

# Economic Partnership Agreements

A tool for development?!

November 2010



**FAIR  
POLITICS**  
MAKE ———  
DEVELOPMENT  
WORK ———

**The Economic Partnership Agreements (EPAs) between the EU and countries in Africa, the Pacific and the Caribbean (ACP countries) were initially meant to merge development policy and trade policy into a comprehensive framework within the Cotonou agreement. However, as the delayed negotiations are in a complete deadlock it becomes more and more clear that development is not fully taken into consideration in the agreements. The content of the agreements is determined mostly by trade interests, turning EPAs into treaties that are essentially free trade agreements, which will result in the opening up of new markets for products from the EU. In other words, development is once again subordinate to trade interests. Therefore EPAs, in their current form, are not coherent with development policy.**

The Cotonou agreement is currently the legal basis for trade between the EU and the ACP countries. The central objective of the Cotonou agreement, signed in 2000, is poverty reduction.<sup>1 2</sup> The Cotonou trade agreement regime operates under a waiver from the World Trade Organisation's (WTO) General Agreement on Tariffs and Trade (GATT) article 1 and 24. The latter article requires "the liberalisation of *"substantially all the trade" between contracting parties "in a reasonable length of time."*<sup>3</sup> Because the Cotonou waiver ended in 2007, the EU has since 2002 been negotiating new trade agreements with ACP countries. These new trade agreements are called Economic Partnership Agreements (EPAs). As a continuation of the Cotonou agreement, the EPAs were initially conceived as a development tool, designed to increase regional integration among countries in the ACP sub regions and to diversify the economies in these ACP regions.<sup>4</sup>

By encouraging regional integration, six regional trade blocs amongst ACP countries were formed: a Pacific, a Caribbean and four African regions.<sup>5</sup> These free-trade areas are intended to create the larger regional markets deemed necessary for strengthening economic development, south-south trade, for competition purposes and for the attraction of substantial foreign investment. Also, this would supposedly give ACP regions a stronger position vis-à-vis the EU.<sup>6</sup>

The reason why EPAs are being established is for the trade arrangements between the EU and the ACP countries to meet the WTO criteria for free trade. Within the WTO-framework agreements were made, obliging all countries to open their borders for imported products. On top of this, governments will have to limit subsidies intended to

---

<sup>1</sup> Cotonou agreement, article 35(2).

<sup>2</sup> Cotonou agreement, article 34.

<sup>3</sup> WTO GATT, article 24, [http://www.wto.org/english/docs\\_e/legal\\_e/gatt47\\_02\\_e.htm](http://www.wto.org/english/docs_e/legal_e/gatt47_02_e.htm)

<sup>4</sup> The EPA sub regions are: Caribbean, Central Africa, East and Southern Africa, Pacific, SADC-minus, and West Africa.

<sup>5</sup> The African regions consist of: a West-African region (ECOWAS), a Central African region (CEMAC), East and Southern African region (ESA) and Southern African regions (BNLS).

<sup>6</sup> Davies R., Bridging the divide: the SADC EPA, Trade Insights, May 2008.

stimulate domestic production. The Cotonou agreement does not comply with these criteria. ACP countries have access to European markets to some extent, while many ACP countries apply tariffs to imported products.<sup>7</sup>

The discussion on WTO compatibility in the EPA negotiations is based on an EU perspective. Although according to GATTs Article 24 substantially all trade should be liberalised, the WTO does not oblige countries to cease all trade preferences. However, European Commission guidelines state that in a Preferential Trading Agreement at least 80% of trade should be liberalised. This percentage is an EU interpretation of article 24 and through the EPA negotiations the EU is imposing this interpretation on ACP countries. Moreover, in order to comply with WTO rules, only trade in goods needs to be liberalised. Trade in services and trade-related issues are thus not required to be liberalised, but have been part of the EPA negotiations. These and other issues concerning WTO compatibility will be discussed in more detail below.

