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UPDATING ECONOMIC PARTNERSHIP AGREEMENTS TO TODAY’S GLOBAL CHALLENGES

ESSAYS ON THE FUTURE OF ECONOMIC PARTNERSHIP AGREEMENTS
Edited by Emily Jones and Darlan F. Martí

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Updating Economic Partnership Agreements: An Overview

Emily Jones¹ and Darlan F. Marti²

Sub-Saharan Africa has been hit hard: first by the food crisis, more recently by the financial and economic crises, and at the same time grappling with the challenges of adapting to climate change. In this fast evolving context, African countries continue to negotiate the challenging Economic Partnership Agreements (EPAs) with the European Union (EU). These new agreements have the potential to help African countries accelerate their economic growth and develop more resilient economies. However, the presence of negotiating deadlocks or a sense of fatigue as well as the lack of a real appetite for these agreements among many African, Caribbean, and Pacific (ACP) negotiators, raise legitimate questions regarding their structure and content, as well as their ability to constitute instruments to leverage economic growth.

In fact, just as the crisis has highlighted the vulnerability of African economies, it also provides an opportunity to reflect on the EPA’s function as a true development partnership. The state of play in the negotiations and the current global economic, financial, climatic and food crises create in fact an imperative to update the EPAs (Part I of this book). In order to seize this window of opportunity for reflection, a new beginning for negotiations, based on trust and commitment, is crucial (Part II). A better negotiating environment should allow for a stimulating debate on the possible and desirable improvements for these agreements (Part III). Without purporting to be exhaustive, the collection of opinion pieces in this book hopefully provides a contribution to help steer the EPA debate toward a truly developmental and more positive direction.

The marked divergences of views in this book regarding the content and structure of the EPAs reflect the complexity of negotiations but also point to the necessity of adapting EPAs to the specific needs of different regions or countries. Despite these differences, however, there is convergence over the fact that the EPAs matter greatly and that they should be designed using the lenses of employment generation, economic diversification, regional integration, and more generally, development.

Part I. The imperative to update the EPAs

The state of play in the negotiations and the current global economic, financial, food, and environmental crises provide a window of opportunity to rebuild trust among EPA partners, particularly by updating and improving the content of these texts. Jones and Marti argue that, because EPAs matter so much and have the potential to deliver both positive and negative outcomes, design is crucial. In this sense, there are already a quite large number of possible improvements that can be easily incorporated in the agreements, including safeguarding the food security and industrialization of ACP countries. Moreover, if the EPAs are to remain a relevant and pertinent development instrument over the years to come, they must be flexible, adequately monitored, and, ideally, inserted in a broader trade and economic policy framework guided by poverty reduction objectives.

Evaluating the broad approach taken by the EPAs, Kuhlmann argues that the current focus of EU and U.S. trade policy toward Africa is misplaced. She argues that until regional markets in sub-Saharan Africa are strengthened, preferential market access, rather than the reciprocal liberalization envisaged in EPAs, should be pursued in order avoid costly trade diversion and loss of tariff revenue. The main constraints on trade, including intra-African trade barriers and weak infrastructure, are within

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sub-Saharan Africa, not in international markets. Strengthening regional markets requires, first and foremost, a focus on capacity building, particularly support for ‘development corridors’ across the continent. As the United States is currently reviewing AGOA (African Growth and Opportunity Act), she strongly advocates that the Europe and the United States join forces, and integrate trade policy with development goals as part of a new transatlantic leadership.

Looking at possible ways to print a new departure to EPA negotiations, Messerlin identifies ‘inescapable’ flaws and positive lessons from the past years of discussions. He argues that EPAs will generate few trade liberalization gains as ACP countries will continue to protect inefficient sectors, impeding economic diversification. Moreover, EPAs are likely to entail high government revenue losses and trade diversion in favor of European producers, but to the detriment of regional producers. To solve these difficulties, he suggests that ACP countries launch an initiative at the World Trade Organization (WTO), offering to trade a better access to their markets to third parties, in return for being allowed to keep positive tariffs on imports from the European Community (EC). Meanwhile, he strongly advocates that the EC adopts a more flexible approach to EPAs, including dropping the controversial Most Favored Nation (MFN) clause.

EPAs were, from the outset, a ‘Gordian Knot’ with the Cotonou agreement simultaneously promising to maintain non-reciprocal preferences into Europe, and ensuring WTO compatibility, contends Häberli. The 2007 deadline proved to be a window of opportunity, which the Caribbean region seized, negotiating an agreement that provides significant concessions from Europe, particularly in services, and which will result in deeper North-South integration than ever before. While he identifies some problems with EPAs, including asymmetrical liberalization which will remain legally challengeable under present WTO rules, and the MFN clause, he concludes that EPAs will de facto become a model for North-South cooperation.

Part II. A fresh start for the negotiating process

Model or not, observers of the EPA negotiations and negotiators themselves seem to agree that the negotiating process has been strained over the past years to the point of near collapse. The divergent views expressed in Part II illustrate some of the significant gaps that remain between the negotiating parties. These divergences also indicate clearly that a trust gap remains in the negotiations and that the bruises caused by the December 2007 deadline have not healed entirely yet. This said, there is common agreement that EPAs must be designed to serve development, and there is close consensus that parties need to show increased flexibility in their approach to move the negotiations forward, particularly in light of the ongoing financial crisis.

An overview of the negotiating state of play is provided by Bilal, who briefly examines the EPA negotiating process from its inception to the present day. In addition to a quick overview of the main challenges which each ACP region is facing in the negotiations, this essay enumerates some of the ‘contentious issues’ in the interim agreement, and comments on complications in reconciling EPAs with regional integration initiatives as well as with development finance. EPAs, as a trade policy overarching instrument, must remain flexible and be able to evolve as the trade and productive characteristics change in ACP countries. Given the scope and permanent nature of the agreements, Bilal warns countries against accepting EPAs in haste purely to maintain access to EU markets.
The challenge is to provide renewed impetus to EPA negotiations. Koenders, on behalf of the Dutch government, notes the limited progress in EPA negotiations despite a strong desire to see EPAs as a cooperation and development milestone. Koenders acknowledges that it was ‘probably overambitious’ to assume that comprehensive regional free trade agreements could be agreed upon with so many diverse and relatively poor countries in just a few years, especially given their limited negotiating capacity. It is a ‘genuine accomplishment’ that with the interim EPAs, the largest developed market in the world is able to provide the best available market access conditions to Africa, the poorest continent. Moving forward, the European Union must be flexible and pragmatic, including by accepting ACP demands on contentious issues.

Machado, writing on behalf of the European Commission, notes at the outset that the rationale for EPAs is not to forward the economic interests of the European Union, but rather to stop the economic marginalization of ACP countries. He states that, with EPAs, ‘trade meets development’ through gradual, managed liberalization in goods and services combined with transparent rules, credible institutions, and aid. A series of flexibilities, it is argued, enable a gradual opening process. The positive experience of other countries, including Tunisia under the Euro-Med agreement, shows that countries can succeed if they are willing to innovate and to accept the challenges of change. EPAs provide only an opportunity for reform and, in the end, it is for ACP countries and regions to decide whether to press ahead. ‘It is a challenge they must decide to meet.’

Carim, from the South African government and negotiating team, agrees that the EPAs could provide leverage to enhance regional economic integration, strengthen customs unions, and deepen cooperation in new areas, including trade-related disciplines. South Africa’s decision to join the EPA negotiations stemmed in fact from the perception that the negotiating process would provide a window of opportunity to consolidate the regions’ trade relations internally (SADC, SACU) and vis-à-vis the European Union (EPA, EBA, TDCA). Notwithstanding this initial intent, Carim notes how the negotiating process has been strained and highlights the intransigence of the European Union to genuinely discuss and address the concerns of Southern African EPA countries. In his view, there is a ‘disjuncture between the declaratory principles that launched the negotiations and the ambitions of the EC.’ Even in their best form, the main benefit of EPAs is to secure market access to Europe, and at present the interim agreements pose significant problems related to regional integration, tariff concessions in favor of the EU, legal and institutional provisions, and the inclusion of new generation issues.

The interim EPAs and the resulting overlaps which further complicate the prospects of regional economic integration in Africa are also described by Francois, from the African Union (AU) Commission. Francois insists on the importance of greater coordination among African countries and regions to improve the strength of their negotiating positions. He highlights, for instance, the importance of exchanging information, formulating common negotiating positions, and cooperating with, for instance, the EU Council, the EU Parliament, the EU rotating presidency, and selected member states. One useful instrument to promote harmonization, Francois argues, is the model template for full and comprehensive EPAs recently developed by the AU Commission.

Examining the EPAs from the context of West Africa, Ouedraogo argues that the European Union has unfortunately engaged in ‘power politics’. Pressure to extract an agreement from ACP countries has led to a situation characterized
by division and confusion, and has brought negotiations to a deadlock. The EPAs, as proposed by the European Union, would not assist ACP countries in the realization of their development goals. Instead, they present obstacles to regional integration and do not facilitate economic diversification. Instead of a Free Trade Agreement (FTA) format, it is argued that a cooperation framework, completed with a trade pillar built under the EU’s improved Generalized System of Preferences (GSP) schemes, would provide a more appropriate platform for real cooperation between the European Union and the ACP.

Part III. Evaluating and updating the contents of the EPAs

There is little doubt that rebuilding trust and providing new momentum to the negotiations might prove difficult. The good news, however, is that there is no shortage of creative ideas, positive lessons learned, and sometimes consensual recommendations to improve the content of these agreements. Perhaps the most pragmatic way to give a fresh start to negotiations is indeed for both sides to demonstrate their commitment by agreeing to improvements where possible.

Stevens, for instance, argues that whereas proponents and opponents of EPAs claim the agreements push the boundaries of liberalization, the agreements are ‘more prosaic than revolutionary.’ Analyzing which ACP countries accepted or rejected EPAs, he suggests that decisions can be explained largely by the degree to which exports were vulnerable to the threat of higher tariffs that came with the end of Cotonou preferences. This pattern clearly indicates that the acceptance of EPAs or their interim versions stems primarily from a desire to maintain market access conditions to the European market and not from the actual merits of these agreements. Looking at the likely impact, Stevens suggests that, on the whole, the EPAs are quite ‘anodyne’ because it is reasonable to question whether controversial elements will ever be enforced. Moreover, as preferences are eroded, the value of EPAs will diminish so if the ‘EPA shoe starts to pinch’ ACP countries ‘may simply take it off.’

There are clearly very different understandings of the impact of the trade liberalization aspects of EPAs, and models are one way to adjudicate between these evaluations. Laborde describes the use of economic models in FTA—and EPA—negotiations. A strong advocate of models, he warns that the results produced need to be interpreted with caution, not least because they can be subject to the power politics of negotiations. If used in an honest way, models help rationalize negotiations, increase transparency, and facilitate mutual understanding. In fact, models conducted for the EPAs have highlighted the potential adverse effects of EPAs for ACP countries, particularly for trade diversions, government revenue loss, and deterioration in balance of payments. Models show that the European Union will benefit to a greater extent than ACP countries from trade gains, but equally that the trade liberalization ‘will not be a terrible shock for ACP countries.’ Moving forward, it is important that ACP negotiators have the relevant training and experience to use models to their advantage in negotiations.

As far as trade in services is concerned, Sauvé and Audet question the extent to which the EU-Caribbean Forum of African, Caribbean and Pacific States (CARIFORUM) EPA can be used as a model for other regions. Given marked economic differences between Caribbean, African, and Pacific countries, they argue that the services and investment chapters of prospective EPAs with other regions should not be as extensive. The key is to get the timing and sequencing of market opening and policy consolidation right. EPAs for African and Pacific regions should therefore first focus on...
building up regulatory and productive capacity. A complementary, subsequent process could then be the gradual opening of those sectors.

Introducing a fresh angle to the EPA debate, Karekezi, Kimani, and Onguru link EPAs to energy and climate change, examining the possible implications of EPAs for the renewable energy market in sub-Saharan Africa. The availability of modern, reliable, and efficient energy services is an essential driver for development and the authors fear that, if sub-Saharan Africa’s negotiators are not alert to the potential pitfalls of EPAs, the growth of a promising embryonic renewable energy industry could be permanently stunted. Learning from previous experiences, they make a series of recommendations for how the sector should be treated. Above all, the needs of local industry must be prioritized by carefully sequencing liberalization, and by incorporating investment requirements for transfer of technology, by creating joint ventures with local businesses, and by having significant local shareholding in Greenfield investments.

Innovation plays indeed a crucial role in achieving the diverse array of economic development goals of ACP governments. Okediji examines the potential of EPAs to encourage creativity, innovation, and technology transfers. She argues that, as designed, EPAs share the pitfalls of other free trade agreements, addressing innovation exclusively through formalized rules of intellectual property protection. This narrow approach fails to respond to structural challenges faced by ACP countries seeking to acquire technology. To facilitate technology transfer and stimulate domestic innovation, Okediji makes specific recommendations, including a strengthening of EPA technology transfer obligations and a protection of ACP countries’ national policy space.

A core objective that all parties agree on is the need for EPAs to foster economic diversification. In the context of the global economic crisis, Cirera questions whether EPAs will facilitate export diversification, which is essential for increasing the resilience of ACP economies. Analyzing trade data from 2000 to 2007, he shows that existing preferential schemes such as Everything But Arms (EBA) and the Cotonou Agreement have not had any major impact on export diversification in ACP countries. Learning from these experiences, he argues that, if EPAs are to succeed where others failed, they need to be reformed. In particular, this requires further improvements in rules of origin, a shift in emphasis from liberalization of financial sectors toward specific programs to increase trade finance for new export sectors, and additional targeted assistance to increase productivity in these sectors.

Delving further into the theme of export diversification, Naumann examines the new EPA rules of origin. Although often overlooked, rules of origin can be just as significant an impediment to accessing the European market as tariffs are. Naumann examines the changes that have been introduced in EPAs, which relate mainly to exports of textiles and clothing, fish and fish products, and certain agricultural products. He argues that these changes are few and of questionable immediate benefit. Of particular concern is that restrictions and onerous administrative requirements do little to foster regional production, that is, most exporters will find it easier to source materials from outside the region than from neighboring countries. A series of product specific improvements are suggested, as well as more general changes, including expanding rules on cumulation.

Conclusion

There is no single conclusion emanating from this book as its purpose is to foster reflection and debate. However, some points emerge from
the opinions expressed and two messages can be
delineated: one depressing, the other uplifting.

The negative message is that there seems to be
near universal agreement that EPAs fall short of
their developmental potential and that they need
improvements. Eight years down the negotiating
road, the promised improvements have not
materialized, regional integration has been largely
compromised, and trust has eroded.

The positive message, however, is that actors have
not lost hope of turning this situation around,
and there is no shortage of creative suggestions as
to how the agreements can be improved, ranging
from relatively minor changes in existing texts, to
major changes in structure. Several improvements
are consensual (e.g., the elimination of the MFN
clause), others seem to be more controversial
(value of exclusion lists, rules of origin) and others
still would need further careful elaboration (e.g.,
innovation, trade in services, monitoring).

The challenge for negotiating parties is to put
aside the rocky negotiating process to date, rebuild
the trust needed for a true partnership, and with
renewed focus, enter into a constructive, realistic,
and pragmatic dialogue on how best to update EPAs.
Updating EPAs: Rising to the Challenge

Emily Jones¹ and Darlan F. Martí²

The Economic Partnership Agreement (EPA) negotiations between the EU and the African, Caribbean, and Pacific (ACP) countries have attracted so much attention, been the subject of so many analyses, raised so many expectations and caused so many fears that it becomes difficult to identify areas of the debate where commentators seem to agree. There is little doubt that the debate has become emotional and politicized.

One point of convergence is that the EPAs can potentially have a large direct impact on development—and that impact could be positive or negative. EPAs can indeed aggravate existing developmental difficulties, for instance, exacerbating balance of payment difficulties or reinforcing the reliance of ACP producers on the EU as an export market. However, the EPAs can also contribute in a significant manner to accelerating economic growth and possibly employment generation, by, for instance, facilitating exports through simplified rules of origin or by ensuring more and secure access to effective trade-related support and financial assistance. It is, as a result, safe to state that EU-ACP cooperation—and the EPAs as a central part of it—matters greatly. This helps explain why all stakeholders in the negotiations have not yet simply abandoned the idea of an equitable agreement despite all difficulties.

Another, closely related point of convergence is that, because EPAs can seriously affect development, their design and implementation are fundamentally important, albeit complex. Even when defending contradictory positions, all negotiating sides claim to be pursuing a developmental outcome. Beyond conjectures about what the development dimension of these agreements consists of, what matters is that all aspects of the EPAs be assessed using the lenses of economic growth, or even better, poverty reduction. This is all the more necessary as the EPAs are cast to last for a long time, in fact, endlessly, in principle.

While there is agreement on the importance of getting the form and content of EPAs right, after eight years of protracted negotiations, there are signs of ‘EPA-fatigue’ on all sides. As negotiation rounds are continually postponed, and momentum seeps away, it seems increasingly likely that African countries will find themselves facing the status quo for many years to come, with some countries operating under ‘interim EPAs’, and others exporting to Europe under alternative regimes.

This scenario would be unfortunate, to say the least. It would further impede regional integration in a continent already beset with integration challenges, leave untapped the potential of better trade between Europe and Africa, and do lasting damage to Europe's reputation. Against this backdrop, perhaps looming threat, all negotiating actors must embrace the challenge of updating the EPAs and making it a useful trade tool for economic growth for the years to come.

Crisis as opportunity

Just as the global crises have shocked policymakers into questioning received wisdom and rethinking the way that the world economy is managed, so they provide an opportunity to take stock of the EPA negotiations. If the crisis has provided any lesson, it is the danger of designing economic policy according to ideology rather than a pragmatic and flexible approach that responds to inevitable complexities and dynamics.

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This lesson is particularly pertinent as we evaluate the EPAs. In fact, whereas international trade can indeed provide an important leverage for development, empirical research suggests that free trade agreements (FTAs) do not automatically lead to increased exports and economic growth. It is even more hazardous to predict that FTAs will yield actual poverty reduction. The question then, is not so much to isolate the development dimension of EPAs, but rather to design learning lessons from other FTAs and fitting them to the peculiarities of poor signatories to harness trade and growth linkages.

African countries and regions vary significantly and face a myriad of development challenges, and their needs will continue to be diverse well into the future. If EPAs are about harnessing the potential of increased trade for development, they cannot be isolated from the wider economic policy environment of ACP countries. They should hence be solidly embedded into national development frameworks, flanked by appropriate measures to boost productivity, promote economic diversification and the diffusion of innovation. Such an embedment requires tailor-made EPAs carefully calibrated to local specificities - a major challenge for both sides: the EU has little desire for nuance and variation as it is seeking to build a series of FTAs based on harmonized rules that work toward an eventual global compact. Moreover, it has relatively little political capital to invest into negotiating a series of highly differentiated agreements with small and fragmented ACP economies. African countries on the other hand have limited administrative and institutional capacity, which means that the drive for negotiating the EPAs, and concluding their Interim versions, is much more related to maintaining preferential access to the EU's markets than anything else.

With these constraints in mind, it is important to strike a balance between idealism and realism. In a rapidly evolving international trading context and now faced with these concomitant global crises, how should the EPAs be updated? Are the mandate, objectives, structure and current contents likely to respond to the current and real challenges vulnerable ACP countries face? What are not only desirable but also feasible changes?

**EPAs: Updating the content**

The international trade context in which ACP countries evolve is changing rapidly. For the first time in centuries, the EU will soon cease to be Africa's main trading partner. For instance, China shall overtake the EU as West Africa's primary source of imports by 2010. In addition, while the EU and the United States remain major suppliers of Foreign Direct Investment (FDI) to Africa, Asian emerging economies are increasingly present. Nonetheless, new investments from both new and traditional trading partners tend to be directed to the extraction of natural resources, particularly oil and gas. The challenge for EPA negotiators is to reflect on how these partnerships could support market and productive diversification—instead of reinforcing current trade and investment patterns. The emergence of new partners for Africa is an opportunity for negotiations as it should increase the chances of engaging in a true 'relationship of equals', as enshrined by both Africa and Europe in the Lisbon Declaration. The elimination of the

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2 Authors’ calculations from www.trademap.org

Infamous MFN clause from the EPAs would be a symbolic but concrete step in that direction. As if these changes were not enough, EPA negotiators must design EPA texts that reflect and respond to new challenges, some of which could not be foreseen or were not duly taken into account at the time the negotiations were launched. The ongoing and concomitant food, environmental, financial and economic crises have once again dramatically exposed the underlying vulnerabilities of African countries. For instance, after a few years of sustained strong growth and high levels of optimism, growth rates in sub-Saharan Africa are expected to fall in 2009 and exports, which have driven much of Africa’s recent expansion, are expected to fall by 40 percent. It is, moreover, foreseen that the continent’s problems would be seriously aggravated by the rise of global temperatures with particularly dramatic consequences for the production of staple food.

EPAs cannot solve the consequences of the current economic crises or those of collapsed or threatened agricultural production. They can, however, aggravate the consequences of these crises. Or, hopefully, they can also provide instruments to attenuate the consequences of these crises and assist ACP governments to deal with them. For instance, more diversified economies are more resilient economies, prepared to withstand not only the contraction of export markets, but also the challenges of adapting to climate change. A series of steps could, as a matter of fact, be taken to update EPAs to respond to these difficulties and an invaluable window of opportunity for such a review is offered by the occurrence of these crises and the current negotiating state of play.

Much of the attention in the EPA debate has been on maintaining (at the least) and increasing (at best) market access and entry into the EU for ACP producers. While beneficial (yielding improvements on rules of origin and cooperation regarding technical issues, for instance), this focus on market access can prove narrow, and repeat the pitfalls that thirty years of Lomé-Cotonou preferences have faced. To support African countries to develop more resilient economies, EPAs need to support local innovation and entrepreneurship, the diffusion of technologies as well as the emergence of local and regional industries.

Economic diversification into higher value dynamic products and the necessary industrialization of African regions, for instance, must be upheld and supported by EPA mechanisms. Processing and industrialization is already an explicit policy objective in most African countries, sometimes prominently enshrined in national industrial visions. As EPAs, and their interim versions, currently stand, however, several industrial policy instruments would be forbidden or restricted after the implementation of the agreements. A large part of African industrial policies are, in fact, based on instruments such as border tariff protection (tariff escalation and tariff peaks), export taxes (some with a clear industrializing intent), public procurement measures favouring local producers and suppliers, and, punctually, competition policy and import restrictions.6

In addition to the necessary exclusion (temporary or definitive) of fragile or infant industries from liberalization, another useful instrument would be to grant ACP governments the flexibility to modify tariff reduction schedules (akin to renegotiating schedules) to spur competitiveness and enable trade policies to adapt to evolving global production

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A general lesson from the current concurrent financial, economic, climatic and food crises is therefore that EPAs need built-in flexibilities, (as opposed to rigid regulations, norms and more restricted utilization of trade policy tools), real monitoring and evaluation as well as the possibility of adjustments and amendments, and a firm embedment in broader development and sectoral policies.

Systems. Flexibility with exclusion lists as well as with the implementation of tariff reductions would provide reassurances particularly to Least Developed Countries (LDCs) and therefore an incentive for these countries to join their non-LDC neighbors in fully regional EPAs.

The restriction or prohibition of industrial instruments is not only politically unpalatable but also unwise as diversification is an evolving process which requires changing trade and economic policies.

Productive diversification, particularly in agriculture and agro-processing, as a response to the global economic crisis has, in addition, at least two fundamental short- and medium-term by-products. First, it contributes to improved food security. Second, provides a tool for climate change adaptation. Net food imports, at levels present in Africa, are not viable in light of the recent food crisis, which revived the debate concerning the need for balance between importing and local production. It is known that the improvement of rural infrastructure, the environmental recovery of rural areas, the modernization of agricultural production and support for agricultural trade have enormous potential for poverty alleviation given the importance of the agricultural sector for African economies.

African governments must channel investments towards the agricultural sector, particularly for the modernization of production systems, the electrification of rural areas, the encouragement of processing and value addition activities, and the strengthening of farmers’ awareness about and capacity to trade. EPAs can contribute to those goals by making available trade related financial assistance (e.g., supporting rural banks) and by encouraging agriculture or resource-based diversification (i.e., chemical, leather and textiles industries, agro-processing and rural services enterprises).

In addition, EPAs would need a coherent and gradual approach to the liberalization of agricultural products and inputs, particularly through carefully identified (temporary or excluded) sensitive products. The relaxation of certain aspects of Rules of Origin in the EPAs could also facilitate increased value-added exports to Europe, including for textiles and fish, although a positive outcome is not automatic and would still require sectoral support. Financial support for agricultural infrastructure and trade infrastructure is also capital. Finally, given the experience of the ACP countries, particularly those in Africa with import surges, it will be important that adequate instruments are provided to them to address this phenomenon in the context of the EPAs. An ad-hoc and special agricultural safeguard mechanism is not only legally and technically possible, but is also a requisite in a context in which the subsidization of European agriculture is allowed to continue.

A general lesson from the current concurrent financial, economic, climatic and food crises is therefore that EPAs need built-in flexibilities, (as opposed to rigid regulations, norms and more restricted utilization of trade policy tools), real monitoring and evaluation as well as the possibility of adjustments and amendments, and a firm embedment in broader development and sectoral policies. A review of the vast number of legal analyses and economic assessments of EPAs or of their Interim versions shows that there is no shortage of ideas and proposals that form a solid basis for updating several aspects of the agreements.

**EPAs: Updating the structure**

In many ways, the recommendations made above—simple illustrations of what can be both desirable and feasible—are aimed at adapting EPAs rather than completely overhauling them. Is this sufficient? Given that most African countries have
Another element of a fresh start for EPA negotiations relates to the persistent negotiating capacity constraints of African governments, particularly in light of the wide scope of the EPAs. The EPA agenda will inevitably have to be adapted (either by being reduced or by extending negotiations over a longer period of time) to match the capacity of African governments. Human and institutional capacity building is necessarily a long-term effort, which needs to be untied, neutral, and participatory. And the regional dimension of negotiations necessitates a coordinated approach that respects the pace of the most vulnerable countries in a region—even if that entails agreeing to minimum common denominators only. However frustrating such slow pace or delays may be for the EC negotiating machinery; this is the only approach that is equitable and compatible with endogenous, nationally and regionally-owned integration processes. Furthermore, it is the only approach that can ensure the actual implementation of a negotiated outcome. For EPA implementation to happen and work there needs to be political buy-in and a satisfactory acceptance of these agreements by the private sector and the civil society.

Finally, the success of EPAs needs to be assessed against their development impact—not only against commitments to implement. For this reason, the importance of a well functioning built-in EPA review mechanism, based on periodic impact evaluations cannot be overstated. Such a mechanism would be fundamental if African
EPAs can't solve all Africa's development problems, and no one should expect or claim them to. However, if properly updated, these agreements could truly make several positive contributions.

Countries are to embed their EPAs within a national and regional development vision, and hence use this partnership as a policy instrument. Moreover, a real monitoring and review mechanism would provide a reassuring guarantee, which may provide strong incentives for implementation. At present, EPAs are in danger of falling short of this vision. The few LDCs that have chosen to initial an Interim EPA (Tanzania, Rwanda, Burundi and Uganda in EAC; Mozambique and Lesotho in SADC) have arguably done so more to preserve regional cohesion than because they believe in the merits of the EPAs themselves. Such a review mechanism would only be effective as a guarantee if it has teeth, in other words, is based on independent evidence and well design benchmarks or a list of items to be monitored, and it yields adjustments if necessary.

Conclusion

North-South economic collaboration generally and the EU-ACP collaboration in particular can provide strong leverage for economic growth strategies. The EPAs are central in the context of such collaboration and because of the possible breadth of their scope, they do matter greatly for economic development - EPAs may even provide a defining framework of national or regional economic and investment policy making (e.g., defining the floor for trade-related regulations).

Because EPAs matter so much and have the potential to deliver both positive and negative outcomes, design is crucial. The agreement must be a ‘living’ one open to modifications if it is to remain a relevant and pertinent development instrument over the years to come. In light of the current economic, financial, climate and food crises, it would seem that much of the proposed content of the EPAs, or their Interim versions, has already been outlived. This need not be so. Actually, this should not be so. The very concrete consequences of these crises on African countries have highlighted the real challenges governments face, for which EPAs could provide assistance.

Having said this, EPAs, as FTAs, can only deliver so much. The rhetoric that EPAs could lead to development or poverty reduction is not helpful as it raises the expectation that these agreements could be a panacea. It also places disproportionate pressure on negotiators. EPAs cannot solve all Africa’s development problems, and no one should expect or claim them to. However, if properly updated, these agreements could truly make several positive contributions. Facing this reality would provide both African and European negotiators with a more honest and a fresh departure, enabling negotiations to continue.
Beyond the Economic Partnership Agreements: A New U.S.-European Approach to Trade and Development in Sub-Saharan Africa

Katrin A. Kuhlmann

The United States and European Union are at a critical turning point in their trade and development policies with sub-Saharan Africa. The vehicles for large-scale international policy change, including the Doha Development Round and developed country agricultural reform, have, at least temporarily, ground to a halt. The deadline for meeting the Millennium Development Goals is fast approaching, yet sub-Saharan Africa continues to suffer from seemingly intractable poverty on a massive scale.

Setting sub-Saharan Africa on a different course will require creating the conditions for sustainable, regionally-focused, market-led development. Too often, however, international policies have fallen short of their potential to help move Africa in this direction. With the overlapping crises of food insecurity, climate change, and global financial instability, the need for viable solutions is now more pressing than ever. Improving regional markets and strengthening Africa’s agricultural sector will help lessen sub-Saharan Africa’s extreme vulnerability in increasingly volatile global markets and could buffer farmers from the impact of climate change. International trade and development policies should be better framed and coordinated to respond to these challenges.

There is both an urgent need and real potential for a positive shift in trade and development policy with sub-Saharan Africa. In Europe, the European Commission (EC) is determining how to move forward with the Economic Partnership Agreements (EPAs). On the U.S. front, Congress and the Executive Branch are embarking on a comprehensive review of trade preference programs, including the African Growth and Opportunity Act (AGOA). On both sides of the Atlantic, significant political will and resources are being put behind initiatives to promote food security, and there is an increased focus being placed on how to promote regional integration and development of markets in sub-Saharan Africa. In sub-Saharan Africa, economic and political leaders are supporting a movement to develop trade and transport corridors, or “Development Corridors,” that criss-cross the continent and hold the potential to increase economic opportunities, spur sustainable development, and strengthen regional trade links.

This essay will address several questions and present recommendations for moving forward. What are the global implications of the EPAs? What lessons can be learned from trade and development policies of the past? Can the African “Development Corridors” provide an alternative, Africa-led framework for North-South cooperation? What are some concrete recommendations for a new, comprehensive approach to EU and U.S. trade and development policy with sub-Saharan Africa that go well beyond the EPAs and the limited policies of the past?

Setting the stage—global implications of the EPAs

It is important to remember that the EPAs were born out of a vision for the African, Caribbean, and Pacific (ACP) countries that actually tracked closely with the objectives of the Doha Round and were intended to represent a comprehensive approach to trade with developing countries that would promote local and regional trade as well as trade.
with Europe. If pressed, however, most European negotiators would admit that the EPAs as they continue to be conceived are less than ideal.

According to studies, the EPAs will actually cause trade diversion rather than trade creation and complicate rather than facilitate regional trade. The “sensitive product” exemption under the EPAs, which allows ACP countries to exclude up to 20 percent of trade from liberalization, has effectively enabled countries to protect all products they currently produce while liberalizing and reducing tariffs on everything imported. Not only could this limit regional trade and lock countries into trade patterns that currently contain very little value-added trade, but developing countries also face losing tariff revenues upon which they rely heavily. EU producers, meanwhile, could divert trade away from lower-cost, more competitive third-country producers, including those from the United States. The International Food Policy Research Institute’s (IFPRI) analysis shows that some U.S. exports would decrease significantly, as would exports from Central and South America, China, Japan, Thailand, and others. The EPAs also contain a notorious “most favored nation (MFN) clause” that will result in the ACP countries giving the EU the best trade access afforded to any other trading partner going forward.

Under U.S. law, in order to be eligible for preferential access to the U.S. market, countries must comply with a number of standards set by Congress, including one requiring that beneficiary developing countries do not grant preferential access to their own markets that has or is likely to have a “significant adverse effect” on the United States. As the U.S. Congress prepares to consider how to expand preference programs and create additional benefits for sub-Saharan Africa, the EPAs could undermine the possibility of creating new opportunities and jeopardize current preferential access to the U.S. market under AGOA and the U.S. Generalized System of Preferences (GSP) program.

