

EU Economic Partnership Agreements in Sub-Saharan Africa

Avenues of Compromise for a Constructive Outcome by September 2014

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For more than ten years the European Union has been negotiating economic partnership agreements (EPAs) with regional groupings in Africa. These free trade agreements are dedicated first and foremost to the goal of sustainable development. While African governments are wary of the consequences of market opening and sceptical of restrictions of their policy space, they are also interested in gaining access to the EU market. The European Union's decision to restrict free market access as of 1 October 2014 to countries and regions that exhibit a clear intention to ratify such agreements has injected pressure and momentum into the talks. The negotiations can be concluded constructively if both sides accept necessary compromises. That demands movement, not least at the very top.

The Cotonou Agreement of 2000 specified that EPAs were to be concluded between the European Union and regions in Africa. They were to succeed the decades-old non-reciprocal tariff preferences that the European Union had granted to former colonies in Africa, the Caribbean and the Pacific (ACP), which became incompatible with world trade rules when the World Trade Organisation's waiver expired in 2007. The objective of the EPAs is to bring the European Union's trade relations with the ACP states into line with WTO rules while preserving trade preferences for these states. Moreover, the Cotonou Agreement demands that the EPAs should contribute to sustain-

able development of the ACP states and to their integration in the global economy.

Current State of Play

Only one comprehensive regional EPA has to date been concluded, with the Caribbean in 2007. Negotiations with the African regions are turning out to be tough. The WTO rules on free trade areas demand that ACP states joining the EPAs must also open their markets to the European Union to a certain extent. But African governments fear that the ensuing import competition from the European Union would incur economic adjustment costs. The thirty least de-

veloped countries (LDCs) in the EPA regions possess little incentive to participate in the agreements because they already enjoy access to the “Everything-But-Arms” scheme of the Union’s Generalised System of Preferences. An interest in participating in an EPA only arises for them if they use liberalisation steps associated with an EPA to leverage economic reforms and seek to create a better basis for developing regional integration.

The EPA talks had very different effects on regional integration in Africa. In certain cases they accelerated regional integration processes, where simply thinking about the regional negotiating configurations has promoted clarification processes and spurred the dynamic in eastern and southern Africa. In ECOWAS (Economic Community of West African States) the EPA talks provided an incentive to finally adopt the common external tariff. In the Caribbean the talks strengthened cooperation between the Caribbean Community (CARICOM) and the Dominican Republic, which then jointly signed the EPA as CARIFORUM (Caribbean Forum).

In order to achieve free market access various states and regions in 2007 initialled twenty-one subregional or bilateral interim trade agreements, in the scope of which the European Union completely opened its goods markets. However, to date interim agreements have been signed and ratified only by certain ACP states. In the meantime negotiations continued with the goal of concluding comprehensive regional agreements. One interest of certain ACP states here was to alter particular aspects of the interim agreements. In the meantime six years have passed and the texts have been technically largely finalised. Now political decisions are demanded. In this situation the European Union has set a new deadline. After a transition phase lasting until 1 October 2014 free market access will be withdrawn from all countries that fail to demonstrate a real intention to sign and ratify. Tariffs could then increase for Botswana, Côte d’Ivoire, Fiji, Ghana, Kenya, Camer-

oon, Namibia and Swaziland. According to the EU-Africa Chamber of Commerce this could have serious repercussions on individual countries and products (for example, tariffs of 23 to 24 percent on cut flowers from Kenya would be introduced). The imminent threat of losing free market access has given new impetus to the negotiations. But a number of critical political sticking points still need to be cracked, probably at the ministerial level, before comprehensive regional agreements can be concluded. We will now examine these points in greater detail and identify possible avenues of compromise.

