

# **Zambia and Economic Partnership Agreements**

## **Civil Society Information Pack**

**CUTS Africa Resource Centre, December 2006**

## Section 1

### **Introduction and Background to EPAs**

The EU has maintained a close relationship with its ex-colonies in Africa, the Caribbean and Pacific (ACP) and this relationship has since 1975 been formally governed by the Lome Convention and latterly (since 2000) the Cotonou Agreement. These agreements, signed by all ACP and EU member states, commit the parties to specific measures relating to economic and political cooperation. The main components of this cooperation consist of a framework of trade preferences and a fund to finance development programmes in the ACP states (the European Development Fund).

Under the Lome Convention, the trade arm of the agreement included a system of trade preferences which provided ACP states with preferential access (i.e. at reduced tariff rates) to EU markets for a wide range of goods without them having to open their markets to the EU (i.e. non-reciprocal). However, in the run-up to the expiry (in 2000) of the Lome Convention the EU experienced a number of legal challenges to its preference system, which non-ACP WTO members claimed unfairly discriminated against their exports and therefore contravened the WTO principle of non-discrimination.

The principle of non-discrimination, one of the founding principles of the WTO (and its forerunner the GATT) states that individual WTO members have to treat the exports of all other WTO members equally. One exception to this rule is that developed countries can provide preferential access to developing countries. However, in providing preferential access to their markets developed countries are not allowed to discriminate amongst the developing countries, and are required to provide these preferences to all developing countries or just to LDCs. By providing trade preferences to ACP states (a mix of LDCs and non-LDCs) the Lome Convention therefore discriminated between developing countries a measure that according to WTO law could only be taken as a part of a Regional Trade Agreement (RTA), requiring signatories to engage in reciprocal market opening.

In designing the successor to the Lome Convention, the Cotonou Agreement, the EU therefore proposed that through negotiations the Lome preference system be reformed into a series of RTAs, which would require ACP regions to reduce tariffs applied to EU exports in return for the ACP maintaining preferential access to the EU. The Cotonou Agreement which was signed by the ACP and EU member states in 2000, therefore recommends that the EU and ACP negotiate a series of RTAs (called Economic Partnership Agreements (EPAs)), which are due to come into force in 2008. In the meantime the Lome preference system of trade preferences remains in place, a measure that was only approved by WTO members following the provision of a five year waiver from WTO provisions agreed at the Cancun Ministerial in 2003.

In order to qualify as an RTA under WTO law EPAs must lead to the “liberalisation of substantially all trade”<sup>1</sup> between the EU and ACP i.e. the removal (at the end of suitable transition period) of substantially all tariff barriers. Given the ambiguity of this phrase the degree of liberalisation has attracted a range of interpretations. However, the EU interprets this to mean that an RTA must lead to the liberalisation of at least 90% of all trade between the negotiating parties and given that the EU has stated it is willing to

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<sup>1</sup> GATT Article XXIV:8

liberalise all its trade with the ACP, the ACP will be expected to liberalise around 80% of their trade with the EU. However, these figures and the degree of liberalisation required by the ACP has been a major feature of the negotiations.

It was also envisaged that EPAs would include agreements on a wide range of other trade related matters, including: non-tariff barriers (e.g. sanitary and phytosanitary standards and rules of origin); trade in services; competition; investment; and safeguard measures.

EPA negotiations at the all-ACP level were launched in September 2002, and the separate regional negotiations between the six designated ACP regions (four African regions, the Caribbean and the Pacific) and the EU commenced the following year.

Given that EPA negotiations are legislated for through the Cotonou Agreement both parties are obligated to ensure that EPAs are designed in such a way as to uphold the objectives and principles of the Cotonou Agreement.

The objectives of the Cotonou Agreement include: *the promotion of development and poverty reduction; supporting the smooth integration of the ACP into the global economy; the promotion of regional integration.*<sup>2</sup>

The principles of the Cotonou Agreement include: *equality of partnership; sovereignty of partners; participation by non-state as well as state actors; differentiated cooperation according to each countries' level of development (with special consideration for LDCs).*<sup>3</sup>

In addition to upholding these objectives and principles, as stated by the ACP and EU EPAs also aim to achieve the following:

- To enhance the supply and trading capacity of the ACP.
- To create a new trade dynamic and foster private investment.
- To take account of the level of development and the socio-economic impact of trade measures on ACP countries, and their capacity to adapt and adjust their economies to the liberalisation process.
- To put development at the core of the EPAs reform process.
- To provide alternative options (which provide the same level of market access to the EU and are WTO compatible) to those ACP countries not willing to sign an EPA.

