

## What would it take to make an EPA economically and politically feasible for Europe and Africa?

### Elements for consideration ahead of the Africa-EU Summit of April 2014

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#### Key messages

EPA negotiations have been lingering for over 10 years, but should be concluded within a year.

Preserving regional integration processes and cohesion is key.

Solutions exist, but require flexibility and political will.

Failure and possible regional break ups will seriously damage Europe-Africa relations.

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Almost eleven years after the start of the negotiations, only a handful of African, Caribbean and Pacific (ACP) countries have concluded an economic partnership agreement (EPA) with the European Union (EU). Only the Caribbean region has signed a comprehensive regional EPA. For the other regions, negotiations have continued in a slow and protracted way, with significant key challenges and points of contention still to be addressed (see Annex for a background).

The approaching **deadline of 1<sup>st</sup> October 2014** does not mean the end of EPA negotiations. It means the end of EPA preferences for countries that do not implement (that is conclude, sign and ratify) the EPAs before that date.

While negotiations are dominated by technical considerations, solutions on the way forward will ultimately require a more **political approach** that will have to preserve the political and economic interests and objectives of the EU and ACP alike, so as to strengthen rather than undermine their strategic relationship.<sup>1</sup> In doing so, considerations related to development objectives, geostrategic interests, regional integration integrity and World Trade Organization (WTO)-compatibility would have to prevail. That is all the more important in view of the Africa-EU Summit of April 2014.

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<sup>1</sup> See Bilal, S. (2013), Trade talks set to disrupt Africa-Europe relations and poison the upcoming Africa-EU Summit, ECDPM Briefing Note No. 58, November. [www.ecdpm.org/bn58](http://www.ecdpm.org/bn58)

## Key challenges

*The main challenges of the current process are:*

- Lingering negotiations: how to **conclude EPAs**, if possible on a regional basis?
- Preserving **regional integration** processes and integrity: how to prevent regions breaking apart?
- Maintain trust and **political goodwill** between EU and ACP: how to avoid EPAs souring political EU-Africa relations?

*In particular, the main concerns are the following:*

1. Besides the Caribbean region, none of the EPA negotiating regions has signed a regional agreement. Many least-developed countries (LDCs) are satisfied with their duty-free quota-free access to the EU market under the Everything-But-Arms (EBA) scheme. But in the absence of an EPA, some upper middle-income countries will lose all preferences and other non-LDCs may be downgraded to the standard EU generalised system of preferences (GSP); therefore, they may be tempted to sign an EPA only to preserve their preferences, at the risk of undermining their own regional integration process if others do not. This is the case in all African EPA regions, where countries have different levels of development and therefore will be subject to varying trade regimes on the EU market.
2. Some countries do not seem to have any incentive<sup>2</sup> to conclude an EPA, and may have adopted a wait-and-see attitude, comfortably settling in the current status quo with the EU.
3. In Africa, the regional integration process is still largely in the making. This means that countries may give more favourable treatment to the EU than they give to their own regional partners. The level of intra-Africa trade is relatively low and there are growing concerns that this will not encourage countries to boost trade within their own regions because producers would favour the EU market due to the duty free regime.
4. Some clauses<sup>3</sup> in the EPA are viewed as constraining the policy space of Africa countries (i) for their own economic development and (ii) with future trading partners.
5. EPAs may turn out to be solely a free trade agreement devoid of a truly development angle. The link, as well as the instruments, to accompany trade to make it work for development is not sufficient from the point of view of several African negotiators. Expectations are that EPAs should be accompanied by additional financial resources to support accompanying reform processes that would meet the development objectives of the EPA. These should take place within, as well as beyond, existing European Development Fund (EDF) instruments.

## What's next?

While trade negotiations are dominated by technical issues, the way forward after over 10 years of negotiations will require a more political approach, not only to move forward on the EPAs, but also because it is becoming very evident that the EPA is having a wider negative impact on the overall Africa-Europe relationship. There is therefore an increasingly urgent need to promote a positive and constructive atmosphere in the wider strategic relations between the EU and Africa.

From a technical perspective, during the 10 years of negotiations, all possible technical solutions have been explored in and out, both as alternative to EPAs and in terms of possible remedies to address the concerns of African and European negotiators. This has led to some substantive progress in the negotiations. However, negotiators have still not been able to unlock the deadlock on some sticking points.

<sup>2</sup> Least Developed Countries (LDCs) are beneficiaries of the Everything-But-Arms (EBA) preferences, where they benefit from duty-free quota-free market access to the EU market, even if they do not sign an EPA. The level of most favoured nation (MFN) tariff is very low or non-existent for many raw materials and for hydrocarbons, so that some resource-rich countries might not suffer from the removal of preferences.

