



“Love is blind”?

A two-stage agreement risks being an ‘EPA tight’ rather than an ‘EPA light’

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As the EPA crunch-time looms, the European Commission appears to have pulled back from its threat to end trade privileges given to African, Caribbean and Pacific countries unless they sign a comprehensive agreement on time. The EU is now prepared to sign an interim deal on goods only. Remaining controversial issues – such as trade in services or measures to strengthen competitiveness – could then be negotiated in a second stage in 2008.¹ But will this stage ever come?

Imagine a couple that sets the date for their wedding well in advance. They have been forced by their families to enter a more ‘mature relationship’ but take enough time to discuss the marriage plans so as to avoid falling out. The pair fights for five years, unable to agree on life as a married couple. Nevertheless, the eagerness of one fiancé and family pressure not to cancel the big day means they tie the knot anyway. Both agree to make their union ‘mature’ with the formal exchange of rings, although neither agrees what ‘mature’ must mean for them to enjoy married life together. “Love is blind”: the couple has stepped into the unknown, legally recognising their relationship for the sake of being partners, without any assurance that life together will work.

ACP and the EU countries seem to be facing a similar situation in the EPAs. Legal pressure from the WTO (the family) to enter a reciprocal free trade agreement (the more ‘mature’ relationship), could mean that both sides decide to sign a deal on trade in goods only to respect the big day (December 31 2007), leaving agreement on all other uncertain elements of the partnership (haggled over during five years of negotiations) for the future. In this case, although they would sign a WTO compatible deal (to be legally recognised as couple), no other key areas of an EPA would be agreed, particularly those designed to strengthen the ACP’s *capacity to trade* (the assurances that life together will be workable).

¹ See EC Communication on EPAs, 23 October 2007, COM (2007) 635 final, (http://trade.ec.europa.eu/doclib/docs/2007/october/tradoc_136541.pdf)



The Pacific struck a deal with the EU to conclude an interim market access agreement “as a stepping stone to a comprehensive EPA” on October 2.² It appears that each of the four configurations in Africa could also sign such a two-stage EPA.³ In particular, West African ministers decided on October 5 that they are not in a position to conclude an EPA by the deadline and requested a two-year extension of trade preferences.⁴ The Commission immediately refused and indicated that the only solution would be the two-stage option.⁵ The one exception is the Caribbean, the region closest to signing a comprehensive deal, where negotiators have always advocated only a full and ambitious EPA.

The conclusion of an interim agreement sounds like a rational choice in the context of the tight EPA timeframe. It would avoid the likely disruption of trade that failure to conclude an EPA deal would cause by allowing the continuation - or even improvement in the case of non-Least Developed Countries (LDCs) - of ACP exporter preferences. Moreover, it would give the parties time to address the extremely complex and sensitive issues that remain unresolved, particularly important for ACP countries that lack capacity and expertise.

However, the two-stage approach risks forging an agreement that could be defined as an EPA ‘tight’ rather than EPA ‘light’ (see box). In other words the delay in negotiations could mean the acceptance of an EPA which lacks the original core elements. The EPAs were conceptualised and negotiated as trade *and* development agreements, going beyond pure market access because both sides agreed that trade was not enough to stimulate ACP economic development.⁶ Since the launch of talks in September 2002, both have regularly emphasised that without a broad range of accompanying measures to boost ACP competitiveness, internal trade reforms and improved foreign market access alone will not translate into development benefits.⁷ Thus, a two-stage agreement that risks becoming an EPA ‘tight’ with binding commitments on market access only would act as an ‘alternative’ to the ambitious development oriented partnership initially conceived.⁸

It can be argued that a comprehensive EPA will be concluded in 2008. However, a number of obstacles make this unlikely. First of all, once a reciprocal free trade area is established and WTO compatibility satisfied, what legal pressure will push parties to conclude agreements in other complex areas? Observers of the EU’s global trade strategy think that a desire to secure reciprocal deals to coincide with

² Pacific-EC EPA Ministerial Meeting- Joint Declaration, Brussels 2 October 2007

³ For more details, see ‘EPA Negotiations Update’ in this month’s issue of TNI.

⁴ *Les ministres de la Cedeao jugent impossible de signer avant décembre 2007*, APS, 9 October 2007 (<http://www.sudonline.sn/spip.php?article6105>)

⁵ *EU rejects delay in West Africa trade talks* (October 10, Reuters (africa.reuters.com/wire/news/usnL10187216.html)).

⁶ The major rationale for EPA, especially for the EC, has always been that Lome type tariff preferences have failed to deliver on development and export diversification.

⁷ The key divergences between ACP and EU countries related to the role and weight to be assigned to reciprocal liberalization and development assistance as elements of the overall EPA ‘development dimension’, with the EU favouring the former and the ACP the latter.

