

Makhan, Davina

**Research Report**

## Linking EU trade and development policies: lessons from the ACP-EU trade negotiations on economic partnership agreements

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# Linking EU Trade and Development Policies

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Studies  
Deutsches Institut für Entwicklungspolitik

50

Linking EU Trade and Development Policies  
Lessons from the ACP-EU trade negotiations  
on Economic Partnership Agreements

*Davina Makhan*

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## Preface

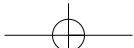
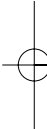
The present study is part of a more comprehensive research project on ‘European policy for global development’ funded by the German Ministry for Economic Cooperation and Development (BMZ) under the direction of Dr. Sven Grimm. The project analyses the European Union’s capabilities to manage policy nexuses and looks particularly at new EU initiatives and instruments (aid effectiveness), the institutional setup (aid architecture) and the coherence for development. It approaches issues of coherence and co-ordination within the EU’s complex system of multi-level governance – encompassing the European as well as the Member State level – in the context of two thematic areas (‘trade’ and ‘security’) and their relation to development policy – as well as the challenge arising for Europe from emerging new actors in this field, in particular China. Focusing therefore on how to strengthen the EU’s policy for global development, the project’s point of departure is that the EU, while being a major actor in international relations, has not fully developed its political potential to shape global development. For this to happen, the EU should, among other things and specifically in the area of trade, (i) manage the nexus between its trade and development policies; (ii) improve the coherence within development policy; and finally, (iii) overcome the constraints resulting from the EU’s complex multi-level structure, involving multiple actors and spheres of competence.

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Bonn, November 2009

Davina Makhan





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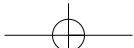
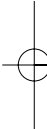
## Abbreviations

AAMS	Associated African and Malagasy States
ACP	African, Caribbean, and Pacific
AEC	African Economic Community
AfT	Aid for Trade
AGOA	African Growth and Opportunity Act
AU	African Union
BMZ	German Ministry for Economic Cooperation and Development
CAP	Common Agricultural Policy
CARIFORUM	Caribbean Forum of African, Caribbean and Pacific (ACP) States
CEMAC	Central African Monetary and Economic Community
CEN-SAD	Community of Sahel-Saharan States
CEPGL	Economic Community of the Great Lakes States
CET	Common External Tariff
COMESA	Common Market for Eastern and Southern Africa
COMSEC	Commonwealth Secretariat
CSP	Country Strategy Paper
DAC	Development Assistance Committee
DG	Directorate General
DRC	Democratic Republic of Congo
EAC	East African Community
EBA	Everything But Arms
EC	European Commission
ECCAS	Economic Community of Central African States
ECDPM	European Centre for Development Policy Management
ECOWAS	Economic Community of West African States

EDF	European Development Fund
EEC	European Economic Community
EPA	Economic Partnership Agreement
ESA	Eastern and Southern African
EU	European Union
FTA	Free Trade Agreement
GAERC	General Affairs and External Relations Council
GATT	General Agreement on Tariffs and Trade
GSP	General Scheme of Preferences
GCC	Gulf Cooperation Council
HIPC	Highly Indebted Poor Countries
IGAD	Inter-Governmental Authority on Development
IMF	International Monetary Fund
IOC	Indian Ocean Commission
LDC	Least Developed Countries
MDG	Millennium Development Goal
MFN	Most Favoured Nation
MRU	Mano River Union
NAMA	Non-Agricultural Market Access
NAO	National Authorising Officer
NDTPF	National Development and Trade Policy Forum
NEPAD	New Partnership for Africa's Development
NGO	Non-governmental Organisation
NIEO	New International Economic Order
NSA	Non-State Actor
OAU	Organisation for African Unity
OECD	Organisation for Economic Co-operation and Development

OIF	Organisation Internationale de la Francophonie
PMU	Programme Management Unit
PRSP	Poverty Reduction Strategy Paper
PSEEF	Private sector enabling environment facility
PTA	Preferential Trade Arrangement
R&D	Research and Development
REC	Regional Economic Community
RoO	Rules of Origin
RPTF	Regional Preparatory Task Force
RTA	Regional Trade Arrangement
SACU	Southern African Customs Union
SADC	Southern African Development Community
SAP	Structural Adjustment Programme
SPS	Sanitary and Phytosanitary (measures)
STABEX	Stabilisation of Export receipts
TBT	Technical Barriers to Trade
TDCA	Trade, Development, and Cooperation Agreement
TEU	Treaty of the European Union
UEMOA/ WAEMU	Union Economique et Monétaire Ouest Africaine/ West African Economic and Monetary Union
UK	United Kingdom
UMA/AMU	Union du Maghreb Arabe/Arab Maghreb Union
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UNECA	United Nations Economic Commission for Africa
VAT	Value Added Tax
WTO	World Trade Organization





## Summary

The European Community has generally been a pioneer in linking development to other policies, not least to trade policy. This is particularly the case in the context of the European Union's (EU) relations to the group of African, Caribbean and Pacific (ACP) countries. Economic Partnership Agreements (EPA) embody the new trade pillar envisaged by the Cotonou Agreement between the EU and the group of ACP countries. EPAs are said to be the EU's flagship endeavour to make (better) use of trade for development and bring the policy areas of trade and development closer together.

Given that trade is a communitarised policy area and a strong instrument for the EU as an international actor, it could be assumed that it will prove as strong a Community instrument when used *for development*. The case of the EPA negotiations thus provides a relevant setting for analysis and assessment of the EU's capabilities in formulating and managing a relevant and coherent trade policy for development. Particularly so at a time when the institution aspires to the role of a "global partner for development": whereas the Community holds an exclusive competency over trade issues, the competency over development policy is shared with the EU member states. It is therefore intended, through this study, to analyse the ability of the EU, as a multilevel system, to manage the trade-development nexus within the framework of the EPAs envisaged with ACP regions.

The aim of this study is two-fold. First, it analyses the development relevance of the EU's trade policy towards the ACP countries as formulated in the EPA, with a view to drawing conclusions on how to strengthen the trade-development nexus. Second, it assesses the way in which the EU as a multi-level system has operated in the EPA negotiations, with a view to drawing conclusions on how to strengthen the capacity of the EU multi-level system to design and carry out its policy for global development.

### **The EPAs: An ambitious instrument for development**

The EC has argued that rather than market opening, market *building* in the ACP is its priority. Indeed, the EPAs have a strong emphasis on

the achievement of development objectives by working on establishing a more transparent, stable and predictable environment with the ACP. Since 2002, the Union and the group of 79 ACP countries have engaged in intense negotiations directed towards the establishment of free trade agreements complying with the rules set out by the World Trade Organization (WTO).

But the EPAs also encompass a number of notable innovative elements that make them more than mere WTO-compatible free trade agreements. These elements are associated with expected beneficial effects individually but also as a 'package', and consist of:

- (i) the introduction of reciprocity on market access issues, i.e. the liberalisation of trade on the ACP side, and improved market access to European markets for the ACP;
- (ii) the comprehensive scope of the negotiations, beyond trade in goods only;
- (iii) commitment to a flexible (and differentiated) approach in the negotiations and implementation of the EPAs;
- (iv) aspirations for capacity building for both the negotiations and for trade and trade-related activities; and
- (v) the expressed desire to promote regional integration.

From the outset, the EPA endeavour was a most ambitious and challenging one. Ambitious, considering that what makes trade (liberalisation) work for development is still a matter of heated debate; challenging, considering that of the 78 ACP countries concerned by this new approach, many are amongst the poorest: out of 50 countries classified as Least Developed Countries (LDCs), 41 belong to the ACP group and 33 are African States. In addition, the envisaged EPAs were not taking place in a policy vacuum but were to replace the long-standing trade regime that had governed ACP-EU trade relations since the 1970s.

The overall development relevance of the new regime of preferences is thus fundamentally contingent upon whether the EPAs have been conceptualised in accordance with empirical lessons drawn from past

experiences, as well as upon theoretical considerations regarding the linkages between trade and development.

**The EPAs' 'formula' for trade and development:  
An assessment of the concept**

At first sight, the EPAs can be seen as providing adequate policy responses to some of the major shortcomings revealed under the previous system, from both an internal and an external perspective. First, internally, the EPAs seek to address core aspects that previously limited the effectiveness of the preferential treatment granted by the EU under the Lomé trade regime. The concept thus offered an opportunity to improve the EU's trade and development package for the ACP: (i) The EPAs aspire to improve the relative quality and value of preferential access to EU markets, notably through a revision of the rules of origin and greater market access. (ii) The introduction of reciprocity and the comprehensive coverage of the EPAs, for their part, make it possible to overcome the restrictive approach of a preferential regime focused on tariffs and quotas only. EPAs thus can include all rules and issues relevant to building up the economic governance framework of the ACP. Second, externally the EPAs are better embedded in the regulatory framework of multilateral trade because of their compatibility with WTO rules, and hence can shelter the ACP-EU regime from being legally challenged by the wider WTO membership.

Furthermore, the key elements of the concept appear to have strengthened the trade-development nexus by integrating the main points of convergence that theoretical considerations indicate are necessary in making trade liberalisation supportive of development objectives:

- First, the EPAs offer to set up a comprehensive regulatory framework. Appropriate weight would thus be given to trade development within the ACP States' development strategies, as well as “due regard for [ACP] political choices and development priorities”, as formulated in the Cotonou Partnership Agreement; ownership has thus been factored in the concept.
- Second, selectivity was consensual among parties. The flexible approach favoured by the EU and the ACP can be understood as al-

lowing for a ‘selective protection’ of products (notably through the foreseen asymmetrical and gradual liberalisation of ACP trade). This selectivity also allows for the adoption of flanking policies and accompanying measures or reforms necessary to benefit from trade liberalisation.

- Third, support for capacity-building was agreed upon. Strong capacities will be required to carry out this process and make the necessary decisions. In the framework of the EPAs as outlined by Cotonou, the EU and the ACP agreed to support and address the negotiating and trading capacities of the ACP in view of the negotiation and implementation of the agreements.

However, the promotion of regional integration by EPA – conceived as a stepping-stone towards integration into the world economy – is more challenging. There are no clear answers in theoretical discussions as to whether parallel North-South and South-South integration can be taken as development-friendly, or rather development-unfriendly. Arguments can be found in the theoretical debates for a two-level integration strategy proposed with the EPAs (i.e. within the ACP and between the EU and the ACP). EPAs might work, provided there is scope for sequencing of the integration processes and adequate support to integration; in addition, the regional dimension of the EPAs will have to be reconciled with the national level of implementation. Northern partners (here the EU), should be careful not to overtake integration processes within the South. Despite the opportunities offered, there is also a clear risk that the marginalisation of ACP countries and regions from the world economy would be reinforced through North-South integration, if trading partners are not careful in crafting the agreement.

More fundamentally, whether the opportunities created through the EU’s new trade policy instrument for development can be seized will depend on the active participation of all involved in the negotiations. Particularly, developing countries’ governments will need to strategically negotiate and use the EPAs according to their needs.

### **Trade and development through negotiations**

Like other international agreements, EPAs are formulated in negotiations, i.e. both sides have to agree on their content and scope. This is

an opportunity, since both bring their goals and strategies to the table. It is, however, also a challenge in situations of unequal capacities, if the overall goal is the development of the weaker negotiation partner. Capitalising on the EPAs' developmental potential depends on at least two factors: (i) whether the EU, as a development partner, is prepared to and does provide adequate and timely support for building ACP capacities in view of the negotiations (not least at the start of the negotiations); and (ii) whether the ACP are capable of defining their strategic priorities to determine their negotiating positions, both at the national and regional levels. For a development-oriented outcome, both sides will also have to base their approaches on the realities on the ground and overcome intrinsic constraints and complexities.

### *The ACP in the negotiations*

In order to meaningfully engage with the EU in the EPA negotiations, the ACP countries and regions, and possibly the group as a whole, needed to be adequately prepared to respond to key issues and challenges in the negotiations. This required strong capabilities to formulate trade policy in the first place, which would then inform the negotiating positions. However, the conditions for such informed and strategic decisions have been lacking throughout the process; they were not sufficiently addressed, not least due to the intrinsic characteristics and diversity of the ACP group.

### *Starting points for the EPA negotiations*

Trade policies had long been a neglected part of many African countries' economic policies. This was due to the lack of or insufficient support from both African governments and donors, including the EU. Therefore, the ACP countries' starting point in the negotiations was clearly unfavourable. ACP trade policies have in the past generally been dominated or even determined by external actors, notably the Bretton Woods institutions. Most ACP countries reluctantly engaged in the EPA negotiations and appeared somewhat passive throughout the process. They have often lacked the capacity – or will – to drive the policy process and fully take advantage of the trade preferences available.