## Section 2

### Structure of negotiations

#### **2.1. Eastern and Southern Africa configuration**

Zambia is currently negotiating an EPA with the EU as a part of the Eastern and Southern Africa (ESA) configuration, with the COMESA Secretariat coordinating the regions

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<sup>2</sup> Cotonou Agreement, Chapter 1, Article 1

<sup>3</sup> Cotonou Agreement, Chapter 1, Article 2

negotiations. The ESA group agreed to breakdown the EPA negotiations into six (6) clusters as follows: (i) Development issues (ii) Market Access (iii) Agriculture (iv) Fisheries (v) Trade in Services and (vi) Trade Related Areas. The ESA set out a number of priorities under each cluster which need to be addressed in the negotiations:

## **2.2. Governance of the negotiations**

Each ESA country, including Zambia, has established a National Development and Trade Policy Forum (NDTPF), a consultative forum which brings together government, private sector and civil society actors involved in trade and development work to formulate national negotiating positions for each of the clusters in the EPA negotiations. These national positions are then taken to the Regional Negotiating Forum (RNF) where member states present their national positions and attempt to formulate common regional negotiating positions. Negotiations with the EU then take place based on these regional negotiating positions.

On issues which are being negotiated at the all-ACP level, ACP regions are expected to formulate joint positions to use as a basis for negotiating these issues with the EU.

Negotiations with the EC are being carried out at two levels, at the Ministerial level in-country and at the Ambassadorial level in Brussels. The ESA Group selected six (one for each cluster) Ministers and six Ambassadors to lead the negotiations at the two levels. In order to ensure that all ESA countries are represented in the negotiations, the ministers and ambassadors responsible for negotiating each cluster have been split amongst the ESA members.

## **Section 3**

### **Progress of negotiations**

- Phase 1 (all-ACP / EC) – Launched September 2002
- Phase 2 (ESA regional negotiations) – Launched February 2004
- Phase 3 (ESA-EC negotiations) – Launched February 2006

#### *Development issues*

- The ESA group has repeatedly asked for additional development assistance (over and above their present allocations through the EDF) from the EC to assist in adjusting to and implementing EPAs. The EC have refused this request and have directed the ESA group to engage with EU member states for support.
- The ESA group has been working to identify national priority areas for development support in relation to EPAs. It is hoped that identified areas will then be funded through EC country / regional support programmes.
- At the first text-based ESA-EC negotiations in September, the ESA group demanded that the negotiations start by focusing on development issues, and despite initial resistance from the EC discussions on development issues were prioritised.

#### *Market access*

- The current ESA EPA text proposes that there be a ten year moratorium on ESA liberalisation with the EU following the signing of an EPA. This will then be followed by the commencement of the liberalisation of raw material and capital good imports from 2018, intermediate goods from 2019 and finished goods from 2024. It is

envisaged that ESA liberalisation commitments will be completed within 20-25 years of signing an EPA.

- The current ESA EPA text also proposes that ESA LDCs will only be required to undertake liberalisation commitments once their countries have achieved development benchmarks (based on their national development plans).
- The ESA countries are still compiling their common list of sensitive sectors which will be excluded from liberalisation commitments.
- The EC continue to demand that the ESA countries establish a Common External Tariff (CET) as a prerequisite for EPAs. The ESA group wants to allow room for differentiation and flexibility and to have the option of not yet forming a CET.
- The ESA group has requested that reformed rules of origin be based on Change in Tariff Heading criteria. The EC has suggested it is open to this proposal but a recent EC study proposes that value added be the primary criteria.
- No substantial negotiations have yet taken place on market access as development issues have so far been prioritised in the negotiations.

#### *Agriculture*

- The ESA group has requested that a mechanism for compensating ESA countries for the impact of EU agricultural subsidies be established as part of an EPA. ESA countries are still developing proposals to tackle this issue.
- The EC dispute the necessity for a compensatory mechanism and have stated that the WTO reform process will deal with ACP concerns sufficiently.

#### *Fisheries*

- The ESA group wants to negotiate a separate fisheries agreement with the EU. This is in recognition of the unique challenges posed in managing this resource.
- The EC has responded that it has no mandate to negotiate a separate fisheries agreement (only an EPA) and claims that such an agreement would not be WTO compatible. It suggests including clauses on fisheries in an EPA.

