

**Effects of Bilateral Trade Agreements on the Multilateral
Trading Arena: special consideration of EPA between EU and
ACP countries**

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Acronyms

ACP	African Caribbean and Pacific
AGOA	African growth opportunity Act
CEMAC	Communauté Economique et Monétaire de l 'Afrique Centrale
CU	Customs union
ECOWAS	Economic Community of West African States
EPA	Economic Partnership Agreements
EU	European Union
FTA	Free trade Area
GATT	general Agreement on trade in Goods
GATS	General Agreement on Trade in Services
LDCs	Least Developed Countries
MFN	Most Favoured nation
RTA	Regional trade Agreements
SADC	Southern Africa Development Community
SDT	Special and Differential Treatment
WTO	World trade Organization

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Synopsis

To substitute the trade preferences granted to ACP countries by the EU, which are scheduled to be phased out in 2008, the EU and ACP countries are negotiating Economic Partnership Agreements. Regarded as vehicles to promote development, there are basically four key principles upon which the partnership agreements are established: WTO compatibility, SDT as well as flexibility for ACP states, maintaining the acquis of Lome' Conventions and preserving sub regional and regional integration processes. The EPAs are to be negotiated between the EU and the regional trading blocks of the ACP countries and will take the form of free trade areas.

The issues that are to be addressed in the EPA negotiations are, among other things, trade in goods, liberalization of the service sector and trade related issues such as competition policy, investment, trade and environment, government procurement as well as trade and labor standards. Some of these issues, the ones known as "Singapore Issues", have been put on the table at the multilateral trading negotiations at the WTO and due to lack of consensus, were dropped from the Doha work program. The introduction of these issues to EPA negotiations amounts to bringing dead issues in to life again and hence, need careful consideration as it may lead to a WTO plus commitment.

This paper discusses some concepts as well as legal issues related to the economic partnership agreements between the EU and ACP countries. The paper is divided into three main sections. The first section will deal with the principles of world trading system and GATT Article XXIV exception. Section II focuses on the trade relationship that existed between the EU and ACP countries, and examines the different issues

underpinned in EPAs. Section three, which is the last section, will try to see the implication of EPAs on the multilateral trading arena.

1. Basic Principles of World Trading System

One of the basic principles in the world trading system is the principle of non-discrimination. This principle provides for the prohibition of discrimination by a country between its trading partners and discrimination between its own and foreign goods. This principle will apply in relation to like products. Thus, the principle of non-discrimination has two aspects: the Most Favoured Nation (MFN) rule and the National Treatment rule.

‘The MFN rule requires that a product made in one member country be treated no less favourably than a “like” good that originates in any other country.’¹ The rule of most favoured nation has been in existence for hundreds of years. In the words of Jackson, most favoured nation clauses apparently have at least seven hundred- year history in trade agreements.² However, the clause was brought to the multilateral trading arena following the coming in to picture of the 1947 General Agreement, GATT.

Pursuant to article I of GATT 1947, any advantage, favour, privilege or immunity in connection with importation or exportation or imposed on the international transfer of payments for imports or exports and with respect to the method of levying such duties and charges, granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like

¹ Hoekman, (2002), 42

² Jackson, Davey and Sykes, (1995), 133

product originating or destined for the territories of all other contracting parties.³ This means, if a country grants any concession to any product for any country; it has to extend the same concession to like products of all other countries. What the principle implies is that the benefit given to one country has to be given to all other contracting parties; so that they all remain 'most favoured'⁴. Hence, countries will not have a legal ground to discriminate between like products originating from different countries.

The second aspect of non-discrimination principle is National Treatment. This rule talks about extending similar treatment to foreign goods to that of domestic like products. Article III of GATT requires that imports should not be treated less favourably than similar domestic goods. The national treatment to be accorded involves internal taxes, regulations and requirements affecting the internal sale, purchase, transportation, distribution, and internal quantitative regulations requiring the mixture, processing or use of the products in specified amount.⁵

Like most rules and principles, the MFN rule also has its own exceptions. There are two main exceptions to the MFN principle. The first one allows preferential treatment when based on development concerns; and hence there will be preferential arrangements for the benefit of developing countries either bilaterally or unilaterally. Part IV of the GATT, under the heading "*Trade and Development*" refers to efforts to be undertaken in favour of less developed countries in order to ensure that the participation of these countries in the global trade will be a means for these countries to achieve economic and social

³ Article I of the General Agreement on Trade and Tariffs, (1947).

