



THE COMMISSION OF THE AFRICAN UNION; AND INTERNATIONAL LAWYERS AND
ECONOMISTS AGAINST POVERTY

EPA DRAFTING WORKSHOP, 2 TO 4 AUGUST 2006, NAIROBI KENYA

AIDE MEMOIRE

The European Commission has since 2002 been engaged in trade negotiations with African countries, to conclude economic partnership agreements. These agreements, scheduled to be concluded by December 2007, are intended to succeed the trading system currently in place, which is due to expire by 1 January 2008 together with the WTO waiver permitting it. The waiver was agreed by the World Trade Organisation at the Doha Ministerial Conference on 14 November 2001. The imminence of the expiry of the waiver, as well as the agreed time frame of concluding the negotiations by December 2007, show the urgency and importance of ensuring that the negotiations are not inappropriately concluded. Indeed, these negotiations raise various key issues affecting the very prospects for the economic integration and the economic development of Africa.

Regarding the economic integration of Africa, African countries are negotiating as four different groups: ECCAS/CEMAC, ECOWAS/UEMOA, ESA, and SADC. Each of the groups has a separate negotiating mandate, and coordination between them has not been adequate to ensure harmonised positions. The negotiating roadmaps for the groups are not coordinated, resulting in prioritisation of divergent issues and progress at different speeds.

The African Union Trade Ministers have since 2003 adopted declarations and pronouncements on EPA negotiations, at each of their annual meetings, setting out Common African Positions on pertinent issues. These common positions remain important and should guide the negotiations. However, during the years 2006 and 2007, the negotiations may be based on text, with the intention of producing draft economic partnership agreements. This stage of negotiations involves a level of detail that goes beyond the declarations, requiring close examination of words and numbers. It requires also the regular and consistent harmonisation of actual positions and text among the four negotiating groups, so that Africa adopts and projects common positions, consistent with Africa's priorities, in negotiations with the EC.

The configuration of the groups for purposes of the EPA negotiations, does not necessarily reflect the membership of the African regional economic communities in all the four regions. The EC seems inclined to override the membership of the regional economic communities, in preference for the EPA configuration. An important issue here is that the African union has recognised eight regional economic communities as building blocs for the African Economic Community, within the overarching long term development strategy for Africa – AMU, CENSAD, COMESA, EAC, ECCAS, ECOWAS, IGAD, and SADC. The member states of the African Union as well as the regional economic communities therefore insist on putting priority to their membership in their regional economic communities. The EC is insisting on prioritising the EPA configurations in programming for the Tenth European Development Fund, which is causing concern among African countries.

The development prospects of Africa depend on various key components. These include, building and strengthening of regional markets, obtaining unrestricted and full access to the markets of development partners and other emerging economies, without the prevalent non tariff barriers; securing adequate resources in the critical amounts required to generate rapid economic growth and assist in the modernisation of their economies; and ensuring adequate policy space for preparing and implementing development programmes including industrialisation programmes and elimination of poverty. Economic partnership agreements must fully and positively address each of these areas. African countries are therefore seeking yet better market access to the EC, adequate resources well above above EDF 10, and policy space, among other objectives. They are out to avoid an unsuitable trade arrangement that confines their policy space and unduly opens up their markets and that could in that way result in de-industrialisation and the underdevelopment of their agricultural and service sectors.

The Heads of State and Government of the African Union gave the Commission of the African Union in their Maputo Declaration of 2003, the mandate to coordinate and monitor EPA negotiations, which has been re-iterated in subsequent declarations. In this regard, meeting in their Fourth Ordinary Session on 14 April 2006, the African Union Trade Ministers recently adopted the Declaration of Economic Partnership Agreements, in which paragraph 5 states in part as follows:

Recalling the coordination and monitoring mandate given to the Commission of the African Union by our Heads of State and Government at the Maputo Summit, we underscore the absolute importance of regular and consistent meetings and sharing of information among the negotiating groups and with the Commission. In this regard, we direct the Commission to adopt a definite programme and implement it, relating specifically to co-ordination meetings and the regular and consistent sharing of information.

Given the importance of the EPA negotiations, then, as well as the coordination and monitoring mandate, the Commission of the African Union, in partnership with International Lawyers and Economists Against Poverty (ILEAP), will hold a legal drafting workshop on 2 to 4 August 2006 in Nairobi Kenya. Participation will be from selected member states of the African Union, particularly the four negotiating groups, and the secretariats of the relevant regional economic communities. The key purpose of the workshop will be to actively support the negotiating groups in conceptualising and preparing their negotiating draft texts and the draft economic partnership agreements.

ILEAP has been a long standing partner of the Commission of the African Union, participating in and providing support to the Trade Ministers meetings. On this occasion, ILEAP will be providing full financial and technical support for the EPA drafting workshop. The Commission of the African Union sincerely appreciates this initiative and support.

