Africa and West Africa (EU) draft texts (though it has not yet been included in the Central and West African drafts). It appears that the current phraseology is still disputed by CARIFORUM and PACP. The EC clause covers the temporary suspension of preferences if administrative cooperation fails repeatedly to be provided. Breaches of the obligations on administrative cooperation include failure to prove the originating status of products and refusal or undue delay in applying the results of any investigation or in obtaining authorisation. The Joint Implementation Council shall propose an acceptable solution to overcome the respective administrative problem. If no solution can be found within three months the complainant may temporarily suspend the preference for the product in question.

3.4 Trade defence

Effective instruments for trade defence would allow the ACP the opportunity to impose measures (in certain circumstances before any consultation) in cases where EU imports increase in such a quantity that they threaten domestic producers and industries (and *vice versa*). Considering that most ACP companies are very small and vulnerable, immediate action can be necessary in order to protect their existence. On the other hand, the EU has indicated that it could use such provisions to regulate imports of sugar.

There are draft provisions on this issue in all the regional texts except ESA and Central Africa.¹¹ It is important to realise that ‘safeguards’ are provided at several points in these texts, offering different levels of certainty, coverage and duration for different categories of danger. It is the totality of the safeguard provisions that must be assessed, not just a single provision.

3.4.1 Multilateral safeguards

The CARIFORUM and PACP texts include clauses that exempt the countries from any measures taken by the EU in Art. XIV of GATT, the Agreement on Safeguards, and Art. 5 of

¹⁰ See for instance RNM, 2007 and ‘Status of Progress on ACP-EC EPA Negotiations, 15 October 2007’.

¹¹ The ESA draft on which the present joint draft is based referred largely to WTO rules on anti-dumping countervailing measures and safeguards. Pre-emptive safeguards were limited to 180 days and no agricultural safeguards were outlined. Moreover, the ESA drafts foresaw the suspension of preferences if pre-emptive safeguards were extended.

the Agreement on Agriculture (AoA) for five years. The operation of the provision will be reviewed and may be extended. This is not found in any of the other texts, which could indicate that, unless pressed to do so, the EU will not offer the asymmetrical application of multilateral safeguards.

3.4.2 *Safeguards and maximum safeguard protection*

The application of a general safeguard provision applicable to all goods is foreseen in all present agreements. The parties can suspend the reduction of tariff rates, increase the tariff to the MFN level or introduce tariff quotas. In principle the provisions on trade defence apply equally to both parties, but since it is unlikely that the EU can reasonably demonstrate 'serious injury' due to imports from an ACP region (necessary to justify use) the safeguards would be asymmetric in practice. On the other hand, the enforcement mechanism against misuse is not spelled out clearly.

There are time limits on the application of general safeguards in all the drafts, but agreement on how long this should be appears to have been reached only between CARIFORUM and the EC. The text foresees not only an 8-year maximum duration of safeguards, but also that measures can be taken only during the first 10 years after entry into force of the EPA.

Article 3

Safeguard clause

...

1. Where any product originating in the EC Party is being imported in such increased quantities and under such conditions as to cause or threaten to cause one of the situations referred to under 2(a), (b) and (c) above to a Signatory CARIFORUM State, the Signatory CARIFORUM State concerned may take surveillance or safeguard measures limited to its territory in accordance with the procedures laid down in paragraphs 6 to 9.

A Signatory CARIFORUM State may take safeguard measures where a product originating in the EC Party is being imported into its territory in such increased quantities and under such conditions as to cause or threaten to cause disturbances to an infant industry producing like or directly competitive products. **Such provision is only applicable for a period of ten years from the date of entry into force of this Agreement.** Measures must be taken in accordance with the procedures laid down in paragraphs 6 to 9.

2. Safeguard measures referred to in this Article shall only be maintained for such a time as may be necessary to prevent or remedy serious injury or disturbances as defined in paragraphs 2, 4 and 5 above.

Safeguard measures referred to in this Article shall not be applied for a period exceeding two years. Where the circumstances warranting imposition of safeguard measures continue to exist, such measures may be extended for a further period of no more than two years. Where the CARIFORUM States or a Signatory CARIFORUM State apply a safeguard measure, [or where the EC Party applies a measure limited to the territory of one or more of its outermost regions,] such measures may however be applied for a period **not exceeding four years and, where the circumstances warranting imposition of safeguard measures continue to exist, extended for a further period of four years.**

The PACP text has similar provisions but there appears to be dispute over the actual time periods. The EU is proposing that the protection period be limited to eight years applicable during the first 15 years after entry into force of the EPA. It is the understanding of the consultants that PACP would like to see longer protection periods and SDT for LDCs giving further options to extend the application period for safeguards.

The other draft texts do not limit the application of safeguards to a transitional period but do restrict the maximum protection period: three years in the EC drafts for SADC and ECOWAS and eight years in SADC's draft text. All EC and joint drafts stipulate that no new safeguards

may be introduced for one year in the case of a product that has been previously subject to safeguard measures. Furthermore, SADC aims to exclude the EC from safeguards, thus cementing the asymmetrical application of safeguard measures:

2. The EC Party shall not initiate an anti-dumping or countervailing investigation against a SADC-EPA Member State, if a market penetration of imports from that Member State is less than two per cent of the total EC market by volume.
3. The EC Party shall not cumulate imports from a Signatory SADC Member State with imports from other countries if the volume of imports of the former account for less than three per cent of total imports into the EC by volume.
4. Where an anti-dumping or countervailing measure has been imposed on behalf of two or more Signatory SADC EPA States by a regional authority, and where a single forum of judicial review has been operationalised, there shall be one single forum of judicial review, including the stage of appeals.

In addition to these time limits, the EC drafts for SADC, West Africa and PACP limit the total value of imports that may be subject to safeguards. In the case of SADC and West Africa the EU is proposing a limit of 5 percent and for PACP it is 15 percent of industrial products from the other Party.

3.4.3 *Agricultural safeguards*

These time and value limits do not apply to the draft texts on agricultural safeguards, where they exist. Only the joint CARIFORUM and PACP texts and SADC's draft make such provision; no sole EC text refers to agricultural safeguards. CARIFORUM has inserted a phrase into the joint text that would enable its members to impose pre-emptive safeguards 'if the availability or access to foodstuff is endangered' as well as other provisions allowing special safeguards for agricultural and fisheries products if import volumes exceed a certain trigger (which still needs to be defined). SADC also refers to the imposition of safeguards if a trigger volume is exceeded or a trigger price falls below a certain level (which still needs to be defined).