The need for capacity building activities in the ACP in view of the negotiating phase was explicitly addressed in the Cotonou Agreement. Nevertheless, the overall picture with regard to ACP countries' capacities seems somewhat dispersed. The EU system in the initial phase of EPA negotiations apparently was not capable of reacting with appropriate speed or in an adequate manner for the challenges ahead; the link between trade and aid did not work properly. Much of the responsibility for the limited impact of EU support to capacity building activities in view of the EPA negotiations appears to have been attributable to the cumbersome procedures in Brussels and inappropriate responses from partner institutions with limited capacities in Africa.

*Defining positions: The ACP in search of a united and participatory approach*

Nonetheless, negotiating positions needed to be defined within the ACP. One approach by the ACP to tackling the problem of limited capacities was to draw up a common framework of common principles and potential issues of shared interest at the all-ACP level, while later negotiating details by region. However, this attempt was rather unsuccessful, notably due to the heterogeneity of the ACP group, not least in their trade interests. The EC was also reluctant to fully carry out a first all-ACP phase in order to come earlier to the more detailed negotiations.

At the national level, most ACP countries formulated at a late stage or with much difficulty their negotiating positions. EPAs required broad participation from both state and non-state stakeholders, considering the foreseen comprehensive character of the agreements. This constituted a challenge on the ACP side. The difficulties on the ground also hindered the EU's ability to deliver support at crucial moments. While this was not due to the EU's complexity, the Union as the stronger partner failed to grasp (or act upon) shortcomings on the ACP side that were not simply due to a lack of political will, notably at regional level within Africa. Diverging interests were furthermore emphasised by competing incentives created by EU trade policies for developing countries. For instance, the EU's Everything-But-Arms (EBA) initiative in 2001 stood at odds with the intended promotion of regionalism in the EPAs. As a

result, there was little incentive for LDCs – i.e. most countries on the African continent – to fully engage in the EPA negotiations.

The EPAs were ideally intended to build on and reinforce regional integration agreements, but failed to reach this goal due to the intricacies of African integration that were not factored in sufficiently. Operating on the basis of its own experiences in Europe in the African context might impede the EU's capability to deliver on otherwise well-founded policies. Overall, African regional integration largely has a poor record, for reasons of both political and economic nature. In some cases, the “bloc” EPAs are supposed to build on is *de facto* absent. For most of the negotiating process, regional EPA configurations in Africa have lacked consistency. Garnering the necessary support from the national level to feed into the negotiating process – for instance through the identification of national market access offers and the list of sensitive products to exclude – and maintaining regional cohesion and coherence was therefore likely to be a strenuous task.

The EU was able to trigger some movement within the regional integration settings. Paradoxically, the resulting dynamics have in most cases added complexity. Regional groupings in Africa might ultimately require the EU to make adjustments on its trade and regional integration policies towards Africa as a continent, notably factoring in integration between LDCs and non-LDCs. Particularly specific incentives might thus have to be rethought – including on the country level and not least in terms of the overall coherence of EU policies.

### ***The EU in the negotiations***

Coherence between trade and development policies within the EU was a prerequisite for the negotiations. The spotlight was thus particularly on the shared competencies on trade and development within the policy framework of the EU.

### ***Starting points for the EPA negotiations***

A successful preparation in view of the EPA negotiations required that the diverse EU multi-level system be able to effectively engage as a coherent actor for trade and development with and within the ACP. The



complexity of the EU multilevel structure seems to have hampered its ability to be more responsive to an ACP perspective, as can be observed in the reform process of the Lomé Convention that paved the way to the EPAs.

#### Integrating trade into development policy:

##### The EU's policy framework to improve coherence

Some efforts – and arguable improvements – have been made in the last decade for a better coordination role of the Commission with the EU aid system. For instance, the 2005 European Consensus on Development explicitly refers to all EU aid, i.e. including member states' bilateral assistance. Specifically regarding the EPAs, the Consensus takes up key issues that can make trade liberalisation conducive to development, notably ownership, sequencing of the liberalisation process, and flexibility. Other initiatives to improve the effectiveness of EU development cooperation include the adoption of the Code of Conduct on Complementarity and the Division of Labour in Development Policy at the internal level, and on the international level the adherence to the Paris Declaration and Accra Agenda for Action.

However, these initiatives are still recent and the target of a consistent approach is arguably yet to emerge in practice. Thus, instilling more coherence into the European system by better integrating trade into development policy is a long-winded process, and the provisions still need to deliver on their promise. It was the EU's challenge to translate the various efforts and commitments into concrete and timely measures in the context of the ACP-EU relations, not least with respect to the development of trade in ACP countries and in the formulation of the concept of the EPAs.

#### From model to mainstream:

##### Reforming Lomé for ACP development?

Over time, the Lomé framework became more concerned with the policy environment in recipient countries, including policies on economic and trade governance. In the case of the reform of the trade pillar of the ACP-EU relations, however, external factors – rather than development considerations as such – can be found to have triggered the change. In

this respect, considerations of the European structure more so than ACP perspectives have played an influential role in shaping the EPAs.

The EU's position was a difficult compromise reached between EU institutions and member states, thus rather inflexible to external demands. Overall, while the EU has gradually equipped itself with the policy instruments and means required to realise its ambitions in using trade policy as a (coherent) instrument, it is questionable whether it did so for development.

*Defining positions: is the EU capable of getting the incentives for the EPAs right?*

Formulating a consistent response for development-oriented EPAs required that the EU should integrate trade policy into development endeavours, but also vice-versa.

Integrating development into trade policy:  
Addressing ACP concerns?

Ownership constitutes one of the main challenges of EPAs from a development perspective. The ability of the EU as a system to adequately respond to the development dimension of the new agreements is thus closely linked to its ability to ensure ownership of the proposed trade regime on the ACP side. In the course of the negotiations, the demands by ACP states have crystallised around two main issues: (i) that of the EU's financial support for the EPAs and (ii) the extent and scope of trade liberalisation required on the part of the ACP.

The EU and the ACP were unable to reach a common understanding on the approach towards development in the framework of the EPA both when the regime was overhauled under the Cotonou Agreement in 2000 and after negotiations were launched (at the all-ACP level and subsequently at the regional level). Throughout the formal period of the negotiations (i.e. until December 2007), the EC's emphasis on the comprehensive character of the agreements came at the expense of flexibility and the promotion of regional integration. This hampered the developmental value of the EPA in the eyes of the ACP and consequently impacted on prospects for a successful conclusion of the negotiations.

Towards the end of the formal period of the negotiations, the EU provided a policy response of developmental relevance for the ACP and the EPA context: the issue of trade- and EPA-related development assistance (Aid for Trade). The challenge for the EU system was thus to become more streamlined across the board regarding policy competencies.

The EU's response on Aid for trade:  
Streamlining the system for development?

While much of the policy framework for development-oriented EPAs has been set, the system still has to deliver on the substance of its commitments. The Aid for Trade (AfT) initiative could provide the right setting for concrete coordination with more immediate results to take place; the EU has spearheaded the AfT process initiated at multilateral level. The provision of Aid for Trade in the context of the EPAs could act as a strong incentive for *regional* agreements. So far, however, the results are limited. Much of the focus has been on coordination efforts within the EU system, which – while a necessary first step – has come at the expense of being more responsive to ACP concerns.

AfT is a complex endeavour, considering the different qualities, rationales and interests driving the various actors within the EU system. Similarly to EPAs themselves, AfT will have to successfully deliver at both the national *and* regional level while ensuring that the two levels are adequately interlinked if it is to succeed in supporting EPAs. Time was needed (and still is) to allow for clarification of what AfT entails for both donors and recipients. However, the lack of clarity on the extent of existing AfT funding for the EPAs has led to confusion also on the ACP side. Expectations have risen with regard to the additionality of Aid for Trade and the linkages to the EPAs. In any case, the AfT initiative can at best *contribute* to realising the development potential of the EPAs.

The EU's response on market access issues and rules of origin –  
engaging the Commission and member states

Another key aspect of the EPAs as a relevant development package in trade policy is the quality of the preferential market access for the

countries and regions involved. While being nominally vast under the former trade regime, access has in effect been limited due to the relative quality of the preferences granted (i.e. the value of preferences has been reduced as trade liberalisation has furthered at the global level). Furthermore, the restrictive rules of origin were an obstacle. The EU had committed itself to provide a more favourable access to its markets than under Cotonou and to relax the rules of origin applicable to ACP products under the EPAs.

Redefining the rules of origin regulating access to EU markets for ACP exports could also be a key incentive even for LDCs to sign EPAs. However, the EU could provide details on these two important variables for development-oriented EPAs only in the final year of the WTO waiver and set a date for completion of the EPA negotiations. The EU tabled its formal market access offer to the ACP shortly before the expiry of the deadline. Similarly, RoO were not seriously discussed until 2007, due to delays on both sides in reaching common positions. The European side needed an internal compromise acceptable to all EU Member States and was apparently unable to move substantially. The interim EPA RoO are largely similar to the Cotonou rules.

The multi-level system was negatively playing out during the course of formulation of the EU's response on these core issues. Complex dynamics and diverging interests within the EU have slowed and limited policy response. Despite the fact that trade policy in the EU is an area of exclusive competence to the Community, EU member states influence – if not determine – trade policy-making, notably through the Article 133 Committee. The slow response is thus a system-wide issue, not just the responsibility of the European Commission.

Throughout most of the negotiating process, there was thus little incentive and little time for African countries to initiate at their end the long overdue – and neglected – design of their own national market access offer, let alone on the regional level. Considering the capacity constraints highlighted previously, it was unlikely that the negotiations would be comprehensively concluded by the end of December 2007, despite the deadline that had been hoped to act as a catalyst.

### ***The unresolved development dimension of the EPAs***

The key development components of the EPAs were severely tested in the negotiations. In the face of imminent expiry of the WTO waiver and limited progress in negotiations, the EU tabled a pragmatic proposal, thus putting the comprehensive and, in many cases, the regional scopes of the EPAs on the back burner. These aspects of the development dimension of the EPAs remain an unresolved challenge.

#### *Comprehensiveness (temporarily?) sidetracked: pragmatic considerations with detrimental effects*

The December 2007 deadline was arguably a negotiating position of the EC, presumably meant to increase pressure on the ACP to get organised. Towards the end of the year, however, it became obvious that none of the African regions would be concluding a comprehensive EPA. The EC tabled a two-staged proposal, consisting of the conclusion of WTO-compatible interim and partial agreements with predisposed regional groupings or individual countries. These interim agreements are particularly unfavourable to the achievement of the objective of regional integration. The scope of the interim EPAs differs from one region to the other, sometimes even between countries in a given region. In the late weeks of 2007, the pressure was high on both ACP and EC negotiators to finalise WTO-compatible agreements; this negatively affected the quality of the texts for development. Little time was left for the scrutiny or exchange of information on contents which would have been necessary to ensure that existing attempts for regional integration were not jeopardised in Africa.

Falling back on either unilateral preferences, such as the EBA, or interim agreements since the expiration of the 2007, *all* parties have committed themselves to pursue the negotiations for comprehensive and regional EPAs. The EU's approach to the EPAs seems to have taken a more open and flexible turn since that time, while moving from interim agreements towards regional EPA.

### *Regional integration in the balance*

The EPA process so far has negatively impacted on regional integration prospects in Africa. A step in the right direction to address this challenge was the EC Communication on regional integration for development in ACP countries. The EU indeed aspires to combine political dialogue, policy coordination of EU (Community and member states) development cooperation and trade policy in the scope of the EPAs to address the challenge of regional integration in Africa. By suggesting a ‘global EU approach’ to regional integration, this most ambitious agenda for a ‘policy mix’ puts the spotlight on the capacity of the EU to coordinate the ‘27+1’ actions and cast a coherent image.

Coordination within the multilevel governance structure of the EU *and* with the ACP will however remain a challenge. The Commission has committed itself to support a “rationalisation exercise” that might lead to an “eventual single economic African entity”. Given the multifaceted and wide range of political and economic challenges of regional integration in Africa, the EU approach remains in a tension between encouraging enforcement of integration and ownership at the same time. Parallel action in the areas of support for regional integration, Aid for Trade and better market access conditions will thus have to be delivered if the support for regional integration is to be effective.