Analysis shows the implications the EPAs would have for regional economic integration in sub-Saharan Africa. The “sensitive product” exemptions do not overlap between countries and within regions, resulting in a situation where over half—and in some regions up to 92 percent—of the products likely to be excluded as sensitive would not overlap with any of the exclusions of any other country in the same region. Increasing and diversifying regional trade would, as a result, become much more difficult.

This adverse effect on regional trade represents one of the EPAs’ most serious shortcomings. Much of the potential for market development in Africa lies in increasing African countries’ ability to trade with—and through—their neighbors. Strengthening regional trade, which requires both building strategic infrastructure and lowering regional trade barriers, will allow African producers to grow their markets, diversify product lines and realize economies of scale. This is a necessary step on the path to full liberalization with industrialized countries and the wider world. For their part, developed country trading partners should target assistance to support African regional integration efforts.

Despite Europe’s assertions that no alternatives to the EPAs existed when the agreements were proposed, several viable alternatives exist, which could be staged or pursued simultaneously. Over

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4 See Bouet, Laborde, and Mervel,
the longer term, ACP trade could be liberalized multilaterally on a MFN basis, which would satisfy the goals of both World Trade Organization (WTO) compliance and regional integration in sub-Saharan Africa. In the immediate term, Europe could extend additional preferential benefits to the non-Less Developed Countries (LDC) ACP countries as part of a group of similarly situated small and vulnerable economies. Depending upon how these preferences were established, the EC could either invoke the authority of the enabling clause or apply for a separate waiver for the program similar to the one granted for the AGOA program. An enhanced preferential arrangement would also avoid trade diversion and revenue loss. If lessons learned in the past are taken into account and market access is better coupled with strong commitments to build capacity and support regional integration, preferences’ effect would become more predictable and their benefits more widespread.

The current European Trade Commissioner, Catherine Ashton, has signaled a new willingness to show flexibility in the next phase of the EPA negotiations, opening a window of opportunity for Europe and the ACP countries to present strong alternative proposals for a new framework for collaboration. More broadly, U.S. interest in trade preference programs, capacity building, food security, and Africa’s increasing focus on the development corridors present opportunities to increase Africa’s participation in global markets and strengthen regional integration. If brought together, all of these elements have the potential to chart a new course for sub-Saharan Africa.

The author’s recommendations, building on the lessons of the past, include the following elements.

**Recommendations**

1. Make access to international markets as simple and expansive as possible

Open international markets across sectors, including agriculture, will be critical if sub-Saharan African economies are to grow and diversify. Unilateral preference programs already govern a substantial portion of EU and U.S. trade with sub-Saharan Africa, and improving these programs so that they are more comprehensive, simpler to use, and more reliable, is a logical next step. Europe has already shown leadership with Everything But Arms (EBA), its comprehensive program for the LDCs. For the sub-Saharan African countries that are not classified as LDCs, enhanced preferential market access could also be the answer. As U.S. experience with AGOA has shown, extending preferential market access to African LDCs and non-LDCs alike has broad support and can act as a catalyst to promoting regional integration. This option could also be accomplished consistent with the rules of the WTO.

Preferences work best if all developed countries fully open their markets to the poorest, most vulnerable countries. U.S. preference programs need to be expanded to include all products from sub-Saharan Africa, including agriculture. U.S., European, and other programs should contain the most simple, transparent rules of origin possible, and all preferences should remain in place long enough for real investment to take place.

Until regional markets in sub-Saharan Africa are strengthened, preferential market access should be pursued in order to avoid costly trade diversion and loss of tariff revenue. A comprehensive duty-free, quota-free program that contains transparent, simple rules of origin would

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8 The WTO Appellate Body has ruled that preference programs, a deviation from the MFN principle underpinning the WTO, are permissible as long as the preferences are made available to all “similarly situated” countries that share “development, financial and trade needs.” WTO Appellate Body Report on EC-India Panel on EC-Preferential Tariffs, April 7, 1994.
work best for the poorest and most vulnerable economies, including those in sub-Saharan Africa with severe economic challenges that fall outside of the traditional LDC definition. 9

Preferences are just the beginning, however, and the recommendations that follow build upon this foundation. Multilateral liberalization and better regional market access can be pursued on a parallel track, and immediate focus needs to be shifted to addressing the underlying causes of Africa’s low levels of trade and nearly non-existent value-added production.

2. Couple market access with capacity building focused on strengthening regional markets in sub-Saharan Africa

Up until now, developed country trade policies toward sub-Saharan Africa have focused primarily on one piece of the complex puzzle of sustainable development: granting access to international markets on the assumption that the ability to trade and take advantage of these markets would follow. Strengthening sub-Saharan Africa’s regional markets has not yet received the focus that other African development issues have, despite the power of these markets and regional systems to move goods, services, people, and information.

Weak capacity in areas like customs, transport, storage, quality control and certification, water facilities, telecommunications, and electricity and power services limit the ability of many producers to trade. Infrastructure networks are underdeveloped or non-existent, and regional institutions, while numerous, are weak when it comes to implementing agreements.

The number of landlocked countries in sub-Saharan Africa adds to the urgency of significant new investment in infrastructure and capacity. 10 Where transport routes do exist to connect landlocked countries to ports, poor conditions and numerous checkpoints hamper trade and run up costs. Agricultural producers are hit hardest, since transport costs are relatively higher for many farm products, including cotton, fruits, and vegetables. An additional day’s delay due to transport and customs issues can cause exports of time-sensitive agricultural goods to decrease by seven percent.11

Despite the importance of capacity building, U.S. and EU efforts have been ad hoc, bilateral instead of regional, and insufficiently tied to demand on the ground. Business needs, while a driver of economic activity, are often overlooked. No mechanism to incorporate broad-based local business demand exists, resulting in a system in which the interests of few have often prevailed.

The capacity building aspect of any trade policy, including the EPAs, is therefore critical and should be placed front and center.12 Although European institutions generally integrate trade and development functions well, the EPAs do not go far enough to lock in additional capacity-building resources and deliver on their goal of


10 Transport costs can account for up to one-third of GDP and can represent much of export value for many landlocked countries. In Rwanda, for example, transport costs account for up to 40 percent of the value of coffee exports. See “Land Transport for Exports: The Effects of Cost, Time and Uncertainty in sub-Saharan Africa.” U.S. International Trade Commission, 2009.

11 Id. While the costs of transport delays are significant, the benefits of reducing transport times can be immediate and transformative. Mali and Senegal signed a border cooperation agreement that reduced the number of checkpoints from twenty-five to four, and transport time quickly went from seven to ten days to just one or two. World Bank Group (2008). Doing Business in Landlocked Countries 2009, Washington, DC: IBRD/World Bank Group, 2008.

12 See Bouet, Laborde and Mervel
being a powerful instrument for development. A real opportunity exists to make capacity building the starting point with the EPAs, creating a new model going forward. Once African regional markets are stronger, more robust market access will also be possible.

U.S. trade policies with sub-Saharan Africa, including AGOA, have also not adequately incorporated capacity building. Stronger links between trade and development policy are needed, and coordination on trade and development within and among the U.S. Congressional committees and Executive Branch agencies could be improved across the board.

More substantial, better coordinated capacity-building initiatives could help foster functioning regional markets, opening up opportunities for Africa’s farmers and businesses along the entire supply chain and helping Africa meet the challenges of food security and climate change. Better regional markets would also create meaningful opportunities for developed country businesses in the short and long term. Prioritizing agricultural development and building around a common framework, as discussed below, will increase chances of success.

3. Create opportunities for African agriculture

Agriculture is the most significant industry in sub-Saharan Africa, with around 500 million people or between 70 and 80 percent of the subcontinent’s population dependent on farming for their livelihoods. Most farmers have little access to markets and are extremely vulnerable in the face of crises.

Without agricultural development, broad-based growth and poverty alleviation in Africa will not be possible. Poverty reduction will not succeed without focusing on increasing productivity for Africa’s many smallholder farmers and connecting these farmers to functioning markets. International trade and development policies could be a tremendous catalyst for positive change instead of the impediment to agricultural growth they have often been in the past.

Preferential market access for African agriculture comes at virtually no cost to U.S. or European producers, yet the benefits of increased access for African agriculture are great. Europe’s relaxation of its sugar program for LDCs through EBA has already shown the immediate job-creating potential of such a change in policy. The EPAs, on the other hand, could stall local and regional agricultural development because of the trade diversion they cause, limiting opportunities for farmers to build regional trade ties and achieve economies of scale.

As a new way forward is explored and greater emphasis placed on building regional trade ties, other policies that impact African agriculture must also be part of the solution. Although full-scale reassessment of developed country domestic support policies is not likely to happen soon, opportunities exist to streamline Sanitary and Phytosanitary (SPS) procedures and increase training to help African producers meet SPS rules. Comprehensive approaches that address all steps in getting products to market will help ensure that farmers can take advantage of opportunities to trade.

4. Support African initiatives, including the development corridors

While European and U.S. trade and development policies undoubtedly have a significant role to play in increasing Africa’s low share of international trade, better regional markets, opening up opportunities for Africa’s farmers and businesses along the entire supply chain and helping Africa meet the challenges of food security and climate change.
International policies will have a limited impact unless they complement the Africans’ own initiatives to build regional markets and address needs and barriers on the ground. The main constraints on trade, including intra-African trade barriers and weak infrastructure, are within sub-Saharan Africa, not in international markets. Policy change internationally has to be met with internal policy change, and African political will is a critical driver.

The only real solution is to meet the Africans halfway. Given the size of the continent and the scale of the infrastructure and capacity gaps, a comprehensive framework around which to align developed country and African interventions would help achieve more significant results and economies of scale. The Africans have such a framework, which is built around trade and transport corridors that link mineral investments to ports through trunk infrastructure and, in many cases, could generate true sustainable development, similar to corridors that spurred development in ancient Rome, industrializing Europe, and the 20th century United States.

These development corridors hold tremendous potential and while they have the backing of the Africans, they will require additional resources to modernize infrastructure and build capacity to connect remote rural areas to markets. Given the importance of agriculture to sub-Saharan Africa’s future, as discussed above, particular attention will need to be placed on linking poor farmers with commercial markets. The development corridors provide the framework for building regional integration, increasing value-added production and achieving greater economic diversification. Ros Thomas, an expert in African spatial development and a former senior official at the African Development Bank, estimates that trade could expand by $250 billion over the next 15 years if the corridors receive adequate support.

By supporting the development corridors, donors could better prioritize and leverage their investments, and the common framework the corridors provide would bring stakeholders together in a targeted and systemic way. As major donors, Europe and the United States could take the lead, working closely with the Africans, the private sector, and public-private partnerships. Through the development corridors, barriers to trade on the ground, including infrastructure deficiencies, transport links, storage, and local and regional trade policies, could be systematically identified and addressed, creating the force for change that could open up opportunities within sub-Saharan Africa and between African markets and the rest of the world.

5. Coordinate U.S. and European policies

European and U.S. processes that integrate trade policy with development goals in sub-Saharan Africa should be part of a new transatlantic leadership. Coordination between the United

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14 Over the long run, open global trade would have a significant impact on developing country income. One estimate predicts possible gains of around $200 billion per year. See Cline, William (2004). Trade Policy and Global Poverty. Washington, DC: Center for Global Development.

15 Weak infrastructure and intra-regional trade barriers particularly impact agricultural trade, as do low technology, poor skills, high internal taxes, and continued dependence on a small number of commodities, high transport costs, the spread of HIV/AIDS and pricing and marketing policies that penalize small farmers. See Moss, Todd and Alicia Bannon (2009). “Africa and the Battle over Agricultural Protectionism.” Washington, DC: Center for Global Development.

16 There are 26 official corridors as identified by the New Economic Partnership for African Development (NEPAD), and they criss-cross the continent.

States and Europe should increase wherever possible, including on food security initiatives and dialogues on regional integration. Within the U.S. government and the EC, dialogues that bring diverse expertise to the table on all sides, like the U.S. Trade and Investment Framework Agreements (TIFAs), are good models that should be prioritized, strengthened, and more extensively used.

Working across government agencies is also important. For example, the United States could comprehensively promote sustainable development and regional markets in sub-Saharan Africa by coordinating resources and programs across agencies, including the U.S. Department of Agriculture, the U.S. Agency for International Development, the U.S. Department of State, the Millennium Challenge Corporation, the U.S. Export-Import Bank, the U.S. Overseas Private Insurance Corporation, the U.S. Trade and Development Agency, and others.

6. Continue to work multilaterally

Even with Doha stalled, Europe and the United States could together craft a package that would complement an eventual Doha deal and help African countries see the benefits of working multilaterally. A package that includes duty-free quota-free preferences, aid for trade/trade capacity building, and trade facilitation would have a significant impact and give the African countries a stake in the multilateral process. Doing this now would show sub-Saharan Africa that trade can have a positive impact, and extra market access would become a meaningful development tool instead of a difficult trade-off.

European and U.S. processes that integrate trade policy with development goals in sub-Saharan Africa should be part of a new transatlantic leadership. Coordination between the United States and Europe should increase wherever possible, including on food security initiatives and dialogues on regional integration.
At this juncture, the time seems ripe to re-assess these negotiations and provide a fresh assessment for the new Trade Commissioner.

Economic Partnership Agreements: How to Rebound?

Patrick Messerlin

When Peter Mandelson, then European Community (EC) Trade Commissioner, decided to launch the negotiations on the Economic Partnership Agreements (EPAs) with the African, Caribbean, and Pacific Group of States (ACPs), his initiative attracted a lot of heat from almost all the quarters—not only from ACPs, economists and non-governmental organizations (NGOs), but also from EC member states and members of the national and European Parliaments. Since then, negotiations remain slow, opening the risk of getting “agreements by exhaustion.” As of July 2009, the Dominican Republic is the only ACP to have ratified its EPA. Indeed, the EPA ratification process looks even more tumultuous and problematic than their negotiations.

At this juncture, the time seems ripe to re-assess these negotiations and provide a fresh assessment for the new Trade Commissioner who will inherit the complex task of concluding them—asking the crucial question: are the EPAs a stand-alone policy of preferential market access, or are they a pillar of the EC development and foreign policies, that is, an instrument aiming to support the long-term development of the ACP economies and friendly relationships between the EC and the ACP countries?

That said, a fair review should reflect the inescapable flaws of the EPAs (Section 1), but also pinpoint the emerging opportunities that these years of negotiations have revealed (Section 2). Grasping these opportunities would first require changing the mindsets of the protagonists of the negotiations (Section 3) in order to open a wide range of options to improve the situation (Section 4).

Inescapable flaws

The EPA negotiating endeavor is undermined by inescapable costly economic flaws. In a nutshell, the EPAs are doomed to generate a “no liberalization, fiscal crunch” outcome in the ACP countries for the following reasons.

The “no liberalization” aspect has two components.

- The EPAs allow the ACPs to keep their current tariffs on (at least) 20 percent of their tariff lines, a figure high enough to protect almost all the ACP domestic productions. The ACP producers who will remain protected with respect to the EC and the rest of the world will have no incentive to improve their production and/or decrease their prices, giving ACP consumers no reason to support the EPA process.

- The EPAs require the ACPs to eliminate their current tariffs on EC imports for the remaining (at most) 80 percent tariff lines. This will make it very easy for EC firms to compete with ACP producers in their own markets, and very hard for potential ACP producers to enter these markets. Such a situation will entail severe long-term economic costs for the ACPs: elimination of domestic producers, high prices charged by EC firms behind ACP tariffs on imports from non-EC origin. In short, ACP consumers will pay rents to EC firms, another key reason for them not to support the EPAs.

Combined, these two forces will make it very difficult for ACP countries to reach what is
probably their most cherished goal—economic diversification.

“Fiscal crunch” is the only outcome to be expected from eliminating ACP tariffs on imports from the EC on 80 percent of tariff lines, with huge adverse implications for ACP government budgets. The EC says that it is ready to provide compensations, but has no binding obligation to do so. More importantly, in economic policy, correcting a mistake by an off-setting policy is more uncertain and costly than eliminating the initial mistake. And from a political perspective, EC compensatory aid will inevitably expose the EC to accusations of colonialism.

All these flaws could ultimately lead to a disastrous deterioration of the long-term political relations between the EC and the ACP.

Emerging opportunities?

That said, it would be surprising if the past years of negotiations had not revealed some opportunities to be carefully exploited in the future.

First, the EPA initiative was so wide ranging that it forced the ACPs to realize that they have to entirely re-think their trade policy. Indeed, EPAs tolled the death knell of non-reciprocal preferences even more so than the Doha Round, sterilized by the ill-conceived initiative of a “Round for free” tabled by Pascal Lamy, then Trade Commissioner. While the Least Developed Countries (LDCs) indeed require caution to open their economies to international competition, a Round for free (LDCs are not requested to make concessions in the Doha Round) is a trap in so far as it freezes their economies, while the rest of the world moves fast. That said, this salutary shock caused by the EPAs came with a cost—the need to build or expand trade negotiating machineries. Fortunately, however, the stalling of the Doha negotiations in 2008 has limited the opportunity cost of building such machineries.

Second, the EPAs are increasingly presented by the Commission as a “process”—an endeavor that can evolve substantially. Reference is sometimes made by the Commission to Mexico or Morocco, which have progressively opened their economies via a series of bilateral agreements, first with the United States and EC, culminating in Mexico’s unilateral liberalization vis-à-vis the rest of the world launched in March 2009. There is, nonetheless, one key difference between these cases and the EPAs. Mexico or Morocco were the demanders of all these agreements, while the ACPs are not—a critical point revisited below (Section 4).

The third positive experience of EPAs regards their provisions setting the regulatory framework to be adopted in key services by the ACPs. For instance, Articles 93 and 95 of the EC-Caribbean EPA require the existence of independent regulatory bodies in courier and telecom services. Such provisions are critical for long-term ACP development because services have amply shown their critical role in economic diversification, in tradable goods and beyond.

-changing minds-

Making the EPAs a process requires a serious strategic re-appraisal from the three main protagonists in the EPA debate: the ACPs, the EC, and the rest of the world. If not, the basic flaws of the EPAs are likely to entail very negative economic (for the ACPs) and political (for the EC) consequences.

First, the ACP are, in fine, the key players. To win the EPA match, they should accept the need to shift away from their traditional trade policy (based on distortive border barriers) and to turn to the much

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more direct, hence powerful, policies (regulatory reforms, domestic taxes, or subsidies) which are at their disposal and much more capable of addressing their supply problems at their roots. The utilization of this domestic policy space would require major political will and courage; all the more so since the ACP have been put in such a difficult situation by the hasty way the Commission designed the EPAs in 2007.

Second, the EC should realize that hiding behind the ACP decisions to keep highly protected goods is cynical (it should have expected the ACPs to fall into the 20 percent exclusion list trap), that pressing for quick signatures is not credible from a trade group that itself moves so slowly on minor sectors for itself (agriculture) and that hiding behind “interim” agreements without ratification for many years is not an option acceptable for a group of democracies. Once and for all, the EC should clearly answer the following question: are the EPAs a stand-alone policy of preferential market access, or are they a pillar of the EC development and foreign policies, that is, an instrument aiming to support the long-term development of the ACP economies and friendly relationships between the EC and the ACP countries?

Finally, the rest of the world—in particular major players such as Brazil, China, or the United States—have increasingly high stakes in the ACP growing markets, and hence have good reasons to be supportive of ACP efforts. This will also require political will because, as shown by Table 1, the EPAs induce these players to be offensive on products for which the EPAs give high preferences to EC firms (cell B) and adopt a more lenient attitude on ACP goods highly protected on a Most Favored Nation (MFN) basis (cell D). Unfortunately, the latter products are likely to be more numerous than the cell B goods, and the liberalization of goods highly protected on a MFN basis would generate major gains for the ACP consumers and key incentives to the ACP producers to improve their products.

### Improving the EPAs

Possible improvements to the EPAs are listed below in order of decreasing efficacy.

#### An ACP initiative at the World Trade Organization (WTO)

The EPAs sharply magnify the distortive structure of the ACP tariffs which will be divided between zero and high tariffs. Only the ACPs have the power to address this issue in a fully satisfactory manner, and they have a strong interest to do so, as underlined in Section 1.

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### Table 1. The EPAs impact on third parties (non-ACP-non-EC countries) in WTO negotiations

<table>
<thead>
<tr>
<th>Products liberalized under EPAs</th>
<th>Products with low pre-EPAs tariffs</th>
<th>Products with high pre-EPAs tariffs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cell A</td>
<td>• probably a very frequent case</td>
<td>Cell B</td>
</tr>
<tr>
<td></td>
<td>• low preference margin for EC firms</td>
<td>• probably a rare case</td>
</tr>
<tr>
<td></td>
<td>• weak incentives for the third parties to act in the WTO</td>
<td>• high preference margin for EC firms</td>
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<tr>
<td></td>
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<td>• strong incentives for the third parties to act in the WTO</td>
</tr>
</tbody>
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<table>
<thead>
<tr>
<th>Products sensitive under EPAs</th>
<th>Cell C</th>
<th>Cell D</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• probably a very rare case</td>
<td>• probably a frequent case</td>
</tr>
<tr>
<td></td>
<td>• no preference margin for EC firms</td>
<td>• no preference margin for EC firms</td>
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<tr>
<td></td>
<td>• no special incentive for the third parties to act in the WTO</td>
<td>• no special incentive for the third parties to act in the WTO</td>
</tr>
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They could thus launch an initiative at the WTO. The ACPs, or some leading ACPs, would offer to non-EU WTO members better trade access to their markets in exchange for being allowed by these WTO Members to keep ACP positive tariffs on imports from the EC (instead of the zero tariffs imposed by the current EPAs).

Such an initiative would rely on two negotiations: between the ACPs and the non-EU WTO members to define the tariff cuts the ACPs would grant to these Members, and between the ACPs and the EC to define the new (more limited) tariff cuts in the new EPA context. Successful negotiations would lead to a WTO agreement standing alone or included in the Doha Round.

It is essential to underline that, as always in the WTO, the ACPs would offer cuts of their bound MFN tariffs which could result in cuts of their applied tariffs, but not necessarily. In the latter case, the ACP offer would seem of limited value. But, it represents a true improvement in access to ACP markets by the certainty it provides to the world exporters.

Two initiatives from the rest of the world

The rest of the world could take two very different types of initiatives. First, major WTO members may choose to negotiate in order to reduce or eliminate the preference margins which are granted to EC firms by the ACPs, and which limit their own firms’ access to the ACP markets with huge growth potential. As a result, they may request tariff cuts from the ACP, hopefully including in their requests both cell D (high MFN tariff rates) and cell B (large preferential margins in favor of the EU) products. Again, such cuts would be expressed in bound tariffs, with a possibly limited impact on applied tariffs. Such an initiative is less powerful than an ACP-led initiative because it would be politically difficult to force the ACP-LDCs—exempt from concessions under the “Round for free” notion—to exchange of concessions in the WTO.

Second, non-EC non-ACP countries may choose to litigate, rather than to negotiate. Several EPA provisions are legally challengeable. Brazil already raised concerns about the “MFN provision” which requires all parties to offer the same trade concessions they accord to major countries to all EPA signatories (hence the EC). Many other EPA provisions could be challenged. For instance, interpreting “substantially all the trade” as the liberalization of trade flows covered by an average of 90 percent of the tariff lines is not an iron cast proposition. Litigation is not very satisfactory: it cannot solve the basic EPA economic flaws, and targets scattered legal points. Litigation is also the worse scenario for the EC, if only because the slower the ratification process of EPAs, the deeper the ACP hostility to the EPAs would grow, favoring more frequent litigation.

Initiatives from the EC

The EC is in the uncomfortable situation of being unable to solve the basic problems it has generated with the EPAs. Negotiating initiatives from the ACPs and/or from the rest of the world should thus come as a great relief to the EC, who should warmly support them.

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In short, focusing on “process” entails the EC fostering the emergence of “leading” ACP countries willing to shift away from traditional trade policy to better targeted domestic policies.

A careful adjustment: The heated discussions on the EPAs have somewhat overblown the regional dimension—by EPA critics and supporters alike. First, from an economic perspective, ACP regions are very small—less than twice the size of the Bulgarian economy. Including Nigeria and South Africa in the corresponding ACP regions will bring them to the combined size of roughly Romania and Bulgaria.

Second, from a political economy perspective, a regional approach has pros and cons. Supporters of a regional approach argue that it would help the ACP members to reform their trade policies. But, the EPA freeze of the 20 percent tariff lines undermines greatly this argument since this exception is large enough to cover most of the goods produced by individual ACP countries. Rather, it induces individual ACPs to fight for their own highly protected sectors when defining the regional list. The resulting regional deals may be so difficult to reach that either they will be frozen for a long time or they will quickly collapse. The EC has a long experience in such negative deals, with its common agricultural and fisheries policies.

The last reason for the EC to review its regional approach is the most important when the EPAs are conceived as a “process.” An ACP initiative as described above is most unlikely to be taken by the whole set of countries. It would require some ACPs to take the lead. Individual ACPs that could play a “role model” for the other ACPs, unilaterally, in bilateral agreements or in the WTO, should thus not be “glued” in regional agreements. In many respects, this is illustrated by Southern Africa: Botswana, Lesotho, and Swaziland are torn apart between their desire for a more open trade policy in goods and services (in this respect, the EPA is more promising than the current SACU trade agreement with South Africa) and the continuation of their cozy budgetary agreement with South Africa (a very costly agreement for South Africa).⁶

In short, focusing on “process” entails the EC fostering the emergence of “leading” ACP countries willing to shift away from traditional trade policy to better targeted domestic policies (see Section 2).

EC “flexibilities”: Such a careful adjustment suggests several “flexibilities” in the EC current position. First, the EC should drop the controversial “MFN provision” which cumulates so many negative effects. It constitutes a key obstacle to progress in delicate EPA negotiations, such as those in Southern Africa. It will dissuade the ACPs to conclude meaningful trade agreements with other trade partners, bringing no gain to the EC other than freezing the ACPs, and in complete contradiction with the Mexican or Moroccan cases mentioned by the Commission. It will generate increasingly bitter frustrations due to infringed sovereignty, particularly in those ACPs eager to play a leading role. Last but not least, it is challengeable in the WTO, and dropping it now would avoid a humiliating defeat to the EC in Geneva sooner or later.

Second, pending the full adoption of regional agreements among ACPs, the EC should work in favor of minimizing the differences in tariffs imposed on EC products by neighboring ACP countries. This is crucial for minimizing the risks of massive smuggling between neighboring ACP—smuggling has a strong corrosive impact on the robustness of ACP states. What matters are tariff differences among neighbors. For instance, a situation where one ACP country keeps a 10 percent tariff on a good imported from the EC while its neighbor liberalizes fully the import of this product is less distortive than a situation where

the two ACPs maintain two very different tariffs (say 20 and 50 percent) on imports of the same product from Europe. A tailor-made design of the EC rules of origin could help to get such a desirable narrowing of tariff differences. For instance, the EC could decide to introduce some flexibilities in its rules of origin regime if the two ACP neighbors narrow down their key tariff differences.

Third, African ACP governments have recently expressed a growing desire to combine EPAs and AGOA. It is a kind of Mexican strategy—and a weak form of the above-described ACP initiative in the WTO. As a result, the EC should support such a request. It should also start to discuss with the United States on what could be done jointly or cooperatively.

Last but not least, conceiving the EPAs as a process requires the inclusion of trade in services in the EPAs, with two conditions. First, services will be so demanding for the ACPs in terms of institution-building that the EC should not burden the ACPs with other issues, such as government procurement (largely covered by World Bank rules), investment provisions (the EC Member States have strongly divergent views on this issue), and competition policy (a too farfetched endeavor, all the more because competition issues could be addressed in much simpler alternative ways). Second, the EPA provisions on services should focus on institution-building. They should not cover specific services and leave enough time for the ACP to build their much needed institutions and therefore better grasp their comparative advantages and negotiating interests. The EC should, in addition, not repeat the harmful provisions on audiovisuals which were imposed by EC member state hardliners in the Caribbean EPA.

Conclusion

The way the EC extricates itself from the EPA “faux-pas” will shape its reputation for a long time, particularly for the Commission which has played such a dominant role in this venture. All the speeches by the EC as a supporter of development and as a global responsible player will be perceived very differently by all the developing countries—ACP and the others—if the EC holds true to its commitments on the EPAs as a process and develops appropriate flexibilities.
EPA negotiations were extremely difficult. For the first time, the World Trade Organization (WTO) showed the way forward: out of the colonial approach to preferences, and as a guardian for third country interests.

Cutting the Gordian Knot

Sometimes even governments and trade diplomats can work fast, against the clock and against the odds. Even if the purpose is as complex as deepening special relations without discriminating against others. Perhaps this was only possible because on December 31, 2007 the time had run out.

WTO vs. history

The historic ties between the European Communities (EC) and the African, Caribbean, and Pacific Group of States (ACP) constitute an intrinsic mesh of interests reaching far beyond colonial trade. A large number of agreements since 1963 tried to incorporate the manifold power asymmetries between the contracting parties into an initially rather unilateral kind of five-year development plans under the name of Yaoundé (I–II) and Lomé (I–IV). The Cotonou Agreement finally adopted on June 23, 2000 extends over 20 years and covers a much larger number of subjects. The Economic Partnership Agreements (EPAs) initiated in 2008 are the new trade component of the Cotonou Agreement.

EPA negotiations were extremely difficult. For the first time, the World Trade Organization (WTO) showed the way forward: out of the colonial approach to preferences, and as a guardian for third country interests. The biggest obstacle to a discretionary development of EC–ACP trade relations were the so-called most-favored nation (MFN) provisions obliging all members of the WTO to grant tariff and other preferences indiscriminately, with only two exceptions: (i) preferences for all developing countries (Enabling Clause) or (ii) in the context of a regional trade agreement (RTA) (GATT Article XXIV and GATS Article V). Not surprisingly, it was mostly developing countries which, through WTO dispute settlement procedures, successfully challenged three different sets of EC measures: its banana regime, its special preferences for certain countries combating drug production and trafficking, and its re-export subsidies for ACP and Indian sugar.

Preferences vs. reciprocity

EPAs and their WTO compatibility are a Gordian Knot, because the Cotonou Agreement provides that the new EPAs would continue temporary non-reciprocal preferential treatment for ACP member states, at least on a level equivalent to the trade preferences under the Fourth Lomé Convention, and be supportive of regional integration among ACP countries. At the same time, the EPAs would have to be fully compatible with the WTO once the waiver that protected EU/ACP preferential relations expired. Adding to these legal difficulties was the fact that economic realities had changed. A few tariff preferences, even when coupled with financial aid and technical assistance (still controlled by Brussels), had become clearly insufficient to honor the historic obligations of certain EU member states. Despite all agreements and preferences most ACP countries continuously lost market shares against their competitors from Asia and Latin America who successfully penetrated European markets under no, or with much less, preferential conditions. Were preferences “Opium for Africa” instead of an instrument for development? Was Lomé an ugly duckling, for cynical trade economists and lawyers?

Time pressure as a deal-maker for regional integration

Perhaps surprisingly, given the vociferous opposition to changes by numerous ACP
Regardless of the answer to the question of who pushed whom in this negotiation, the CARIFORUM-EC EPA signed on October 15, 2008 opened the door to more North-South regional integration than ever before.
A third problem with EPAs is in fact inevitable. All tariff reductions, whether in a WTO or RTA context or autonomous, lower the tariff wall impacting on trade between nations. At the same time, they reduce the advantages that other preference beneficiaries had enjoyed beforehand. Least Developed Countries (LDCs) are those which lose most in this process called preference erosion.

requirements for non-reciprocal trade relations. It could even be called a “disabling clause.”

