

ACP/EU Economic Partnership Agreements (EPAs)
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“Boom or Doom for Zambia”

Response to EU on overall key issues and alternatives-refocusing on development
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Why have the EPA negotiations come about?

Trade negotiations have come about because there is a need to have the EU-ACP trade relations to be WTO compatible. The WTO rules that govern the provision of unilateral trade preferences are contained in the “Enabling Clause” of the GATT. The Enabling Clause provides for the granting of trade preferences so long they only differentiate between countries according to their level of development. This means that any preferential trade agreement must either grant preferential access to all developing countries, or to all LDCs. By providing preferential access to only to ACP countries, excluding non ACP LDCs and non ACP developing countries, the Lome Conventions were incompatible with the Enabling Clause. Since 1995, the legality of the EU’s banana and sugar trade regimes have been challenged by several developing countries, like Brazil, Ecuador, Mexico, Thailand among others, which have been denied similar market access to the EU market as the ACP countries.

In response to these legal challenges, the EU, with support of the ACP successfully applied for a Waiver from the WTO for the extension of trade preferences granted under the Cotonou Agreement. The Waiver was established in November 2001 and will expire on 31 December 2007. That is how and why the deadline to conclude the EPA negotiations by 31 December 2007 has come about.

The key principles of WTO compatibility:

1. Enabling Clause
2. Article XXIV of GATT. The key provision of this Article is the principle of reciprocity-that all parties to a Regional Trade Agreement (RTA) must liberalise trade between them. In effect, they must enter a ‘Free Trade Agreement’ (FTA). The two main aspects to gauge reciprocity in a RTA are:-
 - a. Liberalisation of “substantially all trade; and
 - b. Implementation of concessions over a “reasonable length of time”

From the view point of EU the EPA is being designed to conform to Article XXIV of GATT. However conformity with Article XXIV is not straightforward because the interpretations of these two requirements of Article XXIV remains ambiguous and are currently subject to negotiations under the WTO Doha Round.

The European Commission interprets conformity with Article XXIV of GATT has largely influenced their view of the EPA structure, scope, ambition and pace of implementation of the EPAs. This also determines the level of reciprocity that is expected from ACP, including how many products ACP will be able to exclude from liberalisation and how fast ACP will have to liberalise its markets.

But it is also very important to emphasize that Article XXIV of GATT only concerns the liberalisation of merchandise trade. Therefore, nothing in the WTO would require EPAs to cover trade in services and trade related disciplines on investment, competition, government procurement or intellectual property.

The EU has generally been dismissive and patronizing in its EPA negotiations with the African Caribbean Pacific (ACP).

Some of the pertinent fundamentals for the ACP in the EPA are enhanced development assistance, aid for trade, level playing field, removal of agricultural subsidies and simple and beneficial rules of origin.

In November 2005, Peter Mandelson the EU Trade Commissioner in a lecture to the London School of Economics said "Trade will not promote development without parallel investment in the supply side". **So Zambia is asking- where is the beef on EU's Aid for Trade financing?**

EU's own member state, the United Kingdom through its ministers, Ian McCartney the Trade minister and Gareth Thomas the Development minister in an open letter in November 2006 to Mandelson and Louis Michel the EU Development Commissioner said "rules of origin (RoO) determine the real level of market access which is provided under trading schemes.

In the EU's current schemes these RoO are out of date, complex and restrictive, impeding take up by developing countries". Since the time when Pascal Lamy was the EU Trade Commissioner, and now Mr. Mandelson, EU has promised a revision of the RoO, but to no avail. **So Zambia is asking where are the revised RoO?**

So why am I saying the EU is patronizing? The EU's Deputy Director of Trade, Karl Falkenburg and the Director General for Development, Stefano Manservigi set out its absurd response to the Fijian Trade Minister saying in response to the Pacific regions proposals to the EU on EPA, that "in your draft EPA submission detailed development co-operation provision form integral part of the text.... as you know this is not acceptable to us". **So what does that tell us in Zambia?**

The EU says that the costs of adjustment will come from the 10th European Development Fund (EDF) funding cycle 2008 to 2013. For which Euro 22.7 billion has been pledged. However for the EU to maintain its existing aid portfolio it will need Euro 21.3 billion, leaving Euro 1.4 billion for ACP adjustment costs, when for instance a 2006 study by the Commonwealth Secretariat indicates that the ACP will need about Euro 9.2 billion.

The same study further shows that on average only 34.5% of actual development assistance is disbursed during the EDF 5 year financing cycles. For instance, the 6th EDF (1985 to 1990) Euro 8.4 billion was pledged but only Euro 3.26 billion was disbursed. Under the 8th EDF, Euro 14.6 billion was pledged, but only Euro 3.46 billion was disbursed.

Why is a fair EPA so important to all ACP countries?

What is EPA about? It's about two things.

The first issue is the need for the EU to have a WTO-compatible trading relationship between itself and its ex-colonies which remain grouped together as the African-Caribbean-Pacific (ACP) countries.

The second issue is about the EC's genuine belief that trade liberalisation is good for countries like Zambia. They believe that preferences have not worked for the world's poorest countries and that across-the-board trade liberalisation (and here read tariff reduction) will lead to economic growth and poverty reduction.

