TEPSA BRIEF

Time for a new generation of Trade Agreements between the EU and ACP countries?

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For the past 9 years, the European Union (EU) has been negotiating Economic Partnership Agreements (EPAs) with economic blocs of African, Caribbean and Pacific (ACP) countries. The aim has been to ensure that trading with the region is compatible with rules of the World Trade Organisation (WTO) and to promote regional integration among the ACP states as a means to integrate them into the global economy.

There has been some progress but far below expectation. Almost a decade of preparations and negotiations has resulted in the conclusion of only one regional EPA – the EU-CARIFORUM EPA adopted in October 2008. There remain six regional negotiations which have been stalled for the past 111 months due to unambiguous disagreements on several issues. Sensing complacency and lack of political will on the part of some ACP regions, for the conclusion of comprehensive regional EPA, the EU issued a statement on 30 September 2011 announcing the termination of Market Access Regulation 1528/2007 – an instrument which grants market access to countries in the ACP region that have initialled or signed interim EPA, pending the conclusion of the regional comprehensive one, by 1 January 2014.

Despite the efforts of the EU to push the negotiations ahead, there is still little hope for the conclusion of the regional EPAs in their existing forms any time soon. It is therefore recommended that the EU reconsiders the currently deep and comprehensive EPAs in favour of specific sector agreements. The EU could recognize its now WTO-compatible trade relations with the ACP region and faction specific Special Trade Agreements as a stepping stone towards a new generation of comprehensive Free Trade Agreement with the region in the future, but only when the conditions are ripe.

Background

The basis for the negotiations of the EPAs between the EU and the ACP countries can be summarized in six points. First and foremost, there was the desire to ensure the compatibility of EU-ACP trade relations with current and future WTO rules. The EPAs are also pursued as instruments for development - contributing to poverty reduction and consequently poverty eradication in the ACP region. They are also to promote regional integration in the ACP region and also to be in the form of reciprocal trade partnerships. Additionally, the negotiation has been to preserve ACP countries’ market access into the EU as well as a recognition of the asymmetrical relationships that exist between the EU and the ACP states – which requires special and differential treatment for those states in the EPA negotiations.

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2 These negotiations are between the EU on one hand and variously with the Economic Community of West-African States (ECOWAS), the Economic Community of Central African States (CEMAC), the East African Community (EAC), the Pacific ACP (PACP), the Caribbean Forum (CARIFORUM) and the Southern African Development Community (SADC) as well as Eastern and Southern Africa (ESA) economic bloc.
The following table offers an overview of state of play of the negotiations after 9 years.

<table>
<thead>
<tr>
<th>Region</th>
<th>State of negotiations</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Pacific (PACP)</td>
<td>Regional EPA pending</td>
<td>Negotiations are continuing with renewed commitment. The EU is currently undertaking a study of the region on global sourcing Rules of Origin, to give for negotiation to resume from April 2012</td>
</tr>
<tr>
<td>Central Africa (CEMAC)</td>
<td>Regional EPA pending</td>
<td>Negotiations are ongoing. Recent negotiation meetings have been postponed to February 2012</td>
</tr>
<tr>
<td>West Africa (ECOWAS)</td>
<td>Regional EPA pending</td>
<td>Negotiations are ongoing with deadlock issues such as additional funding of EPA adjustment, MFN clause, non-execution clause etc</td>
</tr>
<tr>
<td>Eastern &amp; Southern Africa (ESA)</td>
<td>Regional EPA pending</td>
<td>Negotiations are ongoing with concerns remaining over additional development support, questions on “enhanced mode 4” movement, MFN clause, export taxes, market access, agricultural safeguards, etc</td>
</tr>
<tr>
<td>Southern Africa (SADC)</td>
<td>Regional EPA pending</td>
<td>Negotiations are ongoing with work to be done on services and investment provisions, market access, Rule of Origin, development cooperation, etc</td>
</tr>
<tr>
<td>East Africa (EAC)</td>
<td>Regional EPA pending</td>
<td>Negotiations are in progress but controversy remain on export taxes, additional funding of EPA adjustments, Rules of Origin, etc</td>
</tr>
<tr>
<td>The Caribbean (CARIFORUM)</td>
<td>Regional EPA signed and ratified with implementation in progress</td>
<td>This is the only regional EPA concluded successfully and on schedule.</td>
</tr>
</tbody>
</table>

Source: Own compilation

Why the EPAs are failing

A number of factors could be seen as contributing to the delay in the negotiations of the regional EPA. Some of those include:

**WTO Compatibility no longer a driving factor**

As mentioned earlier, the negotiation of the EPAs was premised mainly on need to regularised EU-ACP trade in line with WTO rules. However, the demand for WTO compatibility is no longer an effective external factor driving the EPA negotiations because since the 1 January 2008 deadline, countries that have not initiated an interim EPA with the EU or signed the EPA, no longer enjoy preferential market access to the EU –which would have been a contradiction to WTO rules. 42 ACP countries that did not sign the interim EPA have resorted to other trading arrangements that are consistent with WTO rules. While the majority of the ACP regions are as Less Developed Countries (LDC) now trading under the Everything But Arms (EBA) trade preferences, the non-LDCs now trade with the Generalised System of Preferences (GSP) or the GSP+. These trading schemes are now all compatible with the WTO rules because there is no discrimination of any sort. In the absence of a need to meet WTO compatibility, coupled with the numerous objections of the ACP countries, the attraction of the EPAs in its present form to the region is very low.
Doubt over EPA as Instrument for Development
Nine years of negotiations clearly show that there are different understandings between the EU and most of the ACP countries of development and the tools to achieve it. According to the Cotonou Agreement, the EPAs are to help the ACP countries achieve their development priorities. The negotiations are therefore failing because of numerous uncertainties of the ACP countries. Most of the countries do not see how the EPAs in their current forms are development instruments for them in the immediate to medium term, although these countries may be ready to concede to the long term benefits of EPAs.