## **EPAs: the pitfalls**

### ***Regional disintegration***

Despite ambitious ideas and good intentions, it was unclear from the start reaching regional integration would be achieved. Many of the countries were conveniently shoved together in regional groups but are hardly comparable in terms of economic development: some are relatively advanced, some belong to the worlds poorest, some produce rice, mangoes and bananas for export purposes, others depend on subsistence farming and others are exporting raw materials.

Currently only the Caribbean region has signed a full regional EPA and not with great enthusiasm.<sup>8 9</sup> With the nearing deadline in 2007, the European Commission decided to conclude interim EPAs (iEPAs). These iEPAs should ensure WTO-compatible market access for goods and extend the negotiation time towards full-EPAs, while avoiding a disruption in trade during the negotiating period towards these full-EPAs.

The countries that agreed to sign an individual interim EPA (iEPA) are usually the richest countries of their region. For these countries, the EPAs are relatively attractive, because of their economic position and relatively advanced economies, they will be in a better position to adapt to the new situation once borders open up for European products. Plus, not signing an interim EPA for them would mean they have to face trade arrangements under the enhanced Generalised System of Preferences (GSP+) which has much more

---

<sup>7</sup> European Commission: Trade. Bilateral relations: regions. Retrieved from <http://ec.europa.eu/trade/issues/bilateral/regions/acp/>

<sup>8</sup> ACP Council of Ministers, Declaration of the ACP Council of Ministers at its 86th Session Expressing Serious Concern on the Status of the Negotiations of the Economic Partnership Agreements, Brussels, 13 December 2007.

<sup>9</sup> Alternatives to EPAs if not signed? Retrieved from <http://www.otal.com/ghana/epas.pdf>

disadvantages as it leads to higher EU tariffs than before. Moreover, they are not eligible for trade with the EU under Everything But Arms (EBA). Only Least Developed Countries (LDCs) can sign an EBA agreement, which is much more advantageous for them as all imports to the EU are quota and duty free. To protect developing countries, unilateral preferences like EBA are still allowed.<sup>10 11 12</sup> At the same time, the pressure for LDCs to sign an EPA is much lower as an EBA agreement is much more advantageous.

The fact is that countries sign an individual iEPA because no consensus could be reached with the entire regional group. Therefore, iEPAs do not represent the interest of the entire regional group. This means that concluding an EPA for the regional group only becomes harder after some countries of the group have signed iEPAs. Consequently, an iEPA can counter the signing country's interests within the region as well as the region's own integration needs. Fair Politics argues that the EPAs should conform to its regional integration goal, and the EU should stimulate regional integration in all ACP regions by approaching regions as collective partners.

Ghana is one of the ACP countries that has signed an iEPA and at the same time is part of negotiations for an EPA agreement as part of the regional group ECOWAS. An incentive for Ghana to sign the iEPA is, amongst others, to provide predictability for the business community and avoid trade disruptions with the EU. Yet, signing the iEPA endangers the chances of signing an EPA with the regional bloc, as several provisions in Ghana's iEPA contradict the negotiating position of ECOWAS. The most obvious example of this is the market access offer: while Ghana's iEPA commits to open 80% of the market, ECOWAS is still aiming for 60%.

### ***Trade liberalisation: the exclusion list and timeframe***

As mentioned earlier, the EU guidelines for the EPAs state that at least 80% of trade should be liberalised. For the remaining percentage of trade, the developing country needs to create an exclusion list on which they list all the products that they want to protect. There are several problems with the exclusion list. Firstly, it is static in time, which means that the list of products cannot be altered over time while markets do change. Moreover, countries can only put products on the exclusion list, but they cannot effectively protect value chains. If value chains cannot be protected, the protection of single products will not have much effect. This will lead to the collapse of developing countries' industries that cannot compete with goods from the EU.

---

<sup>10</sup> One of these arrangements is Everything But Arms (EBA), giving the Least Developed Countries tariff- and quota-free access to EU markets.

<sup>11</sup> Keck, A. (2004) *Low Special and Differential Treatment in the WTO: When, Why and How?* WTO Staff Working Paper; GATT Article XXXVI Para8 (1947) .