⁴ Rao and Guru, (2003), 39

⁵ Article III/1 GATT 47

advancement. The article in the GATT agreement allows preferential and more favourable treatment to developing countries⁶ on the basis that they are offered by to all developing countries or all LDCs without discrimination. Two things can be considered as basic elements of this article. First, the relationship governed here is that of developed countries on the one hand and less-developed ones on the other. That is to say, favourable treatment is to be accorded to less-developed countries by the more developed ones. And secondly, the treatment given to one less-developed country has to be also extended to all less-developed countries. There should not be discrimination between two less-developed countries. This form of treatment to less developed countries was further enhanced with the adoption of the Decision of November 28/1979.⁷ The Generalized System of Preferences as well as *Everything but Arms* initiative of the EU with Least developed countries and the African Growth Opportunity Act (AGOA) of the US with African countries can be taken as examples of the exceptions falling under the enabling clause. However, the AGOA act has been criticized as being contrary to the principles of the World trading system as it affords preference only to a certain group of less developed countries-African countries.

The second exception, as envisaged under article XXIV of GATT 47, is the formation of preferential trade agreements. Article XXIV of the GATT-1947 defines the modalities

⁶ Article XXXVI/8 states that developed contracting parties do not expect reciprocity for commitments made by them in trade negotiations to reduce or remove tariffs and other barriers to the trade of less-developed contracting parties.

⁷ Differential and More Favourable Treatment Reciprocity and Fuller Participation of Developing Countries, Decision of 28 November 199

under which WTO members may not respect the MFN principle in trade in goods. The justification behind this derogation to the MFN principle is that, under certain conditions, free trade agreements benefit not only their members, rather the global economy as a whole, through trade creation which results in increased overall welfare.⁸

Article XXIV of the GATT allows the formation of free trade areas (FTAs) and customs unions (CU) provided certain conditions are met. The conditions that need to be fulfilled for the formation of preferential trade agreements are:⁹

1. Trade barriers after integration should not rise on average
2. All tariffs and other regulations of commerce has to be removed on substantially all intra-regional exchanges of goods within reasonable length of time, and
3. The arrangement has to be notified to the Contracting Parties (now the WTO).

The conditions attached to the formation of regional arrangements are designed to minimize opportunistic behaviour that is aimed primarily not at integration but at discrimination against non-members.¹⁰ The rationale for the first condition is that ‘if restrictions on imports from non member economies are no higher than before, the extent of possible reductions in imports from non members is limited.’¹¹ This condition tries to avoid or limit the trade diversion effect of regional integration. The rationale behind the

⁸ Stephen Karingi et al., (2005), 12

⁹ See article XXIV/5, 7 and 8 of GATT 47

¹⁰ Maurice and Hoekman, (2002), 548

¹¹ Hoekman and Kostecki (2001), 352

second condition is a public one in that it attempts to ensure that participants in the regional liberalization efforts go all the way.¹²

Determination of whether the requirements set under article XXIV are met was left for the council. However, it was reported that the GATT experience in testing Free Trade Areas and Customs Unions against article XXIV was very discouraging.¹³ Although politics has played a great role in hampering the decisions on these issues, the ambiguity of the language and criteria set by Article XXIV also contributed for its non-fulfilment. Differences of opinion regarding how to define 'substantially all trade', how to determine whether the external trade policy of a customs union has become more trade restrictive on average, and what is a reasonable time for the full implementation of a FTA or Customs Union existed.¹⁴

These issues are still unresolved and entail some debate. In relation to the requirement of 'substantially all trade', it is generally thought that at least 90 percent of the trade has to be liberalized under a free trade agreement, but there is no legal confirmation for that figure.¹⁵ This argument is basically derived from the experiences of EU free trade areas with different trading partners. For instance, in the EU-South Africa free trade agreement, the EU agreed to extend liberalization on 95 percent of its trade with South Africa, while

¹² Ibid

¹³ Id., 353

¹⁴ Id., 354

¹⁵ Stephen Karingi et al., (2005), 12

South Africa agreed to liberalize “only” 86 percent of its imports from the EU.¹⁶ Hinkle and Newfarmer also adopt the view that “substantially all trade” is generally to be interpreted to mean 90% or more of trade.¹⁷

Table No.1 Share of Trade Not Subject to Tariff or Non-Tariff Barriers (Percent)

	EU Imports		Partner Imports		Total Trade	
	1998	1999	1998	1999	1998	1999
EU-Tunisia Mediterranean Agreement	95.2	92.9	95.4	96.7	95.3	95
EC-Egypt Cooperation Agreement	85.7	84.5	100	100	96.4	96.4
EC-Turkey Customs Union	86.4	86.9	97.6	97.6	93.3	93.1
EC-Hungary Europe Agreement	92.7	93.5	98.5	98.8	95.8	96.3
EU-South Africa TDCA	90.2	91.1	91.1	90.3	90.7	90.7

