

**Economic Partnership  
Agreements:  
A better ACP-EU trade  
agreement is both possible  
and desirable**

**Policy Briefing**



"as the deadline [...] approaches, there is a danger that our regional groupings may be put under pressure to accept EPAs that do not take adequate account of Africa's long-term development interests"

*Elizabeth Tankeu, AU Trade  
Commissioner  
AU Trade Ministers Conference,  
January 2007*

## 1. Summary

The December 2007 deadline for the Economic Partnership Agreement (EPA) negotiations between the European Union (EU) and the African, Caribbean and Pacific Group of States (ACPs) is only a few months away. However, we are still a long way away from a positive conclusion that will keep within the spirit of partnership of the Cotonou Agreement and ensure a positive development outcome.

These agreements are meant to replace a thirty-year long special trading relationship based on unilateral trade preferences, with new trade arrangements that **must support the structural economic transformation of ACP economies**. This is an extremely ambitious agenda for the negotiations, and goes far beyond concluding a simple free trade area agreement.

ActionAid believes that the EPAs **will not deliver development for ACP countries**, since they:

- Do not provide the necessary framework for pro-poor growth, as they expose ACP small-scale farmers and infant industries to unfair competition of subsidised European agricultural products and highly competitive industries, thus creating an uneven playing field;
- Have serious potential to undermine the right to food of ACP countries and the obligations EU and ACP countries have in respect to the UN Economic Social and Cultural rights;
- Do not provide an adequate timeframe and sequencing,



pressuring ACP countries to liberalise in parallel with the structural transformation of their economies;

- Will have severe effects on ACP governments' income for public spending;
- Do not provide adequate development finance to match the ambition of the change demanded.

Instead they

- Distract from existing regional integration processes within the ACP regions and the specific needs and agendas that arise;
- Increase pressure and competition over dwindling natural resources such as fish, land and water - particularly important to ensure food security in the regions;
- Serve the needs of European industries for continuous access to cheap raw materials;
- Undermine the role of the State by severely limiting the policy space of ACP countries and drastically cutting government income for public spending.

## **Are EPAs the only viable option? NO: a better trade arrangement is possible and desirable<sup>1</sup>**

The Cotonou Agreement clearly states that development is the primary objective of any EU-ACP trade agreements and that negotiations should be informed by the principle of partnership. Yet, the European Commission (EC) is using its economic and political power to force its own 'vision' of EPAs onto the ACP. ***In the absence of convincing evidence to demonstrate that EPAs are the best instrument to deliver development outcomes, it is necessary to explore if alternative options are viable and desirable.***

One example is an enhanced General System of Preferences (GSP+). This could offer generous market access to ACP countries, nearly equivalent to the Cotonou preferences. With the necessary political will, the EC could offer other options, such as an enhanced GSP. However, the EC has refused to explore this option with developing countries.

## **Conclusions and recommendations**

Positions still diverge and several doubts remain in respect to the capability and desirability for most ACP regions to sign EPAs by the end of this year and to implement them by 1 January 2008.

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<sup>1</sup> ActionAid et al., Partnership under pressure, An assessment of the European Commission's conduct in the EPA negotiations, May 2007



For the deadline to be met, one of the sides - most likely the weaker one - would need to concede its position. In addition, national parliaments would not have the time to properly scrutinise any possible agreement to ensure that development, partnership and poverty reduction were at the heart of any deal.

ACP political leaders should not be pushed and rushed into signing up to an agreement, which could sign away the future of its people.

Therefore the EU should:

- make broader commitments to eliminate all forms of subsidies that have trade distorting and dumping effects;
- provide reassurance to live up to the commitments taken in the Cotonou Agreement and provide Cotonou preferences in case EPAs do not enter into force by 1 January 2008;
- ensure the extensive right to protect sensitive agricultural and industrial products in ACP countries;
- desist from reducing the policy space of ACP countries.

The ACPs and EU should:

- reaffirm the primacy of human rights as defined by the 'Vienna Declaration', which declares that: "human rights are the first responsibility of Governments";
- reaffirm the importance of the right to food as a human right and a binding obligation well-established under international law such as the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights;
- clearly reaffirm the importance of accountable and democratic governance, and they agree not to bypass the role of national parliaments before entry into force of any agreements;

The ACPs should:

- be able to reinstate product tariffs to protect against imports that have trade distorting and dumping effects;
- make an explicit request to the EC to explore possible alternative arrangements, along the lines of an enhanced GSP<sup>2</sup>.