Article 4

Agricultural Safeguard Measures

1. Notwithstanding the provisions of paragraph 1(b) of Article II and of Article XI of GATT 1994 or of Article 4 of Agreement on Agriculture, any Signatory SADC-EPA Member State may **take recourse to the imposition of an additional duty** in accordance with the provisions of paragraphs below in connection with the importation of any agricultural product where:

the volume of imports of any agricultural product originating in the territory of the EC Member State Party during any year exceeds a trigger level of the SADC-EPA Member State or the c.i.f. import price, expressed in terms of the Signatory SADC-EPA Member State's domestic currency, (at which a shipment of imports of that product enters the customs territory of that SADC-EPA Member State during any year), falls below a trigger price equal to the average monthly price for that product for the most recent three-year period preceding the year of importation for which data is available.

2. A measure under this Article may be applied as follows:
 - (a) an increase of the import duty on the product in question to a level not higher than the WTO bound rate of duty on the product in effect at the time the measure is taken; or
 - (b) a tariff rate quota based on historical trade volumes, which shall be the average of imports for the three preceding years, excluding the import surge volumes that necessitated the introduction of the safeguard measure.

Any action under this Article by one of the Signatory SADC-EPA Member State in connection with the importation of any agricultural product originating in the territory of the EC Member State, Party shall be

implemented in a transparent manner. Within 60 days after taking a measure, the SADC-EPA Member State shall notify the EC Party in writing and shall provide relevant data concerning the measure.

Any action under this Article by one of the Signatory SADC-EPA Member State in connection with the importation of any agricultural product originating in the territory of the EC Party shall be notified to the Joint Committee.

A measure taken by a Signatory SADC-EPA State under paragraph 1 shall be applied as long as the economic conditions in particular changes in price or volume of imports that necessitated the trigger prevail.

The PACP safeguard clause, which also refers to food security, has not yet been specified so that it remains open whether the provisions are subject to pre-emptive or regular safeguard measures.

Article 4

Food security

1. The Parties acknowledge that the removal of barriers to trade between the Parties, as envisaged in this Agreement, may pose significant challenges to producers in the agricultural and food sectors and to consumers and agree to consult with each other on these issues.
2. Where compliance with the provisions of this Agreement leads to problems with the availability of, or access to, foodstuffs or other products essential to ensure food security of a Party or Signatory Pacific State and where this situation gives rise or is likely to give rise to major difficulties for such a Party or Signatory Pacific State, that Party or Signatory Pacific State may take appropriate measures in accordance with the procedures laid down in Article [safeguard clause, paragraphs ...].

3.4.4 Pre-emptive safeguards

With exception of the joint ESA draft and the EC draft for Central Africa, which have not yet drafted the chapter on safeguard measures, all present drafts foresee the application of pre-emptive safeguards ‘where exceptional circumstances require immediate action’ and which are not limited to agricultural products.

Pre-emptive safeguards are limited to 120 days (EC draft on SADC and ECOWAS) and 200 days (joint CARIFORUM and PACP drafts as well as SADC draft) respectively. The Joint EPA Implementation Committee shall be notified about any safeguard measure a party intends to undertake and shall examine its legitimacy within 30 days.

3.5 Non-tariff barriers and subsidies

All drafts forbid any import or export restrictions other than customs duties and taxes (except when associated with safeguards).

Prohibition of quantitative restrictions

All import or export prohibitions or restrictions in trade between the Parties, other than customs duties and taxes, and fees and other charges provided for under Article 6 of Chapter 1, whether made effective through quotas, import or export licenses or other measures, shall be eliminated upon the entry into force of this Agreement. No new such measures shall be introduced. The provisions of this Article shall be without prejudice to the provisions of Article ... [on antidumping and countervailing measures].

CARIFORUM and PACP appear to accept this phraseology, while SADC will provide its own text. Whether or not Central and West Africa accept this clause is not known.

For ESA and the EC differences remain: ESA aims to eliminate any NTBs within one year of entry into force of the EPA and to exchange schedules on NTBs and set up a monitoring

mechanism. The EC has announced that it will submit an alternative text on the prohibition of QRs and national treatment on internal taxation and regulation.

Except for SADC and ESA all drafts envisage the phasing out of current EU agricultural export subsidies and a prohibition on the introduction of new, or the increase of existing, subsidies.

Article 3

Agricultural export subsidies

1. No Party or the Signatory Pacific State may introduce any new subsidy payment which is contingent upon export or increase any existing subsidy of this nature on products destined for the territory of the other Party.
2. With regard to any product as defined in paragraph 3 for which the Pacific States have committed to the elimination of customs duties the EC Party undertakes to phase out all existing subsidies granted upon the exportation of that product to the territory of the Pacific States. The modalities of such phasing out are set out in Annex ...
3. This Article applies to products as covered by Annex I of the WTO Agreement on Agriculture.

The EU's commitment to eliminate existing export subsidies for those products that will be liberalised in ACP markets does not go any further than what has already agreed on a multilateral level. The EU has agreed in the WTO to phase out its export subsidies – but not the subsidies paid to domestic producers – by 2013.

It is understood that PACP and ESA have reservations concerning the phraseology of this provision and would prefer an asymmetric approach with respect to subsidies. In its proposal to the EU ESA aimed to retain the option to introduce or increase industrial and agricultural subsidies. SADC is in the process of framing its proposal on NTBs and subsidies.

3.6 Customs and trade facilitation

The chapter on customs and trade facilitation is a central one in the EPA texts. Cumbersome customs procedures and red tape are regarded as prime causes of high business costs and low intra-regional trade in the ACP countries (EC, 2005). Enhanced EU-ACP cooperation and EU technical support shall help to improve, simplify and standardise customs procedures and to increase transparency. Relevant provisions can be found in all present drafts except for ESA, where the chapter has not yet been drafted. All available texts envisage the application of a single administrative document. For CARIFORUM and PACP this document shall be reviewed after three and five years respectively.

The EC texts for SADC, Central Africa and West Africa adopt a partially regional approach. Thus, it is envisaged that standardised requirements, procedures and documents will be developed. The PACP draft goes even further and proposes the creation of common legislative procedures. Moreover, the implementation of PACP provisions is to be subject to regular follow-up. PACP's position on these provisions is unknown.

All existing drafts anticipate the creation of common institutions to monitor the implementation of customs and trade facilitation. Such a Special/Sub-Committee on Customs and Trade Facilitation, which appears to be commonly agreed between the EC and ACP regions, shall:

- (a) monitor the implementation and administration of the customs and trade facilitation chapter and the Protocol on RoO;

- (b) provide a forum for consultation and discussion on all issues concerning customs, including in particular procedures, valuation, tariff regimes, nomenclature, cooperation and mutual administrative assistance in customs matters;
- (c) provide a forum for consultation and discussion on issues relating to RoO and administrative cooperation;
- (d) enhance cooperation on the development, application and enforcement of customs procedures, mutual administrative assistance in customs matters, RoO and administrative cooperation.

3.7 Fisheries

3.7.1 Access for EU fleets to ACP waters

Only the EU text for PACP includes specific provisions in this area. The EC asks PACP to reserve at least 5 percent of its total allowable catch (TAC) for EU fleets. Bilateral fisheries agreements shall remain unaffected but the EU would like to be entitled to ‘mobilise the corresponding amount of fishing opportunities’ – including in those countries which do not have a fisheries agreement.

