

27 September 2012: 10 Years of EPA Negotiations

From Misconception and Mismanagement to Failure

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Even if the EU continues to insist that its concept of economic partnership agreements (EPAs) was and is the right one, and ACP countries continue to repeat their commitment to a development friendly outcome, after ten years of negotiations, it can no longer be denied that the EPA negotiations are a big failure. Which is not necessarily a sad thing: they have never been a good idea anyway.

Little to show for

Since the initialing of the CARIFORUM EPA at the end of 2007, no other complete comprehensive regional EPA has been agreed; and it seems that there will not be any other, although partial regional and sub-regional agreements remain possible. Besides the newest issues that the EU has come up with, like good governance in tax matters and the “Turkey clause”, negotiators are still discussing basics like tariffs and aid for trade or contentious issues raised by the interim EPAs concluded by the end of 2007. In the meantime, the EU is welcoming the ratification of un-amended interim EPAs as “excellent news”² and is preparing legal steps against ACP countries that fail to ratify or to implement EPAs.

Mind the gap

The main reason why EPAs have failed is the gap between the EU approach to EPAs and the ACP expectations, or more precisely the inappropriateness of the EU’s approach.

In 2002 the EU Commission drafted a negotiating mandate for ambitious “comprehensive deep integration” free trade agreements, which would not only liberalise investments and the trade in goods and services but also introduce disciplines for competition, government procurement, trade facilitation, intellectual property rights and data protection.

Most ACP countries on the other hand were hoping for agreements that would offer a flexible fix for the WTO compatibility issue and that would otherwise concentrate on strengthening their productive capacities, their infrastructure, institutions and regional integration efforts.

The EU’s comprehensive deep integration concept went well beyond what was foreseen by the Cotonou Agreement or what was required by the WTO. In fact

the Commission’s EPA mandate was the most comprehensive of the time, more comprehensive than the Doha Agenda. Yet for the EU it would not involve much policy change: the mandate reflected existing EU practices and regulatory approaches; and was meant to export them. Here also lies the most important offensive interest of the EU: making 76 ACP countries sign up to the EU’s regulatory approach would be a great advantage for the EU, in particular in the WTO.

For the ACP countries however, almost everything in the EU’s EPA would require huge reforms: administrative, legal and constitutional. For many issues that the EU wanted to address in the EPAs ACP countries had not yet designed domestic policies, let alone regional schemes or international plans. The EU’s EPA concept therefore was much more than a trade agreement; it was a huge economic reform programme.

Inappropriateness of trade negotiations

Could such programme bring development? Perhaps.

In its preparation for the *Commission’s Communication on Trade, Growth and Development* published this January, DG DEVCO commissioned a study of the state of play of the economic research on the relation between trade, development and poverty reduction. The study noted that the results of that research are inconclusive and that the development outcome of trade liberalisation cannot be taken for granted: trade liberalisation can improve but also harm economic development and poverty reduction. The study also noted: “The countries that have benefited the most are those that have carried out selective and gradual liberalisation and have continued to provide state support to a number of key economic sectors”³.

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The study says that the positive outcome of trade liberalisation depends on many factors. These include: the choice of sectors, the sequencing, the speed, the preparatory process, the accompanying measures, the infrastructure, the institutions, the adjustment measures, the access to credit, and very importantly the extent to which there is ownership by the countries and stakeholders involved and the extent to which the liberalisation policy is embedded in the broader development strategy. In other words, a well-prepared elaborate reform programme, that takes into account all these factors, can possibly deliver a development outcome.

But the questions here are: can such a programme be elaborated in the context of trade negotiations? Between 76 developing and least developed countries and the EU? Can it be written by trade negotiators? Can it be put into a hardly amendable trade agreement with an implementation time frame of 20 to 25 and an eternal lifespan? Can it be co-drafted and enforceable by the EU?

Trade negotiations are a very exclusive form of policy making. It is based on secret (unless leaked) mandates, given after closed door discussions between or within governments, with hardly any parliamentary involvement. Negotiations, proposals and texts are secret. Briefings and consultations are inadequate. And the results cannot be changed by parliaments (or even by governments as the ACP countries found out when asking to revise the contentious issues in the interim EPAs). Trade negotiations are a completely inadequate and inappropriate method for the huge reform effort that the EU wanted EPAs to accomplish; completely contradictory to the ownership requirement even at the top level. Indeed there have been numerous incidents of technical negotiators running ahead of political decision makers; regional secretariats running ahead of national governments; and regional and national parliaments, farmers' organisations, trade unions and business associations not knowing what was going on. No wonder civil society revolted against such scheme: economic reform is too important to all layers of society to be left to behind closed door negotiations.

