

Working Paper 288

**Economic Partnership Agreements: A ‘historic step’
towards a ‘partnership of equals’?**

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List of acronyms

ACP	African, Caribbean and Pacific
BLNS	Botswana, Lesotho, Namibia and Swaziland
CAP	Common Agricultural Policy (of the EU)
CARIFORUM	Caribbean Forum
CEMAC	Communauté Economique et Monétaire de l'Afrique Centrale
CET	Common External Tariff
COMESA	Common Market for Eastern and Southern Africa
EAC	East African Community
ECOWAS	Economic Community of West African States
EBA	Everything But Arms
EDF	European Development Fund
EPA	Economic Partnership Agreement
ESA	Eastern and Southern Africa
EU	European Union
FTA	free trade agreement
GSP	Generalised System of Preferences
LDC	least developed country
MFN	most favoured nation
PACP	Pacific ACP
RoO	rules of origin
SACU	Southern African Customs Union
SADC	Southern Africa Development Community
SDT	special and differential treatment
TDCA	Trade Development and Cooperation Agreement
UEMOA	West African Economic and Monetary Union
WTO	World Trade Organization

Executive summary

This paper argues that the (interim) EPAs initialled between the EU and less than half of all ACP states at the end of last year do not represent a ‘historic step’ in EU-ACP relations. The majority of EPAs concluded to date are neither complete nor comprehensive trade agreements. Almost all signatory states were countries that would bear substantial economic costs if they lost their preferences in the EU market. Many ACP states submitted hastily drawn up liberalisation schedules that did not consider whether their liberalisation commitments were in line with their neighbour. This has significant implications for future regional integration processes. To revise individual timetables and bring them into line on a regional basis, as envisaged by the Commission, will be a mammoth task. It is further argued that the enforcement of the EPA implementation is unlikely in some cases given the decreasing attractiveness of the EU market, and the Commission’s dwindling capacity to sanction non-compliance by withdrawing preferences. If the EU wants to see EPAs implemented, it is vital that both the process and outcome are owned and supported by both sides.

1. Introduction

The EU (European Union) is the major trading partner for most African countries. Its special relationship with Sub-Saharan Africa as well as with the countries of the Caribbean and the Pacific dates back to 1963 when the EEC (European Economic Community) entered into a trade and development relationship with its former colonies (Treaty of Yaoundé).¹ In 1975, the EU granted ACP (African, Caribbean and Pacific) countries unilateral preferences under the Lomé Agreements (I-IV). These preferences (which were combined with substantial financial support under the EDF (European Development Funds)), did not, however, kick start economic development in ACP countries². Many of these mostly African countries actually experienced a reversal in development gains as socio-economic indicators declined and unilateral preferences failed to initiate a change in the EU-ACP trade structure. ACP countries' share of total EU imports has more than halved in the past 30 years and is still heavily biased towards a few primary products with fuels and minerals the major revenue earners (EC DG Dev, 2006a).

In its 1996 Green Paper the EC analysed the shortcomings of the Lomé Agreements and identified three major reasons for their limited success:

- (i) the ACP countries' manifold supply-side constraints which prevented them from increasing and diversifying their production base;
- (ii) the missing emphasis on 'good governance' and institution-building,³ and
- (iii) the unilateral character of the preferences which contributed to highly-protected, non-competitive economies.

With the expiry of the last Lomé Agreement (*IVbis*) imminent the EC proposed a new trade and development regime. The Cotonou Agreement, coming into force in 2000, envisaged the creation of reciprocal trade agreements between the EU and regional blocks of ACP countries by establishing so-called EPAs (Economic Partnership Agreements); these were to be in place by 2008. EPAs are supposed to be asymmetrical trade agreements covering not only trade in goods and services but also 'behind the border' issues, such as competition, government procurement, intellectual property, and trade facilitation. This type of 'comprehensive trade agreement' is designed to decrease transaction costs for companies, improve transparency and help to establish bigger markets. EPAs will, according to the Commission, help to improve ACP countries' trade and business environment, promote growth and increase ACP's 'overall competitiveness' which will, in turn, aid their integration into the global economy (EC, 2000: Article 35-37).

¹ An earlier version of this paper was presented at the University of Leipzig (Faculty of African Studies) workshop "Economic Partnership Agreements – Devilish Undertaking or just the Devil in the Details?" 19-21 November 2007.

² The basic idea behind unilateral preference was that ACP countries gained competitive advantages over other developing countries which would increase the demand for ACP imports and *ceteris paribus* the welfare of ACP countries (at the expense of third country suppliers). Additionally, the unilateral character of the preferences should enable ACP producers to protect their infant industries and to diversify their product range.

³ The sovereignty of parties own economic systems, political regime and development model were essential features of the Lomé Conventions.

