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What next?

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Introduction

After over a decade of controversy, Economic Partnership Agreement (EPA) negotiations are coming to a close. Come October 2014, the European Union (EU) will withdraw the temporary arrangement that had permitted individual African, Caribbean and Pacific (ACP) countries to continue exporting to the EU duty free quota free (DFQF) while they carried on negotiations in regional groupings. While negotiations could technically go on beyond that date, the removal of this temporary arrangement will put ACP countries negotiating EPAs regionally in a position where they will have to choose whether to stick to their groupings or not, in cases where a regional agreement has not been found.

This paper looks back at the EPA process, attempting to outline the basic dynamics surrounding the negotiations, with a particular focus on West Africa. It argues that EPAs are first and foremost Free Trade Agreements (FTAs) replacing a preferential regime. This simple observation often gets lost in the debate surrounding EPAs, yet it can account for the sometimes difficult nature of the negotiations. African countries were asked to open their markets in order to secure their current level of market access to the EU.¹ There was little “new” to be gained in terms of market access, which meant that in most cases little domestic support emerged in African countries in favor of the EPAs. The

1 The EPAs did grant some important improvement in terms of more flexible rules of origin, for example. The legal certainty and more stable trading environment associated with a binding agreement would also be an improvement. But this has in all evidence not helped to tip the balance domestically in favor of EPAs in most African countries.

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heterogeneity of regional groupings in terms of interests also did not help in speeding up the process: some had little to gain (and potentially a lot to lose) from EPAs, others were fighting for the survival of important export oriented industries (see Czapnik, 2014 for an illustration in Côte d'Ivoire).

Further, the more ambitious narrative presenting EPAs as development instruments, which could have helped in overcoming the fact that there was little to gain from EPAs in terms of new market access to the EU, never really caught on in most African countries (notwithstanding a few exceptions). This is also a broader lesson to be learned from EPA negotiations: the political backing for reforms grows domestically, and cannot be spurred from the outside via FTAs (for a similar point, see Weinhardt, 2014).

At the time of writing (June 2014), the negotiations in West Africa are closed, with the final outcome pending political endorsement. The EAC and the SADC regions have also overcome most – but not all - outstanding issues in their negotiating groupings, and a conclusion before October 2014 is not impossible to envisage.²

As a result, the trade regime between Sub-Saharan Africa and the EU will be fragmented between regional EPAs (possibly ECOWAS, EAC and SADC), individual EPAs (e.g. Mauritius), and countries falling under one of the EU's three unilateral preference schemes. In some cases, a few African countries might not be granted any preferences at all and will fall under Most Favored Nation (MFN) treatment.³

In the longer term, Europe could be tempted to try to initiate new negotiations with regional heavyweights such as Nigeria, South Africa or Kenya on “new generation” issues like competition, investment or public procurement. This would not be surprising given the current trends in European trade policy, and the booming economies of some African countries. Keeping the EPA experience in mind, the questions facing the EU would be threefold: what can Europe put on the table to make such negotiations enticing?; will it try to negotiate regionally with African Regional Economic Communities (RECs) like it did for the EPAs?;

2 For an overview of negotiations visit <http://ecdpm.org/great-insights/overview-epa-economic-partnership-agreements-updates/>

3 Countries classified as Upper Middle Income Countries by the World Bank do not received GSP preferences under the EU's revised scheme.

and more importantly, will there be any interest on the African side to negotiate on such issues?

This paper is structured as follows: Part I explains the rationale behind EPAs: the move away from the so-called Lomé preferences in the mid-1990s. Part II goes into the basic setup of the negotiation and the ensuing dynamics. Part III reflects on what Europe's trade policy agenda towards the African continent could look like in the medium to long-term future.