Article 6

Access to resources

1. Any fisheries agreement between the EC Party and Pacific States shall be concluded in accordance with the Palau Arrangement yearly limitations and with an appropriate tuna stock assessment based on objective and scientific criteria, including the “Western and Central Pacific Tuna Fishery Overview and Status of Stocks” published yearly by the Secretariat of the Pacific Community.
2. Access to resources shall be put into effect under the terms and conditions of existing or future bilateral agreements between the EC Party and any of the Pacific States or within the umbrella of regional fisheries organisations. It shall enhance the standards of fisheries access agreements, and in particular in relation to standards of operation and compliance of all fishing vessels operating in the region.
3. **At the request of the EC Party, the Pacific States shall guarantee that the EC Party obtains access to at least 5% of the fishing opportunities** granted to the Pacific States in each management year under the Palau Arrangement for the Management of the Western Pacific Purse Seine Fishery Management scheme.
4. This guarantee does not prejudice the fishing opportunities that may be allocated to the EC Party directly by the Western and Central Pacific Fisheries Commission (WCPFC).
5. **The amount of this guarantee may be adapted on the occasion of the EPA revision** foreseen under Article X [general EPA revision clause]
6. This guarantee will be put into effect under the terms and conditions of existing or future bilateral agreements that the EC Party have signed or may sign with any of the Pacific States or under the rules governing regional fisheries organisations.
7. Any Signatory Pacific State that has already provided 5% or more of its yearly total allowable fishing opportunities to the EC Party has no further obligation under this guarantee, although it may decide to provide the EC Party with additional quantities.
8. **Should the EC Party not be able to mobilise the corresponding amount of fishing opportunities under existing fisheries agreements in the region, the Pacific States that do not enjoy a fisheries agreement with the EC Party commit themselves to undertake negotiations with a view to conclude such an agreement upon request of the EC Party.**

9. The Parties agree that when negotiating or renewing fisheries agreements between the EC Party and one or more Signatory Pacific States, the terms and conditions of such agreements and protocols shall be consistent with the provisions set out in this chapter.

10. The Parties agree that when negotiating or renewing fishing agreements with non-parties, the Pacific States shall ensure that the terms and conditions of such agreements are not more favourable to the non-parties than those laid down in bilateral fisheries agreements between the Pacific States and the EC Party.

The joint EC–CARIFORUM draft and the EC drafts on SADC, Central Africa and West Africa do not foresee enhanced access for EU fleets. The texts are limited to joint cooperation, transfer of know-how, the establishment of joint ventures and capacity building programmes.

The joint EC-ESA text does not outline an agreement on fisheries. The original ESA text outlined the creation of a Fisheries Framework Agreement (FFA). It was foreseen that the FFA, which would not have affected bilateral access agreements, would focus on cooperation and technical support in the areas of monitoring, control and the creation of effective surveillance systems to combat uncontrolled fishing.

3.7.2 ACP access to EU markets

PACP countries would like to harmonise their bilateral access agreements with the EU and enter into a regional fisheries agreement under an EPA. However, since DG Trade does not have the mandate to negotiate it has rejected PACP's request.¹²

An alternative (or additional) means to improve access is to reform the RoO for fish, for instance with respect to value added/processing and the ownership of vessels. PACP seemed to have reached more generous RoO (though these are not yet reflected in the present draft text). It is reported that the EU offered PACP canneries and processors to utilise fish from all sources reflecting the region's problem of limited fishing capacities. The EC should have further agreed to consider extending this provision to fresh and chilled fish; i.e. the region may use third-country vessels for EU fish exports. PACP hopes that more generous RoO will attract capital and investment in its processing facilities, thus stimulating manufacturing activities.¹¹

In sum, the draft provisions on fisheries for PACP are very different from the other draft texts. While the joint EC–CARIFORUM text and the EC drafts on SADC, Central and West Africa are largely limited to joint cooperation, the EC draft for PACP contains access provisions by reserving 5 percent of TAC for EU fleets. Moreover, PACP appears to be the only region that has managed a breakthrough with respect to more generous RoO, largely allowing the region to source from third countries.

3.8 Sanitary and phytosanitary standards and technical barriers to trade

The text drafted on SPS and TBT in the CARIFORUM EPA has been agreed *ad referendum*. It confirms parties' multilateral obligations and outlines options for cooperation. The parties will designate competent authorities to implement the cooperation and information provisions and agree to endeavour to harmonise EC and CARIFORUM regional standards and procedures.

The EC and SADC have also largely agreed on joint provisions for TBT and SPS (though both parties retain their right to modify the provisions further). The joint text is significantly

¹² According to the report 'Status of Progress on ACP-EC EPA Negotiations, 15 October 2007' received by the consultants from ComSec.

shorter than the EC proposal. With respect to TBT, SADC has agreed to develop common views and approaches 'where appropriate' and to 'undertake to consider, in due course, negotiating mutual recognition agreements in sectors of mutual economic interest.' The joint EC-SADC text agrees further 'to establish an early-warning system to ensure that the SADC-EPA Member States are informed in advance of new EC SPS measures that may affect SADC EPA exports to the EU.' The text focuses on cooperation and capacity building. SADC countries shall benefit from capacity and training programmes in the areas of TBT and SPS. Agreement is envisaged on 'priority sectors and products' which shall receive immediate attention with respect to capacity building. The annex has not yet been agreed but SADC names among others fish, meat, fish and meat products, fruits and vegetables, sugar and flowers as priority products.

The SPS and TBT provisions outlined in the PACP draft text also appear to be largely agreed. In addition to the confirmation of multilateral obligations and the outline of joint cooperation and technical support, PACP also aims to define 'priority products' for which EU technical support to comply with SPS regulations shall be given first (annex not yet developed).

The EC text for Central Africa and West Africa also aims to define 'priority products' where the intensification of collaboration is foreseen, 'with a view to facilitating access to their respective markets, by increasing the mutual knowledge and understanding of their respective systems in the field of standards, technical regulations and conformity assessment.'

The joint EC-ESA text has not yet drafted a chapter on TBT. The text on SPS is extensive, outlining the objectives to improve the harmonisation of standards, including testing and certification procedures, and to define 'priority products' for technical assistance.

ESA and SADC appear to opt for the creation of separate institutions that deal with TBT and SPS. Thus, the joint ESA draft and the SADC proposal mention relevant bodies that should supervise the proper implementation of the SPS/TBT provisions.

With respect to the regionalisation of SPS and TBT there also appears to be common ground between EC and ACP interests. Thus, all present texts highlight the relevance of collaboration between regional authorities and endeavouring to work towards a harmonised regional approach with respect to standardisation. The details on the 'regionalisation' of SPS and TBT are, however, different in the single drafts. Thus, the joint CARIFORUM and ESA drafts, which envisages countries endeavouring to harmonise their legislations, institutions and regulations with respect to SPS, goes further than outlined by PACP and SADC with respect to regional cooperation.