EPA contracting parties thus had no choice but to go by the other exception to the MFN obligation, i.e., Article XXIV of the General Agreements on Tariffs and Trade (GATT) shields RTAs and customs unions from the obligation to extend all concessions to all other WTO members. This Article can only be invoked if the RTA covers “substantially all the trade.” The ACP countries thus had to make many more concessions than they would have liked. In the case of the CARIFORUM-EC agreement, the line-by-line tariff concessions granted by the 15 Caribbean states extend over an impressive 1,500 pages. However, a closer look at the more sensitive products reveals not only implementation periods extending as far as 2033 but also some concessions in the form of tariff-rate quotas. Moreover, an estimated 20 percent of all tariff lines remain without any concessions. The word “substantially” has never been defined so, given the existing and prevailing asymmetry of concessions in the EPAs, they could still fail the compatibility test under GATT Article XXIV. Like for the other RTAs, a formal endorsement by the competent WTO Committee on Regional Trade Agreements (CRTA) is unlikely. Because the Enabling Clause does not address North-South PTAs it cannot provide legal coverage under its paragraph 2c for the non-reciprocal character of the EPAs, for instance by a decision of the Committee on Trade and Development (CTD). This means that the lack of full reciprocity will always cast some uncertainty in the key issue of EPA compatibility with the WTO obligations of its contracting parties.

MFN provisions

A second challenge for the CARIFORUM-EC contracting parties are the provisions regarding bilateral MFN treatment. In order not to lose preferential access through future deals of its Caribbean trading partners with third countries, the European Commission obtained a very strict non-discrimination concession from the ACP. In the services chapter, the EC offers “to commercial presences and investors of the Signatory CARIFORUM States a treatment no less favorable than the most favorable treatment applicable to like commercial presences and investors of any third country with whom it concludes an economic integration agreement after the signature of this agreement.” In exchange, the ACP states extend a similar guarantee to EC service providers and investors that will thus benefit from any more favorable concessions the CARIFORUM states could grant to “any major trading economy” (Article 70(1)(b)). Interestingly, “major trading economy” is defined as “any country accounting for a share of world merchandise exports above 1 percent.” Such a low threshold includes many more countries than just the United States. Unsurprisingly, this ratchet clause (which looks a bit like the national treatment provision for sub-federal entities in Article 301/2 of the North America Free Trade Agreement) was criticized in the WTO by Brazil and others arguing that it raises a hurdle to more South-South economic integration. Time will show whether this is only a theoretical concern, as some of the negotiators were quick to point out, or whether the bilateral MFN provision is indeed preventing developing countries from seeking more favorable treatment among them.

Preference erosion

A third problem with EPAs is in fact inevitable. All tariff reductions, whether in a WTO or RTA context or autonomous, lower the tariff wall

2 Article 70(1)(a), emphasis added to show the limits of this bilateral MFN commitment. The EC remains free to offer more favorable services concessions in free-trade agreements with other developed countries without having to extend the same treatment to the CARIFORUM states.
EPAs cannot be considered as a blueprint for other RTAs. They are nevertheless a step forward in terms of partial reciprocity, and in lessening third country discrimination. This has implications also for the future of regional integration and for the multilateral trading system.

No blueprint...

First, each such agreement addresses the specific situation of its contracting parties. For example, it is difficult to imagine that a country like China, or the Association of Southeast Asian Nations, would ever even contemplate more than perhaps a polite dialogue on human rights within a trade agreement. Likewise, the European Union will hardly envisage substantial financial assistance to such large and more advanced trading economies, beyond some trade facilitation projects. As for the world’s biggest economy, its trade agreements with developing countries follow different objectives, not all necessarily linked to trade promotion objectives.

Second, even the EPAs fail to address the totality of the obstacles preventing a level-playing field between such unequal parties as the ACP and the European Union. For instance, such agreements contain no disciplines on the domestic support provided by rich countries to their farmers. They even prohibit trade remedies that could offset such subsidies. This simple fact explains why for instance South Africa—a free-trade-minded country—steadfastly refused a free trade agreement with the United States that might have washed away its own small-scale, unsubsidized corn producers. South Africa, together with Namibia and Angola, has also refused to sign even an Interim EPA with the European Union.

3 As verified by the author in May 2008.
...but a step forward

The EPAs thus cannot be a panacea for all future North-South RTAs. Even so, the EPAs show a way forward and may yet lead the way for future PTA negotiations.

First, all such agreements will henceforth comprise a financial assistance package, more or less important, and more or less managed in common (rather than by the donor party alone as before).

Second, the “WTO Plus” chapters of the CARIFORUM-EC EPA will provide at least a template for other such agreements, especially as long as relevant multilateral rules for, say, investments, competition, or government procurement, are lacking or deficient. Of course, what matters more than a list of covered items is the binding character of the concessions made therein. Trade never happens from tariff reductions or other trade facilitation measures for goods alone. Regardless of whether they are in fact substantial or not, these new chapters are of a dynamic character that can be developed on the basis of their own review clauses and in light of the evolving trade patterns between the contracting parties. Besides, the commitments which the ACP partners have sometimes grudgingly accepted constitute as many improvements of their own standing—a non-negligible argument in today's global competition and trade and investment promotion.

A need for new approaches in regionalism—and in the WTO

Looking beyond EC-ACP relations, such a template could also address the infamous "spaghetti bowl syndrome," which in the absence of progress at the multilateral level is likely to further increase with each new RTA. If at least the future North-South agreements would follow a common pattern of partial reciprocity as well as of sectoral and topical coverage, they could together set a new standard for the common overall objective of sustainable development through trade development. EPAs may thus lead the way in a world-wide competition for better trade regulation!

Finally, the multilateral constraints shaping the new EPAs show the need for a thorough review of the rules and disciplines laid down in the Enabling Clause and in GATT Article XXIV. The European Union has now steered clear of the preferential (not to say deferential) type of agreements to a new set of progressively reciprocal RTAs. In its wake, the Enabling Clause may well turn out to become obsolete, at least for contractual preferences. Even if this represents a new economic reality, the relevant WTO bodies i.e., the General Council, the CRTA, and the CTD will have to take a new look at these two legal bases for such agreements—and at the so-called Part IV of GATT 1994 (“Trade and Development”). Other items on this agenda would be the respective safeguard, anti-dumping, investment protection, and dispute settlement provisions in various multilateral and regional agreements. The purpose of such a review should be to provide PTAs with sufficient flexibility to allow for a dynamic development, but without preventing other RTAs, particularly South-South trade agreements, from unlocking the biggest trade development potential of today, i.e., trade between developing countries.

Whether and when all of this will happen remains to be seen. For all their infant diseases, many of which are attributable to the circumstances and the haste that accompanied their genesis, the EPAs are not a bad start.
Economic Partnership Agreements:
To be or not to be?

Sanoussi Bilal¹

The delivery of Economic Partnership Agreements (EPAs) between the European Union and the African, Caribbean, and Pacific (ACP) countries has so far been a slow, painful, and incomplete process, whose future remains most uncertain. Will most ACP countries finally rally under the EPA banner, forgetting about the bumpy road to get there? Or will EPAs continue to split regions and divide ACP policymakers on the most appropriate way to pursue sustainable development and maintain a privileged relationship with an important and traditional partner, the European Union?

1. A long and strenuous process

The 1996 European Commission Green Paper on the relations between the European Union and the ACP countries first proposed EPAs, and these principles were enshrined in the 2000 Cotonou Agreement. After a lethargic preparatory period, the EPA negotiations started in September 2002 at the all-ACP level, and at the end of 2003–early 2004 at the level of the six ACP EPA regional groupings. By the end of the 2007 deadline, according to which all agreements should have been concluded, only one region, the Caribbean, had finalized the negotiations, and more than half the ACP countries failed to reach any type of agreement with the European Union.²

With the expiration as of January 1, 2008, of the unilateral Cotonou preferences, imports of ACP products have since entered the EU markets under one of the following regimes:

a. An EPA providing duty-free, quota-free (DFQF) market access to the European Union for those countries that have initialled such an agreement.

b. The Everything-But-Arms (EBA) initiative under the generalized system of preferences (GSP) of the European Union, which also provides for DFQF access to the European Union, though under less favorable rules of origin than EPAs (notably for fisheries and textiles), to all least-developed countries (LDCs).

c. The EU GSP available to all developing countries other than non-LDCs.

d. Another free-trade agreement, namely the Trade, Development, and Cooperation Agreement (TDCA) between the European Union and South Africa.

To avoid having to face newly imposed market restrictions (i.e., higher import duties or more restrictive rules of origin), several African and Pacific countries have thus opted to conclude interim EPAs that cover market access in goods only, leaving other dimensions such as trade in services and trade-related issues (investment, competition, government procurement, intellectual property rights, trade facilitations, environment, etc.) to be negotiated in a second phase in 2008-2009. Other African and Pacific countries preferred to conclude only a single undertaking, and have thus continued negotiations with the European Union as part of their initial regional EPA configuration, though without agreeing to any prior interim EPA.

Following the conclusion of some interim agreements by the end of 2007, EPA negotiations

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have continued in all African EPA regional groupings and in the Pacific in 2008 and 2009. At least formally, few countries or regions have achieved progress since, and only little.

In parallel, the (interim) EPAs initialled at the end of 2007 had to be notified to the World Trade Organization (WTO). Before doing so, however, the European Union insisted on completing first the ‘legal scrubbing’ of the agreements and on officially signing them. This process has taken much more time than expected. While the Caribbean EPA and the interim EPA with Cote d’Ivoire have been signed, notified to the WTO (Autumn 2008), and given assent by the European Parliament (March 25, 2009), only a few other countries have signed their interim EPAs, but in most cases not yet notified them at the WTO:

- Central Africa: Cameroon on January 15, 2009 (notified to the WTO on 24 September 2009)
- Southern African Development Community (SADC): Botswana, Lesotho, and Swaziland on June 4, 2009; Mozambique on June 15, 2009;
- East and Southern Africa (ESA): Madagascar, Mauritius, Seychelles, and Zimbabwe on August 29, 2009; and

Finally, while some other ACP countries have chosen to initial an interim EPA, they have yet to formally sign them. Table 1 summarizes the situation as of the end of September 2009.

The African and Pacific regions are thus currently split between the countries that have not yet concluded any agreement with the European Union, those that have concluded an interim EPA but still have to sign it more than a year-and-a-half after initialling, and those that have finally signed it. These differences are important as they reflect not only superficial tensions, but are often symptomatic of more deeply rooted differences of approaches or concerns about the EPAs and regional integration processes. Understanding recent events is thus crucial to appreciate the possibilities of moving the EPAs forward. This is of particular relevance as all African and Pacific countries are currently engaged in ongoing negotiations with the European Union for the conclusion of final, regionally-based EPAs.

2. Some major challenges

Each country and region has its economic, political, and negotiating specificities, making generalization a dangerous exercise, as it can lead to serious misperception and misunderstanding. However, some challenges in the current EPA process are common to many stakeholders cutting across ACP countries. These include the elements enumerated and briefly discussed below.

Negotiating final EPAs and status of interim agreements

While all African and Pacific countries and regions have expressed the willingness to negotiate final EPAs that would supersede the interim agreements, the timeframe for concluding EPAs remains an issue. The European Union has feared that in the absence of clear and binding deadlines, the negotiation process could drag on indefinitely. This is one of the primary reasons why the European Commission insisted on sticking to the end of 2007 deadline to conclude WTO-compatible trade agreements with the ACP. Over 20 months later, no final EPA has been concluded yet, and the negotiation process has stalled in several regions, such as Central Africa and Pacific. In addition, as mentioned above, several of the interim EPAs still remain to be signed, giving some credence to the European fears.
As far as African negotiators are concerned, this slow process can be explained by:

a. the moderate appetite if not reluctance to open up domestic markets to EU competition by concluding such a free trade agreement,

b. concerns about the scope of a final EPA (see below),

c. concerns about an appropriate development dimension, notably in terms of EU commitments to support accompanying measures to an EPA, a dimension missing or being too weak in the current framework for some ACP stakeholders,

d. concerns about some inadequate provisions in the interim EPAs (see below),

e. difficulties in reaching common regional positions endorsed by all countries of a regional grouping, and

f. numerous domestic capacity constraints, including negotiating trade in services or some trade-related issues (e.g., investment, competition, government procurement, and intellectual property).

Should negotiations face delays, the interim agreements might be applied over a longer period than initially foreseen or even become permanent.

**Contentious issues in the interim agreements**

Several African negotiators and politicians have voiced concerns over a number of provisions appearing within the interim agreements that they view as ‘contentious’ and which they demand be reviewed. These issues include, among others: the definition of substantially all trade, transitional periods, export taxes, free circulation of goods, national treatment, bilateral safeguards, infant industry provisions, non-execution clause, the most favored nation (MFN) clause, and rules of origin.

The European Union has acknowledged the existence of such contentious issues within the interim agreements and adopted a more flexible approach on some of the issues, already suggesting some revised provisions. Some African countries (e.g., Namibia) or regions (e.g., East African Community [EAC]) would like to see the interim EPAs amended. But the European Union is willing to consider revisions in the context of negotiations toward final and comprehensive EPAs only. While the European Commission’s apparent flexibility has encouraged some countries to sign their interim EPA and move forward in the negotiations, it has antagonized some others who are reluctant to sign an interim agreement which they deem flawed, since certain improvements have already been identified and some revised provisions agreed in principle with the European Union. These tensions, which threaten the cohesion of regional integration processes, are best illustrated by the current situation in Southern Africa, where some members of the Southern Africa Customs Union (SACU) have recently signed their interim EPA and are actively engaged in negotiations toward a comprehensive EPA (i.e., Botswana, Lesotho, and Swaziland), whereas the other members continue to voice serious concerns about this process (i.e., Namibia and South Africa).

The debate over contentious issues has crystallized tensions for two reasons. First, it reflects a divergence of views over some specific content

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of the agreements, which when considered of strategic importance by one of the parties may block progress in the negotiations or signing of an agreement. But it also highlights challenges related to the status of the interim agreements and the process toward a final EPA. The European Union introduced interim agreements as temporary stepping-stone agreements that would bridge the gap between the loss of Cotonou preferences as of January 1, 2008, and the conclusion few months later of final EPAs. With the EPA negotiations progressing at an extremely slow pace and their conclusion not yet in sight, the status of interim agreements becomes more prominent. They should start being implemented by the African and Pacific countries concerned. Interim EPAs are fully-fledged free trade agreements in the sense of Article XXIV of General Agreement on Tariffs and Trade (GATT), which should thus be notified to the WTO and should be signed and ratified by the parties concerned, in line with their domestic procedures. They could be amended, in which case these amendments would have to be notified to the WTO and be signed and ratified as well by the parties. The European Union is afraid that this would unduly delay the process of adoption and implementation of the interim EPAs and reduce the incentives of some countries to conclude a final EPA. On the contrary, some ACP countries do not wish to have to sign and ratify an agreement they do not fully endorse, in particular on substantive issues where a compromise could or has been found with the European Union.

**Thematic scope of final EPAs**

The rendezvous clauses in the interim agreements specify areas to be addressed in negotiations (in particular relating to services and trade-related issues), without, however, prescribing the outcome of these talks. Accordingly, if negotiations on services and trade related issues are concluded, there are various options of how provisions may be designed in the final agreements, ranging from comprehensive rules to best endeavor language. In order to address the specificities of individual countries and sub-regions, variable geometry might be applied within a region, as some countries may undertake commitments on services liberalization or other issues while others do not. Indeed, in the near future it seems most unlikely that any African or Pacific region will undertake common regional commitments on services and on critical trade-related issues. It is important, however, that commitments undertaken by individual countries in the context of an EPA remain coherent with their regional agenda and ambitions, to prevent regulatory fragmentation and disintegration of some regions.

**Harmonization of the EPA process with regional integration initiatives**

So far, the only regions that have not been divided by the EPA process are the Caribbean\(^5\) (with the exception of Haiti that has yet to sign the regional EPA) and the EAC.\(^6\) Yet, the initial objective of EPAs is to foster regional integration and not to complicate it. The current challenge is thus to find sufficient common ground among regional partners and for the European Union to provide sufficient flexibility to accommodate specific concerns in order for regional groupings to conclude final regional agreements, which

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harmonize commitments in a coherent manner among all countries within a region. However, should some countries continue to see little development benefits from concluding an EPA, it is likely that divergences over an EPA will remain in some regions, with the possibility of some EPAs *à la carte* being concluded. This outcome could seriously complicate regional integration initiatives.

**Development support for EPAs**

While all parties recognize the necessity of financial assistance to support the negotiation and implementation of EPAs as well as to assist ACP countries in fully benefiting from these agreements, challenges relate both to the amounts and to the effective use of resources, which will be provided under the European Union’s joint Aid for Trade (AfT) strategy. While the European Commission has made clear that it will not provide any additional finance for EPA support beyond the 10th European Development Fund (EDF) currently available, EU member states have committed to increasing their AfT spending.7 A challenge in implementing AfT is the translation of commitments into concrete programming and the effective assessment of needs in ACP countries and regions. The reality is that, while there is plenty of money to support trade-related initiatives in ACP countries, captured under the AfT umbrella, there is no specific additional commitment from donors to respond to the increasing needs that the implementation of an EPA would generate, in particular if ACP countries are to effectively adjust to a new competitive environment and develop their productive capacity and infrastructure accordingly.

In this respect, the case of West Africa will be particularly instructive. Indeed, the parties have agreed in June 2009 to conclude, by the autumn of 2009, a regional EPA on trade in goods and EPA-related development cooperation.8 Notwithstanding the challenge of agreeing to a common market opening for Economic Community of West African States (ECOWAS) that complies with the minimum European requirements (currently set at 80 percent of the value of imports of EU products to the region), a major question remains as to how the European Union will respond to the ECOWAS EPA Development Program (EPADP/PAPED). Can the EPADP be further elaborated and used as a strategic template to program AfT support for EPA and regional integration, in a way that promotes aid effectiveness principles as embodied in the Paris Declaration and Accra Agenda for Action (e.g., country ownership, donor alignment, coordination and harmonization, mutual accountability)?9 And can donors commit to provide sufficient support over time for this process?

**Impact of the global crisis**

The financial crisis, though having its origin in developed countries, has generated a global recession that has severe consequences for the prospects of economic growth and development of ACP countries, notably through a decline of trade and investment flows, lower remittances, and lower commodity prices with a greater volatility. This appears to have led already to a reduction of employment opportunities and an increase in poverty and malnutrition for the most vulnerable people. In this context, it becomes more urgent for ACP countries to unleash the potential that regional integration processes carry in order to stimulate

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7 The EU Aid for Trade Strategy specifies a concrete target of increasing EU trade related assistance (TRA) to €2 billion per year by 2010 (€1 billion each from the European Commission (EC) and from EU member states). As the EC is already close to providing its target, most of the increase in TRA is expected to come from member states. Around 50 percent of the increase is earmarked for ACP needs.


9 See www.oecd.org/document/18/0,3343,en_2649_3236398_35401554_1_1_1_1_1,00.html
economic growth. The creation of effective regional markets, encompassing not only institutional arrangements but also physical integration, policy coordination, and the pooling of resources, can be decisive to stimulate production capacities, trade and investment flows, when integrated in a broader development strategy that does not rely on an obsolete and rigid economic orthodoxy. The EPAs will be ultimately beneficial only if they can contribute to such regional objectives.

In the short run, EPAs offer little prospect of addressing the immediate consequences of the crisis. Special attention should thus be given to the scope of commitments and their sequencing, to reflect the specific current conditions and development approaches of each country and region. In particular, the difficulties resulting from the global crisis should be more explicitly taken into consideration in the EPA process. This should lead to greater flexibility in the EPA agenda, including *inter alia*:

a. possible revision of some EPA provisions regarding market opening, in particular by introducing, where appropriate, some flexibility in the scope and speed of trade liberalization as well as in some other obligations (revision of schedules, safeguards, infant industry support measures, export restrictions, standstill clauses, rules of origin);

b. careful services liberalization, considering proper sequencing and regulatory requirements, notably in the sensitive sector of financial services (at the source of the financial crisis), and possible postponement of or agreement to a built-in agenda for commitments in this area when desired by the African parties; and

c. some flexibility and restraints in trade-related areas when the African side does not express an interest for negotiations in these areas.

In addition, the global crisis has further heightened the need for a timely and appropriate level of support, notably in terms of EPA-related aid for trade and effective delivery mechanisms. Greater effort should be made to effectively address the EPA-related loss of revenues from import duties and to support fiscal adjustment. The current crisis has made the fiscal debate extremely sensitive in some regions (notably West and Central Africa) and could even prevent the conclusion of an EPA by some African leaders. Without flexibilities, EPAs may add to the pain of the crisis.¹⁰

3. To be or not to be? Which way forward?

Whether final and comprehensive EPAs will be concluded at the regional level in Africa and in the Pacific remains an open question.

In the near future, however, it is unlikely that other regions will conclude Caribbean-like EPAs as only a handful of African countries remain committed to the ambitious EPA agenda initially set out under the impulse of the European Commission.

Following the turbulent negotiating process of 2007, where antagonizing tactics and (at times disgraceful) power play were too common,¹¹ 2008 and 2009 have been marked by a return to a more serene atmosphere, thanks notably to the EU Trade Commissioner Catherine Ashton, who has

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adopted a less confrontational approach than her predecessor, Peter Mandelson. But tensions have flared again in some instances, notably in Southern Africa, with South Africa and the European Union at a deadlock. More generally, the post-2007 EPA process has been marked by a widespread apathy from most ACP actors.

Most ACP countries initially engaged in EPA negotiations with reluctance. The prime objective has been to maintain their preferential market access to the European Union while making minimal commitments in terms of opening markets or regulatory reforms (including the so-called trade-related issues). EPAs are generally not perceived as opportunities, but as destiny, the price which must be paid to continue to export to Europe—the main trading partner for many ACP countries. By concluding interim EPAs, those countries that really needed to conclude a new trade agreement with the European Union to preserve preferential access to the European market have done so. Once the interim EPA signed, their market access was secured. Other countries that chose not to conclude an interim EPA and have relied instead on the EU GSP (standard or EBA) since 2008, do not seem to have been negatively affected. The main driving force for pursuing regional EPA negotiations is thus the need to maintain a regionally coherent preferential regime with the European Union.12

This is the case in West Africa, where the region’s agenda to form a customs union is incompatible with a couple of countries (Ghana and Côte d’Ivoire) having concluded interim free trade agreements with the European Union. Fostering regional integration seems thus the main traction for pursuing a regional EPA, though there is no guarantee of success. It is also worth noting that the European Union seems to have implicitly lowered its ambitions, having accepted to conclude a goods-only agreement (and development cooperation at the instance of ECOWAS), the first such agreement since the end of 2007. It is doubtful that negotiations, if successfully concluded, will quickly move toward a “second phase” to include trade in services and trade-related issues. For the European Union too, preserving regional coherence seems to be the paramount objective.

In Central Africa, where the situation is similar to the one in West Africa, one country—Cameroon—has concluded an interim EPA. However, the state of the region’s integration, the political dynamics, and the institutional capacity constraints are such that EPA negotiations have gone into a sleeping mode, with no progress in sight.

In Southern Africa, the region is divided between Botswana, Lesotho, and Swaziland, joined by Mozambique on the one side, and Namibia and South Africa, joined by Angola, on the other side, splitting SACU and SADC and threatening the existence of the current regional arrangements unless a compromise is found soon. Internal regional politics seem to have played a crucial role in the respective positions in the regions, notably between Botswana and South Africa. In this context, the EPA negotiations have further exacerbated existing tensions. While technically not out of reach, it is unclear whether diverging positions can be mended to conclude a regional EPA.

In East and Southern Africa, where countries have negotiated jointly but concluded individual interim agreements, regional coherence is not yet at stake, though the ambitions to form a COMESA-EAC-SADC free trade area and customs union will not be sustainable with heterogeneous market access commitments toward the European Union. Most countries that have opted out from interim EPAs are likely to maintain their position. Those with an

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12 In this regard, it is interesting to note that regional negotiators are often more positive about the EPA ambitions than their national counterparts.
interim EPA are pursuing further negotiations with the European Union, which are likely to lead to agreements with variable geometry, some countries accepting commitments on trade in services, for instance, while others are not willing to commit at this stage.

As for the Pacific, negotiations are also de facto frozen, with most of the attention of the region focused on their new trade negotiations with Australia and New Zealand. A regional EPA is unlikely to emerge soon.

Besides these regional considerations, two other key factors will determine the occurrence and shape of final EPAs, none of which are related to traditional technical trade and development considerations, which should arguably be guiding principles for trade negotiators. The first is the availability of additional aid related to an EPA, or at least the new packaging of existing development cooperation commitments to give the impression that fresh AfT is forthcoming. Many African countries have expressed their support for an EPA on the condition that appropriate development assistance is delivered. To the extent that new AfT programs provide the opportunity for better needs assessments, a more strategic orientation of the support provided, and greater coherence among donors along the aid effectiveness principles of the Paris Declaration, this may result in pro-development outcomes. But as stressed by the EU member states, additional aid should not be the bait for ACP to conclude an EPA. However, since the European Union is not able or willing to commit new funding, repackaging of old wine into new bottles is likely to be the approach followed.

The second factor is political. A major lesson of the EPA process so far is that many of the ultimate decisions are driven by politics. Some ACP head of states have been lobbied, if not pressured, by the European Union to conclude an EPA, and decisions have not necessarily been made on the technical merits of the EPA provisions negotiated, but on broader political and geostrategic considerations. This is unlikely to drastically change in the near future, and trade analysts should not be surprised if they are at times at a loss to explain the outcome of the negotiations and national decisions to conclude or not an EPA.

While it would be foolish to predict the outcome of the current EPA negotiations, it is fair to assume that a patchwork framework of EPAs is likely to emerge over the coming months, with some countries concluding a comprehensive EPA, some limiting their ambition to agreements covering trade in goods (most likely including a rendezvous clause), and others abstaining altogether from sealing any deal. This should come as no surprise, though, as there is no ‘one-size-fits-all’ recipe for development, and trade agreements should be tailored to the specific conditions of the parties engaged. But whatever the outcome, it is important to remember that EPAs make sense only for those countries and regions which are seriously committed to a reform process. In these cases, the EPAs should be framed accordingly, to provide the supporting framework while preserving the necessary flexibility to actively pursue other development policy reforms and adjustments. To engage in EPAs under any other circumstances, or to contemplate signing far-reaching agreements purely on the basis of maintaining access to the EU market, would be absurd and incredibly short-sighted.

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<table>
<thead>
<tr>
<th>Regional Grouping</th>
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<th>Trade regime²</th>
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<th>Signature</th>
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</table>

**Notes**

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⁴ Cape Verde has been classified as non-LDC since January 2008 but will be able to export to the EU under the EBA initiative for a transitional period of three years.
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EPAs: A Challenge to Development

Bert Koenders

After seven years of Economic Partnership Agreement (EPA) negotiations, only one full EPA has been agreed: the EU Caribbean Forum of African, Caribbean and Pacific States (CARIFORUM) EPA covering the 15 Africa, Caribbean, and Pacific Group (ACP) countries in the Caribbean. Another 21 ACP countries are party to interim EPAs, half of which have been signed formally. However, the majority of the ACP countries (41 out of 77) have not entered into any EPA at all. This lack of involvement is especially acute among Least Developed Countries (LDCs) in Africa.

This situation calls for reflection. Why has progress been so limited? What are the consequences of the current situation? How should we proceed from here?

Why EPAs in the first place?

'Something has to change.' We heard this opinion expressed time and again in the 1990s with regard to the EC-ACP trade regime.

To begin with, the unilateral trade preferences the European Community (EC) awarded to the ACP countries for decades under the Yaoundé and Lomé agreements had come under attack in the World Trade Organization (WTO). Several developing countries in Latin America and Asia no longer accepted the special treatment extended to ACP countries, arguing that the EU-ACP regime ran counter to the non-discrimination principle of the multilateral trade framework. The banana regime, which was a particular bone of contention, prompted a series of WTO panels, all of which condemned the European Union.

At the same time, many development and trade experts questioned the continuation of the EU-ACP trade arrangements for other reasons. Some blamed the unilateral preferences for locking the ACP countries into exporting a limited package of goods (mainly raw materials) to the European Union. More generally, the lack of economic development in Africa was seen as an indication that a new approach was required: progressive liberalization and stronger regional integration were held to be key factors in the resumption of longer-term economic growth. With regard to the mainly middle-income countries of the Caribbean (some of which have higher per capita incomes than certain EU member states), many within the European Union felt that it was time to broaden the economic relationship.

Against this background, the ACP countries and the EC consented in the 2000 Cotonou Partnership Agreement to replace the unilateral trade preferences with EPAs by 2008, through a process of regional negotiations. In the WTO Doha conference in 2001, the EU and the ACP countries were able to secure a transitional waiver for the unilateral trade preferences until January 1, 2008.

What sort of EPAs?

The broadly shared view was that EPAs should become development instruments that would support the gradual integration of the ACP countries into the world economy. However, it soon became clear in the course of negotiations that different choices were in play about how best to give shape to that development dimension.

The current Dutch government, in office since early 2007, has always taken the position that the development dimension should take precedence in the EPAs, which, at the

1 Bert Koenders is the Dutch minister for development cooperation.

2 The CARIFORUM EPA was signed in October 2008 by all CARICOM countries and the Dominican Republic. Haiti, which did initial the interim EPA in December 2007, has not signed yet.
same time, must adhere to WTO guidelines. Important elements would therefore be:

- Building on and strengthening existing regional cooperation. Trade barriers between poor countries can hamper growth and make regions in Africa less attractive to domestic and foreign investors. Improved regional integration is, therefore, an important aspect of the development dimension of the EPAs.

- Clear asymmetric liberalization. On the EU side, EPAs should grant all ACP countries full access to the European market.3 The Netherlands was one of the proponents of the duty-free, quota-free negotiating proposal the Commission put forward in spring 2007. On the ACP side, while the EPAs should ultimately lead to more open markets, they should not impose undue limitations on these countries’ ability to protect the livelihoods of millions of farmers or infant industries. ACP countries should therefore be allowed—if they so desire—to exempt a significant part of imports from the European Union from their liberalization schedules and opt for long transitional periods for other sensitive import products. From this perspective, the general indicator used by the Commission in the negotiations to ensure WTO compatibility—at least 80 percent liberalization over a maximum of 15 years on the ACP side—seems realistic and gives the ACP side considerable policy space.

- Improved rules of origin. Under Lomé and Cotonou, rules of origin for textiles and clothing, fishery products and a number of other specific products were preventing the ACP countries from making full use of their preferential access to the EU market. The Dutch government had called for improvements for a long time. The proposal for Cotonou-Plus Rules of Origin that the European Commission issued in September 2007 went a long way in addressing these issues. The single transformation rule for clothing, in particular, is an excellent step forward.5

- A broader scope for cooperation, with full EPAs requiring the consent of the ACP regions. The Netherlands takes the position that agreements about services and trade-related “Singapore issues” (procurement, trade facilitation, investment, competition) can contribute to economic development in the ACP countries. Nevertheless, it is up to the ACP countries to decide if they want or not to include these elements.

EU products would flood their markets, to the detriment of local producers. The bilateral safeguards and the food security clause in the first EPA texts provide such scope, while specific review clauses ensure some degree of flexibility, especially for the more vulnerable countries.4

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3 The CARIFORUM EPA was signed in October 2008 by all CARICOM countries and the Dominican Republic. Haiti, which did initial the interim EPA in December 2007, has not signed yet.

4 The CARIFORUM EPA contains a review article for the nine most vulnerable economies (out of 15).

5 Under this rule, a piece of clothing is said to originate in an ACP country even if the cloth is imported from a cheap, non-ACP supplier such as China or India (single transformation). Before, the cloth had to be woven in an ACP or EU country, though the thread could be imported from elsewhere (double transformation).
The reasons behind the limited progress in the negotiations are manifold. It could be argued that it was probably overambitious to assume that comprehensive regional free trade agreements could be agreed with 77 diverse and relatively poor countries with limited negotiating capacity within a matter of a few years.

Regional integration takes time, as we well know from our experience within the European Union. In some parts of the ACP, regional bodies are practically non-existent, or if they do exist, they are too loosely organized. While EPA negotiations have succeeded in stimulating regional integration debates, there is a limit to the extent to which regional integration can be effectively stimulated from the outside. CARIFORUM was able to achieve a fully regional EPA by building on the relatively strong Caribbean Community (CARICOM) structure. East African Community (EAC) initialled an interim EPA, building on the customs union they had agreed before.

An important factor is that within existing organizations—and even customs unions—members often had widely divergent interests. As beneficiaries of Everything But Arms (EBA) since 2001, the LDCs had nothing to lose from the expiry of the Cotonou preferences at the end of 2007 and very little to gain from EPAs, in terms of their access to the EC market. While some LDCs chose to enter into an EPA because they saw it as a step toward greater regional cohesiveness (for instance Tanzania, Rwanda, Burundi, and Uganda in EAC; Mozambique and Lesotho in the Southern African Development Community or SADC), many refrained from taking action.