Mismanagement

There have also been numerous incidents between the EU and the ACP countries. The Commission proved to be a rigid negotiator clinging on to its positions, pushing back ACP proposals. Several ACP Council resolutions express ACP frustration about the gap between the fine development rhetoric of the EU and its behaviour at the negotiating table. The Cotonou Agreement speaks of flexibility and the taking into account of different needs and development levels, regional integration efforts, policy choices and priorities.

But the EPA negotiations were never a quest for the most suited trade measures; instead they were an attempt in making ACP countries sign up to the EU scheme. For the EU EPAs had to fit its overall trade policy; they could not differ too much from its standard approaches. Moreover the attitude of the negotiators and commissioners was often paternalistic and the more the 2007 deadline approached the more the ACP complained of being bullied. And so the exaggerated ambition, the overburdening of the negotiating agenda, the rigid and paternalistic attitude and the bullying destroyed whatever "enchantment" EPAs might have had.

EPA mess

Today both the EU and the ACP countries struggle with the mess that the EPA negotiations have created.

The interim EPAs have complicated the negotiations even further: they have caused rifts in the regions and the refusal of the EU to swiftly amend them left the negotiations stuck with protracted discussions on contentious issues. All regions are split and the danger exists that the EPAs negotiations will exacerbate the divisions: because the EU's rigid interpretation of WTO compatibility or offensive interests prevent regional agreement; because ACP countries ratify un-amended interim EPAs; or because the EU negotiates Singapore issues with individual countries.

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In the meantime, Caribbean countries are struggling with the implementation of the CARIFORUM EPA: most have yet to ratify the agreement, start to eliminate tariffs and prepare measures to avoid the impact on tariff revenue or on the competitiveness of their industries. The Caribbean case seems to demonstrate how little understanding and ownership there is of the comprehensive and complex EPA and how inconvenient the EPA commitments are.

This does not bode well for any EPAs in Africa and the Pacific where the institutional and economic situations are even more precarious. The EU's threat to launch legal procedures against non-complying Caribbean governments adds to the EPA mess.

And so does the Commission's proposal to amend Market Access Regulation 1528/2007 to withdraw preferential market access from ACP countries that have not begun to ratify (interim) EPAs by the end of next year. The proposal has once more upset the ACP countries. The new deadline is too tight

for the ACP regions that are still trying to replace the contested and divisive interim EPAs by regional goods agreements. It will force countries again to accept agreements, not because they think they will serve their development, but because they want to avoid losing preferences. It will push countries to ratify the interim EPAs that they have been trying to amend in the past 5 years.

A thing of the past

EPA negotiations started 10 years ago, but they were conceived in the mid 1990's. Much has changed since then. Emerging developing countries have increased their share of the world market. China has become one of the largest trading nations. ACP countries have diversified trading partners and donors. The climate, food, financial and economic crises have brought about new challenges and highlighted the need to maintain policy space and to strengthen local and regional markets. The EU is struggling with the Euro crisis and undergoing austerity measures. It has been reviewing its trade and cooperation strategies.

Meanwhile preferential market access to the EU has been eroded by reforms (CAP reform, abolition of commodity protocols, more stringent sanitary standards) and EU bilateral trade agreements. For many ACP countries, the current cost of losing EU preferential tariffs is far less than the revenue lost when eliminating their own tariffs on EU imports.

The painstaking and divisive EPA negotiations need to be re-assessed in this context.

Notes

1. This clause by the EU requests the third country to enter into negotiations and conclude a FTA with Turkey as soon as possible.
2. See the quote from EU Commissioner De Gucht in the press release on the ratification of 4 "ESA" interim EPAs, <http://trade.ec.europa.eu/doclib/press/index.cfm?id=800>.
3. Commission Staff Working Document accompanying the Communication Trade, Growth and Development. Brussels, 27.1.2012 COM(2012) 22 final (quote: p.9). The Commission has not release the study, but the staff working paper summarises the results.

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