The shift to reciprocity and the rationale for EPAs

The EPAs are meant to replace unilateral preferences that ACP countries have enjoyed for decades: the Lomé preferences. Up until then, the ACP had benefited from the most generous preferences granted by Europe to countries from the developing world: quasi-DFQF access for most products, with special protocols in place for a few agricultural commodities such as sugar or bananas. These special arrangements were beneficial to ACP countries, and have been phased out over the past decade following rounds of agricultural market reforms in the EU (see Goodison, 2008 for an in depth discussion). In short, ACP countries were at the top of the European preferential pyramid: they enjoyed the best kind of unilateral market access granted by the EU at the time. It is this system, inherited from the immediate post-colonial period that the EPAs are meant to replace. The transition is still ongoing to this day.

The factors that led to a change from this system are already well explored and there is a wide literature on the topic (see for example Mc Queen, (1999); Grynberg, (1998)). Amongst others one could cite the diminishing strategic importance of the ACP grouping, problems of World Trade Organization (WTO) compatibility, and doubts as to the achievement of unilateral preferences in terms of development outcomes. This part succinctly reviews three of these factors: problems of WTO compatibility, the disappointing results of decades of unilateral preferences, and the broader trend aimed at "normalizing" the EU's preferential system.

The Lomé agreement came under increasing pressure from the outside in the mid-1990s. It was increasingly clear that the ACP preferential regime was becoming harder to maintain in the face of criticism and challenges from other WTO members. The longest running WTO dispute in the history of the

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organization (the “Banana wars”), for example, had the ACP preferential regime squarely in its crosshair. The EU also showed little appetite to seek a waiver going beyond a transitional arrangement. This led the EU and the ACP group to agree on finding a “WTO compatible” arrangement for their trading relationship, one that would be based on Article XXIV of the GATT governing reciprocal FTAs. Other options were on the table, such as modifying the EU’s Generalized Scheme of Preferences (GSP), but they were dropped relatively early on (see Stevens, 1999).

At the same time, the European Commission (EC) also began to question the achievements of three decades of unilateral preferences in terms of export diversification, export competitiveness, or industrialization. If ACP countries were to use trade as a development tool, it was argued, reciprocity could be used to drive domestic reforms and improve competitiveness. FTAs can be a powerful tool to attract foreign investment and drive reforms. In this vein the EPAs could be seen (and are still seen, including by some ACP stakeholders), as a tool to promote internal reforms. In this sense the EPAs also mark an ideological change in the way trade and development were conceived: whereas Lomé preferences focused on market access questions, the EPAs were tied to broader efforts aimed at improving the business environment of ACP economies.

Additionally, Europe was at the time also re-arranging its preferential system from one based on colonial ties to a more “objective” system (for an elaboration of this argument see Bartels, 2007). Granting preferential access to developing countries is possible under the WTO’s enabling clause, but treating similar developing countries differently on the basis of historical ties is not. A number of northern EU member states were in favor of re-orienting the European preferential system to a more “modern” one according to which eligibility was defined based on the development levels of each country, not historical ties.

EPA negotiations started in this context: a multilateral environment hostile to the continuation of ACP preferences, doubts regarding their effectiveness, and a reform of the European preferential system away from historical ties.

State of play and observations on negotiating dynamics

State of play as of March 2014

EPA negotiations are conducted in regional groupings, with the exception of the Eastern and Southern Africa (ESA) region where negotiations with individual countries have gradually taken the forefront. Each region faces different challenges in terms of negotiations. Below is a summary of the state of play of negotiations in African regions as of the end of March 2014.⁴

- In the Economic Community of West African States (ECOWAS), a compromise was found in January 2014. The West African region is currently in the process of validating the deal at the level of Heads of State and Government after Nigeria objected to the aforementioned compromise. Negotiations were stuck for over a year on the question of market access, or the level and timing of the liberalization of the ECOWAS member states' markets. Gradually, the two parties moved closer, prompted on the side of the EC by pressures from European Member States to soften its stance, and on the West African side by the finalization of the ECOWAS Common External Tariff (CET) and the "fast tracking" of the deal at the political level (president Macky Sall of Senegal having been tasked with supervising the negotiations in November 2013). Other issues, like the MFN clause, whereby West Africa was asked to grant the EU any additional advantage it would grant a third party in a subsequent FTA, were solved by softening the reach of the clause in terms of countries covered and the automaticity of the extension of concessions to the EU. Importantly, the EU also announced during the final round of negotiations that it would discontinue the use of export subsidies on agricultural goods exported to EPA signatories, an offer it is now extending to other EPA regions.
- The East African Community (EAC) has been close to a deal for some time, but some of the "contentious issues" remain: the issue of export taxes, whereby the EU seeks commitments on the curtailing of the use of export taxes on raw minerals, the MFN clause, and, importantly, the non-execution clause which permits the suspension of the agreement by either party in cases of