### *Conclusions*

This study argues that, as a policy concept, the EPAs hold a strong potential to strengthen the EU’s policy for global development in its trade relations with the ACP. At the same time, however, it finds that the development potential of the EPAs has not been fully capitalised on in the process of the EPA negotiations, due to (i) inconsistencies stemming from the multi-level governance structure of the EU system, notably in the formulation of the EPAs and the design and delivery of related development assistance, and (ii) complex realities in ACP countries and regions, not least the limited capacities for trade policy for many of them, which have not been sufficiently and systematically addressed so far by policy makers, including the EU.

The developmental outcome of the EPAs is not guaranteed. The right balance needs to be struck between comprehensiveness, flexibility and the capacity to trade and negotiate in order to make trade liberalisation and regional integration supportive of development for the ACP. These are necessary, but not sufficient conditions, inasmuch as trade agreements are negotiated results. Most importantly, flexibility in the negotiation and implementation of the EPAs, in particular on the EU's side (as the stronger partner), will be at the core of a development-friendly outcome of the EPA framework.

The EU will need to increase its efforts if it is to be a 'global partner for development'. The system has already shown an increasing willingness to concretise a flexible approach in its negotiations, i.e. there was some institutional learning involved. More efforts are required to enable the EU system to more flexibly respond to problematic issues of development concern in the trade negotiations, notably through improved coordination. Efforts will particularly need to aim at engaging both the communitarian and bilateral development policies within the EU's multilevel system more successfully with a view towards the promotion of regional integration in the ACP.

The challenge for the multilevel system is to successfully strengthen the trade-development nexus from the 'development angle'. A more flexible approach will need to be reflected in the 'technical' details and provisions of the EPAs. Besides through measurable flexibility in the content of the agreement, the EU could improve the quality of the market access it has granted, through a more liberal and flexible set of rules of origin (allowing notably for greater regional cooperation, possibly including non-EPA signatories), and provide stronger additional incentives with the Aid for Trade instrument. More broadly, better integrating trade and development through the EPAs and with the support of Aid for Trade also calls for adequately monitoring and accompanying negotiation and gradual implementation of the EPAs. The EPAs thus also provide a learning opportunity for the EU institution, as they increase the urgency for more systematically and effectively addressing trade-related capacity needs in the ACP within development policy.

Thus, the EU needs to make progress in operationalising its Aid for Trade commitments, ideally along the lines of a workable division of labour. Such an endeavour will also crucially need to accommodate for the ACP partners' perspectives, which in turn would require more flexibility in the EU's development cooperation policies as well. The EU will need to be cautious about raising ACP expectations, and needs to provide more clarity of its own expectations from developing country partners.

The potential of AfT can only unfold if it builds on experiences gained from the negotiations. The AfT initiative provides a most relevant setting for further investigating how to strengthen the EU multilevel system to improve the trade-development nexus. The AfT agenda indeed calls for an inclusion of member states and the Community, as well as developing countries' perspective. In the context of the EPAs in particular, the initiative also brings together the national and regional levels of implementation. A common understanding of how to provide this support, and with what focus, will be crucial. Indeed, the efficient use of available resources to ensure the effectiveness of trade policy for development will depend on a stronger and concrete focus on building the necessary capacities in recipient countries to produce, trade and export.

Empirical work will be needed at the country level to better adjust approaches and get the incentives and the system right. More will thus have to be known about the coordination of the different actors' interests and approaches for development in the framework of the AfT initiative at the specific country level and how they engage with the discussion taking place at the regional level. This would instruct the EU on how to avoid shortcomings on its part of the equation in the future. Only on the basis of such concrete analysis can the multilevel system of governance on trade and development better divide its labour. The alternative option of a greater centralisation of tasks might further constrain the ability of the system to be more responsive to developing partners' concerns, as the example of trade policy illustrated. But it also appears to be politically unviable, given the difficulties with EU treaty changes in general.





## 1 Introduction

This study is part of a research project focusing on how to strengthen the European Union's (EU) policy for global development. Part of a broader understanding of policy for global development is trade policy. This study looks into the trade-development nexus and takes as an example the case of the Economic Partnership Agreements (EPA) that the EU is currently negotiating with the group of African, Caribbean and Pacific (ACP) countries.

In line with the research dimensions of the overall project, the aim of this study is two-fold. First, it analyses the development relevance of the EU's trade policy towards the ACP countries as formulated in the EPA, with a view to drawing conclusions on how to strengthen the trade-development nexus. Second, it assesses the way in which the EU as a multi-level system has operated in the EPA negotiations, with a view to drawing conclusions on how to strengthen the capacity of the EU multi-level system to design and carry out policies for global development.

For a long time, "development" has been a rather diffuse concept to qualify and assess, and very much depended on the "ideological flavour of the day". After several decades of different perspectives, which advocated for varying if not contradictory recipes for development, a newly-created consensus has emerged. Since the turn of the millennium, leaders from across the world have "committed to making the right to development a reality for everyone" and have further resolved to "create an environment – at the national and global levels alike – which is conducive to development and the elimination of poverty" (United Nations Millennium Declaration – Resolution adopted by the General Assembly 55/2, 274).

Eight goals (the Millennium Development Goals – MDGs) have been derived from the widely-endorsed Millennium Declaration and are broken down into a number of quantifiable targets and indicators for assessing the progress made (see Box 1). Globally, a first milestone has been set for 2015, by which the international community has vowed to halve the poverty level world-wide<sup>1</sup>. Governments of developing and developed countries alike are thereby held to the promise of designing policies that will deliver results for

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1 See the annual reports and progress charts at <http://www.un.org/millenniumgoals/reports.shtml>

global development. Of these, developing a global partnership for development (MDG 8), aiming notably at integrating developing countries into the world trading system, is arguably amongst if not the most powerful at hand.

**Box 1: UN Millennium Declaration and the eight Millennium Development Goals: Selected paragraphs**

**United Nations Millennium Declaration**

**[...] III. Development and poverty eradication**

11. We will spare no effort to free our fellow men, women and children from the abject and dehumanizing conditions of extreme poverty, to which more than a billion of them are currently subjected. We are committed to making the right to development a reality for everyone and to freeing the entire human race from want.

12. We resolve therefore to create an environment – at the national and global levels alike – which is conducive to development and to the elimination of poverty.

13. Success in meeting these objectives depends, inter alia, on good governance within each country. It also depends on good governance at the international level and on transparency in the financial, monetary and trading systems. We are committed to an open, equitable, rule-based, predictable and non-discriminatory multilateral trading and financial system. [...]

19. We resolve further:

- To halve, by the year 2015, the proportion of the world's people whose income is less than one dollar a day and the proportion of people who suffer from hunger and, by the same date, to halve the proportion of people who are unable to reach or to afford safe drinking water. [...]

**VIII. Strengthening the United Nations**

29. We will spare no effort to make the United Nations a more effective instrument for pursuing all of these priorities: the fight for development for all the peoples of the world, the fight against poverty, ignorance and disease; the fight against injustice; the fight against violence, terror and crime; and the fight against the degradation and destruction of our common home.

30. We resolve therefore:

[...] To ensure greater policy coherence and better cooperation between the United Nations, its agencies, the Bretton Woods Institutions and the World Trade Organization, as well as other multilateral bodies, with a view to achieving a fully coordinated approach to the problems of peace and development. [...]

**The Eight Millennium Development Goals (MDGs)**

1. Eradicate extreme poverty and hunger
2. Achieve universal primary education
3. Promote gender equality and empower women
4. Reduce child mortality
5. Improve maternal health
6. Combat HIV/AIDS, malaria, and other diseases
7. Ensure environmental sustainability
8. Develop a global partnership for development

Persistent efforts are being made for trade to work as an instrument for development at various policy levels. Developed countries have unilaterally designed specific trade policy instruments to the presumed benefit of developing countries, and some developing countries have actively used trade policy as a contribution to their development strategies. On the multilateral scene, member countries of the World Trade Organization (WTO) have been working since 2001 towards the conclusion of more development-friendly international regulatory trade system. Regionally as well, countries have increasingly committed their resources to move the integration agenda forward. This is seen as a key contribution to their national economic development and poverty reduction objectives, both with neighbouring countries (intra-regional level) and between regional blocs (inter-regional level). Of the latter, of particular significance is the negotiation of Economic Partnership Agreements (EPAs) between the European Union (EU) and the group of African, Caribbean and Pacific (ACP) countries.

According to the provisions of the Cotonou Partnership Agreement (ACP-EC 2000), EPAs are conceived of as a contribution to the overarching goal of reducing – and ultimately eradicating – poverty in ACP countries and promoting their sustainable development (Article 1 and Article 34.1 of the Cotonou Agreement). Set within the WTO framework of rules, EPAs envisage the progressive removal of barriers to trade as well as increased cooperation in all areas relevant to trade between the EU and (preferably) regional groups of ACP countries (Articles 35.2 and 36.1). EPAs are therefore aimed at “fostering the smooth and gradual integration of the ACP States into the world economy, with due regard for their political choices and development priorities” (Article 34.4). Such an approach would enable ACP States to “play a full part in international trade”, “to manage the chal-

lenges of globalisation and to adapt progressively to new conditions of international trade thereby facilitating their transition to the liberalised global economy” (Articles 1, 34.1 and 34.2).

In conformity with the provisions of the Cotonou Partnership Agreement, negotiations towards the conclusion of the EPAs were formally launched in September 2002, on the basis of the negotiating mandates and guidelines identified by each party earlier the same year (ACP 2002a; EC 2002b). By the set deadline of December 2007, however, only the Caribbean had reached an agreement with the EU on a regional and comprehensive EPA. In the Pacific and Africa, most countries initialled partial and individual ‘stepping stone’ agreements with the EU, as temporary solutions towards the conclusions of full and regional agreements. In Africa, only the East African Community (EAC) initialled a regional interim agreement with the EU. In all regions concerned (i.e. besides the Caribbean), negotiations have since been ongoing towards the conclusion of comprehensive and regional EPAs.

From the outset, the EPA endeavour was a most ambitious and challenging one. Ambitious, considering that what makes trade (liberalisation) work for development is still a matter of heated debate; challenging, considering that of the 78 ACP countries concerned by this new approach, many are amongst the poorest: out of 50 countries classified as LDCs, 41 belong to the ACP group and 33 are African States. In addition, the envisaged EPAs were not taking place in a policy vacuum but were to succeed to and reform the long-standing trade regime that had governed the ACP-EU trade regime since the 1970s. For over forty years, interactions between an increasing number of both ACP and EU countries<sup>2</sup> have been managed in the framework of a series of negotiated contractual agreements: the successive Yaoundé and Lomé Conventions from 1963 to 2000, and since that time, the Cotonou Partnership Agreement. But the EPAs fundamentally overhaul the way the ACP had been trading with the EU inasmuch as they entail a shift from unilateral (non-reciprocal) preferences to a reciprocal Free Trade Agreement (FTA) between some of the most developed and some of the poorest countries in the world.

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2 The number of signatories to the EU-ACP agreements increased from a mere 18 ACP and 6 European countries in 1963 to 77 ACP and 15 EU signatories of Cotonou in 2000. There are currently 79 ACP countries and 27 EU Member States.

The European Community has generally been a pioneer in linking development to other policies, not least to trade policy. Given that trade is a communitarised policy area since the inception of the European integration process and a strong instrument for the EU as an international actor, it could be assumed that it will prove as strong an instrument when used *for development*. The case of the EPA negotiations thus provides a relevant setting for analysis and assessment of the EU's capabilities in formulating and managing a relevant and coherent trade policy for development. This is particularly so at a time when the institution, characterised by its multi-level governance structure, aspires to the role of a "*global partner for development*" (EC 2008c): whereas the Community as a whole holds an exclusive competency over trade issues, the competency over development policy is shared with the EU member states. It is therefore intended, through this study, to analyse the ability of the EU, as a multilevel system, to manage the trade-development nexus within the framework of the EPAs envisaged with ACP regions.

In line with this view, Chapter 2 will first establish the special nature of the policy concept of the EPA as an instrument for development and highlight its key elements and supporting rationale, after setting the endeavour in the broader international context as well as within the EU's overall trade policy. Chapter 3 will then seek to assess the development relevance of the new ACP-EU trade regime envisaged with the EPAs based on current debates in the literature. This analysis will be carried out by measuring the key elements of the EPA policy concept – including its regional dimension – against the former trade regime that had governed ACP-EU relations under the Lomé Conventions, as well as key considerations and lessons drawn from theoretical debates and country experiences on the linkages between trade, development and poverty. Chapter 4 will turn to the process of the EPA negotiations as such and, by looking alternatively at the ACP and the EU, seek to identify whether the conditions were met for a developmental outcome to the trade negotiations. This will be done by assessing the starting point of both sides for the negotiations and analysing the process leading to the formulation of negotiating positions. The section discussing the ACP preparations and positions for the negotiations will focus particularly on the African continent, since this is where the development challenges are arguably greatest. The section dedicated to the EU will be particularly devoted to the influence of the multilevel system of governance in formulating the concept of the EPAs as instruments for development, and in shaping the

EU's response on the core elements of the EPAs in the course of the negotiations. On this basis, future challenges that will need to be addressed if the system is to successfully use trade policy for development purposes will be mapped out in chapter 5, after the current state of play in the negotiations has been sketched. Chapter 6 concludes the analysis.

