GOVERNANCE REGIONAL INTEGRATION ECONOMICS AGRICULTURE TRADE

GREAT insights

Volume 1
Issue 2
March/April 2012

online version available at www.ecdpm.org/great

Regulars

Features

European Centre for Development Policy Management

ecdpm

Special Issue

Trade and Human Rights, Prominence of an Ongoing Debate

The human rights aspect of Europe's external relations is back on the policy map in Brussels. Such a development may be the result of what Jean Bossuyt calls the 'eye-opener' that was the Arab Spring for European foreign relations. But how is this linkage perceived in the trade sphere? What does the evidence regarding the impact of Human rights conditionality in trade agreements tell us? Is the linkage desirable at all? These are some of the questions addressed in this special issue of GREAT Insights.

One of the first areas of concern is conditionality. How does the EU go about tying its preferential agreements to Human Rights performance? How much conditionality is enough? What shape should it take? Emile Hafner-Burton argues in favor of strong conditionality, while Jan Vanheukelom warns of blunt 'on-off' approaches. Lorand Bartels reminds us that the EU is legally bound to take measures that 'least disturb the functioning of the agreement'. All of the above seems to point to the need to resort to some kind of 'smart' conditionality, revolving around two principles: (i) a clear cutoff line, credible enough to sway the cost-benefit calculations of leaders engaging in human rights violations, and (ii) the targeting of a key sets of goods likely to 'hit where it hurts' in the governing regime and sparing the population of broader negative consequences.

Another point emerging from this collection of articles is that human rights are a broad concept, going beyond civil and political liberties to include the right to food, child labour, and health. Therefore, tools beyond simple conditionality have to be devised if these dimensions are to be 'mainstreamed' in EU trade policy, and lead to a more constructive engagement with partner countries. Kinda Mohamadieh and Susan Aaronson mention the concept of human rights impact assessment of trade agreements, designed to take into account exactly these dimensions. Perhaps such assessments could also be a way of building a shared understanding of the ways in which trade liberalization should tie in to development and human rights objectives. If anything, the article by Archana Jatkar reminds us that such a shared understanding on the trade and human rights nexus is far from being reached. Suspicion and skepticism from Southern countries is rife.

These two questions are only a sample of the many areas where the complex interplay between trade and human rights needs to be explored. One thing that is clear from the recent policy trends and events is that there is a need to go 'beyond business as usual' in fitting human rights into trade agreements. The two communities have started talking to each other, but a reinforced interaction is necessary. As Jean Bossuyt and Jan Vanheukelom remind us, more clarity and realism is also needed on the EU side on how domestic politics, institutional constraints, and external tradeoffs – what Vanheukelom calls the 'political economy of the EU itself' – influence the EU's own approach to the question.

Trade and Development Agreements for Human Rights?

Emilie M. Hafner-Burton

Libya, Yemen, North Korea, Syria -- human rights are at the forefront of international politics these days. Since the adoption of the Universal Declaration of Human Rights in 1948, the world's values have changed. Today, almost all states have ratified the UN Charter and one or more of the seven international agreements that form the core of international human rights law. This regime, which charts out principles for the promotion of wellbeing everywhere, has received wide recognition.

The issue today is not whether human rights should be respected but how best to ensure that they are. The debate is not theory; it's over strategy.

This is a discussion of special importance for African, Caribbean and Pacific (ACP) states. For even as respect for human rights and other democratic values has gained credence in these regions, abuses continue to occur, sometimes prompting intervention or meddling by other countries. How to encourage respect for human rights is important as a matter of good governance. But it is also a means of protecting national sovereignty.

How best, then, to promote human rights? Perhaps surprisingly, the short answer is: not with more UN-based human rights treaties, but with other agreements -- such as trade -- that offer material benefits in exchange for compliance with agreed upon human rights norms.

International Laws for Human Rights

Even as more states ratify more treaties and protocols for the protection of human rights, abuses remain pervasive worldwide. Today, almost every nation on the planet has ratified one or more of human rights treaty—a majority of them also repress civil or political liberties (according to Freedom House) and resort to political terror (according to Amnesty International). The human rights treaties have not been all that effective at convincing governments to actually protect human rights, even of those that profess to endorse them.

This is because human rights treaties were not designed to address head on the political contexts and personal motivations that breed abuses. They can hardly change the deep-rooted societal and political problems that lead to violence, like war, tyranny, poverty, inequality, and prejudice. And they have not been able to alter the motivations of many human rights violators.

Instead of directly influencing the causes and conditions of abuse, these laws tend to make universal moral claims in an effort to persuade repressive actors to change their beliefs. They offer few material rewards in exchange for better practices and have only weak enforcement machineries.

To be effective, these laws must be taken up by local advocates and be applied by local courts. This is most likely to happen in settings where leaders control their security forces, are constrained by independent legislatures and courts, support active civil societies, and care about their image -- precisely the settings in which human rights abuses are less likely to occur in the first place. The system doesn't work well with the worst abusers.

Thus, creating more human rights treaties and pushing more countries to ratify them will not promote greater respect for human rights.

Conditionality For Human Rights

A far more promising way forward is to affect the cost-benefit calculation of human rights violators -- to alter the "economics" of their crimes. Abuse may be abhorrent, but it is often a rational act people carry out because they perceive a benefit.

This is the reason that some economic agreements – such as trade, which condition the delivery of valuable goods on respect for human rights, have helped improve human rights practices. For example, there are more than 200 agreements today governing states' access to regional markets. Semi-autonomous from the World Trade Organization regime, these agreements frequently regulate spheres of social governance, and increasingly human rights standards. Unlike human rights laws, most trade agreements are designed to change incentives, not values. Typically they offer material and political benefits and provide institutional structures to reward (and also punish) members' behavior.

Consider the standard trade and partnership agreements used by the European Union. The prospect of joining the EU, with all its attendant economic benefits, has vastly improved respect for human rights in countries that are candidates for membership, such as Slovakia (back when it was a candidate) and Turkey. But more relevant for ACP states is the Cotonou agreement, and the Lomé agreements that preceded it.

Thus, creating more human rights treaties and pushing more countries to ratify them will not promote greater respect for human rights.

A far more promising way forward is to affect the cost-benefit calculation of human rights violators -- to alter the "economics" of their crimes.

The Cotonou agreement is the most far-reaching partnership agreement between developing countries and the EU. It offers benefits from economic and trade cooperation as well as assistance for development cooperation to certain ACP countries. It also commits "parties to undertake to promote and protect all fundamental freedoms and human rights, be they civil and political, or economic, social and cultural" (Article 9.2). A mechanism to encourage ongoing political dialogue, including about human rights, is provided, as is one for reviewing members' performance. Associated financial protocols are also conditioned on the respect for human rights.

> Historical statistical studies of the relationship between these kinds of trade agreements and human rights behavior confirm these examples.

The United States also participates in trade agreements that contain provisions to support improvements -- and punish declines -- in the human rights practices of some of its trade partners. The African Growth and Opportunity Act of 2000 (AGOA), for example, provides market incentives for states to liberalize their economies but conditions the benefits on the observance of human rights, specifically workers' rights. The U.S. Generalized System of Preferences (GSP) does similar.

Consider one example. With Mauritania, this agreement helped support internal reform, punishing declines and rewarding improvements in protections for human rights. In 1993, the U.S. government suspended Mauritania's benefits under the GSP for violations of workers' rights. Mauritania amended its labor code and recognized a few labor unions. In the summer of 1996, while its GSP status was still in limbo, the U.S. House of Representatives passed a resolution condemning slavery in Mauritania and Congress passed an act requiring that all assistance to the country be withheld until it enforced antislavery laws.

The Mauritanian government both launched a national debate on slavery and ratified the International Labor Organization's treaty banning forced labor. By 1997, it had recognized another trade organization and more NGOs, signed an agreement with the UN High Commissioner for Refugees to help resettle refugees, and created a new cabinet post, the Commissariat for Human Rights, Poverty Alleviation, and Integration to address slavery. In 1999, President Bill Clinton announced his intention to grant GSP benefits to Mauritania.

Mauritania's improved human rights record wasn't the only reason: in the meantime, the government had also recognized Israel and formally severed diplomatic relations with Iraq. But greater respect for human rights played a role and continued to afterward. Shortly after Clinton's announcement, the Mauritanian government joined the UN treaty against the worst forms of child labor.

Historical statistical studies of the relationship between these kinds of trade agreements and human rights behavior confirm these examples.[1] Repressive states violate human rights less when they are parties to even one trade agreement that incorporates human rights standards than when they are party to none. Those that are party to at least one such agreement are more likely to improve their human rights behavior over time than to stay at the same level.

The Limits of Conditionality for Human Rights

There are, of course, big limits to the effectiveness of conditionality. Agreements like the GSP and Cotonou usually only deal with first-generation rights: political and civil rights rather than economic ones. Their effect also tends to be partial. Conditionality simply can't work everywhere for every problem. To be credible, it must involve costs or benefits that are significant enough to affect perpetrators' behavior -- and engineering this can be taxing for even the most committed of human rights stewards. Also, these agreements provide little sway over large economies; for those, the prospect of gaining benefits or the fear of losing them is relatively unimportant. China is a prime example.

Conditionality can also seem unfair, like an imperialistic imposition of the West's values or preferences. This problem can be mitigated, however, by ensuring that conditionality is based on truly universal norms -- such as those in the Universal Declaration of Human Rights -- and that these echo local ideas and ownership of human rights. Conditions are undermined when they look like a tool for advancing the interests of great powers. Advocating the endorsement of foreign values does not have much positive effect on human rights unless the policies are supported locally.

But when agreements like Cotonou promote values that are seen as legitimate by all partners and they impose conditions bearing material gains or losses, they have considerable potential to improve the human rights practices of repressive states.

This article is based on the following research: Emilie M. Hafner-Burton, Law and Power for Human Rights (Princeton, NJ: Princeton University Press, 2012); Emilie M. Hafner-Burton, Forced to Be Good: Why Trade Agreements Boost Human Rights (Cornell University Press, 2009); "Trading Human Rights: How Preferential Trade Agreements Influence Government Repression." International Organization, 2005, 59(3), pp. 593-629.

Notes

1 Emilie M. Hafner-Burton, *Forced to Be Good: Why Trade Agreements Boost Human Rights* (Cornell University Press, 2009); *"Trading Human Rights: How Preferential Trade Agreements Influence Government Repression."* International Organization, 2005, 59(3), pp. 593-629.

Author

Emilie M. Hafner-Burton is a professor at IR/PS and director of the School's new Laboratory on International Law and Regulation. Most recently, Hafner-Burton served as professor of politics and public policy at Princeton University, where she held joint appointments in the Department of Politics and the Woodrow Wilson School for International and Public Affairs. She also served as research scholar at Stanford Law School and fellow of Stanford's Center for International Security and Cooperation (CISAC). Previously, she was postdoctoral prize research fellow at Nuffield College at Oxford University, recipient of MacArthur fellowships at Stanford's CISAC and affiliate at the Center for Democracy, Development and the Rule of Law at Stanford University. Hafner-Burton's research at Oxford, Stanford and Princeton examined ways to improve protections for human rights, the design of international and regional trade policy, and a wide array of other topics related to the use of economic sanctions, social network analysis and international law.

Democratic Transitions and the EU 'Deep and Comprehensive FTAs' with MENA Countries: a Possible Backlash?

Kinda Mohamadieh

At the end of 2011, the EU Foreign Affairs Council authorized the opening of new trade negotiations with Egypt, Jordan, Morocco and Tunisia. The decision provides the European Commission (EC) with a mandate to start negotiations towards establishing 'deep and comprehensive free trade agreements' (DCFTAs). These agreements go beyond tariff reductions to cover more extensively dimensions of investment protection, public procurement, and competition policy[2].

As described by the EU Trade Commissioner Karel De Gucht, the DCFTAs represents the EU's support for the "process of democratic and economic reform"[3]. The trade and investment policy of the EU towards the region comes within the broader policy approach set out in the communication on "Partnership for Democracy and Shared Prosperity with the Southern Mediterranean", which the EU describes as its steps to "support wholeheartedly the demand for political participation, dignity, freedom and employment opportunities(...)"[4].