2. The growth and development concept of EPAs

2.1 Growth hypotheses

Current growth hypotheses⁴ provide the theoretical basis for EPAs with a particularly strong focus on the policy-hypothesis of economic growth.⁵ The *policy-hypothesis of growth* states that an open trade regime is a prerequisite for economic growth because it increases domestic competition, attracts investment, promotes diffusion of technology, stimulates cooperation and learning processes and leads to economies of scale.

The importance of institutions in initiating growth is acknowledged in the theoretical concept of EPAs but is not the main element. This is reflected in the fact that aid for trade is decoupled from EPAs. The Commission believes that an open trade regime will have a positive impact on ACPs institutional development; it does not however, consider effective institutions to be a prerequisite for gaining from EPAs (as for example Borrmann and Busse, 2006 argue). EPAs are designed to ‘lock-in’ policy reforms by establishing binding regulations in the areas of trade, investment and other trade-related issues. This in turn will enhance institutional effectiveness.

The *geographical-hypothesis of growth* is an integral element of the theory behind EPAs. The Commission acknowledges that the underdeveloped and remote nature of ACP economies constrain investment and economic growth. Regional integration would enable individual countries to reduce the costs of doing business and to increase the attractiveness of their markets by, for example, achieving greater economies of scale or by collaborating on large infrastructure projects. Consolidated ACP regions, it was envisaged, would jointly enter into an EPA with the EU thereby promoting intra- and extra- regional trade.

2.2 Development hypotheses

The development component of EPAs is hotly contested. From the Commission’s point of view, the reciprocal character of EPAs and the inclusion of binding regulations that address ‘behind the border’ issues, such as competition, investment and government procurement policies render them development-friendly. The ACP countries by contrast, emphasise the need to link aid for trade to EPAs and to secure long-term financial resources for their implementation. The major difference between ACP countries’ reading of the development component and that of the Commission is therefore material: while the former would like to see a binding commitment to additional funding for the planned reforms, the latter would like to keep additional funding voluntary but make the afore-mentioned reforms binding.

⁴ See Ahlfeld et al. (2005) for a literature overview of the different theoretical approaches to the growth debate.

⁵ See e.g. EC DG Trade 2006b and 2007.

3. The EPA negotiation process

EPA negotiations started in 2002 on an all-ACP level; in 2004 they were devolved to the regional level. Although the Commission knew exactly what it wanted (namely comprehensive, WTO compatible trade deals with ACP regions) it did not have a clear idea of how to align these objectives with ACP realities.

The main pitfalls were:

(1) *Differing interpretations of the development component.*

While the ACP countries wanted to tie import liberalisation commitments to development aid arguing that guaranteed access to long-term funds is crucial to overcoming supply-side constraints and diversifying the production base, the EC insisted that EPA negotiations and talks on development finance were two separate issues. In any case, DG Trade (responsible for EPA negotiations) argued that money had been made available under the 10th EDF (administered by DG Dev) to implement EPAs. ACP countries meanwhile argued that it was unacceptable to limit guaranteed funding to 2013 given that the implementation process will extend beyond this date and the full effects of major liberalisation and regulatory reform will only be felt thereafter. The Commission in turn indicated that multilateral and bilateral funds would be made available for the implementation of EPAs if and when needed.

(2) *Lack of improved market access*

In addition to the lack of long-term, guaranteed funding to aid the implementation of EPAs, the EU's DFQF (duty and quota free) market access offer was also considered insufficient. Despite the fact that 97.6% of ACP exports entered the EU market duty free in 2006, the EU was not prepared to grant full DFQF market access to ACP countries in 2008. The Commission's 'generous offer' continues to restrict ACP countries' rice and sugar exports for a period of up to seven years. As it stands, the EU's offer amounts to little more than €100m (£75.5m) for 2008 – compared to €1.4bn (£1.1bn) were all products to be included (ODI, 2007d).

The extent to which ACPs market access will be improved by more generous RoO (rules of origin), as stipulated in Article 37.9 Cotonou, is far from clear. The Commission failed to present its 'simplified' RoO regime in 2005⁶ and has incorporated 'Cotonou plus' RoO in EPAs which shall be replaced by a new regime in the next 3 to 5 years 'with a view to further simplifying the concepts and methods in the light of development needs.'⁷

(3) *Failure to agree on 'WTO plus' commitments*

Only two regions (CARIFORUM and PACP) wanted to include services into the EPAs while most other countries were reluctant to submit a GATS compatible service offer (including 'standstill' and 'most favoured nation' clauses).⁸ Rather, the ACP focus was on trade facilitation and technical support with the aim of improving their access to higher value segments in the EU market.

ACP countries also raised concerns over binding provisions for public procurement; investment and capital movement; competition policy; and intellectual property rights. They argued that none of these provisions were necessary for bringing EU-ACP relations into line with WTO commitments and should, therefore, be negotiated on a case-by-case basis. The EC, however,

⁶ The Commission intended to propose a simple, uniform and development friendly RoO system based on value added. ODI research questions the feasibility of such an approach since the analysis of developing countries' exports reveals that there is substantial variation in the value added between products and countries. The value-added thresholds used in the current RoO of the Cotonou Agreement are much higher than what is normally achieved by ACP companies (ODI, 2006).