## **2 The EPAs: An ambitious instrument for development**

Economic Partnership Agreements (EPA) embody the new trade pillar envisaged by the Cotonou Agreement between the EU and the group of ACP countries. EPAs are said to be the EU's flagship endeavour to make (better) use of trade for development. They are part of a wider range of collaborative efforts to bring trade and development closer together. However, efforts to build a more development-oriented multilateral trading system have encountered little success so far, and have given way to greater attention for the conclusion of bilateral or regional preferential trading arrangements between developed and developing countries. The EPAs can thus be seen to be in line with this general trend and to be meant as a replacement for, or a 'stepping stone' towards, multilateral endeavours. How are they conceptualised in the EU's overall trade policy and in the context of the multilateral debates?

### **2.1 Designing trade policy for development: A challenge still ahead**

Trade has not always been at the core of the various paths that developed or developing countries have adopted towards development. It is potentially a successful avenue, as some Asian examples have illustrated. However, a vast majority of developing countries, most of which are on the African continent, remain or have been increasingly marginalised from the world economy, not least due to fundamental shortcomings in the rules and regulations of the multilateral trading system. Efforts to reform the international trade regime, let alone to instil a stronger development focus in the existing framework of rules, have been met with little success so far. As a result, countries have increasingly sought to conclude bilateral or regional preferential trade arrangements.

For many developing countries, and as a result of their market openness towards more developed countries, trade has constituted a substantial share of national income since the early stages of the development process – a situation inherited from colonial times. However, it was not before the 1980s that trade became central to development thinking, with the clear success of the export-oriented strategies led by the East Asian countries and the demise of the inward-looking experiences carried out in many Latin American and African countries (Page 2006). More prominently, within a decade or so, a leading few, the so-called “emerging powers”, have joined the arena of influential global economies: China and India have been doing exceptionally well; Brazil and South Africa are also increasingly weighing in, albeit to a lesser degree. Another oft-cited success story in terms of economic development where trade had a major role to play is Vietnam. On a smaller scale but nevertheless outstanding and largely based on international trade is the sustained economic and development performance of Mauritius (with structural transformation) and Botswana (with no structural transformation) (Kiiza 2006). These countries have managed to overcome natural physical constraints of being respectively a small island state and a resource-rich/land-locked developing country. Overall, regions like Latin America and Asia that have grown the fastest over the past couple of decades have also had the highest export growth (UNDP 2003).

However, most African countries remain or have been increasingly marginalised from the world economy. For these countries, international trade has not had the positive and substantial impact on poverty levels and overall development prospects encountered elsewhere. Overall export performance and export diversification post-liberalisation has been disappointing in African countries (UNCTAD 2008a). Most of them belong to the group of 50 Least Developed Countries (LDC). While strong growth performance has been noted over the last decade following development models that have sought to deepen their integration into the world economy, the 2008 LDC Report however indicates that “it has been associated with a slow rate of poverty reduction and human development” (UNCTAD 2008c, 2). Against such mixed evidence even in economically favourable times of global growth, and despite the widely acknowledged *potential* of trade as an instrument for development, the linkages between international trade and its role (or not) for economic and social development are still much disputed.



To some extent, the controversy can already be captured by considering the number of actors, and hence views and perspectives, involved. For instance, responding to the commitments undertaken in the framework of the Millennium Declaration in concrete terms would require that a dynamic process be triggered whereby developing countries design and implement or pursue trade policies that facilitate their development objectives, in a sustainable manner. This would also entail that the domestic and international environments in which these policies are carried out are favourable ones (see paragraph 12 of the Millennium Declaration, Box 1). These two sets are connected in multiple ways but a stronger influence is exerted from the international context on the domestic level, in particular for developing countries. Considering for instance the financial resources needed for (trade) policy implementation, many developing countries' governments budgets rely, in certain cases critically, on the provision of external support from bilateral or multilateral donors. The latter have their own development cooperation policies to guide the delivery of financial aid to developing countries which are, despite commitment on procedural reforms, not fully aligned let alone identical to developing countries' policies. This also includes trade-related issues. Concurrently, developed countries pursue their own trade policies which are not necessarily following a development-friendly rationale for trade partners. Trade and commercial policies are but part of a set of the national policies<sup>3</sup>, and each have different implications for development if looked at from the sectoral, national or international angle. Therefore, the realisation of peaceful, equitable and sustainable global development also calls for careful consideration to be given to the potential influences of donor policies on development prospects for developing countries.

The need to instil policy coherence for development at the level of the donor community and to foster convergence with partner/recipient countries' development endeavours has been widely acknowledged in recent years, and efforts have been stepped up in this direction at the various levels: the United Nations, the Organisation for Economic Co-operation and Development (OECD), the European and national policy levels (Ashoff 2005). With specific reference to trade, the eighth goal identified in the framework of

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3 In addition, other policies led by the bilateral donor community also impact on partner countries, directly or indirectly and with varying intensities. These range from environmental, agricultural and consumer protection policies to security and migration policies.

the Millennium Declaration is of particular interest, inasmuch as it brings together the responsibilities of developing countries with those of developed countries in a global partnership to “develop further an open, rule-based, predictable, non-discriminatory trading and financial system”. This came as recognition of the fundamental shortcomings of the rules and regulations of the multilateral trading system for developing countries in its existing form.

At the conclusion of the last round of negotiations, the so-called Uruguay Round – which lasted from 1986 to 1994 –, it indeed appeared that “*one of the unintended consequences of the negotiation [was] a serious asymmetry between North and South*” (Ostry 2007, 26). Firstly, current WTO rules largely emulate the policies, practices and interests of richer developed countries, partly due to the fact that most developing countries are latecomers to the multilateral trading system, both in terms of numbers and activism (UN Millennium Project 2005). The special treatment designed for agriculture and textiles or the inclusion of far-reaching rules on the protection of intellectual property rights are the most apparent examples of this. In addition, the complexity of the issues under negotiation has considerably increased over time, calling for a corresponding increase of in-depth knowledge, expertise and capacity of member states to tackle and negotiate on such issues strategically.

A second aspect of the asymmetry stemmed from the strengthening of the multilateral trading system with the advent of the WTO in 1995. From then on, WTO rules were adopted according to the principle of globalism, by which the whole agreement, rather than parts of it, was to come into effect – the so-called ‘single undertaking’ principle –, and became enforceable (Dickson 2004). Therefore, member states became less indulgent towards policies they deemed discriminatory. Highly specialised legal and technical expertise also became necessary to keep up with topics on the negotiating table, but was often lacking in most developing countries. Several efforts were made by the donor community to provide support and technical assistance and to build the capacity of developing countries to more effectively participate in the multilateral trading system – and in some cases, successfully (Brown 2006). But the task was overwhelming “*as efforts to build negotiating capacity and enhance access to the dispute settlement system should have preceded and not followed the implementation of the Uruguay Round agreements*” (Brown 2006, 273). As a result, an increasing number of developing countries felt that the terms of the Round were skewed against their interests and expressed disappointment with the agreements, arguing

that expected benefits such as market access had failed to materialise, while the obligations of implementation exceeded both expectations and available resources (UN Millennium Project 2005).

Hence, since 2001, the now 153 Members of the WTO have been striving to balance the system in such a way as to better serve the development interests of developing countries, deliver multilateral liberalisation of trade on policy areas of relevance to developing countries, and take into account the particular challenges and constraints they face in integrating themselves into the world economy and pursuing their development strategies. That is – at least rhetorically – the Development Agenda under which the Doha Round of negotiations was launched.

Indeed, this endeavour has been met with little success so far. The slow and difficult progress<sup>4</sup> in the negotiations has aroused much frustration and acrimony on the prospects of the round actually being concluded, let alone delivering on its development agenda. This has led to the recent rather grim statement by Sir John Kaputin, the Secretary-General of the African, Caribbean and Pacific (ACP) group of countries, who doubted the sincerity of the statements by Northern states to aspire for development through trade policy: *“As we have seen in all these talks, beginning with the failure of the Seattle Ministerial Conference in 1999<sup>5</sup>, it is fair to say that development and eradication of poverty are the furthest issues from the minds of rich country negotiators at these talks.”* (Kaputin 2008b)

The successive collapses of the Doha Round talks and the growing perception that the WTO is failing to deliver to its members have prompted many countries to actively pursue or seek the conclusion of preferential trade arrangements (PTAs) at the bilateral or regional level. Already noticeable during the protracted negotiations of the Uruguay Round, this trend has intensified over the last decade and is rivalling the sluggish progress in the Doha discussions (Forientino / Verdaja / Toqueboeuf 2007). A flurry of

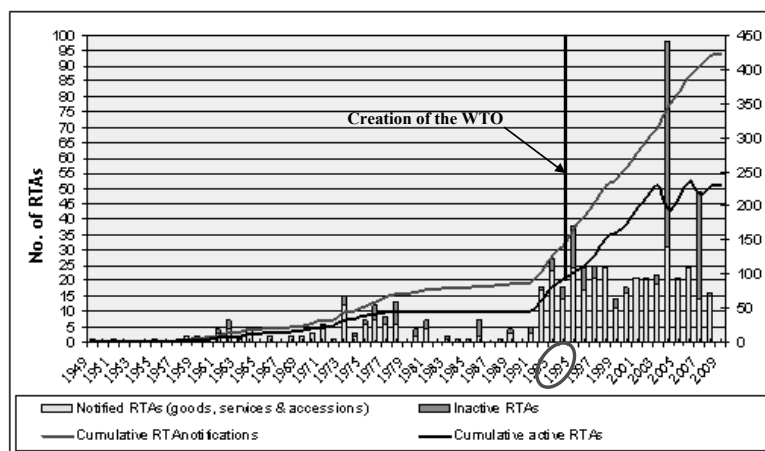
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4 For a discussion on the substantive and tactical reasons of the slow progress of the Doha Round, see Ismael 2007.

5 It is commonly viewed that development was propelled to the centre of attention in the multilateral trade negotiations at the 1999 WTO Ministerial held in Seattle when for the first time, amidst widespread demonstrations by the civil society calling for a more equitable set of rules, developing countries fully articulated their dissatisfaction with the multilateral trading system in force.

such deals has been settled over the last decade, under the most widespread form of free trade agreements (FTAs)<sup>6</sup>, and has increasingly provided for the world trade system's structure in terms of its rules, regulations and relations (see Figure 1). As of January 2009, 233 regional trade agreements had been notified to the WTO and were in force, of which 139 were FTAs<sup>7</sup>. Of particular developmental relevance, a distinctive feature of this surge is that it primarily consists of agreements between developed and developing countries, such as those aspired to by the EU-ACP negotiation of Economic Partnership Agreements (EPAs).

**Figure 1: Evolution of Regional Trade Agreements in the world, 1948-2008**



Source: WTO Secretariat

- 6 Another form of preferential trade agreement is the custom union, which consists of an FTA whose integration has been pushed further by adopting a common external tariff.
- 7 WTO database on Regional Trade Agreements Information System (RTA-IS), accessed January 2009.

## 2.2 The EU's approach to trade policy: Between regionalism and multilateralism

The European Union (EU) has consistently been the main player in the field of regional integration, not least due to the fact that regionalism is at the core of its identity. It has also long advocated for strengthening the multilateral trading system. Both concepts – the multilateral and the regional approach – need to be coordinated in order not to conflict with each other.

The Treaty of Rome, which laid the foundations of European integration, was the first PTA of which notification was given to the GATT. Since that time, the EU has become the most advanced and complex PTA in force. But it has also, with the European Commission as negotiator, *“used preferential arrangements as a way of binding potential members, neighbours and former colonies of its member states more closely to it.”* (Rollo 2007, 1). Over the years, the EU has built the strongest track record with a network of various forms of preferential trade deals, extending its outreach beyond Western Europe, to encompass the African, Caribbean and Pacific (ACP) group of countries, and gradually also the Mediterranean region, Central Europe and the Western Balkans. Preferential deals were also concluded with South Africa (1999), Mexico (2000) and Chile (2002), before an informal self-imposed moratorium virtually brought the pursuance of *new* agreements to a halt.