In addition, many ACP countries hesitated because of the potential loss of government revenue that would result from liberalizing the bulk of their imports from the EU under an EPA. They have called for guarantees, in the form of at least partial compensation by the EU. The EU has consistently declined to take up that suggestion, which would be practically tantamount to buying EPAs. Most EU member states, including the Netherlands, have always argued that while substantial support was available under European Development Fund (EDF) 10 and Aid-for-Trade to support the transition process, tariff revenue compensation with aid money was not on the cards. Moreover, ACP countries could receive help to change their tax base (e.g., the transition from import duties to sales tax). However, this issue continues to slow down the negotiations.

How to proceed?

The current situation is unfortunate, but not dramatic. In fact, one could argue that some success has already been achieved: since 2008, all but three ACP countries in sub-Saharan Africa (Nigeria, South Africa, and Gabon), now benefit from duty- and quota-free market access to the European Union, either under EBA or under an interim EPA. It is a genuine accomplishment that the largest developed market in the world is able to provide best available market access conditions to Africa, the poorest continent.

The CARIFORUM EPA and the interim EPAs do largely live up to our expectations.
about the development component, in terms of asymmetry (with useful exclusions), protection against import surges, infant industries, food security, rules of origin, etc.

But obviously there is a major downside to the current situation in which half of African countries are part of an interim free trade agreement (FTA) with the European Union, while many of their neighbors are not. This is not conducive to regional cooperation and integration—quite the contrary. Up to now, regional integration has been strengthened by the EPA process in the Caribbean and possibly in the EAC region. However, in other regions the outcome is unclear and there is some cause for concern: will the EPA process eventually strengthen or weaken regional integration?

Take the situation in West Africa: both the major non-LDC economy (Nigeria) and 13 LDCs are not party to any interim EPA, while non-LDCs Côte d’Ivoire and Ghana have concluded bilateral interim EPAs. Yet, Côte d’Ivoire is a member of UEMOA, a customs union with a common external tariff. And the whole ECOWAS region, to which Ghana is also a member, is striving to become a customs union.

Fortunately, the negotiations with the full West African region have recently gained momentum. The region has been able to present joint proposals for trade liberalization under a regional EPA, which, however, do not yet come close to the indicators the European Commission generally uses to assess WTO compatibility.

The EPA negotiations with several African regions will probably require more time than was initially foreseen; after all, regional integration does not happen overnight. If a more flexible deadline helps to achieve genuine regional agreements, we should embrace it.

For achieving progress in the signing of the Interim EPAs and toward definitive regional EPAs, it is important that the European Union take a flexible and pragmatic approach to negotiations. The Netherlands (together with Denmark and Ireland) has been commended by the ACP for advocating more flexibility on the part of the European Union over the past years. There is a series of contentious issues in the negotiations that should not block progress. If ACP regions want an explicit reference to food security and infant industries, it should be included (as was recently done). If specific elements of another interim EPA are desired, it should be possible to insert them. If changes need to be made in the initial liberalization schedule in order to secure signature under the interim agreement, these changes should be taken on board. If ACP countries do not want to negotiate trade in services and/or trade-related Singapore issues, we could accept that, or suggest a rendezvous clause in the final EPA. If eliminating certain export taxes proves difficult for an ACP country, we should accept exemptions. If the MFN clause6 provokes unwarranted political resistance, we should be able to explain that the clause would not hamper future South-South trade. If the vast majority of countries in a region consist of LDCs, we could consider a liberalization scheme that covers less than 80 percent or a period of more than 15 years. Flexibility and pragmatism are required, but always within the boundaries of what could reasonably be defended in the WTO.

The current Trade Commissioner, Catherine Ashton, has made a commendable effort to move forward in the negotiations. It is crucial that under the next European Commission this approach is continued and expanded further.

6 The MFN (Most Favored Nation) clause in EPAs requires the ACP partners to give EU products similar access, if the ACP partners were to negotiate a Free Trade Agreement with another major trading nation (more than 1 percent of world trade) or trading region (more than 1.5 percent of world trade), and vice versa. This therefore covers many developed countries and regions, but also emerging countries and regions like China, India, Brazil, Thailand, Mercosur, ASEAN, etc.
The negotiation of EPAs with ACP regions was agreed between the ACP and the EU in Cotonou, Benin, in 2000. The idea was to replace the old trade regime of EU unilateral preferences by a comprehensive new partnership that would better deliver development.

Boosting self-sustained economic growth: it all started in Cotonou, Benin

The negotiation of EPAs with ACP regions was agreed between the ACP and the European Union in Cotonou, Benin, in 2000. The idea was to replace the old trade regime of EU unilateral preferences with a comprehensive new partnership that would better deliver development. It was also agreed that discrimination of other developing countries should end and trade preferences with the ACP should be brought into line with World Trade Organization (WTO) rules. In Cotonou, ACP and the European Union agreed a period of seven years to negotiate the EPAs. Negotiations really only got underway in 2002. However, apart from the Caribbean, progress was slow in most regions. The Commission would have preferred to conclude wide-ranging, comprehensive regional agreements before the old preferences expired on December 31, 2007, but not all of our ACP partners seemed ready at the time.

A first result: interim agreements

As the previous preferential scheme approached its expiration, it became necessary to protect the ACP’s preferential market access to the European Union from disruption. To this end, less comprehensive agreements or interim agreements (covering mostly trade in goods) were initialled with ACP regions or countries at the end of 2007. These agreements fully liberalized trade in goods on the EU side. By eliminating the last remaining barriers for ACP exports (mainly agricultural exports) the European Union made a down payment on the promise to make trade an instrument for development. As a second pro-development element, the European Union offered to improve considerably the rules of origin regarding the products of particular interests for ACP exporters, i.e., textiles, fisheries, and agriculture. This gave ACP exporters more freedom to source their inputs from the cheapest or most competitive producers and hence become more competitive in EU markets.

Liberalization on the ACP side was dealt with in a flexible way to take account of their special development needs and constraints. This allowed the ACP to exempt products from any liberalization and stretch removal of tariffs for other sectors over long transition periods if this was considered necessary for their development needs. There are further special clauses (safeguard clauses) that allow the ACP to protect inter alia infant industries and food security, or to react quickly to other unforeseen negative developments due to liberalization.

The interim Agreements were in large part conceived to protect non-Least Developed Countries (LDCs) from trade disruption, as the LDCs could continue to benefit from the Everything but Arms (EBA) scheme that the
European Union grants unilaterally to all LDCs. Nevertheless, a significant number of LDCs have also signed up to interim EPAs.

In addition to the interim agreements, a comprehensive EPA was initialled with the Caribbean region (CARIFORUM) at the end of 2007, and it was signed on October 15, 2008. This “comprehensive” EPA goes beyond trade in goods and also covers services, investment, competition, intellectual property rights, and government procurement—rules of good economic governance. The CARIFORUM EPA is unique among the EPAs and in international trade and development agreements offering as it does a host of provisions customized to the countries of the region, including clauses governing the behavior of investors and access to medicines. The agreement also foresees a number of arrangements to ensure and monitor implementation, with a joint effort between EU and Caribbean countries, and with a broad participation of stakeholders.

In all other regions in Africa and the Pacific, interim agreements were initialled at the end of 2007. So far, the following have been signed: Ivory Coast in West Africa in November 2008; Cameroon in Central Africa in January 2009; Botswana, Lesotho, Swaziland, and Mozambique in Southern Africa (SADC) in June 2009; Papua New Guinea in the Pacific Region in July 2009; and most recently with the ESA region (Comoros, Madagascar, Mauritius, the Seychelles, Zambia, and Zimbabwe) in August 2009.

Currently we are in the process of finalizing and signing the initialled interim agreements, a process that bears completion with signatures by Haiti, Ghana, Namibia, Fiji, and the EAC group.

**Why EPAs?**

What is the rationale behind EPAs? To begin with, they are not about the economic interests of the European Union. The statistics tell a clear although perhaps also worrying message in this regard: in 2007, excluding South Africa, total EU imports from and exports to ACP countries represented less than 3 percent of total EU imports and slightly more than 3 percent of total EU exports. This is less than EU trade with Switzerland, which in 2007 amounted to more than 5 percent of total EU imports, and almost 8 percent of total EU exports.

ACP countries have continually lost market share in the European Union. From 1975 to 2000, despite the European Union granting the most advantageous tariff preferences of any trading partner, ACP countries found that they were increasingly marginalized. Their share of EU imports declined from 7 percent to 3 percent and their small and segmented markets have become less and less attractive for trade and investment operations when compared to other developing countries. EPAs were agreed as an attempt to stop and reverse this ongoing marginalization by placing trade in the context of a longer term development agenda.

One of the key observations the ACP and European Union made was that unilateral EU tariff preferences did not deliver on their promises—neither on trade, nor on development.
Crucially, EPAs go beyond the EU-ACP trade dimension to other policy objectives: first and foremost, regional integration. Freer trade—not free trade—an opportunity for development

Of course, the underlying premise is that the opening of ACP markets will take place at the right pace over time and will allow sufficient flexibility to help shelter or adjust sensitive sectors (in particular agro-food) and offer safeguards to cope with unexpected crises. Gradual and controlled liberalization is not an end in itself or just due to WTO rules. It is an opportunity for development. Above all, liberalization will create more opportunities for economic operators, strengthen competitiveness, create jobs, and reduce prices for vital goods for producers and consumers alike. Many countries have deliberately and successfully used this process to boost their development.

Under the interim EPAs many ACP countries continue to protect their most sensitive products: in some cases, up to 20 percent of the imports have been excluded from any liberalization altogether. Some argue that large exemptions will lead to a preservation of the status quo and water down any beneficial effects from liberalization. Others argue that liberalization leads to an efficient allocation of resources. This is where the many studies and negotiations can help tease out the most appropriate approach given the different development levels, to allow for capacity to be built up over time and with assistance, so the protection of sensitive sectors and infant industries are good cases for exceptions to be made to the rules.

Losing fiscal revenues and infant industries?

Some fear that trade liberalization will bring about a substantial loss in customs revenue for countries that still depend on such revenues for much of their public spending. This is indeed an important point. Fiscal reform is already widely discussed or tackled by many ACP governments. The objective is to gradually expand the revenue basis to absorb losses from liberalization and reduce the burden on competitiveness and growth that is implied by collection revenue through tariffs, by shifting toward general income or consumption-based taxation. Experience in a number of countries, such as the Dominican Republic, Kenya, or Mauritius has shown it is possible to reform taxation in a way that compensation for revenue losses from liberalization is achieved.

The potential impact of liberalization under EPA again underlines the need for reform. The European Union and other donors will continue to support ACP efforts and increase support where needed. Moreover, the EPA package aims at delivering a net positive effect on fiscal revenue through boosting economic growth in the ACP, strengthening their capacity to manage trade and collect tariffs where they continue to exist, and reduce losses through enhanced transparency in government procurement.

Regional integration

Crucially, EPAs go beyond the EU-ACP trade dimension to other policy objectives: first and foremost, regional integration. Most ACP economies and markets are small, scattered, and fragmented, preventing them from achieving economies of scale and of synergies at regional level. Regional integration will help build regional markets and attract foreign investment in sectors other than energy and natural resources. The associated political integration, peace, and stability would also have positive effects.

In recent years, regional trade integration between developing countries, “South-South” trade, has been booming, bringing benefits to ACP countries, but still intra-regional trade accounts only for a fraction of total trade of most ACP countries. Yet
Overall, the barriers facing South-South trade are estimated by the Organisation for Economic Co-operation and Development (OECD) to be almost three times higher than those facing North-North trade. This suggests considerable scope for trade policy to boost trade between low and lower-middle-income countries thus helping economic development and poverty reduction.

**Beyond trade in goods**

While interim trade deals mainly focus on trade in goods, the objective of the ACP and European Union in Cotonou was to also tackle all other issues important for boosting trade and its contribution to development: services and investment, transparency of government procurement, intellectual property rights, competition law, sanitary and phytosanitary issues, social standards, and environment issues, to name but a few. Negotiations on comprehensive EPAs with all ACP regions are ongoing and may be concluded in 2009 or 2010.

In particular, EPAs call for gradual and controlled liberalization in the service sector, backed up by good regulation. The opening up of the telecom, transport, banking, and insurance sectors can help improve these sectors in ACP countries, which are essential as inputs for the development of all other sectors of the economy, with the European Union granting access to its own service sectors. It should be noted that while these sectors are opened up to foreign competition, the ACP governments fully retain their rights to regulate, so EPAs do not interfere with the capacity of governments to formulate policies to shape the conditions, under which all companies in their markets operate. Asymmetry and flexibility are also used to protect weaker service sectors in ACP countries, while basic services such as health care, education, water etc., are outside the scope of EPAs and will not be liberalized.

Legal certainty and stability is also a key dimension to EPAs. To grow, you need investment. But investors, African or foreign, will only put their money where they feel that there is a fair, transparent, and predictable legal environment. Even greater benefits can be reaped if such a stable legal environment is set up at regional level. Clear rules for intellectual, industrial, commercial, and other property rights foster investment, jobs, and growth.

**Hand in hand with development**

All comprehensive regional EPAs will include development cooperation provisions tailored to the needs and specificities of the region. Combined with the trade and trade-related rules of the agreement that are designed to promote development and regional integration, these provisions further reinforce the integrated nature of EPAs as trade agreements for development. EPA development cooperation provisions are not meant to replace existing legal or financial instruments, but to underpin the commitments made in EPAs by provision of development cooperation in the priority areas identified. In addition, the development chapter recognizes that ACP regions need to mobilize more development cooperation and commits EU member states to support the EPA through their bilateral development assistance, as well as ensuring that the European Union undertakes to facilitate the cooperation of other donors.

The EU and ACP states have agreed the six regional strategies and indicative programs of the 10th European Development Fund (EDF) focusing on trade and regional integration with an amount of over €1.3 billion for the period 2008–2013. In addition, many country assistance strategies include Aid for Trade components to support the regional integration strategies and economic development drive of the EPAs.
In total, the European Commission and member states’ spending on the wider Aid for Trade agenda, including trade-related infrastructure and productive capacity building, was €7.2 billion in 2007, of which the ACP region was also the largest beneficiary. The resources made available will help countries prepare new structural reforms and trade policies, adjust to the changes EPAs bring and enhance infrastructure and competitiveness to seize trade opportunities. Under its Aid for Trade strategy, the European Union further undertook steps to increase the overall aid for trade amounts, and to ramp up its trade-related assistance (TRA) component, specifically targeting trade policy, regulations, and trade development-oriented productive capacity, to €2 billion per year. In 2007, the European Union’s aid for trade has surged by nearly a quarter, to €1.96 billion.

**Partners for change**

The relationship between the European Union and Africa in many ways anticipated what U.S. President Barack Obama envisaged for the United States and Africa in his recent speech in Ghana—one where “we are partners in building the capacity for transformational change,” where investment in people and infrastructure, diversification of exports, and the creation of good environments for small and medium-sized businesses is at the forefront of our partnership.

**Strong on sustainable development + social clauses?**

In the Commission’s view, sustainable development is a fair, balanced, inclusive, and long-term oriented relationship between the European Union and our ACP partners, with the objective of contributing to the overarching objective of poverty reduction. The EU goal is also to promote sustainable development through EPAs—although ACP governments are not always ready to address it. On the contrary, sustainable development is the key principle governing the CARIFORUM EPA. It is covered in detail in two chapters dealing with environmental and social provisions. It reaffirms the sustainable development provisions of the Cotonou Agreement, respect for international environment standards, and commitments to international labor standards.

On sustainable forestry, the Commission’s initiative in this area is FLEGT (Forest Law Enforcement, Governance and Trade), and EPAs put forward proposals that are in line with FLEGT priorities. On fisheries, EPAs, in particular for the Pacific, Eastern and Southern Africa, and Caribbean regions, include provisions on fisheries management and control to ensure that exhaustible resources like fish are caught in a sustainable manner.

**EPAs in the context of the financial crisis**

What of the financial and economic crisis? The current economic situation poses particular challenges to trade policy. Of course, Europeans as well as Africans are nervous about the crisis. However, these challenging times also provide for opportunities. Liberalization schedules foreseen by EPAs will be phased in over several years, and estimates seem to indicate that the crisis should be over by then. It is now time to rise to the challenge posed by the crisis, to innovate and to adapt—and to emerge from the crisis in a stronger economic position.

So far, there is no evidence of an escalation of protectionism. The fall in trade is mostly due to the cyclical downturn and not any retreat from open trade. However, some new barriers to trade have been introduced since the beginning of the crisis. The challenge for trade policy is to prevent protectionism from taking hold. For trade to
In the end, it is for ACP countries and regions to take the decision to press ahead: we cannot want EPAs more than the ACP do. It is a challenge they must decide to meet. With EPAs, trade meets development.

Looking into the crystal ball

What will happen when all EPAs have been signed and entered full implementation? Do not forget that liberalization on the ACP side is scheduled over long transition periods, hopefully well beyond the current crisis. Several studies foresee positive results in line with our expectations. However, these are just forecasts—let us look at some hard facts. In another region of Africa, the Southern Mediterranean, we can see that doomsday forecasts for the Euro-Med region at the time of negotiating the EU-Med trade agreements did not materialize.

In 1995, the Euro-Mediterranean partners agreed on the establishment of a fully-fledged Euro-Mediterranean Free Trade Area (EMFTA) by 2010. Thanks to the Euro-Med agreements, EU imports from Mediterranean countries more than doubled in less than ten years, from almost €48 billion in 1999 to around €107 billion in 2007, with an average annual growth of 10.6 percent.

The share of the Mediterranean countries in EU27 imports was 6.4 percent in 1999—it now stands at 7.5 percent. The share of the Mediterranean countries in EU27 exports was 9.9 percent in 1999 and is now 9.7 percent. Imports from Mediterranean countries rose faster than EU exports toward those countries, dispelling the myth of the invasion of EU products onto local markets. Some Mediterranean countries, like Tunisia, made the most of the agreements and are now leading the pack. A recent issue of the “Jeune Afrique” magazine (“Jeune Afrique,” n°2463, 23/29 mars 2008) underlines that, since the inception of the EU-Med trade agreements, Tunisia has seized the opportunity to innovate and reform while implementing the trade agreement with the European Union, even accelerating the liberalization process while building a strong industrial and business service base.3

You choose

In the end, it is for ACP countries and regions to take the decision to press ahead: we cannot want EPAs more than the ACP do. It is a challenge they must decide to meet. With EPAs, trade meets development. There is also a moral imperative to close the deals, as the European Union cannot treat different groups of developing countries (Asian or Latin American vs. ACP) unequally. The EU’s goal is to make developing countries better off as a result of these deals: regional EPAs will offer a precious opportunity to permanently alter the vicious circle of poverty and turn into a virtuous circle of growth. They are the basis to develop the relationship with the ACP to a more mature level.

Examples in other regions of the world indicate that, when countries are willing to innovate and to accept the challenges of change, they can succeed. In the ACP area, this is what the Caribbean region is doing. EPAs provide an opportunity to reform the tax and overall economic system, to initiate a sustainable cycle of growth, and ultimately to accelerate the exit from dependence. But only the countries concerned can take the strategic decision to embrace change and make the most of the opportunities presented. Once that decision has been taken, and negotiations have been successfully concluded, we shall start real work: turning EPAs into reality. EPAs are not a destination; they are a journey—a journey we are hoping to make with our ACP partners.

THE INTERIM ECONOMIC PARTNERSHIP AGREEMENT (IEPA): VIEW FROM THE SOUTH AFRICAN GOVERNMENT

Xavier Carim

Introduction

There can be little doubt that the Economic Partnership Agreements (EPAs) negotiations between the African, Caribbean, and Pacific (ACP) countries and the European Commission (EC) have been controversial. The negotiations have not only strained relations between some ACP members and the EC, but also created frictions within many of the regional groupings that make up the ACP. This is no different in Southern Africa, where controversy and division continue to mark the EPA negotiating process.

The EPAs emerged as the European Union’s proposal for World Trade Organization (WTO) compatible alternative to Cotonou Agreement preferences that had been provided legal cover in the WTO through a waiver that was to expire at the end of 2007. The stated objectives of the EPA included that no ACP country would be worse off following the negotiations, and this was accompanied by clear commitments that the EPA would support regional integration and development in the ACP. The European Union also indicated that it had no mercantilist objectives, and that the EPA would provide a platform for enhanced development support for ACP countries.

Despite these declaratory statements of good intent, the negotiations themselves revealed concrete elements of the EC’s trade strategy as spelled out in its policy document entitled “Global Europe.” This is a strategy for “an activism in creating open markets” for EU firms in the face of intensifying global competition, particularly from such emerging economies as China, India, and Brazil. The strategy paper makes clear that the EC no longer considers tariffs as the main barrier to international trade. It targets non-tariff measures that impede access for EU firms, and prioritizes market opening and rules in new areas that are important to the European Union such as services, investment, procurement, intellectual property, and competition.

At the heart of the difficulties in EPA lies the disjuncture between the declaratory principles that launched the negotiations and the ambitions of the EC that go far beyond the need to transform ACP-EU trade relations into a WTO compatible arrangement. By the end of 2007, when the EPA was to be concluded, only one ACP region signed a full EPA. Many ACP countries agreed only to initial an Interim EPA (IEPA) so as to maintain their preferential access to the EU market. Still others opted not to initial or sign either the IEPA or a final EPA because they were unable to accept the terms of the agreement. These countries were then forced to export to the European Union under considerably less preferential conditions. In other words, these countries were left “worse off,” contrary to the undertaking specified at the launch of the negotiations. Where only some countries of regional groupings in the ACP agreed to initial or sign the IEPA, regional integration processes have been placed at risk.

The EC possesses formidable negotiating machinery. In addition to discrepancies in negotiating strength and capacity between the EC and the ACP, the threat of losing preferences for the small and vulnerable economies that make up the ACP provided the EC with additional negotiating leverage that made it difficult for many ACP countries to resist EC demands. A range of provisions introduced by the EC as “deal breakers” in the final negotiating sessions in 2007 put enormous pressure on ACP countries to submit to EC demands and accept contentious clauses into the agreement or face losing preferential access to the EU market on which they are highly dependent.

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South Africa’s motivation for joining the EPA Process

South Africa’s decision in 2004 to participate in the EPA was motivated by a desire to strengthen regional integration in Southern Africa and to consolidate the region’s trade arrangements with the European Union. South Africa believed it was possible to align its existing trade agreement with the EC (the Trade, Development, and Cooperation Agreement or TDCA) with the EPA. Our participation in the process also followed on requests from ACP SADC and the European Union to play a role in the negotiations and, as the mid-term review of the TDCA was scheduled for 2005, an opportunity to consolidate the region’s trade relations with the European Union appeared to be offered.

In seeking to advance this objective, South Africa, together with the SADC EPA States, over an 18-month period developed a negotiating framework that was adopted by SADC EPA Trade Ministers in February 2006. The framework, submitted to the EC in March 2006, set out the following core elements for the negotiations.

1. First, since Botswana, Lesotho, Namibia, and Swaziland (BLNS) were de facto subject to the TDCA by virtue of being part of the SACU customs union with South Africa, they would accept the TDCA as a basis for a negotiating outcome so long as their sensitivities under the TDCA were addressed.

2. Second, the other SADC EPA members (Mozambique, Angola, and Tanzania), all least developed countries (LDCs), should be allowed to continue to receive duty free quota free access under the EC’s Everything But Arms (EBA) initiative that extends such treatment to all LDCs along with improved rules of origin.

3. Third, all SADC EPA States should obtain duty free market access to the European Union: harmonization of the region’s access to the European Union at the best available conditions. South Africa indicated that it would not press this point at the expense of any other SADC EPA member, and recognizing the EU’s sensitivities in agriculture, this objective could be obtained over a suitable transitional period.

4. Fourth, all new generation issues (services, investment, procurement, intellectual property, competition, labor, and environment) should be subject to non-binding cooperative arrangements to build capacity at national level, to be followed by regional convergence to build regional markets as a prerequisite to entering into negotiations with the EC at a future date.

The EC responded in March 2007 (one year later) and, while it agreed that South Africa be included in the negotiations, it insisted that due to its level of competitiveness, South Africa would be differentiated from other countries in the region. It argued that LDCs must offer reciprocal market openings to the EC and while the TDCA should remain the benchmark for the offer from the BLNS, it would consider addressing their sensitivities under the TDCA but would not grant new protection to South Africa. Finally, the EC insisted that new generation issues be included.

The short timeframe for negotiations of nine months before the December 2007 deadline put enormous pressure on the negotiating process. Between March and December 2007, positions among members of the SADC EPA members shifted: LDCs in the SADC EPA Group agreed to grant the EC reciprocity, and, aside from Angola, Namibia, and South Africa, SADC EPA members agreed to negotiate services and investment.
The insistence on treating South Africa differently amounts to a refusal by the EC to recognize SACU as a customs union, and a clear measure of how the EPA has undermined regional integration.

Since 2007, Angola, Namibia, and South Africa have raised concerns with the IEPA. We have argued that, in its current form, the IEPA will unduly limit the region’s development policy space, hamper efforts at trade diversification, and undermine existing regional integration processes in SADC and SACU. Other members of the Group have been more favorably disposed mainly to secure their access to the EU market. This, however, has come at the expense of regional integration.

**Concerns with the EPA: regional integration**

The insistence on treating South Africa differently amounts to a refusal by the EC to recognize SACU as a customs union, and a clear measure of how the EPA has undermined regional integration. It is inconceivable that the EC would itself accept that any of its trading partners would provide differential market access to different Members of the European Union. For the European Union, any exchange of tariff concessions must apply to all its Members equally in order to retain the integrity of its customs union. Surely, the same should apply to SACU. This differential approach to the region has been a source of perennial friction as it undermines policy coherence in SACU.

At the outset of the EPAs negotiations in 2002, SADC members were split into separate EPA configurations: i) the SADC EPA Group comprising the BLNS, Mozambique, and Angola; ii) East African Community (EAC) comprising SACU Member Tanzania; iii) Central African Economic and Monetary Community (CEMAC) that includes the DRC; and iv) the East and Southern African Group (ESA) comprising the other SADC members. While the decision to configure in this way may have been the decision of countries in Southern Africa, the fact remains that the IEPA is deepening fragmentation in the integration processes in Southern Africa. South Africa joined the SADC EPA Group configuration in 2006.

Under the IEPA, SADC members have at least four sets of separate trade relations and regimes with the European Union and each vary considerably from one another. This will complicate—even foreclose—efforts to build a single trade regime in SADC and between the SADC and the European Union, which remains the region’s single most important trade partner. The tariff reduction commitments in each of these configurations varies from one to the other and, on implementation of the separate agreements, SADC members will be required to introduce new customs controls to avoid trade deflection.

**Concerns with the EPA: tariff negotiations**

The EC offered all ACP countries, except South Africa, duty-free, quota-free (DFQF) access to its market for all products, except on rice and sugar which were subject to a transitional period. While impressive in form, in substance, the difference between DFQF and existing access under the Cotonou Agreement is marginal. Where new market access opportunities do occur, the supply capacity response in ACP economies is highly constrained. Moreover, as all ACP countries account for less than 3 percent of EU world imports, the EC DFQF offer will impose minor adjustment costs in the EU market.

By contrast, the EC has secured new openings of up to 80 percent in the markets of the ACP for exports. The exchange of tariff concessions is, in these terms, unbalanced. This outcome should also be considered in light of the EC negotiating position on LDCs and small and vulnerable economies.
(SVEs) in the Doha Round. In these negotiations, the EC supported the position that LDCs and SVEs make no, or minimal, market access commitments. It appears the EC aims to ensure that no other WTO member obtains improved market access in the ACP through the multilateral process, while it secures for itself vastly improved access into the ACP economies via the EPA.

In the tariff negotiations between South Africa/SACU and the EC, progress was made on industrial tariffs and fish but differences remained on agriculture. However, the unilateral decision by the EC to remove South Africa from the IEPA in 2008 while the exchange of concessions was still under negotiation, converted a draft SACU offer into a final tariff offer from BLNS. Implementing this outcome will fracture the common external tariff that underpins SACU as the BLNS, but not South Africa, will be required to grant improved access to the European Union on approximately 450 agriculture, industrial, and fish tariff lines. Subsequently, while the EC offered to forego this additional access to the BLNS so as not to undermine the SACU CET, to date, this offer has not been formalized.

The IEPA thus threatens to break up SACU—the oldest customs union in the world—by creating different tariff commitments among its members vis-à-vis the European Union. If other SACU Members implement the IEPA, the misalignment between tariff dispensations under the IEPA and the TDCA would require new customs controls at South Africa’s borders within SACU to collect tariffs on EU products subject to lower tariffs under the IEPA than the TDCA, to avoid trade deflection. Customs controls would also be required on products that are subject to different rules of origin under the EPA and the TDCA. Aside from the administrative costs involved, breaching the common external tariff in SACU will make the current revenue distribution arrangement between its members unworkable.

### Concerns with the EPA: legal provisions

The IEPA will limit the scope for industrial and agricultural development policy among SADC and SACU countries. Some provisions are WTO-plus and others presume a decision-making structure that does not exist among the SADC EPA countries. The IEPA will also hamper efforts to diversify the region’s trade relations with other key economies including the most dynamic emerging economies in the world.

The IEPA provision on *national treatment* reduces the policy space currently available under the WTO in a manner that could undermine South African government procurement for black economic empowerment programs. The provision on *free circulation of goods* provides that once a good enters any SADC EPA State, it must be allowed to circulate freely without any additional duty. This ignores the fact that, aside from SACU where goods move freely within the customs union, there are three separate customs jurisdictions in the SADC EPA Group which would make this provision unworkable.

Under the IEPA, *export taxes* that could be used to promote industrial and economic development are prohibited, except under exceptional circumstances and subject to EC agreement. Again, this goes beyond WTO requirements which permit export taxes. The IEPA also includes WTO-plus provisions on *customs administration* that grants the EC the right to suspend tariff preferences if it deems that a party does not comply with EC-defined stipulations for cooperation and administration on customs matters. The provision on *quantitative restrictions* is also WTO-plus in that it prohibits quantitative restriction measures currently allowed under the WTO.
It should be noted that there is no compulsion to negotiate new generation trade issues under the EPA to meet WTO requirements. Neither the Cotonou Agreement nor the TDCA contain any obligation in these areas.

The IEPA provision on infant industry limits its application to a safeguard provision. The purpose of an infant industry clause is to assist developing countries to promote new industries, whereas a safeguard provision is employed to respond to a surge in imports. Moreover, the safeguard clause in the IEPA is highly constrained and would not allow for a rapid response to address a surge in imports in, for instance, subsidized agricultural products from the European Union.

The IEPA defines parties to the agreement as the EC and EU member states on one side, and the SADC EPA States as a single party acting collectively on the other. This preserves a legal and institutional basis for decision-making among the SADC EPA States that does not exist. The IEPA also defines a single judicial process for trade remedies (anti-dumping, subsidies, and safeguards), although only South Africa has the legal and institutional framework for implementing trade remedies. SADC EPA states would thus be required to reach consensus to pursue trade remedies or dispute against the EC, while the EC could act against the entire SADC EPA Group. The IEPA also establishes new regional institutions to implement the agreement without specifying how these new institutions would relate to existing SADC and SACU institutional structures or to national competencies.

The most favored nation (MFN) clause obliges SADC EPA Members to grant to the European Union any trade advantage it may extend to other major trade partners in future negotiations. A major trading partner is defined as any developed country or countries/grouping accounting for more than 1 percent of global trade (Mercosur, India, and China). The SADC EPA states that obtain duty and quota free access to the European Union under the IEPA will not be able to receive anything more from the European Union if the latter negotiates a more preferable arrangement with another third party. However, they would have to offer any advantage they grant to another third party to the European Union. By excluding South Africa from the IEPA, while other SACU countries remain under this obligation, a wedge in SACU’s common trade policy emerges. The MFN clause will limit the ability of ACP countries to diversify their trade relations away from the European Union as it will ensure that trade relations with the European Union are privileged in perpetuity. Trade policy sovereignty will be compromised and leverage in any future negotiations will be undermined.

Concerns with the EPA: new generation issues

It should be noted that there is no compulsion to negotiate new generation trade issues under the EPA to meet WTO requirements. Neither the Cotonou Agreement nor the TDCA contain any obligation in these areas. Second, some new generation trade issues are under negotiation in the WTO (services, IP, and environment), while others have been excluded (investment, competition, procurement, labor) due to the concerns raised by developing countries. Third, as SADC countries have little capacity and no common policies in these areas, negotiations run the risk of delivering unbalanced outcomes that may be prejudicial to national development objectives and outcomes may foreclose prospects for deeper integration in SADC and SACU.