Contesting old Economic and Social Models in the Arab Region: the Need for Policy Space

While these decisions are pursued at the EU level, peoples of various Arab countries, including Egypt, Tunisia, Morocco, and Jordan have demonstrated their rejection of the political as well as economic and social models of governance in their countries, through revolutions and mobilizations that started at the end of 2010 and continue into 2012. For people in the Arab countries and civil society groups active across the Arab region, the revolutions will continue until economic and social models are re-established to prioritize peoples' rights to development and justice.

Reinstating the policy models drawn by previous regimes under which poverty, unemployment, and inequalities continued and deepened despite economic growth will clearly not serve the development rights and needs of the people.[5] Economic growth in the upcoming period should be rooted in support of people's choices to a revised economic model, where productive capacities, redistribution mechanisms, employment and wages take the forefront. For such purposes, trade and investment policies established by the previous regimes need to be revised in order to serve a new development vision, not the concentration of economic powers in the hands of the few.

It is fundamental for the democratic and development processes in Arab countries witnessing transition to realign their trade and investment policies with their development levels. Moreover, new negotiations and agreements should be undertaken within a clear constitutional framework, that defines the interaction between the governments' obligations in regards to human rights and development objectives and its obligations under international economic and trade agreements.

Repackaging old Proposals

It is important to note that the proposal for DCFTAs with Southern Mediterranean Arab countries is not a new one. In fact, this proposal was developed by the EC in a non-paper entitled "ENP- A Series of Deep Free Trade Agreements as a Path towards a Neighborhood Economic Community (NEC)", which was released during 2007. Back then, civil society groups had critiqued this proposal for lack of rights-based and developmental considerations, potential negative impacts on policy space, lack of addressing the political and economic contexts and priorities of Arab countries, and lack of sound partnership mechanisms.[6]

Accordingly, one could question whether the proposal of DCFTAs is designed to serve the specific economic and social needs that Arab countries are currently facing or if it is a mere repackaging of old recipes. Moreover, proposals to include negotiations on investment, government procurement, and competition policy under the multilateral process of negotiations at the World Trade Organization have for many years faced significant opposition from developing countries, including governments and peoples.

However, the EU continues to push a model of trade and investment liberalization that have proved unsupportive of the development needs of its partner countries, and that could override national democratic transition if maintained or deepened. This includes the agenda of negotiating liberalization of trade in services, as well as initiating negotiations in the areas of investment, government procurement, and competition policy.

Proceeding with enforcing the same model of trade and investment that failed to serve development objectives for years, at a time when people and governments are trying to exercise their sovereign democratic rights of drawing new constitutions and designing new development visions, hold a significant potential to negatively impact national policy space. This space has been redefined through citizens' struggles, revolutions, and continuous mobilizations.

Integrating Political, Social, and Economic Rights in Trade Agreements: Beyond Social Chapters and Human Rights Clauses

What these countries and peoples need is an urgent stop of the 'business as usual' approach to trade and investment, and re-establishment of these policies and instruments to support a nationally nurtured development and economic policy. This necessitates several structural changes in the way trade and investment policies are conceived and implemented.

First, is it important to realize that protecting development policy space of developing countries involved in these agreements cannot be achieved and guaranteed through the sole inclusion of a chapter on sustainable development or clauses addressing human rights and social and environmental responsibilities in these agreements. It is essential to adjust the rules and ensure the integration of human rights and development

considerations in decision-making throughout the policy formulation, design, and implementation, including checking and adapting the processes related to trade and investment agreements. This necessitates that these agreements be designed in full partnership between the negotiating parties and not based on a template model that one party develops and the other signs on. This is essential if trade and investment are to accommodate the development levels achieved by the different parties to the agreements.

Second, it is crucial to effectively address the interface between the wide scope of the trade and investment agreements being negotiated and the sovereign rights of governments to regulate for developmental purposes. Indeed, while the Arab countries are seeking to revise their constitutions and their development plans, they are also addressing their regulatory capacities to serve the public interest. Among these interests is the process of redressing violations of citizens' economic and social rights undertaken under previous regimes, as well as the exploitation of the countries' national resources and economic assets. The ability to regulate and re-regulate in various areas and sectors for the legitimate public interest purposes are fundamental to any prospective development process, and should not be restrained by investment and trade rules.

In this regards, the European Parliament[7], addressing the model of investment agreements pursued by the EU, has indicated the need to secure a model of agreements in investment that respects the capacity for public intervention. It called for clarifying the definition of investor in order to redress any negative impacts on public interest and the sovereign right to regulate; avoiding protection of forms of investment that are speculative or result in abusive practices; and making the dispute settlement regime more transparent, more inclusive, including the obligation to exhaust local remedies. As long as the EC does not progress on these processes, then initiating negotiations on investment protection with Arab countries will have significant negative implications on the latter's national policy space and development prospects.

Third, it is imperative to undertake a full assessment- based on human rights and development approach- of the outcomes of existing agreements and any future ones (see Box). The UN Special Rapporteur on the Right to Food had noted on this subject that: *"human rights impact assessments can help governments determine whether new or existing trade and investment agreements will undermine their human rights obligations. Ensuring consistency between human rights obligations and trade and investment agreements is essential at the stage of negotiation of such agreements. Otherwise, because of the stronger enforcement mechanisms in trade and investment regimes, human rights obligations risk being set aside when conflicts arise"*.[8] Ex-ante and ex-poste assessments are the responsibility of the governmental parties negotiating the agreements and should be undertaken with a full participatory process that genuinely engages stakeholders, including civil society organizations from various impacted sectors.[9]

Both the EU and the counterpart negotiating governments hold the responsibility to address these challenges and shortcomings. They are responsible to ensure that the legal framework defining trade and investment relations – along possible frameworks in areas such as competition policy and government procurement- puts at the forefront development objectives, respects the sovereign rights of peoples and nations, and does not end up being a backlash against democratic transition processes in the Arab region.

What did we learn from the impact assessment of the Euro-Med FTAs?

It is important to recall the findings of the Sustainability Impact Assessment of the Euro-Mediterranean Free Trade Area (2007)*, which notes that, unless parallel measures are taken and implemented by the Southern MPCs, the EMFTA will result in a negative effect on employment, poverty, and development. The study identifies, among the potential social impacts, a significant rise in unemployment, particularly following the liberalization of trade in industrial products and agriculture, and a fall in wage rates associated with increased unemployment, as well as a significant loss in government revenues, reduced expenditure on health, education, and social support programs, and greater vulnerability of poor households. No revision of the existing agreements was undertaken in light of the findings, nor any mitigation measures or compensation mechanisms were set in place (for more information, see Mohamadieh, Kinda: "Euro-Mediterranean Free Trade Area 2010: Stakes, Challenges and Proposals Regarding Employment in the Southern Mediterranean Countries, at: www.fes.org.ma/common/pdf/publications_pdf/.../Policy_Brief.pdf.

* http://trade.ec.europa.eu/doclib/docs/2006/november/tradoc_131340.pdf

Notes

The article reflects the position supported by more than ten civil society organizations from the Arab region, sent to the European Parliament Subcommittee on International Trade on 24th of January 2012.

2 See http://trade.ec.europa.eu/doclib/press/index.cfm?id=766 (Brussels, 14th of December 2011).
3 Ibid.
4 See: http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/11/918&format=HTML&aged=0&language=EN&guiLanguage=en
5 Civil society letter raised to the EU officials under the title: "What Does 'More' Stand for and how to Ensure Economic Policy Conditionality is not Exercised?" Available at: www.annd.org/userfiles/file/latestnews/General-%20CS%20reaction%20to%20CSF_SPRING%20initiatives-%20October%202011-%20FINAL.pdf
6 See the Comments prepared by the Arab NGO Network for Development on the "ENP- A Series of Deep Free Trade Agreements as a Path towards a Neighborhood Economic Community (NEC)" (15th of May 2007), available with the organization.
7 European Parliament resolution (6 April 2011) on the future European international investment policy (2010/2203(INI)).
8 Statement by Olivier De Schutter -UN Special Rapporteur on the Right to Food – reflected in the Report of the Expert Seminar on Human Rights Impact Assessment for Trade and Investment Agreements (June 23-24, 2010).
9 See the positions of the Seattle to Brussels Network (www.s2bnetwork.org/), noting that the model of investment agreements proposed by the EU remains skewed towards the sole aim of providing unconditional maximum protection to the European investors and investments abroad, and carries significant threats to democratic processes, public policies, and public interest.

Author

Kinda Mohamadieh is Programs Director at the Arab NGO Network for Development.

Trade for Change: EU Trade and Investment Strategy for the Southern Mediterranean following the Arab Spring Revolutions

Niccolò Rinaldi

The Arab Spring to date has been a major challenge for Europe's foreign policy. The wave of revolutions that have swept across the countries in the MENA (Middle East and North Africa) region has offered Europe the opportunity to match its foreign policy and commercial interests with those values that are at the core of its institutions: the respect for human rights in a free, democratic society.

Having exclusive competence over local trade and investment policies, Europe can provide an effective response to the turmoil in the area, facilitating the transition of the region towards democracy and economic integration, supported by a fair and free market.

At present there is a huge expectation among people in the Southern Mediterranean Countries (SMCs) for greater EU support towards democratic reforms and a genuine economic development to the benefit of all concerned. These circumstances provide for a warmly welcomed concept at the basis of Europe's Neighbourhood Policy (ENP), the so-called "*More for More*" approach introduced by the European Commission. This slogan is based on a positive conditionality and summarizes a simple idea: if partner countries show *more* commitment (i.e. by introducing more reforms on the path towards democracy), then the EU will give them *more* political and financial support.

In other words, the results achieved for democratic reforms and individual freedoms on the one hand, should be mirrored by a similar "liberation" process in the economic landscape on the other, in the attempt to dismantle the oligarchies which have traditionally dominated.

Notably, the publication of specific criteria for such an approach, on the part of the European External Action Service (EEAS), will determine whether a country is eligible for a Deep and Comprehensive Free Trade Agreement (DCFTA).

The European consumer market is the biggest in the world, and Arabic countries should only be granted access under three main conditions:

- bilateral opening of markets should be seriously engaged by partner leaderships;
- the whole population should be able to enjoy the benefits of the new economy;
- appropriate political, social and environmental commitments should be fulfilled by them.

As a result, setting clear, detailed guidelines will enable each partner country to know whether adjustments are to be made in order to access such a market.

Europe has often missed the opportunity to reform the policy of its neighbouring countries because its political response was too slow and at times even contrary to the democratic aspirations of the people. Trade has always been the backbone of the ENP, and a change of tactics is now necessary to facilitate a prosperous and stable neighbourhood, which is important to the security and economic progress of Europe.

In order to achieve these goals, focus should be placed on investment strategies for Small and Medium Enterprises (SMEs) in the MENA region. To begin with, the European Investments Bank (EIB) should not be limited to simply providing more investments. It should also specifically target local enterprises to improve innovation and organization in a manner that would enable them to avail of the advantages of the EU's Internal Market. The EU, through its financial institutions, should be more active in handing out loans to individuals in the region, and should explore policy options such as the provision of counter-guarantees.

In trade terms, this would entail a closer coordination amongst the different financial institutions investing in the area (including global entities such as the World Bank). It would also mean a substantial alignment with the *EU acquis* on behalf of SMCs, through the dismantling of remaining tariff barriers on agricultural products in the hope of creating a Euro-Mediterranean Free Trade Area, where business people will be granted flexible movement. It is vital that issues about giving out visas are therefore agreed upon in coordination with trade negotiations and that their implementation is not overly bureaucratic.

If the MENA region is to engage in serious economic growth, the EU's commercial strategy should also encourage unregistered businesses to legalize their status, since certain studies put the percentage of informal employment (excluding agriculture) at 70% in some SMCs.

The Commission must also encourage its partners to negotiate on the so-called "Singapore issues" such as services and investment. The latter is especially important since the level of FDI (Foreign direct Investment) in SMCs is too low, limiting economic development. EU Member States should provide more grants for students of economics, business people and future leaders: this is an essential step to establish lasting connections with future partners.

To conclude, Europe has a unique opportunity to display political guidance and serious engagement aimed at trade liberalization, creation of investment opportunities, and new jobs. These are all the ingredients needed to help foster economic growth in SMCs.