4. Services and trade-related issues

4.1 Services

Services remain a disputed area within EPAs. The EC's approach (included, with almost identical texts, in the EC drafts for SADC and PACP) is a comprehensive one, covering establishment, cross-border supply of services, key personnel (mode-4), computer services, and international maritime transport services. The EU asks for a positive-list approach for all four modes to develop a GATS-compatible service offer.

None of the present drafts outlines an offer on trade in services and the *status quo* on services is very different in the single regions.

For West Africa it is unknown whether a proposal has been submitted to the EC. *Central Africa* has submitted a service offer which it is currently revising after having received the EC's comments. Central Africa announced that it is unhappy with the offer received from the EU, in particular with respect to mode-4 conditions and the insistence on including the MFN clause to the service chapter.

4. La Partie européenne a transmis à la Partie l'Afrique centrale, son offre en matière de services. Mais cette offre a été jugée en deçà des attentes de l'Afrique centrale, en particulier de l'engagement de la CE pris à Kinshasa d'une offre plus intéressante voire exceptionnelle. La partie Afrique centrale a exprimé sa préoccupation quant à l'inclusion de la clause de la Nation la Plus Favorisée (NPF) dans un accord qui constitue une exception aux règles de l'OMC. Tout comme elle juge décevante la proposition de l'Union européenne sur le mode 4 relatif aux mouvements temporaires des personnes physiques.

SADC rejects the EU's approach to opening the region's service market to the EU. *SADC* aims to liberalise intra-regional trade in services and to achieve compliance with multilateral commitments for all *SADC* EPA countries. EU cooperation activities and technical and financial support shall help *SADC* countries to overcome supply-side constraints and to facilitate intra-regional information flows as envisaged.

For those *SADC* countries who wish it, the draft proposes that they shall within two years 'identify sectors for cooperation and formulate Action Plans, and Programmes for the purpose of sequencing support for development and strengthening of the service sectors of the *SADC* EPA States for future engagement.' *SADC* proposes to discuss the future liberalisation of services for the region five years after entry into force of the EPA, after having made an assessment of the implementation of the cooperation agreement.¹³

CARIFORUM and PACP have submitted service offers and requests to the EU. Both regions aim to link their liberalisation commitments to development assistance in order to enhance capacities and undertake regulatory reform. They ask for *real asymmetry* with respect to liberalisation and would like to improve their access to the EU market in various sectors, such as construction, retail services, tourism, education services, financial services and health services – including the export of semi-skilled labour.

It is understood that negotiations on the *CARIFORUM* text are the most advanced. *CARIFORUM* signalled its acceptance on standstill provisions and is ready to improve its offer for transport, tourism and computer services. In turn, the EC agreed to improve its offer for tourism and the access of natural persons to its territory. What is, however, still disputed is the EU's definition of a *CARIFORUM* company (which *CARIFORUM* would like to define in a broader sense to attract third-country investors) and the EC's insistence on the MFN clause (RNM, 2007).

4.2 Trade-related issues

SADC appears to be the only ACP region that rejects the inclusion of any *binding* trade-related commitments in an EPA. The *SADC* draft text on trade-related issues – intellectual property, investment promotion, public procurement and competition policy – is very brief and does not go beyond WTO commitments. The focus is on capacity building and the exchange of information. Moreover, *SADC* seeks to exclude all 'new generation trade issues' from the dispute settlement provisions of the EPA.

¹³ Countries that have not gained the required experience may ask for an extension of a further five years.

4.2.1 *Investment and capital movement*

The chapters on investment differ in the present drafts. While the ‘progressive liberalisation of investment’ is intended in the EC drafts for PACP and SADC, no such clause is to be found in the joint EC–CARIFORUM text and EC drafts on Central and West Africa. The identical EC provisions inserted in the PACP and SADC drafts require further that the countries review their legal investment frameworks at regular intervals and bring them into line with international agreements within a (yet to be defined) period of time:

Article 11

Review

With a view to the progressive liberalisation of investments, the Parties shall review the investment legal framework, the investment environment, and the flow of investment between them consistent with their commitments in international agreements no later than [...] years after the entry into force of this Chapter and at regular intervals thereafter.

All drafts (other than ESA, where the chapter has not yet been drafted) foresee the free movement of capital relating to direct investments, subject to safeguard measures in case of balance of payment problems.

All EPA regions can apply safeguards in case of balance of payment difficulties, subject to the relevant WTO and International Monetary Fund (IMF) conditions (except for SADC, where no corresponding provision has been included). For SADC and ECOWAS the application of safeguards is limited to six months. All EPA texts stipulate that no new safeguard measures should be applied for at least one year for any product that has previously been subject to safeguards.

It is understood that this is disputed by CARIFORUM, PACP and SADC. SADC is in the process of preparing an alternative text on safeguards in case of balance of payment difficulties.

4.2.2 *Competition*

The texts in the present drafts go beyond the recognition of the importance of free and undistorted trade and link EU technical support to ACP countries’ obligation to build up national competition bills. This appears to be a common EC–ACP objective, though the timing remains disputed. The EC drafts foresee 3–5 years to implement national competition bills (three years for ESA, four years for Central Africa, and five years for SADC and West Africa)¹⁴ but it appears that only in the case of CARIFORUM are the parties agreed on a time-frame (five years).

For SADC, the draft also foresees technical support to build up a regional competition authority. Whether a regional competition bill is also envisaged for Central Africa is not clear from the present draft:

Article 5

Coopération

1. Sans préjudice des dispositions de l’article XX¹⁵ du présent accord, les Parties conviennent de coopérer, y compris en adoptant des mesures de soutien, dans les domaines suivants:

¹⁴ For PACP no time-frame was named in the EC draft.

¹⁵ Article horizontal sur les questions d’assistance/de coopération.

- (a) rédaction de dispositions législatives, lignes directrices et manuels,
- (b) mise à disposition d'assistance technique,
- (c) organisation de formations pour le personnel administratif clé et pour le personnel judiciaire,
- (d) installation des autorités de la concurrence de l'AFRIQUE CENTRALE.

All drafts (barring the joint ESA draft, in which the chapter on competition policy has not yet been drafted) show further provisions on public enterprises. Five years after entry into force of the EPA, state monopolies of a commercial character shall be adjusted in a way that ensures that no discrimination takes place.