South Africa recognizes the importance of the so-called new generation issues. However, these are complex issues that impact directly on national regulatory and legislative frameworks. Moreover, across the region, there is insufficient empirical data and understanding on the regulatory and trade implications of negotiating market access disciplines in these areas. We have thus argued that the region should engage these issues in a technical exchange and cooperation framework that would not involve substantive obligations nor
be subject to dispute settlement under the EPA. Our approach would aim to secure EC assistance in the development of SADC institutional, policy, and legislative infrastructure at national levels as a prelude to building regional rules and markets. Once there is a degree of commonality among members of the region, we could consider negotiating market access and rules with third parties, including the EC.

However, Botswana, Lesotho, Swaziland, and Mozambique agreed to negotiate with the EC on services and investment immediately. They have also agreed to negotiate procurement and competition at some future date. Angola, Namibia, and South Africa did not accede to this EC demand. In other configurations, SADC countries have accepted to negotiate these new generation issues. As such, the IEPA is establishing a basis for new generation of trade policy division in the region, and the EC will obtain preferential access to the markets of individual economies in the region, before the region has had the opportunity to build its own regional market.

**Recent developments and way forward**

Following positive overtures from the new EC Commissioner in February 2009, the SADC EPA Group and the EC met in Namibia in March 2009 to address some of their concerns. At the March meeting, the EC indicated it was only prepared to discuss seven issues, of which five could be solved. The EC was not prepared to discuss the many other issues of concern. Moreover, even on the five issues that were resolved, the EC insisted that it would not change the IEPA but it would be prepared to “secure” these new provisions via a declaration that would accompany the signed IEPA. The declaration would specify that the new provisions would be incorporated into the text of a final EPA.

Although the joint declaration was to be negotiated, in the end it was unilaterally drafted by the EC and it has been couched in “best endeavor” language that does not stand against the legal stronger provisions contained in the IEPA. The declaration provides no legal security that the “progress” made in Namibia would be incorporated in a final EPA text. Notwithstanding this uncertainty, the EC invited the SADC EPA Group, except South Africa, to sign the IEPA in June 2009. In June 2009, the EC, Botswana, Lesotho, Swaziland, and Mozambique signed the IEPA. Their decision to sign the IEPA represents acceptance of the IEPA in its current form by those Parties.

South Africa, together with Angola and Namibia, has not accepted this as a conclusion to our negotiating process. We have agreed to continue to engage the EC to resolve all the outstanding issues. We remain committed to seeking an outcome that supports regional integration and development, and does not limit our efforts at trade diversification. South Africa’s proposed approach is that contentious provisions in the IEPA be addressed satisfactorily, and that SACU continue to work to forge a common tariff offer to the EC in order to preserve the SACU CET; the essential underpinning for the customs union.

Our approach aims to create the conditions for all Members of the SADC EPA group to participate in a final EPA outcome, and thereby to establish a single regional trade arrangement with the EU.
South Africa will not sign an EPA until it is convinced that the concerns we have raised are substantially addressed. While we are firmly committed to addressing these issues, it is evident that South Africa cannot achieve these objectives on its own. We need a common vision among the SADC EPA States and a continued willingness from the EC to prioritize its professed concern to promote regional integration not just in broad declaratory statements, but in the detailed outcomes of negotiating processes. The EC now appears open to consider these proposals. Time will tell if this is indeed the case.
African countries need support for infrastructure development, consolidation of regional markets and other policy interventions that can address the problem of production and supply side constraints which most African countries face.
Moving the negotiations forward requires a more constructive approach that balances the requirement of WTO compatibility with the need to promote rapid and sustainable economic growth in developing countries. WTO compatibility in the EPAs should also reflect adequate special and differential treatment, asymmetry and the spirit enshrined in the WTO's Enabling Clause.

**EPAs and regional integration**

A major objective of EPAs, as agreed in the CPA, is the reinforcement of the regional integration initiatives of the ACP countries. Africa's key integration initiative is the establishment of a Pan African Economic Community, with the RECs as the building blocks. The configuration of African countries for EPAs is not in line with membership of the RECs. Out of the eight RECs recognized by the African Union, only the East African Community (EAC) is negotiating EPAs configured in its recognized form. The creation of Free Trade Areas (FTAs) and Customs Unions (CUs), on the basis of EPA configurations that will run parallel to programs of the RECs will tend to undermine rather than strengthen Africa's regional integration efforts.

The adverse implications of the current EPA configurations for regional integration in Africa can be illustrated with the following examples. The SACU, made up of Botswana, Namibia, Lesotho, Swaziland, and South Africa, is under threat because of the EPA process. All the members of SACU except South Africa and Namibia signed the Interim Agreements and this is now causing serious challenges within the region. In the broader SADC region, Mozambique, Botswana, Lesotho, and Swaziland have initialled Interim Agreements, while Angola decided not to. Trade between South Africa and the European Union is continuing under the TDCA. Some SADC countries like Zimbabwe negotiated and initialled the Interim Agreements under the ESA-EPA configuration. SADC is supposed to launch its CU in 2010. The interim EPAs and their resulting different trade regimes complicate the problem of multiple memberships of RECs that characterizes regional integration in Africa and could delay the launch of the Customs Unions in the continent.

**Scope of the EPAs**

The broadening of the scope of the EPAs to include trade in services as well as the Singapore issues (i.e., competition policy, investment, and government procurement) is also problematic for some African countries and regions negotiating EPAs. Most countries in Africa have limited experience in services liberalization at the regional, continental, and multilateral levels. Negotiating these issues would also cause problems for African RECs because they do not have a regional framework for intra and inter regional liberalization of services. As a result, it is difficult to have a regional approach to liberalization of services with the European Union under EPAs.

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2 The Regional Economic Communities recognized by the African Union are as follows, Southern African Development Community (SADC), Common Market for Eastern and Southern Africa (COMESA), East African Community (EAC), Arab Maghreb Union (UMA), Intergovernmental Authority on Development (IGAD), Economic Community of West Africa (ECOWAS) Communaute Economique des Etats de l Afrique Centrale (ECCAS) and Communaute des Etats Sahariens (CEN-SAD)
Given the growing importance of services in international trade and the positive contribution that services can make to economic and social development, the need for cooperation between African countries and the European Union in this area cannot be overemphasized. However, such cooperation agreement, as envisaged by the CPA, should focus on capacity building and strengthening regulatory institutions in the African partner countries. Already, there are some African countries in favor of negotiating rules and taking commitments in services and Singapore issues without a common regional position. This has complicated the implementation of the agenda for regional integration.

**EPAs and the global financial crisis**

The negotiations for full EPAs are continuing amidst a global financial and economic crisis that started in the United States mortgage market but has its effects felt across the world. Lack of adequate control and excessive liberalization of modern financial services have been a major root cause of the crisis. Developed countries have handled this crisis by taking measures to protect local markets from import competition and by putting in place bailout packages in favor of the financial services and other sectors. There have also been increases in anti-dumping measures adopted by the developed countries. Developing countries have also taken action aimed at mitigating the impact of the global economic and financial crisis on jobs, income, and poverty. Such measures include raising tariffs, use of non tariff measures, as well as trade defense mechanisms.

The global economic and financial crisis and the response of developed countries reflect the failure of markets and indicate that market liberalization cannot always be relied upon to produce developmental results. The key lesson to be drawn for the EPA negotiators is the need for African countries to have adequate policy space to be able to deal with domestic problems and promote national objectives. Such policy space should include the right to use export taxes, grant subsidies to local companies, and the right to regulate and introduce new regulations. Countries that are going to negotiate services should therefore be careful when developing their schedules of specific commitments. Care should be taken to inscribe the necessary limitations on market access and national treatment on all sectors chosen for liberalization.

**The role of the African Union in the EPA negotiations**

The AU Commission is not a negotiating party in the EPA negotiations. It provides a forum for the elaboration of common African positions in EPA negotiations. Common positions enable negotiating groups to negotiate from a point of strength and promote harmonization, thus contributing to the process of continental economic integration.

In their Maputo Declaration of 2003, the AU Heads of State and Government mandated the AU Commission to coordinate EPA negotiations in Africa. In line with the mandate, the Commission has organized sessions of the Conference of AU Trade Ministers where EPA negotiations have been considered and pertinent declarations adopted. Technical meetings for the coordination of the EPA negotiations have also been organized. The Policy Organs of the AU have adopted various declarations on EPA negotiations since the year 2003 to guide the negotiations. Over the years, the AU Ministers of Trade, the Executive Council, and the Assembly of Heads of State and Government, have adopted decisions and declarations on EPAs.3

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As the negotiations for full EPAs continue, there should be improvements on the rules of origin regimes under the EU’s GSP schemes as well as on those under interim EPAs. In broad terms, the improvements should aim at simplifying the concepts and methods used for the purpose of determining origin in light of the development needs of African countries.

At the Joint Conference of AU Ministers of Trade and of Finance held in Addis Ababa on April 13, 2008, the Ministers mandated the AU Commission to develop, in collaboration with UNECA and the RECs, a model template to be used as a guide in the negotiations of full and comprehensive EPAs. At the 5th Session of the AU Ministers of Trade Conference that was held on March 19-20, 2009, Ministers agreed that the AU EPA Model Template be used as a broad set of guidelines in the EPA negotiations. It is important for African countries and regions negotiating full EPAs with EC to follow this ministerial directive, which has been endorsed by the AU Heads of State and Government.

At the Africa-EU Lisbon Summit, the need for high-level political dialogue to examine issues relating to the EPA negotiations with a view to moving the process forward was underscored. The dialogue should be organized as quickly as possible by the AU Commission and EC to give impetus and political guidance to the EPA negotiations.

**The way forward**

The ultimate responsibility for the social and economic development of Africa falls squarely upon the peoples and leadership of Africa. This responsibility includes the mobilization of internal resources and rallying all the peoples of Africa, including those in the Diaspora, and all friends of Africa to the effort. The African leadership and negotiators should ensure that odious agreements, which would be detrimental for the development prospects of Africa, are not concluded with third countries or partners.

The renewed political willingness of the leaders of the G-20 and G-8 for the conclusion of the WTO’s Doha Development Agenda (DDA) in 2010 is a positive development. The conclusion of the DDA has, as a matter of fact, important implications for EPA negotiations. For example, the conclusion of negotiations on special safeguards for agriculture at the WTO would inform EPA negotiating positions. The outcomes of the WTO services negotiations could also be useful for those countries and regions that are negotiating trade in services under EPAs. It is in this regard that EPA negotiating regions in Africa ought to consider waiting for the conclusion of the DDA round in 2010 before concluding EPAs. This way, it will be possible to maintain coherence between African negotiating positions in the WTO and EPA negotiations. However, given that the main process drivers at the WTO are mainly preoccupied with domestic issues, there are chances that the round may not be concluded in the immediate future.

In light of the DFQF market access granted by the European Union, it becomes imperative to ensure that rules of origin do not prevent African countries from effective access to the EU market. As the negotiations for full EPAs continue, there should be improvements on the rules of origin regimes under the EU’s GSP schemes as well as on those under interim EPAs. In broad terms, the improvements should aim at simplifying the concepts and methods used for the purpose of determining origin in light of the development needs of African countries, for instance, allowing cumulation among all ACP and African countries. The new rules of origin regime should also foster the development and industrialization of Africa.

Some of the challenges being faced in the EPA negotiations cannot be resolved at the technical level and require high level political engagement instead. The inclusion or not of the MFN provision in the EPAs is a case in point. It is crucial, in this sense, to foster collaboration between African leaders and the political leadership of the European Union, European Council, European Commission, European Parliament, the EU Presidency, and selected member states of the EU.
As the negotiations for full EPAs continue, efforts should be made to enhance the participation of all relevant stakeholders, the private sector, parliamentarians, and civil society. In particular, national and regional parliaments should be regularly informed on the progress of the negotiations given the role that parliamentarians are expected to play in the ratification and domestication of EPAs. Feedback received from the relevant stakeholders should be seriously considered in formulating EPA negotiating positions.

There is need for increased collaboration among the RECs EPA Negotiating Regions to share experiences and reduce information asymmetry among EPA negotiators. The AU Commission stands ready to play its coordination role in this regard. The efforts by SADC, COMESA, and EAC authorities to establish a FTA should be sustained. This framework should also be used to identify practical solutions to the problems of different rules of origin, cumulation, and unaligned tariff regimes within the same regional blocks. Other regions could also use the same approach in trying to solve some of the challenges being confronted in the EPA negotiations and in the broader framework of regional integration. In the long term, regional economic communities should be given the mandate to formulate trade policies for their regions.

Even the best trade policy will not bring positive results if not complemented by relevant national and regional policies. In this regard, African countries will need to ensure that follow up measures and policies to create incentives that encourage local companies to export their products to take advantage of the EPAs are put in place. Such complementary policies could focus, in addition, on strengthening national and regional industries with a view to broadening the African export base and taking advantage of the market access opportunities in the EU markets.

African negotiating groups should continue pressing for a clear legal commitment on additional resources to support specific development programs and projects as well as to address EPA adjustment and implementation costs. The commitment of the European Union to respond to these needs should go beyond best-effort obligations. In view of the challenges that have been faced in the utilization of EDF resources, the negotiators should also insist that regional EPA funds be used for the implementation of EPAs. African RECs/Negotiating regions should identify bankable projects focusing on building of infrastructure and enhancing the production and supply-side capacities of African countries, so that Africa can beneficially participate in the global economy and effectively utilize the DFQF market access to European markets.

EPAs will bring fundamental changes to the economies of Africa countries that will sign them. In this regard, it is important that the negotiations and implementation of EPAs be monitored regularly. While appropriate institutions can be created to perform this monitoring function, it is of paramount importance that mechanisms are identified in the agreements to ensure the availability of adequate resources for the monitoring. It is equally important that the agreements provide some guidance on what actions will be taken should the monitoring reveal specific challenges for African countries resulting from the implementation of the agreement.

There is no doubt that EPAs can serve as an important instrument for the promotion of sustainable development and eradication of poverty in Africa, as envisaged in the Cotonou Partnership Agreement, if the contentious issues identified in the Interim EPAs are adequately addressed and the full EPAs are made to become development friendly. African and EU negotiators must strive to achieve this objective.
Why are the Economic Partnership Agreements detrimental for Africa’s future?

Ablassé Ouedraogo¹

Introduction
In September 2002, the European Commission, on behalf of the EU member states, initiated new trade negotiations for the Economic Partnership Agreements (EPAs) between the European Union and 7 African, Caribbean, and Pacific Group (ACP) countries. This was in response to pressure from the World Trade Organization (WTO), which deemed that the EU’s long standing preferences in favor of the ACP were illegal because of their discriminatory nature against other developing countries from Asia and Latin America. The EPAs aimed to support poverty reduction, sustainable development and the progressive integration of ACP countries in the world economy, while stimulating regional economic integration. If both sides of the partnership sought to make these aims a reality, the new agreement could significantly transform the lives of countless people who live in poverty, give viable incomes to farmers and small entrepreneurs, and provide decent jobs to workers.

In the current negotiating process, Europe has unfortunately engaged in power politics to the detriment of a partnership. While it is true that international trade entails a power struggle, the conclusion of EPAs in their current format will deprive ACP governments of policy instruments, which are essential for their development. These agreements will, in addition, result in a blow to regional integration, aggravating poverty and perpetrating the reliance of ACP countries on primary commodities. These negative developmental implications explain why EPAs have attracted so much criticism over the last months, especially from the African Union, ACP ministers and heads of state, UN and World Bank staff, representatives of Parliaments, farmers, and private sector associations, as well as internationally renowned trade specialists.

Nonetheless, this outcome is not inevitable. A win-win result between the European Union and the ACP is not only possible, but also absolutely necessary.

A Power Struggle
Europe, unfortunately, conceived the EPAs as a classical free trade agreement, similar to those it signed, for instance, with Chile and Mexico. As such, the EPAs do not cater for regional differences among ACP countries. Moreover, the guiding strategy for formulating these agreements was maximising the competitiveness of European firms abroad.

Presented with this approach, the many stakeholders in the negotiations have forcefully expressed their concerns that these agreements would jeopardize the means of existence of ACP countries as well as deprive them from having recourse to necessary development policy tools. Analyses point to the fact that Europe will win more from such an agreement, while many ACP countries will face a deterioration of their economic situation. This is illustrated by the fact that exporters from the European Union will gain more from trade reciprocity than those from ACP countries, as the latter already have significant access to the European market.

These differences in expected gains explains the strong tensions that occurred between the EU and ACP countries in December 2007, when the European Union wished to impose the EPAs and its trade interests, over development and regional integration concerns. Two deeply different visions of development were at the heart of these contradictions.

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To achieve its objective, the European Commission has exploited both the fragile negotiating capacity of ACP countries, by dividing them into six negotiating groups, and the December 31, 2007 deadline, by threatening to raise trade barriers. The division of regional groups has reinforced the economic and negotiating imbalance that has long characterized EU-ACP relations. Fragmented ACP countries had to confront the Commission, the most powerful and most experienced negotiating machinery in the world.

The EU’s tactics can hardly be justified on the basis of legal restrictions, including the very notion of a non-negotiable deadline. There were indeed alternative ways for the European Union to maintain its markets open. The extension of the WTO waiver for a supplementary period in order to complete the negotiations, as requested by the West and Central African regions, was a case in point. For this to happen, however, the European Union would have needed to demonstrate real political will to support ACP countries in their poverty reduction efforts as well as in their struggle for sustainable development. As the deadline loomed closer, such political will was placed under mounting pressure, including from big firms exporting to the European Union or having invested in ACP countries, a large number of which are European.

As a consequence, many ACP regions find themselves in a situation in which several trade regimes coexist, de facto compromising all chances of real regional integration and contradicting the explicit objectives of the EPAs. For instance, all African EPAs are different, with the exception of that signed by the East African Community. Regional negotiators in charge were bypassed by the European Union who imposed bilateral agreements without any true national and regional consultation, as occurred in Ivory Coast and Ghana, in the case of West Africa. Regional integration is supposedly one of the columns of these new agreements but all efforts in that sense have been blown by the EPAs imposed by Europe at the end of 2007.

The incoherence in Europe’s approach to the EPA negotiating process has brought discussions to a real deadlock. This is reflected in both the content and in the structure of the EPAs:

- With relation to its content, the EPAs, as proposed by the European Commission, do not assist ACP countries in the realization of their development goals. Against the backdrop of globalization and the need to constitute larger economic spaces, the bilateral interim EPAs being proposed present considerable obstacles to the integration between existing regional trade partners. In addition, these agreements do not facilitate economic diversification, particularly since they restrict the policy options available to ACP governments to support the development of new industries. As far as food security is concerned, the new agreements could needlessly expose small farmers to surges from competing imports.

Moreover, there is no sign from Europe that significant new finance will be made available for the development of infrastructure in ACP countries. On the contrary, the new agreements arguably create conditionalities and additional costs for the delivery of old promises of financial assistance.

Concerning market access, Europe does not assure any significant opening of its services markets and, notwithstanding the effective lowering of its tariffs, does not improve its rules of origin, which remain complex.

As far as investments are concerned, the proposed agreements are not very likely to
It is clear that the initialled EPAs and those currently being negotiated will not, in their current form, contribute to the development of ACP countries, contrary to the hopes placed in this new partnership by all its participants.

- In relation to the negotiating process, the EU’s pressure to extract an agreement from ACP countries has led to a situation characterized by division and confusion which compromises the continuation of negotiations and the conclusion of full and global EPAs within a reasonable timeframe. In West Africa, for instance, during their summit, on January 18, 2008, WAEMU Heads of State expressed their profound concerns regarding the continuation of negotiations, especially with respect to the development dimension of these new agreements. Acting on their instructions, ministers in charge of the EPAs confirmed the region’s preference for a fully and global developmental EPA. Despite these commitments, the agreed deadline of June 30, 2009 was unrealistic having regard to the width of tasks to be achieved.

In addition to working for the conclusion of a fully regional EPA, indeed, West African negotiators also have a duty to support Ivory Coast and Ghana in the finalization of their interim EPAs. This stretches even thinner what is already a limited human capacity.

Finally, trust between the two parties must be rebuilt. Without trust, negotiators will not be able to extricate themselves from the current deadlock, and negotiations will continue to be delayed. For instance, the meeting in Brussels between EU and ACP chief negotiators scheduled for June 17, 2009 was postponed until the end of October 2009. The depth of divergences on many issues still under negotiation indicates that even the new deadlines are unlikely to be met.

What alternatives are there?

It is clear that the initialled EPAs and those currently being negotiated will not, in their current form, contribute to the development of ACP countries, contrary to the hopes placed in this new partnership by all its participants. Far from reorganizing economic and trade relations to spur development, these new agreements could lock the ACP into patterns of inequality and marginalization, further tilting the multilateral trading system against developing nations.

It is, therefore, urgent to conceive of a new approach to EU-ACP trade in order to implement a fair and mutually beneficial agreement. If its rules are fair, international trade and investment can be a source of shared prosperity and development. If not, it can be a source of increased poverty and exclusion and many ACP countries will find themselves locked in the vicious cycle of exporting little value-added products and importing onerous goods. In fact, the bulk of investments into ACP countries go to extractive industries, resulting in the creation of only few employment opportunities.

A truly fair trade agreement can help the ACP modify the terms of their integration into the global economy and stimulate a fairer distribution of local value addition in favor of workers and producers, as well as local and foreign investors. Such agreement would spur long-term sustainable changes, helping countries to diversity their economies away from commodity dependence.

A fair agreement of this type is not only still possible but is also absolutely necessary. All it
would take to achieve that noble objective is political will and sheer acknowledgement that time has come to change the direction of EPAs. Other than this, the only obligation for a fair EPA is its conformity with the rules of the WTO. In this respect, two options are possible for trade in goods:

• To negotiate a free trade agreement which would include only the fundamental elements of WTO compatibility;

• To adapt European preferential regimes in order to grant ACP exporters full access to the European markets, in conformity with WTO rules.

The first alternative would enable the negotiation of much more favorable texts than those being currently submitted to the ACP. As a matter of fact, some of the most worrying provisions, such as the standstill clause and the most favored nation (MFN) clause would be eliminated and safeguards could be improved.

The second option would allow ACP countries to have access to European markets while maintaining their autonomy over their trade policies. It would also allow ACP countries to proceed with regional integration at their own pace. While this option would certainly entail an erosion of trade preferences for ACP exporters, such losses would be minimal if compared to the costs of a free trade agreement with the European Union. Besides, such preferences could provide the basis for a fair deal on several additional areas, notably on trade in services, investment, transfer of technology and innovation, and aid for trade. This option can be implemented relatively simply if the EU adapted its existing preferential regimes to reflect the interests of ACP countries:

• Everything But Arms (EBA): Grants the 41 Least Developed Countries (LDCs) a duty- and quota-free access to the EU’s market, for all goods except armaments. Rice and sugar are subject to a progressive liberalization schedule.

• GSP-plus: Encourages beneficiary countries to commit to sustainable development and good governance objectives while offering them duty and quota free access to the EU's market for 88 percent of all products. All LDCs and economically vulnerable countries can benefit from this scheme. The weakness of this option is that it does not provide preferences for banana, sugar, rum, and beef—all important export products for many ACP states.

• GSP: Offers all developing countries free access to the European Union for 66 percent of all products

Economic models have consistently demonstrated that the GSP-plus scheme, even without any reform, offers an economically advantageous exporting scheme for most ACP countries in comparison with the proposed EPAs. Even if its coverage and conditions are more restrictive than those of an EPA, the GSP-plus scheme would avoid all negative implications of a reciprocal free trade agreement. And all ACP states already comply with most of the scheme's requirements concerning governance, democracy, and child labor.

The European Union, in its endeavors for a fair agreement could strengthen the GSP-plus scheme to expand the coverage, to make it equivalent to the coverage of the Cotonou Agreement. Europe could, as a matter of fact, merge the EBA and the GSP-plus schemes to cover all economically vulnerable countries (including the LDCs). To make it more predictable and grant certainty to investors, the European Union could eliminate discretionary aspects of these schemes and commit to make them permanent. This would simply entail an ordinary administrative procedure with a ministerial decision.
Conclusion

The current context of financial, economic and humanitarian crises which favor protectionism and a contraction of investments do not favor the conclusion of EPAs. Worse still, pressure to conclude the EPAs are jeopardizing the EU-ACP historic ties. Given this, ACP countries could consider deepening ties with other development partners, replacing relations with Europe with other countries who might better respond to the priorities and interest of ACP governments. ACP countries must enhance their solidarity and withstand pressure to obtain a better EPA, particularly as an exclusive and restrictive deal with Europe could hinder the fostering of relations with emerging nations as development partners for the ACP.

The change of negotiating personnel looming on the horizon could offer a window of opportunity to change the direction of the EPA process and to facilitate the conclusion of a full, global, developmental and fair EPA. For the European Union, the current standstill in negotiations and resistance by ACP countries to sign the proposed EPAs should provide an incentive to rethink these agreements afresh and avoid locking in an agreement that, although based on good intentions, is ill-conceived. It is therefore time for the European Union to cease its display of power politics and to embrace an adult to adult partnership with ACP negotiators. That was the spirit of the Lisbon summit which called for a productive and mutually beneficial EU-ACP partnership. This change would not only respond to the hopes of millions of people living in poverty in ACP countries, but it would prove beneficial for the European Union, too.
Economic Partnership Agreements: The Symbol Versus the Reality

Christopher Stevens

The analysis of the Economic Partnership Agreements (EPAs) has been fixated on their symbolism but, now that their details can be analyzed, it is the reality that counts. The symbolism and the reality, however, are very different. Only time will tell how the EPAs are implemented, so the argument is necessarily partly speculative. But in content they are more prosaic than revolutionary and it is plausible to argue that implementation in many (though not necessarily all) cases will be equally drama-free. Yet the debate has been portrayed in ideological terms from the outset, with EPAs cast (by supporters and opponents alike) as pushing the boundaries of liberalization.

Though the discourse has tended to focus on the symbolic EPAs, in reality these agreements have always primarily been about retaining preferential market access for the Group of African, Caribbean, and Pacific (ACP) exports to Europe in a form that, at a minimum, was 'least cost' for the European Union at the World Trade Organization (WTO) and, at best, also advanced other EU interests (primarily in relation to non-ACP partners). Anything more than this would have been unnegotiable, acceptable only to ACP states persuaded of the developmental desirability of broad-based and deep liberalization or to those with so much to lose from an end to preferences that they felt obliged to accept deeply unpalatable provisions. The evidence suggests that few fall into either category.

Lessons from the pattern of EPA acceptance

An important piece of evidence is the pattern of ACP acceptance or rejection of EPAs. Of the 76 ACP states that took part in the EPA negotiations, only 36 initialled an agreement (most of which have either gone on to sign an amended version or are expected to do so). This low proportion has attracted much attention, especially since the overall average has been boosted by the 100 percent rates achieved in the Caribbean Forum of African, Caribbean, and Pacific States (CARIFORUM) and the East African Community (EAC); by contrast in three regions only one-eighth of the negotiating states have accepted (see Table 1). The low acceptance rate is certainly problematic in several respects—most notably in what it means for future regional trade integration since it introduced major divisions in all except two ACP sub-regions. Some states have committed to removing tariffs on imports from the European Union and each other while others have not. But the (legitimate) concern over the consequences of a low acceptance rate has diverted attention from another key feature. As explained below, the pattern of acceptances/rejections is very close to what was predictable from countries' objective self-interest, and the differences are almost all of cases where countries expected not to accept an EPA have done so.

The negotiating ACP countries fell into one of three categories in terms of their vulnerability to the threat used by the European Union to force the pace of the negotiations. It threatened, and then put into effect, the termination of the preferential

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1 Christopher Stevens is a senior research associate at the Overseas Development Institute (ODI).
2 The term EPA is used to cover both full and interim agreements, except where the context makes it important to distinguish between them.
3 Since the process of signing the EPAs is still underway at the time of writing—and uncertain in a few cases—the terms 'accept' and 'reject' are used to cover either the initialing of the EPAs (which for most states took place at the end of 2007) or the failure to do so, or signature where this has happened.
4 Only 75 of the 77 countries that receive Cotonou trade preferences negotiated an EPA. Somalia and East Timor did not. In addition, South Africa (which does not receive Cotonou preferences) was a negotiating party—making 76 negotiating countries in total.
<table>
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<th>Table 1. Overview of EPA signatory states</th>
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<td><strong>Members</strong></td>
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Notes:
(a) Countries in italics are classified as LDCs.
(b) Cape Verde has been classified as non-LDC since January 2008 but will be able to export to the EU under the EBA initiative for a transitional period of three years.
Table 1. Overview of EPA signatory states  

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<th>Members</th>
<th>Initialling/ Signatory states</th>
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<th>Proportion of signatory countries</th>
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<td>PACP IEPA</td>
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Notes: (a) Countries in italics are classified as LDCs.

Cotonou tariff regime under which Europe has imported goods from the ACP states for the past three decades (the regime lapsed on December 31, 2007). Countries that had not, by this time, been granted an EPA-based tariff regime found that their exports have since been taxed on the basis of the next-most-favorable tariff regime for which they are eligible. For least developed countries (LDCs) this next-most-favorable regime is the non-transaction periods for rice, sugar, and bananas, the last of which expires in 2009). But for the non-LDCs the next-most-favorable regime is either the standard Generalized System of Preferences (GSP) or, in the case of products which it does not cover, the Most Favored Nation (MFN) regime. Tariffs under these regimes can be high.

The basis for allocating countries to one of the three categories is the extent to which it is vulnerable to this threat (and why). Category 1 comprises ‘vulnerable’ countries that stood to lose in a very tangible way if the pre-existing regime
for their exports were not continued and they were downgraded to the GSP. Kenya, for example, faced the imposition of significant tariffs on its exports of horticulture and processed tropical fruit. Another illustration of the scale of the problem: Had beef preferences ended for Botswana, the European Union’s import taxes on its beef exports would have been equivalent to 80 percent of their value, obviously making the trade commercially unviable.5

The other countries did not face the danger of an immediate, significant increase of barriers to their exports if Cotonou came to an end and was not replaced by an equivalent new regime. Hence they could face this prospect with equanimity, but for differing reasons.

Category 2, the largest, included countries with ‘a good alternative.’ It consisted primarily of LDCs which, since 2001, have been eligible for the duty-and quota-free (DFQF) market access extended by the European Union under its Everything But Arms (EBA) initiative to all LDCs (ACP and non-ACP alike). Therefore, the end of Cotonou for an LDC meant only the need to fill in different forms in order to export to the European Union under EBA, to forego the right to meet the European Union’s rules of origin requirements by combining its own production with others, and to forego whatever ‘security’ is afforded by a negotiated agreement as opposed to a unilateral EU decision.6 In addition to LDCs the category also includes South Africa. Under its bilateral Trade, Development, and Cooperation Agreement (TDCA) with the European Union it has access to the EU market that is preferential, although not as good as that available to other ACP states. While a failure to agree an EPA would not improve the status quo ante, neither would it cause deterioration.

The reason the third group, those with “non-sensitive exports,” did not fear the end of Cotonou is that its main exports are all products on which the EU’s standard tariffs are either zero or very low.7 This applies to the oil exporters Nigeria, Gabon, and Congo and also to most of the non-signatory Pacific states which export mainly fish to the European Union (where the ‘real’ negotiations may be on Fisheries Partnership Agreements).

Figure 1 shows that 54 percent of the ACP states were in Category 2, with 31 percent in Category 1 and the rest in Category 3. The figure also illustrates that countries broadly acted as would be

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6 The rules of origin specify how much production or which processes must be undertaken within an ACP state for the resultant goods to be eligible for preferences. Under Cotonou, production undertaken in any ACP state counted toward meeting these thresholds, and the same applies to countries signing an EPA. Such combination (known as cumulation in the jargon) is also possible between LDCs, but only if certain conditions are met—none of which apply to the LDCs that have not initialled/signed an EPA.

7 Selecting the membership of group 3 is more subjective than for the other two groups since few countries have zero vulnerable exports, so a judgement is required on the thresholds to be applied.
predicted proportion of countries in each category that have acted as predicted and those that have not.

For the countries in Category 1 with vulnerable exports the ‘prediction’ is that they would accept an EPA and almost all have done so. For countries with a good alternative or with non-sensitive exports the prediction is that they would reject an EPA, and in both cases a majority have done so, although a significant minority have accepted.