Author

Niccolò Rinaldi is a Member of the European Parliement, and Vice-Chair of the Group of the Alliance of Liberals and Democrats for Europe. He seats in the International Trade committee where he is rapporteur on the "Trade for change: EU trade and investment strategy for the Southern Mediterranean following the Arab spring revolutions" own initiative report.

A Legal Analysis of The Human Rights Dimension of the Euro-Mediterranean Agreements

Lorand Bartels

This article takes a closer look at the human rights clauses in the Euro-Mediterranean association agreements, which have been negotiated and concluded in the context of the Barcelona process. To date, the human rights clauses in the Euro-Mediterranean association agreements have not played a significant role in the EU's political relations with its Mediterranean neighbours

Since the early 1990s, the European Union (EU) has maintained a policy of conditioning its economic relations with third countries on their compliance with human rights norms. One of the main elements of this policy is an insistence on the inclusion of 'human rights clauses' in all new bilateral trade, co-operation and association agreements that the EU concludes with third countries. The stated purpose of these clauses is to entitle either party to the agreement to take 'appropriate measures', including suspending the agreement, in the event that the other party fails to comply with specified human rights norms.

Given the recent social transformations in these countries, and the pressures on the EU Council and Commission from other institutional and non- institutional actors to make more effective use of these clauses, a legal analysis of these clauses seems timely. What is the scope and operation of the human rights clauses in these agreements? What type of 'appropriate measures' can be taken in response to human rights violations? Can these clauses support 'positive' human rights policies, involving political dialogue, implementation and financial aid?

The Human Rights Clauses: How Far do they Go?

The human rights 'clauses' are actually composites of a number of different provisions present in the association agreements. Not all of these provisions are found in all of the Euro- Mediterranean agreements, nor do they have identical wording. In general, the relevant provisions are threefold; the 'essential elements' clause, the 'non-execution' clause, and finally the provision defining cases of material breach or special urgency, and confirming that in all cases the 'appropriate measures' must be 'taken in accordance with international law'.

Essential Elements Clauses: which human rights?

The 'essential elements' clause establishes the respect for the principles of human rights and democracy as an essential element of the agreement. With the possible exception of the Tunisia agreement, which does not mention the Universal Declaration of Human Rights, the human rights norms that are referenced in the Euro-Mediterranean agreements cover the full spectrum of civil, political, social, economic and cultural rights set out in that Declaration, including rights which have not attained the status of customary international law. This wide interpretation is also borne out in practice, based on those occasions on which human rights clauses, including those contained in other agreements, have been invoked (if not applied) within the EU institutions. Human rights clauses have been cited in connection with the Middle East crisis, but also in relation to democratic principle, child sex tourism, female genital mutilation, freedom of speech and labour rights, amongst others.

> What is the scope and operation of the human rights clauses in these agreements? What type of 'appropriate measures' can be taken in response to human rights violations? Can these clauses support 'positive' human rights policies, involving political dialogue, implementation and financial aid?

Non-execution clauses: operationalising conditionality

The 'non-execution' clause provides that 'appropriate measures' may be taken in cases of a failure to fulfil the obligations in the agreement. One interesting element of the non-execution clause is contained in the first sentence of its first paragraph, which states that:

The Contracting Parties shall take any general or specific measures required to fulfil their obligations under this Agreement. .

If one makes the assumption that the essential elements clause does establish obligations, then there is no reason why this provision should not have an operative effect in this context. This first sentence could then be interpreted as meaning that the parties are under a positive obligation to do whatever is necessary to fulfil those obligations. At the very least, this would mean that the parties cannot claim that their human rights obligations only apply in the case of positive governmental action. A failure to act could then also lead to a violation of obligations.

In addition, this sentence could have the concrete effect, within the structure of the association agreement, of requiring the parties to implement mechanisms to ensure that the norms set out in the essential elements clause are being respected. This could require the establishment of monitoring and implementation mechanisms, along the lines suggested by the European Parliament.

Appropriate Measures: defining the scope of sanctions

The next question concerns the 'appropriate measures' that can be taken in response

to a failure to fulfil obligations under the essential elements clause. The first reference to taking 'appropriate measures' in the non-execution clause gives no indication as to what such measures might be. The non-execution clause simply says that '[i]f either Party considers that the other Party has failed to fulfil an obligation under [the] Agreement, it may take appropriate measures'.

Given the historical origins of the human rights clause, and the context of the non-execution clause, there is little doubt that these measures would include the suspension of any benefits provided under the agreement. The EU Commission said in its 1995 Communication on the human rights clause that the range of appropriate measures could include the suspension of any benefits accorded under the agreement, such as trade preferences, public procurement rights, rights relating to cumulation of rules of origin, and rights relating to special commodity agreements.

There are certain conditions on the 'appropriate measures' that might be taken under the non- execution clause. First, all of the Euro-Mediterranean agreements contain the requirement that priority must be given to measures that 'least disturb the functioning of the agreement'.

This requirement can be explained by the fact that the non-execution clause had the original function of regulating the 'appropriate measures' which could be applied in cases of serious damage caused by imports or dumping (that is, safeguard and anti-dumping measures). In this context, the 'least disturb' function makes sense, because here the non- execution clause has a primarily defensive rationale.

It seems reasonable to propose that the most obvious way of protecting the 'functioning of the agreement' is to ensure that the agreement remains in force wherever this is possible. In practice, this means that measures should be chosen that are less severe than a full suspension or termination of the agreement. Furthermore, if the 'agreement' in this phrase is interpreted in terms of its object and purpose, then any measures taken should minimize their impact on the objectives of the relevant agreements, which relate to political dialogue and trade liberalization, with a view to improving the economic and social development of the population. These objectives are best protected by restricting any 'appropriate measures' to those that have a limited impact both on the objective of trade liberalization and on the economic and social development of the population of the targeted state.

Consequently, the requirement to take measures that 'least disturb the functioning of the agreement' could be understood as meaning that any negative measures taken under a human rights clause must be as limited as possible, especially in their impact on the populations of the target state.

In a similar vein, all of the Euro-Mediterranean agreements, except those with Israel and Tunisia, include an additional stipulation that the appropriate measures 'shall be taken in accordance with international law'. Under international law, countermeasures in response to violations of international obligations are required to comply with principles of proportionality. It seems reasonable to propose that any appropriate measures that are taken under the non-execution clause must now be proportionate to the violation. Indeed, this is stated expressly in the agreements with Lebanon and Egypt, which specify that any appropriate measures must be 'proportional to the violation'.

> (...) any negative measures taken under a human rights clause must be as limited as possible, especially in their impact on the populations of the target state

Conclusion

From this survey, a number of conclusions may be drawn. First, with two exceptions, all of the Euro-Mediterranean association agreements are 'based' on the full spectrum of human rights and principles set out in the Universal Declaration of Human Rights. The exceptions are the agreements with Algeria and Morocco, which do not refer to this Declaration, and therefore probably only include rights with the status of customary international law. Nevertheless, even in these cases, the human rights clause would cover not only civil and political rights, but also social, economic and cultural rights. It is therefore notable that, in the practice of the EU institutions, these clauses are only invoked in relation to civil and political rights, with the exception of labour rights violations. As with the EU's political human rights dialogue, social and economic rights seem to be ignored.

The second conclusion is that there is legal support for the proposition that the human rights clause should not only be applied negatively, but also positively. The essential elements clause deems human rights and democratic principles to be an issue of common interest between the parties, which means that they can legitimately be insisted on in political dialogue between the EU and its Mediterranean partners. Further, the first sentence of the non-execution clause can be seen as an obligation on the parties to establish monitoring and implementation mechanisms to ensure that human rights and democratic principles are being respected. It is arguable also that 'appropriate measures' under the non-execution clause can include positive measures, such as direct funding, in response to non-compliance with the essential elements clause, although this does not conform to current EU practice.

When negative sanctions are adopted, only such measures can be taken as 'least disturb the functioning of the agreement'. This means that, in the first instance, any sanctions must be limited in scope. Furthermore, under all of the agreements except those with Tunisia and Israel, these measures must be proportional to the violation. It is therefore only in very extreme cases that the entire agreement could be suspended.

In concluding, it might be observed that while the human rights clauses in the Euro-Mediterranean association agreements could have a genuine application, it seems that it is only with a significant change of heart on the part of the EU's political leadership that their potential can be realized. It remains to be seen whether the Arab Spring revolts provide the political impetus to change the way the EU uses the human rights clauses in the Euro-Mediterranean agreements.

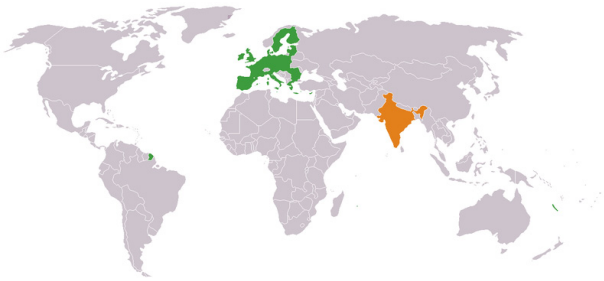
Author

Dr Lorand Bartels is a University senior lecturer in Law and Fellow of Trinity Hall, University of Cambridge.

Human Rights in the EU-India FTA: Is it a Viable Option?

Archana Jatkar

In recent years there has been a growing trend towards the inclusion of social protection clause with human rights language in preferential trade agreements. The path has been espoused by major economies such as the US, the European Union and Canada, and have taken been up by a few developing countries.



As a result of such inclusion of human rights clauses, experts suggest over 70 per cent of governments are now participating in PTAs having human rights clause.[2] Developed countries include the human rights clause in their PTAs in various ways such as in the preamble or by way of non-derogatory clause. However, it is worth noting that most of these agreements including social protection clause with human rights provisions do not provide any linkage between the two and are at best in line with the exception clause contained in Article XX of General Agreement on Tariffs and Trade (GATT). They may sometimes increase the number of exceptions in addition to the GATT provision.

Whatever form it may take, it is argued by some analysts that human rights provision is 'legal inflation'. The common criticism is that rich countries are using trade agreements as an instrument to inflict their values and norms in order to globalise their social policies or regulatory approach. Some also consider that inclusion of human rights provisions in PTAs is nothing but a new form of protectionism in disguise. They emphasise that trade agreements are not an appropriate forum to address human rights issues. These arguments gain more momentum when the trading partners in an agreement involve a developed economy and a developing economy.

In the context of the EU-India FTA, a recently adopted European Parliament resolution contains a number of non-trade issues. This is a cause of concern for India. Some of the major non-trade issues that find place in the negotiations between the two parties are human rights, labour standards, animal welfare and environmental standards. This article aims at understanding whether social protection clause with human rights provision is viable for the EU-India FTA.

Context of the EU-India FTA Negotiations

The negotiations between the EU and India began in 2007 and so far eleven rounds of negotiations have been held. India is a priority for negotiations because of its market size and its future potential, but also because of the high level of protection it enforces on the EU's exports and investors. On the other hand, India is keen on an FTA with the EU because it is the country's third largest trading partner in the world.

The negotiations have so far been controversial and mostly held behind closed doors. Reportedly, one of the main roadblocks has been the EU's insistence on including non-trade issues in the FTA, to which India is strictly opposed. The major argument behind the opposition to the inclusion of social clause from India is that the EU is using human rights issues and environmental and labour standards as protectionist ploy.

At present, both parties are hopeful to conclude the negotiations by the end of 2012. However, the EU continues to insist that India should improve its labour standards, human rights and animal welfare issues, amongst other non-trade concerns.

Why is the Human Rights Clause a Cause for Concern?

