

CHOOSING A COMPREHENSIVE EPA

by

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1. The Economic Partnership Agreement (EPA) between the Cariforum countries (CAR) and the EU is a Free Trade Agreement (FTA) and the choice of a comprehensive FTA with the EU by CARIFORUM is essentially dictated by the options in the multilateral legal framework to which this region subscribes in the WTO and the specific collective interests of the region. At the multilateral level, North/South and North/North FTA agreements must be concluded within the confines of Article XXIV for goods (unlike many similar South/South agreements which can be done within the Enabling Clause where the conditions are less stringent) and Article 5 under the GATS for services. The scope for North/South trade agreements in the WTO remains limited to either a non-reciprocal GSP under the Enabling Clause or a reciprocal FTA either partially under Article XXIV or under Article XXIV and Art 5 of the GATS. The Cotonou non-reciprocal arrangement was an exception to these two options as it departed from the non-discrimination principle and required a waiver which ended on the 31st January 2007.
2. At the signing of the Cotonou agreement, both parties agreed to reduce trade barriers and explore in the future a WTO-compatible trade agreement which by implication meant either of the two options described above in the manner in which they were evolving in the WTO at the time of negotiation. As the non-reciprocal trade part of Cotonou was more preferential than the GSP, the ACP argued for no less favourable trade treatment after 2007 and got a best endeavour clause in the Cotonou Agreement which committed the EU to try and find some way, if possible, to get an equivalent framework which could either be a new type of EU GSP that secures all the existing Cotonou preferences or an FTA.
3. Cotonou also made provision for a mid-term review for the ACP non-LDCs to decide if they wanted to opt for the best available GSP at the time or continue with exploring an FTA. Since Cotonou was signed the EU introduced a WTO compatible GSP for all ACP and non-ACP LDCs (Everything-But-Arms) (EBA) that offers a status that is even more preferential than Cotonou. It also further differentiated its GSP to allow for more preferential treatment than the standard GSP for small vulnerable countries (GSP-SVEs), drug-producing countries and those with governance problems (Super GSP).
4. WTO rules require that a developed country can offer a group of developing countries a special GSP once the criteria are universally applied to all developing countries. Differentiating the GSP to give all ACP non-LDCs the same status as Cotonou became problematic as some of the key ACP preferences would have to go to other non-ACP non-LDCs some of whom are large and fiercely competitive and this would certainly nullify the effort.
5. At the time of the mid-term review the region at the highest technical and political levels examined the GSP alternatives and concluded they were all unsuitable. Both GSP-SVEs and Super-GSP did not cover important CAR traditional preferences in sugar, bananas, rice, etc as well as significant margins in many important non-traditional areas. The loss to the region in choosing this option would have been unbearable in these of income and

employment. The best technical advice from those who favoured an alternative to the FTA could only come up with the GSP option with some among them throwing in for good measure a partial reciprocal services agreement even though it was not clear how the latter would be WTO compatible and could be negotiated separately.

6. It should be clear to all that in terms of unilateral non-reciprocal preferences the EU hands are tied in the WTO. On a daily basis many of our “friendly” neighbours in Latin America and “cousins” in Asia have been and continue to challenge legally the entitlement of the region to the special Cotonou preferences. Even though these preferences cover a small part of world exports, they claim they lose huge markets in Europe as well as investments at home as a result of the granting of these preferences to the ACP.
7. Cotonou preferences under a waiver are therefore not longer sustainable- a fact again supported by the difficulties encountered in obtaining the renewal of the CBI waiver in the WTO. Furthermore, this opposition is not only in the WTO. Many well-known pro-development academics and NGOs (as OXFAM) in developed countries have been campaigning against these special preferences for the ACP non-LDCs pointing to the plight of the most needy non-ACP LDCs in the world. The EU is being urged by them to establish either a universal GSP for all developing countries or to differentiate the GSP based on acceptable criteria- options which would not cover the special development needs of the small countries of the region whose trade options do not lie in these multilateral solutions as they are not yet global traders.
8. In choosing therefore to explore the FTA option, the challenge before the region was how to negotiate a development-friendly asymmetrical reciprocal agreement whose net welfare benefit (benefits minus costs) would be greater than that under the best available GSP. As part of this strategy, the region along with its ACP counterparts focused on obtaining more flexibility within the multilateral framework by placing systemic changes to North/South Regional Trade Agreements (RTAs) on the Doha Agenda and deploying efforts to change Article XXIV, essentially to include longer transition periods and greater exclusions as well as provide legal certainty to an area where the borders are still nebulous and what is reasonable has to be determined in court.
9. All these ACP negotiating efforts have come to naught, and it is evident as already seen in the impasse and in the absence of real substantive negotiations in this area, that Doha will end without any flexible changes in Art. XXIV. The only possibility that therefore remained by going this FTA route was to try and pull the maximum flexibility out of the existing loose Article XXIV and hope for the best.
10. Consequently, the recently-negotiated FTA has to be basically judged in terms of the trade-off with the GSP and the flexibility negotiated under Article XXIV and GATS V. Maximum gain from any FTA talks with the EU would have logically to go beyond goods and include at least services and development assistance since a limited goods agreement would not offset the costs of reciprocity. Already under Cotonou, 97% of the region’s exports were entering duty-free. It makes little sense to offer reciprocity in goods only, even asymmetrical, just to cover the remaining 3% and offset the loss from the GSP alternative especially when the vast majority of the countries have a services export

destiny and are in need of more development assistance to transform and adjust to further integration into the world economy.

11. The basic objectives of the region therefore centred on securing some meaningful residual margin of preference for key traditional exports and extending market access to the uncovered areas in goods; breaking new WTO-plus ground in service areas where the region has the capacity or can quickly develop this capacity either on its own or in collaboration with the global factors of production; and obtaining a higher level of development assistance for dealing with this new phase of liberalization.
12. Obviously, it was clear that preference erosion is taking place from both internal EU forces and WTO pressures. But even after Doha (which will further erode the Cotonou and even negotiated preference margin) there will still be a measure of preferential treatment in these sensitive areas that will last some time and which could assist the process of adjustment if combined with the growth in competitiveness. Negotiating skills, technical work and political diplomacy had therefore to be mustered in the region to obtain a development-oriented WTO-compatible asymmetrical FTA option that would be a superior choice to the GSP given the EU objectives to open up CAR goods and services markets.
13. In a next installment I will argue how CAR largely obtained its objectives indicating the gains and losses that resulted from the negotiating process.