<sup>3</sup> These are the so-called contentious issues, including the elimination of export taxes, the standstill clause, the MFNs clause, the degree of liberalisation and the related time frame.

One year before the deadline, and ahead of the Africa-EU Summit of April 2014, it is time now for pragmatic and realistic political solutions on EPAs if both Europe and Africa want to move their dialogue forward and strengthen their good relations.

The bottom line for a truly pragmatic and realistic political agreement on both sides could include the following:

### **1. Compatibility with WTO and other multilateral legal obligations of both parties**

A challenge for Europe is that it has yet to negotiate free trade areas (FTAs) with some of its main trading partners, including developing countries, and therefore is seeking a coherent approach across its FTAs, as well as with the WTO, which may limit the extent to which flexibility and/or exceptions could be given to the Africa Caribbean and Pacific (ACP) in an EPA. For instance, the EU is reluctant to set a new precedent at the WTO for the interpretation of substantially-all-trade (SAT) and the timeframe for liberalisation commitments.

From the African perspective, LDCs have little incentive to open up their markets to the EU because they can benefit from unilateral preferences under the EBA. In order to encourage them to conclude a reciprocal agreement regionally, it is necessary to provide asymmetry in the EPA.

A pragmatic way to address this issue is to read and interpret Article XXIV of the General Agreement on Tariffs and Trade (GATT) taking into account the flexibility accorded under Part IV of the GATT relating to trade and development (Article XXXVI – XXXVIII) and Paragraph 44 of the Doha Development Agenda (DDA) on Special and Differential Treatment. So far, Article XXIV of the GATT has generally been interpreted in isolation of Part IV of the GATT relating to trade and development.

This could be done on a case-by-case basis, reflecting the reality of each region. In this context, a case can be made for **EPA regions with a majority of LDCs** (as in West Africa) **to have a more flexible interpretation of Article XXIV (SAT and longer timeframe) for greater asymmetry** given their levels of development. The EU could justify this exceptional approach on the grounds of regional agreements with a majority of LDCs only, hence avoiding setting undesirable precedent for other bilateral trade negotiations.

In addition to addressing the issue of SAT, such an approach would also **ensure regional cohesion** and prevent non-LDCs being faced with a situation where they have no choice but to sign individual EPAs, putting at risk their regional integration processes.

### **2. Policy space for future negotiations given the changing geopolitical landscape**

The MFN clause is a major cause of concern for Africa and Europe for the same reason: both are yet to negotiate trade agreements with some of **their main trading concerns**. This has been confirmed by the recent signals given by the United States (US) in the context of the extension of the African Growth and Opportunity Act (AGOA) that it would also seek reciprocity, in line with the EPAs.

The justification of an MFN clause from the European side comes from a perspective of equity – they view it as a fair request because they give full market access to Africa. From the perspective of African countries and regions, it is both an economic and political concern. It will constrain their policy space in future trade negotiations with other major trading partners as they will have to automatically extend to the EU any additional preference they will give to their future large trading partner (i.e. the internationally big ones only), regardless of whether that trading partner gives them better market access than the EU (such as better rules of origin).

For now, since African EPA countries already have duty-free quota-free, the MFN in trade in goods has no added value on trade liberalisation. One practical approach, that could be mutually beneficial, would be for Europe to **explicitly broaden the scope of the MFN clause** to extend to African economies for example favourable rules of origin (such as full cumulation granted to Euromed countries could be extended to African EPA regions) and other non-tariff measures that it

would grant to third parties. This could be an incentive for Africa to reciprocate in the future. Similarly, an MFN in services could be a very attractive bargain to some countries in Africa in exchange for MFN in goods given that Europe is expected to negotiate an ambitious trade agreement with the US.

Flexibility in the wording of the MFN clause (relative for instance to non-automaticity and consultation) might also help, as this issue appears of importance more for its symbolic value than real trade effects.

### **3. Policy space for national economic development purposes**

The EC's request to African countries to eliminate export taxes is another major cause of concern. Many African countries argue that it is a matter of policy space for revenue or industrial purposes. But one could argue that export taxes could be limited to the specific exceptional economic conditions, as is the case in the GATT for the exceptions granted to the use of new duties and levies in special circumstances.

A pragmatic solution would use the flexible language of Article XX of the GATT whereby it suffices that these measures be non-discriminatory or not be used as a disguised restriction to trade, rather than requesting countries to *justify* the measure, which then necessarily have to be approved by the Joint EPA committee. Since this language is compatible with the rules of the WTO it is therefore politically acceptable.