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<sup>2</sup> For more information on GSP and GSP+ see box 1, page 12



## 2. EPA negotiations: under pressure to make the right choice

The EPA negotiations between the EU and the ACP countries have entered a critical phase. The deadline for completion of negotiations is scheduled for the end of 2007, but **several disagreements between the EU and ACP countries on the long-term implications and the "development dimension" must still be worked out**. Most notable are market access and tariff reduction schedules, the level of protection of agricultural products from ACP countries, liberalisation commitments beyond goods, and the development finance essential for tackling supply-side constraints and specific EPA-related adjustment needs.

These agreements are meant to replace a thirty-year long special trading relationship, during which ACP countries benefited from unilateral duty-free access to the EU market for most of their exports, with six separate bi-regional trade agreements. The EU's rationale for negotiating EPAs as reciprocal free trade agreements is **the failure of trade preferences to deliver more trade growth and to help ACP countries out of commodity dependence**.

In a globalised world, trade can contribute to economic development and can be a powerful tool for national growth. However, it is widely accepted that liberalisation per se does not necessarily bring more trade and economic growth, and least of all development. The ACP countries, from the outset of the EPA negotiations, held that **EPAs must support the structural economic transformation of ACP economies** - a process of structural transformation that progressively adds more value to the goods and services produced in ACP regions, in ways which generate increased employment and rural incomes, and do not undermine food security or the overall local ownership of such processes.

This is an extremely ambitious agenda for the EPA negotiations. It goes far beyond concluding a simple free trade area agreement; it requires a careful review of every aspect of the proposed agreements to determine precisely how every aspect will contribute to the process of structural transformation, which is essential to assisting ACP nationals working their way out of poverty. This is the key litmus test for the proposed EPA agreements with ACP countries.

ActionAid believes that, if measured against other possible arrangements in terms of trade offs - ie the extent of trade liberalisation concessions ACP countries must make to receive limited additional access to the EU market - EPAs are less desirable for ACP states than other options. **EPAs do not bring substantial new market access to ACP states while demanding very ambitious trade liberalisation from them. The principle of less**



**than full reciprocity is actually reversed. Further, EPAs don't bring new development finance to existing European Development Fund (EDF) commitments.**

Therefore, the EU should offer a trade arrangement which provides ACP states with a market access which is equally generous to the one offered through the Cotonou preferences. In ActionAid's view, this is not only possible but also desirable for ACP states.<sup>3</sup>

**A new arrangement, building on GSP+, would square the circle of making the new EU/ACP trade arrangements both WTO-compatible and no less favorable than the existing ones.**

ActionAid supports the legal opinion of the Commonwealth Secretariat,<sup>4</sup> that **commitments made in the Cotonou Agreement will remain in place if EPAs have not been concluded and entered into force by 1 January 2008.** WTO-compatibility does not take precedence over other commitments made in the Cotonou Agreement, such as in defining new trade arrangements. **Therefore, in the likely case that the EU and ACP countries are still negotiating at the end of 2007, Cotonou preferences should continue and disruption of trade should not take place.**

ACP countries are negotiating these agreements in good faith, and are raising concerns broadly shared by a large number of economic operators, NGOs, UN agencies and other institutions. Their concerns must be taken into consideration without any retaliation.

### 3. What are the key concerns around EPAs?

#### 3.1 Are EPAs going to deliver on development?

Agriculture and agri-food products play a major role both in communities' livelihoods and in creating opportunities for pro-poor sustainable development. It is the primary activity of 60% of the population in sub-Saharan Africa and accounts for over half of the gross domestic product (GDP) in some countries. Agriculture is also of paramount importance to export earnings. Small scale farmers account for most of Africa's agricultural production, particularly staple foods critical for food security. EPAs should build on this asset for economic development through increased value and transformation while ensuring food security of local people.

