

Trade Justice Movement

Economic Partnership Agreements (EPAs): Assessing recent developments in EPA negotiations against the UK Government's 2005 position¹

In March 2005, the UK Government set out its position on Economic Partnership Agreements (EPAs) in which it stated *inter alia* that:

1. ACP countries should not be forced to accept sweeping liberalisation commitments
2. ACP countries should be provided with effective safeguards to protect against subsidised EU imports
3. The EU should provide complete duty and quota-free market access to the ACP, with no strings attached
4. The EU should make rules of origin more pro-development under EPAs
5. Negotiations on trade-related issues should only take place if they were ACP-driven
6. Alternatives to EPAs should be made available

In addition, the UK Government has consistently stressed, as recently as December 2007 that,

7. EPAs should promote the ACP's regional integration

From our analysis, the current proposals on the table are far from the pro-development goals the UK Government set out in 2005.

As the end of year deadline for negotiations has drawn nearer, and as the EC has continued to ignore both suggestions for alternatives and calls for more negotiating time, the pressure on ACP countries to sign EPAs has increased significantly. The EC has threatened to increase tariffs on goods from non-Least Developed Countries (non-LDCs) in the ACP on January 1 2008 if EPAs aren't initialled in the next few days.

As a result, many ACP countries, particularly those with larger trade with the EU, have been forced to lower their expectations regarding what EPAs could deliver and have been pressed to secure any agreement. **This has meant that many of the interim agreements that have been concluded were negotiated in a hurry and that only a handful of their provisions were actually negotiated.**

The coverage of these agreements is very wide and the stringency of disciplines goes beyond what is required under WTO rules. In addition, the structure and some of the conditions of these agreements actually undermine the original objectives of EPAs and, in this sense, empty EPAs from their developmental promise. While the EC has portrayed the interim agreements as soft, not very binding and flexible agreements, **the provisions detailed in these agreements create a large number of binding obligations for ACP governments and require a number of reforms. The implementation of reforms or disciplines is often tied to specific deadlines and non compliance with the terms of the agreements could be sanctioned through a dispute settlement mechanism.**

As of 17 December 2005, 21 countries had initialled Interim EPAs with the EU, and 15 Caribbean States had agreed a Full EPA. We have analysed the texts of the Interim agreements in order to produce a direct comparison with the UK Government's position. This analysis - outlined in detail below - reveals the following serious gaps:

1) ACP governments are being pushed to sign up to free trade agreements that require sweeping liberalisation commitments over limited time frames. For example, the East African Community, including four LDCs, has agreed to liberalisation of 82% of imports from Europe, while

¹ This brief has been prepared by Traidcraft, Christian Aid, Oxfam and Tearfund, based on our understanding of the situation on 17th December 2007.

others have committed to even higher percentages (Botswana, Lesotho and Swaziland 86%, Seychelles 97%, Mauritius 95.6%, Papua New Guinea 88%). Most of this liberalisation will happen at the start of the liberalisation period. In the EAC EPA, 62% of the EU imports will be liberalised after two years, and 80% after 15 years; only 2% of liberalisation is back-loaded over a period of more than 15 years. This implies significant liberalisation as currently only 22% of Rwanda's and 0% of Burundi's imports have a zero tariff.

Although ACP countries have been able to exclude some of their most vulnerable sectors from immediate liberalisation, this unprecedented liberalisation exposes industries and agricultural producers to highly competitive EU exports, could lead to widespread loss of jobs and livelihoods and threatens both current and future industries. It will also lead to loss of vital government revenue that might otherwise be spent on health and education. The agreements eliminate virtually all policy space from ACP countries, which will no longer be able to use tariff policy to develop their economies, a tool that is widely recognised as having been instrumental in the creation of the East Asian tiger economies.

2) The texts contain inadequate safeguard clauses for the ACP. As currently structured, the safeguards will not protect ACP producers from import surges, which they are vulnerable to, particularly in the agricultural sector. The articles that include so-called 'infant industry clauses' are extremely deceptive in that they are, in reality, no more than ordinary safeguards by a different name. In addition, in only one of the initialled EPA texts analysed (the Pacific text) does the EU make a commitment to eliminate subsidies on tariff lines that are liberalised by ACP countries, and even in this case only export subsidies are covered. This perpetuates unfair import competition for ACP producers.