Source: Davenport (2002) as cited by Bilal and Rampa (2006)

The other area of uncertainty in relation to article XXIV of the GATT is the time allowed for implementing an RTA. According to article XXIV/5/c of the GATT the interim agreement establishing the FTA and CU will include a plan and schedule for the formation of the CU or the FTA within a reasonable length of time. How reasonable is a reasonable time is a question not addressed by the agreement. Moreover, there is no official interpretation of what a reasonable length of time might be, although it is conventionally thought to be ten years.¹⁸ Interpreting ‘reasonable length of time’ in the

¹⁶ Ibid

¹⁷ Lawrence E. Hinkle and Richard S. Newfarmer, (2005), 8

¹⁸ Stephen Karingi et al., (2005), 12

establishment of an FTA to mean a maximum of 10 years seems to have attained the acceptance of many scholars.¹⁹

The Uruguay round of trade negotiations ended up with the adoption of the Final Act of the Uruguay round and the Marrakech agreement establishing the World Trade Organization in 1993. The WTO was established in Geneva two years latter.²⁰ By adopting an Understanding on the implementation of Article XXIV of the General Agreement, the members of the WTO tried to solve the problems that were created while interpreting the article.²¹ The GATT 1994 Understanding on the interpretation of Article XXIV reiterates that regional integration agreements should facilitate trade between the members and not raise barriers to non-members.²² It was also recognized that the effectiveness of the role of the council for trade in goods in reviewing agreements notified under article XXIV needed to be enhanced. The Doha Declaration has also launched an effort to clarify the understanding of Article XXIV and the role of Special and Differential treatment in regional trade agreements.²³

¹⁹ Hinkle and Newfarmer as well as Bilal and Rampa reflect the same view on the interpretation of 'reasonable length of time' as being maximum of 10 years. See Hinkle and Newfarmer supra note 17 and Bilal and Rampa, (2006), Alternative to EPAs, Possible Scenarios for future ACP trade relations with the EU

²⁰ <<http://www.wto.org>> [accessed on 15 August 2005]

²¹ GATT 94 which was adopted at the end of the round made GATT 47 its annex. Hence, GATT 47 still remains functional.

²² Preamble of Understanding on Article XXIV GATT 94, paragraph 3

²³ Stephen Karingo et al., (2005), 12

The General Agreement in Services (GATS) is also similar in that it allows for the formation of economic integration that liberalizes trade in services under article V. The agreement also lists down three preconditions that need to be fulfilled in order to establish an economic integration.²⁴

2. Trade Relationship of Africa and Europe: from Yaoundé to Cotonou

The cooperation between EC and ACP countries can be traced back to the Treaty of Rome establishing the EEC in 1957. In the treaty, the EC countries expressed solidarity with the colonies and overseas countries and territories as well as commitment to contribute to their prosperity. Following their independence of in early 1960s some African countries negotiated with the EEC for the continuation of their preferential economic relations.²⁵ With this, the relationship of the EU and independent African states began. This relationship was soon followed by the Caribbean countries getting similar reference from the EEC.

In the mean time, the African, Caribbean and Pacific countries have signed an agreement to formally establish the ACP group of states. The Georgetown Agreement establishing the ACP states was opened for signature on June 6, 1975.²⁶ The members were largely made up of former colonies of European countries. The aim of establishing the ACP group was to strengthen the solidarity among the states and promote cooperation and

²⁴ The three conditions, as provided under article V of GATS, are: 1. the agreement must have substantial sectoral coverage in terms of the number of sectors, volume of trade and modes of supply, 2. the agreement must provide for the absence or elimination of substantially all measures violating national treatment in sectors where specific commitment was made, and thirdly, the agreement may not result in higher trade barriers against third countries.

²⁵ Stephen Karingo et al., (2005), 8

²⁶ Nsuongurua J. Udombana, (2004), 63

understanding between ACP people and the governments.²⁷ Subsequent to the adoption of the Georgetown agreement, the ACP countries acquired status of legal entity i.e., they obtained capacity to perform juridical acts.²⁸ As a result, the ACP states managed to create a link with countries of the EEC in trade and aid areas.

The commitment enshrined under the Treaty of Rome was further strengthened with the drawing up and signing of the Yaoundé I and II treaties. The signing of Yaoundé I (1963) and II (1969) between EC and French speaking countries, launched the first association of the ACP-EC partnership.²⁹ Interestingly, the trade provisions of Yaoundé were based on reciprocal and non-discriminatory terms, pursuing the trade arrangements of pre-independence time.³⁰ These reciprocal trade arrangements were more like the EPAs that are being negotiated between the EU and ACP countries right now.