⁴ For regular updates on negotiations see <http://ecdpm.org/great-insights/overview-epa-economic-partnership-agreements-updates/>

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important human rights violations. Traditionally, the EU has not applied this clause in its trade relations with ACP countries, suspending development assistance instead. The EAC and the EU are currently planning consultations at ministerial level after additional technical rounds, and consider that the upcoming ministerial meeting will be the last round of negotiations in the region.

- The Southern African Development Community (SADC) region is a complex one, where a customs union is already present in the regional grouping (the South African Customs Union, SACU), one member of which already has an agreement with the EU (the Trade and Development Cooperation Agreement, TDCA, between the EU and South Africa). In that region, remaining bottlenecks include issues of agricultural market access to South Africa, the safeguards associated to this access, and the use of export taxes by SADC Member States, amongst others. The region is marked by the strong dependence on EU preferences for exports of beef and fish products by countries like Namibia and Botswana (see below).
- In the Central Africa grouping, regional negotiations have not taken place for a number of years. The region's set-up is similar to West Africa's, with a subset of countries having a customs union in place (the Communauté Économique et Monétaire d'Afrique Centrale, CEMAC), planned to be subsumed under a new CET that would regroup all of CEMAC's member and Angola, Burundi, Congo, and Sao Tomé et Príncipe. The CET would in principle be the basis of the region's offer to the EU, it is unclear whether the CET or the region's market access offer have progressed in recent months. Currently, Cameroon is rumored to be considering the signature of an EPA individually in order to safeguard its horticultural exports to the EU.
- The ESA grouping consists of Comoros, Djibouti, Madagascar, Ethiopia, Eritrea, Malawi, Mauritius, Seychelles, Sudan, Zambia and Zimbabwe. It is not based on any pre-existing regional grouping. Mauritius, Seychelles, Zimbabwe and Madagascar signed interim EPAs in 2009 (EPA). It is widely considered that due to their heterogeneity, ESA countries will continue to engage bilaterally with the EU on future trade ties.

Why so little traction?

As explained above, EPA negotiations were meant to replace a unilateral scheme. Much of the dynamics during the negotiations and tensions that resulted from them can be directly traced back to the setup of the post-Lomé negotiations.

In West Africa for example, countries face the following incentive structure: Without an EPA, one would be “retrofitted” into one of the “standard” EU preferential schemes: the GSP, GSP+ or “Everything but arms” (EBA), available to different categories of developing countries. All three differ in terms of the coverage and depth of preferences offered. The GSP offers partial coverage, and of that partial coverage a good share of tariff lines are only partially reduced from the MFN rate. The GSP+ has the same coverage as the GSP, but eliminates duties completely on the tariff lines covered. Only EBA, available to Least Developed Countries (LDCs), is comparable in term of Market Access to the Lomé preferences: it offers DFQF market access.

From thereon it is possible to distinguish a couple of “ideal types” of West African countries with varying levels of interest in EPA negotiations:⁵

- LDCs, for whom EPA negotiations had no real added value in terms of market access (with the possible exception of some improvement in rules of origin). Without an EPA, they would enjoy a similar level of market access through the EU’s EBA scheme. These countries have essentially no offensive interest in EPA negotiations. Their immediate concerns are fiscal revenue loss and increased competitive pressures, amongst others. For LDCs in ECOWAS the main incentive to engage in EPA negotiations was to safeguard their regional grouping’s unity.
- Non-LDCs whose export baskets meant that they would be largely satisfied with GSP market access. For these countries, the fallback option from EPAs was acceptable economically speaking. In ECOWAS, Nigeria is a perfect example of this type of country. Its export basket to the EU is dominated by oil and petroleum products. Its second largest export, cocoa and cocoa products, faced increased duties when it decided not to sign an Interim EPA

5 The EPA does provide some improvements, however, on Rules of origin, coverage of issues and legal stability.

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in 2007, but the Nigerian government remained unswayed. It appeared more inclined to protect its industrial sector than safeguard market access to the European Union.

