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**REPORT ON NEGOTIATIONS OF ECONOMIC  
PARTNERSHIP AGREEMENTS**

## REPORT ON NEGOTIATIONS OF ECONOMIC PARTNERSHIP AGREEMENTS

### I. INTRODUCTION

1. In the Cotonou Partnership Agreement that was signed by the EU and ACP countries in 2000, the parties committed themselves to conclude a WTO-compatible trade regime in the form of EPAs by 31<sup>st</sup> December 2007. Due to a number of problems, including divergence of positions on some major issues, it was not possible, for any of the four African Groupings that have been negotiating with the EU since 2002, to conclude full EPAs by the deadline of 31<sup>st</sup> December 2007. However, as at that date, eighteen African countries had initialed Interim EPAs with the EU. Some of them, mainly non-LDCs, have had to do so under pressure in order to avoid the disruption of the access of their exports to the EU market. The initialing of the Interim EPAs by the African countries concerned was done in a rush and outside of the framework of the geographical groupings within which negotiations have been carried out with the EU.

### II. ASSESSMENT OF THE INTERIM EPAS

2. The analysis of the eighteen Interim EPAs that have been concluded by African countries indicates that they are all different and only in one region (the East African Community), does more than one country have the same trade liberalization commitments. The differences among African countries in the same RECs in time schedules and baskets of products for liberalization in the Interim EPAs will weaken Africa's regional integration initiatives rather than reinforce them as agreed in the Cotonou Partnership Agreement. In addition, the issue of development dimension including binding commitments on additional resources to meet adjustment costs and build supply side capacity has not been adequately addressed in the Interim EPAs. Moreover, the Interim EPAs that have been initialed contain a number of contentious issues such as the MFN clause, the non-execution clause, substantially all trade, transitional periods, export taxes, standstill provisions, free circulation of goods, national treatment, bilateral safeguards, capital account liberalization and the Singapore issues.

3. The European Commission has been exerting pressure on the countries that have initialed Interim Agreements to sign and ratify these agreements. The Interim Agreements were done in a rush and were undertaken as temporary measures to comply with WTO rules and avoid the disruption of trade. Notification of the Interim Agreements is sufficient for WTO compliance. Ratification of Interim Agreements that contain contentious provisions and that have not adequately addressed the development dimensions will make it difficult for these issues to be reviewed and re-negotiated in the context of comprehensive and full EPAs.

### III. STATE OF PLAY OF THE NEGOTIATIONS

4. Following the initialing of the interim agreements by the East African Community (EAC) as a region and by individual countries, negotiations with the EC have resumed in all regions. Since the beginning of the year, the negotiating groups have held meetings at the ministerial level with the EC and in some cases some progress has been made. Notwithstanding the progress, significant areas of difference remain, where guidance is needed at a political level. The negotiations will continue on the basis of agreed roadmaps with a view to conclude full EPAs by the agreed deadlines specified in the Interim Agreements. There has been an indication from the EC that contentious issues that have been identified will be re-opened for negotiations in the context of the full EPA.

5. The focus of the negotiations has also been on the implementation of the interim agreements by those African countries and regions that initiated pending signature and ratification of the Interim Agreements. The dynamics of the negotiations have changed following the initialing of the interim agreements by some countries while some did not. The summary below identifies key areas in the negotiations in which divergences exist with the EC.

- a) In the key area of development, differences persist on the scope of development provisions, additionality of resources, legally binding commitments from the European Commission and the member states, relation of development provisions to other specific areas such as capacity building for health and technical standards, infrastructure, and institutional and private sector development; as well as the concrete modalities relating to delivery of resources for implementation and adjustment to EPAs.
- b) The initialing of the Interim Agreements by individual countries threatens regional and continental integration. The relation between the EPAs and the various regional frameworks in the clusters under negotiation is not yet clear. The overall impact of EPAs on the process of forming the African Common Market, is also to be further clarified and solutions operationalised in the EPA negotiations.
- c) In the areas of market access and agriculture, differences relate to the definition of “substantially all trade”, transition periods, rules of origin, trade remedies, elimination of export and domestic subsidies, preference erosion, food and nutrition security, net food importing countries.
- d) Negotiations on services have resumed in some negotiating groups, though the EC has produced proposals linking this area to investment. The EC has shown the intention to seek extensive opening of a wide range of service sectors and have strong offensive interests in mode 3 on

commercial presence while African negotiating groups are mainly interested in mode 4 on the movement of natural persons.