#### *Services*

- The ESA countries have been carrying out assessments of their services sectors in preparation for negotiations with the EC. These preparations are ongoing and the ESA group has stated its eagerness to negotiate greater Mode 4 access.
- The EC has stated its willingness to negotiate Mode 4 and preferential services access with the ESA group, although no concrete proposals have yet been proposed.
- Services negotiations are ongoing although it is not anticipated that a full blown services agreement with extensive sectoral coverage will be negotiated.

#### *Trade related issues*

- The ESA group has reiterated its opposition to negotiating competition and investment with the EC, and instead proposes to strengthen regional provisions. The ESA group has also been working to develop an ESA SPS protocol which will be the basis for negotiating SPS issues with the EC.
- The EC has continued to call for negotiations on competition and investment, stating that these are vital to creating the required investment climate. The EC has shown a willingness to negotiate SPS issues, although no concrete proposals have yet been negotiated.

#### *Upcoming issues / meetings*

As mandated by the Cotonou Agreement, in 2006 (due for September / October) there will be a review of the EPAs negotiations in order to assess their progress. The EU and ACP have agreed that this will be a comprehensive review covering the development aspects, the state of regional integration and the overall progress of the negotiations. It is envisaged that each ACP region will carry out its own review which will contribute to an overall review of the negotiations.

COMESA has been mandated by ESA member states to carry out this review (to be completed in October) and at the last RNF it was recommended that alternatives to EPAs be explored as a part of this review. It was also recommended that there be an RNF dedicated to the ESA EPAs review, in order to present the report to members for feedback before it is submitted to the overall ACP EPAs review process.

There has so far been one ESA-EC negotiating meeting at which the current draft ESA EPA text was discussed. The next RNF is due to take place in early November and will be followed by a further round of ESA-EC negotiations later in the month.

An EU-ESA EPA is due to be signed in December 2007, although the EC have shown a willingness to consider extending the negotiations for a reasonable time in order to ensure they are completed successfully.

## Section 4

### Potential impact of an EPA on Zambia

#### *Threats*

- **Revenue losses from the reduction in tariffs (and therefore tariff revenues).** These are expected to be in the region of \$15 million (less, if sensitive sectors are excluded from the calculation) which is quite low relative to other members of the ESA group. This is down to the fact that Zambia's imports are not EU centric.
- **Increased import competition.** A number of sectors are expected to face increases in competition from EU imports, and although this might stimulate efficiency gains, it might also lead to these sectors contracting. The main sector that will be affected is heavy manufactures (especially chemicals and plastic). Agriculture and a number of key manufacturing sectors (such as textiles and leather) are likely to be included in the ESA sensitive list and therefore excluded from liberalisation. However if an EPA will required Zambia to eliminate tariffs on around 80% of its good this will leave it limited flexibility in the future to increase tariffs to the EU in response to future patterns of trade.
- **Adjustment costs.** As well as dealing with revenue losses, the reallocation of resources following liberalisation is likely to lead to lay-offs and necessitate restructuring. Adjusting to these impacts will require investment in a range of support areas, including training, infrastructure development and fiscal reforms.

#### *Opportunities*

- **Reduced prices of consumer goods and inputs.** A number of sectors are likely to benefit from reduced input prices, including some heavy and light manufacturing sectors, and floriculture. However, the impact on producers will be limited as tariffs on most imported inputs are already low. Most sectors of interest to consumers are likely to be excluded (e.g. textiles, agriculture) so there will be limited impact on consumers.
- **Productivity improvements.** The static productivity gains are unlikely to be significant as tariffs on imported inputs are already low. As the main productivity bottlenecks are related to infrastructure weaknesses, if an EPA does not contribute to tackling these then the dynamic productivity gains may also be limited.
- **Continued / improved preferential access.** Given that Zambia is an LDC and therefore qualifies for EBA preferences, it can continue to access the EU market duty and quota free regardless of whether it signs an EPA. However, an EPA will be more secure and its preferences will have less strict rules of origin applied to them. Although for Zambia the overall value of preferences is limited, they are still valuable in sectors such horticulture, floriculture, processed food and some light manufactures.

## Section 5

### Alternatives to an EPA for Zambia

Given their reciprocal nature, in signing an EPA Zambia will be required to open its economy to EU imports to a greater extent than ever before. This is understandably of major concern to Zambia as its economy is vulnerable to exports from more competitive EU producers. Therefore, one option that is being considered by Zambia is to avoid opening its market further to the EU by not signing an EPA, and instead accessing the EU market through a number of alternative preference schemes.