- Non-LDCs exporting a product not fully covered by the GSP for whom the loss of DFQF access would mean significant export disruption, and entail non-negligible economic costs. In ECOWAS, Cote d'Ivoire and Ghana fit this description. Export lines of importance to their economies (e.g. processed cocoa products) are not covered in the fallback preferential scheme available to them. These countries are, by and large, the main reason why EPA negotiations kept running in West Africa.

When assessing how these countries responded to the following scenarios, their domestic political economy also comes into play. Nigeria for example is home to a vocal industrial base that has vehemently opposed the EPA from the outset. In contrast, some parts of the Ghanaian private sector wary of increased competition has challenged their government's support of the EPA, but to little avail. Senegal, for its part, has recently taken on the role of "regional mediator" after Nigeria refused to endorse the compromise found in January 2014.

In any case, what is evident from the above description is that the overriding motivation for EPA negotiations was the safeguarding of Lomé levels of market access. Whether a country was "in favor" of EPAs or not is to a large extent a function of the expected loss of market access from its next best option (GSP, GSP+ or EBA).

This observation is key to understanding why the EPAs have proved to be so unpopular in Sub-Saharan Africa. For the vast majority of countries, there was little "new" to be gained in mercantilist terms. ACP countries and regions were asked to open their markets in order to maintain the *status quo*. For countries having EBA as a fallback option, for example, other issues (possibly movement of natural persons – Mode 4) would have to had been put on the table.

Trade negotiations are run on the basis of a *quid pro quo*: I open my market, you open yours. The trick is then to balance the political fallout emanating from concessions one makes with support gained from export-oriented industries. Some segments of the economy might oppose the deal because of increased competition from imports, but exporters will be in favor of the deal. In the case of EPAs, however, African governments have little to show for in terms of "new" market access opportunities, since the EU market was already

almost completely open on a temporary or permanent basis. This framed the negotiations in a negative light from the start. No real industry champions for EPAs emerged in African countries, except for those that would suffer from the loss of preferences.

Other issues such as services, procurement, and International Property Rights were put on the table, but these were of little interest to most ACP countries, except the Caribbean grouping and smaller, more service oriented economies like Mauritius. These issues have gradually been dropped in most cases and put in “*rendez-vous*” clauses.

Additionally, some of the issues described above in section 2.1 are directly motivated by commercial concern from the EU, as one would expect in commercial negotiations. The perceived duality of the EU, presenting EPAs as development instruments while also pushing for clauses directly linked to commercial interest and concerns, also added to misunderstandings and misperceptions on the African side.

This section focused mainly on the question of market access. This does not mean, however, that other issues introduced in the EPAs have had no impact on the negotiations. Other contentious issues include, in the case of West Africa: the MFN clause, domestic agricultural support in the EU, the non-execution clause, rules of origin, etc. The “development component”, or the amount of development assistance provided under the EPA has also been a divisive issue.

What outlook for the future: immediate concerns and long-term vision for EU-Africa trade relations

Immediate concerns: managing the end of negotiations

EPA negotiations will, in all likelihood, end on October 1st 2014. By that date, Europe will withdraw the temporary arrangement under which countries having signed “Interim” EPAs in 2007 could still access the EU market DFQF while regional negotiations were ongoing. It is likely that by that time one or more African regions will have signed a regional EPA.