Article 5

Public enterprises and enterprises entrusted with special or exclusive rights including designated monopolies

1. Nothing in this Agreement prevents a Party from designating or maintaining public or private monopolies according to their respective laws.
2. With regard to public enterprises and enterprises to which special or exclusive rights have been granted, the Parties shall ensure that, following the date of the entry into force of this Agreement, there is neither enacted nor maintained any measure distorting trade in goods or services between the Parties to an extent contrary to the Parties to an extent contrary to the Parties interest, and that such enterprises shall be subject to the rules of competition in so far as the application of such rules does not obstruct the performance, in law or in fact or the particular tasks assigned to them.
3. The Parties shall progressively adjust, without prejudice to their commitments respectively taken or to be taken under the GATT or GATS, any State monopolies of a commercial nature character, so as to ensure that, by the end of the [fifth] year following the entry into force of this Agreement, no discrimination regarding the conditions under which goods are procured and marketed exists between nationals of the EU Member States and those of the West African States. The Joint EPA Council will be informed about the measures adopted to implement this objective.

For CARIFORUM and PACP the continuation of discrimination beyond year 5 is allowed when it is 'inherent for the existence of the monopoly'. For SADC, Central Africa and West Africa no respective exemptions were defined in the EC drafts.

CARIFORUM has achieved the most generous provisions to date by excluding public enterprises that are 'subject to specific sectoral rules' from the principle of non-discrimination. The CARIFORUM text has been agreed *ad referendum*.

The Central and West African position on the competition clause is not known. However, the fact that the SADC draft does not include a corresponding provision suggests that this clause is not considered to be acceptable for SADC.

For PACP, it is understood that the region requests a longer period of time to implement national competition bills.

4.2.3 Innovation and intellectual property rights

The evolution of the provisions on innovation and intellectual property rights (IPR) is at very different stages in the present drafts. While no provisions on IPR have yet been formulated in the joint EC–ESA draft and the EC drafts on Central Africa and PACP, those in the joint EC–CARIFORUM text and the EC texts for West Africa and SADC are extensive (13 pages for SADC and 15 pages for CARIFORUM and West Africa, covering trademarks, geographical indications, industrial design, patents, genetic resources and traditional knowledge), and in each case are to be implemented CARIFORUM by 1 January 2014 at the latest. CARIFORUM has largely excluded Haiti from the obligations of the IPR chapter, but the EC

drafts for West Africa and SADC exclude LDCs only from trade-related intellectual property rights (TRIPs) obligations, not from implementation of the IPR section.

Enforcement of the proper implementation of the provisions on IPR is envisaged in the joint CARIFORUM draft and in the EC drafts on ECOWAS and SADC; for instance by an embargo of exports or the blocking of bank accounts if an infringement is committed on a commercial scale.

Article 19

Provisional and precautionary measures

1. Without prejudice to the measures foreseen in Article 50 of the TRIPS Agreement the European Community and the Signatory SADC EPA States shall ensure that the judicial authorities may, at the request of the applicant issue an interlocutory injunction intended to prevent any imminent infringement of an intellectual property right, or to forbid, on a provisional basis and subject, where appropriate, to a recurring penalty payment where provided for by national law, the continuation of the alleged infringements of that right, or to make such continuation subject to the lodging of guarantees intended to ensure the compensation of the rightholder. An interlocutory injunction may also be issued, under the same conditions, against an intermediary whose services are being used by a third party to infringe an intellectual property right.
2. An interlocutory injunction may also be issued to order the seizure or delivery up of the goods suspected of infringing an intellectual property right so as to prevent their entry into or movement within the channels of commerce.
3. In the case of an infringement committed on a commercial scale, the European Community and the Signatory SADC EPA States shall ensure that, if the applicant demonstrates circumstances likely to endanger the recovery of damages, the judicial authorities may order the precautionary seizure of the movable and immovable property of the alleged infringer, including the blocking of his/her bank accounts and other assets. To that end, the competent authorities may order the communication of bank, financial or commercial documents, or appropriate access to the relevant information.

The ECOWAS position on the EC draft is unknown. SADC rejects the EC approach and is not ready to commit to any obligations that go beyond what has been agreed on a multilateral level.

The section on IPR also remains disputed by CARIFORUM, which seeks a flexible interpretation of the 2014 deadline with respect to countries' development levels and also rejects the regional integration provisions to move towards 'a homogeneous level of intellectual property protection', preferring the term 'harmonised'.

4.2.4 Public procurement

To date CARIFORUM is the only EPA region that has jointly outlined provisions on public procurement (though the annex that defines the entities to which the provisions apply has yet to be developed). CARIFORUM has agreed to come up with a positive list for public entities that should be subject to the outlined procurement rules. Such a request is also reflected in the EC drafts for SADC and West Africa. For ESA, Central Africa and PACP no text on public procurement has yet been presented by either side.

Both the joint EC–CARIFORUM draft and the EC texts for ECOWAS and SADC require that the parties do not discriminate against any locally established supplier. Additionally, the regions shall not (CF: 'endeavour not to') discriminate against EC goods or services. CARIFORUM would like to include a provision that the non-discrimination principle between EC and CARIFORUM suppliers 'shall not be required ... unless a decision by the Joint CARIFORUM-EC Council to this effect is taken.' (Art. 3.6).

Article 3

Scope

...

4. (b) With respect to any measure regarding covered procurement, the EC Party and the Signatory CARIFORUM States, including their procuring entities:

(i) shall [**endeavour**]^{CF} not [**to**]^{CF} discriminate against a supplier established in either Party on the basis that the goods or services offered by that supplier for a particular procurement are goods or services of either Party;

(ii) shall not treat a locally established supplier less favourably than another locally established supplier on the basis of degree of foreign affiliation to or ownership by operators or nationals of any Signatory CARIFORUM State or of the EC Party.

5. Subject to Paragraph 6 below, each Party, including its procuring entities, shall with respect to any measure regarding covered procurement, accord to the goods and services of the other Party and to suppliers of the other Party offering the goods or services of any Party, treatment no less favourable than the treatment the Party, including its procuring entities, accords to domestic goods, services and suppliers.

6. The Parties shall not be required to provide the treatment envisaged in Paragraph 5 unless a decision by the Joint CARIFORUM-EC Council to this effect is taken. That decision may specify to which procurements by each Party the treatment envisaged in Paragraph 5 would apply, and under which conditions.

The provisions in all three draft texts exclude from the principle of non-discrimination several areas, such as immovable property, financial institutions and fiscal agencies, public employment contracts, research and development, arbitration services, aid and procurement of agricultural products and programmes. Moreover, the section on ‘limited tendering’ offers the option to exclude businesses from the procurement rules in some cases such as ‘extreme urgency’ or if the ‘technical ability of a certain supplier’ is required.

CARIFORUM linked the implementation of government procurement rules to EU technical assistance, which will give Caribbean countries up to five years in which to bring their measures into conformity with the obligations. No such provision is included in the EC drafts on West Africa and SADC.

4.2.5 Environment, social aspects, data protection

The provisions on environment, social aspects and data protection are largely identical in all present drafts (except for ESA, where the chapters have not yet been drafted). The texts propose the adoption of national environmental policies that promote environmental and public health protection and implementation of international standards if no adequate national or regional standards exist. For Central Africa, there appears to be discussion about SDT regarding the environmental chapter of the EPA. However, the parties have not yet been able to agree on a text outlining the ‘Règlement des différends’.