### **4. Agreement that delivers on the development ambitions of Africa and on the economic interests in Europe**

The link between trade and development is the essence of the EPAs. Given the current financial constraints and the difficulty for Europe to commit additional funding (beyond the EDF and existing Aid for Trade commitments and mechanisms, such as regional funds), a pragmatic approach would be to bring the debate "beyond aid" and explore collectively possible innovative financing mechanisms.

While it may be politically difficult to convince some African countries of the full merits of an innovative financing approach, since the expectation is that the EU would bear the financial costs of EPA implementation, it may however be a practical way and a sustainable way in the longer-term of addressing broader economic transformation concerns for Africa. These include, for instance, the financing of large infrastructure and energy projects, a prerequisite to industrial development and effective regional integration.

There is already an on-going debate in Africa, notably under the joint leadership of the African Development Bank, the African Union Commission and the UN Economic Commission for Africa to explore new ways of financing development. The EU and its Member States could join the debate by using existing financial mechanisms as a leverage for innovative financing, including from European private sector, multilateral financial institutions and African financial institutions.

For Europe<sup>4</sup>, it would be an effective way of participating in large projects, necessary for the broader transformation of African economies, which, currently it cannot do alone (contrary to some so-called emerging players that have the back-up of their national governments). For Africa, it will fit well with their own transformation agenda and will provide sustainable additional sources of financing to address broader economic concerns, given the massive financial requirements needed to meet economic transformation challenges.

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<sup>4</sup> This includes member states, European financial institutions, the Commission's financial instruments etc.

## Annex I: Background

The economic partnership agreements (EPAs) are meant to be development-focused comprehensive reciprocal free trade and economic agreements, negotiated and whenever possible concluded by the European Union (EU) on a regional basis with African, Caribbean and Pacific (ACP) countries. They were meant to replace the EU unilateral trade preferences for the ACP initiated under the framework of successive Lomé Conventions and extended until the end of 2007 under the Cotonou Agreement, which required a waiver at the World Trade Organization (WTO).

The EPA negotiations were initiated in 2002. By the end of 2007, only 36 ACP countries have concluded EPAs with the EU. With the exception of the Caribbean, all agreements were interim free trade agreements concluded to preserve the market access of these countries to the EU. Under Market Access Regulation (MAR) 1528 of 1<sup>st</sup> January 2008, the EU granted duty-free quota-free market access to the all the exports from EPA countries. Since 2008, the other ACP countries have been exporting to the EU under the Generalised System of Preferences (GSP), which provides duty-free quota-free market access to exports from least developed countries (LDCs) under the Everything-But-Arms (EBA) initiative.

EPA negotiations have continued with all African regions and the Pacific, with a view to conclude regional agreements. The EU has given African and Pacific countries until 1<sup>st</sup> October 2014 to complete new trade agreements between the two, or ratify existing ones, if they do not want their exports to risk facing higher restrictions to the European market.

*The underlying principles for EPAs: development objectives and WTO-compatibility*

The prime objective of EPAs was to create a development tool that would help ACP countries:

- a. To create a mutually beneficial agreement that fits the development needs of Africa while maintaining economic interests of Europe;
- b. To foster regional integration and inclusive growth by stepping up trade and investment, improving their business environment and securing sustainable access into the EU market;
- c. To facilitate the integration of ACP countries into the global economy;
- d. To contribute to the reduction poverty and;
- e. To provide focused financial development support to accompany reforms necessary to implement the EPAs.

In addition, the EU is committed to ensuring the compliance of all its trade regimes with the rules of the WTO. This means notably that EPAs must be free trade agreements in the sense of Article XXIV of the General Agreement of Tariffs and Trade (GATT), and are thus required to cover “substantially all trade” between the parties and trade must be liberalised “within a reasonable timeframe”.

*Where are we now?*

Market access to the EU market for those countries that have initialled but not yet signed an EPA is currently covered by an advance application of the EPA, made possible by a Market Access Regulation 1528 of 2007. However, the European Commission has announced the end of the provisional application for 1<sup>st</sup> October 2014, where countries that would not sign, ratify and implement the EPA would lose EPA market access. These countries would fall under the other trade regimes that the EU grant (i) to developing countries under the GSP, where developing countries benefit from some autonomous preferences and LDCs are granted duty free quota free market access or (ii) the normal “most favoured nation” (MFN) treatment, applicable for those countries that are not eligible for GSP preferences.

## Further ECDPM references

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