Membership of the UK to the EEC in 1973 led to the signing of a wider agreement, Lome I in 1975, which continued until Lome IV. Many Anglophone African countries became member of the Lome agreement due to the change in the trade framework of the UK following its accession to the EEC.³¹ The integral part of the Lome Convention was the principle of non-reciprocity under which the ACP countries were allowed to access the

²⁷ Ibid

²⁸ Article 15 of the Georgetown agreement talks about the capacity of ACP states to enter in to contracts, own property as well as institute legal proceedings.

²⁹ The New ACP-EU Agreement: General Overview, 2

³⁰ Stephen Karingi et al., (2005), 8

³¹ Id., 9

EC market on a non-reciprocal basis.³² Hence, while the EC was granting a very favorable market access to products originating from ACP countries, these countries were not required to grant equivalent concessions to European exporters.

Lome I was replaced by Lome II, III and IV every five years. The Conventions had each five years of life span, except for Lome IV, which was drawn for a period of ten years. The agreements were based up on the shared principles and objectives like the equality between partners, respect for sovereignty as well as mutual interest and independence. However, the trade and financial benefit (aid aspect) of these agreements is the one which has expanded over time to become the Lome 'acquis'.³³

Even if the Lome agreement was highly praised as being the most comprehensive partnership agreement between the EC and ACP countries, it was not able to meet its development objectives. Despite the existence of the partnership agreement, the economies of ACP countries, especially that of Africa, showed a regression. It is reported that ACP countries' share of the EU market had declined from 6.7% in 1976 to 3% in 1998.³⁴ Moreover, there was high degree of concentration on some types of products. The level of intra-African trade was also very minimal.

While discussing the Lome Conventions, it is mandatory to talk also of the separate trading Protocols. There were separate protocols on sugar, beef and veal and bananas which became part of the successive Lome Conventions. The banana protocol ensured duty free entry of a specific quota of bananas from the ACP countries to the EU market. The bananas import regime allows for the continuation of traditional levels of ACP

³² Matthew McQueen, (1998), 669

³³ The New ACP-EU Agreement: General Overview, 2

³⁴ Id., 5

banana exports while setting a quota for Latin America or dollar-zone producers.³⁵ The bananas import regime was highly praised by the beneficiary ACP while it led to lodging of complaint by the dollar zone producers to the WTO dispute settlement unit (DSU).

One major issue that should not be forgotten while discussing about the Lomé' agreement is the fact that the unilateral trade preferences for ACP countries extended by the EU under the Lomé Convention were not consistent with WTO rules. That is to say, the preferences that were given for ACP countries do not fall in anyone of the exceptions discussed in the first part of this paper. That is because, first, they were not extended to all developing countries as per the requirements of Part IV of GATT 47 or the Enabling Clause of 1979. Secondly, they cannot be considered to fall under the MFN exception of regional free trade arrangements due to the fact that they were not reciprocal. As a result of the inconsistency of the trade arrangements between the EU and ACP countries with the principles of the WTO, the partners needed to obtain waiver from the WTO members. The waiver obtained from the WTO expired, like the Lomé IV Convention, at the end of February 2000.³⁶

On the other hand, the 'Banana wars' waged in 1994 and the subsequent decision of the WTO dispute settlement unit, which found the Lomé treaties to be in contravention with the WTO rules, and principles necessitated a change in the preference given to ACP countries. As a result, the Cotonou agreement, the partnership agreement between the

³⁵Joseph A. McMahon, (1998), 634

³⁶ UNCTAD, (2003), 45

members of the ACP group of states of one part and the EU and its member states of the other part was signed on 23 June 2000 in the capital of Benin, Cotonou.³⁷

The Cotonou Agreement redefines the relationship between the EU and the ACP. It is envisaged as a partnership between the European Union and the ACP States. The central objective of the Agreement is the reduction and eventual eradication of poverty, 'consistent with the objectives of sustainable development and the gradual integration of the ACP countries into the world economy.'³⁸ The CPA has three pillars: political, development and economic and trade cooperation.