**Yet, the almost complete elimination of tariffs will leave agriculture from ACP countries unsheltered from the dumping of heavily subsidised European agricultural products.** Dumping causes massive harm to farmers in developing countries who cannot compete

<sup>3</sup> Actionaid, Trade escape, October 2005; Third World Network and Oxfam A matter of political will, April 2007; ODI and IDS, The Cost to the ACP of Exporting to the EU under GSP, March 2007

<sup>4</sup> Commonwealth Secretariat, Opinion on the General Preferential Regime applicable to imports of Goods originating in ACP non-LDC failing the conclusion and entry into force of EPAs by 1 January 2008, March 2007



with the cheap products that flood their markets and put them out of business. Increased import from Europe will both decimate the livelihoods of millions of rural people and undermine the development of local industries. In the last 15 years, imports from Europe to west Africa increased by 84%, predominantly in the agri-food sector where expenditure rose from €0,987 billion in 1989 to €1,930 billion in 2004.<sup>5</sup>

The current EU offer does not adequately address these problems. It seeks to eliminate export subsidies for products in which ACPs will eliminate tariffs (zero-for-zero approach). **Export subsidies do not represent the largest cause of dumping**, and their elimination has already been committed at the WTO ministerial conference in Hong Kong in December 2005. It is domestic subsidies, which represent a much larger proportion of EU support to its farmers, that have the effect of distorting trade.

In addition, the EU has recognised that dismantling tariffs and to excluding some products from tariff elimination can take a long time because of their importance to food security and livelihoods. However, it seeks to limit their application to very exceptional cases for very few products.

### **3.2 What are the likely consequences of EPAs on other State obligations, such as the right to food?**

Dumping of cheap agricultural products, the subsequent displacement of local producers and the loss of local businesses that cannot compete with European companies are likely to have severe consequences for the right to food for poor people in ACP countries. The right to food is a human right and a binding obligation well-established under international law such as the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights. It seeks to ensure that all people can feed themselves with dignity. It includes not just the availability but also access to food; that it is physically and economically accessible to all, is safe, meets standards of nutritional adequacy and is culturally acceptable.

**By signing EPAs, ACP governments will be faced with the challenge of failing to meet their obligations on the right to food and the possibility of legal action under the UN system.** In fact, trade does not occur separately from the human rights framework. Most of the States that sign multilateral trade agreements and set up free trade areas are also parties to the major international and regional human rights agreements. They have agreed to the primacy of human rights by signing the 'Vienna Declaration', in which they

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<sup>5</sup> ROPPA, « Le Point de vue des Organisations Paysannes sur les négociations de l'APE », speech of Bassiaka D'AO to Civil Society Dialogue meeting with the European Commission, 25 Sept 2007



declare that "**human rights are the first responsibility of Governments.**"<sup>6</sup> As such, States are obligated to respect, protect and fulfill human rights, not just in domestic decisions but in their dealings with other countries.<sup>7</sup>

### 3.3 Reducing government income for public spending

Reduced government income is another major area of concern related to the progressive elimination of custom tariffs. This will affect ACP governments's ability to spend on public policies, with direct implications for education and health sectors, as well as support to trade development and agriculture.

**Findings of various studies conducted in countries that already face the introduction of free trade with the EU show that the effects can be severe. Zambia is estimated to lose US\$15.8 million in government revenue, which is equivalent to its annual HIV/AIDS spending. Burundi stands to lose US\$ 7.6 million in revenue, which is one dollar per head of population.**<sup>8</sup>

The EC has made vague commitments to absorb fiscal losses by making reference to unspecified "net losses".<sup>9</sup> Further, it remains unwilling to make attainment of fiscal reforms a precondition for tariff reductions.

**ACP governments and national parliaments will find themselves confronted with the challenge of matching the increasing demands of their people with decreasing budgets.** Also, with a decreasing national budget, it will be increasingly difficult for ACP countries to meet the Millennium Development Goal (MDG) targets, increasing state dependency on foreign aid.

### 3.4 Is the EC offer of development finance up to the challenge?

Equally central to the development equation is the financial dimension of EPAs, which will demand a massive adjustment process for ACP countries, estimated by the Commonwealth Secretariat at €9.2 billion over the next ten years. In addition, there is an overwhelming requirement for additional support to be deployed outside of the current EU procedures of aid disbursement, which prove to be cumbersome and inefficient.