Instead, the EU became a driving force behind the launch of the Doha Round of WTO negotiations and was perceived as *“the most aggressive and persistent advocate of a broader international trade agenda and the strongest proponent for developing common multilateral disciplines on the making of domestic rules”* (Young / Peterson 2006, 796). In addition, it championed enlarging the round to more countries, pushing for instance for the inclusion of China and Russia and playing an instrumental role in getting Cambodia, Saudi Arabia and Vietnam on board (Meunier 2007). At the same time, a *“stated cornerstone of the EU's trade policy since the launch of the Doha Round in 2001 [was also] to distribute fairly the benefits of globalisation, using trade liberalisation to improve the economic development of the least advanced countries.”* (Meunier 2007, 915). This was the underlying rationale that supported the granting of unilateral (i.e. non-reciprocal) preferences to the group of Least Developed Countries (LDCs) under the ‘Everything But Arms’ initiative, launched in 2001. According to this policy, LDCs ben-

efit from duty-free quota-free access to the EU market for all their products, with the exclusion of arms and ammunition and with transition periods for sugar, rice and bananas<sup>8</sup>.

As argued by Meunier (2007), this came as part of the EU's strategy of "managed globalisation" carried out under the leadership of Pascal Lamy<sup>9</sup>, then EC Commissioner for Trade. The EU therefore clearly prioritised multilateralism over bilateral agreements in the governance of trade policy, as a signal to the rest of the world of its commitment to making multilateralism work: *"the more members, the more countries subjected to the rules and therefore the less anarchy in the trading system"* (Meunier 2007, 912) The EU's strategy also entailed widening the scope of the trade issues subject to rule-making. Indeed, since the establishment of the dispute settlement mechanism, *"world trade is regulated by a powerful international institution whose rules apply to a very large number of countries. [Subsequently,] the more issue-areas fall under the aegis of the WTO, the more 'managed' globalisation will become."* (Meunier 2007, 913). Therefore, in an effort to widen the scope of the WTO's remit, an agenda of "trade and" issues was launched in the mid-1990s, focussing specifically on trade and trading conditions, trade and environment, trade and labour laws and trade and culture. More particularly, the EU championed the inclusion of the so-called 'Singapore issues', which seek to address and establish rules determining the broad framework of trading conditions – namely competition policy,

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8 It should be noted here that many observers have questioned the 'developmental value' of the EBA, notably arguing that its adoption was a way to 'buy-in' the support of developing countries for the post-Seattle ailing multilateral system (Holland 2002). If this was indeed part of the EU's motivation, Meunier (2007, 920) concludes that *"it is not clear that the EU's efforts to devise special trade regimes in favour of the developing countries have paid off in terms of bargaining power in multilateral trade negotiations."* In addition, taking an internal perspective, Brüntrup (2006) argues that more than a 'development gift', the EBA can actually be seen as a 'Trojan horse' that forced a breach in the EU sugar regime, irrevocably provoking its far-reaching reform. Finally, but quite remarkably, it is somewhat puzzling that the EU wanted to prevent LDCs from exporting arms to its markets. As noted by Holland, this exception was to raise criticism even among the group of LDCs *"rather than excluding the duty-free export of third world arms to Europe, it was argued that greater benefits would result from a cessation of European arms sales to the developing world!"* (Holland 2002, 227).

9 Pascal Lamy was the EC Commissioner for Trade from 1999 to 2004, under the Romano Prodi Commission.

transparency in government procurement, trade facilitation and investment protection. It was however met by strong resistance from other WTO members, in particular developing countries, *“which had acquired more voice than ever in multilateral trade negotiations and insisted on retaining control over these key sectors of their economy.”* (Meunier 2007, 914)

Paradoxically, at about the same time the EU was carrying out its “doctrine of managed globalisation”, many other major economies from the developed and developing world that had traditionally been reluctant to conclude such arrangements were increasingly aspiring for bilateral and regional preferential deals (Forientino / Verdaja / Toqueboeuf 2007). The United States, which had been the traditional champion of the first four decades of multilateral liberalisation under the General Agreement on Tariffs and Trade (GATT) (Koopmann / Vogel 2008) shifted towards a “competitive liberalisation” strategy in view of the slow progress in the Doha talks. As a result, a number of free trade area agreements were concluded bilaterally and regionally, reaching out in particular to the Americas and Asia, on the premise that, by unlocking deadlocks, a “strong bilateral or sub-regional option helps spur progress in larger negotiations” (Zoellick<sup>10</sup> 2004, cited in (UNCTAD 2007, 64). More recently, Japan has also been particularly active in engaging into preferential deal talks with countries in the Asia-Pacific region and beyond, most likely in response to the competitive pressure from the deals they concluded with other developed countries. Similarly, Australia and China are not lagging far behind, and many others in the developed and developing world are following suit (Forientino / Verdaja / Toqueboeuf 2007; UNCTAD 2007). Against this backdrop, the EU – with its moratorium on PTAs – ran the risk of being sidelined, and perhaps more crucially, from the key emerging markets of Asia.

The appointment of Peter Mandelson as the new EC Trade Commissioner in 2004<sup>11</sup> and the increasingly bleak prospects for a successful outcome of the Doha Round led to a change in the European policy stance. Having reassessed the direction of EU trade policy, a more assertive, market-opening strategy was adopted, driven by the need to address the risk of potential

10 Robert Zoellick was the United States Trade Representative from 2001 to 2005.

11 Peter Mandelson was EC Trade Commissioner from 2004 till October 2008, when he returned to the UK government and was replaced in his European position by Baroness Catherine Ashton.

discrimination that European export interest were facing in major markets (Meunier 2007; Abbott 2008). This new policy orientation is spelled out in the October 2006 Communication “Global Europe: Competing in the world. A contribution to the EU’s growth and jobs strategy”<sup>12</sup> whereby it is emphasised that the EU needed to “*adapt the tools of EU trade policy to new challenges, to engage new partners, and to ensure Europe remains open to the world and other markets open to us*” (EC 2006a, 3). While the primacy of the multilateral level of negotiation is restated “*in a somewhat ritual fashion*” (Abbott 2008, 2), it is no longer an exclusive focus. Instead, a fresh impetus is given for the negotiation of “a new [or resumed] generation of carefully selected and prioritised FTAs” (EC 2006a, 15), rooted within but not limited to the wider set of existing rules of the multilateral trading system and targeting fast-growing economies, particularly in Asia<sup>13</sup>.

In this general picture and somewhat at odds with the evolution of the EU’s approach to trade policy outlined above, the Union and the group of 79 ACP countries have engaged since 2002 in intense negotiations towards the establishment of WTO-compatible free trade agreements. The initial objective set in Cotonou was to conclude the negotiations by December 2007 in order to replace the regime of non-reciprocal preferences granted under the Lomé Conventions by January 2008. However, – in the words of Louis Michel, EC Commissioner for Development – “*the EU has no offensive interest*” in ACP markets (Michel 2008, 19) with the EPAs. For Peter Mandelson, former EC Trade Commissioner, “EPAs are the European Commission’s most basic expression of the desire to put trade and development together” (Mandelson 2006).

12 For a discussion, see notably Evenett (2007) and Rollo (2007), as well as other articles of the December 2006 Special Issue of *Aussenwirtschaft*. See also Abbott (2008) and Meunier (2007).

13 The Communication identifies the Association of Southeast Asian Nations (ASEAN), Korea and Mercosur as “priorities”. India, Russia and the Gulf Cooperation Council (GCC) are marked as being of “direct interest” due to their market potential and the levels of protection applied. China is considered as requiring “special attention because of the opportunities and risks that it presents” (EC 2006a, 10). A separate Communication was issued on the EU’s relation with China, but neither document mentions an envisaged FTA between the two regional giants. Negotiations with the Mercosur and the GCC had been initiated as early as 1999 and 2001 respectively, but have not been completed to date. For all other countries – except Russia, with whom negotiations will be launched once it has joined the WTO – negotiations were launched in 2007.



### 2.3 The EU-ACP Economic Partnership Agreements: Key elements and supporting rationale for development

Since their inception, the EPAs have somewhat stood out from the EU's overall governance of trade policy, but are not necessarily in sharp contradiction to it either. The EPAs have a strong emphasis on the achievement of development objectives. They are thus in line with the trade relationship between the EU and the ACP, which has generally been conceived of as a development partnership. The innovative character of the Cotonou trade component is based on the combination of a number of key elements: (i) on market access issues, the introduction of reciprocity, i.e. the liberalisation of trade on the ACP side, and improved market access to European markets for the ACP; (ii) the comprehensive scope of the negotiations, beyond trade in goods only; (iii) a flexible (and differentiated) approach in the negotiations and implementation of the EPAs; (iv) capacity building for the negotiations and for trade and trade-related activities; and (v) the promotion of regional integration. How can these elements be understood with regard to the *beneficial* effects of the EPAs for development?

By working on establishing a more transparent, stable and predictable environment with the ACP, the EC has argued that rather than market opening, market building in the ACP is its priority (EC 2005c). Thus, through the EPAs, the EU and the ACP aim at addressing the marginalisation of most ACP countries from the world economy, the continued decrease of the ACP's share in total EU imports and their dependence over a few commodities. Based on the belief that its exclusive focus on promoting trade between the EU and the ACP had been too limited in its ambitions, the revamped economic and trade cooperation seeks instead to tap into the potential offered by national, regional and international markets: *"trade will act as a motor for growth and development in whatever direction it goes"* (EC 2002a, 2).

Nonetheless, a number of the assumptions and hallmark features of the recent trends in international and European trade policy making for development highlighted previously can be discerned in the proposed EPAs outlined in the Cotonou Agreement. From the outset, it is suggested that opening up their economies to increased trade with the EU under an EPA will serve the development objectives of the ACP countries. Related to this, it is con-

sidered that the best way to do so is by complying to the multilaterally set “WTO rules then prevailing” (Article 37.7) and preferably on a regional basis, since “regional integration is a key instrument for the integration of ACP countries into the world economy” (Article 35.2). More concretely, these two parameters taken together entail that the scope and implementation of the EPAs would conform to Article XXIV of the WTO General Agreement on Tariffs and Trade (GATT), which sets out the common rules for all regional trade agreements between WTO members. EPAs should therefore result in the gradual liberalisation of “substantially all trade” between the signatory parties, “within a reasonable length of time” (Article XXIV of the GATT).

However, it should be noted that, while the conclusion of reciprocal free-trade agreements in the form of an EPA is presented as the preferred option, this is however not compulsory. For those ACP countries that consider that they are not in a position to do so, Cotonou provides for a differentiated treatment depending on whether it is a LDC or a non-LDC that decides to opt out. The former would be able to export under the “Everything But Arms” initiative of 2001<sup>14</sup> and the latter would be granted access to the EU markets under a “new framework for trade that is equivalent to their existing situation and in conformity with WTO rules” (Article 37.6). These alternatives are based on unilateral initiatives of the EU which the ACP would not be required to reciprocate. The WTO provision applicable is the so-called Enabling Clause, which allows developed countries to grant unilateral trade preferences to the benefit of all or a sub-grouping of developing countries identified on the basis of objective and non-discriminatory criteria, such as the level of development (e.g. the EBA initiative for the group of LDC, which are designated as such by the United Nations)<sup>15</sup>.

The EPAs also encompass a number of key elements that are to make them more than plain WTO-compatible free trade agreements. Indeed, rather than ends in themselves, EPAs are conceived as tools for the benefit of develop-

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14 While the EBA initiative was formally adopted in 2001, Article 37.9 of the Cotonou Agreement already signals the intention of the EU in this respect, whereby it pledges to “allow duty free access for essentially all products from all LDC”.

15 The Enabling Clause also provides for mutual (i.e. reciprocal) trade preferences among developing countries.

ment in the ACP and are meant to contribute to the overarching objective of poverty reduction.

Remarkably, the EPAs introduce a radical departure from the principle of non-reciprocity that had governed the trade relations between the EU and the ACP for over three decades, and hence call for the liberalisation of ACP markets. **Reciprocity** is thus a major innovation of the EPAs, since it requires ACP countries to open up their markets following the terms determined through a negotiation process. By opening up their markets, it is expected that a greater number of ACP countries would be able to take advantage of a wider array of trade opportunities than in the case of the previous unilateral and non-reciprocal preferences granted under the Lomé Conventions. This would be facilitated by improved access to European markets, which the EC committed to provide, notably through a review of the rules of origin<sup>16</sup> applicable to ACP products (Article 37.6).