⁷ As for instance stated in the CARIFORUM EPA Part II, Title I, Article. 2.

⁸ The standstill clause (which can be found in all EPA texts except for CARIFORUM in the trade in goods chapter) freezes the existing applied tariff rate in parties' mutual trade. The MFN clause extends any preferences granted to other 'major trading economies' (defined as economies accounting for a share of world merchandise exports above 1 percent) automatically to any party of the EPA. Both, the standstill and MFN clause are unique and cannot be found in any previous FTA the EU has with developing countries and are disputed.

insisted that binding rules on services and trade-related issues represented the real development component of EPAs.

(4) *Applying the regional component of EPAs*

Regional integration is a key element in EPAs. In theory, regional integration reduces transaction costs and monopolistic behaviour, enhances efficiency through increased competition and creates new opportunities for exploiting economies of scale. Larger markets can reduce the economic and political risk premium (a major concern in many African countries) offering the opportunity to attract more investment. In this way regional integration encourages the formation of an interdependent relationship between economic and political gains, leading to the maximisation of welfare. Because of these potential welfare effects of regional integration, which have been experienced by the EU, the Cotonou Agreement regards regional integration as a '*key instrument for the integration of ACP countries into the world economy*' (Article 35.2).

- (5) However, the EC's seemingly relentless promotion of regional integration among ACP countries betrays an inherently Eurocentric view of the world and neglects the unique difficulties faced by ACP countries.⁹ Although the Cotonou Agreement clearly states that EPAs should be negotiated with regions '*which consider themselves in a position to do so at the level they consider appropriate*' (Article 37.5) the EC pushed ACP regions to submit uniform regional liberalisation offers which at a minimum require countries to have agreed on a common external tariff.

When negotiations began on a regional level in 2004, however, only three regions, covering just 18 of the 77 ACP countries, had established a CU or were in the process of doing so.¹⁰ In the absence of sufficiently well-developed regional entities, six EPA configurations were eventually established which:

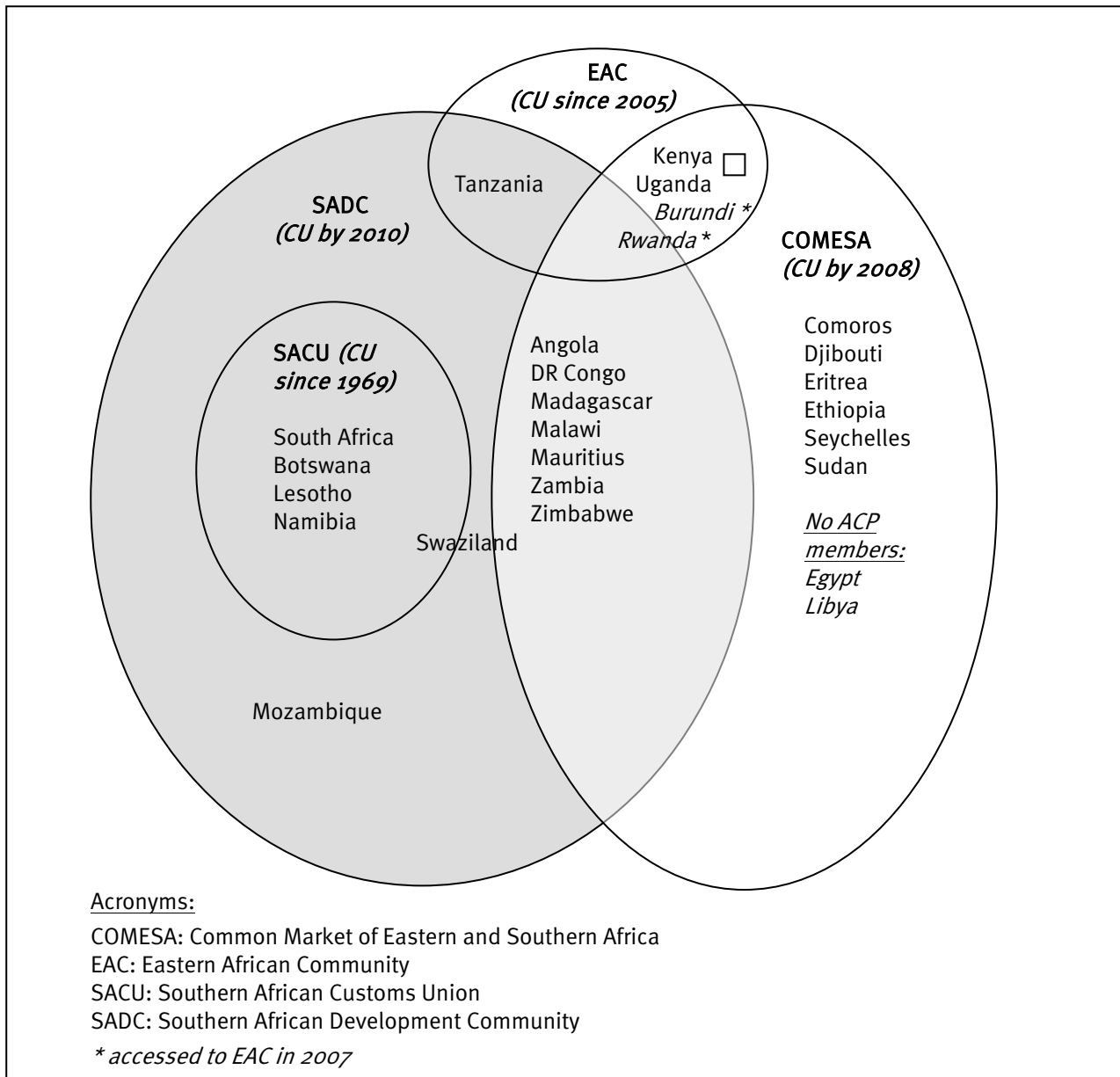
- (i) either incorporated non-members into existing regional groups (as was the case in the Caribbean and the Pacific);
- (i) or merged sub-regions to create larger entities which profoundly underestimated the importance of economic integration and the fact that these new associations had yet to reach a sufficient level of integration (as was the case in Africa where SACU (Southern African Customs Union) was incorporated into the SADC (Southern African Development Community) EPA group, the EAC (East African Community) into the ESA (Eastern and Southern Africa) group, and the UEMOA (West African Economic and Monetary Union) into the ECOWAS (Economic Community of West African States) group).¹¹

