

The 3rd Africa-EU Summit in Tripoli, 29-30 November 2010: The long awaited high level meeting on EPAs?

EU NGO briefing paper on the current state of play of the EPA negotiations.
22 November 2010

*EPAs are at an impasse. There is a fundamental difference between the EU and the ACP countries on the nature and content of the EPAs, which cannot be solved by technical negotiations. Since the end of 2007, ACP countries have been calling in vain for a high-level meeting to discuss these differences. African leaders are now determined to raise EPAs at the upcoming Africa-EU Summit. This joint NGO briefing paper explains the reasons for the impasse, illustrates the danger arising from the recent new pushes from the EU and displays solutions for how to overcome the fundamental differences on EPAs on the opportunity of the Africa-EU Summit. **The EU should not continue to impose its view and take the utmost care not to undermine regional integration efforts in Africa. It's time to find a political solution on EPAs.***

1. The EPA impasse stems from a fundamental difference in points of view

EPAs are at an impasse

By the end of 2007, of the 76 ACP countries negotiating EPAs, only the 15 CARIFORUM countries had initialled a comprehensive regional EPA while 20 African and Pacific countries had merely initialled interim EPAs on the trade in goods. Since then the situation has barely changed¹. At the previous Africa-EU Summit (6-7 December 2007), African leaders expressed grave concern about the way the interim EPAs were imposed and how they split the negotiation regions. Abdoulaye Wade, president of Senegal said for example: *"Let's not talk about the Economic Partnership Agreements! We've said we rejected them - for us, it's finished."* A week later, the ACP Council called for a revision of several controversial provisions in the hastily drafted interim agreements.

The EU on the other hand insisted on an expeditious signing of the originally proposed interim EPAs and a swift conclusion of comprehensive regional agreements. Almost three years have passed since then and little progress has been made. EPAs knots seem to be inextricable; and as recent statements reveal, the protracted discussions are souring EU-ACP relations. Paul Bunduku-Latha, Chairman of the ACP Ministerial Trade Committee summarized the situation precisely: *"three years after the scheduled date for their conclusion, only one ACP region has managed to conclude a comprehensive EPA agreement but major difficulties persist concerning implementation. In the light of the legitimacy of the demands of the ACP States which stem from development objectives defined in the framework of the ACP-EU Partnership Agreement, and given the stalled technical discussions, it is now urgent to issue new policy guidelines for the negotiations."* And with regard to the EU's current negotiating position he added *"if we are to reach conclusions which are of mutual benefit, Europe has to listen a little. We beg it to show a little flexibility and humanity"*.

Re-invigorating or re-thinking EPAs?

On 5 September the Commissioners for Trade and Development, Karel De Gucht and Andris Piebalgs, wrote to the EU trade and development ministers to hear their views on the EPA impasse. EPAs were discussed by trade ministers on 10 September and by development ministers on 22 October. Meanwhile, ACP countries also assessed the situation and strategized on the best way out of the deadlock. The African Union Commission and the African Regional Economic Communities (RECs) met in Lusaka on 7-8 October, the ACP

¹ Except that Zambia joined the ESA interim EPA by tabling a market access schedule on October 2008.

trade ministers in Brussels on 20 October, the African trade ministers in Kigali on 1-2 November, and the ACP Council in Brussels on 8-10 November.

When the two sides briefly met in Brussels at the 22 October EU-ACP Joint Trade Ministerial Committee (JMTC), it was clear that the positions had remained as far apart as ever. The EU confirmed its belief that its approach is the best for development and that new deadlines are needed to re-invigorate the negotiations. The ACP side rejected new deadlines and stressed the need to re-think the EU's approach.

EPAs: yes but no.

Since the beginning of the negotiations both side have reiterated their commitment to conclude development-friendly EPAs as soon as possible. However, they have never agreed on what EPAs should entail to be real instruments for development.

In 2002, the EU Council gave the Commission a mandate to negotiate comprehensive agreements that would include far-reaching commitments on government procurement, competition rules and intellectual property rights, in addition to the liberalisation of investments, goods and services. As such the EPAs would not differ much from the EU's standard approach to free trade negotiations. The EPA mandate also goes far beyond what is required by the WTO and the Cotonou Agreement (which speaks more about cooperation than about binding commitments).

The ACP side however has always insisted on improving infrastructure and strengthening institutional and productive capacities and regional integration **before** undertaking liberalisations and regulatory commitments. They have expressed concerns about the costs of implementation and adjustment as well as the loss of fiscal revenue due to tariff eliminations. They have insisted that their commitments in the EPAs should be matched by financial commitments by the EU.