The major change made by the CPA with respect to the economic and trade pillar is the agreement to negotiate new Economic Partnership Agreements (EPAs) between ACP countries and the EU.³⁹ This will constitute change of the preferential market access the ACP countries used to enjoy for almost half a century in to a reciprocal trade relation. The reciprocity is to be achieved with the terms and conditions to be negotiated in the context of so-called Economic Partnership Agreement (EPAs) between the EU and different country groupings within the ACP.⁴⁰ The EPAs are to be functional beginning from January 1st 2008. In the mean time, negotiations in the terms of the agreement will be conducted, and the Lomé non-reciprocal trade arrangements will prevail. After this deadline, the agreement under article 34/4 clearly stipulates that a WTO compatible trade arrangement will be put in place. Concretely, the new trading arrangements would take

³⁷ UNCTAD, (2005), 2

³⁸ Article 1 of the Cotonou Partnership Agreement (CPA)

³⁹ Article 36 of the CPA talks about the formation of an EPA with EU and ACP states.

⁴⁰ Alexander Keck and Roberta Piermartini, (2005), 3

the form of free trade agreements between the EU on one side and ACP regional groupings on the other hand.⁴¹

There are basically four key principles upon which the partnership agreements are established: WTO compatibility, SDT as well as flexibility for ACP states, preserving the acquis of Lomé Conventions and preserving sub regional and regional integration processes.

A: *WTO Compatibility:* the Economic partnership agreements provide for replacing the non-reciprocal preferential market access of ACP countries to the EU market with a reciprocal arrangement. The WTO-compatibility problem arises because the EU's special unilateral preferences for the ACP countries are inconsistent with WTO's "enabling clause".⁴² The enabling clause provides that differential and more favorable treatment will be provided by developed contracting parties to products originating in developing countries. This treatment is to be provided to all developing countries and discrimination may not be employed in respect of individual countries. When we see this requirement of the enabling clause in light of the EU unilateral preference for the ACP, the favorable treatment is extended only to a certain group of country, not to all developing countries in the world. This obviously is inconsistent with the WTO requirements.

Due to the fact the Cotonou agreements are incompatible with the principles of the WTO, the EU needed to obtain waiver from the WTO for the agreement. The members of the WTO, in the Doha Ministerial Conference held in Doha in 2001 decided that:

⁴¹ Stephen Karingi et al., (2005), 13

⁴² Hinkel and Newfarmer, (2005), 7

Subject to the terms and conditions set out... Article I paragraph 1 of the General Agreement shall be waived, until 31 December 2007, to the extent necessary to permit the European Communities to provide preferential tariff treatment for products originating in ACP States as required by Article 36.3, Annex V and its Protocols of the ACP-EC Partnership Agreement, without being required to extend the same preferential treatment to like products of any other member.(Ministerial Decision, paragraph 13)

In reaching to this decision, the members have considered some factors including the fact that the preferential trade arrangements were designed to promote the expansion of trade and economic development of beneficiaries in a manner consistent with the objectives of the WTO and with the trade, financial and development needs of the beneficiaries and not to raise undue barriers or to create undue difficulties for the trade of other members. (Ministerial Decision, Paragraph 5). As a result of the findings of the members, the EU was allowed to extend preferential access of its markets to ACP countries until 31st December 2007. Hence, the waiver will expire at the end of 2007 requiring the concerned parties to enter in to a new trading regime.

B: Preserving sub regional and Regional Integrations: The EPAs try to preserve regional integration schemes of the ACP countries in the process of creating an FTA.⁴³ The objective of preserving the regional integration schemes of ACP countries centers around the idea that if a FTA is established between the EU and the individual ACP states, without first liberalizing trade among the ACP states, the ACP state will still face problems accessing each others market while the EU will have access of all the markets.

⁴³ Article 35/2 of the CPA states that the economic and trade cooperation shall build on regional integration initiatives of the ACP States

This will be an incentive for investors to invest in EU, rather than individual ACP states, so as to have access to all the other markets (which they will not have had they invested in only one ACP state). In this way, the benefit will be one sided, only for the EU. In order to have equal distribution of the benefits, the ACP countries will be encourage first to create and maintain already existing FTAs among themselves and the EPAs will be conducted with the trading blocks rather than individual states.

Based on these principles the first phase of the negotiation was launched on 27 September 2002 and the second phase in October 2003.

C: Special and Differential Treatment: Paragraph four of article two of the CPA provides for differentiation in treatment of countries. Accordingly, Special treatment is to be given to the least-developed countries and the vulnerability of landlocked and island countries will also be taken into account.⁴⁴ The agreement also dedicated certain articles on the treatment to be accorded to LDCs and land locked as well as island ACP countries beginning from article 85 to articles 90. Pursuant to article 85/1, least-developed ACP States will be accorded a special treatment in order to enable them to overcome the serious economic and social difficulties hindering their development so as to step up their respective rates of development. Special and differential treatment under this agreement is to be understood to allow beneficiary countries to open up their market in a longer period of time when compared to the non-LDC ACP countries.