⁹ See Meyn, 2007 for an overview of the factors that constrain economic integration among ACP such as (a) the non-complementary trade structure and low degree of industrialisation; (b) conflicts and political instability; (c) low macroeconomic convergence among member states; (d) supply-side constraints; (e) insufficient compensation mechanisms to limit the effects of trade diversion and revenue losses; and (f) overlapping memberships and the inconsistency of regional integration strategies.

¹⁰ SACU (5), EAC (5), and UEMOA (8).

¹¹ In West Africa a certain level of economic integration is only apparent between the 8 Francophone countries that form UEMOA. UEMOA was established in 1995 and is the continuation of previous regional arrangements dating back to 1945 and where member countries possessed a common currency, the CFA Franc, tied to the French Franc (today the Euro). UEMOA implemented a Customs Union in 2000 but has yet to fully liberalise intra-regional trade.

Figure 1: Overlapping Regional Membership in Southern and Eastern Africa



The southern and eastern African regions presented the greatest challenge in terms of the new configurations (see figure 1). With the exception of Mozambique all countries belong to two or more regional integration schemes. Seven of the 14 members of SADC are also members of COMESA. There is a serious conflict of interest given that both SADC and COMESA intend to establish customs unions for their members.

As a 'compromise' the SADC EPA and the ESA EPA were created in 2004, resulting in the splitting of both regions. The SADC EPA thus comprised eight of the 14 SADC countries and the ESA EPA 16 of the 19 COMESA countries.¹²

With the exception of the Caribbean, none of the regions was in a position to negotiate collectively. Low levels of trade integration and divergent economic interests (reflected in the non-convergence of tariff levels) complicated the formulation of a common negotiation position (Stevens, 2006).

¹² DR Congo joined the ESA EPA in 2004 but also negotiated in the Central African EPA (without leaving the ESA group).

4. The ‘alternatives’ to EPAs

Although negotiations began in 2002, the first three years passed without significant progress. The two sides could not agree on basic points of principle. This was reflected, among other things, in the differing interpretation of EPA’s development component.

Most ACPs, however, were not overly concerned, relying on what they saw as the EU’s obligation to provide a fallback option: ‘*a new framework for trade which is equivalent to their [ACPs] existing situation and in conformity with WTO rule.*’ (Article 37.6 of the Cotonou Agreement). However, such an alternative did not and does not exist today. The only alternative remaining is the EU’s GSP (General System of Preferences), comprising three different preference levels of which only two have been made available to ACP countries to date:

- (i) The *standard GSP*, which applies to most developing countries and all ACP countries;
- (ii) The EBA (*Everything But Arms*) initiative, which has applied to the world’s LDCs (Least Developed Countries) since 2001; and
- (iii) The *GSP+* regime, which grants enhanced terms to a range of countries that have ratified and implemented a list of international conventions on core labour and human rights principles.

When the GSP+ regime was introduced in 2005, not one of the ACP countries applied.¹³ Given the impending deadline for the WTO waiver, however (which ended the EU’s ability to legally discriminate against non-ACP countries) as well as increased pressure to finalise the negotiations before mid-December 2007, two ACP countries, namely the Seychelles and Nigeria, applied to become GSP+ beneficiaries. The Commission rejected their applications on the basis that neither country would meet the labour, human rights and environmental conditions necessary to benefit from GSP+ treatment and, in any case, a decision on whether or not to renew the GSP+ regime was not due to take place until December 2008.