The most important link between trade and human rights is that trade increases human welfare in general by generating economic growth. While the impact of trade on human rights is not automatic, the inclusion of social clauses in trade agreements (with sanctions-based approach to deal with legal commitments) can, in effect, weaken the positive linkage between trade and human welfare. This argument can be sustained by reviewing the case of child labour and discrimination against Dalits and Adivasis, issues that the EU is trying to include in the India- EU FTA.[3]

One of the main reasons why developed countries such as the EU and USA are pushing for the inclusion of labour clause in trade agreements is because they believe that developing countries that have lower labour standards gain an unfair advantage over the developed countries when it comes to labour-intensive industries. The developed countries are also facing rising unemployment and income disparities – things that they are attributing to the phenomenon of cheap labour in developing countries.[4]

To cite the case of child labour, India's main export destinations for its carpets are Europe and the US, both of whom are stringent in their child labour laws. The drop in demand for India's carpets by these major export destinations is attributed partly to the fact that India's carpet industry employs a large number of children who work in exploitative conditions, mostly in the informal sector.[5]

A Consumer Unity & Trust Society (CUTS) study on child labour in the Indian carpet industry found that on an average a child's earning was just enough to cover some basic needs. Another study estimated the amount of monetary resources that India would need to send its child labour to school and to compensate their families for the loss of income. It suggested, in the Indian context, the enormous cost of US$14.62 to 18.94bn every year. Moreover, besides providing free primary education, a mechanism needs to be created to attract the child to come and stay in school.[6] Thus inclusion of social clause in the FTA, without understanding the underlying cause behind this social malaise is not only impractical but has a potential to hurt the child itself.

Turning to the issue of Dalits and Adivasis, a resolution from the International Trade (INTA) Committee of the European Parliament on the EU-India FTA states that there are concerns over the "continuing persecution of religious minorities" and specifically makes calls to ensure that the FTA will benefit disadvantaged groups in India such as the Dalits and Adivasis.

The study on Sustainability Impact Analysis of the EU-India FTA demonstrates that the social impact of this FTA is positive and is expected to induce a significant increase in the real wages of both skilled and unskilled workers in India as a consequence of the FTA. The net effect on Dalits and Adivasis would therefore, a priori, be a positive one without the inclusion of a reference to their social condition.[7]

Furthermore, it is worth noting that discrimination on the basis of caste is prohibited under Article 16 of the Indian Constitution, and India has ratified two core Conventions on Equal Remuneration and Discrimination of the International Labour Organization (ILO). Some instances of social discrimination may happen (as in case of any society including in European countries) but it is no longer a major cause of concern. Such issues need to be seen from the perspective of their socio-political-economic dimensions rather than legal adherence to a set of already existing legislation. Also, inclusion of social clause is like trying to kill two birds with one stone.[8] These are domestic problems and trade agreements should not be used as a tool to deal with them. They are to be addressed by implementing targeted initiatives.[9]

It is also important to understand that if India agrees to incorporate non-trade issues in its FTAs, it will have implications at the multilateral level. Many developing countries facing similar developmental challenges will be in a disadvantageous position.

Arguably, if the purpose of social protection clause is to create harmonisation of policies that are uniformly beneficial to all countries, it is difficult to justify them in the context of developing countries. It is natural that developed and developing countries would find it difficult to agree on minimum wage levels and issues related to merits of child labour, amongst others.[10]

India's argument that non-trade issues can be discussed at an appropriate forum outside legally enforceable trade agreements is justified. It is not a case of avoiding international human rights obligations but a valid proposition to not to deal with these issues in a trade agreement whose primary objective is trade liberalisation in a gradual manner.

> Trade is an effective means to achieve more growth and development and human rights clauses and development chapters should not be used for protectionism, which would endanger the most important link for human rights promotion though trade – namely economic growth.

Way forward

India is sceptical for labour standards to be included in trade agreements because it sees labour standards as a barrier that restricts market access for its products and services. India believes that the ILO should be an appropriate body to deal with labour laws. Sanction-based approach (as in the case of trade agreements) to deal with social clause can backfire. Therefore, the ILO and other agencies such as the United Nations Children's Fund (UNICEF) and the United Nations Environment Programme (UNEP) should be given more power and resources to deal with their core mandate. In short, social issues such as child labour are domestic problems and trade agreements should not be used as a tool to deal with them. They are to be addressed by implementing targeted initiatives.

CUTS research has shown that there is a strong positive correlation between a country's growth and development and its human rights and other social and environmental standards. Trade is an effective means to achieve more growth and development and human rights clauses and development chapters should not be used for protectionism, which would endanger the most important link for human rights promotion though trade – namely economic growth.

Disclaimer: The views and opinions expressed in this article are those of the author and do not necessarily reflect the official policy or position of organisation in which she works.

Notes

1 It is noteworthy that not all developed countries favour social protection clause with trade. For example Australia and Japan barely see any such linkage.
2 Aaronson, Susan Arial, and J.C. Chauffour, *The Wedding of Trade and Human Rights: Marriage of Convenience or Permanent Match?* Switzerland: WTO.
3 Dalits are historically disadvantaged people that are given express recognition in the Constitution of India, Adivasi are indigenous people. Both benefit from constitutional protection and privileges.
4 Cottier, T. (2008). *Human Rights and International Trade*. In J. P. Thomas Cottier. Oxford University Press. 5 Bhattacharya, S. K. (2004), India and the European Union: trade and non-tariff barriers'. Akaar Publications
5 Bhattacharya, S. K. (2004), *India and the European Union: trade and non-tariff barriers'.* Akaar Publications
6 Basudeb Guha-Khasnobis, Mehta PS & Agarwal, (1999). *Eradicating Child-Labour While Saving the Child - Who will pay the costs ?*, CUTS Publication, India.
7 Ecorys- CUTS-Centad, E. C. (2009). *Trade Sustainability Impact Assessment for the FTA between the EU and the Republic of India.* Rotterdam: Ecorys for European Commission.
8 See http://cuts-international.org/linkages-twinsal.htm , accessed on March 20, 2012
9 ILO-IPEC Programme in India aims at 80,000 children are supposed to be withdrawn and rehabilitated, see
10 http://labour.nic.in/cwl/ipec.htm 10 Krishna, P. (2009), The Economics of PTAs in Bilateral and Regional Trade Agreements-Commentary and Analysis. Cambridge University Press

Author

Archana Jatkar is Coordinator & Deputy Head, CUTS Centre for International Trade, Economics & Environment. This author is thankful to Mr Bipul Chatterjee, Deputy Executive Director, CUTS International, for his valuable inputs for this article.

Political Conditionality in the EU's Development Cooperation – Pointers for a Broader Debate

Jan Vanheukelom

There can be little doubt that the Arab Spring has pushed human rights and political governance higher on the policy agenda in the European Union (EU) and elsewhere. This has resulted in tougher talk about political conditionality in the aid component of the EU's foreign relations. Are there any lessons to be drawn from the experiences and evidence in applying political aid conditionality for other dimensions of the EU external action?

There is a long tradition of applying all sorts of conditionality in delivering aid, including political conditionality. Usually this takes the form of the European Commission (EC) and EU member states interrupting, stopping or re-directing bilateral aid flows. This has been in response to all sorts of violations of human rights, flawed election processes, military coups or mediatized corruption scandals. There are principally three reasons for donors to apply political conditionality in their aid relations. One is to respond to demands or pressures in donor countries not to provide aid to certain regimes. A second reason is to ensure that partner country governments cannot abuse aid to maintain the status quo. And a third reason is to create strong signals and incentive packages that favor or stimulate reform minded groups in power on their reform path.

Political aid conditionality does not have a very good track record in terms of this third donor objective: it has not stopped authoritarian leaders from committing human rights violations, from rigging elections, or from capturing resources or grand scale corruption. Despite some good case studies (for example on budget support and political conditionality[1]) this arena has not been the subject of systematic research into what applications of political conditionality have actually worked, or what the effects have been. We can distil a few findings – "lessons' would be a too optimistic choice of words here – that may be relevant for the ongoing efforts to lever political change, or promote "fundamental values" through applying political conditionality.

First, the EC and EU member states have often not acted in unison when applying political conditionality in their bilateral aid with partner countries. They've found it very hard to agree on and identify among one another common conditions or cut-off points for their aid. They may differ in their assessment of the seriousness of a particular event or, the direction a particular political process is heading towards. Usually, domestic considerations in donor countries (the pressures from public opinion, or special interest groups, etc.) influence decisions and assessments. Such considerations may make it difficult to harmonise joint positions in partner countries. So in practice, it is highly unlikely for the EC and member states to identify clear-cut thresholds and agree with partner country governments on non-negotiable minimum standards for appropriate human rights performance.

Secondly, political aid conditionality does not seem to deliver short-term political change in partner countries at all. Donor expectations tend to be over optimistic. Even in aid dependent countries, cutting off aid has not produced the envisaged effects on political actors. Even with aid modalities that are generally favored by partner country governments (such as budget support), withdrawing aid – or the threat thereof – has not substantially altered the course of political developments. Already in 2006, a Joint Evaluation of General Budget Support called for more realism among donors. Budget support "does not transform underlying political realities (it is unrealistic to expect any form of aid to do so)".

Thirdly, a too narrow focus on aid conditionality – the *on/off* option – draws the attention away from what probably can be the most important added value of aid: the fact that it can help develop knowledge (about structural and historic factors, how these interact with social, political and economic dimensions in a particular context, and the margins of maneuver for reforms) and its potential to contribute to transformation and reform processes over time. Some donors have started to ask questions about why socio-political processes are as they are, which institutions and actors or coalitions shape political processes and development outcomes, and the potential to strengthen incentives or remove obstacles to reforms such as more inclusive development. Aid can be channeled to strengthen the demand side for reforms, and such reform coalitions – depending on the context – can be found both within the state and with civil society. Merely relying on a punitive conditionality framework that is not sufficiently owned or accepted by a partner country government most often results in isomorphic mimicry (a façade of compliance with donor preferences) – or a slate of hand rejection when donors call the shots.

Yet, there are examples of effective forms of political conditionality. But these usually involve more than merely aid. Moreover, these conditionality measures are designed to be in sync with in-country reform dynamics and supportive of reform-minded coalitions or drivers of change. The incentive package for European countries that are candidate for joining the EU involves aid, financial and technical assistance, trade concessions and migration access. In themselves, these measures don't create political reform readiness (such as respect for human rights, rule of law and more open access democracies), they merely contribute to tilting the balance and may – when cleverly applied – reinforce the hands of reformers over time. Political aid conditionality does not need not be ruled out, but it only should be called upon in well-coordinated and solidly prepared contexts.

The EC is not your average donor. It has the means and the governance structures to create a different added value to the inputs of member states. So in the pursuit of supporting "fundamental values" the EC can act differently from a-political multilateral

donors (such as the World Bank) and also from bilateral donors that are often politically constrained by domestic constituencies and politics. The EC also operates on a scale within the EU that allows it to become a knowledge hub about partner country social, economic and political processes. It can do so, partly by cleverly sampling existing politically informed assessments (a number of member states, but also the WB have embarked on political economy analyses). Moreover, it has a broad range of aid instruments at its disposal that can be adapted to the complexities of institutional and political reform processes in a longer time perspective. Beyond aid, the EU can combine other dimensions of its external action to create more coherent incentive packages in particular contexts where this can be conducive for reform minded coalitions.

One burning question that begs for an answer, is why the EU does not use this potential more strategically to the advancement of both its interests and values. Part of the answer relates to the political economy of the EU itself. Its history, structures and institutions – with governance systems that have to accommodate diversity, including powerful vested interests – determine, influence and constrain decision-making processes. They set boundaries within which often well-sounding but ill-informed external policies are partially and incoherently implemented. More realism about such real life institutional and political constrains at home – but also about the real possibilities, soft and other power (including brain) and weight it has would help set more credible policies. A more principled curiosity in finding out what has worked in its neighborhood and other countries could help build the political *savvines* and the knowledge about change dynamics, coalitions and transformation to become more effective in the implementation.

Notes

1. Molenaers, N., Cepinskas, L., Jacobs, B. (2010), *Budget Support and Policy/political dialogue. Donor practices in handling (political) crises*, Institute of Development Policy and Management

Author

Jan Vanheukelom is Senior Adviser Political Economy & Governance at ECDPM

New Ambitions with Regard to Human Rights: Can the EU Deliver?

Jean Bossuyt

Since the end of the Cold War, the EU gradually developed its normative and institutional architecture for dealing with human rights. Yet from the outset, the EU faced major challenges in turning its pledges into practice. The Arab Spring has had the effect of a wake-up call for the EU. It illustrated the limitations of the 'stability versus human rights' paradigm and prompted a fundamental rethinking of EU policies. Building on the findings of a recently concluded evaluation[1], this contribution explores the feasibility of this new EU agenda.

