



## **Panorama of the European Union current trade negotiations**

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### **The European Union and the Cultural Cooperation Protocol**

It is especially important to take heed of the development of bilateral trade negotiations which the European Union has undertaken with third-party states, first and foremost, since the European Union now appears determined to append to all its future agreements a *Cultural Cooperation Protocol*. Such a protocol has already been appended to the recent Economic Partnership Agreement (EPA) which the EU and the CARIFORUM States signed in October 2008 and which will serve as a model for future negotiations. As we alluded to in a previous article, the Protocol, for the first time, refers to the UNESCO Convention in order to justify the differential treatment granted to cultural goods and services in the context of a trade agreement. However, this type of protocol appended to a trade agreement involves several risks for the diversity of cultural expressions, in particular:

- (1) some doubt persists with respect to the effective separation of this protocol to the trade agreement to which it is appended. In the event of litigation, the protocol could be subject to trade dispute resolution procedures, which would have the effect of subordinating culture to trade interests;
- (2) there is a clear risk that, during negotiations, the boundaries between the main agreement and the protocol will become blurred and that, in practice, the cultural cooperation protocol offered will become a bargaining chip in order to obtain benefits in other economic sectors;
- (3) trade negotiators are not appropriate specialists in order to develop cultural cooperation protocols. These protocols, as well as other preferential treatment measures, should instead be initiated, drafted, implemented and assessed by authorities having cultural orientation and expertise.

#### **1- EPA Negotiations**

“Economic Partnership Agreements” (EPAs) are free trade agreements which also incorporate provisions relating to development between the European Union and groupings of countries in Africa, the Caribbean and the Pacific, known as ACP States.

Trade relations between the European Union and the 77 countries of the ACP zone were previously governed by the Lomé Convention which granted unilateral preferential access to the market of the Union. Since this agreement was in breach of WTO rules owing to its discrimination in favour of importations, since 2000, pursuant to the Cotonou Framework Agreement, the parties have agreed to establish new agreements based on reciprocal preferences.



The European Union, therefore, initiated a series of negotiations to enter into independent bilateral agreements with the groups of participating countries of the ACP. Six groups of countries were specifically involved, on the basis of the regional institutions already in place: West Africa, Central Africa, Southern and Eastern Africa, the South Africa Development Community, the Caribbean and the Pacific.

**Caribbean (Regional Organization: Caribbean Forum of African, Caribbean and Pacific States (ACP) or CARIFORUM)**

States involved (in addition to those of the European Union): Antigua and Barbuda, the Bahamas, Barbados, Belize, Dominica, the Dominican Republic, Grenada, Guyana, Haiti, Jamaica, Saint-Lucia, Saint-Vincent-and-the-Grenadines, Saint-Kitts-and-Neves, Surinam and Trinidad and Tobago.

The first comprehensive (EU-CARIFORUM) EPA was signed in mid-October 2008 and has been applied on an interim basis since December 29, 2008. Full implementation will occur upon ratification of the agreement at the national and regional levels.

As mentioned above, this is the first agreement which incorporates a *Cultural Cooperation Protocol* in its appendices. Note that, in addition to the questions raised above, this Protocol, even if it includes provisions with respect to the performing arts and publishing, is chiefly concerned with the audiovisual field. In addition, the only exemption from any liberalization commitments contained in this EPA is with respect to audiovisual services. Hence, other cultural sectors are incorporated in the trade agreement and are subject to liberalization commitments. Indeed, at the heart of the EU-CARIFORUM EPA lie commitments for market access and national treatment by EU states and Caribbean states in other cultural sectors: entertainment services (including theatre, live bands, circuses and discotheques), news agency services and library, archive, museum services and “other cultural services”.

**Central Africa (Central Africa Economic and Monetary Community or CEMAC according to its French acronym)**

States involved: Cameroon, Congo, Gabon, Equatorial Guinea, Central African Republic, Chad.

An interim APE (or stepping stone agreement) was signed on January 15, 2009 between the European Union and Cameroon. Its preamble declares that the States must not encourage direct foreign investment which would lead to an easing of their regulations aimed at protecting and promoting cultural diversity (this reference is also found in Article 73 of the CARIFORUM-EU EPA).

Even if the final objective remains the signature of a comprehensive EPA with all the members of the region of Central Africa, several roadblocks remain, specifically with respect to the fear that a free trade agreement could bring about drastic consequences for these fragile economies.



### **West Africa (Economic Community of West African States or ECOWAS)**

States involved: Benin, Burkina Faso, Cape Verde, Gambia, Ghana, Guinea, Guinea Bissau, Ivory Coast, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo.

In December 2008, the ECOWAS asked for negotiations to be jumpstarted with a view to reaching a comprehensive agreement by June 2009. In November 2008, an interim EPA was signed with Ivory Coast which recognizes, in its preamble, the need for the promotion and acceleration of cultural development. Another interim agreement was supposed to be signed by the Ghana; however, it was postponed as a result of the change of government in December 2008. The country is now awaiting the new date for signature.

### **Southern and Eastern Africa**

States involved: Comoros, Djibouti, Eritrea, Ethiopia, Madagascar, Malawi, Mauritius, Seychelles, Sudan, Zambia and Zimbabwe.