As ODI (2007a) pointed out, however, beneficiaries of the EU’s previous GSP regimes automatically qualified for GSP+ when it was launched in 2005 despite the fact that not all countries complied with the conditions at the time of its introduction. Moreover, at the time of applying for GSP+ the Seychelles had ratified all 27 relevant Conventions and Nigeria all but one. Secondly, it is the Commission that determines how and when to revise the regime and the degree to which it should be made available to ACP countries at any given point in time.

The Commission was equally reluctant to extend the WTO waiver beyond 31 December 2007, arguing that it would be too costly (given that other developing countries would inevitably seek similar concessions). The option to ‘stop the clock’ and allow the expiry of the WTO waiver to pass while granting ACP countries Cotonou preference until EPA negotiations continued was similarly refused. The Commission argued that such a policy would not only detract from EPA negotiations but also breach WTO rules – something the Commission could ill afford to do.

With the deadline fast approaching some countries began to panic at the lack of progress and the continuing absence of any comparable alternatives. Their fears were not unfounded since they had neither the option of a fallback position (EBA) nor were they in a position of comparable equanimity (as only very few of their exports benefited from Cotonou preferences).

¹³ The reason is probably that most ACP believed that either EPA negotiations would be successfully concluded in time or, in case they are not, the EU would provide ‘equivalent alternatives’ to Cotonou. In both cases, ACP market access would have been superior to GSP+ (which does not cover traditional ACP exports such as sugar, beef and bananas).

Meanwhile the non-LDC ACP countries that benefited greatly from EU agricultural preferences feared a sharp fall in their EU agricultural exports would lead to the collapse of key sectors after being downgraded to the EU's 'next best alternative'. ODI studies (2007a, 2007b, 2007c) confirmed these fears by calculating the immediate monetary costs of the loss of Cotonou preferences:

- 267 products would face tariff jumps of over 10% ad valorem. Among the products most affected would be beef, processed fruit, sugar, rice, bananas, citrus and horticulture;
- Nearly two-thirds of non-LDC ACP countries would see tariff jumps of over 25% of their EU export values;
- Taking 2006 quantities, the taxes imposed on Namibia's agricultural exports to the EU would have amounted to €45.15m (£34.1m). As this is unsustainable, Namibian meat exports, which would face tariff increases of up to 132% would, in all likelihood, end. A similar situation would have arisen in Botswana where the loss of EU preferences would have been most likely to turn the country into a mono-export economy. EU taxation of its beef exports would have equalled 80% of its 2006 export revenue – higher than that paid by some of the most competitive beef suppliers in the world.

Facing the very real risk of severe damages to their economy all but three African non-LDCs entered into an EPA by December 2007 – some of them at the very last minute which begs the question: to what extent are EPAs properly negotiated trade agreements?

5. Spin or reality? How the deadline was met and what are the consequences for regional integration?

Given the immanent cut-off date and mindful of the EU-Africa Summit taking place in early December, Trade Commissioner Peter Mandelson announced on 22 October 2007 that a 'trade in goods' EPA only would be sufficient to meet the December deadline. Such 'stepping stone agreements' could also be concluded with 'sub-regions' since it was apparent that many countries were not ready to sign EPAs. However, the Commission stressed that these first-step agreements would incorporate binding provisions for continued negotiations with the objective of forging comprehensive, regional trade deals (Mandelson, 2007a).

ODI undertook a comprehensive review of what were believed to be the latest EPA draft texts (ODI, 2007e) in November 2007 - when negotiations were supposed to be more or less complete. The analysis revealed that there were huge gaps in areas on which the text was supposed to be agreed and that all texts had a long way to go before they resembled anything like a 'standard' trade agreement. None of the texts for example, contained detailed annexes (such as liberalisation schedules and rules of origin) to give effect to the decisions of principle embodied in the main text. The absence of annexes indicated that they either did not exist or had not yet been agreed – either of which was bad news less than a month before signatories were due to initial the EPAs.

Indeed, while some regions (ESA, SADC, PACP) were still engaged in consolidating their different drafts into one joint document in November 2007, others regions (CEMAC (Communauté Economique et Monétaire de l'Afrique Centrale) and ECOWAS) only had working documents from the EC - with zero input from the region. CARIFORUM was the only region for which all parties had achieved a common understanding on most issues – though once again, no annex had been agreed.

Miraculously, just days before the start of the Second EU-Africa Summit in the first week of December the Commission appeared having achieved its objective and proudly announced 'a historic step' in EU ACP relations – with 35 of 77 countries having initialled an (interim) EPA. However, the adage 'the devil is in the detail' is nowhere more appropriate than in the context of EPAs and ODI research suggests that 'spin' rather than 'bridge building' was behind the apparent resolution of the differences that had existed just a couple of weeks before.