The countries that have acted non-predictably are mostly LDCs plus a number of CARIFORUM states that export very few (if any) sensitive goods to the European Union. In many cases they belong to regional groups that also include one or more states with substantial vulnerable exports. Given that the latter were under strong pressure to accept an EPA, a rejection by the former would have fractured the regional grouping. A desire to retain a pre-existing regional grouping may, therefore, explain the decision of Burundi, Rwanda, Tanzania, and Uganda to join Kenya in initialising the East African Community (EAC) EPA, and of Antigua, Bahamas, and Haiti to accept the CARIFORUM EPA. But this does not explain the decision of, for example, Lesotho, Madagascar, Mozambique, or Zambia. There appear to be country-specific explanations in each case. Lesotho and Madagascar are understood to have been influenced by the improved EPA rules of origin (RoO) for clothing, Zambia is believed to have sought the short-term increase in the volume of sugar it could export to the European Union within an EPA, and Mozambique’s general trade stance is liberal (in order partly to reduce dependence on high-priced imports from protected South African producers). The important general point is that the expected “gains” from acceptance are generally quite small yet none of these countries perceived the “cost” of accepting the EPA to exceed them.

**How constraining are EPAs?**

This raises the question of whether the EPAs are indeed anodyne or whether the countries have miscalculated the cost of signing. As in all trade agreements, not only is ‘the devil in the details’ but also in the enforcement. EPAs will only limit signatories’ policy space if, one, the text requires actions that the country would not otherwise choose and, two, these requirements are enforced.

The picture on tariff removal is clear: many countries, but not all, have managed to exclude from any liberalization a large proportion of their most sensitive goods and to defer for a decade or more a significant reduction of high tariffs. Less clear are the implications of the many other ‘rules’ created by the EPAs that establish an apparent commitment to alter other policies besides those on tariffs, some of which may not even be directly ‘trade related.’ They are not always as transparent as the commitments to remove tariffs. Signatories may not even be sure whether an existing or planned policy falls foul of a general commitment in the EPA text. While the details vary between the EPAs, common problematic provisions include, for example, those on regional preferences and on the “MFN clause.” The regional preference clauses require each ACP signatory to extend to all the others any improved treatment that it grants to the European Union. This requirement can be problematic in regions (such as the Caribbean Community [CARICOM] and Southern Africa Customs Union [SACU]) that specifically allow lesser developed members to apply trade defense measures on imports from more developed countries.

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Take the celebrated example of the MFN clause that requires an ACP state to extend to the European Union any more favorable treatment it subsequently offers to a major trading country with which it agrees a free trade agreement. It is hard not to agree that this represents an infringement to ACP sovereignty, but will it ever be applied?

The provisions on dispute avoidance and settlement vary between the EPAs but generally establish three levels of intervention: consultation, mediation, and arbitration. Action follows from the first two only by mutual consent. If they fail to produce a mutually acceptable outcome, the complaining party may refer the matter to dispute settlement, with a panel being selected jointly by the European Union and the ACP. If the panel ruling goes against it, a complained-against party must take steps to remove the infraction of EPA rules in ways that do not create a new infraction. Not all the EPAs specify what then happens if there is no action, or inadequate action, but the final resort is that the complaining party can suspend its trade concessions under the EPA.

The ultimate "risk" that any ACP government runs in making a narrow interpretation of opaque provisions is that it may be required to reverse this position at a later date on pain of losing some or all trade preferences. In other words, the stark choice facing a non-implementing ACP state if it is taken to dispute settlement and loses is similar to the one it faced in 2007—with the penalties being the same or smaller.

Take the celebrated example of the MFN clause that requires an ACP state to extend to the European Union any more favorable treatment it subsequently offers to a major trading country with which it agrees a free trade agreement. It is hard not to agree that this represents an infringement to ACP sovereignty, but will it ever be applied? Since the initial onus will be on the ACP states autonomously to extend to the European Union any more favorable treatment it will be up to them to decide whether or not the provision is better, whether its partner is a major trading country, and whether it is in a 'free trade agreement.' All are subject to dispute. What counts as more favorable treatment in an agreement that may have some parts that are less good and some that are better? Is a trade agreement notified to the WTO under Part IV (which deals with special and differential treatment for developing countries) of a free trade agreement, or must it have been notified under Article 24? Even the apparently precise definition of major trading country is open to some fudging. The EAC EPA includes the definition that it is any developed country or any country accounting for more than 1 percent of world merchandise exports in the year before entry into force of the new agreement. Yet no source is specified for the measurement of the 1 percent (and there are several candidates, usually giving different figures)—and full data for the most extensive (the UN Comtrade database) normally emerge with a lag of over three years. It is clear that the MFN clause will cover an agreement with an Organisation for Economic Co-operation and Development (OECD) state that is uniformly more favorable than the EPA but its jurisdiction in all other cases is open to dispute.
Reality will probably be messy

ACP states will implement unpalatable policies that they would otherwise avoid only if: the EPA text requires them to do so and either they choose autonomously to apply the requirement or the European Union takes them successfully to dispute settlement and the perceived costs of European sanctions exceed those of implementation. In this context the term “implementation” is not limited to passing a law or a regulation; it extends to the effective enforcement of these measures.

It is likely that some ACP states will be persuaded (perhaps through diplomatic or commercial pressure) to introduce new laws and regulations that they might have been able to defer or avoid. This expectation is supported by the huge disparity between the EPAs suggesting that the less well organized ACP states have accepted texts largely compiled in the European Union while the better organized ones have obtained a much less onerous deal.9 Whether or not the less well organized states are actually in a position effectively to apply any such changes on the ground is more questionable. Of those countries that interpret the EPA text in a narrow way, some may be taken successfully to dispute settlement but others will not.

Actual implementation is therefore likely to be messy. Undesired policies will be applied in some cases but not in others. The underlying trend, though, will probably be for lower rates of compliance with undesired policies rather than higher rates. This is because "preference erosion" will reduce the costs of failing to abide by an unfavorable dispute settlement ruling. In a decade's time, when the highest tariffs are due to come down, many of the countries that in 2007 were in Category 1, with significant vulnerable exports, will no longer be there. The commercial value of the EPA preferences will have been overtaken by events. If the EPA shoe starts to hurt they may simply take it off.

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9 op.cit. S. Bilal and C. Stevens (2009)
MODELING THE ECONOMIC PARTNERSHIP AGREEMENTS: CHALLENGES AND LESSONS

David Laborde Debucquet

Trade negotiations, whether bilateral, regional, or multilateral, rely more and more on quantitative analysis and modeling tools. The Economic Partnership Agreements (EPAs) have not escaped this trend and dozens of studies have been conducted over the last five years. Why do we need models? What types of models have been used? Have they taught us useful lessons? How well can real life negotiations be reflected in models? Conversely, under what conditions can a model be used to shape negotiations with pro-development outcomes?

This article examines the use of models in the EPA negotiations and concludes that, even if their results should be considered with caution, they help to rationalize the negotiations and may reduce the asymmetry of power between the European Community (EC) and its Group of African, Caribbean, and Pacific (ACP) partners. Beyond the design of the trade liberalization process with the EPA agreements, models should play an important role during the implementation process by helping to sketch the best adjustment policies.

Why do we need models?

Oftentimes, economic rationality plays a secondary role in the genesis of the numerous trade agreements negotiated since antiquity. The EU-ACP relations do not escape this rule. Indeed, the EPA process is more the result of political commitments rooted in deep historical relations than economic rationale. Considering this institutional background, we may wonder why quantitative economic models are needed in a highly political discussion.

For optimistic observers, applied economic models are used to assess ex-ante the impact of policy scenarios to help policymakers and stakeholders make the most suitable choices. The results of the models should help them make the right decision (signing or not signing a trade agreement), improve the design of a trade agreement (by identifying whether products are sensitive and defining the right speed of liberalization), and consider policies to enhance the benefits of such agreements or compensatory policies (adjustment package) for the agents expected to register losses.

Such an approach is advocated by the European Commission, which requires impact assessments to be conducted for any trade agreement under negotiation. However, for cynical observers, models will be used ex-post to justify decisions that have already been taken, in many cases, for non-economic reasons. In which cases, models help policymakers sell their choices to their constituencies using the scientific methodology of complex mathematical models.

Both the economists that supply such models and the different stakeholders (policymakers, civil society) that will be faced with their results have to acknowledge this ambivalent situation. All the results and interpretations must be considered carefully. Models and their results are tools that will be used by different players, each of them having their own political agenda.

As usual, the truth lies somewhere between the naïve and the optimistic view. Depending on the period, models have been used more to sell political decisions or to design the features of the agreements.

1 David Laborde Debucquet is a research fellow and co-leader of the “Globalization and Markets” research project inside the Markets, Trade, and Institutions Division at International Food Policy Research Institute (IFPRI).
It is important to note that, during this period, almost all studies focused on the trade dimension of EPAs. Step by step, the full free trade agreement (FTA) hypothesis has been replaced by more accurate scenarios introducing asymmetric liberalization in terms of speed of liberalization and product coverage.

2 Simulation models refer to analytical tools that compare one state of the “world” to another state of the world, e.g. a world without EPA and a world with EPA.

2 EPAs allow ACP countries to exclude some products from the liberalization scheme and to implement tariff reductions over an extended period of time.

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**Which models have been used?**

Broadly speaking, two families of simulation models have been used to assess the EPAs. On the one hand, there are computable general equilibrium models (CGEMs) and on the other hand, partial equilibrium models (PEMs). Both present specific limitations, pros, and cons.

CGEMs provide the most rigorous framework to assess the macroeconomic effects of trade policies (efficiency and redistribution effects) but the level of detail regarding sectors and countries is somewhat limited. On the contrary, PEMs can be conducted at the product level (more than 5,000 products), analyzing specific cases with precision. However, the fields of investigation are more limited (essentially to trade and custom revenue effects).

Indeed CGEMs have been used to assess the economy-wide impact of the EPA agreements, their effects on gross domestic product (GDP), real income, “welfare,” current accounts, unemployment, dynamics of the different sectors, net fiscal impact for government, and so on. Initial simulations simply compared full Free Trade Agreements between the European Union and the ACP regions to the Cotonou preferences. Before December 2007, alternative scenarios to EPAs were also investigated. It is important to note that, during this period, almost all studies focused on the trade dimension of EPAs. Step by step, the full free trade agreement (FTA) hypothesis has been replaced by more accurate scenarios introducing asymmetric liberalization in terms of speed of liberalization and product coverage.

More recently CGEMs have also been used to focus on other aspects of EPAs, such as the Aid for Trade package and/or development

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**EPA models: A few references**

Among cross-country analysis in partial equilibrium, readers can refer to:


In a multi-country CGE framework, the readers can refer to:


Models have also demonstrated that the EPAs will, in addition, have three implications for ACP countries. First, the fall in tariff revenue will reduce governments’ income which in turn means that public expenditures or investments will have to be cut.

What have we learned from the models?

Both PEMs and CGEMs are based on neo-classical international economics with strong micro-foundations. In this framework, it is assumed that welfare increases as countries move toward freer trade. However, the design of the trade liberalization component of the EPA is not a canonical example of trade liberalization. Indeed, numerous results have quickly emphasized the adverse effects of the EPA for the ACP economies. EPAs actually include relatively low gains in terms of market access for ACP countries (compared to the previous Cotonou framework or the Generalized System of Preferences [GSP] alternatives) and lead to a steep liberalization with only one partner (the European Union), which may cause important trade diversion. In this context, ACP countries suffer from terms of trade losses. Liberalization with the European Union benefits EU exporters but reduces the market shares of third countries. Such an agreement increases the level of distortions across trading partners and has an efficiency cost. Choices made by importers no longer follow the true prices of different producers but are twisted by policy choices (who gets preferences and who does not). Moreover, the request for sensitive products, in particular in agriculture, also increases the level of distortions across sectors, since some products will remain protected and others will be liberalized. By maintaining some tariffs (in many cases, the highest initially) and eliminating protection for other sectors, countries support some producers but not others. This creates an unfair situation that will bias the allocation of resources in the economy. Both these effects reduce, and may even offset, the gains coming from trade liberalization.

Models have also demonstrated that the EPAs will, in addition, have three implications for ACP countries. First, the fall in tariff revenue will reduce governments’ income which in turn means that public expenditures or investments will have to be cut.

4 Depending on the ACP regions, a different mix of modeling exercises and participative/interactive approaches with stakeholders has been chosen to define the regional/country sensitive product lists.
to achieve sustainable development and attract investments—are already too limited. For instance, the trade liberalization with the European Union, its main partner, may lead to a fall of tariff revenue of 45 percent for Cote d’Ivoire, a revenue that represents about 28 percent of government income (Fontagne, Laborde, and Mitaritonna 2008). An important alternative would be to increase the resources collected\(^6\) by reforming the tax system. However, this is quite difficult to implement as in many countries the formal sector is very limited\(^7\) and increasing the tax pressure will shift more workers to the informal side. Indeed, workers and firms will have more incentives to move, or to return, to the untaxed informal sector if the tax rate applied on formal activities increase.

Second, for the country as a whole, the asymmetric liberalization (more concessions than gains) will lead to a deterioration of the trade balance which could cause balance of payment problems. Since many ACP countries have pegged their exchange rate (e.g., zone Franc), they will not be able to use currency tools to solve their difficulties, which means they could enter a period of macroeconomic instability. The shadow of a devaluation could follow after the EPA implementation, however this decision is always politically difficult to adopt. The only other way to restore the external account balance is to create a domestic recession: an outcome which would contradict the objectives promoted by the EPAs (e.g., economic growth). For instance, Mali will have to find a way to solve an increase in its trade deficit of up to 2.7 percent of its GDP (Fontagne, Laborde, and Mitaritonna 2008).

Finally, by granting concessions to EU exporters, third parties will be excluded from the domestic markets of ACP countries, including other regional producers. If EU imports replace regional imports, the mechanical effects of the EPAs will go in the opposite direction of the official goal of boosting the regional integration of ACP countries. While the increase of EU exports will belong to the range [15 to 17 percent], other exporters will face a decrease of their exports by [–2.6 to 3.6 percent] (Bouet, Laborde, and Mevel 2007; Fontagne, Laborde, and Mitaritonna 2008).

It is important to keep in mind that a few assumptions in a CGEM model will drive most of the story. A key feature is for instance the current account closure that defines the external constraint on a country, i.e., how a country can finance its imports. Two main solutions can be assumed. The first one is optimistic and can be seen as a “free lunch” case: the country borrows external resources to pay for its new imports. It is an easy solution in the short run but costly in the future since the country will have to reimburse its debts. Otherwise, it will have to depreciate its currency in real terms—assuming it can—to boost its exports and to limit its imports. The last strategy is instantly costly since it will reduce the purchasing power of the country on the world market. Another important modeling assumption defines the government constraint: how can it restore its fiscal balance? Should it cut expenditure or revenues? Such assumptions will lead to more or less positive outcomes of such an agreement and there is no “universal” truth. When modeling trade liberalization, it makes sense to have different assumptions for different countries: the European Union and a small Pacific island do not have the same capacity to handle international and domestic constraints.

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\(^6\) It is important to keep in mind that tariff revenue reduction leads to a diminution of the amount of tax paid by the consumers. With perfect competition, tax revenue losses by the government is totally saved by the consumers, the nation does not suffer a revenue loss. However, many ACP countries face imperfect price transmission and the tariff revenue decrease may be captured by a “middleman” that may be a foreign agent.

\(^7\) Even in nonagricultural activities, about 75 percent of employment in Africa is informal ("Women and Men in the Informal Economy: A Statistical Picture," ILO, Geneva 2002)
Neo-classical models have demonstrated that trade liberalization will not be a terrible shock for ACP countries. For most countries/studies the effects are in a range \([-1 \text{ percent}, +4 \text{ percent}]\) of GDP by the end of the implementation process. It means that after the full implementation of the agreement (15 to 20 years) ACP countries will have an annual GDP slightly above/below their expected level in a world without EPA, where instead they rely on the EU’s GSP/GSP+ trade preferences.

Effects could be more moderate for three main reasons:

- First, the tariff revenue losses are limited. The trade agreement with the European Union will just remove tariffs on EU imports. Other imports are still dutiable and even EU imports are still taxed through domestic excise and value-added tax (VAT) or sales tax. Since the 1990s many African countries have started a fiscal transition, with import duties representing a declining share of government income. Moreover, a close look at the data shows that for many countries the duty collection rate is relatively low (below 60 percent) meaning that the government received much less than the nominal tariff will lead us to think. Thanks to PEM and CGEM, it is possible to quantify the losses and identify exactly which countries are vulnerable, and how their governments should be supported.

- Second, many EU products are poorly substitutable with local production (price range, quality, etc.). As a result, the competitive effects and the negative effects on regional integration from increased imports of European goods will be limited. The most affected parties will be other developed and emerging country exporters (the United States, Brazil, and in particular China that has taken large market shares in Africa in the recent years).

- Finally, if the inclusion of sensitive products is costly in terms of the overall economic welfare, it may significantly reduce tariff revenue losses and/or the competitive pressure on domestic producers, in particular for local farmers whose basic products are weakly differentiated from the EU agricultural exports.

At the same time, modeling exercises have also shed light on the gains and losses of different alternatives for ACP countries. With the approaching deadline of December 2007, the messages delivered by the models varied across countries: some countries were expected to gain from signing an interim-agreement or an EPA, while others were expected to lose but stood to lose even more if their alternative was to switch from Cotonou preferences to the GSP regime (such as developing countries exporting bananas and sugar). Finally, the outcomes for some other countries were neutral or positive if they did not sign (e.g., Least Developed Countries that benefit from the Everything But Arms initiative, developing countries that are mainly oil exporters). Interestingly, multi-country models have also shown the strategic consequences of individual choices: if it is economically rational for no country to join an interim agreement with the European Union in a given region, it is also rational for all countries to join if at least one country enters an agreement. Indeed, trade agreement and trade preferences are a matter of competitiveness: you give “preferences” to one country versus the others. When you are among the few to benefit from preferences, your gains are large. On the contrary, if you are one of the few countries excluded from the process you will lose your market shares to
preferred exporters. So, the more countries benefit from preferences, the less exporters gain from receiving them, but, equally, the higher the cost of being excluded.

Having noted this, it is quite difficult to know if models and their results have played a role in the final decisions by ACP governments of whether to join interim agreements. In any case, what has been observed in terms of choice is consistent with the teachings of different models. Here, it is also important to understand that the definition of the situation of reference, the “baseline,” is crucial. If one assesses the effects of the EPA in comparison with the Cotonou preferences, gains shrink. If you assess them in relation to the GSP, gains will be magnified. As a matter of fact, African negotiators have emphasized the existing Cotonou situation as a reference point, while the European Union has argued that, after 2007, Cotonou was no longer an option and that only the GSP was a realistic reference point.

Now, if the models have clearly shown the limited risks of the trade dimension of EPAs, they also provide a relevant framework to confirm that such agreements are beneficial. They help to identify the sectors that may gain from the agreement and those which should be targeted by Aid for Trade measures to ensure that producers can grasp potential benefits. At the same time, models help identify the main challenges for the government and define a time path for budget support and fiscal reform. They also help to sketch reasonable investment policies that can be scaled according to the absorption capacity of individual ACP countries.

**Models and negotiations: complex interactions**

As already said, quantitative tools play an increasingly important role in trade negotiations and the EPA is an excellent illustration of such an evolution. Fundamentally, bringing models to the negotiating table helps to root the discussions in a rational framework and leads negotiators to adopt a common language. The results of a model should always be interpreted carefully, especially having regard to the limited quality of data available for most ACP countries, and the underlying assumptions that drive the models. Understanding and analyzing the mechanisms of a model leads negotiators to focus on the effects that could have been neglected otherwise. Interestingly, it also requires each delegation to be clear on its objectives. Policymakers have to take full responsibility for their decisions and must refrain from having models decide for them. For instance, when models are used to study the issue of sensitive products, they generate the gains for each product on the basis of which the government can consider it as sensitive (e.g., tariff revenue saved), and the gains for the producer and cost for the consumer (i.e., changes in domestic prices). However, models do not propose a solution; it is the role of the policymaker to weigh up the different components and make a decision. In several ACP regions, defining priorities at the country and regional level has been an important outcome of the EPA process and has forced local policymakers to identify and clearly express their choices.

Using a strong analytical framework based on models may help to reduce the gap between negotiators, but it is still a challenge for negotiators to agree on a common tool to be used. This has been achieved in the long-lasting EPA negotiations in West Africa where a regional CGEM has been developed to assess the agreement. A steering committee comprising negotiators from both sides took part in its development. The data, assumptions, and scenarios studied were commonly agreed upon. Such an analytical tool may be difficult to design and has high transaction costs.
Improving capacity building at the national and regional level within ACP countries remains the main prerequisite for achieving an efficient, quick, and fair outcome from the EPA negotiations.

costs, but it facilitates transparency and mutual understanding during the negotiation, especially when delicate issues are at stake like assessing the fiscal impact of the agreement or the magnitude of accompanying measures that should be implemented.

Of course, bringing an applied research tool to a negotiating arena is always a delicate exercise. Each party will always welcome conclusions and results that support their own point of view and will have incentives to criticize any assumption or methodological choice causing the results to move into the opposite direction. However, applied economic modeling is not “Ars gratia artis.” It is designed to provide rational policy recommendations to policymakers. Economic models may appear as alien constructs to negotiators. To be relevant, models need to be as close as possible to trade negotiators and interact closely with them as only close interaction can help to demonstrate their value-added. At the same time, it is important that modelers defend their scientific independency and do not forfeit their credibility in the political turmoil of negotiations.

Models will feed the negotiations with results and will in turn be fed by the negotiations. This last point is very important since many “EPA assessments” have focused on theoretical scenarios disconnected from what occurs in real life negotiations. Such analyses have blurred the public debate. This was particularly the case when models announced they would assess the effects of an EPA when they were actually assessing a full FTA scenario.

Using models is the best way to bring a scientific aspect to the negotiation and to reduce the role of other negotiation tools (rhetoric, carrot and stick strategies). This is a very desirable feature in a context of asymmetric power and capacity between negotiators, as is the case between the EU’s economic super power and the more vulnerable ACP economies. At the same time, it is also crucial that ACP countries have the human capital in their negotiating team to handle such tools. Without the relevant training and experience, ACP negotiators will suffer from a significant disadvantage and may adopt a defensive position against modeling tools when such a tool may in reality help them demonstrate the rationality of their requests, allowing them to become proactive in the negotiations. Even if such resources have started emerging in ACP countries, they are still insufficient. Skilled trade negotiators and trade economists are still a rare resource and at the same time many ACP countries are involved in many parallel negotiations at the regional level (FTA implementation, definition of a regional Common External Tariff [CET]), bilateral level (with the European Union), and multilateral level (Doha Round etc.). Improving capacity building at the national and regional level within ACP countries remains the main prerequisite for achieving an efficient, quick, and fair outcome from the EPA negotiations.
The Treatment of Trade in Services in Economic Partnership Agreements (EPA): Implications for Prospective EPA Partners

Pierre Sauvé and Denis Audet

This paper highlights some of the key implications and challenges that the members of the African, Caribbean, and Pacific Group of States (ACP) are likely to confront in agreeing to enter into comprehensive Economic Partnership Agreements (EPAs) with the European Union (EU) featuring detailed disciplines on trade and investment in services. The main provisions and architecture of the first comprehensive EPA—that signed between the European Communities (EC) and the Caribbean Forum of African, Caribbean, and Pacific States (CARIFORUM) in December 2007—is used as a basis for assessing the EPAs still under negotiation with other regional groupings of ACP countries. The analysis suggests that given the marked economic differences among ACP regions, the services and investment chapters of prospective EPAs with other ACP regions should not be as extensive as those found in the EC-CARIFORUM Agreement and that any agreed provisions in these areas should relax further the reciprocal nature of the EPA's rules and market access commitments. Addressing such areas of behind the border rule-making in a flexible manner should enhance domestic and regional investment climates and help promote progressively greater competition through new entry in sectors of crucial importance to economy-wide performance.

Services and investment provisions in the CARIFORUM-EU EPA

The signature of the EC-CARIFORUM EPA on December 16, 2007 marked the realization of the first comprehensive EPA and set an important precedent in the treatment of services trade in preferential trade agreements. Not surprisingly, its structure and core provisions are replicated in the draft EPAs under negotiation with other ACP regional groupings. The bulk of the EPA's services and investment provisions are spelled out in Title II of Part II of the Agreement entitled “Investment, Trade in Services, and E-commerce.” Title II features seven chapters, whereas the schedule of each party’s commitments is detailed in specific annexes. Further provisions governing services trade can be found in the Protocol on Cultural Cooperation, in chapters governing competition policy, transparency in government procurement, and development cooperation matters. Such a scattered treatment reflects the complex nature of services trade and the wide spectrum of regulatory measures governing such trade.

The EPA concluded between the European Union and the CARIFORUM countries took into account the inherent differences between the two negotiating partners by providing for various means of asymmetrical commitments and obligations. In services trade, asymmetry is reflected in differing coverage of each partner's schedule of commitments. According to the Caribbean Regional Negotiating Machinery (CRNM), the EC has committed more than 90 percent of the sectors listed in the World Trade Organization (WTO) services classification list (i.e., GNS/120), whereas the more developed CARIFORUM countries have agreed to undertake binding (and status quo) commitments in regard to 75 percent of sectors and lesser developed countries in 65 percent of sectors. Moreover, whereas EU commitments tend to be immediate in character, in some CARIFORUM

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The German Marshall Fund of the United States

The EPA’s umbrella provisions on development cooperation affirm the central importance of trade-related technical assistance in order to complement the liberalization of services and investment and to support the CARIFORUM states’ efforts to strengthen their capacity to supply newly-opened services markets.

Member states’ commitments can be phased in over longer timeframes to address various policy sensitivities at the national or regional level.

Sector-specific regulatory frameworks are spelled out in Chapter 5 for computer services, courier services, telecommunications services, financial services, international maritime transport services, and tourism services. These regulatory frameworks either broadly codify relevant provisions found in the General Trade Agreement on Trade in Services (GATS) and form the backdrop against which new or improved (GATS+) commitments have been agreed, or they innovate by developing new disciplines and agreeing on commitments in sectors that were weakly or not addressed under the GATS (e.g., tourism, maritime transport, Mode 4 trade). While preserving the GATS’ bottom-up (or voluntary) approach of scheduling commitments, the EPA features a GATS+ “standstill clause” that compels parties to schedule commitments at the prevailing level of openness (i.e., locks in the regulatory status quo).

With regard to the treatment of services-related labor movement, Chapter 4 applies to measures concerning the entry into and temporary stay in their territories of key personnel, graduate trainees, business service sellers, contractual service suppliers, independent professionals, and short-term visitors for business purposes. According to the Caribbean Regional Negotiating Machinery (CRNM), the new access opportunities for CARIFORUM contractual service suppliers represent a significant improvement over the EC’s existing commitments and Doha Round offer in the WTO. For their part, CARIFORUM members have made only limited temporary entry commitments for contractual service suppliers and independent professionals. Despite such improvements in conditions of access, it bears noting that economic needs tests are still applied in certain EU countries albeit without numerical limitations. Moreover, partner countries still need to conclude mutual recognition agreements in certain sectors to take full advantage of the EPA. Some provisions are also not formally binding and “best endeavor” commitments will need to be materialized into concrete provisions, notably in respect of procedures governing the granting of entry visas.

Protocol III on Cultural Cooperation establishes a framework within which the parties can cooperate with a view to facilitating exchanges of cultural products, notably audiovisual services in which CARIFORUM members had strong export interests. While the provisions governing the temporary entry of artists, other cultural professionals and practitioners are not formally binding, they retain their salience and novelty by committing the parties to endeavor to facilitate the movement of workers in artistic fields. The CRNM expects that the EPAs will encourage the conclusion of co-production agreements that should make it possible for Caribbean audiovisual producers to access new sources of funding for creative projects in the region.

The EPA’s umbrella provisions on development cooperation affirm the central importance of trade-related technical assistance in order to complement the liberalization of services and investment and to support the CARIFORUM states’ efforts to strengthen their capacity to supply newly-opened services markets.

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3 Whereas in the GATS, the member states were given the option to voluntarily sign on to some texts, e.g. the Understanding on Commitments in Financial Services and the Reference Paper on Basic Telecommunications, these elements form an integral and binding part of the EPA. Similarly, the tourism regulatory framework draws its inspiration from the Doha Development Agenda proposal for a GATS Annex on tourism services that focuses attention on the prevention of anti-competitive practices, mutual recognition, promoting sustainable forms of tourism, compliance with environmental and quality standards, as well as technical assistance.

4 Economic needs tests are not defined in the GATS. They consist of various quantitative and qualitative factors whose aim is to limit the degree of new presence in a market based on various criteria linked to the capacity of markets to absorb new competitors. Such tests may affect both domestic and foreign service suppliers or apply solely to foreign suppliers.
the liberalization of services and investment and to support the CARIFORUM states’ efforts to strengthen their capacity to supply newly-opened services markets. The agreement pursues this aim through an aid for trade agenda in services that included improving the ability of CARIFORUM producers to meet EC regulations and standards, improving their export capacity, facilitating interaction and dialogue, addressing quality and standards needs, strengthening regulatory regimes and implementation capacities, as well as establishing mechanisms for promoting investment.

**The impetus for services and investment commitments in the CARIFORUM-EU EPA**

To date, only the CARIFORUM region appears to have had a sufficient comfort level to sign onto a comprehensive EPA. This reflects a complex set of factors, many of which were mutually reinforcing:

- There was widespread recognition of the role of services being both a dominant sector in the region as well as a key input into other key segments of the economy. From CARIFORUM’s perspective, the European Union represents a market of 457 million consumers that could easily absorb increased services exports from the Caribbean region.
- The process of intra-Caribbean regional integration was largely deemed as suboptimal and suffering from an “implementation deficit” by regional leaders, so that the EPA’s emphasis on regional groupings was seen as offering a desirable boost to the internal integration process, offering a tool with which to advance CARIFORUM competitiveness, and promote productive capacity and innovation in new products and production systems.
- The region’s service sector, especially knowledge-based services, was generally seen as offering the most viable avenue for economic diversification and global repositioning because of its value-added potential. With the looming combined effects of preference erosion and the decline in EC agricultural support policies for Caribbean producers of bananas and sugar, such a diversification imperative was particularly strong.
- The EPA supported the creation or strengthening of regional regulatory regimes in a number of key areas of economic governance, such as competition policy, government procurement, finance, or telecommunications.
- While the region had witnessed an increase in investments from Europe, European FDI in most non-tourism sectors had stagnated in preceding years. Hence, the investment component in the EPA was seen as offering a framework of rules to facilitate the easier flow of investment in both directions, to reduce discriminatory treatment of foreign investors and to give increased predictability and transparency to the investment regime.
- CARIFORUM officials also expect that such an enhanced investment regime would offer companies from the region more opportunities for the transfer of technology, lead to the creation of more (and better) jobs and encourage the production of quality products and services from the region.
- The region as a whole brought “signalling” into the EPA’s properties, viewing it as a powerful means to signal to foreign investors and development partners the region’s commitment to continued economic reforms.
- The earlier trade negotiation experience gained in the Free Trade Area of the Americas (FTAA) and the CARICOM-Dominican Republic
When compared with CARIFORUM, the African regions clearly possess larger economic diversification potential in agriculture and manufacturing but lag behind in services trade.

Free Trade Agreement contexts contributed to improving the quality of the region’s trade policy formulation and negotiation capacities, enhanced closer ties between governments and industry in trade policy discussions and boosted the region’s overall level of comfort in dealing with many of the policy and regulatory areas which are also dealt within a comprehensive EPA.

- Unlike other ACP regions, notably sub-Saharan Africa, CARIFORUM members were not confronted by the problem of overlapping regional initiatives with differing memberships and the attendant risk of overlapping disciplines and institutions.

The potential for services and investment commitments in other ACP regions

The potential for global repositioning into higher value-added services and the degree of readiness in negotiating a comprehensive EPA varies significantly across the six ACP regional groupings. Table 1 compares these dimensions for three such regions: CARIFORUM; Common Market of Eastern and Southern Africa (COMESA); and CEMAC (Communauté économique et monétaire de l’Afrique centrale–Central Africa).