<sup>12</sup> Bartels, L. (2007) *The WTO Legality of the EU's GSP+ Arrangement* 10 *Journal of Intl Economic Law* 1-18 p5 PSE POSITION ON ECONOMIC PARTNERSHIP AGREEMENTS (EPAs).

Although the European Commission has stated that in special cases the transition period could be up to 25 years, the usual transition period amounts to 15 years, which is considerably short for countries that are highly dependent on tariff revenues.<sup>13</sup> Instead of linking liberalisation to a timeframe, Fair Politics argues that it should be linked to a development benchmark, so that industries will only be liberalised once a certain level of competitiveness is reached.

### ***More than WTO compatibility: Most Favoured Nation, Rules of Origin and Export Taxes Clauses***

Moreover, the EPAs include rules of origin and Most Favoured Nation (MFN) clauses. The rules of origin clause entails that only goods originating from a country that signed an EPA or iEPA are allowed on the EU market. This implies that products containing inputs from other countries cannot access the EU market. The rules of origin clause thereby counters the EUs stated objectives to broaden market opportunities and to foster regional integration of developing countries.

The MFN clause implies that if the developing country signs a trade agreement with another country, whatever concession is granted to that country should also be granted to the EU. This clause limits the ability to diversify trading partners and increases dependency on the EU. The MFN clause is part of WTO compatibility, however the WTO has an Enabling Clause (2c) which allows developing countries to craft South-South agreements to which MFN does not apply.<sup>14</sup> The current MFN clause negotiated in the EPAs and iEPAs is contradicting the Enabling Clause and dampening South-South trade.

Some of the draft EPAs clearly state that apart from the traditional trade in goods, also services and in some cases even capital arrangements will be included in the agreements. The European Commission is actively pushing for this, even though, in many developing countries, a services sector hardly exists. This implies that the services paragraph is part of the negotiations purely with the aim to open up new markets for European companies. It risks to seriously damage the existing economies of developing countries, in terms of their sensitive local industries and production models. Therefore, Fair Politics argues for an effective safeguard mechanism to protect the market from imported products which should be included in the EPAs for ACP countries to use if faced with a surge of subsidised EU imports. On top of this, developing countries must have the right to temporarily support and/or protect the economic activities they want to develop.

Another principle in all EPAs is that no export taxes are allowed, while export taxes are legitimate according to WTOs GATT. Historically it has been a proven instrument for

---

<sup>13</sup> European Parliament debate on Economic Partnership Agreements, Remarks by Peter Mandelson, Strasbourg, 22 May 2007.

<sup>14</sup> South Centre. September 2010. EPAs and WTO compatibility A Development Perspective.

industrialisation and diversification. Especially for developing countries that are resource-rich, banning export taxes will be extremely damaging (see the Fair Politics [Raw Materials case](#) for details). By demanding that ACP countries eliminate all export taxes by signing an EPA, the EU takes away an important tool for developing countries to develop. And, thus the EU counters the stated development objective of the EPAs.<sup>15</sup> Fair Politics argues that the EPAs should not require anything more than is required under the WTO, and thus export taxes should be allowed in the EPAs.

### **Negotiation positions**

Although officially the negotiations are fair and equal, the European Commission has, obviously, a much stronger position than the ACP countries. The ACP countries highly depend on trade relations with the EU, while European countries depend to a very limited extent on imports from developing countries.<sup>16</sup> In addition, the EU negotiates with many negotiators, including lawyers and agricultural experts while the developing countries often do not have the resources and expertise to match the negotiating team of the EU. Besides that, on behalf of the EU only trade officials and specialists conduct the negotiations and no development experts are involved. As a result, the negotiated texts fail to mention any of the developmental goals, let alone elaborate on how to reach these.<sup>17</sup> This lack of a level playing field results in a very weak negotiation position for developing countries. Fair Politics argues ACP countries should be given the chance to assess the advantages and disadvantages of new developments they face to, in the end, sign treaties that they believe will serve their interests too.