A Changed Setting for EU-ACP Relations

The present political context for negotiations with Africa is considerably different from the situation in 1996, when the *Green Paper on Relations between the European Union and the ACP Countries on the Eve of the 21st Century* was published. The green paper also set the scene for a reorientation of trade cooperation after decades of non-reciprocal preferences. Many African countries have recorded high rates of growth in the interim. Their trade dependency on the European Union, which was still very strong in the 1980s, has declined rapidly, with the Union’s share of their foreign trade falling to about 23 percent today. But the European Union has changed greatly too. The newer member-states have no colonial past and are free of any associated sense of political obligation. Moreover, some of them even have incomes that are lower than those of certain ACP countries, for example in the Caribbean: in 2012 per capita income in Hungary was \$12,622, in Barbados \$14,917 (World Bank data). This state of affairs does not exactly promote a willingness to maintain the Union’s historically rooted special treatment of the ACP states. Both the European Union and the ACP states must therefore ask themselves what value they attribute to cooperation under changing political and economic conditions.

One important point in this connection is progress on African regional integration. In 2012 intra-ACP trade reached 11.5 percent of overall trade. While that is admittedly not enormous, the share has grown rapidly. And regional integration is high on the agenda of African governments. The question of whether EPAs promote regional integration processes (and whether long-term provisional arrangements like the interim agreements impede them) needs to be thoroughly thought through.

Bilateral interim agreements are not a problem as long as the participating regional integration communities are nothing more than free trade areas. But if internal integration is to go further, towards a customs union (with free internal movement of goods and a common external tariff) the situation is different. The external tariffs would in principle already be defined by the EU agreement, the leeway for talks about the region's common external tariff smaller, and consensus therefore harder to achieve. But this problem is not of equal practical relevance in every case, as regional integration is often still rudimentary. Customs controls are occasioned not only by different levels of tariffs, but also by sanitary and phytosanitary regulations. On top of this come heavy administrative burdens. This applies even within the Southern African Customs Union (SACU). The external trade rules introduced by the EPAs presently represent merely an additional complication at these borders. And it can be assumed that over time different tariff rates vis-à-vis the European Union will also become less important. Multilateral liberalisations and liberalisation within larger regional communities might *sometime* surpass the EPA tariffs. For the moment they obstruct the way there.

Problem Areas in the Negotiations

1. Export taxes on raw materials. The European Union demands the abolition of export taxes on raw materials. Although the contested passages of the draft agreements

permit ACP partners to apply export taxes for particular reasons, for example in order to develop domestic value chains, the relevant decision would be made by a joint body, the joint EPA Council. Export taxes play an important role in certain African countries; the establishment of the Namibian leather industry after independence, for example, was promoted by a combination of industrial policy and export taxes. African politicians therefore regard an arrangement that takes the decision out of the hands of national government as a restriction of their policy space and consequently reject it. Moreover, export taxes are not prohibited under WTO rules. To that extent the African ACP countries point out that the WTO is the right place to negotiate about export taxes. Here they echo the European Union's position on internal support for agriculture, which it wishes to negotiate only under the WTO framework and not in EPAs. The ACP countries have thus shrewdly linked the two topics, in full knowledge that it would be out of the question for the European Union to negotiate aspects of its Common Agricultural Policy in the EPA framework.

2. Market opening by the ACP states. The European Commission has insisted since the start of the talks that the ACP side liberalise 80 percent of its imports. That would achieve the average 90 percent liberalisation (EU: 100 percent, ACP: 80 percent) that is required to legitimise a free trade area under WTO rules. That, however, is only the European Union's interpretation. The WTO has in fact yet to spell out the criteria for a free trade area. The relevant article XXIV of the General Agreement on Tariffs and Trade demands a liberalisation of "substantially all the trade" within a reasonable period. According to the European Centre for Development Policy Management (ECDPM) a liberalisation of 70 percent over a period of fifteen to twenty years is widely regarded as reasonable.