D: Preserving the aquis of Lome (Coordination of trade and aid policy): The EU and the ACP countries have a long time relation of aid and trade. As regards members of African ACP countries, the EU is one of the largest aid donors. As mentioned earlier, the

⁴⁴ Paragraph 4 article 2 of CPA

trade and aid aspects of the EU-ACP relation is named as the aquis of Lome. The CPA envisages a scenario whereby this relation would be maintained. There is also an agreement among the parties that EPAs will maintain and improve the current level of preferential market access into the EU market for ACP exports.⁴⁵

The financial and technical cooperation program of the EU to these countries would, in principle, provide for substantial assistance for overcoming problems and taking advantage of opportunities created by the improved market access and trade liberalization. The overall objectives of EPAs are the sustainable development of ACP States, their smooth and gradual integration into the global economy, and eradication of poverty.⁴⁶ The trade and aid relationship would enable the ACP countries to achieve the benefits thus envisaged in the Cotonou agreement. The opportunity for effectively coordinating trade and aid with a major trading partner and aid donor is a distinct advantage of the EPA process relative both to multilateral trade negotiations and to most other bilateral trade negotiations, where the link between aid and trade is non-existent or, at best, tenuous.⁴⁷

When we look at what is on the ground, the negotiations have been structured around two main phases. The first (Phase I) was an overall ACP Group discussion with the EU on general issues of common interest to all ACP states as well as the framework of an EPA. This was followed by Phase II on substantive negotiations at the regional level. Since

⁴⁵ Joint Report on the all-ACP – EC phase of EPA negotiations, (2003), 2

⁴⁶ UNCTAD, (2005),4

⁴⁷Hinkel and Newfarmer, (2005), 9

October 2003, the ACP countries have started Phase II negotiations at the regional level for individual EPAs with the EU.⁴⁸

Phase III of the negotiations has been launched on 29 September 2005 in the Caribbean region while it is expected to start in 2006 in other regions.⁴⁹

Table 2: the Six ACP Regions and date of Launching of Negotiation

Region	REC or countries	Negotiation launched
<i>Central Africa</i>	CEMAC (Communauté Economique et Monétaire de l'Afrique Centrale) plus Sao Tome and Principe	3 October 2003
<i>West Africa</i>	ECOWAS (Economic Community of West African States) plus Mauritania	6 October 2003
<i>East and Southern Africa</i>	an open configuration currently comprising COMESA countries minus Egypt and South Africa	7 February 2004
<i>Southern African Development Community</i>	Botswana, Lesotho, Namibia, Swaziland (BLNS) plus Angola, Mozambique and Tanzania	8 July 2004
<i>CARIFORUM</i>	Caribbean Forum of ACP States	16 April 2004
<i>Pacific ACP States</i>		10 September 2004

Source: Bilal and Rampa (2006)

⁴⁸ Sanoussi Bilal and Francesco Rampa, (2006), 15-16

⁴⁹ Id., 17

2.1 Issues covered under EPA

As barriers to merchandise trade have come down and trade has expanded, policymakers and trade negotiators have turned their attention to services and trade-related regulatory issues.⁵⁰ Services, investment, intellectual property, and temporary movement of labor arguably are the ones having great potential in affecting incomes and trade in developing countries. North-South agreements, notably the bilateral free trade agreements of the United States and of the European Union (EU), have been the important drivers for services, investment, and intellectual property rights.⁵¹ As a result, agreements on these four issues are now becoming common in bilateral regional trade agreements. The relationship between the EU and ACP countries under the EPAs would be no different.

One thing that should be noted here is that North-South agreements differ in their coverage of services, investment, and intellectual property. In one respect, the US FTAs usually involve the most explicit negotiations for market access in services and US-style rules for investment and intellectual property.⁵² In respect of the EU's Economic Partnership Agreements in Africa, it uses development assistance in combination with trade preferences to promote rules beyond international agreements, including EU-style concerns for competition policy and geographical indications.⁵³

As a result, the EPAs are to be comprehensive in scope, covering trade in goods⁵⁴ and will also cover the liberalization of services and the building of service supply capacity of

⁵⁰ World Bank, (2005), 97

⁵¹ Id., 98

⁵² Ibid

⁵³ Ibid

⁵⁴ Article 37 and 38 of the CPA

ACP States in the areas of labor, business, distribution, finance, tourism, culture, and construction and related engineering services.⁵⁵