Human Rights as a Core Value in External Relations

The European Community (EC) was a relative latecomer in the field of human rights. The Lomé III agreement (1985-1990) timidly created a first opening to discuss these matters. The end of the Cold War was a turning point. The 1992 Maastricht Treaty upgraded human rights as an objective of both the Common Foreign and Security Policy and EC development cooperation. This, in turn, led to the inclusion of human rights clauses in cooperation agreements and commitments to promote this core value through dialogue and all relevant cooperation instruments.

The resulting EU architecture for dealing with human rights may look impressive at first sight. Yet in practice it has proven difficult for the EU to push forward a credible human rights agenda. The abovementioned Evaluation concludes that the track record of the EC/EU has been "mixed". Across the world, the EC has made relevant contributions through the use of funding and non-funding instruments. Yet the evaluation also shows that EC/EU actions have been hampered by structural constraints including: (i) insufficient use of high-level EU political leverage (particularly in countries where major interests are at stake); (ii) the lack of a clearly spelled out "joint" strategy between the EU and Member States; (iii) the tendency to 'ghetto-ise' human rights; (iv) limited leadership to push for the mainstreaming of human rights; (v) a wide range of downstream implementation problems.

> The EC/EU need to ensure that the architecture for addressing human rights has a solid 'political roof'.

The Arab Spring: Eye-opener and Trigger for Reform

The 2011 upheavals in North Africa illustrated the ambiguity of the EC/EU approach to human rights. In the name of 'stability' and commercial interests, the EU actively continued to support entrenched dictatorships (Tunisia, Egypt, later also Libya). This culture of complacency was painfully exposed during the Arab Spring. The citizen's revolts in North Africa were all about human dignity and rights. They acted as a powerful wake-up call for the EU, which swiftly announced a fundamental review of its human rights policy. The High Representative Catherine Ashton stressed that human rights should become the "silver thread" throughout all EU external action. In a recent speech, Development Commissioner Andris Piebalgs pleaded to "embed human rights and democracy even more deeply" in EC practices, amongst others by ensuring that they are given "greater weight in determining the ways and means of providing assistance"[2]. The new policy has been spelled out in various EC Communications, including regarding future approaches to providing budget support.

Windows of Opportunity

The landscape for human rights is constantly evolving. In the process, several positive evolutions can be noted providing windows of opportunity for a more credible and effective EU action:

- The international and normative framework for human rights continues to expand and be refined, including through dynamics at regional level (such as the African Union). This, in turn, is contributing to the emergence of new EU policy frameworks based on 'rights-based approaches' in development.
- The struggle for better human rights legislation is increasingly complemented by efforts to make rights 'substantive' and 'real' for poor and marginalised people. This indicates that the struggle for human rights is a shared agenda (rather than a Western imposition).
- The growing realisation that a widening and deepening global economy carries with it profound implications for human rights (both positive and negative). Current debates focus on the role human rights standards should play in formulating economic and social policies, on the human rights responsibilities of transnational corporations and on the role of the state as 'guardian' of human rights (including labour rights). This highlights the critical need for global players (such as the EU) to contribute to a more inclusive and equitable global economic system.

Becoming a Credible Actor: Some Key Challenges

All this suggests EU human rights policies find themselves at a critical juncture. There are major opportunities to better connect currently largely disjointed agendas (development and human rights; the global economy and human rights). Yet for this to happen, the European External Action Service (EEAS) and the EC Directorate-General for Development and Cooperation (DEVCO) will need to face upfront major implementation challenges. Four priorities are briefly explored here.

First: enhanced capacity for collective action at EU level. The EC/EU need to ensure that the architecture for addressing human rights has a solid 'political roof'. This means providing clarity on the human rights ambitions of the EU towards third countries and regions. It implies being more explicit about EU interests that co-exist with the promotion of human rights as core value. It means developing common implementation strategies for which both the Commission and the Member States take responsibilities. It calls upon all EU institutions to effectively work together in the new Post-Lisbon configuration (rather than creating new silos).

Second: seeking allies to overcome resistance. In many countries the overall environment remains hostile to human rights. The governments involved tend to develop a façade of laws and institutions to display an apparent concern for human rights. New emerging powers (e.g. China) do not necessarily uphold the same values in their external policies. All this confronts the EU with the need to carefully choose which levers to pull, how, when and why. It also invites the EU to build on the growing societal demands for reform and to strengthen alliances with domestic forces or regional actors pushing for change.

Third: connect the development and human rights agendas. Evaluation findings confirm that human rights are still too often addressed in a 'ghetto'. There is growing recognition of the critical links between human rights, poverty, exclusion, vulnerability and conflict. The time has come to overcome the divide between human rights and development and to fully exploit possible synergies between both work streams.

Fourth: localize human rights. This means taking local conditions as point of departure for elaborating a realistic and inclusive human rights local agenda. This 'localization' process is key to better connect international normative frameworks with societal dynamics at country level. The recently introduced innovation to request all Delegations to elaborate a local implementation strategy is a step in the right direction. The task at hand is to further improve the quality, strategic management and effective monitoring of these local implementation strategies.

Notes

1 European Commission. 2012. Independent 'Thematic Evaluation of the EC support to human rights and respect of fundamental freedoms. http://ec.europa.eu/europeaid/how/evaluation/evaluation_reports/2011/1298_docs_en.htm

2 Speech of Commissioner Andris Piebalgs at the European Parliament inter-parliamentary committee meeting with national parliaments. Brussels, 11 October 2011.

Author

Jean Bossuyt is Head of Strategy at ECDPM

Should We Celebrate the Wedding of Trade and Human Rights?

Susan Ariel Aaronson

When we trade goods, services, and ideas, we are often also affecting human rights. The Internet can help us better understand the relationship between trade and human rights. Citizens in Egypt, Tunisia, and Russia (among other states) have used the internet to understand their rights, express their views, organize political movements, and advance human rights. Alas, some policymakers in these countries have blocked the Internet in the hopes of maintaining power. As the Swedish Foreign Minister Karl Bildt stressed, these officials have tried to wall off their own people from information.[1]

In response, some governments have tried to ensure the free flow of information on the World Wide Web. In 2011, the U.S. and Korea signed the first trade agreement with language designed to ensure that neither country would block the free flow of information without legitimate justification such as public morals or to protect national security.[2] In 2011, the US also proposed that the 9 countries negotiating the Transpacific Partnership prohibit signatories from blocking Internet data flows.[3] US policymakers argue that Internet filtering and censorship are barriers to trade.[4]

Policymakers today not only use trade agreements to protect human rights, they use the threat of less trade as a tool to pressure governments that undermine the human rights of their own citizens. As example, the US and EU have implemented trade sanctions against Syria, Burma, Belarus, North Korea, Zimbabwe and Iran, among others.[5]

Clearly policymakers recognize that trade can be a significant incentive to prod some governments to respect human rights. Yet we know very little about the relationship between human rights and trade. We don't know if enhanced human rights protections lead to increased trade, or if increased trade leads governments to do more to protect human rights. And we have little insight as to how trade agreements and policies will influence the realization of human rights over time.[6]

This article will examine how policymakers link trade and human rights. In a 2011 study for the World Bank, I found that more than 70 percent of the world's governments now participate in a preferential trade agreement with human rights requirements.[7] If these human rights provisions are designed carefully, they can work both to improve governance and to empower people to claim their rights. Yet policy makers, scholars, and activists still know very little about the effects of including human rights provisions in trade agreements.

Background

The marriage of trade and human rights sounds contemporary, but it is in fact ancient. As long as men and women have traded, they have wrestled with questions of human rights. In biblical times, the sea could bring contact with strangers who could enhance national prosperity, but these same strangers might threaten the security of the nation or enslave its people.

Policymakers first began to regulate state behavior regarding trade and human rights in the 19th century. For example, after England banned the slave trade in 1807, it signed treaties with Portugal, Denmark and Sweden to supplement its own ban. After the U.S. banned goods manufactured by convict labor in the Tariff Act of 1890 (section 51), Great Britain, Canada and Australia adopted similar bans. Ever so gradually, as markets became increasingly global, these national laws inspired international cooperation. Policymakers first made an explicit link between human rights and trade in the U.S. generalized system of preferences (GSP) program in 1984. NAFTA, signed in 1993, was the first preferential trade agreement to include specific human rights language.

The US, EU, EFTA, and Canada are the main demandeurs of human rights provisions in trade agreements. Table I summarizes the state of human rights provisions in many of their recent trade agreements.

Best Practice: How should policymakers use trade to promote human rights abroad?

Some countries have decided to use disincentives as a means of advancing the human rights embedded in particular trade agreements. However, sanctions or fines can do little to build demand for human rights or to train governments or factory managers in how to respect human rights. Isolating a government or punishing it will do little to increase the targeted country's commitment to human rights over time. Other countries rely on dialogue to prod changes, but dialogue may do little to encourage a country to change its behavior. Still others rely on incentives. The European Union requires countries that seek to join the EU (or join a preferential trade agreement) to protect some human rights, and the EU provides foreign aid, financial assistance, and technical expertise to these countries. If candidate countries do not meet human rights objectives, they can't accede or they may lose their trade agreement benefits.

Policymakers should think of human rights as a market. Government officials are the

suppliers of good governance; their citizens are the demandeurs—the consumers. Hence, policymakers can increase the supply of human rights abroad with incentives such as increased market access, technical assistance and training, and funding for improved governance. However, they should also focus on ways to bolster the inherent demand for human rights among their developing-country trade partners. They can encourage the adoption of new strategies that empower individuals such as apps to monitor government, web sites such as ipaidabribe.com; and tools to evade Internet filters such as TOR.[8]

Policymakers should also examine carefully the human rights impact of their trade policy decisions. America's support for ethanol made from corn is one of several factors leading to the higher prices and declining supply of basic foods abroad. Americans are just beginning to see how subsidies designed to reduce U.S. oil imports have affected the price and supply of basic foodstuffs at home and abroad. To put it differently, US trade policy may be undermining access to safe affordable food for some of the world's people.

Conclusion

The world and its people benefit when more governments protect, respect, and realize human rights. Yet some human rights provisions are expensive for developing countries to implement. These governments often have few resources, and yet under many recent trade agreements, they must choose to protect intellectual property, provide access to affordable medicines, and/or invest in education. Trade agreements may prod policy makers to make the human rights priorities of their trade partners their human rights priorities. We don't know if this strategy ultimately increases the demand for and supply of human rights. To gain better understanding of the costs and benefits of the association of trade and human rights, scholars, policy makers, and activists could use qualitative studies; empirical studies; or human rights impact assessments. Scholars have several global datasets they can use to do empirical research (for example, the CIRI human rights dataset or the now open World Bank datasets). Human rights impact assessments are relatively new; they are designed to measure the potential impact of a trade agreement on internationally accepted human rights standards[9]. Trade and human rights policy makers should collaborate with scholars, NGOs, and others to develop a clear and consistent methodology for evaluating such impact.

In sum, trade should not be wed to human rights simply because it provides a way for citizens of one country to express their displeasure over the human rights practices of other countries. If policymakers carefully assess the human rights impact of their trade policy choices, they may create an enduring and effective match, and not just a marriage of convenience.