As such, increasing the prospect for exports through improved market access – and hence, foreign exchange earnings – would not require a very liberal regime on part of the ACP. However, agreeing on ACP liberalisation would allow curtailing protection against imports. Related price and market distortions would thus be reduced, in turn stimulating the production of exportables. Indeed, import restrictions or barriers create an “anti-export bias” effect, inasmuch as they raise the price of importable goods relative to exportable goods. This effect can be offset through trade liberalisation which encourages shifting resources from the production of import substitutes to the production of exports (Ackah / Morrissey 2005). Furthermore, lowering tariffs on EU imports would make a wider variety of cheaper and more competitive inputs more readily available to ACP producers, notably by facilitating access to cost-saving and quality enhancing new technologies (EC 2006c). Increased exposure to international markets and foreign competition would thus improve the efficiency and competitiveness of domestic industries, while also encouraging a more efficient allocation of resources: countries would specialise according to their comparative advantage and

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16 Rules of origin (RoO) are necessary in any preferential scheme in order to prevent misuse of the advantage granted to one country by a third country for re-exports for instance. They can also be designed with a view to fostering industrial development within the preference-receiving country by requiring investment in additional stages of manufacturing.

concentrate on producing goods in which they are (or can become) internationally competitive. These are then exchanged for products the country cannot produce efficiently. In turn, consumption possibilities for ACP consumers are expanded, by improving their access to a wider variety of cheaper goods and services. Overall, the expansion of the production and consumption possibilities and more efficient allocation of resources are expected to fuel economic growth.

These expected benefits of liberalisation would be further encouraged through the adoption of a *comprehensive approach* in the negotiations, whereby the supply and demand side constraints can be addressed through trade development measures to increase ACP competitiveness (Article 35.1). EPAs would thus encompass all areas relevant to trade. It is indeed considered that simply removing tariffs may not be sufficient to fully achieve the objectives of the economic and trade cooperation envisaged under the Cotonou Agreement. By the time the Cotonou Agreement had been reached, tariffs were no longer the key determinants of trade exchanges. Non-tariff measures and regulations such as standards, veterinary, sanitary and phytosanitary (SPS) rules, rules for the protection of the environment or of consumers, or more generally the stability and predictability of the investment climate and trading environment – or lack thereof – had become important trade policy instruments that could either act as barriers to or facilitate trade. For instance, if a country maintains high levels of protection, costly regulations or discriminatory standards, investors generally will opt to locate in other countries where policies more conducive to investment and production are in place (Ackah / Morrissey 2005).

It is against this background that the aspiration for comprehensive EPAs can be understood. As put by the former EC Commissioner for Development, Louis Michel, *“growth is built on investment; and investors need rules”* (Michel 2008, 26) and it is out of this conviction that EPAs aim to address all rules and issues relevant to building up the economic governance framework of the ACP (EC 2002a). This broad approach can also be seen to be in line with the EU’s favoured “trade and” approach identified by Meunier’s (2007) (as argued in the previous section) and entail a widening of the scope of trade issues tackled in the WTO in the framework of an EPA with ACP (regions). The scope of the agreements will thus include trade facilitation, investment, competition, public procurement and intellectual property and all rules necessary *“to lower the costs of doing business, attract fresh do-*

*mestic and foreign investment and make ACP producers more diversified and competitive” (EC 2005c, 30).*

In doing so, however, the EU and the ACP also agreed to negotiate and implement the EPAs *“with all the flexibility which is required to take account of the level of development of the ACP countries concerned”* (EC 2002a, 8). While ensuring overall conformity with the WTO rules then applicable, due consideration would thus be given to the socio-economic impact of trade measures on ACP countries, as well as their capacity to adapt and adjust their economies to the liberalisation process. In this view, flexibility would guide the decision as to its pace (transition period) and scope (final product coverage), while also taking into account sensitive sectors. Besides being progressive, ACP commitments on tariff dismantlement would furthermore be asymmetrical, so the EU would be liberalising its markets deeper and faster than the ACP would. Flexibility would thus also guide the degree of asymmetry of the liberalisation process (Article 37.7 of Cotonou).

Due consideration was also given to the need to build ACP **capacities to negotiate and to trade** in preparation for the negotiation process and implementation of the EPAs. Cotonou envisaged that the run-up period to the entry into force of the new regime would be used to make initial preparations for the negotiations. This would include building capacity in the public and private sectors of ACP countries, and “measures to enhance competitiveness, for strengthening of regional organisation and for support to regional trade integration initiatives, where appropriate with assistance to budgetary adjustment and fiscal reform, as well as for infrastructure upgrading and development, and for investment promotion” (Article 37.3). The social and economic adjustments entailed by an EPA were also to be addressed through the adoption of appropriate flanking policies by the ACP. These would be complemented by the financial and technical support of the EU broader set of cooperation strategies encompassed by the Cotonou Agreement, in such a way that the development strategies and economic and trade cooperation mutually reinforce each other (Article 18). Trade would thus be mainstreamed in ACP countries’ and regions’ development strategies and in the national and regional strategy papers programming the allocation of the European Development Fund (EDF) (Article 35.1). The need to better link trade negotiations to development support programmes was also recognised (EC 2002a).

Finally, because most ACP countries' economies are small, negotiating with the EU as part of a wider regional grouping would prove all the more beneficial as it would encourage the establishment of larger markets, more attractive for investors in a wider range of sectors. **Regional integration** is thus another cornerstone principle of the ACP-EU cooperation strategies and is considered to be a springboard to the world market for ACP countries (Article 1). The ACP and the EU therefore agreed to "build on regional integration initiatives of ACP States" and that "negotiations of economic partnership agreements will be undertaken [...] taking into account the regional integration processes within the ACP" (Article 35.2 and 37.5).

In addition, inasmuch as many ACP countries are often member to one or more regional integration bodies, particularly in Africa (see chapter 4.1.2.3), it is expected that through an EPA greater rationalisation would be brought to the various integration processes at play, since ACP countries would have to choose under which configuration to negotiate with the EU. This in turn would lock-in the process and related policy reforms in the ACP, hence contributing to the effectiveness of the existing initiatives. Indeed, being seen to implement economic reforms tackling the lack of competitiveness, particularly for land-locked countries may attract foreign investment, which tend to be drawn to countries with relatively open trade regimes and increasing trade volumes (Ackah / Morrissey 2005). By its presence within each EPA grouping, the EU would moreover act as an 'external guarantor' of the regional setting, thereby increasing its credibility (Busse et al. 2007). Stability and predictability would accrue from doubling the stakes for non-compliance to the regional rules. The provision of EU development support in the framework of the regional EPAs would furthermore encourage internal political support for regional integration and promote effective intra-regional trade (South Centre 2007a). Ultimately, as the former EU Commissioner for Development Louis Michel put it, "*EPAs are to achieve a situation in which each EPA region is based on a single market (with a customs union and free movement of goods) and harmonized regional rules on services, investment, etc.*" (Michel 2008, 25)

However, beyond their expected positive effects, the overall development *relevance* of the new regime of preferences is more fundamentally contingent upon whether the EPAs have been conceptualised in accordance to empirical lessons drawn from past experiences, within the context of the ACP-EU relations and beyond, as well as from theoretical discussions' findings on the linkages between trade and development.

### 3      **The EPAs ‘formula’ for trade and development: Drawing from past experiences and founded on theoretical discussions?**

The EU has generally been a pioneer in linking trade and development policies. EPAs, however, present a different ‘formula’ than that conceived under the former EU trade regime for the ACP, as presented in the previous section: they entail a shift from unilateral (non-reciprocal) preferences to reciprocity, and aspire to make the EPAs a development-friendly package, understood as embracing comprehensiveness, flexibility and capacity-building. A first question therefore is whether the proposed EPAs constitute an actual improvement for development as compared with the previous system of preferences, and it is thus required to explore the compelling reasons that led to the reform of the EU-ACP trade regime. Second, it is necessary to review the concept of the EPA against key insights drawn from theoretical discussions and experiences beyond the ACP on how the linkages between trade liberalisation and regional integration can be made supportive of development efforts. Indeed, if they are meant to strengthen the trade-development nexus, the concept of the EPAs will have to have taken these insights on board. On the basis of this two-fold analysis, preliminary conclusions can be drawn as to whether the main features of the EPAs have strengthened the trade-development nexus in the EU’s policy towards the ACP.

#### 3.1      **Lessons from the Lomé regime of ACP-EU preferences before the EPAs: The rationale for reciprocity**

The presumably most striking reform with the EPAs is the renunciation of the non-reciprocal nature of the former set of EU trade preferences to ACP countries. The principle of reciprocity is actually not new in the framework of EU-ACP relations. It was, however, abandoned relatively early in favour of non-reciprocity, which became the hallmark feature of the EU’s trade policy to the ACP group for over three decades. Results of this non-reciprocal approach turned out to be disappointing, thus providing grounds for reforming the cornerstone principle of the preferential treatment to the ACP. Most importantly, however, the international context had changed, exerting pressure on the EU-ACP regime towards conformity with the multilaterally defined set of WTO rules.

### 3.1.1 Europe's trade policy towards the ACP: From reciprocity to non-reciprocity

At the time of the 1957 Treaty of Rome, the founding members of the European Economic Community (EEC) were actively involved in designing not only the framework, but the content of trade policies on behalf of their colonies. Reciprocal free-trade was thus established between the EEC and its members' dependencies in Africa.

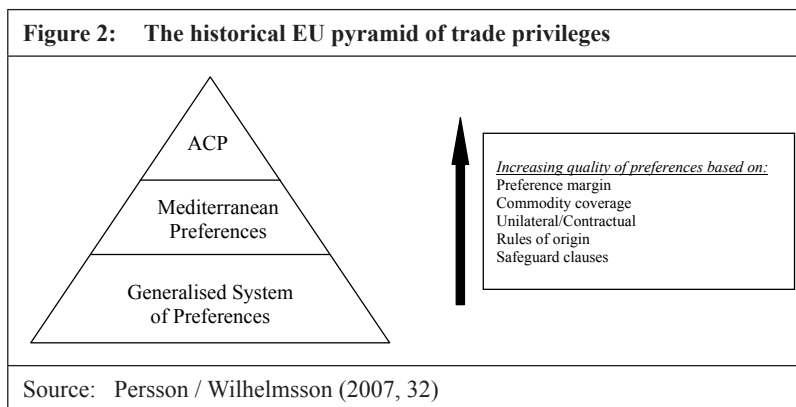
The colonies and overseas territories were unilaterally associated to the nascent European integration process. Little internal capacity for trade policy formulation existed, nor was it encouraged. As argued by Grilli (1993), "*economically weak and politically fragmented, developing countries were then rather passive subjects of policies, including trade policies*" (Grilli 1993, 138) and were in no position to influence the terms of the association. With decolonisation, the measure of change was limited. Even after decolonisation, the trade regime established between the EEC and its former dependencies reflected to a large extent the European agenda. Strong divergences emerged between European Community member states on the contours the new regime should take and led to protracted discussions. The Netherlands and Germany for instance favoured a more 'global' approach for Europe's relations to the developing world than the regional focus on Africa. The compromise eventually reached left little room for major adjustments or for accommodating many of the associated countries' demands. If there were some attempts to formulate a common position for discussion with the EEC, the cohesion of the associated countries was thus short-lived and they were soon defending their individual interests again (Zartman 1971). The main concern of the newly independent countries was to preserve their access to European markets, on which they remained heavily dependent (Grilli 1993).

Under the terms of the first Yaoundé agreement, signed in 1964, the reciprocity of preferential trade between the Community and the eighteen Associated African and Malagasy States (AAMS) was maintained, albeit on a bilateral basis only. Indeed, the obligation for associated countries to establish free-trade zones amongst themselves was dropped on their request. This resulted in the creation of 18 free trade areas between the EEC and each of the associated countries. The second Yaoundé Convention, signed in 1969, mostly continued the prevalent trading system.



By the turn of the seventies, the agenda-setting capacity of developing countries had increased considerably, and non-reciprocity was amongst their key demands. Developing countries had indeed become more vocal within the Group of 77 and were calling for a New International Economic Order (NIEO) to be established. Concentrating their efforts at the international level, developing countries coalesced in the framework of the United Nations Conference on Trade and Development (UNCTAD) and strongly argued for generalised non-reciprocal trade preferences in favour of developing countries. Demands formulated in the wake of the NIEO should also be read against the backdrop of the predominant ideology at the time. Stated development was the norm and most developing countries had focussed their development efforts on an import-substituting strategy. Preferential access to richer and more developed countries markets was therefore needed to support the transformation into diversified and robust economies.