Environmental aspects appear to have high priority in the EC draft on Central Africa, which has an extra chapter on wood outlining the relevance of good governance with respect to forestry and trade in wood. It is anticipated that Central Africa will introduce verification systems to prevent illegal wood trafficking and put in place an independent surveillance and traceability system. Joint cooperation and technical assistance shall help to improve the sustainable exploitation of wood and wood products on a commercial basis.

CARIFORUM agreed on the environmental chapter *ad referendum*. SADC is to provide a separate text. The position of the other regions on these provisions is unknown.

With respect to social aspects, all drafts (other than ESA, for which no text has yet been drafted) reaffirm international commitments and outline that trade should not be enhanced by lowering social or labour standards. The importance of promoting social cohesion policies and decent work conditions is also outlined at the regional level.

Article 4

Regional integration

In the light of the social challenges facing their respective regions, and in order to promote the sustainable development of international trade, the Parties recognise the importance of establishing social cohesion policies and measures and promoting decent work at regional level.

The CARIFORUM and PACP drafts propose that the Joint EPA Consultative Committee monitor the implementation of the chapter (for instance with respect to core labour standards). The parties 'may agree to seek advice from the International Labour Organisation on best practice, the use of effective policy tools for addressing trade-related social challenges, such as labour market adjustment, and the identification of any obstacles that may prevent the effective implementation of core labour standards.' If the parties cannot agree on the advice received with respect to international labour standards a Committee of Experts shall examine the matter and report to the Joint EPA Consultative Committee. The EC drafts for SADC, Central Africa and West Africa do not contain similar provisions.

CARIFORUM has agreed on the provisions on social aspects *ad referendum*. SADC has said that it will provide an alternative text. The position of PACP is unknown

With respect to personal data protection provisions have been outlined in all drafts except for ESA and Central Africa. The EC envisages the creation of legal and regulatory regimes to protect personal data. Enhanced cooperation shall improve the level of personal data protection and technical assistance should be provided to develop appropriate legislative, judicial and institutional frameworks. CARIFORUM, which agreed on the chapter of personal data protection *ad referendum*, has seven years in which to implement the provisions. For the other ACP regions no time-frame has yet been outlined and the degree of acceptance of the present provisions is unknown.

4.2.6 Good governance in the tax and financial area

This is an area which is a subject of dispute among ACP. The EU is keen to include phraseology of the kind found in its drafts for PACP and SADC.¹⁶ This covers (a) improving the effectiveness of tax collection and avoiding undue business taxation; (b) improving international cooperation with respect to taxation and transparency of taxation; and (c) providing technical assistance for fiscal reforms, capacity and institution building. In addition, improved transparency and effective exchange of tax information is envisaged.

Article 5

Promotion of transparency and effective exchange of information for tax purposes

The Parties recognize the importance of achieving the highest international standards of transparency and effective exchange of information in order to facilitate the enforcement of measures aimed at preventing the avoidance or evasion of taxes.

¹⁶ Similar provisions are foreseen for the EC ECOWAS text but have not yet been prepared. The EC text for CEMAC includes a heading on this subject but no text. The ESA text makes no reference to it.

CARICOM rejects the text in its current form because it fears that judicial regulations on tax and financial issues contravene its fiscal incentives to attract investment. Moreover, CARIFORUM has inserted provisos about sharing investment data with the EU. The degree to which these provisions are accepted in the other ACP regions is unknown.

5. Dispute settlement

The provisions for dispute avoidance and settlement in all the current drafts are more extensive and rigid than in previous EU FTAs, such as the TDCA with South Africa.¹⁷ The procedures for consultations, seeking advice from a mediator and establishing an arbitration panel are detailed and the time-frame are very strict. It is not certain, however, how far the EU proposals are a source of dispute. CARIFORUM appears to have accepted them and SADC's text has quite similar provisions. Where there are disputes it is over the provisions on the temporary remedies in case of non-compliance.

The procedures of dispute avoidance and settlement are largely identical in all present drafts and read as follows:

1. Consultation: to be held within 40 days (SADC proposal: 20 days) and concluded within 60 days (SADC: 40 days) of the date of the submission of the request. In urgent cases: held within 15, concluded within 30 days.
2. If the time-frame is not respected or no agreement has been reached a mediator shall be appointed within 15 days (SADC: if the time-frame is not respected or no agreement has been reached an arbitration panel shall be set up). If the parties are unable to agree on a mediator the Joint Implementation Committee shall select a mediator. The mediator decides within 45 days, his decision is non-binding.
3. If no agreement has been reached an arbitration panel composed of three arbitrators will be established within ten days (SADC: 30 days).¹⁸
4. If no agreement about the composition of the arbitration panel can be reached the Joint Implementation Committee shall select the members within five days (SADC: 30 days).
5. The arbitration panel will submit an interim report within 120 days. The parties have 15 days to comment on the report (SADC: no corresponding provision).
6. The ruling will be made after a further 15 days, i.e. 150 days after the establishment of the arbitration panel (SADC: 180 days). In urgent cases the ruling shall be made within 90 days (SADC: 60 days)
7. The ruling of the arbitration panel is binding. No later than 30 days after having been informed about the decision of the arbitration panel the party shall notify the Joint Implementation Committee of a 'reasonable period of time' it needs to comply with the ruling.
8. If no agreement on the 'reasonable period of time' can be reached the arbitration panel shall determine its length.

¹⁷ Thus, it is envisaged that an arbitration panel will be established within 15 days (TDCA, six months) which has to make a binding decision after 180 days in regular cases and 90 days in case of emergency (TDCA, 12 months).

¹⁸ A joint list of 15 arbitrators shall be submitted within 3 months of the provisional entry into force of the EPA.

9. If the arbitration panel is unable to convene a new panel will be established (SADC: no provisions).
10. If the complaining party does not agree on the measures directed by the arbitration panel the whole procedure starts again (SADC: no provisions).

In case of non-compliance with the arbitration rule the application of temporary trade remedies is envisaged:

Article 12

Temporary remedies in case of non-compliance

1. If the Party concerned fails to notify any measure taken to comply with the arbitration panel ruling before the expiry of the reasonable period of time, or if the arbitration panel rules that the measure notified under Article 11 paragraph 1 is not compatible with that Party's obligations under the provisions referred to in Article 2, the Party complained against shall, if so requested by the complaining Party, present an offer for temporary compensation.
2. If no agreement on compensation is reached within 30 days of the end of the reasonable period of time or of the arbitration panel's ruling under Article 11 that a measure taken to comply is not compatible with the provisions referred to in Article 2, the complaining Party shall be entitled, upon notification to the other Party, to adopt appropriate measures including the suspension of benefits granted under the provisions referred to in Article 2 at a level equivalent to the adverse economic impact caused by the violation.¹⁹ The complaining Party may adopt the appropriate trade measures 10 days after the date of the notification....
4. The appropriate measures shall be temporary and shall be applied only until any measure found to violate the provisions referred to in Article 2 has been withdrawn or amended.....