Table I Human Rights in Preferential Trade Agreements: Comparing EFTA, the EU, the United States, and Canada

	EFTA	EU	United States	Canada
Strategy	Universal human rights	Universal human rights and specific rights	Specific human rights	Specific human rights
Which rights?		**Labor rights, transparency, due process, political participation, and privacy rights**	**Transparency, due process, political participation, access to affordable medicines, access to information, and labor rights**	**Transparency, due process, political participation, labor rights, privacy rights, cultural and indigenous rights**
How enforced?	No enforcement	Human rights violations lead to dialogue and possible suspension depending on nature of violation.	In newest agreements, labor rights can be disputed under dispute settlement body affiliated with the agreement. Process begins with bilateral dialogue to resolve issues.	Only labor rights (monetary penalties). Use dialogue first.
Any challenge?			First challenge: Guatemala Review of Jordan	

Source: Susan Ariel Aaronson, "Human Rights," in Jean-Pierre Chauffour and Jean-Christophe Maur, *Preferential Trade Agreement Policies for Development: A Handbook* (World Bank, 2011)

Notes

1 Carl Bildt, Minister for Foreign Affairs, Sweden, "Tear Down these Walls Against Internet Freedom," 1/25/2010, http://www.washingtonpost.com/wp dyn/content/article/2010- /01/24/AR2010012402297.html.
2 US International Trade Commission, "Potential Economy Wide and Selected Sectoral Effects of the US-Korea Free Trade Agreement," Investigation No. TA-2104-24, Publication 3949, September 2007, p. 5-4, fn. 98, http://www.usitc.gov/publications/pub3949.pdf
3 Knowledge Ecology International to Senator Patrick Leahy, 1/26/2012, http://keionline.org/node/1349
4 FAC, "Obama Acts on FAC petition against China's "Great Firewall" 10/19/2011, http://www.firstamendmentcoalition.org/2011/10/obama-acts-on-fac-petition-against-chinas-internet-censors/.
5 www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx; and http://eeas.europa.eu/cfsp/sanctions/index_en.htm
6 Susan Ariel Aaronson and Jamie M. Zimmerman, *Trade Imbalance: The Struggle to Weigh Human Rights in Trade Policymaking*. New York: Cambridge University Press, 2007.
7 Susan Ariel Aaronson, "Human Rights, "in Jean-Pierre Chauffour and Jean-Christophe Maur, Preferential Trade Agreement Policies for Development: A Handbook (World Bank, 2011)
8 "Live at State: Internet Freedom and US Foreign Policy," www.state.gov/r/pa/ime/178707.htm; and the TOR project, designed to help individuals anonymously use the Internet. http://en.wikipedia.org/wiki/The_Tor_Project
9 http://ciri.binghamton.edu/; http://econ.worldbank.org/WBSITE/EXTERNAL/EXTDEC/EXTRESEARCH/0,,contentMDK:20388241~menuPK:665266~pagePK:64165401~piPK:64165026~theSitePK:469382,00.html.

Author

Susan Ariel Aaronson is Associate Research Professor, Elliott School, GWU and a visiting Scholar at the Quality of Governance Institute, Gothenberg, Sweden. She is the author of 6 books and numerous articles on trade and human rights.

Taking stock of CAADP in West Africa: state of play and challenges ahead for the region

Dolly Afun-Odigan

Agriculture, food security, and rural development: buzzwords that seem to be trending in the last few years. Most would agree that this is a welcome development, especially after decades of relegating Africa's agricultural development to the background. With the endorsement of the Comprehensive Africa Agriculture Development Programme (CAADP) by African Heads of States in 2003, the continent's agriculture and food security agenda returned to the spotlight.

Just going by numbers, one can say that CAADP has progressed quite well at the national level: over 27 countries have launched compacts and are at one stage or the other of developing or implementing an investment plan. The regional dimension, however, has not progressed at the same rate. Most Regional Economic Communities (RECs) have yet to launch a regional compact, despite of the fact that key actors recognize the importance of regional action on agriculture[1]. Yet, there are important lessons to learn from the different African regions on their approaches to food security, especially within the framework of CAADP. As momentum around regional CAADP increases, it is important to identify what concrete actions are needed, clarify the roles different stakeholders should play and jointly agree on how support can be coordinated.

Starting with the Economic Community of West African States (ECOWAS), GREAT will publish a five part series to share findings from a regional CAADP mapping exercise[2]. Each monthly article will highlight lessons learned from one of four African regions (COMESA, EAC, ECOWAS and SADC). A fifth final article will summarize and present crosscutting lessons relevant for successful implementation of the CAADP process at the regional level.

The ECOWAS Agricultural Policy: pioneering regional CAADP

Agriculture plays a key role in most West African economies. The sector represents on average 36 percent of national GDP and employs over 60 percent of the active labour force in the region[3]. Yet food security still remains a challenge across the region. The food crisis in Sahel parts of the region is a recent reminder of the urgency for and importance of concrete and well delineated regional action to improve agricultural development and address impediments to food security in West Africa.

ECOWAS is seen as a region that had made considerable progress in articulating a regional approach for agriculture within the CAADP framework. As far back as 2001, ECOWAS initiated and adopted a framework of guidelines for the creation of a common regional agricultural policy for West Africa (ECOWAP). This conveniently coincided with the period when CAADP gained momentum and global interest. By 2005 the ECOWAP was adopted as the reference framework for CAADP implementation at the regional level in West Africa. The ECOWAS CAADP regional compact was launched in 2009, followed by the Regional Investment Plan (RAIP) in 2010. A Regional Agency for Agriculture and Food (RAAF), Regional Fund for Agriculture and Food (ECOWADF) and a Strategic and Operational Plan is currently being set up to implement the ECOWAP and its RAIP. The ECOWAS Commission was also quite proactive in supporting its member states along the CAADP process at the national level: it provided technical support and financial assistance of over USD 0.4mn to each member state to organize the national CAADP compact and investment plan formulation process.

West Africa's regional CAADP processes show that it is possible to catalyze political and investment traction for regional cooperation on agriculture. The ECOWAP process provided a rallying point for a wide range of key actors, from national governments to the ECOWAS Commission, to the regional farmers representation, and development partners- to align to the region's agricultural development priorities.

But the process has also shown that drafting a regional compact document requires both regional and national actors think through and jointly identify what issues can best be addressed through regional actions, and 'task-divide' on the identified priority actions. Coherence between the ECOWAP and national CAADP compacts is not visible enough. Although no analysis has been undertaken to check to what extent national compacts complement the ECOWAP, it is generally understood that the national compacts of ECOWAS member states are predominantly inward looking and do not sufficiently recognize the cross border linkages that exist between member states.

The ECOWAP also includes interventions, such as the co-financing of social safety nets, which many believe could be better dealt with by member states and their compacts, rather than the regional compact. There is space to clearly identify the roles and the responsibilities of the member states versus ECOWAS Commission vis-à-vis the ECOWAP.

Beyond member states and the Commission, other key actors for the implementation of the ECOWAP include farmers and the private sector. In general, the ECOWAS Commission has been commended for promoting an inclusive and multi-stakeholder approach and there is a perception of broad based ownership for the ECOWAP. The regional compact preparation process served as a platform to bring together regional and national Non-State Actors (NSA), giving them a somewhat stronger role and voice. The Network of Farmers' and Agricultural Producers' Organisations of West Africa (ROPPA), the regional farmers organization, and other

agro-businesses were closely involved in the compact development process. But there is an opportunity for increased private sector collaboration in the monitoring and implementation phase of the RAIP. ECOWAS' experience shows that the political will and ability of a REC to drive CAADP is a major determining factor for the success of this framework at the regional level. Nevertheless, the Commission still struggles with institutional weaknesses and capacity deficits, which has led some donors to channel funds through non-governmental organisations, UN-type or multilateral institutions rather than the ECOWAS Commission or the ECOWAS Bank for Investment and Development (EBID). There is a feeling that financing the institutional capacity of the ECOWAS Commission and other agencies affiliated with ECOWAP should be the responsibility of member states, not donors.

On the donor side, the ECOWAP/ RAIP has provided a good rallying point for them to align to the region's priorities and strengthen their harmonization. A regional Donor Working Group (DWG) has been set up around the ECOWAP to support regional initiatives and plans around CAADP. Donors and the ECOWAS Commission generally perceive this as a well-functioning and useful platform. The DWG has adopted its own rules of procedure, and meets once a month. It presents a good platform to share information among donors and formulate joint positions for discussions with ECOWAS. Staff members of ECOWAS's Department of Agriculture and Rural Development (DARD) often attend the working group's meetings. Yet, improvements can be made. Because regional development partner representations are often spread across countries in the regions, information exchange between national-regional levels is still fragmented. Actual harmonization still remains a challenge.

The implementation of regional CAADP has the potential to significantly contribute to overall regional integration and cooperation efforts. But bottlenecks for regional integration are still very present in ECOWAS. Mismatches between regional processes and dynamics and the gap between regional commitments and their application at the national level, amongst other problems, could limit the potential of ECOWAP to promote regional agricultural cooperation and development.

In this regard, an obstacle to regional integration is that 'regional thinking' is not institutionalized in many member states, and arbitrary unilateral policy measures are still common and contradict basic principles of regional cooperation. Because agriculture is inherently linked to other sectors, slow action on regional trade, infrastructure, and other related regional initiatives have consequences for regional food security and agricultural development.

What next? Challenges ahead

ECOWAS is a pioneer in developing regional approaches for CAADP. Nevertheless, some challenges remain in order to fully capitalize on the lead that ECOWAS has taken in developing regional CAADP approaches. The first of these challenges concerns the relationship between regional and national level CAADP processes. As stated above, the links, synergies and coherence between these two levels could be strengthened. What, exactly, should be undertaken regionally and what should be undertaken nationally is still not entirely clear in ECOWAS' CAADP. This suggests that there is clearly for some room for improvement on the application and definition of the subsidiary principle in the region.

Secondly, the important role that NSAs have played in the CAADP process has to be kept up and deepened in the monitoring and implementation phase. The experience of involving non-state actors has been, on the whole, satisfactory, and their involvement must be ensured in the future. Inviting national farmers and agro-business employers associations more often to take part in regional processes could be a first step in this regard.

Thirdly, the capacity of the ECOWAS Commission to implement the RAIP is uncertain. The DARD, in charge of implementation the regional investment plan, is currently understaffed and weak. This should be addressed in the ongoing institutional assessment of the ECOWAS Commission. It is uncertain whether the creation of the Regional Agency for Food and Agriculture, the newly announced regional agency in charge of implementing the PRIA, could help fill this gap. In any case, institutional coordination between different bodies in ECOWAS will be key in determining the ability of the Commission to deliver on the RAIP.

Fourthly, donors could step up efforts to reduce the bewildering amount of programmes and projects, currently existing and build on the working group present in the region to align and harmonize their programs. Joint programming is a promising option that should be explored.

Finally, the linkages that exist between ECOWAP/CAADP and other areas of regional integration, which will necessarily impact food security, have to be taken into account. Recognizing and capitalizing on the synergies that exist between cross-cutting sectors, such as trade, infrastructure, natural resource management, etc and agriculture are relevant for achieving the objectives of ECOWAP. These synergies could be explored in more detail during the ECOWAP/ RAIP implementation process and through multi-stakeholder dialogues, where actors will be able to discuss coherence, complementarity and coordination of specific ECOWAP actions with other policies and investments. This could be facilitated by inter-departmental and cross-sectoral information exchange and coordination, within the ECOWAS Commission, regional and national bodies, and within development partners' departments and agencies.

This article is based on ECDPM's Mapping Study of CAADP in ECOWAS available at: www.ecdpm.org/dp128

Notes

1 The 7th CAADP Partnership Platform in Yaoundé recognized the need for accelerating the development and implementation of regional CAADP compacts
2 ECDPM was given the mandate by the CAADP Development Partners Task Team (DPTT) to conduct a series of mapping exercises of the CAADP regional process in COMESA, SADC, EAC and ECOWAS. The mapping assessed the major challenges and opportunities for the design and/ or implementation, as the case may be, of a regional CAADP compact.
3 ECOWAS Commission. 2011. Strategic and Operational Plan of the ECOWAS Commission for Governance, Coordination and Monitoring and Evaluation of the Regional Agricultural Policy of ECOWAS – (ECOWAP/CAADP) 2011-2015. Abuja: ECOWAS Commission.

Author

Dolly Afun-Odigan is Policy Officer for the Food Security Programme at ECDPM

EPA Update

Melissa Dalleau, Policy Officer Trade & Economic Governance at ECDPM

All ACP

Parliamentarians discuss EPAs

A European Delegation of parliamentarians from the International Trade Committee of the European Parliament visited Kenya and Zambia this March, in order to monitor EPA negotiations in the EAC and ESA regions, and discuss their potential impact. Parliamentarians used the opportunity of these visits to meet with stakeholders -- government authorities, business and trade organisations, and representatives from civil society .[1]

On 22-24 February 2012, the Members of the ACP-EU Joint Parliamentary Assembly (JPA) from the Southern Africa region of the ACP Group and their European Parliament counterparts met in Lusaka. They reemphasized the importance for EPAs to be tailored to enhance Regional Integration objectives, and of the role of "elected representatives to enhance clarity on the EPA process[2]".

These Parliamentarian discussions should be seen in the light of European Commission's proposal to amend the EPA Market Access Regulation 1528/2007 to exclude from its remit countries that have not taken the necessary steps to ratify and implement their agreement as from 1st January 2014. Following the Lisbon treaty, the European Parliament will have the possibility to amend, adopt or reject the proposal.