Mixed Results of EPAs as a Promoter of Regional Integration
The EPAs have not followed through successfully as anticipated date due to the mixed impact their negotiating processes are having on regional integration in the ACP region. While it might have helped to facilitate integration process in the Caribbean region, the EU’s negotiation of bilateral interim EPAs with some countries when the WTO deadline in 2008 was due has led to some rather disintegrated regions. The formation of EPA negotiating blocs has also created overlapping memberships for some of the ACP countries – a phenomenon that makes the satisfaction of all stakeholders cumbersome.

Concern over Revenue Loss and lack of Capacity
After several years, there is still no agreement in sight in most of the ACP regions due to their concerns on import and export revenue loss and lack of capacity. The economic and capability conditions prevailing in the regions are not conducive for EPA negotiations to continue in their existing comprehensive form.

Unbalanced Equation of the EPA Partners
One major challenge of the EPA negotiations has been the conception of reciprocity. While there is no dispute about the intensity of asymmetrical relationship between the EU and the ACP countries, the EPA negotiations have been challenged with doubts on how truly beneficial a reciprocal FTA between economically, politically and institutionally unequal partners would be to the ACP countries. The ACP countries clearly are not convinced based on their continuous opposition to the EU’s proposals and the fear of competition created by a free trade environment.

Lack of Public Support in the ACP Regions
Since the start of the EPA negotiations, there have been a number of public protests against it across the ACP region and in Europe. A number of civil society organisations established a “Stop EPA Campaign Movement”. These campaigns have thrown EPA in a bad light and seem to have succeeded in painting the EU in terms of neo-colonialist power seeking to extend its interests against those of the ACP countries.

Majority of the people in the ACP region are seemingly undivided in asking for revision of the present proposals. The lack of public support for the EPAs therefore makes ACP politicians vulnerable should they go ahead to sign it in its current form.
As hinted in the foregoing analysis, the EPA negotiations have not followed their original schedules due to structural reasons; the obvious asymmetrical development levels between the EU and the ACP countries and even among countries in the ACP region; the absence of an existing integrated regional economies prior to the EPA negotiations; the availability of alternative trading arrangement for LDCs, who do not necessarily need to engage in the EPA negotiations to be better-off; and the plethora of trade-related rules being proposed by the EU, which would overburden the ACP countries’ implementation capacities.

Given the proceedings of negotiations so far, there is the need for the EU to consider options that offers alternatives to the current EPA proposals.

Policy options for European Union

Status Quo: Continue the Current EPA Negotiations
One obvious option for the EU on the highly controversial EPAs is to continue the current negotiations with the hope that they would be concluded. This option may be appealing obviously due to the times and resources committed to the negotiations so far. However, it also has the potential to prolong deteriorating relationship between the EU and the ACP countries as has been witnessed in the course of the negotiations.

Postponing the Negotiations: Allowing time for internal integration of economies among the ACP countries
Another option the EU could pursue is postpone the current negotiations until later when the conditions in the ACP region are ripe for an agreement. It is observable that a greater level of institutionalised regional market plays very crucial role for the conclusion of EPA as evidenced in the Caribbean countries. The existing Customs Union and progress in creating a single market in the Caribbean Forum played a significant role for the speed of that region’s negotiation with the EU. For progress with the EPA negotiations between the EU and the remaining ACP regions, time and resources from the European Development Fund (EDF) could be committed to the development of the regional markets outside the context of the EPA negotiations, to serve as a stepping stone for future comprehensive Free Trade Agreements. This option, though may be necessary, has the tendency to imply that the EU is weak and has accepted diplomatic defeat.

Revise the Current Proposal to Specific Sector Agreements
Due to challenges of the current negotiations and the time and resources being utilised in the negotiations of the EPA that have yielded results far below expectations, the EU could trim down the ambition of the present proposal to specific agreements with able and willing ACP regional blocs. It would seem much more feasible for some ACP regions and countries to agree to a more specific and non-comprehensive trade agreements that could serve as a building block towards more comprehensive agreements in the future.

Conclusion

The EU-ACP countries negotiations were mainly necessitated by the need for EU-ACP trade relations to be WTO-compatible within specific deadline. The 31st December 2007 deadline has long elapsed and there is now no longer unilateral preferential market access for ACP countries that is illegal by WTO standards. This means that the EU’s proposals on a broad range of trade-related policies that are being opposed by the majority of the ACP region could drag on for years.

As demonstrated by the example of the Caribbean region, it is easier for a more integrated economies and relatively richer countries to agree to comprehensive Free Trade Agreements on
goods and services with the EU from a win-win perspective. The evidence of the same logic is seen with the EU-Korea Free Trade Area agreement reached in 2009, which took only 29 months of negotiations, as compared to about 111 months with the ACP region. Alternatively, it is extremely challenging and difficult for less developed countries to agree to a comprehensive Free Trade Agreement with highly industrialised economies such as the EU, no matter the good intentions being preached.

The EU has some options on the table. It could continue the negotiation as is the case currently, without expecting the agreements to be reached quickly. It could also suspend the current EPAs negotiations – indefinitely until the right institutional and economic as well as political environments are developed in the ACP region, in preparation towards a new generation of trade agreements in the future. The Union could also trim down the current proposal from deep and comprehensive EPAs to specific sector agreements with able and willing ACP regions and countries- with the prospects of completing the negotiations sooner than later and normalising its relations with the region.