- e) On trade-related issues, the major area of difference is the treatment of the investment, competition and government procurement (whether there should be rules in these areas); there are differences also on the treatment of intellectual property rights, private sector standards, among others. The EC has introduced new issues for discussion and these include dialogue on good governance in tax matters and judicial areas. The EU is advancing the notion that taking commitments in these areas will bring about the much needed development in Africa.
- f) The EC negotiators have repeatedly raised the issue of their limited mandate, insisting that they cannot bind the Member States in certain key areas of importance to Africa such as financial undertakings, and certain aspects of movement of natural persons. These are the areas that have the potential to make EPA a development tool. The EU External Relations Council in its meeting of 27 May 2008 acknowledged the concerns that have been raised by the ACP countries on EPAs and called on the EC to show flexibility.
- g) The question of parties to the EPA has not been definitively resolved, including in the context of the process of economic integration in Africa. The initialing of the interim agreements has brought new dimensions to the problem of the definition of parties in the negotiations.

#### **IV. ROLE OF THE AU COMMISSION IN THE EPA NEGOTIATION PROCESS**

6. The AU Commission is not a party in the EPA negotiations. It has however been given the mandate to coordinate and harmonize the efforts of African countries and regions negotiating EPAs with the EU so that Africa can speak with one voice. The AUC has been instrumental to the development and adoption of common African positions, Decisions and Declarations on EPAs by the Policy Organs of the AU. Based on the Report submitted to the AU Summit on the EPA negotiations, African Heads of State and Government had engaged their European counterparts on the issue of EPAs during the Africa-EU Summit that was held in Lisbon towards the end of 2007. It was agreed at the Summit that high-level consultations between the African and the EU sides should be held to address the contentious issues in the EPA negotiations.

7. The last Summit of the AU that was held in Addis Ababa directed the AU Commission to organize a Joint Conference of African Ministers of Trade and Finance to deliberate and make recommendations on the EPA negotiations. The Joint Conference was held in Addis Ababa on 3<sup>rd</sup> April 2008. It adopted a Declaration in which it called, inter alia, for the review and renegotiation of the contentious issues in the Interim Agreements within the framework of Comprehensive EPAs. It urged the European Union to provide adequate and predictable additional resources beyond the EDF to meet adjustment costs, to support supply side capacity and build infrastructure, regulatory

capacity, competitiveness and national and regional interconnectivity. The Joint Conference of Ministers of Trade and Finance directed the AU Commission to develop, in collaboration with the ECA and RECs, a model EPA that would serve as a template for African countries and regions in their negotiations of full and comprehensive EPAs with the EU.

8. Work on the development of the model EPA has commenced, it is expected that by the end of July 2008, a draft will be available for consideration by the negotiating group. The Chairperson of the AU Commission had written to the President of the European Commission on the need to hold high-level consultations between Africa and EU, as agreed in the Lisbon Summit. The response of the EU Commission is being awaited. The AU Commission, through the Brussels Office, organized a Retreat on 16-17 May 2008 in Dinant, Belgium on the way forward in the EPA negotiations for the Brussels Group of African Ambassadors. The Commission was invited to participate in the preparatory meetings for the ESA-EPA negotiating group held in Addis Ababa on the 16<sup>th</sup>-19<sup>th</sup> June 2008

## V. WAY FORWARD AND RECOMMENDATIONS

- a) The AUC, in collaboration with the ECA should accelerate the development of the model of a full and comprehensive EPA and organize a meeting of the RECs, African Chief Negotiators of EPAs, and other relevant stakeholders to deliberate on the model EPA.
- b) EPAs have important implications on intra-Africa trade, regional integration and on the formation of the Common African Market. As such, the various EPAs from the negotiating groups and regional economic communities that are involved in the negotiations should be harmonized in areas where this is possible before they are signed.
- c) The Chairperson of the African Union is called upon to liaise with the President of the European Commission with a view to holding the Africa-EU high-level consultations on EPAs as agreed in the Lisbon Summit.
- d) Now that the pressure to conclude Interim EPAs has subsided and the access of their products to the EU has been safeguarded, African countries that initiated Interim Agreements should return to the fold of their RECs/Regional Groupings for the negotiations of full and comprehensive EPAs. African countries in their engagement with the EU in the EPA negotiations must remain united and respect the common positions adopted by the policy organs of the African Union in order to have EPAs that will serve as instruments for the promotion of sustainable development, the eradication of poverty, the gradual integration of Africa into the global economy, and the re-enforcement of Africa's regional integration initiatives, as agreed in the Cotonou Partnership Agreement. They must resist the pressure to ratify Interim EPAs that contain contentious issues that are yet to be fully addressed.

- e) Due consideration should be given to the fact that the Doha round of negotiations at the WTO has not been concluded and its conclusion has important implications on the outcome of the EPA negotiations. There is need to maintain coherence between the positions that African countries are committing to in the EPA negotiations and the positions of the African Group and the ACP in the WTO negotiations.

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# Report on negotiations of economic partnership agreements

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