The imposition of this deadline has been strongly criticized among ACP stakeholders, not least in Parliamentarian circles. Indeed, meeting in the framework of the 27th session of the ACP Parliamentary Assembly, ACP Members of Parliament called for flexibility on the side of the EU[3]; a position which echoes the one of ACP Secretary General M. Ibn Chambas, who, in his address to the Assembly, insured that " [The ACP secretariat] continue[s] to use quiet diplomacy and moral authority to prevail on our EU colleagues to exercise a greater degree of creativity and flexibility – and to tamper the calculus of economic self-interest with a dose of empathy, enlightenment and practical reason[4] " . This ACP Parliamentary Assembly session was held from 20-22 March, in preparation of the 23rd session of the ACP-EU JPA -- which will be held in Horsens (Denmark) from 28-30 May 2012.

West Africa

EPA meetings postponed in the region

To our knowledge, no EPA meeting has been held on the EU-West Africa EPA this month. The negotiation sessions planned at Technical and Senior Officials level in Brussels from 13-17 February have been postponed (partly due to the recent institutional changes within both the UEMOA and ECOWAS Commissions).

Among the remaining bottlenecks in the negotiations of a regional agreement, one could mention: the revised market access offer tabled by the West African side, a few issues related to the EPA Development Programme (EPADP), the definition of third countries concerned by the MFN clause, the non-execution clause, the status of the Community Levy, subsidies and domestic support, as well as Art. 106 addressing the question of Customs Unions between the EU and third parties.

The next round of negotiations on Rules of Origins is now foreseen from 26-28 March in Brussels. Discussions on the text of the agreement and on outstanding and contentious issues should occur from 17-25 April, also in the Belgian capital. The Regional Preparatory Task force will meet simultaneously on the 17 April to address issues related to the EPADP.

Central Africa

EPA Negotiating Roadmap for 2012 soon to be finalised

No EPA negotiating session has been held between the parties since the last round held in Bangui (CAR) in September 2011.

Following regional meetings held from 31 October to 4th November in N'Djaména (CAR), the region has however elaborated its regional market access offer, which has been transmitted to the EU.

The draft negotiating roadmap for the year 2012, which has been elaborated jointly by the CEMAC and CEEAC Secretariats in Bangui earlier this year, is currently under consideration in Brussels. Specific venues and dates for future negotiating sessions remain to be specified. In the meantime, Central Africa has submitted to the Ministers a proposition of ministerial consultations to validate the progress made in the region during the year 2011.

SADC

SADC-EU joint negotiating sessions postponed

No meeting between the parties has been held on the EU-SADC EPA since the last technical and senior official meetings that took place in Johannesburg from 10-16 November. Following this negotiating round (which addressed questions of market access, services and investment, geographical indications and Rules of Origins - see our previous EPA update for a report on this meeting), SADC and EU technical experts and Senior Officials should have met again in early February and early March this year in the Southern African Region. These two meetings have however been postponed to later dates. Although discussions are currently being held on when the next Joint Seniors Officials Meeting could take place, no further information is available as GREAT goes to press.

ESA

No joint EPA meetings held since November last year

The joint ESA-EU technical and senior officials negotiating sessions originally foreseen in March 2012 have not yet taken place. No further information is available in this respect. Despite a few progress made during the last joint negotiating session held in Mauritius in November 2011 (notably on questions related to Sanitary and Phyto-Sanitary Standards (SPS) and Technical Barriers to Trade (TBTs) on which negotiations have been finalised), a few issues, among which the controversial issues of export taxes, rules of origin and special agricultural safeguards, continue to seriously hamper the pace of regional negotiations. Discussions on trade in goods, services and trade-related assistance should also be on the agenda of the parties during future encounters. The question of the additionality of funds in the context of development cooperation is also one that continues to divide the two parties.

Implementing the IEPA: MMSZ go one step further

In the meantime, a seminar aimed at discussing the beginning of the

implementation phase of the IEPA signed by Mauritius, Madagascar, the Seychelles and Zimbabwe (MMSZ) in August 2007[5], has been held, mid-March, in Mauritius. Gathering representatives from the EU, as well as governmental authorities and representatives from the private sector of the four countries mentioned above, this seminar was not only an opportunity to discuss advantages and challenges potentially deriving from an EPA, notably for private sector actors; but also an occasion to explore options for further enhancing trade in the region.[6]

EAC

EAC-EU negotiators continue to work towards the finalisation of the EPA negotiations by Summer 2012.

Following the last technical and senior officials (SO) level meeting between the EU and the East African Community (EAC) EPA group that was held in Brussels from 12-15 December 2011, an EAC-EU EPA Experts Intersession meeting was held from 20-24 February in Kigali, Rwanda, to discuss provisions related to Rules of Origin (RoO) and the text on "Institutional Arrangements, Dispute Settlement and Final Provisions".

With regards to the Protocol on RoO, whilst some progress has been achieved during the Intersession meeting on a number of articles, the parties have not yet reached an agreement in areas such as cumulation, administration cooperation, and the timeframes for the verification of origin and for the suppliers' declarations. According to sources close to the negotiations, all provisions related to RoO for fisheries products also remain unsettled. Beyond the Protocol, discussions also focused on Annex II of the agreement, including on product specific rules. Progress has been made on agricultural and processed agricultural products (chapters 1-24 and chapter 35). However , a few chapters/headings remain to be negotiated.

As agreed during the December SO negotiating session, the EU has sent comments on the EAC Annex II proposals for RoO for Chapters 25-97 covering industrial products. The Region expressed during the February Experts Intersession meeting its intention to conduct national and regional consultations on this subject in April this year.

With regards to the text on "Institutional Arrangements, Dispute Settlement and Final Provisions", the European Commission submitted during the Kigali meeting their positions on most parts of the text but on Title I related to Institutional Arrangements and a few articles regarding the General Exceptions, on which the EU agreed to come back to the EAC in March. The Region should now consider the EC proposals ahead of the next joint technical officials meeting that will be held between the parties from 18-20 April 2012 in Brussels, Belgium. This meeting should be an opportunity for parties to discuss all remaining issues in the negotiations, but the question of RoO, which should be kept out of the agenda to leave the time for the region to hold the above-mentioned national and regional consultations on RoO for industrial products.

The next technical and senior officials level negotiating sessions will then be held in Mombasa, Kenya, respectively from 8-12 May 2012 and 14 May, to consider all issues under negotiations. A Ministerial meeting should then in principle be scheduled to finalize the negotiations by summer 2012.

EAC high-level workshop on interactions between WTO and EPA Negotiations asks for stronger role of the EAC Secretariat

Members of the East African Legislative Assembly, EAC National Parliaments, EAC Ambassadors from the Partner States' Missions in Brussels and Geneva, Permanent Secretaries, WTO and ACP representatives, as well as stakeholders from the business community and civil society met for an EAC high level workshop organized in Arusha, Tanzania, from 13-16 February. The workshop aimed at making specific recommendations on the EPA negotiation process in the region, notably in light of developments at the WTO.[7]

Participants clearly expressed their positions with regards to ongoing EPA negotiations, notably urging to leave out of the agreement provisions related to export taxes, the so-called "Singapore issues", trade in services, as well as the MFN, standstill, and non-execution clauses. They also asked for a strengthened trade coordination and negotiation structure in the context of the EPA negotiations, soliciting the Council of Ministers to consider consolidating the role of the EAC Secretariat. It considered that its role should be akin to the one of a "think tank [that would] support the partner states trade negotiations with evidence based and research positions[8]" in the EPA negotiations.

More coordination between various stakeholders (e.g. between negotiators and Geneva/Brussels-based ambassadors, or between negotiators and private sector actors) and the necessity to conduct a thorough impact assessment of the EPA on the long term industrial development of the region, were also among the recommendations made by the high-level participants.

Caribbean

No specific meeting concerning the implementation of the CARIFORUM-EU EPA has taken place in the past month. Judging from the discussions on the possible reforms to be brought to the CARICOM Secretariat during the 23rd Inter-Sessional Conference of CARICOM Heads of Government held in Suriname this March[9], the region seems currently busy dealing with its own regional governance matters.

This said, in line with the requirements of Art. 74 of the concluded EPA, according to which "the parties shall review the investment legal framework, the investment environment and the flow of investment between them[10] ", a report, commissioned by the Regional EPA implementation Unit, has recently been completed, to" provide appropriate technical guidance to allow informed decisions to be taken in respect of the Region's obligations[11]" and making concrete suggestions on how to ensure an effective monitoring of investment flows between the parties.

Among the main bottlenecks that continue to hamper the smooth implementation of commitments taken in the context of the agreement, the latter document mentioned, inter alia, heavy government bureaucracy, the lack of regional harmonization when it comes to national legal systems of CARIFORUM countries and national investment legislations, as well as the lack of common policy when it comes to investment promotion[12].

Warning about the limited knowledge and awareness of the private sector (both in the region and in Europe) on the potential benefits of an EPA, the report emphasizes the possibilities to improve communication around the EPA through different means, including the definition of a methodology to gather and process statistical information on FDI in CARIFORUM Member countries[13].

Pacific

2nd Trade Committee Meeting under the Interim EPA between EU and PNG discusses impact of "global sourcing" derogation for fisheries products

The second meeting of the EPA Trade Committee under the Interim EPA was held in Port Moresby, Papua New Guinea (PNG) on 24 February – a meeting to which Fiji (the only other country with PNG to have signed such an interim EPA) was not participating, as it has not yet applied the agreement. This meeting was an opportunity to assess and report on progress made in the implementation of tariff commitments on the side of PNG, which reported that 77.1% of (HS8) tariff-lines had already been eliminated, whilst duties on the remaining 5.1% tariff lines to be liberalized in the context of the IEPA should be removed in accordance with a gazettal notice to be released by PNG at the end of March 2012.[14]

The parties also concluded the process of consultation on the implementation of the special derogation to the rules of origin for fishery products within the framework of the Trade Committee.. It should be recalled that the EU had agreed under the Interim EPA concluded in 2009 to allow some Pacific countries to source fresh fish -- regardless of where it was caught and by which vessel -- and re-export it under preferential EPA rates to the EU in processed form (canned tuna or frozen cooked loins), under the so called "global sourcing" provision.

This consultation was based on a report examining its development effects, as well as its impact on conservation and the management of fisheries resources.[15] According to the report, up to now, PNG made only limited use of the derogation, but five projects that should create 53,000 jobs by 2016 are in the pipeline.

On a related matter, the joint Trade Committee agreed that the two parties should continue their discussions, including in the framework of development cooperation, on how to handle potential preference erosion on fisheries products and palm oil that may follow from the conclusion of Free Trade Agreements between the EU and third countries – preference erosion that may negatively impact on PNG's economy.[16]

As reported in the agreed minutes from the Trade Committee meeting, the encounter was also an occasion for the EU to submit various documents with regards to Rules of Procedures in the context of the agreement, as well as to inform the Committee about the results of a recent two day seminar held in PNG with representatives of PNG private sector to raise awareness about the agreement and the potential advantages the latter may bear for their activities.[17]

The PNG government also indicated it is considering whether to deepen its interim trade agreement with the EU to issues such as services and investment on its own or collectively with the region. However, few other Pacific countries have expressed interest in joining the IEPA, and none have as yet formally requested the possibility to do so.

As reported in the pages of our last issue of GREAT Insights, following their encounter in Brussels in November 2011, EU and Pacific ACP (PACP) states' representatives agreed to hold their next technical level negotiating session in the spring of 2012 to discuss the key contentious issues that continue to hamper the conclusion of a full regional EPA, including the unsettled questions of the MFN clause, the non-execution, infant industry and standstill clauses, export taxes, trade in goods, development cooperation and the sensitive question of rules of origins in the fisheries sector .