When compared with CARIFORUM, the African regions clearly possess larger economic diversification potential in agriculture and manufacturing but lag behind in services trade. However, in both the COMESA and CEMAC sub-regions, enhancing the quality of service delivery and attracting greater levels of foreign

| Table 1. ACP potential and readiness in concluding a comprehensive EPA |
|---------------------------------|----------------|----------------|
| **Export Potential**            | CARIFORUM      | COMESA         | CEMAC          |
| Population (millions)           | 26             | 389            | 30 (90 if the DRC is included) |
| Agriculture                     | Limited and declining as EU support declines and as preferences are eroded | Large export potential, subject to addressing infrastructure bottlenecks | Large export potential, subject to addressing infrastructure bottlenecks |
| Manufacturing                   | Limited by scale considerations | Large export potential subject to addressing infrastructural bottlenecks | Weaker export potential owing to infrastructural bottlenecks: need for a complimentary focus on logistics, transport, and trade facilitation |
| Services                        | Large potential for specialization with sectoral expertise and high human capital | Strong potential in selected sectors subject to enhanced supply of human capital and strengthened negotiating, implementation, and supply-side capacities | Significant weaknesses in investment climates, regulatory and supply side capacities; landlocked countries need to pursue a trade facilitation agenda |

<table>
<thead>
<tr>
<th>Readiness to negotiate services and investment provisions</th>
<th>CARIFORUM</th>
<th>COMESA</th>
<th>CEMAC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regionally-integrated market</td>
<td>Operational but small</td>
<td>Incomplete; services regime not yet in force</td>
<td>Incomplete; chiefly limited to goods trade</td>
</tr>
<tr>
<td>Prior free trade agreement (FTA) negotiation experience</td>
<td>FTAs and bilateral FTAs from the mid-1990s onwards</td>
<td>Limited</td>
<td>None</td>
</tr>
<tr>
<td>Implications for existing integration efforts</td>
<td>Positive: complimentary to and reinforcing Caribbean Single Market initiatives; no regional overlap</td>
<td>Mixed: significant overlap with existing regional integration schemes</td>
<td>Mixed: significant overlap with existing (but weakly implemented) regional integration schemes</td>
</tr>
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investment in the sector could play a significant role in addressing the manifold infrastructural bottlenecks—in energy, transport, logistics, trade facilitation, and the like—that impede both primary and secondary sector production and exports. The decision to engage in more meaningful negotiations in services trade and investment must, accordingly, rest on broader, economy-wide, considerations than those stemming from a more narrow focus on export interests in the sector.

In terms of readiness to conclude a comprehensive EPA, the CARIFORUM was much better prepared in almost every respect than the two African regions under consideration. First, the CARIFORUM process of regional integration was significantly more advanced than the regional integration processes in Africa. This was especially true on the services front. Second, as noted above, CARIFORUM trade negotiators were able to capitalize on their earlier negotiating experience. Finally, CARIFORUM did not suffer, as did African countries, from overlapping membership of different regional economic communities. The inherent complexity and great sectoral diversity of services negotiations, the lack of progress in establishing a regionally-integrated services market, and the novelty of regional coordination efforts on behind the border issues, have all contributed to raising policy anxiety levels among African negotiators. This, in turn, has precluded the conclusion of comprehensive EPAs and resulted in further delays in—and fueled significant controversy over—the EPA negotiating process beyond goods trade.

**Implications for services and investment negotiations in African and Pacific regions**

Prospective EPA partners are confronted with a relatively narrow range of options in deciding the basis upon which to pursue their trading relation with the EC. The EC considers a comprehensive EPA as the only feasible model for structuring its cooperation with ACP partners in a WTO-compatible manner. The African and Pacific regional groups thus need to evaluate which is the best form of trading arrangement that will satisfy their development goals. Options include:

| Option 1 | A comprehensive and reciprocal EPA that, beyond trade in goods, delves into behind the border areas such as investment, services, government procurement, competition policy as well as cultural cooperation matters, together with the attendant development assistance. |
| Option 2 | Continued reliance on the EC’s unilateral (and non-permanent) preference schemes, which are confined to goods trade only, and with continued reliance on the EC’s services commitments under the WTO. |

A third potential option could be for EPA partners to aim to conclude WTO-compatible preferential trade agreements (PTAs) limited to goods trade or to goods and services trade only, but not other policy areas such as investment, government procurement, or competition policy. While such an option is certainly possible under WTO law, it does not appear politically feasible given the stated aims of EC negotiators. Nor would it appear to make much policy sense given the close and increasingly complimentary relations between investment and trade or between services trade.

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5 To date, developing countries’ interests in terms of WTO/GATS improved access for temporary labor mobility, so-called Mode 4 trade in services—the main offensive sector for this group of countries—have not been fulfilled and improved access is being pursued via other negotiating avenues such as bilateral and regional preferential trade agreements as well as non-trade bilateral guest worker programs.
Given the marked economic differences among ACP regions, it can be argued that the services and investment chapters of EPA to be concluded with other ACP regions should not be as extensive as those found in the EC-CARIFORUM Agreement.

In pondering whether to engage more comprehensively into EPA negotiations with the EC, prospective EPA partners must also take into account the likelihood that the WTO aid for trade process might yield equally tangible and targeted forms of needed capacity building than that likely to emerge from the EPA process. A key question facing African and Pacific region ACP members is thus whether they can use the EPAs services chapters and their likely development finance and technical assistance complements as a useful cooperation and developmental tool. While there is no WTO obligation compelling them to negotiate services, investment and other behind the border issues in the EPAs (an argument used by prospective EPA partners with a view to reduce the EPA comprehensiveness), there is little doubt that the European Union expects that a comprehensive EPA will feature asymmetrical services and investment commitments combined with an embedded aid for trade package.

Conclusion
Given the marked economic differences among ACP regions, it can be argued that the services and investment chapters of EPA to be concluded with other ACP regions should not be as extensive as those found in the EC-CARIFORUM Agreement and that such prospective EPAs should be adjusted to relax further the reciprocal nature of the EPA’s rules and market access commitments while nonetheless satisfying the (admittedly weak) requirements of GATS Article V.

Addressing such chapters in a flexible manner could prove useful in enhancing domestic and regional investment climates and in promoting greater competition through new entry in sectors of crucial importance to economy-wide performance, including in agriculture, fisheries, mining, and manufacturing, and in helping to promote needed economic diversification. An EPA compact on services and investment cannot be viewed merely as a stand-alone element. Rather, as noted above, it must be seen as part of a determined effort to enhance the infrastructure for trade and to lower the overall cost of producing goods and other services, and to make them accessible to markets at home and abroad.

At the same time, prospective EPA partners must strive to get the timing and sequencing of their market opening or policy consolidation right. More so than the CARIFORUM states, Africa and the Pacific negotiators will need more time to allow for the building up of regulatory and productive capacity. Perhaps a first useful step should be to work within the EPA on building up such capacities. A complementary, subsequent, process could then be the gradual opening of those sectors in which two elements exist: (1) a readiness to open up progressively and (2) the needed funding to ensure that regulatory implementation, and supply capacities are properly buttressed.

There is, indeed, a need to ensure that both a comprehensive EPA and its services and investment chapters provide for a development cooperation roadmap that adequately supports commitments made. A development-enhancing equilibrium must be found between the agreed rules and the commitments scheduled in services and investment while also maintaining conditions of asymmetrical reciprocity. While it is most unlikely that the EU’s EPA-related aid for trade commitments could ever be made legally binding, greater consideration could be given to ensuring that prospective EPAs with acute trade capacity constraints receive funding that is not only targeted at specific
implementation or supply side bottlenecks (as in the CARIFORUM-EU EPA), but also involves funding that is additional to that already committed under the European Development Fund (unlike the CARIFORUM EPA).

The EC-CARIFORUM EPA showed how asymmetrical commitments and variable geometry in rule-making offer useful tools to structure investment and trade in services relations between unequally matched partners. Such tools may be adapted to encourage deeper and faster integration among developing countries before initiating a later stage of integration between developing country partners and the EC.
EPAs and Liberalization of Renewable Energy Industry in Sub-Saharan Africa

Stephen Karekezi, John Kimani, and Oscar Onguru1

Renewable energy and EPA negotiations

Africa’s energy sector can best be viewed as being comprised of three distinct areas: North Africa, which is heavily dependent on oil with relatively high levels of access to modern energy services; South Africa, which depends on its well endowed coal deposits and has registered high electrification levels; and the rest of the continent—sub-Saharan Africa—largely reliant on traditional and inefficient biomass energy resources. Sub-Saharan Africa is characterized by some of the world’s lowest levels of access to modern energy services with many rural areas recording rural electrification rates of less than 10 percent.2

It is widely recognized that the availability of modern, reliable, and efficient energy services is an essential driver for development. Modern energy supports productive activities, is a determining factor of costs and global competitiveness and, in this sense, is a pre-requisite for sustained economic and social growth—a key objective of the Economic Partnership Agreements (EPAs). This article examines the implications of the EPA negotiations for the development of the renewable energy sector in sub-Saharan Africa and argues that, if its negotiators are not alert to the potential pitfalls of EPAs, the growth of a promising embryonic renewable energy industry could be permanently stunted.

The market for renewable energy

Today, Africa, especially sub-Saharan Africa and its large and underserved demand for modern energy, represents, in potential terms, one of the largest markets in the world for renewable energy. The vast market potential is a result of a combination of the following factors:

Renewable energy potential: Africa is well endowed with a wide array of renewable energy resources. The continent is estimated to have a technical hydroelectric potential of about 1,750 TWh per annum; 9,000 megawatts of geothermal potential (including hot water and steam based but excluding heat applications and the almost unlimited energy potential of heat pumps); abundant biomass; and significant solar and wind potential.3

Better match between renewables and rural dispersed demand for energy services: Due to limited urbanization, the majority of the population in sub-Saharan Africa is largely rural and lives in dispersed settlements.4 This pattern of settlement, combined with difficult rural terrain, makes it expensive and difficult to deploy conventional centralized energy systems. However, this pattern provides a perfect match for decentralized renewable energy technologies such as solar, wind, cogeneration, biogas, and small hydro.

1 AFREPREN/FWD—Energy, Environment and Development Network for Africa.
The vast market potential for renewable energy in sub-Saharan Africa presents a unique window of opportunity to establish a competitive renewable energy industry with the concomitant benefits that accompany industrialization, generation of better paying and more secure jobs, rural development, more competitive export revenues, and increased government tax revenues.

High oil prices: In times of high oil prices, renewables can be competitive and their use allows a reduction of fossil fuel imports. In addition, the unpredictability of high oil prices has increased the interest of African policy in renewables as they often have more predictable price patterns.

Failure of conventional energy systems: Poor management and drought combined have crippled much of the conventional power sector in sub-Saharan Africa with governments in the region often resorting to very high cost stopgap oil-fired emergency power supply measures. The steep premiums charged by emergency power suppliers combined with high oil prices has now resulted in extremely high electricity prices—many sub-Saharan African electricity tariffs are twice as high as tariffs found in much of the industrialized world and in other developing parts of Asia and Latin America. The very high cost and poor performance of conventional power systems makes renewables competitive purely on financing terms. In contrast to industrialized countries that need to subsidize renewables on environmental grounds, renewable energy development in sub-Saharan Africa can be justified on economic grounds.

As a result, there is now an emerging infant African renewable energy industry, particularly within the agro-industrial sector. For example, sugar-processing factories use one of their primary waste products, bagasse, to provide heat for sugar production and generation of electricity for their own internal use and export to the grid. Through cogeneration, the sugar industry in Mauritius now meets over half the country’s electricity needs and electricity sales are now more profitable than their sugar business. The tea industry in eastern and southern Africa is also beginning to grow its energy business as its location in the highlands combined with good rainfall patterns and numerous rivers provide excellent small hydro potential. A number of tea industries have become energy self-sufficient and are exploring possibilities of exporting excess electricity to the grid.

The success of these installations demonstrates that renewable energy can play an important role in ensuring that agro-industries remain profitable entities and are better able to compete in a bruising world market of continuously falling prices for primary commodities. Energy self-sufficiency combined with the added revenue streams of electricity sales allow agro-industries to remain viable and provide them with the opportunity to move up the value chain by producing other high value by-products such as ethanol as in the case of the Malawi sugar industry.

The vast market potential for renewable energy in sub-Saharan Africa presents a unique window of opportunity to establish a competitive renewable energy industry with the concomitant benefits that

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accompany industrialization,9 generation of better paying and more secure jobs, rural development, more competitive export revenues, and increased government tax revenues. This unique window of opportunity for to develop an indigenous, competitive, and viable renewable energy industry is further supported by the fact that most renewable energy technologies are generally not very sophisticated with much of the required expertise still in the public domain. Therefore, developing a competitive renewable energy industry is within the reach of many sub-Saharan African countries. Finally, with no major conventional energy industry existing in most countries, the local embryonic renewable energy industry faces no major local challenger in securing favorable treatment and subsidies that are justifiable for a growing infant industry.

**EPAs and the liberalization of the renewable energy industry in SSA**

With respect to EPAs, the key question that needs to be asked is whether EPAs will assist or strangle the embryonic infant renewable energy industry in sub-Saharan Africa. The answer to this crucial question depends on how well the following key issues are addressed during their negotiations:

**Elimination of import duties on imports of renewable energy technology:** The removal of import duties on renewables could lead to an influx of unnecessarily sophisticated / expensive technologies that utilize little local content. For example, EU-based renewable energy industries are likely to supply over-engineering and unnecessarily sophisticated renewable energy technologies whose after-sales service can only be provided by European service companies thus cutting off the participation of locally-owned service companies.

**Liberalization of investments:** Negotiation of EPAs appear to have a significant European-led push for the liberalization of investment—which would imply a liberalization of energy investments, including, most likely, renewables. As Stichele (2005) notes, proponents of this argument claim that “liberalization is likely to lead to the establishment of conducive conditions to attract the much needed foreign investment” into, for example, the nascent local renewable energy industry. However, based on past experience in the energy sector in sub-Saharan Africa, liberalization does not always lead to a significant increase in foreign investment. For example, despite liberalizing its power sector a decade ago, Malawi has not received any foreign investment in the sector.10

**Liberalization of provision of energy services:** Energy services in sub-Saharan Africa have largely remained in the hands of large state-owned utilities or multinational companies. This is particularly true for the oil and power sectors. In the power sector in particular, the participation of local investors, especially those interested in providing renewable energy services such as cogeneration and small hydropower generation, has been hampered by a lack of supportive policies and regulation designed to attract and support local renewable energy investors, e.g. attractive and predetermined feed-in tariffs for renewables and small scale electricity generation options combined with “light-handed” regulatory options such as Power Purchase Agreements. Most of the policies that have accompanied the

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liberalization of the power sector have been designed to establish an enabling framework that attracts large scale foreign investors and has failed to mobilize and enhance the participation of local small scale energy investors. Liberalization of the renewable energy sector could very well replicate the adverse impacts of power sector liberalization in sub-Saharan Africa.

To sum up, sub-Saharan Africa’s unhappy experience with liberalization and reforms linked to the energy sector and to World Bank-led Structural Adjustment provides an important backdrop to the understanding of what EPAs might do to the region’s infant renewable energy industry. Power sector liberalization in sub-Saharan Africa is synonymous with establishing favorable conditions for power sector investors from more advanced economies with almost no attention given to promoting local investors and establishing regulatory framework and incentives for supporting local investors.11

The few investors from more advanced economies that deemed sub-Saharan African countries to be of interest asked for and secured enormously advantageous short-term deals that virtually eliminated all risks and allowed for higher than normal profits to be realized by means of some of the world’s highest electricity prices to poor sub-Saharan Africa economies.12 Many of these short-term power sector investment deals have run into heavy criticism as they resulted in very high prices without delivering significantly more secure electricity services. The financial crisis now affecting much of the industrialized world has resulted in many of the investors from more advanced industrialized countries losing interest in sub-Saharan Africa. The end result is that there are very few serious long-term large investors in the region’s power sector, virtually no significant local investment in power industry and continued under-performance of the electricity sector.

The unhappy result of liberalization of the power sector in many sub-Saharan Africa countries have led countries such as Senegal, Cameroon, Chad, Mali, and Cape Verde to return the power sector back to state hands thus missing out on some of the more attractive benefits that liberalization and local private sector participation could deliver, that is, throwing the baby out with the bathwater.13

As the adverse experience of power sector liberalization shows, it is possible that if sub-Saharan Africa’s negotiators are not alert to the potential pitfalls of EPAs, the infant embryonic emerging renewable energy industry could be still-born as a result of any of the following:

- The European renewable energy industry is likely to opt to expand production of renewable energy technologies in Europe to be exported to sub-Saharan Africa instead of establishing what it is likely to consider as un-economic small renewable energy industries in these countries. In fact, many of the components of renewable energy technologies would be manufactured, under European license, in China, India, and parts of Southeast Asia, and simply assembled in Europe for onward export to sub-Saharan Africa.

- The aforementioned influx of over-engineering and unnecessarily sophisticated renewable energy technologies that places European-

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based service providers at an advantage and cuts out local service providers.

- The opening of the renewable energy sector in sub-Saharan African countries would likely lead to foreign investors “cherry-picking” the most lucrative investments—with the highest returns and lowest risks. This could be at the expense of investing where returns are relatively lower but where energy services are most required, for example, in poor rural areas.

**Which way for EPA negotiations?**

The liberalization of the power sector without a clear role for local private investment contributed to a complete reversal of privatization in some sub-Saharan African countries. Emerging from these experiences is a series of lessons and recommendations for how EPA negotiations on energy services, and the renewable energy industry in particular, could lead to win-win options for all key stakeholders.

First and foremost, the European Union and African negotiators must truly treat EPAs as vehicles for sustainable development in sub-Saharan Africa. This implies that the EU’s commercial interests in the agreements should be secondary to the development needs of the sub-Saharan African region and the need to grow promising embryonic infant renewable energy industries.

Second, liberalization must lead to a significant amount of new capital investment or expansion of existing investment in sub-Saharan Africa. Merely opening up the market for the entry of finished renewable energy products is unlikely to lead to long-term economic benefits in the

region, especially in terms of employment and the associated impact on poverty reduction.

Third, it is imperative that liberalization is not implemented in a “blanket” fashion. It is vital that sectors in which sub-Saharan Africa is relatively competitive be liberalized first while less competitive infant industries are liberalized later. This would require the speed of liberalization to be adjusted to reflect different levels of competitiveness in different renewable energy technologies.

Fourth, liberalization of the renewable energy industry should involve local private sector in a significant way. There are three possible approaches that could be used to achieve this goal:

- **Local manufacture of key components**: EPAs could include a provision that all renewable energy systems installed by EU companies in sub-Saharan Africa must have at least 40 percent of the value of the installation comprising of locally/regionally produced components. For example, for a solar photovoltaic system, the photovoltaic panel, control equipment, and the end-use equipment maybe imported from the European Union but the batteries, cables, and balance of system can be locally produced or imported from neighboring sub-Saharan African countries.

- **Encouragement of joint ventures**: EPAs should not encourage the establishment of wholly foreign-owned stand-alone renewable energy investments. Rather, joint ventures between European investors and existing locally-owned

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renewable energy entities should be promoted and provided with substantial incentives. An ideal joint venture would be between a European investor (50 percent shareholding) and a locally-owned venture (50 percent shareholding) that has been in existence for at least five years. This arrangement would promote technology transfer and ensure that only investments that are in conformity with the needs of the country take place.16

This model has proven successful in other parts of the developing world. In India, for instance, the emergence, efficiency, and quality improvement of wind turbine manufacturers could be attributed to the establishment of joint ventures between Indian companies and foreign partners. This joint venture model has also worked in the renewable energy industry of an African country, Mauritius, which enacted legislation and policy measures designed to encourage cogeneration of joint ventures between foreign investors and local sugar companies.17

**Significant local shareholding in greenfield investments:** Understandably, there is the likelihood of European investors not finding any existing or suitable local partners to form joint ventures. In such a situation, EPAs could set a condition that 50 percent of the shares be held by a government agency for a limited period of time after which the government could relinquish its stake through the national stock exchange to local retail investors that are showing growing appetite for energy stocks—amply demonstrated by the highly successful IPO (initial public offers of shares) of Kenya’s flagship local power generation company—KENGEN that attracted small scale local retail investors in virtually all regions of Kenya.

Last but not least, the success of EPAs and the associated liberalization in the African energy sector, largely depends on capacity and skills of African EPA negotiators. The bulk of African EPAs/trade negotiators have limited specialized expertise in energy and renewables and have not been able to forge effective partnerships with existing African energy/renewables experts that can be found in national utilities, African academia, civil society, and diaspora. Forging these partnerships is likely to be a key factor to unlocking the benefits that EPAs could deliver to Africa’s infant renewable energy industry.

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Prospects for Innovation and Technology Transfer Under the European Community-Group of African, Caribbean, and Pacific Economic Partnership Agreements

Ruth L. Okediji

Introduction

Studies of the relationship between labor productivity and development progress have long established a link between technological diffusion and economic growth. But only recently has the relationship between technology, innovation, and commerce become a staple feature of international economic agreements. Beginning with the auspicious integration of trade and intellectual property rights (IPRs) under the World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), the acquisition of technology by developing and least developed countries (DCs and LDCs) has become routinely recognized as an important goal within a larger global framework in which “development” is the stated rationale for any number of multilateral initiatives and accords. The Economic Partnership Agreements (EPAs) have similarly followed this burgeoning tradition, recognizing in several provisions the need to encourage creativity, innovation, and technology transfer in order to accomplish the development objectives of the agreements.

Despite the incontrovertible role of innovation in productivity growth (and thus in enhancing development prospects), access to new technologies by DCs and LDCs remains one of the most contested areas of international economic regulation.

The innovation context of free trade agreements

Like most other free trade agreements (FTAs), the EPAs address innovation exclusively through formalized rules of intellectual property (IP) protection and in terms that view the creative enterprise as a byproduct of the free movement of goods and services across borders. Several studies confirm that trade liberalization facilitates knowledge diffusion by opening markets to new goods and services that embody new technological inputs allowing local firms to improve efficiency gains and contribute positively to domestic productivity. Further, as new goods and services penetrate the domestic and regional market, opportunities for follow-on innovation to adapt new knowledge to local conditions can stimulate domestic creativity and increase prospects for absorption of technical knowledge. In theory, then, standard assumptions from the free trade context of what might loosely be called a global innovation policy include the following: (i) lower barriers to the entry of goods and services promote competition and encourage R&D investments by firms, (ii) trade surpluses will generate income for investment in aid and capital to reinvest in local and regional markets, and (iii) the competitive

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3 For purposes of this essay, references to the EPAs will encompass draft agreements, the interim agreements as well as the EC-CARIFORUM EPA.
environment resulting from an open trade regime will stimulate productivity of small and medium enterprises (SMEs) and encourage local innovation.

As scholars have pointed out, however, many of these assumptions are untested under the regulatory environments that prevail in ACP countries. While foreign firms historically have enjoyed technological gains under conditions of liberalized trade, evidence of any substantial positive innovation and technological impact on ACP countries is far from established. On the contrary, constraints on the scope and flexibility of ACP countries to implement domestic policies more conducive for technological catch-up and imitation are inherent to the global IP system pursuant to the TRIPS Agreement. Yet, most free trade agreements are structured along these classic assumptions, with no proven basis to suggest that the negotiated frameworks in fact support access to technology, facilitate technology transfer or stimulate domestic innovation. It is important in light of ongoing EPA negotiations to reconsider how technology can best be diffused in aid of development goals and economic growth.

**The limits of IPRs as mechanisms for technology transfer to ACP countries**

It is well established that IPRs comprise the classic mechanism for promoting innovation and diffusion of new technical knowledge, particularly in high-income countries. These private rights are granted with the familiar, if simplistic, justification that enhancing public welfare by encouraging creative activity, including investments in R&D, is best achieved through the grant of proprietary rights. In a globalized economic environment, however, IPRs increase the costs of access to knowledge goods for the public at large, and particularly for DCs and LDCs.

First, markets for technology are famously complex because, among other things, knowledge goods are difficult to price due to uncertainties associated with valuation of new technologies. Even in developed economies, asymmetries of information between buyers and sellers complicate negotiating strategies and generate significant transaction costs. In ACP countries, where deficiencies in technical expertise are compounded by a lack of institutional support to facilitate transactions in technology, the negative externalities associated with cross-border purchases of technology can be prohibitive.

Second, although in theory IPRs provide the legal framework in which technology transactions can more easily occur, IPRs are also instruments through which owners can extract rent beyond the marginal cost of their inventions. In markets where optimal investments in innovation take place, a competitive equilibrium could occur between firms by which licensing agreements, patent pools or other arrangements facilitate access to new technologies, thereby enhancing the competitive environment among producers of new goods and services. Such welfare-enhancing prospects are far less likely in environments typical of many ACP countries, which are characterized by weak regulatory agencies, low rates of specialization, small markets, and minimal R&D investments.

Third, positive foreign direct investment (FDI) flows, accompanied by relevant technology transfers, have long been a standard justification for implementing IPRs in DCs and LDCs. As recent empirical evidence illustrates, however, firms in developed countries invest in R&D for reasons that extend beyond mere appropriability of returns.6

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When international economic agreements incorporate protection for IPRs, technology transfers are not an ineluctable outcome; rather, IPRs usually place new technologies beyond the reach of most ACP firms. Similarly, firms choose to invest in overseas markets in consideration of factors far beyond the domestic availability of protection for IPRs. Accordingly, when international economic agreements incorporate protection for IPRs, technology transfers are not an ineluctable outcome; rather, IPRs usually place new technologies beyond the reach of most ACP firms. Further, the absence (or failure) of domestic policies and institutions to address potential anti-competitive effects of IPRs in domestic markets suggests that the diffusion goals of the IPR system are also less likely to be viable.

Avoiding the classic paradigm of regional FTAs

The recent integration of IPRs in a series of regional and multilateral trade agreements assumes the traditional justification that technology flows, innovation, and enhanced competition are the natural by-products of granting proprietary interests in knowledge goods. As such, long-standing technology and innovation deficits in DCs and LDCs are treated as symptoms of market failures attributed to, among other things, low levels of FDI, weak or non-existent domestic absorptive capacity for new technical knowledge, and low rates of capital accumulation. Rarely do recent free trade agreements incorporate any provisions or principles that address the structural pitfalls common to DCs and LDCs that have adopted IP laws but have yet to experience any development gains as a result. Nor do these agreements reflect any possibility that protection for IPRs, as linked to innovation and technology transfer, may occasion costs that should be offset by balancing the obligations imposed on DCs and LDCs with principles that secure the primacy of the social welfare objectives underlying IPRs.

For sure, the TRIPS Agreement recognizes the “underlying public policy objectives of national systems for the protection of intellectual property, including developmental and technological objectives.” However, it imposes no legal obligation on member countries to implement norms that can secure those objectives. The Agreement acknowledges the importance of technology as an essential development input, but offers no framework to evaluate the efficacy of the mandatory rules in enhancing access to knowledge-based goods. It grants rights to members to implement domestic policies and laws to promote basic development interests, including measures to address market distortions caused by abuses of IPRs, but this comes with political and economic costs that often are too high for ACP countries to bear, either for fear of retaliation from developed countries or for lack of domestic capacity to take advantage of these provisions. Notable examples include the Doha Declaration, which only one ACP country to date has tried to implement, and the Berne Appendix for securing bulk access to

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8 See, e.g. Agreement on Trade, Development and Cooperation between the European Community and its Member States, on one hand, and the Republic of South Africa, on the other, art. 46, Apr. 12, 1999, 1999 O.J. (L 311) 3; Economic Partnership Agreement between the CARIFORUM States, on one hand, and the European Community and its Member States, on the other, arts. 112, 132, 142, O.J. L 289/1/3, Oct. 30, 2010 [hereinafter EC-CARIFORUM EPA], Chapter 2.


10 See id., art. 7.

11 See id., art. 8.


educational materials, which no ACP country has ever utilized.

In light of this, the EPAs can make significant contributions to the innovation deficit by explicitly incorporating norms that oblige EC member states to recognize the right of ACP countries to freely exercise the special and differential rules that apply to them in the context of IPRs. Further, the EPAs could be treated as binding obligations, rather than mere exhortations, the stated objectives of the TRIPS Agreement. A practical expression of such a commitment could be that the EC agrees to evaluate any ACP domestic policy designed to promote access to EC technologies in light of the relevance of such a policy on measurable development goals, particularly in areas such as education, R&D, infrastructure, and public health. Further, unlike many existing FTAs, the EPAs could provide technical assistance to aid ACP countries in the design and implementation of IP policies that operationalize TRIPS Articles 7 and 8, in particular by recognizing appropriately crafted limitations and exceptions to IPRs. Numerous other recommendations exist for structuring EPAs more meaningfully to enhance the capacity of ACP countries to absorb technical knowledge and improve the domestic technological environment.14 The point simply is that the EPAs should not replicate the failed innovation and diffusion strategies of contemporary FTAs.

Technology and IP provisions in the EPAs

The pivotal question, then, is how to make IPRs relevant to the development agenda reflected in the Cotonou Agreement and stated in the objectives of the specific EPAs. At a minimum, the obligations pertaining to IPRs should not impede prospects for domestic innovation in ACP countries or exacerbate the innovation divide.

Ceding national policy space

Like other regional FTAs, the EC-CARIFORUM EPA has incorporated IPR provisions that largely mirror the substantive obligations of the TRIPS Agreement. And despite the fact that Article 46 of the Cotonou Agreement explicitly acknowledged the development dimension of IPR protection, EC negotiators have in some cases attempted to include obligations that extend even beyond those required by the TRIPS Agreement. These so-called “TRIPS-plus” provisions generally require ACP regions to strengthen particular IPRs beyond the minimum standards established by the TRIPS Agreement.15 In addition, a provision may qualify as “TRIPS-plus” if it expands the scope of subject matter coverage beyond those disciplines recognized by the TRIPS Agreement. For example, in the area of copyright, Article 143 of the EC-CARIFORUM EPA imposes on the CARIFORUM the obligation to comply with the standards set forth in the World Intellectual Property Organization (WIPO) “Internet Treaties”—the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT).

While such obligations may be facially neutral, there are hidden costs associated with even ostensibly beneficial provisions. The fact is that any increased breadth of subject matter covered by the IPR provisions of EPAs reduces the discretionary policy space that could be used to promote initiatives directed solely at domestic innovators in ACP groupings. The more policy space is taken over by EPA-based obligations regarding IPRs, the less ACP countries can act unilaterally for the benefit of local firms.


15 See, e.g., EC-CARIFORUM EPA, arts. 143, 147, 151-163.
The role of EPAs in promoting technological diffusion and enhancing innovation capacity in ACP regions is essential to whether these agreements can materially affect sustainable development gains.

In short, decreased opportunities for experimentation, combined with the reciprocity imposed by national treatment and most-favored nation obligations, will rob ACP countries of any advantages or opportunities to develop competitive strategies to address the technological lead and dominance of EC firms. Such artificially induced “lead time” was crucial to the industrial success of many developed countries such as the U.S. and Germany that delayed membership in major international agreements until their domestic firms had accomplished a certain level of technical or competitive capacity. While this privilege has been foreclosed given the TRIPS Agreement, it is nevertheless important for ACP countries to refrain from ceding any additional policy space that could be essential for leveraging future opportunities for a more deliberate strategy of securing sustained access to new stores of technical knowledge.

Passive versus active technology obligations

Currently, the EPA framework for innovation and technology transfer consists of good faith commitments to cooperate in the area of research, innovation, and technology transfer.¹⁶ Like the TRIPS Agreement, these commitments do not impose any legal obligations on the EC to adopt policies that improve prospects for technology transfer, nor do they recognize existing normative principles that could stimulate access to technology in ACP states. At best, the EPA provisions appear neutral with regard to the question of innovation and access to technology in ACP countries.

The role of EPAs in promoting technological diffusion and enhancing innovation capacity in ACP regions is essential to whether these agreements can materially affect sustainable development gains. Some impact studies demonstrate that on the whole, ACP countries have much more at stake than the EC with respect to trade disparities.¹⁷ If ACP exports to the European Union are likely to be less competitive, and estimated tariff losses are as significant as projected, the loss in income for most countries will have a direct impact on domestic investments in technology and innovation.¹⁸ To offset the economic consequences of trade diversion that is anticipated as a result of the EPAs, ACP countries must diversify and build up the competitiveness of domestic markets. This process requires access to technology and strengthening domestic capacity to incorporate new techniques and processes in productive activities. None of the technology provisions in the EPAs provides a basis for ACP countries to experience positive welfare gains over what currently prevails under the TRIPS Agreement. Technical assistance, financial assistance, and other levers such as transitional periods could mitigate the short-term costs of the passive technology obligations currently in the EPAs. A possible consideration is that funding approximate to losses in tariff revenue could be contributed to a fund to support access to technology for SMEs in ACP countries, as well as other assistance directed at innovation supports. However, long-term solutions require significantly different substantive and institutional arrangements to secure sustainable access to technologies for development goals.