As can be seen from table 1 only three regions, CARIFORUM, EAC and SADC, have an agreement for more than half of their original configuration members. In the other three regions, CEMAC, ECOWAS and PACP, less than one fifth of the original members have yet initialled an EPA.

Moreover, only two regions, EAC and CARIFORUM, have submitted a regional liberalisation offer while most other EPAs are bilateral trade deals. In Central Africa, Cameroon was the only CEMAC signatory state. In West Africa, the ECOWAS configuration (which had always been divided between the Francophone UEMOA and the Anglophone countries) broke down. Ghana and Côte d'Ivoire signed two different EPA texts, both of which invited other ECOWAS countries to join them. Thus, even if all the remaining ECOWAS countries joined either Ghana or Côte d'Ivoire, the region would still be divided by two EPAs.

Table 1: Overview of EPA signatory states

	Members	Signatory states in December 2007 ^a	Countries falling into EBA/Standard GSP	Proportion of signatory countries (%)	Number of liberalisation schedules
ESA EPA	Comoros Djibouti Eritrea Ethiopia Madagascar Malawi Mauritius Seychelles Sudan Zambia Zimbabwe	<i>Comoros</i> <i>Madagascar</i> Mauritius Seychelles Zimbabwe	Djibouti Eritrea Ethiopia Malawi Sudan Zambia	45	5
EAC EPA	Burundi Kenya Rwanda Tanzania Uganda	<i>Burundi</i> Kenya <i>Rwanda</i> <i>Tanzania</i> <i>Uganda</i>	—	100	1
SADC EPA	Angola Botswana Lesotho Mozambique Namibia South Africa Swaziland	Botswana <i>Lesotho</i> <i>Mozambique</i> Namibia Swaziland	Angola	71	2
CEMAC EPA	Cameroon Chad Cent. African Rep. Congo DR Congo Eq. Guinea Gabon S. Tomé/Príncipe	Cameroon	Chad Cent. African Rep. Congo DR Congo Eq. Guinea Gabon S. Tomé/Príncipe	12.5	1

	Members	Signatory states in December 2007 ^a	Countries falling into EBA/Standard GSP	Proportion of signatory countries (%)	Number of liberalisation schedules
ECOWAS EPA	Benin Burkina Faso Cape Verde Côte d'Ivoire Gambia Ghana Guinea Bissau Liberia Mali Mauritania Niger Nigeria Senegal Sierra Leone Togo	Côte d'Ivoire Ghana	Benin Burkina Faso Cape Verde ^b Gambia Guinea Bissau Liberia Mali Mauritania Niger <u>Nigeria</u> Senegal Sierra Leone Togo	13	2
PACP EPA	Cook Islands Fed. Micronesia Fiji Kiribati Marshall Islands Nauru Niue Palau Papua New Guinea Samoa Solomon Islands Tonga Tuvalu Vanuatu	Fiji Papua New Guinea	<u>Cook Islands</u> <u>Fed. Micronesia</u> Kiribati <u>Marshall Islands</u> <u>Nauru</u> <u>Niue</u> <u>Palau</u> Samoa Solomon Islands <u>Tonga</u> Tuvalu Vanuatu	14	2
CARIFORUM	Antigua/Barbuda Bahamas Barbados Belize Dominica Dominican Rep. Grenada Guyana Haiti Jamaica St Kitts/Nevis St Lucia St Vincent/Grenadines Suriname Trinidad/Tobago	Antigua/Barbuda Bahamas Barbados Belize Dominica Dominican Rep. Grenada Guyana <i>Haiti</i> Jamaica St Kitts/Nevis St Lucia St Vincent/Grenadines Suriname Trinidad/Tobago	—	100	1

Notes:

- (a) Countries in italics are classified as LDCs. In the table compiled by the Commission (<http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/08/15&format=HTML&aged=0&language=EN&guiLanguage=en>), Somalia and East Timor are listed as LDC non-signatories (in the ESA and PACP groupings respectively). However, since neither has played any part in the negotiation of EPAs, they are omitted here.
- (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.

The Commission argues that interim EPAs with individual countries had to be negotiated to avoid the disruption of trade for non-LDC ACPs. Since all interim EPAs provide for a review of tariff concessions it would not be a problem to build regional markets when negotiating comprehensive EPAs (EC DG Trade, 2008).

As discussed, however, low levels of economic integration and huge disparities among countries in terms of their protectionist tendencies (reflected in their wildly diverging tariff levels) has inhibited a joint approach to regional EPA negotiations once started. The problems have not suddenly disappeared; if anything they have multiplied and become even more complex with the introduction of interim EPAs!

EPA signatory states were able to exclude about 20% of EU imports from their liberalisation commitments.¹⁴ If, however, these countries have to submit to a WTO compatible liberalisation schedule on a regional basis, only about 20% of EU-ACP *regional* trade can be excluded. This would imply, in some cases, comprehensive reviews of national exclusion baskets and, following that, the liberalisation of hitherto excluded items.