Notes

1 John Oyuke. European MPs in drum up support for EPAs. The Standard. 20 March 2012.
2 final communique of the 7th Regional Meeting of the ACP-EU JPA.
3 ACP Secretariat Press Release. ACP Members of Parliament urge more understanding from Europe on free trade agreements. 22 March 2012.
4 Address of the Secretary General at the 27th Session of the ACP Parliamentary Assembly, 20 March 2012, Brussels. ACP Press Release.
5 One should recall here that while at the end of 2007, six ESA countries have initialed an EPA, only the four countries here mentioned have signed their Interim EPA.
6 Maurice souhaite un accord de partenariat économique complet entre l'Afrique orientale et australe et l'UE. Xinhua, via CRI online.
7 EAC High level Workshop on interaction between the WTO and EPA negotiations ends in Arusha / Participants say support EAC Secretariat to become think-tank for EPA negotiations. February 16, 2012/African Press Organization (APO) via StarAfrica.com.
8 IBID.
9 CARICOM heads of Government meet in Suriname: Restructuring and reform high on Agenda. CARICOM Press Release 52/2012 (05 March 2012)
10 Economic Partnership Agreement between the CARIFORUM states, on the one part, and the European Community and its Member States, on the other part, published in the Official Journal of the European Union on 30 October 2008
11 Report: EPA provides comprehensive framework to improve flow of investments CARICOM Press release 78/2012 (16 March 2012).
12 Ibid.
13 Ibid.
14 Agreed Minutes of the second Meeting of the Trade Committee between Papua New Guinea and the European Commission under the Interim Partnership Agreement between the Pacific States of Papua New Guinea and Fiji and the European Union. Port Moresby, 24 February 2012.
15 Amanda Hamilton, Anthony Lewis, Liam Campling. Report on the Implementation of the derogation to the standard rules of origin granted to the Pacific ACP States in the framework of the Interim Economic Partnership Agreement. FWC COM 2011 RFS 2011/266449. Linpico sarl. (financed by the EU). December 2011.
16 Agreed Minutes of the Trade Committee meeting (see footnote 13)
17 For more information on the specific agenda and outcome of the November negotiating session held between the parties, please refer to our previous EPA update, available online at: http://www.ecdpm.org/great.

Monthly Highlights from ECDPM's Talking Points

www.ecdpm.org/talkingpoints

Sorting out the what, how, and who for regional action on agriculture in Africa
In 2003, African Heads of States launched the Comprehensive Africa Agriculture Development Programme (CAADP), as an effort to renew interest in and prioritize the continent's agriculture agenda, as well as put food security objectives at the fore of national, regional, continental and global processes. Progress on CAADP has been reviewed every year since 2006 at the CAADP Partnership Platform meeting. During the Platform meeting, various stakeholders who contribute to, have vested interest in or are associated with CAADP process, have an opportunity to coordinate collective and mutual responsibilities for CAADP implementation (...)

Beyond development as a business by-product?
That the private sector is important, if not key, to economic development is nothing new. However, with the increasing rhetoric on the need to "enhance the role of the private sector in development", events around this topic are mushrooming. Business Europe organized a seminar in Brussels on March 15th, with the European Commission, the European Investment Bank, as well as business federation and private sector company representatives present. While we have commented before on the need to distinguish "which" private sector we are talking about, here we were very much discussing how the EU private sector (...)

EC Communication on Trade, Growth and Development: A good start or a missed opportunity?
On Friday 27 January the European Commission published its Communication on "Trade, Growth and Development: Tailoring Trade and Investment Policy for Those Countries Most in Need" proposing "concrete ways to enhance synergies between trade and development policies". It contains all the right words, but does not say much new. As is often the case with EC Communications, the document brings together a breadth of content from across different Directorates within the EC. This leads to a relatively un-controversial document that appears to draw on the main emerging consensus in both fields of trade and development (...)

African mineral wealth: turning stones into bread...
Which policy maker, in particular at the time when many developed countries are struggling with budgetary constraints and have little left for development support, would not agree that it has become imperative to transform the rich African mineral resources into long-term sustainable development? African leaders have placed the bet to attain this objective by 2050. Traditional development partners got the message and are making efforts to strengthen their partnership with Africa. This is to some extent, in reaction to the increasing role of emerging players in Africa. The future looks promising In recent years, the (...)

Africa is in desperate need for greater unity and stronger leadership to realise its pan-African ambitions
As noted by the Economist last December, and confirmed by a recent report by Invest AD and the Economist Intelligence Unit, Africa is on the rise to become one of the most attractive regions for investment and a pole for growth. The challenge is to transform these opportunities into concrete deliverables for equitable, inclusive and sustainable development throughout the continent. Committed political drive and vision will be key in this process. This week's African Union Summit of Heads of State was meant to bolster such Africans aspirations. The Summit was dedicated to providing the highest (...)

Monthly Highlights from ECDPM's Weekly Compass Newsletter

www.ecdpm.org/weeklycompass

The relation between roads and poverty
Infrastructure, mostly seen as a responsibility of the public sector, lacks funding in many developing countries and private investments are often far from sufficient to fill the financing gap. A new report published by the Private Infrastructure Development Group reviews how support from Development Finance Institutions helps with infrastructure funding and provision. It also analyses its impact on development outcomes and finds that while Development Finance Institutions seek to enhance economic growth, they do "far less" to directly impact poverty. The report also provides recommendations for how to better target infrastructure investment to be pro-development.

BRIC's aid reduces poverty, but debt sustainability is a concern
The infrastructure focus of BRIC (Brazil, Russia, India, and China) development financing has benefited Low Income Countries by alleviating key bottlenecks, boosting export competitiveness and making goods and services more affordable to consumers according to this paper IMF working paper by Nkunde Mwase and Yongzheng Yang. Continued cooperation can increase economic growth and reduce poverty in the long run, but there is concern over debt sustainability, pace of employment creation, labor practice, and competition with local firms.

Arab youth on Chinese payroll
One of the root causes of the uprisings in North Africa last year was unemployment among a large part of the population, the youth. Their unemployment rate in the region is 24%, and notably higher than in other parts of Africa where only 12% of young people don't have a job. Dealing with this problem requires coherent national socio-economic policies by North African governments and one way of facing the challenge is securing 'smart' foreign direct investment - FDI that brings economic benefits and also guarantees job creation and skills transfer. A new paper published by the African Development Bank and co-authored by ECDPM's Faten Aggad-Clerx looks at the role of China in reducing youth unemployment in North Africa. Two case studies from Algeria and Egypt provide a comparison on how Chinese investments have contributed to job creation in both countries. The paper provides policy recommendations to North African governments.

"Africa can embark on industrialization, just as China and India"
An issues paper by the African Union Commission and UNECA, prepared for the upcoming annual meeting of African Finance Ministers, examines key institutional and policy factors that are shaping Africa's economic growth. It highlights the opportunities for the continent to become "a pole of global growth", but to unleash this potential, African countries need to effectively address a set of constraints. Urgent and determined action of leaders is needed, for example when it comes to providing critical infrastructure or human capital development, the paper says.

ACP-EU Trade Calendar

April

18-20 EAC-EU EPA joint technical officials meeting, Brussels, Belgium

17 Meeting of the West Africa Regional Preparatory Task Force on the EPA Development Programme, Brussels, Belgium

17-25 West Africa-EU joint EPA negotiating session, Brussels, Belgium

23 Pacific ACP Meeting on Market Access, Tongatapu, Tonga

24-25 Meeting of the Pacific ACP Technical Working Group on Fish, Tongatapu, Tonga

26-27/30 Meeting of the Pacific ACP Technical Working Group on Legal, institutional and capacity Building

TBC EAC Regional Experts meeting (in the region) on RO for industrial products (harmonization of the regional position).

May

1-2 Pacific ACP Trade Officials Meeting, Tongatapu, Tonga

3-4 Pacific ACP Trade Ministers' Meeting, Tongatapu, Tonga

8-12 EAC-EU Technical Officials Meeting, Mombasa, Kenya

9-10 Forum Trade Officials Meeting (FTOM), Majuro, Marshall Islands

11 Forum Trade Ministers' Meeting (FTMM), Majuro, Marshall Islands

14 EAC-EU Senior Officials Meeting, Mombasa, Kenya

23 Meeting of the Delegation to the ACP-EU Joint Parliamentary Assembly, prior to the 23rd session of the ACP-EU JPA, Strasbourg

28-30 23rd Session of the ACP-EU JPA, Horsens, Denmark

TBC Third Meeting of the COMESA-EAC-SADC Tripartite Trade Negotiating Forum (TTNF)

June

11-13 95th Session of the ACP Council of Ministers, Port Vila, Vanuatu

14-15 37th Session of the ACP-EU Council of Ministers, Port Vila, Vanuatu

Resources

Billions less for development? Analysing drivers and consequences of possible 'zero growth' scenarios for the 11th European Development Fund 2014-2020, Ulrika Kilnes, ECDPM Briefing Note 35, March 2012, www.ecdpm.org/bn35

More or less? A financial analysis of the proposed 11th European Development Fund, Ulrika Kilnes, Niels Keijzer, Jeske van Seters and Andrew Sherriff, ECDPM briefing Note 29, March 2012, www.ecdpm.org/bn29

What future for the ACP and the Cotonou Agreement? Preparing for the next steps in the debate, Geert Laporte, ECDPM Briefing Note 34, March 2012, www.ecdpm.org/bn34

Where is the Paris Agenda heading? Changing relations in Tanzania, Zambia and Mozambique, Bertil Odén and Lennart Wohlgemuth, ECDPM Briefing Note 21, February 2011, www.ecdpm.org/bn21

Chinese Investments and Employment Creation in Algeria and Egypt, Chris Alden and Faten Aggad-Clerx, African Development Bank Economic Brief, February 2012, www.ecdpm.org

Regional approaches to food security in Africa : The CAADP and other relevant policies and programmes in COMESA, SADC, EAC and ECOWAS, Francesco Rampa, Jeske van Seters, Dolly Afun-Ogidan, ECDPM Discussion Paper 128, February 2012, www.ecdpm.org/dp128

Harmonisation and mutual recognition of regulations and standards for food safety and quality in Regional Economic Communities: The case of the East African Community (EAC) and the Common Market for Eastern and Southern Africa (COMESA), Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), March 2012, www.giz.de

Development Finance Institutions and Infrastructure: A Systematic Review of Evidence for Development Additionality, Stephen Spratt and Lily Ryan Collins, Institute of Development Studies & Engineers Against Poverty, January 2012, www.ids.ac.uk

Turning Around CARICOM: Proposals to Restructure the Secretariat, Richard Stoneman, Justice Duke Pollard, Hugo Inniss, Landell Mills LTD, January 2012, www.caricom.org

Effectiveness of European Union development aid for food security in sub-Saharan Africa, European Court of Auditors, March 2012, eca.europa.eu

Growth with Resilience: Opportunities in African Agriculture, The Montpellier Panel, March 2012, www3.imperial.ac.uk

Good Governance as a Concept, and Why This Matters for Development Policy, Rachel M. Gisselquist, WIDER Working Paper 30, March 2012, www.wider.unu.edu

Mapping support for Africa's infrastructure, Kaori Miyamoto, Dambudzo Muzenda, OECD, March 2012, www.oecd.org

The Impact of the European Debt Crisis on Africa's Economy, UNECA and AUC, Background Paper, www.uneca.org

BRICs' Philosophies for Development Financing and Their Implications for LICs, Nkunde Mwase and Yongzheng Yang, IMF Working Paper, March 2012, www.imf.org

Regional Trade and Employment in ECOWAS, Erik von Uexkull, International Labour Office, March 2012, www.ilo.org

Coherence, coordination and cooperation in the context of financing for development, Economic and Social Council Secretary General, February 2012, www.un.org

GREAT Insights is published by ECDPM

Editor: Sanoussi Bilal

Editorial team:
Quentin de Roquefeuil
Melissa Dalleau, Anna Rosengren

HEAD OFFICE
SIÈGE
Onze Lieve Vrouweplein 21
6211 HE Maastricht
The Netherlands *Pays Bas*
Tel +31 (0)43 350 29 00
Fax +31 (0)43 350 29 02

BRUSSELS OFFICE
BUREAU À BRUXELLES
Rue Archimède 5
1000 Brussels *Bruxelles*
Belgium *Belgique*
Tel +32 (0)2 237 43 10
Fax +32 (0)2 237 43 19

Further information or to subscribe to our E-newsletters, visit www.ecdpm.org/infocentre
To order a hard copy of an ECDPM publication, e-mail info@ecdpm.org

Photos:
ECDPM photo collection and European Union (page 6 & 12)

European Centre for Development Policy Management

ecdpm