3) The offer to further open Europe's markets is severely undermined by the failure to reform Rules of Origin (RoOs) and stricter safeguards. The commercial gains arising from the Duty Free Quota Free offer itself are limited because of the failure of the EU to substantially improve Rules of Origin, the retention of transition periods on two key products (sugar and rice) and strict safeguards that limit ACP access to EU markets. Instead the ACP are having to settle for an interim arrangement on RoOs while the EU takes a further three years to decide upon its RoOs regime.

4) The offer to open Europe's markets comes with conditionalities. In the SADC region the EC has insisted on commitments for negotiations on binding services and investment agreements – despite the region's repeated resistance to those controversial topics. South Africa has opted out of this requirement which has now split the SADC region and its own Southern African Customs Union (SACU). The EU has also insisted on the inclusion of a Most Favoured Nation clause under which ACP countries must immediately give to the EU any more preferential treatment subsequently negotiated with third countries such as China or Brazil, and the elimination of most export taxes. None of these issues are needed for WTO compatibility.

5) No alternatives have been offered to the ACP. This is despite the fact that legal analysis shows that feasible alternatives are available. The Seychelles and Nigeria have asked for admission into GSP Plus for January 2008, which is both technically and legally feasible. So far we have no evidence that the UK government has supported these requests for immediate admission.

6) Regional integration efforts are being undermined. The EC is now pressing countries to sign individual EPAs, independently from their regional partners.

The UK Government should:

Ensure that key elements of the agreements are revised given the haste in which they were concluded and their potentially disastrous impacts on development. In particular ensure that provisions are not put into practice that undermine existing regional integration processes.

- *Push for a strong and effective monitoring and review mechanism within the EPAs that enables ACP countries and regions to assess whether EPAs are contributing to their economic development and regional integration and which builds in the legally enforceable right for commitments to be revised in light of the findings.*
- *Ensure that any further negotiations on areas such as services and investment should only take place if requested by the ACP. Where they do take place, they must not be driven by European offensive interests but must focus on areas that the ACP wants to negotiate on, such as cooperation.*

- *Seek to ensure pro-development alternatives for those countries that have not signed an EPA.*

The Gap between UK Government position on EPAs and the agreements being signed

1. Opening of ACP markets

HMG position: in its 2005 position statement, the UK Government rightly said that the ACP market opening should be driven by the ACPs' own regional decisions as opposed to the EU's offensive interests; that there should be as much flexibility as possible; and that a non-linear approach towards opening markets should be possible for the ACP:

- "EU will not pursue any offensive interests";
- "Each regional group should make its own decisions on the timing, pace, sequencing and product coverage of market opening";
- "Regional groups should have the flexibility to move towards more open markets along a non-linear path if necessary";
- "EPAs must ensure that ACP regional groups have maximum flexibility over their own market opening. The EU should therefore offer all ACP regional groups a period of 20 years or more for market opening on an unconditional basis. Each regional group should be offered this full period".

During 2007 the UK Government has regularly stressed that the ACP will be offered maximum flexibility, including transition periods of 25 years and safeguards such as the 'infant industry clause':

- "It is wrong to suggest ACP countries will have to open up their markets overnight under EPAs. ACP countries will have up to 25 years to phase out their tariffs and will be able to keep tariffs on some products to protect local jobs." (Letter to Editor of the Guardian newspaper from Gareth Thomas, September 29 2007)
- "The agreements that have been signed contain measures allowing countries to protect infant industries for up to 10 years, and special safeguards will allow countries to deal with problems facing particular industries for much shorter periods". (Gareth Thomas, European Standing Committee Debate on Economic Partnership Agreements, 3 December 2007)

Content of EPAs being signed:

- Pace and coverage: countries and regions are signing up to schedules that front-load the bulk of liberalisation commitments over the first two years. Article 24 of GATT, even if read very strictly, would allow for much more back-loading than this – at least 10-12 years. Such back-loading would allow for greater flexibility for tariffs to be raised – i.e. the 'non-linear' approach advocated in the UK position statement - during the transition period if mistakes have been made through previous liberalisation. Even Least Developed Countries (LDCs) are being subjected to a very fast pace of liberalisation, which comes nowhere near to the promised 25 years.
 - For example: in the SADC EPA 86% of Botswana, Lesotho and Swaziland's liberalisation will take place over two years; only 3 tariff lines are given a 10 year transition period; no products are allowed longer periods of anything approaching 25 years.
 - For Mozambique, an LDC, there will be liberalisation of 80.5%, most of which is also to take place upon immediate entry into force of the agreement (currently only 12% of Mozambique's trade is at zero percent). In the EAC EPA, 62% of the EU imports will be liberalised after 2 years (51% of this is currently at zero percent); only 2% of liberalisation is back-loaded over a period of more than 15 years.
 - Zambia, an LDC, is being pressed by the Commission to liberalise at least 80% of its trade over a period of no more than 15 years, as the price of market access for sugar.
- Most Favoured Nation (MFN) clause: the late inclusion by the EC of an MFN clause (for example, Article 28 in the SADC EPA, Article 15 in EAC EPA) is a clear offensive interest and severely undermines the scope for the ACP to make their own decisions about their market opening. This

clause locks the ACP into giving the same treatment to the EU that they give to any other major trading partner such as Brazil or China, allowing the EU to maintain a position of dominance relative to competitors. ACP governments have strongly objected to this clause and there is no requirement in the WTO or Cotonou to include it.

- Standstill Clause (e.g. Article 23 of the SADC EPA, Article 13 of EAC EPA) binds all tariffs from 2008, removing the possibility of a 'non linear' route towards market opening.
 - For example, a high proportion of the EAC member countries' tariffs already have zero tariffs (approximately 51%), because of previous liberalisation. However, under WTO rules, these tariffs are bound at relatively high rates, giving countries the important flexibility to raise tariffs from zero to their bound rate if needed. The standstill clause requires the immediate freezing of all tariffs at their applied rates and their progressive liberalisation. This removes the ability of countries to use tariffs as a development tool and eliminates critical policy space.
- Removal of export taxes: export taxes are important for raising revenue and for promoting value-addition. The Interim EPAs require the elimination of export taxes (Papua New Guinea) or forbid the introduction of new taxes (EAC, SADC) with some limited carve outs. In the SADC text no new export taxes are to be introduced, and those existing will not be increased (Article 23) except for specific circumstances and after 'consultation with the EC party.'
- 'Infant industry clauses' are very limited: EAC and SADC texts do contain so-called 'infant industry safeguard clauses', but these are restricted to 10 years (EAC), 12 years (Botswana, Swaziland and Lesotho), 15 years (Mozambique) and 20 years (Papua New Guinea), and are limited to mitigating the damage of import surges for existing sectors – not for building up new sectors. A WTO legal expert has described these clauses as no more than 'normal safeguards by another name'. For such clauses to reflect their title they should be based on the old clause in Part IV of the EEC Treaty and the Yaoundé Conventions, which allowed an ACP country to 'retain or introduce customs duties ... which correspond to its development needs or its industrialization requirements or which are intended to contribute to its budget'. Moreover, these normal safeguards are also difficult to use, based upon ACP experience in other trade arrangements.

2. Safeguard mechanisms and removal of EU subsidies for goods liberalised by the ACP

HMG position: In its 2005 position statement the UK Government said "there should be an effective safeguard mechanism for ACP countries to use if faced with a surge of subsidised EU imports". Gareth Thomas has also very recently said in parliament that: "The other development benefit that I should like to highlight is more equal competition. Commissioner Mandelson has given a commitment that for countries that sign up to an EPA and sell goods into the EU market, similar goods coming the other way from the EU will not have any EU subsidy" (European Standing Committee Debate on Economic Partnership Agreements, 3 December 2007).