In addition to covering goods and services, ACP–EU cooperation is also mandated in trade-related areas. This includes issues like investment, competition, transparency in government procurement, and trade facilitation—the so-called Singapore issues. Protection of intellectual property rights, standardization and certification, sanitary and phytosanitary measures, trade and environment, as well as trade and labor standards are also included under the EPA negotiations.⁵⁶ As mentioned earlier, the EPAs will cover these issues based up on the four agreed principles: WTO compatibility, SDT and flexibility, preserving the *acquis* of Lome, and preserving sub regional arrangements. One thing that should be noted here is that some of the issues to be covered under the EPA negotiations like investment, government procurement and competition, the so called Singapore issues were raised for negotiation on the multilateral level at the Singapore Ministerial. As a result of the opposition from the developing countries, these issues were removed from the WTO negotiation Agenda. The inclusion of these issues under the EPA negotiation tantamount to bringing dead issues in to life again. Several governments in Africa have taken the position that because these issues have been dropped from the global agenda, they should also be left off the EPA agenda.⁵⁷ But in any case, care need to be taken while dealing on those areas.

⁵⁵ Articles 41:4 and 5 of the CPA

⁵⁶ Articles 44–52

⁵⁷ UNCTAD, (2005), 5

2.2. Implications of EPAs on ACP member States

In this section, a brief overview of the studies undertaken on the expected impacts of the EPAs will be made. The available studies mainly focus on the trade effect of EPAs, the impact on the government revenue and welfare effects. As a result, this section will also dwell only on these areas.

Revenue implications:

The majority of ACP countries have substantial reliance on import duties as a source of government revenues. In this relation, many studies have implicated and warned about the revenue losses that may accrue on these countries. As revealed by a World Bank study, revenues from tariffs amount to 2% of GDP in the median Sub Saharan African country; and some countries depend even more heavily on tariff revenues, with these amounting to 4% to 6% of GDP.⁵⁸ On the other hand, the EU is the largest source of imports for most of sub Saharan African countries. As a result, these countries are likely to lose significant tariff revenue from eliminating or reducing tariffs on imports from the EU due to EPAs.

The analysis made on ECOWAS countries as regards the effect of preferential elimination of tariffs on all imports from the EU also show that imports from the EU would increase by between 5% (Guinea-Bissau) and 21% (Nigeria) and rise by about 9% in the median country. The loss of government tariff revenues would range from a low of 0.3% of GDP (3.6% of government revenues) in Niger to a high of 4.1% of GDP (19.8% of revenues) in Cape Verde.⁵⁹

⁵⁸ Hinkle and Newfarmer, (2005), 26

⁵⁹ Id., 29

The forgone revenue in itself presents a major challenge to these countries ability to reciprocate on the trade preferences obtained from the EU.

Trade Effect:

In respect of trade effect of EPAs, the studies indicate that EPAs will create more trade than they will divert. That is to say, the trade creation effect of the EPAs will out weigh their trade diversion effect. Trade creation is the trade resulting from the lowering of trade restrictions in an RTA, which generates imports from more efficient producers in partner countries.⁶⁰

Karingi et al have tried to show the trade effects of EPAs in sub Saharan African countries. In respect of the EU Eastern and Southern Africa EPA, significant trade creation will occur for the EU goods. The effect is that the EPAs will lead to expansion of trade. In the same manner, the ECOWAS region stands to experience rapid trade creation effects for EU producers and exporters while substantial trade will be diverted to EU from possibly more efficient producers in the rest of the world.⁶¹

Welfare Implication:

Welfare enhancing properties of trade liberalization have always made it an attractive policy. Measuring the welfare accruing to a country as a result of trade liberalization is one of the difficult tasks. Despite this, some have tried to show the welfare effects of

⁶⁰ Bilal and Rampa, (2006), 36. On the other hand, trade diversion is the trade resulting from the preferential treatment granted to partners, with discrimination against more efficient producers that are not party to the agreement. Ibid.

⁶¹ Stephen karingi et al, (2005), 70.

trade liberalization, and particularly welfare effects of EPAs. One thing that should be noted is that the level of welfare gain of a certain country from trade liberalization largely depends on the level of trade creation.

Unlike in the potential EPAs for Eastern and Southern Africa, ECOWAS and CEMAC, the SADC region gains in terms of consumer welfare are much lower in value terms. These consumer welfare effects are directly related to the trade creation resulting from the tariffs dismantlement.⁶²

Overall, the studies reviewed all seem to indicate that while EPAs certainly present opportunities to individual ACP countries, they also constitute significant challenges. The size of the reported impact tends to vary, depending on the methodologies used and on the region considered. The bottom line is, EPAs have significant effect on the welfare, trade and revenue of the member countries.