⁸ Though there may be differences between the interim agreement currently discussed and the original ‘EPA light’ proposal, the latter has generally been considered as an ‘alternative EPA’ (see Bilal and Rampa 2006).



the end of the WTO *Cotonou Waiver* is the major driving force behind Europe's EPA tactics. Will ACP countries have any more legal leverage in 2008 than they did over the past five years? In other words, can they convince the EU to include elements such as competitiveness building measures in an EPA? Similarly, what incentive will there be for those ACP countries which have consistently opposed negotiating sensitive trade-related areas (such as services, investment or government procurement) to do so after 2007? Another difficulty of an EPA 'tight' agreement is that the ACP would lose all their bargaining power vis-à-vis the EU to achieve their objectives in a possible second stage of EPA negotiations (see box).

The consequences of an interim trade in goods agreement becoming the final EPA are likely to be serious. The difficulty of trade alone to deliver on EPA development objectives has been repeated time and again. Liberalising imports is also likely to lead to short term economic shocks in the ACP, made all the more difficult to solve because other elements - such as support for adjustment costs - will be missing.⁹ The loss of government fiscal revenue, economic restructuring costs and the loss of policy space for national development strategies are all likely side-effects acknowledged by the EU. The ACP countries could perhaps retaliate on the failure of the second-stage EPA to materialise by not putting the market access chapter into operation. But would this be the 'mature' partnership the parties were striving for?

There is a general consensus that market access is not sufficient to make EPAs effective tools for sustainable development.¹⁰ To avoid the pressure of the deadline from determining the outcome of the negotiations, two options remain: The first is a two-stage agreement which incorporates the legal certainty that there *will* be a second stage to accompany and complement the first with clear objectives and a timeframe. The second would prevent the damage of an EPA 'tight' by giving more time to conclude negotiations on a comprehensive deal that facilitates development (e.g. through an extension of the WTO Waiver). Given the questions over how the first option could be enforced, the second option is clearly preferable. It would maintain the momentum to design the ambitious and balanced agreement originally foreseen and leave the balance of bargaining power unaltered. It would also avoid the rush to define the ACP's lists of special products and liberalisation schedules in just a few weeks - a technically impossible task for most African regions. Moreover, an EPA that contains EU commitments on development aid and measures to increase competitiveness would allow the ACP to be more ambitious in their market access offers.

⁹ Shocks may be less likely for Pacific countries given their distance from the EU and the little amount of existing trade between the two regions This could partly explain the recent decision by the Pacific ACP.

¹⁰ "The real problem is often not market access – our markets are all but completely open to ACP exports – but the capacity to trade that matters. That means infrastructure, regional markets, transparent rules, access to investment, effective ports and customs systems – even the ability to meet basic health and safety standards." (Interview with Peter Mandelson, see the previous issue of TNI)



Love cannot be blind: both parties have a responsibility to stick to what they have argued for during the past five years, a comprehensive deal as tool for development.

Box

The 'EPA light approach', described in Bilal and Rampa (2006), is "a minimalist approach to EPAs focusing, in a first stage, on the opening of ACP markets to the minimum level necessary for securing WTO compliance. In a second stage, at a speed and extent to be defined by the ACP countries themselves, negotiations with the EU could centre on a long-term approach to address supply-side capacity constraints in the ACP and to build effective and functioning regional markets".

An EPA 'tight' is a new definition - appearing in this article for first time. It is a narrow EPA which the ACP are forced to sign as the result of rushed decisions due to the imminent deadline. An EPA 'light' is something the ACP would choose to sign, allowing the agreement to float for at least a couple of years. It has always been on the table for some regions - such as ESA - which sought to limit the damaging effects of liberalisation by proposing to open up 50-60% of trade on the ACP side and then negotiate the rest later. Thus, the difference between the two arrangements would be the rationale behind the outcome and the relationship to the deadline rather than the content of the agreements – which remains speculation at this time.

Despite some differences, a two-stage agreement that risks being an 'EPA tight' raise similar questions to those related to 'EPA light': "Would an 'EPA light' agreement ever be supplemented after 2008 by additional trade-related measures that the ACP may wish to adopt to promote their development? [...] Indeed, standard trade negotiations are about bargaining, often in a mercantilist way: one party makes a concession against a concession by the other party. The major 'concession' that the ACP can offer is the reciprocal opening of their markets to the EU. Once this is granted under an 'EPA light' agreement, what would be left of the ACP's already marginal bargaining power? [...] In other words, by de-linking the negotiations on market opening from broader trade and trade-related issues an 'EPA light' might fail to deliver on the development promises of EPAs." (Text on 'EPA light' from Bilal S. and F. Rampa (2006), [Alternative \(to\) EPAs](#), ECDPM Policy Management Report 11, www.ecdpm.org/pmr11)



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