Content of EPAs being signed:

- Inadequate safeguards for ACP: current texts on safeguards do not differ significantly from those currently available at WTO which have proved inadequate for developing countries and difficult for them to implement. The safeguard clauses in the EAC, ESA and SADC EPA are limited by a number of onerous procedures that have impeded their effective use in the context of other trade agreements. They do not contain the flexibilities that the ACP and other developing countries have been calling for in the WTO, in the form of a Special Safeguard Mechanism (SSM). In addition, they are of limited duration and any safeguards exceeding one year 'shall contain clear elements progressively leading to their elimination at the end of the set period, at the latest.' SSM proposals of the G33 should be the baseline for EPAs, and given the nature and objectives of the agreements, arguably should build on these, as well as include industrial products.

- EU subsidies: despite previous statements from the EC and the UK government suggesting that export subsidies would be eliminated for those products opened by the ACP, there is no clause in either the EAC or the SADC EPA to this effect. Moreover, there are provisions that explicitly allow the EU to continue to subsidise its own products. Article 38.4 in SADC and Article 17.4 in the EAC EPA are substantial 'carve out' clauses from the EU's national treatment obligation with regard to domestic subsidies. The clause allows EU goods to be subsidised in the EU domestic market which not only operates as a market barrier to ACP goods exported to the EU market, but is also likely to lead to a surplus of domestically subsidised products that are exported cheaply to the ACP. These factors mean that the ACP countries will face unfair competition – both in the EU market and in their own domestic markets.
- The Interim EPAs specifically provide for the use of multilateral (WTO) safeguards including the Special Agricultural Safeguard under Article 5 of the WTO Agreement on Agriculture. But as many ACP countries are not party to this agreement they are unable to use this safeguard mechanism, and it is only available to the EC. In some texts the EC has agreed to exempt initially ACP exports from imposition of multilateral safeguards (SADC, EAC) but *only for the first five years*. In other texts even such limited exemption is at the EC's discretion (Papua New Guinea).

3. Duty free quota free market access for the ACP

HMG position: the UK Government's 2005 position statement said that "within EPAs, the EU should make an upfront offer of complete duty and quota-free market access to each ACP regional group, with no strings attached." The UK Government has since reiterated this goal as their top priority and their one 'red line' in the EPA negotiations.

Content of the EU's market access offer:

- The EU's DFQF access was not made up front and has had a number of conditions attached to it:
 - It has strings attached on trade related issues. Commitments to at least negotiate trade related areas (e.g. in EAC) or to conclude negotiations in these areas (in the case of signatories to SADC EPA), even though they are not required for WTO compatibility and are in clear contravention to ACP wishes (in the case of Namibia and South Africa).
 - It has strings attached on liberalisation. LDCs such as Zambia and Malawi are being pressured to liberalise much more quickly than the 20 year period the UK government said it would defend, as a condition of eventual DFQF on sugar.
 - It is not complete because it involves transition periods for two key products – sugar and rice.
 - EU safeguards limit the effectiveness for the ACP: the safeguard mechanisms in the EPA texts (e.g. Article 36 in the SADC text, Article 20.2b in EAC text) combined with the EC's DFQF Regulation contain many exemptions and exceptions that limit its effectiveness for ACP member states and which are stricter than Cotonou and GSP. There are additional safeguard provisions on sugar that go even further.

4. Improved Rules of Origin

HMG position: The UK Government's 2005 position statement said that "the EU should further simplify and liberalise rules of origin under EPAs". Combined with the duty-free quota-free market access offer this has been a priority for the UK.

Content of EPAs being signed:

The interim offer on RoOs that has been made to the ACP (September 2007) made minor improvements to existing rules, and even these are still disputed by many EU Member States. ACP countries are being forced to agree to an interim arrangement for RoOs, lasting three years, with a vague promise from the EC to sign offer more 'development-friendly' RoOs in the future. This is unfair on several counts: without binding agreement on RoOs, it is very difficult for the ACP to assess the

worth of the EU's market access offer. In addition, as the permanent RoOs are to be negotiated in the future, after the main bulk of EPA terms have been agreed, the ACP will have much less scope to influence them.

5. Trade-related issues

HMG position: The UK Government's 2005 position statement said that "Investment, competition and government procurement should be removed from the negotiations, unless specifically requested by an ACP regional negotiating group" and that any negotiations on government procurement should be limited to transparency.