Zambia remains to be convinced of the efficacy of this argument and, in any case, we must be and are concerned about the effects of an immediate or rapid reduction of preferences which could lead to further de-industrialisation and a ratcheting down of the economy and further poverty.

Extent of trade liberalisation.

The EU's interpretation of Article XXIV of GATT is that an FTA (and thus an EPA) should entail liberalisation of 90% of the total value of trade among parties. The 90% threshold can be taken as the average of the total trade between partners, allowing 'asymmetrical approach' to liberalisation. It is generally understood that the EU is seeking liberalisation of 90% of the total value of trade between the EU and ACP. Under this interpretation, if the EU liberalizes 100% of its trade, ACP would have to liberalise 80% of their trade. This would leave ACP being able to protect only 20% of their trade with the EU.

Transition Period:

Article XXIV establishes the period of time that countries have to liberalise their trade should be a 'reasonable length of time'. An understanding of Article XXIV was established between WTO members on 15th April 1994 and it was agreed that 'reasonable length of time' should be interpreted as no more than 10 years, although a longer period of time may be applied in exceptional cases.

On 28th April 2004 the ACP submitted a proposal to the WTO that developing countries be granted a minimum transition period of 18 years/ However this has not been accepted

ESA negotiations to-date has involved a lot of discussions between ESA countries on development aspects (including how to reduce supply-side constraints to production and reduce the cost of doing business); trade aspects (including a tariff phase-down and how this could be done by countries that are not yet in a customs union), sectoral aspects (such as how one can address food security issues within the context of an EPA); trade in services issues; and whether to include the so-called new issues or Singapore issues of investment, trade facilitation, competition policy and government procurement.

But here a world of caution for ACP-if, as it looks likely at present, the majority of LDCs accept 'WTO-plus' provisions in the EPAs in areas such as services, competition and investment policies, it will be very hard to sustain resistance to such measures at the WTO.

Although this process has been slow and difficult it has been a necessary one. The end result has been that the ESA countries have come up with an offer that it felt it was able to give to the EC. Given that this offer also included commitments from the EC itself, and went beyond what the EC envisaged to be covered in the negotiations, it was rejected by the EC and the resultant stalemate.

It has also been difficult for the ESA Group to arrive at an EPA which strengthens regional integration, which is one of the supposed pillars of the EPA process. COMESA is continuing to strengthen its free trade arrangements and to move towards a customs union.

Not all COMESA Member States are part of the EPA negotiations and it may be that not all countries in the ESA Grouping sign an EPA.

The region, therefore faces a situation where the ESA EPA Group could have one tariff structure with the EU, the LDCs could have another and the non-ESA COMESA member States could have a third tariff structure.

Under these circumstances it is difficult, if not impossible, to deepen integration through progression to a customs union.

Perhaps the most difficult question to address in the ESA EPA is that of development. Of the fifteen countries in the ESA EPA Group, eleven are LDCs.

The LDCs are yet to be convinced that it is in their interest to negotiate an EPA when they already have full duty-free quota-free market access into the EC.

Why negotiate an EPA, which is reciprocal, when you do not get any improvement in your own market access?

The LDCs want a bigger development package as a form of compensation for this net deterioration in market access.

LDCs understand that with the conclusion of the Doha Round, Most Favoured Nation (MFN) tariffs will go down so, at the end of the day LDC preferences will also go down so market access will be almost the same for all countries and LDCs will have had their preferences eroded anyway. However, as the conclusion of the Doha Round gets further away this threat seems to get less.

The EC has said that it cannot provide any more money, other than what is already committed under the 10th EDF, to those countries signing an EPA.

As things stand at the moment, countries signing an EPA get the same money from the EDF as those that don't or won't sign an EPA so there seems to be no advantage.

However, what may be possible is for the EC to create a general fund (within the EDF – like they have done for water or peace and security) specifically for LDCs signing EPAs. This fund could be set up on the grounds that LDCs have higher adjustment costs than non-LDCs to move to an EPA.

If an ESA EPA is going to be signed by the end of this year, LDCs will need to be convinced that it is in their short-term and long-term interests to do this and this can only happen if the LDCs see a value addition in the development component.

Then an EPA can be signed but only in a phased way. For an EPA to be WTO compatible at least with Article XXIV of the WTO agreement then the ESA Group will need to negotiate a tariff phase-down by the end of this year.

This could take the form of a grace period of a few years and then a phase-down from an agreed common external tariff.

This would be WTO compatible. The EC could be persuaded to agree to this type of arrangement.

The additional components (services, investment, rules of origin, etc) could be negotiated after 31st December 2007 as part of a revision clause. However it is also very important to note that by discussing and agreeing on any of the so-called "Singapore Issues" under the EPA, it will seriously weaken our negotiations at the WTO level, where we rejected, other than Trade Facilitation to discuss any of the remaining Singapore Issues.

But under no circumstance should Zambia or any other ACP sign up to an EPA that ignores the fundamental developmental needs of the LDCs.

It is better to have no deal than a bad deal.

If we don't sign an EPA in the EU envisaged framework there will be no boom or doom.

We, the LDCs already have a non- reciprocal agreement on duty free quota free, without the Singapore issues attached.

We have little to gain with the current EU demands under an EPA.

It is not for us to explain to the world why LDCs need to be assisted, it is for the EU and other rich countries to explain why they do not want to assist.