ACP countries are calling for additional resources to strengthen their economic infrastructure and productive capacities in order to deal with trade-related adjustment costs.

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<sup>6</sup> Vienna Declaration and Programme of Action of the World Conference on Human Rights, Art. 1, A/CONF.157/23.

<sup>7</sup> Accord, Concept Paper for legal challenges to EPAs based on Human Rights, December 2007, unpublished

<sup>8</sup> Christian Aid, Traidcraft, Tearfund, The real costs and benefits of EPAs, 2007

<sup>9</sup> Commissioner Michel addressing ACP trade ministers at the EU/ACP Joint Ministers meeting of the 1<sup>st</sup> March 2007 in Brussels



The EC has made various statements suggesting aid would increase, for example, in the EDF (35% increase), the Regional Indicative Programme (50%) and a substantial portion of the Aid for Trade package earmarked to ACP countries. However the reality is that:

- **the EDF actual disbursement will decrease by 37%**<sup>10</sup> due to changes in the disbursement procedures and the new “use it or lose it approach”;<sup>11</sup>
- **On the €2 billion Aid for Trade package, the new pledges of €700 million from member states have not yet materialised.** The EC is using the slow rate of allocation by member states as a bargaining chip to force ACP countries to agree to liberalisation. Also, the member states have not specified what the “substantial” portion to be allocated to ACP countries exactly means or when this would be decided.<sup>12</sup> The EC is using the same package as a bargaining chip both in the WTO and EPA negotiations;
- Finally, the **EC is trying to restrict and make “links to development finance”**<sup>13</sup> in the EPA texts. This means that while EPA commitments will remain unchanged, the aid commitments might change over time (eg in the review of the Cotonou Agreement).

#### **4. Should EPAs enter into force before the formal ratification of national parliaments?**

The process of ratification of EPAs is a lengthy one, requiring involvement of national parliaments, for example through debates, scrutiny and analysis of the budget implications and/or ratification. This makes the entry into force by 1 of January 2008 a further challenge.

At the EU/ACP Joint Trade ministers meeting, Commissioner Mandelson suggested “to make provisions in the EPA text for immediate entry into force of EPAs pending ratification by national parliaments”.<sup>14</sup>

**The involvement of national parliaments, including ratification where applicable, represents a fundamental step in democratic**

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<sup>10</sup> Paul Goodison, The Mystery of the ‘Lost’ 10th EDF, Jan 2007

<sup>11</sup> Since 2000, the European Commission changed the procedures on the running of EDF disbursement. As a result, 9th EDF covered period 2002 – 2008 (instead of 2000-2005) and 10th EDF will cover 2010 – 2015 (instead of 2005-2010), the period during which the 11th EDF should have run. This means that there will be only two 5-year financial allocations instead of three over the 15 years from 2000 until 2015. Since the Commission has now adopted a “use it or lose it approach”, all unspent funds will not be carried over into the subsequent EDF but go back to Brussels. Paul Goodison, The Mystery of the ‘Lost’ 10th EDF, Jan 2007

<sup>12</sup> Roundtable on “What Added Value to seek from an EU Strategy on aid for trade” organised by David Martin MEP in the European Parliament on the 5<sup>th</sup> June 2007.

<sup>13</sup> Speech of Commissioner Mandelson at the EU/ACP Joint Ministers meeting of the 1<sup>st</sup> March 2007 in Brussels

<sup>14</sup> Ibid.



**decision making. By-passing this process** with an immediate entry into force will deprive parliamentarians of their power of scrutiny and thus **amounts to undermining democratic governance.**

## **5. What if the EPAs do not enter into force by 1 January 2008?<sup>15</sup>**

The negotiations have experienced considerable delays and several disagreements on the approach and the substance of the arrangements persist. Therefore doubts have been raised about the likelihood of concluding negotiations in time to put into place the necessary administrative, legal and regulatory measures for EPAs to take effect by 1 January 2008. A critical question for negotiators and businesses arises on the position of imports from non-LDCs in case of non-entry into force of EPAs by that date.