And as long as the European Union protects and subsidises its own industries, no fair and equal trade between the EU and ACP countries is possible. ACP countries are only able to protect certain products but are not able to protect their markets appropriately, while the EU keeps protecting certain sectors, especially agriculture. Agriculture is key to most ACP countries, but because of EU subsidies these countries cannot compete with EU products, and opening of the markets will result in the collapse of local markets.

### **UnFair Politics**

The EU has committed itself to Policy Coherence for Development (PCD) which is laid down in the Lisbon Treaty, article 21: *The Union shall ensure consistency between the different areas of its external action and between these and its other policies. The Council*

---

<sup>15</sup> South Centre. June 2010. EPA Contentious Issues Matrix: Key Problems and Some Recommendations.

<sup>16</sup> Commission of the European Communities, Commission Staff working paper accompanying the Commission working paper EU report on Policy Coherence for Development (COM 2007 545 final) 26-27.

<sup>17</sup> Stevens, C.; Meyn, M. and Kennan, J. (2008) Comparative analysis of liberalisation schedules and other commitments of the African interim EPAs, Overseas Development Institute.

*and the Commission, assisted by the High Representative of the Union for Foreign Affairs and Security Policy, shall ensure that consistency and shall cooperate to that effect.*

Moreover in Lisbon article 208 on the functioning of the European Union (TFEU), it is even more clearly stated that: "*The Union development cooperation policy shall have as its primary objective the reduction and, in the long term, the eradication of poverty. The Union shall take account of the objectives of development cooperation in the policies that it implements which are likely to affect developing countries.* In other words, the treaty states that actions in the field of trade policy, for instance, should not harm or undermine development efforts, but should aim to reinforce these. This is called Policy Coherence for Development.

In article 208d of the TFEU it is stated that the EU aims to foster the sustainable economic, social and environmental development of developing countries with the primary aim of eradicating poverty. However when looking at the process of EPA negotiations and at the content of the agreements as explained above, one cannot but conclude that the EPAs are clearly incoherent with the objectives of the EUs development policy. In other words, by concluding EPAs in their current form and content, the EU is undermining its own development efforts. This is costly for both the developing countries and the EU.

Click here to read our [Ghana Impact Study](#) that (amongst others) researched the impact of EPAs on Ghana.

## **POLICY RECOMMENDATIONS**

---

- All elements that are not required to make the EPAs WTO compatible should be taken out of the EPAs. This requires a review of the current provisions on export taxes, and the MFN and rules of origin clauses.
- EPAs must ensure that ACP regional groups have maximum flexibility over their own market opening. The EU should therefore offer all ACP regional groups a period of 20 years or more for market opening, on an unconditional basis. Each regional group should be offered this full period. Moreover, the liberalisation scheme should be linked to development benchmarks instead of a fixed timeframe.
- The EU should cut subsidies on products competing with local products, especially in agriculture. As long as the EU subsidises its sectors, ACP countries should not be asked to liberalise tariffs on products that have to compete with EU products.

- There should be an effective safeguard mechanism for ACP countries to use if faced with a surge of subsidised EU imports.
- The EU should stimulate regional integration in all ACP regions by approaching regions as collective partners but at the same time acknowledging their differences in economic and social terms. Therefore enough policy space should be provided during the negotiations and no differentiation in terms of EPAs and iEPAs which influence the individual negotiation positions should be pushed for.
- Investment, competition and government procurement should be removed from the negotiations, unless specifically requested by an ACP regional negotiating group. It is for ACP regional groups to judge the development benefits of any agreements on these issues and the EU should not push for them to be discussed. If included, any negotiations on government procurement should be subject to transparency.
- A review mechanism for EPAs - with full ACP regional group ownership and participation - should be introduced to ensure the EPAs are delivering the intended developmental benefits.
- The Commission should be ready to provide an alternative to an EPA at the request of any ACP country. Any alternative offered should provide no worse market access to the EU than is currently enjoyed under Cotonou preferences.

**Fair Politics is in cooperation with:**



Fair Politics is an initiative of the Evert Vermeer Foundation and is being sponsored by:



The content of this publication is the sole responsibility of Fair Politics and does not necessarily reflect the position of the sponsors.