

# Economic Partnership Agreements: A Case of Unfortunate Timing?

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## *Prologue:*

In preparing this paper, Stephen Lande and Dennis Matanda leverage their extensive first-hand experience with both the African Union and Africa's regional economic communities. They also spent countless hours rehashing Lande's recollection of negotiations around the 1974 period when Britain joined the European common market. At that time, a major bone of contention between the U.S. and Europe was the European Commission's attempts to foist reverse preferences on former African colonies – actions eerily similar to what's going on today with the European Union's economic partnership agreements (EPAs) in Africa.

## **Synopsis**

Today, just as African countries work frantically to meet an October 2016 deadline for acceding to their respective EPAs, the recent Brexit vote justifies a moratorium; one in which both Africans and the EU reflect on Brexit's impact on Africa, and agree upon (i) measures to stave any negative repercussions to the progress Africa has made on integration, and (ii) measures that avoid any loss of preferential access into those third countries giving Africa preferential access for her exports.

While its becoming clearer that in light of Brexit, Brussels intends to play 'hard ball' to enforce key tenets such as EPAs, it is, perhaps, now more incumbent upon the African Union to hold a high-level political meeting to request that the EU extend for a 2 to 5-year period, the earlier-mentioned October EPA deadline. Putting this stay request on record is especially critical because some provisions of fully-implemented EPAs could have an adverse effect a nascent African Economic Community. If the EU granted a delay, they would have helped advance the freer movement of goods throughout sub-Saharan Africa; of course, allowing a recently renewed non-reciprocal AGOA to reach its true potential for the congressionally-mandated 10-year period.

## **Introduction**

Although James Duddridge, UK's Minister for Africa promised that relations between Britain and Africa would improve once Britain voted to leave the 28-member European Union, Africa's largest economies have experienced a whole host of difficulties since the recent infamous Brexit vote. And Brexit comes at a time when the European Centre for Policy Development Management (ECPDM) says the political value of a Cotonou Partnership Agreement (CPA) of 28 EU Member States and 79 ACP countries is rooted in a colonial past that, today, is both 'diluted' & 'diminished.'

Back to effects of the British referendum, Brexit caused South Africa's currency to perform worst after the British pound. The rand has, as at July 8, recovered. Then, even if Nigeria adheres to EPAs, its \$ 8.3 billion trade volume with Britain will suffer as the UK repeals, re-enacts or negotiates up to 5,000 regulations, directives and decisions relating to the international market. Also, whereas the process may wane, Kenya faces the real prospect of capital flight as investors seek safer havens like U.S. Treasuries.

Alternatively, Brexit has exposed a crack in a Europe that has, thus far, acted as a fortress when it comes to EPAs. Unless the EU extends its arbitrary October deadline, Africa's non-LDCs like Kenya, Ghana and Namibia have something akin to a *Sword of Damocles* hanging over them in a 3-month period within which to ratify and then implement their respective EPAs.

If these three countries, for instance, cannot fully accede to their respective regional EPAs, they will – like Kenya experienced in 2014 – lose the preferential entry their products currently have into Europe's lucrative markets. Perhaps even worse, a small LDC like Lesotho, which is primarily benefiting from the AGOA third-country fabric provision, could find its duty-free access to the U.S. reduced or rescinded if its EPA business forces it to discriminate against American imports in favor of those from the EU.

### **What Must Be Done?**

Under present circumstances, Africa and everyone else may have no choice but to accept whatever consequences Brexit have on the world's poorest continent. But with the present flux in Brussels and the EU, the African Union could slow the headlong rush into EPAs by urging Europe to withdraw the October deadline for the Africa's non-LDCs to ratify and implement EPAs or lose preferential entry into the EU. Research shows that the pressure of the deadline is, first and foremost, forcing Africa's non-LDCs and some of their LDC colleagues to sacrifice their long-term interest in continental integration, concurrently putting their relationships with key trading partners such as China, India and the United States into jeopardy.

Seminally, while Africa has held a plethora of EPA meetings, the time has come for the African Union to convene a continent-wide frank discussion on being forced to enter into permanent EPAs with a fracturing Europe versus Africa's relations with third countries, and the progress to graduate the Tripartite Arrangement of COMESA, EAC and SADC into the Continental Free Trade Agreement (CFTA).