6. General and final provisions, reviews, institutions and annexes

6.1 General and final provisions

The general and final provisions can be found in all present drafts and are largely identical although there are areas of dispute. It is understood that CARIFORUM, PACP and SADC have problems with the phraseology of the article on regional preference, and balance of payment difficulties under which a party may restrict imports.²⁰ PACP would also like to see the obligation to appoint a coordinator softened.

It is proposed that each party nominate a coordinator to ensure the effective implementation of the EPA. The coordinator is supposed to be the first contact person if one party requests any information from the other. Improved transparency of laws, regulations, procedures and administrative rulings is also proposed, as well as enhanced cooperation with the EU's 'outermost regions'. Furthermore, the EC inserted a paragraph on regional preference, stating that preferences granted to the EC shall be immediately extended to the other EPA states. Other provisions are the relationship with the Cotonou and WTO Agreement and the date of entry into force.

¹⁹ Appropriate measures adopted pursuant to this provision shall not affect the delivery of development assistance.

²⁰ According to the report 'Status of Progress on ACP-EC EPA Negotiations, 15 October 2007' received by the consultants from ComSec.

Article 2

Coordinators and exchange of information

1. In order to facilitate communication and to ensure the effective implementation of the Agreement the Parties shall designate a coordinator upon entry into force of this Agreement. The designation of coordinators is without prejudice to the specific designation of competent authorities under specific Titles or Chapters of this Agreement.
2. On the request of either Party, the coordinator of the other Party shall indicate the office or official responsible for any matter pertaining to the implementation of this Agreement and provide the required support to facilitate communication with the requesting Party.
3. On request of the other Party, and to the extent legally possible, each Party through their coordinators shall provide information and reply promptly to any question from the other Party relating to an actual or proposed measure that might affect trade between the Parties.
4. Each Party shall ensure that its laws, regulations, procedures and administrative rulings of general application relating to any trade matter covered by this Agreement are promptly published or made publicly available and brought to the attention of the other Party.
5. Without prejudice to specific transparency provisions in this Agreement, the information referred to under this Article shall be considered to have been provided when the information has been made available by appropriate notification to the WTO or when the information has been made available on the official, publicly and fee-free accessible website of the Party concerned.

Article 3

Regional preference

1. Nothing in this Agreement shall oblige a Party to extend to the other Party of this Agreement any more favourable treatment which is applied within each of the Parties as part of its respective regional integration process.
2. Any more favourable treatment and advantage that may be granted under this Agreement by any West African State to the EC Party shall immediately and unconditionally also be enjoyed by each signatory to this Agreement.

6.2 Review clauses

All present drafts propose review clauses for part of the EPA.

In addition to periodic review of cooperation and implementation of the EPA the joint EC–*CARIFORUM* draft proposes to review the chapters on government procurement and customs and legislative procedures every three years. Furthermore any measure taken to comply with the arbitration panel ruling shall be reviewed. Implementation of the competition policy chapter shall be reviewed after six years; no agreement has yet been reached in respect of a review of the RoO (EC: after two years; CF: after five years).

For *SADC*, the EC draft proposes a review of the parties' trade liberalisation commitments (every five years), a review of the implementation of government procurement provisions (after five years), periodic review of the chapter on investment liberalisation and non-specified reviews of the environmental and social chapters of the EPA as well as on measures taken to comply with the arbitration panel ruling. *SADC* proposes in its draft submitted to the EC a review of the EPA after five years 'in light of further developments in international economics relations and to examine the possibility of further developing and deepening the co-operation under this Agreement and to extent it to areas not covered therein.' Further reviews shall be mutually agreed upon.

The EC drafts for *West Africa* and *Central Africa* propose that the Joint Implementation Committee meet annually to review the implementation of the EPA. For West Africa, a review of the implementation of government procurement provisions shall take place after three years, and for both regions reviews shall take place of the environmental and social chapters of the EPA and of any measures taken to comply with arbitration panel rulings (no time-frame defined).

The joint EC–*ESA* draft proposes regular reviews of the exclusion basket and the annexes that define *ESA*'s priority products for SPS/TBT support. Moreover, the draft stipulates that the Joint Council shall undertake a review every five years of progress towards achievement of the development benchmarks and regional integration. And, as in the other draft texts, any measure taken to comply with arbitration panel rulings shall be reviewed.

6.3 Institutional provisions

The institutional set-up largely follows the EC proposal that commonly appears in EU association agreements: a joint Council, a joint Committee/Sub-Committees that implement the agreement, and a Parliamentary Committee/Joint Consultative Committee that monitors and controls the work of the Council and the committees. The joint EC–CARIFORUM draft and the EC drafts for PACP, *ESA*, SADC, Central Africa and West Africa name the same institutions, which are outlined as follows in the CARIFORUM draft:

1. Joint Council: decision making body that supervises the implementation of the EPA; meets every two years. Consists out of the members of the EU Council and ACP ministers; establishes its own rules of procedure.
2. Joint Implementation/Cooperation Committee: Assists and reports to the Joint Council; Consists out of senior officials from both parties who meet once a year. Tasks include: supervise the proper application and implementation of the EPA; evaluate the results; undertake actions to avoid disputes; set up Special Committees or bodies to deal with certain aspects of the EPA and supervise the work of Special Committees; discuss any matters that affect the EPA and undertake action to facilitate trade, investment etc.;
3. Committee on Customs/Trade Facilitation: Monitors the implementation of the chapter on customs and trade facilitation and the RoO.

The joint CARIFORUM drafts and the EC drafts on PACP, SADC, Central Africa and West Africa propose additionally the creation of a

Joint Consultative Committee: Assists the Council to promote dialogue and cooperation between the parties. The Joint Consultative Committee includes civil society, academics, and social and economic partners.

Further joint EC–CARIFORUM/SADC/West Africa/Central Africa institutions shall be the *Joint Parliamentary Committee* (comprised of parliamentarians from both sides who cooperate with the ACP Joint Parliamentary Assembly) and the *Joint Development Committee* (which shall assist the Council with respect to coordination activities of donors; and set up Special Committees to deal with joint development matters).

The PACP text does not name these institutions but proposes the creation of a *Committee of Experts* (which is supposed to supervise the social aspects chapter). The joint *ESA* text refers

further to a Joint Committee on Trade-related Issues (including three sub-committees),²¹ a joint Association Council (which shall determine the mechanism and formula to cope with revenue losses) and a Joint Committee (which is named in the chapter on marine fisheries as committee involving private and public sectors which acting as the first level of a dispute settlement mechanism).