For LDCs such as Zambia it is envisaged that the alternative to an EPA will be the Everything But Arms (EBA) agreement, which already provides LDCs with duty and quota free access to the EU market as a part of the EU's Generalised System of Preferences (GSP). In addition, it should be noted that Zambia can choose any other suitable alternative to an EPA if they request it.

However, despite the obvious benefit that the EBA potentially provides for Zambia (i.e. avoiding market opening requirements) there are drawbacks to the scheme and Zambia will have to assess its relative worth in deciding whether to sign an EPA and what alternative (if any) to choose. The main drawbacks of the EBA include:

- If some countries within ESA choose to sign an EPA and Zambia chooses not to regional integration might be harmed. This is because a customs union (a key step in achieving deep regional integration) requires the application of a common external tariff and also because differential tariffs on EU imports will require strict Rules of Origin to regulate the movement of goods between regional members.
- The EBA is a unilateral preference schemes which the EU could revoke or reform unilaterally at any time.

- The EBA includes a safeguard measures and is only open to Zambia whilst it is an LDC, potentially limiting the benefits available over the long term.
- EBA / GSP rules of origin are less flexible than Cotonou rules of origin and it will therefore be more challenging for ACP exports to qualify for access to EU markets through the EBA / GSP.
- Unless it could somehow be incorporated into a regional EPA (creating WTO compatibility problems), a country opting for the EBA / GSP would not be able to negotiate a wider agreement with the EU, including measures related to non-tariff barriers and safeguard measures.

As a part of the ESA-EU EPA review, the COMESA Secretariat will be exploring the full range of alternative options open to the ESA countries and this will assist Zambia in assessing the relative benefit of signing an EPA.

## **Section 6**

### **Recommendations and conclusion**

#### **6.1. What an EPA should be for Zambia**

- EPAs should address national priorities to achieve development objectives. This requires greater emphasis on using such an agreement to pursue market access in the EU, protect sensitive sectors and include complementary policies.
- Zambia should avoid commitments in areas where its own domestic policy framework is not yet established and should avoid entering into bilateral on issues which have been rejected at the multilateral level (e.g. Singapore Issues).
- Any agreement on Trade Related areas must create an institutional structure capable of addressing some of the most serious market failures if it is to be acceptable. An EPA should also include monitoring criteria to determine whether it is succeeding as well as creating obligations on all parties to identify the reasons for lack of success and to act to remedy them.
- Zambia and other ACP countries should lobby within the EPA negotiations for the EU to review existing aid programmes and institutional arrangements and come up with innovative and integrated country specific, targeted programmes and effective time-frames that take account of country and sub-regional specificities.
- Zambian based civil society should lobby for support to conduct specific training programmes, studies and capacity building in negotiations specifically for trade related areas.
- The EPA negotiations under development issues should be used to seek for assistance for infrastructural development and research and development.
- EPAs negotiations have to consider that for Zambian companies to perform and compete favourably they require an enabling and stable environment to operate effectively. Zambia still suffers from huge budget deficits and will require development assistance in terms of direct budget support.
- Under agriculture Zambia should push for more flexible SPS measures and additional support to comply with current measures.
- There needs to be a comprehensive approach to addressing supply side constraints facing economic operators.

- Zambia's negotiation team should be strengthened and more CSO representatives should be on it.
- The Zambian government should provide subsidies and support measures to producers to enhance competitiveness and the EC can contribute to this.
- Enhancing value addition and competitiveness should be one of the main outcomes facilitated by an EPA.
- The perspectives of those outside Lusaka need to be incorporated into the process.

## 6.2. Conclusion

The challenge for Zambia is to define whether maintaining market access to the EU requires signing an EPA. If an EPA does not offer benefits beyond those provided by the EBA initiative then it should not be signed. If designed and implemented in a development friendly form, an EPA could have some positive impacts on trade and growth in Zambia. It is therefore important that all stakeholders in Zambia get involved in the process and ensure that the outcome of EPAs is beneficial to the Zambian people. To have development-friendly EPAs it is necessary to press for features that include:

- Improvements in the EBA and Cotonou rules of origin
- Increased financial assistance to address supply side bottlenecks and offset the revenue losses from lower tariffs on imports from EU
- Adequate flexibility to accommodate differing conditions among the countries in the ESA group.
- EU technical support for reducing intra-regional barriers to trade and deepening regional integration.
- Development friendly treatment of services like opening up EU market to more workers from the ESA countries

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