The signing of an EPA in this region was set for the end of 2008. Following a deadlock in negotiations, it was determined that a high-level technical team would be created to focus on litigious matters (issues of development, trade of services, etc). The signature of an interim EPA was postponed to the month of April 2009. Appendix IV of this preliminary text referred to the importance of cultural development which is to be enhanced through the promotion of cultural industries and improvement of market access for local products.

### **South African Development Community (SADC)**

States involved: Angola, Botswana, Lesotho, Mozambique, Swaziland, Namibia, South Africa.

Negotiations between the SADC and the European Union have been underway since 2004. The difficulty in hammering out an EPA in this region is caused by the fact that the EU has developed several levels of trade relations with the SADC States. Indeed, in 1999, the EU signed a development and cooperation agreement with the regional economic giant that is South Africa which is expected to lead to the creation of a free trade zone. In parallel, Mozambique, Botswana, Lesotho, Namibia and Swaziland signed an interim EPA at the end of 2007. In this interim EPA, no reference is made to the protection of the diversity of cultural expressions, or of cultural goods or services.



### **The East African Community (EAC)**

States involved: Kenya, Uganda, Tanzania, Burundi, Rwanda

The speed of negotiations of the EAC-EU EPA depends on the East African Community (EAC) integration process. The outcome of this process will determine the commitments which the EAC will be able to make in respect of the implementation of the EPA. For now, a new deadline has been set for April 2009 for the completion of the internal negotiations within the EAC.

### **The Pacific (PACP)**

States involved: Kiribati, Samoa, Salomon Islands, Tuvalu and Vanuatu, Cook Islands, Tonga, Marshall Islands, Micronesia, Niue, Palaos and Nauru

The last round of negotiations with the Pacific ACP (PACP) States took place in September 2008. The deadline to reach a final agreement was December 2008. Presently, only two interim agreements (with Fiji and Papua New Guinea) were concluded and submitted to the EU Council for approval. The final documents should be signed shortly. Currently, the EPA under consideration for this region should not include commitments in the services sector. The wording should, however, include a clause enabling the negotiation of this matter at a later date.

## **2- Negotiations with India, South Korea and China**

### **India**

Negotiations for the finalization of a free trade agreement between the EU and India were initiated in June 2007. These negotiations are broad-based and cover access to goods, services and investments. Two new rounds of negotiation are scheduled over the next few months.

### **South Korea**

Since 2006, signing a free trade agreement with South Korea has been one of the foreign trade policy priorities of the EU. Negotiations started in May 2007 and were expected to conclude in 2008. Even if the eighth round of negotiations scheduled for March 2009 was delayed several weeks and in spite of the criticism voiced by the European automobile industry, the two parties believe this will be the final round prior to the signing of the agreement next Spring.

In January 2009, the European Commission held a briefing on the Cultural Cooperation Protocol contained in the EU – South Korea free trade agreement. The appending of this cultural protocol to the free trade agreement is conditional upon the ratification by South Korea of the UNESCO Convention. Cultural professionals and their representatives within the Belgium, German and French coalitions for cultural diversity have voiced their concerns with respect to the linking of such a protocol to a trade agreement.



## **China**

Since January 2007, the European Union and China, with a view to updating the 1985 economic and trade cooperation agreement, undertook to negotiate a new Partnership and Cooperation Agreement. This is a new type of agreement which will cover 22 sectors, including energy, environment, trade and human rights. In the 1997 partnership and cooperation agreement signed with Russia, cultural cooperation was included. There is every reason to believe that the agreement with China will also cover cultural exchanges. Up till now, only two rounds of negotiations have taken place and the process will likely take quite some time before a formal agreement can be reached.

### **3- Negotiations with States in the Americas**

#### **Andean States: Bolivia, Colombia, Peru, Ecuador**

Negotiations between the European Union and states belonging to the Andean Community (Bolivia, Colombia, Peru, and Ecuador) with a view to reach an association agreement were initiated in June 2007. An association agreement, generally, is an agreement aimed at strengthening cooperation on the political, commercial, social and cultural fronts. The trade aspect has appeared particularly predominant in these negotiations with the Andean Community States. The first round of negotiations was held in mid-February 2009 and the next round is scheduled for March. Even if the stakeholders have stated that they are convinced that they will complete negotiations by September 2009 and conclude an agreement by the end of the year, the Andean Community States are especially divided. Indeed, when Bolivia and Ecuador refused to enter into negotiations with a view to establishing a free trade agreement, Colombia and Peru decided to do it alone and to enter into separated bilateral negotiations with the EU.

#### **Central America: Panama, Guatemala, Costa Rica, El Salvador, Honduras, Nicaragua.**

Negotiations with a view to conclude an association agreement between the EU and the six Latin American States were initiated in 2006. The purpose of such an agreement is to improve cooperation in several sectors, including culture, and to facilitate trade and investments between the two regions. The sixth round of negotiations was completed at the end of January 2009. In an official document, the EU explains that the negotiations with respect to three pillars of the agreement (political dialogue, cooperation and trade) have progressed well so far. As for the issue of cooperation, a statement was made that significant progress was achieved with respect to provisions regarding *cultural and audiovisual cooperation*.

Organizations in Latin American civil society have mobilized to decry the risk that these negotiations lead their countries to sacrifice the autonomy of their governments in their choices of development models, in the management of natural resources, which will result in unfair competition for domestic industries. The next round of negotiations is scheduled for March 30 to April 3, 2009 in Honduras and the parties hope to reach an agreement by January 2010.