In its reflection paper on the EPA negotiations, the EU Commission seems to complain about a lack of commitment to the EPA negotiations and a "wait-and-see" attitude of ACP countries. This ignores that ACP countries have tabled very clear positions on EPAs both in the negotiation rooms and at the political level. The problem of the EU is that it does not like these positions. The Cotonou Agreement specifies that EPAs "*shall aim at fostering the smooth and gradual integration of the ACP States into the world economy, with due regard for their political choices and development priorities, thereby promoting their sustainable development and contributing to poverty eradication in the ACP countries.*" But when ACP countries express their political choices and development priorities, the EU disregards these positions and continues to argue that EPAs must contain comprehensive liberalisation and regulatory commitments in order to be tools for development. By doing so, it takes a paternalistic stance and disrespects the principle of ownership.

2. The new push from the EU

In follow-up to the letter of the Commissioners (5 September), the EU Commission presented the EU development ministers an EPA reflection paper at their informal meeting on 22 October. No formal conclusions or reports from that meeting have been published; however, from the letter, the paper and the press statements the following threads in the EU approach have become apparent.

The EU

- ◆ confirms its approach as the right way to ensure the development outcome of EPAs
- ◆ wants to step up information and communication efforts to convince ACP actors of this approach
- ◆ will continue to offer aid for trade for the EPAs along the current lines
- ◆ sees "variable geometry" as a chance to reach deals with as many ACP countries as possible
- ◆ wants to set new deadlines for the negotiations
- ◆ invokes the issue of legal certainty to possibly withdraw the market access offered to countries that initialled (interim) EPAs at the end of 2007, on the basis of EU Market Access Regulation 1528

In so far that "variable geometry" means taking into account different development needs within ACP regions, it is a positive notion. However, here it means negotiating "WTO plus" and "Cotonou plus" issues

like services, investments, competition, intellectual property rights and government procurement with “the willing”, leaving behind other countries within a region. Such an approach will undermine the possibilities of the regions to develop their own policies and approaches to these issues and further increase splits and tensions within the regions. “Going with the willing” will in effect present other countries with “faits accomplis”.

Imposing new deadlines would ignore the fundamental concerns by ACP countries and forces them to sign-up to the EU approach.

The reference to the Market Access Regulation again comes as a threat to withdraw market access. Such a threat ignores the hesitations of the Least Developed Countries (LDCs) to enter into a comprehensive free trade agreement with the EU and drives the non-LDCs away from their LDC regional partners. At the moment there is no need to raise the issue of legal certainty as all African and Pacific countries are still negotiating, and there is no definition of what a reasonable period of time for such negotiations would be. Moreover, no one in the WTO is questioning the length of the EPA negotiations or the market access offered under this regulation.

3. African Union Declaration and ACP resolution looking for alternatives

In reaction to the latest communication of the EU on the EPA impasse, both the ACP and African Trade Ministers once more came forward with strong and unmistakable statements. Both statements send an unmistakable sign to the Africa-EU Summit which will take place on 29 and 30 November 2010 in Tripoli and provides an opportunity for an EPA review at the highest political level. In the 2 November Kigali Declaration, African trade ministers reiterated their commitment to conclude development-friendly EPAs. But to allow EPAs to achieve development objectives, the EU must show more understanding and flexibility in the negotiations to address contentious issues in a satisfactory way. Ministers also made clear that WTO-plus commitments are not acceptable as they run counter to these objectives. A joint position paper of the AU Commission and the RECs of Africa (COMESA, EAC, SADC, CEMAC, ECOWAS) which was commended by the ministers, includes detailed proposals on all the crucial problems and gives many solutions to the EPA conundrum.