Taking in to account the potential impacts of EPA, Article 37.6 of the Cotonou Partnership Agreement provides for a mechanism to reach an alternative trading arrangement for the ACP countries that do not wish to enter into an EPA. In this respect the EU has already put in place the GSP system and the Everything but Arms (EBA) Initiative.⁶³ The EBA Initiative is part of the EU's General System of Preferences (GSP)

⁶² Id., 81

⁶³ Under the EBA Initiative, if accepted by the EU Council of Ministers, the EU would provide duty-free access to EU markets for nearly all goods-except arms to all 49 LDCs on the list of the United Nations. Hinkle and Newfarmer, (2005), 18

and is compatible with WTO's enabling clause as the special preference granted is to a certain group of countries recognized as being eligible to get the preference-LDCs. 'In contrast to the EU's broader GSP, which is revised every three years, the EBA Initiative runs for an unlimited period and is not subject to periodic reviews.'⁶⁴ However, it has also its own drawbacks. The EBA and the EU GSP as a whole provide less favorable preferential access than the Cotonou Agreement: narrower product coverage, smaller margins of preference, and more restrictive rules of origin.⁶⁵ The decision to enter into an EPA or not is to be made by the individual countries concerned. The countries would base their decision on development perspective and make their own decision whether the alternative is preferable to an EPA.

3. Implications of EPAs on the Multilateral Trading arena

In this globalization era, the number of regional trade arrangements has been steadily growing. It has become very hard to find a country which does not belong to either one or two regional trading blocks. Accompanying the increase in number of these regional blocks is the question whether these arrangements are building blocks or stumbling ones for the multilateral trading arrangement. Are these regional trading blocks complementary, representing different paths to the same desired outcome of faster growth, development, and poverty reduction, or are they competing and incompatible to the multilateral trading system?⁶⁶

⁶⁴ Bilal and Rampa, (2006), 2

⁶⁵ Hinkle and Newfarmer, (2005), 19

⁶⁶ World Bank, (2005), 125

It is an accepted fact that RTAs do alter the incentives for countries to participate in multilateral liberalization. The benefits that may be accrued from the regional arrangements mainly outweigh that of the multilateral trading environment. In such circumstances countries will not have incentive to participate in the multilateral trading system; rather they will confine themselves to the regional blocks. In such circumstances it can be said that the RTAs are more of a stumbling block to multilateral arrangements by creating incentives to resist the preference erosion that can occur through new multilateral liberalization.⁶⁷

However, due to the fact that the gains from multilateral agreements are often substantially larger, concerns over preference erosion may be limited to a very few small countries. As a result, the potential of these countries blocking multilateral agreement is very minimal.

Whether a certain trading block is a building or stumbling block depends on whether its trade creation outweighs its trade diversion effect. As mentioned earlier, the EPAs have more or less the potential to create trade than divert. However, when we look at the EPA negotiations, what makes them a bit different, and hence worth considering, is the inclusion the Singapore issues. The EU has put in the agenda for EPA negotiations issues like competition policy, government procurement and investment. These issues were, due to lack of consensus, cancelled from the Doha work program on the multilateral negotiation.

It should also be noted that the EPA negotiations are taking place at the same time as the multilateral trade negotiations under the Doha work program. As a result, the probability

⁶⁷ Ibid

for the interaction and intermingling of issues between the two negotiations is a possibility. The new trade issues: competition, investment and government procurement, unless addressed carefully, will lead to a WTO plus commitment and hence lowers the bargaining position of the ACP countries in the multilateral negotiations. The EPAs would, otherwise, undermine the position these countries held on the multilateral negotiations.

Conclusion

The trade preferences granted to ACP countries by the EU are scheduled to be phased out in 2008. On the other hand, the EU and ACP countries are negotiating Economic Partnership Agreements. The EPAs are grounded under four basic principles: WTO compatibility, SDT as well as flexibility for ACP states, maintaining the *acquis* of Lome' Conventions and preserving sub regional and regional integration processes. The EPAs are to be negotiated between the EU and regional trading blocks of the ACP countries. In order to fulfill the WTO compatibility requirement, the EPAs will take the form of free trade areas.

The issues that are to be addressed in the EPA negotiations are, among other things, trade in goods, liberalization of the service sector and trade related issues such as competition policy, investment, trade and environment, government procurement as well as trade and labor standards. Some of these issues, the ones known as "Singapore Issues", have been put on the table at the multilateral trading negotiations at the WTO and due to lack of consensus, were dropped from the Doha work program. The introduction of these issues to EPA negotiations amounts to bringing dead issues in to life again. The ACP countries

are required to bargain on dead issues and yet from a weaker negotiating position. Hence, the negotiation need careful consideration as it may lead to a WTO plus commitment.

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