Content of EPAs being signed:

Treatment of services and investment:

- In the SADC EPA there are commitments to conclude negotiations in these areas (under Article 69), even though they are not required for WTO compatibility and are in clear contravention of SADC's collective position
 - in SADC signatories have been committed to 'complete' negotiations on services no later than 31 December 2008, including a *liberalisation schedule for one service sector for each participating SADC EPA State; commitment to a standstill as specified in Article V.1.b(ii) GATS, for all services sectors; agreement to negotiate progressive liberalisation with substantial sectoral coverage within a period of three years following the conclusion of the full EPA.*
 - SADC signatories also commit to *negotiate an Investment chapter, taking account the relevant provisions of the SADC Protocol on Finance and Investment, no later than 31 December 2008.*
- These commitments go beyond a 'commitment to negotiate' on services and investment as they are significant agreement of ACP countries to *liberalise* these sectors even before the terms of this liberalisation have been negotiated.
- Other countries or regions that have stressed they did not want to commit to negotiate in these areas have still had to sign up to a commitment to continue negotiating (e.g. EAC Chapter V commits parties to negotiate and links this in same chapter as Economic and Development cooperation).

6. Alternatives

HMG position: "The Commission should be ready to provide an alternative to an EPA at the request of any ACP country. Any alternative offered should provide no worse market access to the EU than is currently enjoyed under Cotonou preferences."

Availability of Alternatives: Over recent months, a number of feasible alternatives to the EC-led EPAs have been brought to the attention of the UK Government. However, instead of actively pursuing alternatives to EPAs, the UK government has not acted in support of its 2005 position and has maintained that signing up to an EPA is the only plausible WTO-compatible option for the non-LDC ACP countries to avoid disruption to their exports on January 1 2008.

Gareth Thomas has recently said that the UK government indicated to the Government of the Seychelles that they would support their request for GSP-plus. However, the extent to which they have actively done this is unclear. Seychelles asked for immediate entry into the scheme, with effect from January 1 2008 to avoid trade disruption. The Commission's reply to the Seychelles' request was a clear 'no' and as a result, the Seychelles have recently initialled an EPA with the EU.

Nigeria has asked for immediate access to the GSP Plus scheme for January 1 2008, and has committed to ratify the necessary conventions within the same time periods as the EC accorded to the

initial round of GSP Plus applicants. It is technically feasible for Europe to accept Nigeria's request. We urge the UK Government to support Nigeria in this application.

7. Regional Integration

HMG position: the UK Government has consistently stressed that the 'prize' of EPAs is regional integration. For example, "In the long term, the biggest benefits for countries will be from the extra regional integration that flows from EPAs". (Gareth Thomas, European Standing Committee Debate on Economic Partnership Agreements, 3 December 2007)

Actual state of play: the EC is now pressing countries to sign individual EPAs, independently from their regional partners, even in the case of West Africa where a collective regional Ministerial declaration in October stressed the need for two more years to conclude a regional EPA. The UK government is actively supporting this approach.

This approach has a number of serious consequences, all of them extremely counter-productive for regional integration.

- countries are now submitting separate and un-harmonised tariff liberalisation schedules, not agreed as a region, which will commit them to liberalising to the EU before they have decided what to liberalise to each other (in the case of COMESA for example). Since revision clauses are absent or inadequate in these EPA texts, the separate EPAs or trade regimes within a region would prevent the further integration of the region to a customs union.
- such an approach could also undermine capacities to add value between countries that are party to and those not party to an EPA, if no cumulation is allowed on rules of origin for exports under different EU preferential regimes
- in addition to this, countries not signed up will have to impose stricter border controls to guard against EU goods entering their markets through neighbouring countries, leading to defensiveness between regional neighbours and greater barriers to regional trade
- in order to avoid this fragmentation, the only option for countries left behind by regional neighbours that have already signed an EPA, would be to join up to an agreement that has been designed by the stronger partners without their interests in mind. This would in turn leave these weaker countries unable to protect their own sensitive sectors, in cases where these differ from those of their more advanced neighbours
- UN analysis shows that commitments of over 80% tariff liberalisation on the part of the ACP are counter-productive for regional trade, especially in value-added sectors.