A legal opinion of the Commonwealth Secretariat clearly explains (or proves) that, **"any resultant failure to conclude the EPAs by 1 January 2008 does not absolve the EC of its Cotonou obligation to provide preferential treatment to ACP non-LDCs on terms equivalent to those that currently obtain prior agreements"**. Also, **"the obligation under the Cotonou Agreement remains valid, subject to review or denunciation until 2020"**.<sup>16</sup>

In fact, article 300(7) of the EC Treaty states that international agreements "shall be binding on the institutions of the Community and on the Member states", as reaffirmed by the European Court of Justice (ECJ).

This legal opinion contests Commissioner Mandelson's view that, "if we have no new trade regime in place by the end of this year the Commission has no legal option but to offer the region concerned [less generous] GSP preferences".

## **6. Do WTO rules take primacy over the commitments taken in the Cotonou agreement?**

The EC has on several occasions reaffirmed that the end of 2007 deadline for completion of the EPA negotiations is a non-negotiable point, due to the expiry of the WTO waiver and the obligations towards other WTO members.

This might suggest to ACP negotiators and political leaders that the EU commitments at the WTO take primacy over the ones taken in the Cotonou Agreement.

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<sup>15</sup> This section is based on the legal opinion of the Commonwealth Secretariat entitled: Commonwealth Secretariat, Opinion on the General Preferential Regime applicable to imports of Goods originating in ACP non-LDC failing the conclusion and entry into force of EPAs by 1 January 2008, March 2007

<sup>16</sup> Commonwealth Secretariat, Opinion on the General Preferential Regime applicable to imports of Goods originating in ACP non-LDC failing the conclusion and entry into force of EPAs by 1 January 2008, March 2007, Page 1 and 2.



Nevertheless, article 91 of the Cotonou Agreement provides that, "no treaty, convention, agreement or arrangement of any kind between one or more member states of the Community and one or more ACP States may impede the implementation of this Agreement". Also, Article 3 of the Cotonou Agreement imposes an obligation on the EC to, "take all appropriate measures, whether general or particular, to ensure the fulfillment of the obligations arising from this Agreement and to facilitate the attainment of the objectives thereof."

"The status of the Lome *acquis*, within the Community law, now represented by the Cotonou Agreement, is well recognised and provides the basis for asserting rights as well as a standard review of the legality of the Commission and/or Member States' actions. Conversely, the WTO Agreements do not provide a general standard against which Community laws are to be tested"<sup>17</sup>

Therefore, the EC's argument to "give precedence to the requirement of WTO-compatibility in defining new trade arrangements fails to recognise the continuing validity of the Cotonou Agreement in Community law. The challenges this may present do not absolve the parties of their obligations under the Cotonou Agreement".<sup>18</sup>

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<sup>17</sup> Idid, page 10

<sup>18</sup> Ibid, page 15



## **BOX 1 What is the Generalised System of Preferences (GSP) and the GSP+**

The Generalised System of Preferences (GSP) is a system of exemption from the general principle of the World Trade Organisation (WTO) on Most Favoured Nation (MFN) to lower tariffs for developing countries, without also doing so for rich countries.

GSP+ is an improved market access system with lower tariffs compared to the standard GSP. It provides for special market access conditions to dependant and vulnerable countries that accept the main international conventions on social and human rights, on environmental protection and on good governance, including the fight against drugs.

These conventions include: the elimination of discrimination against women; the prohibition of torture; the right to strike; the banning of child labour, the environment, good governance and the fight against drug production and trafficking. These conventions had to be ratified by the end of October 2005 and the remainder within the lifetime of the regulations, ie by December 2008. They include the Kyoto Protocol, the Convention on International Trade in Endangered Species and the UN Convention against Corruption.

Dependence is defined as the five largest sections of its GSP-covered exports to the Community and represent more than 75% of its total GSP-covered exports. In addition, GSP-covered exports from that country must also represent less than 1% of the total EU imports under GSP.<sup>19</sup>

ActionAid is an international anti-poverty agency working in over 40 countries, taking sides with poor people to end poverty and injustice together.

Actionaid, October 2007

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<sup>19</sup> [http://ec.europa.eu/trade/issues/global/gsp/pr211205\\_en.htm](http://ec.europa.eu/trade/issues/global/gsp/pr211205_en.htm)