### **Consequences**

Apart from affecting regional integration in Africa, EPAs will also impact third country flagship programs like AGOA. Here, although the U.S. has, ostensibly, been reluctant to comment on the EPA negotiation process, Brexit may be an opening for the U.S. to seek a pause; a momentary halt that should give Obama's successor the space needed to transition AGOA from its current non-reciprocal status to reciprocity once the program has run its course. Our argument is that

EPAs must be done without the U.S. having to retaliate against any specific preferences Africa has, in the meantime, granted to the EU.

In our estimation, a 2 to 5-year delay in the deadline will help both Africa and the EU – plus other stakeholders to dig deep into the current European configuration: Is the EU much too diminished? Could other countries seek to leave the EU? Doesn't a crack in the EU suggest an opportunity for Africa? To put it simply, Africa should not enter into a contractual agreement with the EU when it is unclear what countries will hold membership 5 years from now. Unfortunately, Africa's immediate concern for loss of preferences seems to cloud the long-term implications of EPAs.

### **Possible Solutions to the EPA**

Like the *Brookings Institution* noted in their June 21, 2016, article on the implications of Brexit on Africa, bilateral trade agreements between the EU and other parties should be delayed to allow careful analysis and even possible EPA modification. So, while technical work on Africa's regional integration continues, it is incumbent upon Africa's leaders to come up with a blueprint for responding to EPAs in the light of Brexit.

In this case, even though the African Union Commission is in the process of voting in a new leadership team for 2016 to 2020, a key meeting would have to be held late July/early August to develop options and scenarios to present to the EU. Even if time before a high-level meeting is short, Africa has more than adequate expertise within the AU itself, at the UN Economic Commission for Africa (UNECA), and in the African Development Bank (AfDB) to carry out studies and present their results to Africa's leadership on a timely basis.

In the meantime, we'd suggest that the EU make generous overtures such as showing flexibility on the EPA implementation date and even reinstating duty-free privileges for Nigeria, Gabon, and the Democratic Republic of Congo. This market access was revoked for, among other things, failing to meet earlier arbitrary deadlines. And as South Africa agreed to modify its EPA/TIDCA as part of the EU-SADC EPA, specific tariff provisions applicable to South Africa should be implemented.

### **The Ideal Scenario**

If the EU were to delay EPA implementation for a 5-year period, for instance, a continental free trade agreement (CFTA) and even a possible common external tariff (CET) or customs union would have better prospects of being in place by the end of the decade; preparing the continent for future mega free trade agreements with trading blocs from a unified and so, stronger standpoint. In fact, although the Trade Facilitation Agreement (TFA) shall have a positive impact on Africa's regional trade, its impact will pale significantly when juxtaposed with potential results of a CFTA and/or CET.

## **Misgivings**

Even before Brexit, Africa had a number of misgivings about EPAs. For instance, countries were uncomfortable with the EU's threats to withdraw duty-free access from more advanced African countries and reduce assistance to the less advanced ones. Africa also felt that EPAs would disrupt regional integration. Hence, if EPAs were so good for Africa, it was befuddling for the EU to strong-arm Africa into discriminating against key trade partners outside Europe.

The fact is that operational EPAs give the EU a right to challenge agreements they deem more beneficial to third countries. Interestingly, with Brexit, these non-EPA member countries will include the UK, since it'd have to sign separate FTAs with African countries that would *ceteris paribus*, be under the EPA regime. Adding to their inopportune timing, EPAs seek to be implemented just as much of sub-Saharan Africa faces severe budgetary shortfalls. Africa is, rightly, concerned that EPAs require duty reduction on EU's exports to Africa sans specific commitments to offset tax deficits. In tandem, the Brexit vote necessitates a call for a balance of concessions where the EU commits not to harm Africa through use of the very agricultural subsidies the UK was stridently against. Brexit weakens opposition to increased subsidization.

## **An Illustration**

If the various African countries fully implemented their EPAs under their present set up, there's no doubt that timing would be a debilitating liability. On the other hand, Africa's non-LDCs face dire straits, if they don't sign along an EPA dotted line this October. When Kenya's market access to the EU was suspended in October 2014, Kenyan flowers, fish, fruit, and vegetables were taxed upwards of 15 percent. Thus, a country already grappling with all manner of developmental challenges was subjected to levies of up to USD \$1.09 million a week. Simply: Alongside other non-LDCs, Kenya can't afford another suspension. The EU only reinstated Kenya's market access benefit to Europe in December 2014; after Burundi, Rwanda, Uganda, and Tanzania were cajoled into acceding to an EAC road map to signing their EPA. In fact, EPAs make it almost impossible for the continent to agree on a CET. A CET cannot be operationalized where some countries subject imports from a major supplier to MFN tariffs and others allow the same country to import under preferential duties.