As far back as 2006, ODI highlighted the potential problems of 'locking-in' country-specific exclusion baskets (Stevens, 2006). This is why the creation of 'framework agreements' was recommended leaving the specification of liberalisation schedules for further negotiations. The basic idea was to take advantage of the shallow WTO provisions (liberalising 'substantially all trade' in a 'reasonable length of time') by creating five liberalisation tranches over 25 years. It was argued that only the first tranche would need to be specified by the end of 2007 while the details of the other tranches could be determined at a later stage (ODI, 2007f). This would have bought the parties' time to harmonise their schedules on a regional basis in a way that reflected their genuine interests in regional trade.

However, in demanding detailed liberalisation schedules, which many countries provided at the last minute, facts were arguably created. These hastily drawn-up schedules do not consider whether a country's liberalisation schedule is in line with that of its neighbours (ECDPM/ODI, forthcoming). It will be a mammoth task to revise these individual schedules and bring them into line on a regional basis.

While the revision of schedules might be a minor problem in Central and West Africa (because only single country EPAs exist and very few countries are likely to sign up to EPAs) it is a major problem in southern and eastern African region. As such, the degree to which regional integration can continue within the current COMESA and SADC frameworks must be questioned given that:

- ESA/COMESA has split with the emergence of the EAC EPA, which leaves the region with mainly least developed countries and island states – none of which are likely to champion regional integration and,
- SADC has lost most of its members during the EPA negotiation process so that economic integration is now centred on SACU (plus Mozambique). The other SADC countries have either tied their external tariffs to a different framework (Tanzania in EAC and Madagascar, Mauritius, and Zimbabwe in ESA) or are hardly involved in regional economic integration.¹⁵

It is very difficult to imagine how this 'spaghetti bowl' of different national and sub-regional commitments could be knitted into two regional integration groupings comprising all southern and eastern African countries.

¹⁴ The EU considers the liberalisation of about 90% of bilateral trade to be WTO compatible. To reach the target of 90% trade liberalisation, the EC applies the 'Maerten formula', according to which a region that exports more than it imports has to liberalise less. If the EU liberalises 100% of its imports countries with a trade surplus with the EU could therefore liberalise around 80% of imports (depending on their trade balance).

¹⁵ The SADC/COMESA members Angola, DR Congo, Malawi and Zambia have not yet bound their CET (Common External Tariff) in a regional framework or vis-à-vis the EU. However, Angola and DR Congo are hardly involved in (formal) intra-regional trade and trade mainly with rest of the world. Malawi and Zambia source more than 50% of their imports from SADC (mainly South African) and heavily rely on SADC import duties which limits their interest in intra-regional trade liberalisation (DNA/ODI, 2007:14).

The fact that SACU, the only functioning customs union within ACP, has been split-up during EPA negotiations, adds another challenging dimension to the regional integration debate of EPAs.¹⁶ Since the 2004 SACU Agreement requires the consent of all members to enter into external trade relations (Article 31) the EPA obligations entered into by Botswana, Lesotho, Namibia and Swaziland are not enforceable. Whether South Africa accepts the necessary changes, which have to be made in the SACU CET, remains to be seen. However, given that South Africa collects 98.6% of SACU's customs duties,¹⁷ it is doubtful that BLNS (Botswana, Lesotho, Namibia and Swaziland) have the capacity to enforce a separate CET to the EU.¹⁸ Thus, it is most likely that South Africa will continue with the implementation of its tariff liberalisation obligations under the EU-South Africa free trade agreement. It would then be up to the Commission's discretion to decide whether BLNS fulfil their tariff liberalisation commitments under the EPA or not.

In sum it appears that the EPA negotiation process had facilitated and accelerated economic integration in some regions (CARICOM and EAC) while consistently undermining it in others, most notably southern Africa. For West and Central Africa as well as for the Pacific the implications for regional integration are negligible since very few countries have initialled an EPA to date.

6. Any lesson to learn?

Though a detailed analysis of the EPAs is still outstanding at the time of writing, the preliminary analysis outlined above suggests that the outcome of 5 years of negotiation is highly unsatisfactory.

- Most regions submitted hastily drawn up liberalisation schedules which were neither the outcome of a national nor a regional consensus.
- For at least two regions (ECOWAS and CEMAC) the ACP input was negligible and the signatory states (Ghana, Côte d'Ivoire and Cameroon) had to accept what were largely EU templates – tabled only a couple of days before the interim deals were signed.
- Most EPAs are neither complete nor comprehensive. EPAs might contribute to the consolidation of regional integration in two regions (CARICOM and EAC) but have fundamentally undermined integration processes in at least two other regions (SADC and COMESA).

Identifying all the factors that contributed to the disappointing outcome of EPA negotiations must be the subject of detailed research. Two obvious reasons, however, stand out. Avoiding their repetition is essential if ongoing negotiations towards comprehensive EPAs are to be successful.