As the pressure increased and trade preferences was already *de facto* practice within the EEC, the Community eventually granted preferential access for developing countries' manufactured products by enacting its Generalised System of Preferences (GSP) in 1971. The unilateral GSP was however crafted in such a way that the Yaoundé countries maintained higher preferences and sat at the top of what was to become known as the EU's 'pyramid of privileges' (see Figure 3). By the same token, the long-standing antagonism between a 'regionalist' and 'globalist' vision of European development cooperation was also eased, as the geographical scope of the trade preferences granted to developing countries broadened.



Within the “Yaoundé group” however, a common position was yet to be reached, notably on the core issue of non-reciprocity. Interestingly, this issue first found little support among the African signatories and its introduction had more to do with the “globalist” approach favoured by the Netherlands and Germany, than with the associated countries themselves (Zartman 1971). To them (and to France) non-reciprocity would deprive the relation of its contractual and mutual obligation character (Zartman 1971; Bouvier 1980). Several factors occurring both at the European and the international level were to contribute to tipping the balance in favour of non-reciprocity. At the internal level, the most important factor was the accession of Great Britain to the EEC in 1973. This called for the accommodation of the special interests and trade provisions it granted to its former African, Caribbean and Pacific colonies, under the framework of the Commonwealth. Negotiations were therefore launched towards the redefinition of a new Agreement. In addition, the oil crisis which occurred the same year gave an additional boost to developing countries’ negotiating power, including in the context of the negotiations for the successor to Yaoundé, as it illustrated the European dependency on energy – and more broadly, raw materials - supply. Contrary to their Francophone counterparts, Anglophone African countries, led by Nigeria, were uncompromisingly in favour of non-reciprocal trade relations with Europe. The AAMS, which had until then proven reluctant to share their trade and aid privileges with other ‘associable’ countries (Grilli 1993), did not actually “take their trade relationship with the Community seriously” until Britain signed the accession Treaty (Solignac Lecomte 2001c, 9). Recognising the substantial increase of their leverage in the negotiations with Nigeria’s participation, the AAMS eventually departed from the rigid position they had adopted, and forged a strong alliance which extended to the Caribbean and the Pacific countries. Unified under the leadership of a single spokesman throughout the negotiations (Frisch 2008a), the group was able to focus on a number of demands formulated in the context of the NIEO: the stabilisation of receipts generated by the export of commodities – through the creation of the Stabilisation of Export receipts (STABEX) (see below) – and the non-reciprocal nature of trade concessions.

Europe’s inclination to respond to these demands was largely prompted by the oil crisis of 1973. Its economy depended heavily on energy supplies from the oil producing countries of the Middle East and Latin America, and these countries had also become important export markets for European products. As the United States’ influence in the Middle-East was gradually

sidelining Europe's foothold in the region and Latin American countries were also steadily turning away, there was a new found strategic and geo-political interest in securing access to Africa's rich natural resources. With the Lomé Conventions, Africa saw its access to European markets secured (Grilli 1993).

Non-reciprocity was therefore put at the core of the Lomé model of European development policy for the following decades and Africa was granted a one-way preferential access to European markets. The first (in a series of four) Lomé Convention was signed in February 1975, between an extended European Community of nine member states and 46 African, Caribbean and Pacific (ACP) countries. With the signature of the Georgetown Agreement in June, the latter also institutionalised their existence as a group. 1975 therefore marked the beginning of what was to become known as the "Lomé era". For some time after the signature of the first Lomé Convention in 1975, the agreement was hailed as a most advanced and unique model of development. The richer "North", while clearly also driven by political and strategic interests, had agreed to fully support strategies formulated by their "Southern" partners and had committed itself to do so within the framework of a contractual agreement.

As provided by the successive Lomé Conventions, the ACP were thus granted the most generous non-reciprocal access to the EU market amongst all developing countries for almost all their products. Provided that their origin was certified – on the basis of the rules of origin – ACP exports could enter the EU market subject to no or reduced customs and non-tariff preferences such as import quotas. This applied to ACP manufactured or semi-manufactured goods, processed textiles and agricultural products, provided the latter were not in direct competition with products covered by the EU's Common Agricultural Policy (CAP).

Besides non-reciprocity, the Lomé trade regime was also characterised by the commodity protocols and the provision of financial and technical co-operation. To substitute for the loss of market access when their former rulers adopted the CAP, the ACP were granted further preferences for a few sensitive agricultural goods and products (Rollo 2007). Hence, rather than trade policy *per se* – or development considerations for that matter – the origins of these instruments were to be found in the EU's agricultural policy. Under the so-called commodity protocols, a number of 'selected and traditional suppliers' from the ACP were given free access for specific quan-

tities of bananas and rum, and benefited from a limitation in the distorting effect of the CAP through the beef and veal and sugar protocols. Hence, while restricted by quotas, these agricultural preferences were commercially valuable as they allow for the favoured ACP beneficiaries to benefit from the artificially high prices created on the European market by the CAP (Koroma / Deep Ford 2006). For instance, the banana Protocol has ensured duty-free entry to the EU market for a specific quota of bananas, which has been crucial for many of the Caribbean island states' economies. An annual quota was also provided under which rum could be imported into the EU duty-free. Under the sugar Protocol, the Community agreed to buy a fixed quantity of sugar from a number of ACP producers, at attractively high guaranteed prices aligned with the EU's own internal sugar prices. The sugar Protocol has been particularly beneficial for the economic development of certain ACP States, most notably Mauritius, Fiji, Guyana and Barbados. As for the beef and veal Protocol, it permitted a 90 per cent refund of tax normally paid on beef imports from several ACP countries and has particularly benefited Southern African exporters (European Commission).

Other major features of the ACP-EU partnership included financial and technical cooperation for the promotion of ACP-EU trade. More notably, two instruments were designed in the wake of the commodity crises of the late 1970s and early 1980s to help ACP countries cope with their adverse effects. The stabilisation of export receipts on agricultural products (STABEX) gave funds to offset losses on a wide number of agricultural products; cocoa, coffee, groundnuts, tea and others, as a result of crop failures and price falls. In addition, those countries that were heavily dependant on a particular mineral and suffering from export losses could access loans through the system for the promotion of mineral production and export (Sysmin), which were designed with the aim of lessening a country's dependency on mining (European Commission).

### 3.1.2 Internal pressure for reform: The disappointing results of the Lomé trade preferences

The non-reciprocal Lomé trade preferences did not stimulate the expected increase of exports or boost ACP economic performance: the share of ACP exports to EU markets actually declined steadily, and export diversification over time remained limited. Reasons for these limited results are to be found in considerations pertaining to the relative value of the preferential regime

granted by the EU, but also to the limited ability on part of the ACP to make strategic use of the trade preferences available.

There are many detailed accounts of the effect of the Lomé preferences on ACP exports (see for instance Grilli (1993) and Holland (2002). All point towards a generally disappointing performance of the ACP in benefiting from preferential access to European markets, both in terms of the value and relative share of ACP exports and in terms of product diversification. It was expected that through the utilisation of the unilateral trade preferences they were granted, ACP countries would be able to increase their export volumes and earnings, promote their industrialisation and diversify their economies. However, it was soon apparent that, with respect to trade in particular, the ACP-EU partnership was falling short of expectations.

ACP export performance over time has reflected these limited results. The share of ACP exports to European markets declined steadily over the lifespan of the Lomé/Cotonou preferences from an average 7% in 1975 to reach 2.8% in 2007 (European Commission August 2008). In addition, ACP exports have remained highly concentrated at both the country and commodity level. For instance, the top EU-27 imports from ACP in 2006 were “mineral products” (essentially oil products) and “pearls, precious stones and metal coins” (essentially diamonds), accounting respectively for 38% and 14% of total imports from the ACP. Main partners for these were Western Africa (mainly Nigeria) and Southern Africa (mainly South Africa) (Xenellis / Pongas 2007; EC 2006b)<sup>17</sup>. In recent years, primary products have accounted for more than 70% of the EU’s imports from ACP countries, an increasing share of which were energy-related<sup>18</sup> (European Commission August 2008).

By contrast, Europe has remained the most important trading partner for the ACP and Africa in particular. A comparative analysis of Africa’s exports destinations shows little change between 1960 and 2006, both in terms of export concentration and market destinations (UNCTAD 2008). Trade

17 The same year, the top EU-27 export to the ACP was composed of “machinery/mechanical appliances; electrical equipment; parts; sounds recorders/producers; tv image, sound recorders/producers, parts/accessories” (33% of EU-27 exports to ACP) and “vehicles, aircrafts, vessels and associated transport equipment” (17%) (Xenellis / Pongas 2007).

18 In 2003, 28.3% of the ACP primary products exported to the EU were energy-related. In 2007, this amount was 42% (EC 2008d)

between the EU-27 and ACP countries accounted for as much as 67% of all ACP trade in 2006, and African countries were by far the EU's biggest trading partner amongst the ACP group, accounting for 89% of all ACP-EU trade in 2006 (Xenellis / Pongas 2007). In addition, the EU attracted more than 50% of Africa's non-oil merchandise and supplied over 30% of Africa's merchandise imports in 2006 (UNCTAD 2008a). This still overwhelming importance of Europe might be about to change, however: the share of the EU's imports to Africa has steadily declined from 56% in 1985 to 47% in 1995 to the current level of 34% in 2006. While it still accounts for three times what China exports to Africa (12%), the latter's exports to Africa have gradually increased from a level of 5% in 2000. The share of African exports to Asian countries – mainly China and India – has almost tripled between 1992 and 2006, to 16%. It is expected that China will become Africa's largest trading partner by 2010 (UNCTAD 2008a)<sup>19</sup>.

The picture of the ACP export performance under Lomé preferences should however be nuanced with considerations pertaining to the *relative* value of the preferences granted by the European Union. As extensive as they may have seemed in terms of product coverage for instance, the Lomé preferences could only prove useful in conferring a competitive advantage in cases where an ACP state actually exports the product concerned; a margin of preferences exists (i.e. most favoured nation (MFN<sup>20</sup>) tariffs are positive or there are non-tariff barriers from which the ACP are exempt); and some or all of the ACP's competitors face less favourable access (Stevens 2000).

The EU preferences granted under Lomé were actually of limited benefit (Manchin 2005; McQueen et al. 1997). The potential of preferences were not equally valuable for all products and thus for all ACP economies. The overall picture was one where no preferential scheme could be granted on

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19 This raises the question as to the effect of China's increasing engagement in Africa on the development objectives pursued through EU policies. For a discussion, see (Hackenesch 2009).

20 The Most Favoured Nation (MFN) principle captured in Article I of the GATT requires every member of the WTO to extend to all other members the lowest tariff that it applies to a given product. Notable exceptions to the MFN rule include the permission to deny MFN status to non-members of a free trade agreement or a customs union, as per Article XXIV of the GATT, and the Enabling Clause, according to which developed countries can grant non-reciprocal trade preferences to developing countries. The Enabling Clause also provides for reciprocal trade preferences among developing countries.

some products of key export interest to the ACP; but where preferences were granted in cases where there was little export potential in manufactured products (Solignac Lecomte 2001b). Agricultural coverage was limited to products (fish, cut flowers...) that were not in direct competition with European ones (CAP products, horticulture...) and other primary commodity products on which many ACP countries were highly dependant, such as metals, were never levied in the first place (Holland 2002). In addition, an average total of 4% of ACP exports were excluded from receiving preferences, albeit with significant differences between countries: in the case of Fiji for instance, as high as 92% of its exports were excluded from the preference scheme, while none of Botswana's exports were (Manchin 2005). Overall, a third of all ACP exports were actually eligible for preferences, a large proportion of which were subject to tariff preferences of a "trivial level" of 5% or less (McQueen et al. 1997). As for the other two-thirds of ACP exports, mostly composed of primary products, they could actually enter the EU duty-free under other general unilateral schemes granted to all countries, the Most Favoured Nation (MFN) or the General Scheme of Preferences (GSP) treatment, granted to all developing countries<sup>21</sup>.

A second factor limiting the effectiveness of trade preferences for ACP beneficiaries stemmed from the complexity of the rules of origin (RoO) they had to comply with. While necessary as such, the Lomé set of RoOs were highly restrictive, limiting the possibility to seek intermediate inputs from non-ACP producers that would contribute to making the end-product more competitive, for instance. The administrative paperwork necessary to demonstrate conformity with the rules also often proved costly and cumbersome and their complex requirements in terms of documentation, accounting and obtaining the relevant certificate were very demanding on small, low income economies<sup>22</sup>.

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21 A waiver to the MFN principle was necessary for the GSP regime to be implemented. This was obtained just before the EEC enacted its GSP scheme and was in 1979 indefinitely extended by the inclusion of the Enabling Clause by a decision of the GATT members.