OBJECTIVES

The main objectives of the drafting workshop will be to ensure that the negotiating groups adopt, project, defend and advance common or harmonised positions in their text based negotiations with the EC; and that the process of economic integration in Africa is promoted.

In light of these main objectives, the workshop will aim to:

- Review and assess the progress made to date in EPA negotiations, to establish areas of convergence and divergence, and chart appropriate ways forward including through examination of any appropriate instruments for the trade arrangements
- Produce user-friendly reference material for negotiations, such as synthesised documents and matrices reflecting the priorities and positions of the member states and collectively the African Union, on the basis of presentations and background documents for the workshop, and all relevant developments to date including progress made in WTO negotiations
- As appropriate, develop common positions, and model clauses and other guidelines for the negotiating groups on the various issues they are negotiating
- Promote the sharing of experience and networking among the negotiating groups, with a view to coordinating negotiating approaches and building institutional memory
- Support and refine the process and programmes for rationalisation of economic integration in Africa, including the development of minimum integration and convergence programmes

JUSTIFICATION

The drafting workshop will aim at coordinating the preparation of the draft economic partnership agreements that the Negotiating Groups are currently working on. The ESA Group has already produced a draft EPA, which was considered at the 7th Regional Negotiating Forum and Council of Ministers, held on 9 to 15 May 2006 in Kigali Rwanda. ECOWAS and CEMAC are beginning the exercise of drafting their EPAs, currently with support from ILEAP. These initiatives need to be coordinated from the start to ensure that the groups move in the same direction as may be appropriate.

In this regard, a key outcome of this workshop will be agreed common modalities for preparation of draft EPAs, as well as agreement on the structure, outline, and coverage of EPAs, taking into account the review exercise due this year and the possibility of trade arrangements not very strictly in line with the current rules in Article 24 of GATT 1994 of the WTO in their un-amended form.

This workshop will provide an opportunity for member states and stakeholders to internalise the Ministerial Declaration on EPAs that the African Union Trade Ministers adopted on 14 April 2006 in Nairobi Kenya. In this regard, a further key outcome of the workshop will be consideration and adoption of an appropriate work programme to follow up the declaration.

An important issue that is becoming more prominent for African Negotiating Groups is rationalisation of the regional economic communities. The African union is addressing this issue in the context of the process of creating the African Common Market under the Abuja Treaty. There has not been adequate consideration of this matter in the context of EPA negotiations, in terms of concrete studies, though the importance of EPAs respecting and building upon the process of economic integration in Africa has been underscored time and again.

Compatibility with the WTO rules has been addressed largely in terms of compatibility with Article 24 of GATT 1994. However, there are various important considerations that should be on board and on which further thought would be helpful. The exact specifics of the amendment to Article 24 as proposed by the ACP Group still need to be worked out. On the basis of such specifics, simulations could be undertaken to indicate the better scenarios. Recent WTO jurisprudence (the GSP case) has indicated that GSPs for selected countries could be consistent

with Paragraph 1 of the Enabling Clause if the countries are selected on the basis of objective criteria. This important outcome has not been adequately investigated in the context of EPA negotiations, given that models of such objective criteria exist. Regarding services aspects, compatibility with Article V of GATS has also not been adequately explored.

As is very well known, EPA negotiations cover various areas – development, agriculture, industrial products, fisheries, services, intellectual property, standards, rules of origin, and so on. At the workshop, presentations on each of the areas covered by the EPA negotiations would be helpful to assist recommendations and generally the outcomes.

EXPECTED PRODUCTS

The expected products are the report of the workshop, the background papers, and above all the reference material for supporting the trade negotiations.

It is expected that the workshop will assist the negotiators and other stakeholders to better appreciate the negotiating priorities and positions, the process and structure, in the context of legal drafting; and will therefore be better placed to advance the interests of the member states and be more effective negotiators or actors as the case may be during this critical stage of the negotiations.

INVITATIONS TO THE WORKSHOP AND LOGISTICS

Invitations to the workshop will be sent out by ILEAP. Participation in the workshop has been discussed with the Commission of the African Union.

ILEAP will be responsible for the logistics relating to the workshop, including the travel arrangements and facilitation, and the payment of subsistence allowance.

DISSEMINATION

The documentation of the workshop will be made available to participants and the relevant ministries of the member states. Partners of the Commission of the African union and ILEAP will also have access to the documentation and may further disseminate them.

VENUE OF WORKSHOP

The drafting workshop will be held in Nairobi, Kenya; on 2 to 3 August 2006.

CONTACT PERSON

For assistance and further information, please contact:

Ms Elaine Wong

ILEAP

Email: e.wong@ileap-jeicp.org

www.ileap-jeicp.org