EPAs will also require FTA partners to maintain additional restrictions in an already messy African border situation. In an EPA regime, non-EPA signatories have to levy duties on imports entering into their domestic commerce where the product entered the FTA through an EPA signatory and thus paid no or preferential duties. In fact, in cases where a product incorporates some EU value-added and the African value-added is not enough to qualify for origin status, customs authorities have to determine the EU content before subjecting it to MFN duty rates. Related concern is: countries incorporating EU inputs into products with sufficient African content to satisfy origin rules would have a competitive advantage over similar products produced in other African countries where the EU component paid full duties.

Penultimately, it's important to note that while trade pacts such as EPAs, or non-reciprocal

programs AGOA are valuable development tools, they really ought to be aligned, first and foremost, to Africa's trade and development agenda. Today, Africa has placed a premium on its continental integration – a process that will ensure that the entire continent can negotiate with the EU or U.S. from a better position than today. At the expense of a conglomerate of African economies, EPAs just give Europe a leg up vis-a-vis Africa's other trading partners. Like USTR Ambassador Michael Froman stated, the U.S. will not sit idly by – providing unilateral preferences to Africa – if American exports suffer because Africa has granted preferences to others.

### **First Hand Experience with EPAs**

While African countries have reported the coercive nature of negotiating with Europe, the authors' direct experience with how the EU deals with EPAs was illustrative:

At a regional summit in Kinshasa, we pointed out that EPAs might be untimely for Africa, and would, perhaps, affect Africa's already uneven road to progress and industrialization. We were swiftly removed from a panel to discuss economic cooperation and private sector development with Sandra Gallina, currently Director of Sustainable Development, European Commission. The pretext was that Ms. Gallina wished to focus on the industry and not EPAs. Treasure Maphanga, Director of Trade at the African Union Commission replaced us on the panel and vigorously opened a discussion on EPAs. Like Mrs. Maphanga pointed out in her discussion with Ms. Gallina, there's value in Africa's integration, and EPAs have negative consequences to Africa's unity.

This direct example – among the many we could describe – is why a united voice must emerge from an African Union meeting. If two or three African leaders approached their European counterparts to request an EPA deadline postponement, they'd garner support from both German Chancellor Angela Merkel and former British Prime Minister David Cameron – both leaders' key advisors have expressed misgivings about EPAs.

Additionally, citing the recent AGOA report statement on EPA implications, U.S. President Obama should be approached to join the delay request by citing the need to protect U.S. interest in American exports and assuring that an arbitrary EU deadline is not allowed to threaten one of Obama's legacy accomplishments – the smooth operation of one of his signal accomplishments; a ten-year AGOA extension; one of the few trade initiatives that has received almost unanimous bipartisan support.

### **A Case for EPAs**

But perhaps, we're being totally unfair to the EPAs and the EU. EPAs may be a good thing for Africa given that they solidify duty-free entry into Europe at a time of uncertainty. Being contractual, they are promoted to break the old rules of trade by creating bound obligations on the EU to provide duty-free access for Sub-Saharan African imports. Such access is designed to encourage Africans to rely less on raw materials and more on adding value to products at

home before exporting them; spurring them to join global supply chains.

EPAs are also meant to encourage Europeans to invest in Africa and ensure that Africans acquire new technology for much less, and growing their respective economies. Sunil Boodhoo of the Mauritius Ministry of International Trade sees EPAs as a ‘formidable instrument [that can] build a globally competitive and diversified economy.’

But there are other ways to bring development to Africa. The U.S. model of continuing unilateral duty-free treatment until a certain date is one such model. By extending AGOA for a 10-year period, sufficient time was provided for Africa to complete its CFTA and possibly a common external tariff before one begins negotiating reciprocal agreements, including a replacement for AGOA. African must, thus, call for a delay in implementing EPAs so that the African Union and its member states can appropriately replace the current dynamic between a united Europe and a fragmented Africa.

### **Post Script**

As we learn that Tanzania may not accede to the EPA as the EAC had planned for July 18, 2016, one mustn't continue to blame colonialism for all that ails Africa, one cannot focus on a glorious future of a united Africa negotiating as one under an EPA regime. That's why Africa's voice must emerge from an African Union meeting – with a blueprint for a scenario where even if the EU does not postpone its deadline, Africa is on record saying that EPA implementation must neither interfere with African efforts to achieve a CFTA, nor cause serious enough discrimination against U.S. exports to threaten Africa's benefits under AGOA. EPAs may seek to bring progress, but are, ultimately, mis-timed.