¹⁶ See, e.g. EC-CARIFORUM EPA, arts. 135-138, 142.


Improving prospects for access to technology and innovation under the EPAs

The multilateral system for the protection of IPRs already recognizes important exceptions and limitations necessary to address the provision of public goods, most notably in the area of public health and education. The EPAs provide an opportunity to incorporate these access norms into the free trade environment, while also adopting special concessions to reduce or eliminate the transaction costs associated with utilizing the mechanisms designed for the benefit of ACP countries. Ultimately, access to technology must be considered a basic development goal; unless the EPAs establish a viable legal framework with complementary mechanisms that create convergence between the welfare goals of IPRs and those of the free trade paradigm, the innovation deficit will outlast (and eventually overwhelm) any gains possible from a liberalized economy.

Conclusion

From access to health and education to climate change mitigation and adaptation, innovation and new technologies play a crucial role in achieving the increasingly diverse array of economic development goals. The ongoing EPA negotiations offer an opportunity within the unique context of a historical relationship between the EC and ACP countries to address a critical source of economic growth by adopting provisions that encourage access to technology on terms consistent with the multilateral IP system, and with the aspirations of the Cotonou Agreement. In contrast to other FTAs, the EC-ACP EPAs should go beyond mere formal acknowledgement of the essential role of technology in accomplishing development-related goals. Instead, the technology-related provisions of the EPAs should enable an environment in which access to technology and strengthening the domestic innovation capacity of ACP states constitutes a material part of the EC’s investment in the development process.
Can the Economic Partnership Agreements (EPAs) Become a Useful Tool for Export Diversification?

Xavier Cirera

Since the start of formal negotiations in September 2002 for the Economic Partnership Agreements (EPAs) the world has changed significantly. New global challenges have emerged with great strength, making economic growth and poverty reduction even more challenging than a decade ago. Economic policies are being shaped in order to respond to these new challenges and uncertainties, and more importantly, a window of opportunity is opening in order to reconsider existing policies; allowing more regulatory and government intervention policies to gain momentum.

The current financial crisis is hitting Least Developed Countries (LDCs) hard. Although mostly shielded from financial contagion due to poor financial development, decreases in industrialized countries’ demand and the subsequent fall in commodity prices are reducing growth rates and government revenues significantly. For example, exports to the United States from LDCs in sub-Saharan Africa (SSA) decreased by 11.5 percent in October and November 2008 with respect to the previous year (World Bank 2009). While the slowdown in economic activity has reduced the sharp increases in food prices that occurred in 2007, these increases are expected to re-emerge as soon as the global recession is over, posing additional challenges for those LDCs that are net food importers.

In the midst of the current crisis turmoil and the new global challenges most African, Caribbean, and Pacific (ACP) countries are engaged in the EPA negotiations, which are expected to be concluded this year. Amidst the current global crisis, questions are raised about the appropriateness of the EPAs as an instrument to face the crisis. This paper focuses on export diversification, an essential element to make ACP economies more resilient to the new challenges. It shows that there is no clear indication that existing preferential schemes such as Everything But Arms (EBA), the Cotonou Agreement, or the Generalized System of Preferences (GSP), have had any major impact on export diversification. As a result, the EPAs need to be reformed to include additional elements on Rules of Origin (RoO) and financial assistance, if the objective of export diversification in ACP countries is to be achieved.

Why export diversification?

Export diversification is the process through which countries export new products (products not exported previously) and reduce the export share of traditional products. Despite the fact that new exports may not necessarily have a higher value-added than existing ones and that a qualitative assessment of the characteristics and importance of these “new” products would be important from a developmental point of view, the empirical evidence clearly shows that diversification toward new exports is associated with higher growth.

This paper focuses on export diversification, an essential element to make ACP economies more resilient to the new challenges. It shows that there is no clear indication that existing preferential schemes such as Everything But Arms (EBA), the Cotonou Agreement, or the Generalized System of Preferences (GSP), have had any major impact on export diversification.

1 Xavier Cirera is a research fellow at the Institute of Development Studies, University of Sussex.


3 The exception is the 15 Caribbean Forum of African, Caribbean, and Pacific States (CARIFORUM) countries that have already signed a full EPA agreement.
and development. Furthermore, climate change adaptation and mitigation policies also require economic diversification. Some mitigation policies, such as border carbon taxes or standards, try to discriminate toward favoring “green” products. This creates new trade patterns, opportunities and threats, as well as the need to diversify away from carbon intensive products. In addition, in order to create climate-resilient economies, adaptation policies require diversification away from commodities more vulnerable to climate change shocks.

While the benefits of diversification are clear, it is less evident how to achieve it, and more importantly, whether preferential trade agreements are a useful tool to achieve this objective.

**ACP export diversification: What the data says...**

Since 2001, the ACP LDC countries have had duty-free access to the European Union (EU) markets for all products except bananas, sugar, and rice under EBA preferences. Furthermore, previous to 2001, all ACP countries, LDC, and non-LDC countries have had preferential access to a large list of products under the Cotonou Agreement or the GSP. As a result, before asking whether the EPAs can deliver export diversification one should ask what has been the record so far of existing EU preferential trade agreements delivering export diversification.

Rather than looking at how diversified ACP exports are, which is highly dependent on a set of economic, geographic, and institutional variables, a more interesting exercise is to look at whether the high degree of preferential treatment provided under EBA, Cotonou, and GSP is associated with the export of new products. In order to identify this type of export diversification, one needs to work with highly disaggregate trade data, so new products can be identified. The COMEXT database provides information about exports and imports to the European Union for highly disaggregated product data at HS-8 digits. The procedure that we follow to identify new products is the following. We use 2000 as the base year and define a new product as a product that was not exported in 2000, but exported thereafter. There are, of course, some limits to this approach. First, we may be counting exports that for some reason were not exported in 2000, but were traded before, as new varieties. Second, the introduction of new product codes for customs purposes, which is the result of splitting existing codes, implies that these new product codes are considered new varieties. Third, as has been well documented (see for example Besedes and Prusa 2006) a large number of products exported to a specific market are likely to stop being exported at some point. The duration of trade is likely to be lower for new products where trading relationships have not yet been consolidated, and the data analyzed suggested that for most countries the percentage of products where exports disappeared is larger in new varieties. As a result, our measure of new exports is likely to overestimate

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### Table 1. ACP Export Growth Decomposition 2000–2007

<table>
<thead>
<tr>
<th>LDCs</th>
<th>Growth 2000/07</th>
<th>Existing Products share</th>
<th>New Products share</th>
<th>Non-LDCs</th>
<th>Growth 2000/07</th>
<th>Existing Products share</th>
<th>New Products share</th>
</tr>
</thead>
<tbody>
<tr>
<td>Angola</td>
<td>111.66%</td>
<td>97.78%</td>
<td>2.22%</td>
<td>Ivory Coast</td>
<td>39.24%</td>
<td>84.44%</td>
<td>15.56%</td>
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<tr>
<td>Benin</td>
<td>–30.55%</td>
<td>68.68%</td>
<td>31.32%</td>
<td>Ghana</td>
<td>–2.23%</td>
<td>91.62%</td>
<td>8.38%</td>
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<tr>
<td>Burkina Faso</td>
<td>–57.09%</td>
<td>67.42%</td>
<td>32.58%</td>
<td>Nigeria</td>
<td>48.67%</td>
<td>96.20%</td>
<td>3.82%</td>
</tr>
<tr>
<td>Burundi</td>
<td>10.68%</td>
<td>90.14%</td>
<td>9.86%</td>
<td>Cameroon</td>
<td>45.48%</td>
<td>90.17%</td>
<td>9.83%</td>
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<tr>
<td>Cape Verde</td>
<td>46.20%</td>
<td>32.15%</td>
<td>67.85%</td>
<td>Gabon</td>
<td>–26.75%</td>
<td>84.27%</td>
<td>15.73%</td>
</tr>
<tr>
<td>Centr. Africa</td>
<td>–77.52%</td>
<td>89.50%</td>
<td>10.50%</td>
<td>Congo</td>
<td>–13.14%</td>
<td>81.18%</td>
<td>18.82%</td>
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<td>Chad</td>
<td>–51.99%</td>
<td>52.05%</td>
<td>47.95%</td>
<td>Kenya</td>
<td>27.92%</td>
<td>86.52%</td>
<td>13.48%</td>
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<tr>
<td>Congo (DR.)</td>
<td>–28.62%</td>
<td>84.24%</td>
<td>15.76%</td>
<td>Seychelles</td>
<td>9.15%</td>
<td>89.29%</td>
<td>10.71%</td>
</tr>
<tr>
<td>Djibouti</td>
<td>–66.70%</td>
<td>67.75%</td>
<td>32.25%</td>
<td>Mauritius</td>
<td>–14.04%</td>
<td>91.76%</td>
<td>8.24%</td>
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<td>Eq. Guinea</td>
<td>193.66%</td>
<td>86.91%</td>
<td>13.09%</td>
<td>Zimbabwe</td>
<td>–53.92%</td>
<td>82.95%</td>
<td>17.05%</td>
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<tr>
<td>Eritrea</td>
<td>–41.23%</td>
<td>33.55%</td>
<td>66.45%</td>
<td>South Africa</td>
<td>44.20%</td>
<td>87.15%</td>
<td>12.84%</td>
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<td>Ethiopia</td>
<td>31.95%</td>
<td>75.92%</td>
<td>24.08%</td>
<td>Namibia</td>
<td>90.77%</td>
<td>84.20%</td>
<td>15.80%</td>
</tr>
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<td>Gambia</td>
<td>–66.90%</td>
<td>54.17%</td>
<td>45.83%</td>
<td>Botswana</td>
<td>60.85%</td>
<td>99.25%</td>
<td>0.75%</td>
</tr>
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<td>Guinea</td>
<td>–8.05%</td>
<td>91.76%</td>
<td>8.24%</td>
<td>Swaziland</td>
<td>19.34%</td>
<td>81.89%</td>
<td>18.11%</td>
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<tr>
<td>Guinea Bissau</td>
<td>–73.45%</td>
<td>56.14%</td>
<td>43.86%</td>
<td>Bermuda</td>
<td>–77.39%</td>
<td>95.37%</td>
<td>4.63%</td>
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<td>Haiti</td>
<td>38.80%</td>
<td>83.29%</td>
<td>16.71%</td>
<td>Belize</td>
<td>–30.88%</td>
<td>81.11%</td>
<td>18.89%</td>
</tr>
<tr>
<td>Kiribati</td>
<td>3087.73%</td>
<td>0.09%</td>
<td>99.91%</td>
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Source: Author’s own elaboration from COMEXT.
diversification. However, keeping these caveats in mind, this measure provides an upper bound for measuring export diversification at the product level.

Table 1 shows the results of decomposing export growth for ACP countries from 2000 to 2007. Clearly the experience has been very mixed, with some countries increasing the nominal value of exports to the EU from 2000 to 2007, while others experiencing a decrease.\(^6\) A more interesting picture emerges from the decomposition of exports into existing products and new varieties. For most of the ACP countries with the exception of 13 small countries,\(^7\) mainly small islands, growth in exports to the European Union during the period

\(^6\) Analyzing the impact of preferences on export growth requires a more rigorous analysis, since high commodity prices and specific country shocks may play a more important role on affecting the level of exports. However, for cases with negative nominal growth, it does indicate that the existence of preferences as such is not sufficient for expanding exports. In addition, not all exports to the European Union are eligible to preferential treatment use preferences due to costs of compliance with preferential use (Manchin, 2006). Source: Manchin, M. (2006). “Preference utilization and tariff reduction in EU imports from ACP countries.” The World Economy, 29 (9). pp. 1243-1266.

\(^7\) These countries are Cape Verde, Eritrea, Somalia, St Lucia, Grenada, Nauru, Solomon Island, Tuvalu, Kiribati, Tonga, Micronesia, Marshall Islands, and Palau.
2000–2007 occurred primarily in existing exports. Regarding the importance of the shares of new exports on total exports, Figure 1 shows a nonparametric plot of both variables. Clearly, as we should expect, the importance of new products is larger for countries with narrow export bases. For 61 percent of the countries analyzed the importance of new products is below 20 percent of total exports for the period, and when we exclude countries with very low export volumes, 72 percent of countries have a share of new products below 20 percent. The data, therefore, suggests that despite the existence of preferential schemes, and the introduction of EBA, ACP exports to the European Union have diversified very little.

So how can the EPAs be reformed to deliver export diversification?

Export diversification is a main objective of the EPAs. The EPA CARIFORUM agreement states in Article 8 “cooperation priorities” as a priority for cooperation: “…(iv) The diversification of CARIFORUM exports of goods and services through new investment and the development of new sectors.” It is assumed that this diversification will be achieved via EU/ACP economic integration, ACP/ACP integration, some changes in RoOs, and new disciplines, for instance in services and investment, as well as financial and technical cooperation with the European Development Fund (EDF). By introducing elements going beyond border measures, the new agreements acknowledge that the experience regarding the growth of ACP exports has not been, in general, very positive. However, in our view, there is no evidence that these new trade-related elements by themselves will be enough to foster diversification, and therefore, concrete measures are required to encourage the emergence of new exports.

Export diversification occurs at the level of the firm. Firms introduce new products for exporting, and this process depends on various factors that go beyond tariff preferences. As a result, there are some key elements that should be incorporated into the EPAs in order to facilitate this process of product discovery. Among these elements, we focus on three key issues: RoOs, services and trade finance, and development finance.

Rules of origin (RoOs)

RoOs have been a long standing obstacle for trade integration in preferential agreements and free trade agreements (FTAs) (see for example Brenton and Manchin 2003, for the case of EU preferences). The European Union is reforming the RoOs and the new CARIFORUM EPA and different interim agreements already include some more flexible RoOs. A clear example is the modification of the RoOs for clothing, moving from double to single transformation, and effectively removing the requirement to source fabric domestically. These more flexible RoOs have been very successful in creating new exports of clothing from SSA to the United States through AGOA (Frazer and Van Biesebroeck 2007; Collier and Venables 2007). Consequently, it would be important to expand this flexibility to the processing of most agricultural products in order to encourage export diversification.

Key within enhancing RoOs is to facilitate cumulation among countries. While there is

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8 As suggested above, our measure of diversification is an upper bound, and suggests that for most countries any new products exported after 2000 do not represent more than a 20 percent share, in countries with an already very narrow export base.


uncertainty over cumulation due to the large number of countries that have not signed the EPAs, allowing cumulation beyond EPAs and expanding it to other GSP countries may provide a very successful tool for promoting South-South trade and new exports, with low risk of trade deflection. More importantly, it would encourage firms to integrate along value chains.

Financial services and trade finance

The current financial crisis is hitting the availability of trade finance worldwide hard (ICC 2009). Recent research on the impact on trade credit in SSA by Humphrey (2009) suggests a slightly different picture for that region. On the one hand, the fact of having an underdeveloped financial system implies that firms have been less affected by the crisis, since established firms tend to obtain trade finance using non-banking channels such as finance from importers or other networks. On the other hand, there are indications that lack of trade credit may be a problem for new exporters and small cooperatives.

Lack of finance is among the major constraints that firms face in SSA. Finance is especially critical for economic diversification, since there is a large finance gap and uncertainty from the discovery of a new product and the resultant initial investment costs to the consolidation of exports of that product. Covering this finance gap is critical for the sustainability of the firm and the consolidation of new exporters. Therefore, it is imperative to increase the availability of trade finance in countries with large underdeveloped financial systems.

It is unclear how the EPAs via financial services liberalization can improve the situation. Foreign banking penetration is already substantial in many ACP countries, and it is not clear how moving from having foreign bank subsidiaries, with own capital requirements, to foreign branches may improve the availability of trade finance. On the contrary, it may increase financial risk for ACP countries, since it may make domestic financial regulation difficult to implement. While encouraging selective liberalization of financial services specialized on trade and productive sectors may be beneficial in some cases, it would be potentially more beneficial to complement these measures with the creation of specific programs for trade finance within EPAs that would support production and marketing activities in new export activities.

Development finance

Despite the attempts by ACP countries to link the EPAs to specific development finance programs, this has been kept outside EPA negotiations, and the EDF and “aid for trade” strategy remain the main instruments and policy frameworks in this area. As suggested above, discovering new products and new markets is often a very costly exercise that in the absence of developed financial systems requires additional financial assistance. If the EPAs are a process of fostering economic integration primarily via tariff reductions, but also via more flexible RoOs, assistance on standards and better service, one may ask whether it would be more efficient to tie development finance to specific opportunities arising from the EPAs.

Export diversification is one of the objectives of aid for trade programs, and specific programs have been funded by the EDF to support market studies and trade related infrastructure. Despite the fact that most of the attention regarding linking the EPAs with development finance has focused on compensation from trade reform, benefits
Considering the long period of implementation of the EPAs that is currently agreed, it is unlikely that the EPAs can have any impact for economic diversification in the short run. However, in the medium and long run, export diversification is crucial in order to face these new challenges and create more resilient economies, and, therefore, the EPAs should be reshaped to achieve this objective. The record in terms of export diversification of previous EU trade agreements has been disappointing. As a result, this article suggests that it is important that the EPAs include concrete measures to foster diversification. In our view, key among these measures are: (i) more flexible RoOs allowing for cumulation with more countries, (ii) selective liberalization of trade services that offer finance for the productive and trade sector, complemented with specific development finance programs for trade in new activities, and (iii) linking and integrating newly created export opportunities under the EPAs with specific development finance programs for new exports.

Conclusion
The current global challenges mean that policies need to be revisited. The fact that the EPAs negotiations are still ongoing opens a window of opportunity to shape the agreements and include new elements that make economies more resilient to these changes. Considering the long period of implementation of the EPAs that is currently agreed, it is unlikely that the EPAs can have any impact for economic diversification in the short run. However, in the medium and long run, export diversification is crucial in order to face these new challenges and create more resilient economies, and, therefore, the EPAs should be reshaped to achieve this objective. The record in terms of export diversification of previous EU trade agreements has been disappointing. As a result, this article suggests that it is important that the EPAs include concrete measures to foster diversification. In our view, key among these measures are: (i) more flexible RoOs allowing for cumulation with more countries, (ii) selective liberalization of trade services that offer finance for the productive and trade sector, complemented with specific development finance programs for trade in new activities, and (iii) linking and integrating newly created export opportunities under the EPAs with specific development finance programs for new exports.
Economic Partnership Agreements and Rules of Origin: Outcomes and Challenges

Eckart Naumann

Rules of Origin (RoO) are a key determinant of market access yet they are too often overlooked in negotiations for preferential market access. This article comments on the RoO underlying the “Interim EPAs” (IEPAs) and relates to the Southern African Development Community (SADC)—European Union IEPA unless otherwise specified. It describes the few changes introduced to the RoO compared with the previous Cotonou preferences, relating mainly to the treatment of textiles and clothing, fish and fish products, and certain agricultural products. It demonstrates that these changes are of questionable benefit for the countries of the African, Caribbean, and Pacific Group of States (ACP).

Rules of Origin and EPAs: the devil lies in the details

RoO stipulate how much local processing must be performed on materials and intermediate goods in order for a product to be considered to be of local origin, and thus qualify for more favorable market access treatment in a trade agreement. RoO confer an economic nationality on a product, which differs from a purely geographical allocation of origin relating to the country of final shipment. RoO, therefore, ensure that a predetermined level of local value-addition has taken place. For raw materials extracted in the exporting country, or products made up exclusively from local materials, the allocation of origin is generally straightforward, unambiguous, and largely noncontentious. For products assembled in multiple locations, complex and sometimes contentious rules apply.

EPAs, as a framework for preferential trading relations between the European Union and the ACP, are no exception and require rules defining what products originate in the ACP and can thus benefit from more favorable entry into European markets. EPAs provide ACP countries with duty- and quota-free (DFQF) market access, which means that EPAs slightly increase the scale of duty and quota preferences over what was previously available under Cotonou, but provide only marginal market access benefits compared to the Generalized System of Preferences’ (GSP’s) Everything-But-Arms program for ACP countries belonging to the Least Developed Country (LDC) group. Put simply, the main market access benefit of initialing an IEPA lies in the opportunity cost of otherwise losing Cotonou preferences and (for all but LDCs) reverting to the less favorable GSP regime. It is therefore important to focus on the conditions attached to this DFQF benefit—and amendments to the RoO—in order to assess changes and determine whether EPAs add value to the previous access of ACP exporters into the European Union.

The European Union uses a RoO framework that is relatively consistent across all its preferential trade regimes. This, in effect, limited the scope of changes to the rules during the initial EPA negotiating phase. Local origin (and hence qualification for preferences) is based on the requirement that goods must be wholly obtained or ‘substantially transformed’ in the preference-receiving country:

1 Eckart Naumann is an economist and associate at TRALAC, the Trade Law Centre for Southern Africa.

2 Note: The RoO found in the different IEPAs are largely the same. When Cotonou expired the EC published a set of regulations (EU Council Regulation 1528/2007) to ensure interim market access to IEPA signatories until such time that the provisions set out in the IEPAs were formally implemented both on the part of the European Union and ACP member states. This Regulation, which defines market access only for ACP countries that initialled an IEPA, contains RoO that are largely the same as those contained in the (reciprocal) IEPA. The IEPAs also contain a provision that RoO are to be revisited (re-negotiated) within a certain number of years.
Despite their criticism of the existing RoO regime, ACP countries were equally unable to articulate a unified position on the reform of RoO during the EPA negotiations and instead focused only on negotiating specific changes in certain sectors.

1. The “wholly obtained” condition is met by raw materials extracted, agricultural products grown and harvested and livestock born and raised in the exporting country, fish caught within the country’s territorial waters, and any finished products made exclusively from local materials;

2. Substantial transformation—a necessary requirement when imported materials are used—is determined through compliance with product-specific rules, using three different methodologies on a stand-alone or combination basis. These are:
   a. the so-called value-added test (normally expressed as a limitation on the value of imported materials),
   b. the tariff heading jump (where the pre and post-processed products or materials can be classified within a different tariff heading), and,
   c. a specific technical requirement.

At this point it may be worth reflecting on earlier developments with respect to EU RoO, which have long been criticized for being overly complex. A 2003 Green Paper on the future of RoO in preferential trade arrangements, published by the European Commission, undertook an “overall assessment of current problems relating to the determination of origin,” and reviewed “available options.” While the Paper focused mostly on issues of control rather than substance with regard to changes to the RoO, subsequent working papers by the European Commission acknowledged shortcomings of the current regime and signaled a proposed change to the EU RoO into a system based on the value-addition principle. Deep divisions among European Union member states on these proposals, also with respect to the determination of origin in certain industry sectors, have subsequently held back the formulation of a clear policy and negotiating strategy on this issue. Despite their criticism of the existing RoO regime, ACP countries were equally unable to articulate a unified position on the reform of RoO during the EPA negotiations and instead focused only on negotiating specific changes in certain sectors.

Textiles and clothing

The textile and clothing sector RoO have long been considered sensitive for both the European Union and ACP. Since the inception of the EU GSP, preferences in these sectors have been granted only where exporters could demonstrate that a substantial portion of production along the value chain was undertaken locally. In the context of clothing, the requirement over the past four decades stipulated the use of locally-made fabric, while for fabric, it demanded the use of locally-spun yarn. Put differently, two distinct stages of local transformation were required. This requirement ignores developments that have taken place in the global textile-clothing pipeline since then and has resulted in the majority of ACP states being totally unable to fulfil the required EU RoO and still remain internationally competitive.

Under the IEPA, there has been a shift to ‘one-step transformation’ for both textiles and clothing and this probably represents the single most important improvement of the EU-ACP RoO. However, this positive outcome was accompanied by two other changes that are more restrictive:

- textiles and clothing are now excluded from the value-tolerance (or de minimis) provisions which grant producers a 15 percent exemption by value from the normal RoO requirements; and,
- the sector has also been excluded from the outward processing arrangements otherwise provided in the provisions on territoriality.
The combined result, in Southern Africa, for instance, is that a Lesotho-based producer would be prevented from outsourcing minor operations (for example embroidery or dying) to a contractor based in neighboring South Africa without being disqualified under the rules. While this specific example is based on a real-world situation, it also demonstrates that the few RoO changes that have been undertaken so far do little to encourage greater regional economic integration, which after all remains a stated policy objective of these agreements. In fact, these restrictions, and the onerous administrative requirements that continue to underlie the RoO do little to foster regional diversification of production; for most exporters under EU preferences, it remains an easier task to source non-originating materials from abroad than to partner with regional stakeholders in the production value chain.

**Fish and fish products**

In the fish and fish products sector, the requirements that confer local origin have been slightly relaxed in comparison with those under the Cotonou agreement, but overall they remain complicated and restrictive.

The new EU RoO in the IEPAs continue to consider fish caught in inland waters (rivers and lakes) as well as within a country’s 12-mile territorial zone as originating in the exporting country, which means that landlocked ACP countries whose fishing industry is limited to inland waters will not be constrained by RoO and would be mainly concerned with other market access hindrances, such as Sanitary and Phytosanitary (SPS) standards. For ACP countries with a significant sea-fishing industry, this 12-mile limitation remains contentious, with many countries arguing that fish caught within the 200 mile exclusive economic zone (EEZ) (subject to any local licensing regulations that might be in place) and landed locally should automatically be considered to be of local origin, considering the sole economic rights that countries enjoy over this area. With respect to this issue, Namibia had in fact initialed the IEPA under some protest, maintaining its full economic rights over its EEZ (in the context of RoO) while also referring to a number of other unresolved issues.

Under the IEPA RoO, fish and fish products caught beyond the 12-mile limit are only considered as originating when a number of conditions have been met. These relate to a vessel’s (country of origin) registration, the flag under which it sails, and complex ownership criteria extended to both private and legal persons. The only significant change in this respect relates to the nationality of the crew. Under Cotonou, at least 50 percent of the crew, captain and master included, had to be nationals either of the ACP state or the EU. This requirement has now been removed.

Other adjustments to the rules include changes to the requirements relating to leasing. While for all practical purposes it remains virtually impossible for an ACP EPA state to lease foreign registered vessels (for example in the absence of a domestic commercial fishing fleet), the rules have been amended from previously requiring an offer to the European Union (which must have been rejected) to negotiate a fisheries agreement, to offering it the right of first refusal of a leasing or chartering agreement. The revised conditions on this issue remain relatively vague and do not provide sufficient certainty to governments and commercial operators alike. The leasing provisions also continue to be limited to fish caught within the exporting country’s EEZ, which effectively prevents operators from targeting some of the commercially valuable yet highly migratory fish species that might move in and out of this area.

There has also been another change to the treatment of fish with the introduction of a 15...
percent product-specific allowance in some categories concerning the use of non-originating fish material (this might involve imported fish or fish caught by vessels not complying with the list of conditions). Since Cotonou already contained a general tolerance provision—incidentally also 15 percent—without any exclusions (unlike other EU agreements, which sometimes exclude textiles and fish from this provision), the significance of this change to the rules is questionable. Many ACP countries had also sought less restrictive RoO for fish products of Chapter 16 (e.g., canned tuna), arguing that the processing and canning should on its own be a sufficiently value-adding activity to confer origin, while such a provision would also be useful at times when highly migratory fish species were not available “locally.” On this aspect in particular the European Union has so far remained relatively intransigent with respect to most ACP regions, even though many countries—particularly in Africa—have significant fish processing industries. The one exception to this rule pertains to the Pacific ACP group, which has been granted a rule-change, subject to administrative requirements being fulfilled.

A notable absence in IEPAs is the tuna derogation, which under Cotonou exempted a specific annual quantity of tuna loins and canned tuna from the strict origin requirements otherwise applicable to exports from the ACP. Although some country-specific temporary derogations have been granted subsequent to the expiry of Cotonou—notably to certain East African countries—these were essentially effected outside of the EPA process and through a special EC framework, and valid only for a year. The changes to the RoO in no way compensate for this loss in ACP privilege.

**Cross-cutting changes: the case of cumulation**

New rules on cumulation under the IEPA are of considerable concern to ACP countries. The “cumulation principle” considers parties to a preferential trade agreement—bound together by near-identical market access provisions to a third country—as being jointly eligible to meet the RoO requirements. Two or more countries may then each fulfill a part of the rules, depending on the availability of supply or individual areas of competitiveness. Under Cotonou, ACP states were considered a single territory for RoO purposes and were eligible for full cumulation. This meant that an ACP country could use inputs produced in any other ACP country and it would be considered originating. Cumulation therefore has been, and remains, an issue of great importance and concern to the ACP. Under the IEPA, the new market access regulations permit cumulation only between countries that initialled the agreement, effectively leaving out more than half of the former Cotonou beneficiaries and in some instances breaking up existing commercial trade arrangements. The GSP also offers no such cumulation (in fact, the only cumulation relates to four pre-defined regions, none of which are least developed ACP
countries). Only once an ACP state has signed and implemented the IEPA on its part may it cumulate production with all other ACP states.

**ACP countries without an IEPA**

At present, more than half the ACP countries previously eligible for preferences under the Cotonou Agreement have reverted to GSP market access, having failed to initial or conclude an IEPA or full EPA respectively. This outcome is significantly less favorable than both Cotonou and IEPA provisions. Although the EBA offers DFQF market access, it is not open to all of the ACP countries, some having had to revert to the full GSP. Aside from the less favorable tariff regime, GSP RoO are also considerably less favorable than the IEPA (or the interim regulation), in some instances because of stricter product-specific requirements or resulting from the absence of cumulation provisions.

**The way forward**

While the current situation with respect to RoO may technically be temporary, the status quo may yet remain unchanged for some time given the slow pace of implementation of the various interim arrangements, and lack of progress toward concluding a full bilateral agreement. Purely from the perspective of market access, there is in fact little incentive for the ACP to implement the IEPA, as the EC Market Access Regulations essentially provide the same preferences to countries that initialled an agreement as is the case once the agreement enters into force, the key difference being that the interim measures remain non-reciprocal.

A further issue that needs to be addressed pertains to cumulation. Aside from the product-specific transformation requirements contained in the RoO, cumulation can play an important part in assisting countries to develop regional supply chains, thereby acting as a stimulus to regional economic integration. In essence, the current situation—given the fragmented trade preference relationship between the European Union and ACP countries—represents a step back from Cotonou. There is little technical reason why cumulation cannot be extended much further than has been the case even under Cotonou—at least to include other EU preferential trade partners for trade in goods where tariffs have been abolished. Added to this is the need for simpler administrative requirements, which to this day continue to undermine cumulation.

The architecture and substance of future ACP-EU RoO remains uncertain as IEPAs also contain an undertaking that the rules should be reviewed within a specified period of time (in the case of SADC within three years of entry into force of the IEPA). This may of course be considered either a threat or an opportunity. It is unclear whether such negotiations would begin only once each member state has implemented the provisions or whether these should take place on a one-on-one basis, which is unlikely. Whether individual or groups of ACP countries will be able to obtain significant concessions beyond the limited changes that have taken place thus far remains questionable, as the European Union through the Commission, has often expressed its desire—and demonstrated this in practice—to maintain a level of overall harmony across its preferential RoO regime and will thus likely continue to be guided by this objective, irrespective of the few changes that have already taken place in the context of EPA negotiations. From the EU’s perspective, this approach is perhaps understandable since it allows it to maintain a fairly consistent external trade policy regime while benefiting its customs apparatus with relatively uniform rules and regulations. Equally, however, this policy effectively undermines the European Union and ACP’s ability to pursue a differentiated...
and more meaningful outcome more suitable to the prevailing economic realities within the ACP states.

There is also confusion over earlier EU proposals to embrace a value-added based system in determining origin. Whether this would represent an improvement over the current system, especially for exporters in less developed countries, is uncertain. What is clear is that a value-added based system requires accounting and administrative systems in ACP countries that go well beyond current norms, particularly with respect to being able to demonstrate compliance with RoO to ACP and European customs officials. The burden of proof and potential penalties will likewise remain a burden on the trade process. The value-added based system’s vulnerability to exchange rate fluctuations, international price movements (especially with regard to commodity inputs) and other exogenous variables is also well-documented and adds to the uncertainty that ACP states face with regard to future preferential market access to the European Union.