The ECOWAS region in particular witnesses energetic wrangling over the extent of market opening. The political and eco-

conomic situation in this region is extremely complex. The largest country, Nigeria, is not really interested in an EPA because of its export structure – primarily oil and oil products that are already exported duty-free to the European Union. Ghana and Côte d’Ivoire, also not LDCs, on the other hand have a real interest in gaining free access to the EU market and have therefore already concluded interim EPAs. Other countries in the region, like Mali (which currently has other worries) are LDCs and therefore not dependent on an EPA for free market access. In this situation, the ECOWAS members agreed in October 2013 on a common external tariff and increased their offer on liberalisation of trade to 75 percent. Through these great efforts the region is taking steps towards the European Union in order to lay the groundwork for a regional EPA. At the same time it wishes to prevent the interim agreements becoming permanent and impeding regional integration processes.

3. The most-favoured-nation clause. In the interests of development it is of fundamental importance that the agreements are asymmetrical. The European Union has abolished all tariffs under the CARIFORUM and interim EPAs, in other words liberalising much more extensively than the ACP. But in return the European Union demands that its ACP partners do not discriminate against it in trade policy by treating it less favourably than other large countries (the most-favoured-nation clause). The African ACP countries fear that this would narrow their policy space and burden possible later free trade talks with other regions or countries (such as Brazil). The CARIFORUM EPA, on the other hand, contains a most-favoured-nation clause that even after implementation is regarded as unproblematic in the region.

4. Sustainability and the non-execution clause. The non-execution clause permits treaty obligations to be suspended in the event of serious human rights violations. Such violations in a treaty state could be punished by the withdrawal of trade prefer-

ences. A similar provision in the Lomé Convention was used twice (Zimbabwe 2001, Fiji 2007) but in those cases affected development cooperation rather than trade preferences. The ACP states reject the non-execution clause on the basis that political concerns should have no influence on trade relations. In civil society the clause is contested. Human rights organisations believe it to be helpful and generally demand a strict linkage between human rights clauses and the operative provisions of trade agreements; from their perspective import restrictions in response to human rights violations are desirable. NGOs concerned with trade, on the other hand, reject the non-execution clause.

5. Additionality of EPA-related aid for trade. The African ACP states demand additional funds (“additionality”) for trade-related projects. Experience has shown that liberalisation does not automatically lead to rising exports and economic diversification. Trade-related development initiatives (or Aid for Trade, Aft) are intended to support these countries in conducting successful trade negotiations, implementing their results, expanding their supply capacities and thus improving their market opportunities. In the scope of the EPA negotiations the need for flanking development initiatives was comprehensively analysed for certain cases (for example for ECOWAS). But the European Union does not accept the necessity of promising further funds because for decades the EU funds for development cooperation provided through the European Development Fund have not been fully taken up; money is fundamentally available. However, EU development policy is widely felt to be administratively complex, and its processes protracted and complicated. Thus implementation problems cannot be attributed solely to a lack of “absorption capacity” in target countries; there is without doubt a need for reform on the part of the European Union.

6. Regional integration in southern Africa. Interests within southern Africa diverge very widely, which makes the nego-

tiating situation particularly complicated. Botswana, Lesotho, Swaziland and Mozambique are all explicitly interested in a comprehensive regional EPA and have all (together with Namibia) already signed – but not ratified – an interim agreement. Namibia, Angola and South Africa tend to be critical of the negotiations. While Angola already enjoys zero-tariff access to the EU market as an LDC, Namibia has important exports (above all beef) that would be at risk without an EPA. Further complicating the situation, South Africa already signed a trade and partnership agreement with the European Union in 1999 (amended 2009). South Africa demands equal treatment with the other members of the Southern African Development Community (SADC). But the European Union has made it clear that it cannot grant free market access because South Africa's economy demonstrates such a high level of development that it should be counted as one of the dynamic emerging economies rather than as a developing country. So South Africa's economic incentive to join an EPA is small. Yet negotiations without South Africa are impossible, because it forms a customs union together with Botswana, Lesotho, Namibia and Swaziland. So South Africa is automatically involved in the EPA through the common external tariff, and also has an interest in asserting its position within SACU and protecting its economic and political hegemony in the region. On the other hand, some of its neighbours have an interest in reducing their dependency. That explains, for example, the diverging positions in southern Africa on whether topics such as services and investment should also come under the scope of the EPA.