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There is however a real possibility that potential regional agreements will not be ratified in time in African countries for their market access to the EU not to lapse. Given that safeguarding market access was the main motivation behind EPA negotiations, this would be an uneasy scenario for both sides. Since economic operators usually work 3 to 6 months in advance, trade disruption might take place even before that date. In West Africa, this might tempt Côte d'Ivoire and Ghana for example to still "implement" their EPAs for a limited period of time before the regional agreement kicks in. This would be a very messy scenario. It would also probably be seen as a lack of flexibility on the part of the EC. The feasibility of having some kind of time-bound transition period for those having signed a deal should be explored.

Thinking the "after-EPA" phase: temptations and lessons learnt

The EPAs were engineered in the mid-1990s. Since then, Africa's trading partners are significantly more diverse. Growth rates are impressive in many countries. This could lead one to argue for a deeper, more ambitious trade agenda going beyond tariff issues. Europe has been pursuing this kind of agreement with most of the trade heavyweights in the world, and it appears that this trend will continue for the foreseeable future. Assuming that there is an interest in Europe to engage on a new, more diverse trade agenda, three questions arise:

- What issues can be put on the table to make these negotiations interesting from an African perspective? One of the key issues regarding the EPAs, it has been argued above, is that there was simply not enough to be gained in order to generate political buy-in for the agreements domestically. This is even more evident in relatively industrialized countries like Nigeria. Given that the European market will, for most countries, already be open to their exports, the topics that Europe will have to put up for negotiations will have to go beyond tariff issues (and development assistance). Service negotiations in Mode 4 would appear to be an obvious option, yet the current political climate in Europe could make significant concessions difficult.
- EPA negotiations were undertaken regionally, with groupings of African countries. This made the negotiations difficult, although on many accounts it also cemented the skills, capacity and institutional framework in concerned RECs for dealing with these types of issues. It even led to the development

of the ECOWAS CET. Should Europe seek to engage (presumably on new generation issues) regionally in the future, as it did for EPAs?

- Can the new trade agenda be tailored to African priorities? Many African countries are undergoing a period of economic growth and development. The emerging economic models are radically different. In terms of economic policy, Nigeria is not Ethiopia and Rwanda is markedly different from Kenya. Yet, if negotiations are to succeed not only does one have to bring something interesting to the table, but in the case of regulatory issues there has to be at least some interest on the partner country's side to reform the policy area in question (e.g. public procurement). Country-based priority definition, keeping in mind the partner's current policy environment, should perhaps be the first step.

Conclusion

The EPAs are a product of their time, answering a need to find a WTO-compliant trade regime while also promoting a certain vision of what kind of trade agenda would further development on the African side. It is no secret that the result of a decade of negotiation is overly negative when it comes to broader EU-Africa relations. This paper has argued that this can be traced back to the incentive structure facing different countries and the lack of issues capable of generating a domestic coalition in favor of EPAs domestically in African countries. The next phase of EU-Africa trade relations should consider these shortcomings in order to come up with a more positive and constructive relation in the coming years.

References

Bartels, L., 2004. The Trade and Development Policy of the European Union. *European Journal of International Law*, Vol 18. Iss. 4, pp.715-756.

Czapnik, B., 2014. Côte d'Ivoire's EPA: Between a rock and a hard place. *Bridges Africa*, Volume 3, Number 5, International Center for Trade and Development (ICTSD).

Goodison, Paul (2007), *The ACP Experience of Preference Erosion in the Banana and Sugar Sectors: Possible Policy Responses to Assist in Adjusting to Trade Changes*, ICTSD Project on Tropical Products Issue Paper No. 7, International Centre for Trade and Sustainable Development (ICTSD), Geneva, Switzerland.

Grynberg, R., 1998. *The WTO incompatibility of the Lomé Convention trade provisions*. Asia Pacific School of Economics and Management Working Paper. Asia Pacific Press.

McQueen, M., 1999. After Lomé IV: ACP-EU trade preferences in the 21st century. *Intereconomics* Vol. 34, Iss. 5, pp. 223-232

Weinhardt, C., 2014. The recent EU-West Africa trade deal is not everybody's success story. *Bridges Africa* Volume 3 - Number 3. International Center for Trade and Development (ICTSD).

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