First, ACP need to give due consideration to EPA negotiations. As noted by a negotiator of the EU-South Africa FTA '*There is no substitute during tough negotiations for a good argument and proper preparation*' (Smalberger 2000:49). This also includes ACP inter-regional cooperation. Enhanced exchange of information and cooperation can avoid situations whereby some regions agree on more onerous provisions than others (as has been the case with the interim EPAs). Secondly, DG Trade should cooperate effectively with DG Dev during the negotiation process towards comprehensive EPAs. All provisions should undergo a 'development check' before being put to ACP countries. Moreover, shortcomings of the interim EPAs (e.g. with respect to safeguards and time limits for infant industry provisions in some cases) need to be reviewed and changed accordingly – with the objective of promoting sustainable development in the ACP.

¹⁶ South Africa, which has already a WTO-compatible trade deal with the EU, decided not to join the EPA initialled by its custom union members Botswana, Lesotho, Namibia and Swaziland.

¹⁷ According to 2006 data provided by South African Revenue Services as quoted in DNA/ODI, 2007.

¹⁸ BLNS liberalisation commitments orientate largely on the TDCA liberalisation schedule but comprise additional protectionist needs the countries identified (ECDPM/ODI, forthcoming).

Second, DG Trade needs to change its attitude in the ongoing negotiations. Claiming that ACP countries had 5 years to get their act together is only half the truth. Despite the Commission's insistence that 'EPAs are what you want them to be' ACP countries remained hostile to them. This is hardly surprising given that when the first region, CARIFORUM, finally managed to submit a liberalisation offer that met EU demands ("80% up to 25 years")¹⁹ the Commission responded by demanding 80% liberalisation within 15 years and the remaining 20% phased over a period of 20 to 25 years with just 6% of products liable to exclusion.²⁰ With such mercantilist attitudes ACP countries' trust in the development objective of EPAs has all but vanished making it very difficult to continue negotiations on the basis of mutual trust.

7. Outlook

EPAs embody a changing EU attitude and mark a new era in the post-colonial history and relations between the EU and ACP countries. Contrary to the Commission's analysis, however, this changing relationship has not been marked by a 'partnership of equals' but by the EU's increasing negligence of ACP development concerns. The main reason for this negligence is the fact that more and more EU member states have no colonial ties and, like ACP countries, face huge development challenges. There was a time when the EU was a club of rich countries that offered guaranteed welfare gains for its new entrants but that has now passed. New EU member states face onerous conditions in meeting EU criteria and get less and less support to do so. The old guard of rich EU member states are also increasingly unwilling to promote ACP development – particularly with respect to long-term financial commitments. Their development concerns focus on the new EU member states, their eastern European neighbours and the Near East (combining development policies with security issues and migration). In addition, increasing unemployment rates and raising inequality in most European states have prompted a more protectionist approach. This goes some way toward explaining why the French, Spanish and German agricultural lobbies' succeeded in protecting their farmers from ACP agricultural exports – of which more than 97% enter the EU market already duty and quota free and which account for less than 1.5% of EU's total imports.

However, it is not only the EU's attitude towards ACP but also ACPs attitudes towards the EU that are changing. The main reason is that the EU has become a less and less attractive market for ACP products. This is not only due to the progressive erosion of preferences (with the 2003 CAP reform switching from product to producer support as a major factor here) but also due to increasingly stringent food safety standards. Both factors contribute to decreased export revenues for traditional ACP exports such as fish, meat, fruits, vegetables, spices, oil and horticultural products. ACP diversification to markets that demand less onerous conditions is the logical outcome. Whether the implementation of EPAs can ever be enforced might therefore be determined by the effects of the 2013 CAP reform on ACP countries.

¹⁹ As Mandelson (2007b) said to members of the European Parliament: "In addition, in many areas, we are ready to give serious consideration to transition periods and in some cases very long transition periods - up to 25 years - together with substantial financial aid to help these countries implement their commitments so that EPAs genuinely act as a catalyst for policy reforms in ACP countries."

²⁰ Information obtained from an open letter from the Jamaican Ministry of Foreign Affairs and Foreign Trade, 14 November 2007.

As this discussion has shown, only those countries that would have lost substantially by being downgraded to the GSP have initialled an EPA (in addition to those LDCs that are part of functioning regional groupings). Whether and to what extent countries will implement the EPAs is, however, another question which hinges on:

- (a) Whether they regard compliance with the respective provisions to be in their national and regional interests;
- (b) Whether the EU will impose sanctions (temporary termination of DFQF and downgrading to GSP) in case of non-compliance and,
- (c) Whether countries and regions regard the opportunity costs of non-compliance as higher than the costs of implementing an EPA.

If neither a) nor c) is the case, the EU lacks any mechanism to enforce the implementation of EPAs. Thus, it is largely up to the EU to decide whether it would like to see EPAs implemented. If so, negotiations for comprehensive EPAs should take ACPs concerns seriously and give their proposals due consideration. Creating Economic Partnership Agreements that are supported by both sides must be the ultimate objective.

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