Options for Action

Negotiations are currently continuing with the aim of concluding comprehensive regional economic partnership agreements by October 2014. Various alternatives for the eventuality that the talks fail to pro-

duce successful outcomes in all regions have been discussed in public (whereas the EU and the ACP are concentrating for the time being on the ongoing talks):

1. Status quo: One possibility for the interested *non-LDC ACP countries* would be to sign and ratify bilateral interim agreements (possibly in amended form), but without pursuing further negotiations. That would secure them their free market access. This option would, however, have two important drawbacks. Firstly, interim agreements with individual countries could impede further regional integration within the ACP regions. Secondly, the ACP could waste an opportunity to leverage the EPAs to initiate a process of deepening integration and thereby contribute to dynamic development.

2. No agreement (reversion to the Generalised System of Preferences): Although this possibility is rarely discussed it should nonetheless be considered. In view of their reduced dependency on the European Union the still wavering ACP countries should evaluate whether concluding an EPA really matches their interests. If they rejected an EPA they would not have to open their markets to the European Union and the regional integration processes could proceed according to their own internal rhythm. This could also be a drawback: *If the pressure of the EPA negotiations is removed*, the incentive to push internal integration also vanishes. The main problem would be that the non-LDC ACP countries would lose their free access to the EU market. This would cause difficulties for individual sectors in the ACP states. The ACP regions would have to deal actively with adjustment problems, promote competitiveness in relevant sectors, diversify their economies and strengthen social security systems. In all these areas development policy could play a supporting role.

3. A new WTO waiver: Theoretically it would be possible to ask the WTO partners to approve another waiver for trade preferences for the ACP. Except: Four decades of non-reciprocal EU trade preferences for

Africa were not able to diversify the African economies. Their already small share of the European Union's external trade fell further over this period. But what is most problematic is that WTO trade partners, especially the developing countries of Latin America and Asia, would only approve a waiver if they were granted other trade privileges of their own. Why, for example, should Guatemala accept Madagascar receiving better conditions for access to the EU market? But compensation would significantly reduce the economic value of the waiver.

4. The OECD states grant developing countries zero-tariff status, if they agree to regional trade liberalisation amongst themselves, which in the case of the African Union means liberalisation within Africa as a whole. This would provide an incentive for regional integration, but the proposal is associated with numerous problems. Firstly, like the waiver option discussed above, it ignores a fundamental development problem: granting non-reciprocal preferences has not so far succeeded in initiating dynamic development processes. The proposal is also problematic in relation to the WTO rules, under which non-reciprocal special treatment is permitted for the poorest countries, but not for those with higher incomes. That is precisely why the EPAs are being negotiated. The principle of non-discrimination also prohibits any preference scheme being regionally restricted to Africa. Furthermore, the proposal is politically unrealistic. Firstly, pan-African integration is far from being so advanced as to fulfil the WTO conditions for such preferences. Secondly, certain OECD states are unwilling to open their markets non-reciprocally for middle-income countries (including African), and instead expect a quid pro quo. This became apparent at the 2005 WTO ministerial conference in Hong Kong, where WTO members were not even able to agree to grant the poorest countries (LDCs) fully duty- and quota-free market access. This proposal is thus no alternative to the EPA negotiations.

Possible Avenues of Compromise

If a constructive outcome is to be achieved, both sides must relinquish rigid stances. The search for possible compromises should be guided by the following considerations.

The European Union should recognise the special situation of the poor and poorest countries; development is the uppermost objective. Sustainable development is anchored as the priority objective of the EPAs in the Cotonou Agreement; the European Union should base its positions on that. One issue where this applies is the demand to abolish export taxes on raw materials. In the case of export taxes levied for development reasons the European Union should put any self-interest of its own to one side and demonstrate flexibility. This can be reflected at various points in the agreement. If the European Union does not wish to remain completely silent on export taxes (which can be assumed), their sphere of application could be defined in broad terms (for example for state revenue, to increase value added, to anchor social and environmental aspects). And it would be possible to define the conditions for their introduction less strictly. For example the role of the joint EPA council could be consultative, without decision-making powers, or it could be bypassed altogether. Such flexible arrangements would allow the ACP states greater policy leeway and give them the possibility to introduce new export taxes in the interests of national development.