Objective development criteria instead of deadlines

The Ministers' resolution rejects the proposal for new fixed deadlines to conclude negotiations. Instead, objective criteria should determine the moment when EPAs should be concluded. This proposal would ensure that countries and regions conclude EPAs only after they have reached a certain level of social and economic development. This will ensure that their economies are able to deal with the foreign competition which will result from opening its markets to the EU. These criteria have been elucidated in the ACP Council of Ministers' Resolution from 10th November 2010. They may be linked to the following areas: *“Millennium Development Goals (MDGs); industrial production, particularly the manufacturing sector; agricultural production; degree of transformation of exports; intra-regional trade; intra-ACP trade; ACP-EU trade; the price of agricultural and mining commodities; currency exchange rates; level of official development aid; and level of foreign direct investment.”*

Of course concrete benchmarks would need to be developed to define the degree to which these criteria must be met in order to ensure the preparedness to open up markets under an EPA. This proposal is a good way to ensure that EPAs do not undermine development by imposing liberalisation obligations on economies which have not yet reached a stage where they are able to manage these. It also reflects the spirit of the Cotonou agreement, which mandates that the *“economic and trade cooperation shall be implemented in full conformity with the provisions of the WTO, including special and differential treatment, taking account of the Parties' mutual interests and their respective levels of development”*, and that *“Negotiations will ... be as flexible as possible in establishing the duration of a sufficient transitional period, the final product coverage ..., and the degree of asymmetry in terms of timetable for tariff dismantlement ...”*.

Ensure market access for all ACP countries

In the meantime, both ACP and African ministers urge the EU to extend and maintain Regulation 1528² to all countries (including non-LDCs) that are negotiating EPAs until these are implemented to ensure that there is no disruption of trade. Additionally, ACP ministers express their deep concern about the pressure exerted by the Commission on some countries to sign the interim EPAs.

In their resolution, the ACP Ministers also outline a feasible alternative solution. They *“request the EU to consider granting the GSP EBA Facility to ACP regions whose majority membership comprises LDCs, and which so request, with a view to foster regional integration and in light of the fact that such an offer is politically defensible even in the WTO.”* Given that most African and Pacific countries are LDCs or small island states, the regions of Africa and the Pacific as such could be considered as least-developed regions and be offered the EBA trade regime. To make this become reality, the EU would only have to slightly amend its Generalised System of Preferences (GSP).

There is no lack of clarity about the kind of trade relationship the ACP countries seek to set in place with the EU. The proposals raised provide substantive solutions on how to resolve the EPA knot. They are in full conformity with WTO obligations and are inspired by the principles of the Cotonou Agreement. Unfortunately, there is a severe lack of will on the part of the EU to respond to these proposals at the political level. The EU can not simply insist on its old excessive mandate of 2002 in the technical negotiations. To break the deadlock, the EU must adjust its trade policy to the reality and accept that in the end EPAs won't include the complete EU wish list. The solutions suggested by the ACP and African ministers present a way out of the current EPA “mess”. Now it is upon the EU to show commitment; and to give the spirit of the Cotonou Agreement precedence over its wish for extensive market access for European companies to ACP markets.

4. Push the reset button at Tripoli



After 8 years of negotiations, it is now clear that the technical negotiations have not managed to overcome the fundamental differences on EPAs. It is time that the parameters for the EU-ACP negotiations are reset. The Africa-EU Summit offers an important opportunity to do that.

European Leaders must use the Summit to change the course in the negotiations. The EU should stop imposing its view and take the utmost care not to undermine regional integration efforts in Africa. The EU must stop insisting on its EPA mandate and on comprehensive deep-integration agreements that neither the WTO nor the Cotonou Agreement require and which the majority of ACP countries see as inappropriate and not feasible.

The EU should consider alternative arrangements to secure the continuity of ACP access to the European market. There are several options to make this happen. Adapting the GSP to make EBA accessible to all African countries is one of them. It would help to keep the African regions together and would give them the breathing space to work out their own regional policies.

It's time for the EU to find a solution at the political level and to seriously respond to the the AU's recommendations.

This discussion paper is supported by the following organisations:

ACORD; AEFJN; APRODEV; Oxfam International; Africa Groups of Sweden; Africa Kontakt, Denmark; Aitec, France; Amici dei Popoli/Partnership for change, Italy; ATTAC-Denmark; BothEnds, The Netherlands; CCFD-Terre solidaire, France; CNCD-11 11 11, Belgium; Coalition of the Flemish North-South Movement – 11.11.11, Belgium; Comhlámh, Ireland; EED, Germany; Forum Syd, Sweden; German StopEPA Coalition; IBIS, Denmark; KASA, Germany; KOSA Koordination Südliches Afrika, Germany; PowerShift – Verein für eine ökologisch-solidarische Energie- & Weltwirtschaft e.V., Germany; SOS Faim Agir avec le Sud, Belgium; Traidcraft, UK; Trócaire, Ireland; Welthaus Bielefeld, Germany.

² Council Regulation 1528/2007 of 20 December 2007 governs the market access of ACP countries who have initialled EPAs.