7. Development cooperation and finance

Intentions for development cooperation are outlined in each and every chapter of all present drafts. The EC has agreed to assist ACPs to build capacity in the fields of customs and trade facilitation, to assist with compliance with SPS and TBT, and to help them implementing the manifold trade-related provisions and institutions. Moreover, the EC has signalled its readiness to contribute to the absorption of the net fiscal impact resulting from trade liberalisation.

However, the Commission does not commit itself to any financial cooperation that exceeds what has been agreed under the European Development Fund (EDF), as demonstrated by the following paragraph that is found in (largely) identical format in all present EC drafts:

Article 9

Development finance cooperation

Development cooperation for regional economic cooperation and integration, as provided for in the Cotonou Agreement, shall be carried out so as to maximise the expected benefits of this Agreement.

The European Community²² financing pertaining to development co-operation between the West African Party and the European Community supporting the implementation of this Agreement shall be carried out within the framework of the rules and relevant procedures provided for by the Cotonou Agreement, in particular the programming procedures of the European Development Fund. In this context, supporting the implementation of this EPA shall be one of the priorities.

Paragraph 2 does not prevent the financing of eligible actions under any relevant provisions of the EC budget.

The Parties shall cooperate to facilitate other donors willing to support the efforts of the West African Party achieving the objectives of this Agreement.

For CARIFORUM, the EC announced a 'redraft' of the development cooperation chapter. The region is not yet happy with the financial commitments under the EPA and also wants adjustment support for lesser developed countries. Moreover, there are fears that the EU member states might not cover their financial commitments (RNM, 2007).

PACP would like to include several sub-categories in joint development cooperation, such as adjustment, the implementation of the agreement, human resource development, support for SPS and TBT, support to implement the customs and trade facilitation chapter and agriculture. However, to date, no appropriate provisions have been drafted.

The ESA draft is the only one that has extra chapters on development cooperation and development finance (22 pages in total). It outlines in detail the region's request for technical and financial support covering the following areas:

²¹ Namely, the Sub-Committee on Customs Cooperation and Rules of Origin, the Sub-Committee on Standards, Technical Regulations and Conformity Assessment and the Sub-Committee on SPS.

²² Not including Member States.

- (i) agriculture (helping ESA to ensure food security and to establish a common agricultural policy);
- (ii) fisheries (infrastructure, marketing, production capacities...);
- (iii) commodities (maintain benefits of Protocols through ‘innovative ways’ and create funds for adjustment and diversification);
- (iv) capacity building on SPS;
- (v) industrial development and competitiveness (promote cooperation between EU and ESA firms by improving procedures of the European Investment Bank (EIB) Investment Facility);
- (vi) mining and minerals (improve participation of SMEs, promote investment etc.)
- (vii) investment promotion and protection (using EIB instruments that will encourage EU private investment in ESA and encourage strategic alliances, e.g. Public Private Partnerships (PPPs);
- (viii) standards and technical regulations;
- (ix) services (cooperate with the objective to diversify ESA services and to improve their productivity and competitiveness with a focus on tourism)
- (x) infrastructure (cooperate to develop, restructure and modernise ESA’s infrastructure incl. transport, energy, and telecommunication and information technology)
- (xi) natural resources (cooperate in the water and wildlife management).

Financial cooperation in all these areas is outlined in an extra chapter. The original ESA draft proposed the creation of the following financial instruments/funds:

1. an *Adjustment Facility* through which the EU provides financial resources to grant budget support and to address other adverse transitional effects of trade liberalisation (including untargeted budget and balance of payment support);
2. an *Infrastructure Fund* to provide financial resources and facilitate ESA economic infrastructure;
3. a *General Development Fund* to support institutional and structural reforms, enhance production and operation efficiencies etc.; and
4. a *Debt Facility* to provide financial resources to liquidate the external debts of ESA economies.

Furthermore, it proposes that the EIB establish a loan facility for ESA private sector borrowers at rates similar to those applicable to EU borrowers.

SADC identifies names macroeconomic stability, job creation, investment, technology transfer, expanded trade and improved supply-side competitiveness as its main development priorities. Development cooperation shall include the implementation of each and every chapter of the EPA draft. SADC stresses that additional funds to the EDF are required and aim to develop a Development Sub-Committee to coordinate donors and to oversee the implementation of development cooperation.

What remains unclear, however, is to what extent these manifold cooperation activities are likely to materialise. To date the EC has limited its financial commitments for EPAs to the funds provided under the 10th EDF (2007–2013). Moreover, the Commission and EU member states ‘pledged to raise ... spending on aid for trade to €2 billion a year from 2010’, of which ‘about half’ shall be specifically targeted at the ACP (EC, DG Trade 2007).

However, to date, neither are the funds secured nor the strategy clear. DG Dev keeps on emphasising that aid for trade will neither be conditional on the outcome of the Doha Development Round nor related to EPAs but will focus on country-specific objectives. DG Trade, however, applies a regional approach and aims to channel aid for trade directly towards EPA configurations.

Furthermore, there is uncertainty as to what extent the funds provided will be long-term commitments (like the EDF) and whether they will mirror the institutional and policy reforms agreed under the EPA – and not bilateral donor priorities. To avoid the duplication and ineffective use of funds and to coordinate the different approaches of EU development cooperation, it would be necessary to set up national and regional management units. Ideally, bilateral, EU and multilateral funds and programmes would then be coordinated in the recipient ACP country and harmonised on a regional level.

The CARIFORUM draft outlines appropriate provisions. It proposes setting up committees to coordinate donor activities and to deal with the region's development priorities under an EPA. The CARIFORUM text defines Caribbean development priorities in each relevant technical discipline in order to get appropriate support from EU funded programmes.

However, such a well-structured approach is not apparent in the other draft texts. The alignment of EU financial and technical support with country-specific and regional development strategies remains, therefore, a relevant priority in order to improve the effectiveness of EU aid for EPAs.

8. Annexes

The annexes to trade agreements provide all of the key details of the policy changes that each party will make to implement the decisions of principle made in the main text. They are therefore crucial. Only when they are completed can the potential economic impact of the EPA be assessed.

They are almost wholly absent from the texts reviewed. The most important ones, on liberalisation schedules and detailed RoO are outstanding in all regions.

The joint EC–CARIFORUM text is the only one that has developed any annexes, and these are far from complete. The EU's DFQF offer to CARIFORUM has been (partly) outlined and the Protocol on RoO has been drafted (see Section 3). However, no annexes have yet been drafted to specify the RoO, such as (a) the disputed conditions on 'sufficiently worked or processed'; (b) the specifics for the derogations of the RoO; and (c) the list of (neighbouring and possibly other) countries with which full cumulation is possible.

The PACP text has 'annexes' – but they are empty EC templates covering the list of commitments on establishments and other services, liberalisation lists, as well as competent authorities and priority products for TBT and SPS support. The EC drafts for SADC, ESA, Central Africa and West Africa do not cover any annexes. SADC's own text includes a draft annex on mutual administrative assistance in customs matters.

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