The extent of market opening by the ACP states is the second point in which the European Union should accommodate the development interests of its partners. The European Union should recognise that ECOWAS, for example, has moved a long way since the talks began. It should accept the offer of 75 percent market opening and cease insisting on its own 80 percent figure.

The African ACP states should not overstretch their claim to special treatment. The ACP countries in turn should recognise that the European

Union, in offering completely free market access, has gone a big step further than the former non-reciprocal trade preferences. They should therefore also agree to compromises on the most-favoured-nation clause. Rejecting it would be tantamount to demanding permanent special treatment, and that would only be comprehensible if these countries permanently retained their LDC status. Fortunately it is foreseeable that this will not be the case.

The ACP should accept that free trade agreements cannot ignore human rights and sustainability. The possibilities for compromise here lie not in the question of whether human rights and sustainability topics are tied to the substantive trade provisions of the agreements, but how close this connection should be or whether the issues can be addressed by other clauses. The ACP states should recognise that the extent to which human rights are respected in the partner countries is an important factor for acceptance of free trade agreements and development cooperation within the European Union. The European Commission can demonstrate only limited flexibility on this point.

EPA-related aid for trade should be made effective – even without additional means. In the European Union there is agreement that trade-related development cooperation represents an important supplement to the EPA talks. In view of stretched EU budgets and unused billions in the European Development Fund there is, however, little willingness on the part of the Commission and the member-states to approve additional funds for EPA-related aid for trade. The European Union should nonetheless take seriously the ACP's worries over adjustment costs and the need for flanking projects. It should be considered how this can be accommodated. An EPA monitoring system that quickly identifies any adjustment burdens and points to response possibilities would also be conceivable, as would consideration as to how the administrative processing of

EPA-related aid for trade procedures could be simplified.

Take regional integration processes in southern Africa into account. Above all in southern Africa there is a tension between the EPA talks and regional integration processes. Here the European Union holds a position that is hard to justify. That becomes clear if we transpose the problem to the EU context, where it is inconceivable that the European Union would accept a free trade agreement that provided special treatment for one member-state, for example Germany. Of course the analogy is not perfect, firstly because the degree of integration in southern Africa is considerably smaller, and secondly because the situation is historically conditioned. Trade policy towards the ACP already differs from trade policy towards South Africa since a long time. But the example spotlights the problem for further internal integration. There is no easy solution: the economically obvious option of including South Africa in zero-tariff status is probably excluded politically by South Africa's economic strength. But in the medium term ways must be found to allow regional integration to advance unhindered. That still applies even if an EPA that provides for special treatment of South Africa can be concluded. Finally, further constructive ideas should be generated. At the least, additional consultation and negotiation mechanisms should be provided for the eventuality that problems arise for regional integration in southern Africa.

Outlook

Opinions differ as to whether the EPA talks are following a normal trajectory or in fact risk doing lasting harm to political relationships with Africa. It is certainly nothing unusual for trade talks to drag on for years and for the participants to adopt stark positions that they sometimes present polemically or aggressively. But in relations with Africa it is unusual. Viable alternative models for keeping trade preferences with-

in WTO rules without an economic partnership agreement are, however, not discernible. In most of the ACP regions there is therefore still strong interest in concluding the talks. Political criticism of the EPAs, for example at earlier EU-AU summits, was never more than empty noise and has not to date led to any country or region withdrawing from the talks. If both sides demonstrate willingness to compromise, a constructive outcome should be achievable by autumn 2014.

Germany should, preferably in coordination with other member-states, push actively in the EU Council working groups for the European Union to adopt a flexible position in the talks, in order to enable compromises along the lines sketched out above.

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