22 Some have also pointed to their potential use as protectionist measures (World Bank 2008) or even as export subsidies, to the extent that restrictive rules can create the incentive for the ACP – in this case – to buy the inputs they need from Europe (for a detailed discussion on the utilisation of preferences, see Grilli (1993), Bouët / Fontagné / Jean (2005) and Manchin (2005).

Thirdly, preferences in tariffs and quotas are not all-encompassing and do not address other trade restrictions. The relative value of EU trade preferences to the ACP was further diminished because the type of preferences was becoming ‘outdated’: tariff and quantitative restrictions were no longer the only barrier to overcome for market access to Europe. Other non-tariff and technical barriers to trade had become more prominent, such as public and private standards related to health, safety and quality, played an increasing role where most of Lomé preferences were useless (Solignac Lecomte 2001c).

Finally, from a broader perspective, the progressive and continuous lowering of tariffs taking place parallel to this in the framework of multilateral trade agreements proportionally reduced the relative advantages of EU preferences for ACP countries, or any preferential scheme for that matter. Similar eroding effects ensued from the increased market access negotiated between the EU and other developed<sup>23</sup> and developing countries through bilateral and regional FTAs, such as those negotiated with Mexico, Chile, South Africa, and Tunisia/Mediterranean countries for instance.

The overall impact of the trade protocols and compensations mechanisms also proved limited. Only a handful of countries were found to have made strategic use of the trade protocols and preferences within their national economic policy and as a contribution to their broader development and diversification strategies, most notably Ivory Coast, Mauritius, Zimbabwe and Jamaica (EC 1996). In addition, further analysis shows that the benefits from the STABEX and Sysmin financial instruments were spread unevenly between products and concentrated on a few recipient countries. For those countries that did increase production capacity and exports, their success could not be attributed to these compensation instruments (Holland 2002).

This brief overview has shown that the preferential trade regime as envisaged by Lomé did not stimulate the expected increase of exports and economic performance. The mixed results of the Lomé preferences should not,

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23 For example, the 1996 “zero-for-zero” tariff agreement on distilled spirits between the EU and the US resulted in the progressive abolition of MFN duties and quotas on both markets. The ACP (essentially Caribbean) rum producers’ margin of preference was therefore eroded and the unrestricted duty-free access they benefitted from de facto nullified. The Rum Protocol was eliminated from the 2000 EU-ACP Cotonou agreement and European development assistance made available to support restructuring efforts.



however, lead automatically to discard the idea of granting preferences as such. In light of the various factors discussed above that have affected the overall effectiveness of the EU trade preferences to the ACP, some have suggested that Lomé preferences could not have had any quantifiable trade stimulating effect on most ACP exports (McQueen et al. 1997). Recent research, however, has shown that in general trade preferences increase exports from developing countries, proportionally to the *quality* of the preference they receive: ACP countries that have benefited from Yaoundé and Lomé/Cotonou preferences, and which have been described as being on top of the “pyramid of privilege” have experienced the largest export-increasing effects, with levels of gross trade creation at around 30% of actual exports (Persson / Wilhelmsson 2007). Thus, while some commentators, looking at the ACP share of EU imports, have concluded to the little value preferences, Persson and Wilhelmsson argue that when taking into account a number of other factors that influence trade (e.g. EU enlargements, which they find have had negative effects on developing countries’ export performance, as countries becoming members of the EU start to import less from developing countries), trade preferences have had a positive effect. The correct interpretation for ACP countries and LDCs for whom EU import shares have certainly declined, these authors argue somewhat counterfactually, should therefore be that their disappointing trade record would have been *even worse* without preferences (Persson / Wilhelmsson 2007).

Against this specific background, it can be inferred that the concept of the EPAs are a step in the right direction for development: they seek to improve the preferential treatment granted to the ACP, notably by enhancing ACP access to EU markets, or in other words, the overall quality of the preferences. However, it appears that the EPAs were conceptualised not so much out the concern to increase the scope and utilisation of EU preferences for ACP countries. Indeed, over the years, attempts to adapt the ‘model’ were modest and the overall structure of the Lomé Conventions remained unchanged, including on trade. Rather, as explored below, the pressure for reform came from a fundamentally changed international setting.

### 3.1.3 External pressure for reform: The need for WTO compatibility

The most compelling thrust for the reform of the Lomé regime of preferences came from a change in the international trade order that ruled out

non-reciprocal preferences on a regional basis. The new framework, materialised through the creation of the WTO, was strongly supported by the European Commission. But maintaining the regional focus of the EU's preferential regime for the ACP in the setting of the WTO (in other words preserving the formal existence of the ACP as a group) meant that reciprocity – i.e. trade liberalisation on part of the ACP – had to be introduced in the EU-ACP trade regime, in accordance with WTO rules. Hence, the new international context provided by the WTO was the main driver for a reform of the regime governing ACP-EU trade relations, rather than development considerations *per se*.

With the creation of the WTO in 1995, existing non-reciprocal nature of the EU trade preferences to ACP beneficiaries could be more forcefully challenged by other WTO members on legal grounds. It became increasingly difficult to justify and maintain trade regimes that contradicted WTO rules or did not fall under the exceptions it provides for. The Lomé regime was one of them.

Built on the cornerstone principle of non-discrimination – encapsulated in the 'most favoured nation' (MFN) rule – the WTO provides for exceptions and the possibility to treat certain countries more favourably than others in a limited number of cases. In the case of unilateral trade preferences, such as Lomé/Cotonou, the so-called 'Enabling Clause' allows for trade preferences that only differentiate between countries according to their level of development (i.e. all developing countries or all LDCs), thereby ruling out preferences that discriminate in favour of a selection of (LDCs *and* non-LDCs) developing countries such as the ACP, whose existence is historical, political and geographical. In addition, because of their non-reciprocal nature, Lomé/Cotonou preferences could not qualify either under Article XXIV of the GATT which allows for preferential treatment between members provided they liberalise trade between them on a reciprocal basis.

While it is true that the enforceability of WTO rules has been the main driver in kick-starting the reform of the ACP-EU trade regime, the new emphasis on the need to comply with them has perhaps more to do with a change of attitudes in the late 1980s and early 1990s. Commenting on the early days of EU development cooperation, Grilli (1993) argues that "*when under pressure (mostly from the United States) for their preferential trade policies towards developing countries, both the Commission and the Council resorted alternatively to legal and political justifications, invoking GATT*

*loopholes (such as Article XXIV on customs unions and free-trade areas), general principles (such as their UN charter derived duty to foster the economic and social development of their associated countries and territories), or simply the ‘facts of life’ – among them the existence of strong economic and cultural links with many African countries’’*<sup>24</sup> (Grilli 1993, 339). However, starting with the end of the Cold war, the European approach in this respect changed substantially. The European Commission played a central role in the process of the institutionalisation of the GATT, championing the creation of the new multilateral trade organisation and strongly advocating the ‘single undertaking’ approach (Dickson 2004). In addition, as a result of greater membership, the value of a strong regulatory system had generally increased and leniency towards exceptions to the core ‘most favoured principle’ were perceived in a more sceptical light than previously (Stevens 2000, 408), which was not to spare the Lomé regime. Indeed, signs of discontent with its discriminatory nature were to add to the pressure for reform.

The finger was first pointed at the preferences granted to ACP bananas, triggered by the simultaneous completion of a larger single European market, which raised the costs for countries of being “non-preferred” (Stevens 2000). Since 1993, the legality of the EU’s banana<sup>25</sup> – as well as sugar – regime has been challenged by several non-ACP developing countries, including Brazil, Ecuador, Honduras, Guatemala, Mexico and Thailand, which have been denied similar levels of access to the EU market as ACP countries, on regional grounds (as they did not belong to the ACP group) and not on the basis of their level of development. In response to these legal challenges and because the ACP preferences ran counter the non-discrimination principle at the core of the multilateral trading system, a waiver was necessary to shelter the Convention from being challenged by other WTO members, which the EU obtained for the duration of Lomé IV-bis (1995–2000). A second waiver was subsequently successfully obtained by the EU, with the support

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24 The issue of non-conformity with GATT rules was de facto solved when the US became satisfied that Europe’s preferential access to African countries’ markets (and resources) was scrapped with the formal introduction of the principle of non-reciprocity under the Lomé Agreements.

25 In fact, the dispute over the EU’s banana preferences to ACP countries has still not been solved. For a background, see Stevens (2000). For a more recent and regular update on the “banana wars”, see [www.ictsd.org](http://www.ictsd.org)

of ACP countries, to cover the trade preferences granted under the Cotonou Agreement. The waiver was established in November 2001 and expired on the 31 December 2007, thereby providing the timeframe within which a fully WTO-compatible trade regime with the ACP was to be negotiated. Since obtaining a waiver from the WTO is the result of a negotiated process and hence comes at the cost of trade-offs and concessions to non-preferred countries (with potential eroding effects on the preferences granted to the ACP), the EU had already made clear that would be the last derogation it would seek from WTO members in the course of the post-Lomé negotiations which paved the way to Cotonou (Solignac Lecomte 2001c; see also Bassilekin 2007 for a discussion on the possibility of obtaining a new WTO waiver).

Therefore, the two possible options to make the ACP-EU trade regime WTO compatible were either to change the way the preferences were granted by the EU and ensure compliance with the Enabling Clause; or maintain a preferential trading system between the EU and the ACP in the form of regional trade agreements compliant with the provisions of Article XXIV. In the *Green paper on relations between the European Union and the ACP countries on the eve of the 21st century* published in 1996<sup>26</sup> (EC 1996), the EU clearly marked its preference for the regional setting. Indeed, notwithstanding the relevance of the group which has been increasingly questioned over time, compliance with the Enabling Clause would have had adverse consequences for the existence of the ACP as a group and further diluted their most preferred access to the EU markets. This would have been an all the more difficult political move to make for the EU inasmuch as it would have also meant that LDC and/or non-LDC ACP countries would need to compete with “heavyweights” of the developing world, such as Bangladesh amongst the LDCs or China, India and Brazil, to take the most obvious examples of non-LDCs, for the same access to the EU market. On the other hand, should the EU have decided to level its preferences from the top of the pyramid and grant all developing countries access similar to that enjoyed by the ACP, EU industries would have been exposed to increased and cheaper imports from these countries in sensitive sectors like agriculture. Therefore, the EC’s starting point in the various options outlined in the Green Paper

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26 See section 4.2.1.2 below for a further discussion on the Green paper process and the importance of internal considerations to the EU in the identification of the options tabled.

was one of heavy insistence on the need to renounce the non-reciprocity of the trade relations with the ACP<sup>27</sup>, and work towards a reciprocal liberalisation of trade scheme with the ACP, compliant with the provisions contained in Article XXIV of the GATT.

While it can be stated that external pressure has been the main trigger for the reform of the ACP-EU trade regime rather than development considerations as such, the combination of elements forming the basis of the EPAs can nevertheless be found to hold a strong potential for development when read against key insights from the theoretical debates and the experiences of countries beyond the ACP.

### 3.2 Key considerations on the linkages between trade liberalisation, development and poverty

Strong internal and external pressures to reform the Lomé regime existed, as discussed in the previous section. But what assessment can be made of the ‘developmental value’ of the reforms against possible recommendations drawn from the theoretical debates? In doing so, it might also be useful to refer to country experiences beyond the ACP when considering the question of the linkages between trade liberalisation and development.

#### 3.2.1 Insights from theoretical debates

There is an extensive literature and intensive debate on whether opening up markets is good for development and addressing poverty, not least due to far-reaching (negative) socio-economic consequences that often accompany the liberalisation process. There however seems to be a consensus pointing to the strong *potential* held by trade liberalisation for positive developmental outcomes. However, such an outcome is by no means automatic and there appears to be no clear-cut answer as to how and under what conditions this would effectively be the case.

The benefits to be derived from trade liberalisation are by no means unequivocal and cannot be limited to the expected positive effects briefly de-

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27 The EU’s refusal to accept apartheid-free South Africa in the exclusive circle of Lomé preferred countries and its seeking instead for a free trade agreement can be considered as a significant mark of this shift.

scribed in section 2.3. By affecting price changes on the goods and services that they consume or that they produce – including on labour – lowering trade taxes can induce an increase in average incomes as imports become cheaper to buy. Conversely, while access to imported investment goods and the technology embodied in imports may be very beneficial, opening up markets might have adverse consequences for less competitive domestic producers of importables (Ackah / Morrissey 2005), with detrimental effects on income levels. Therefore, even if beneficial for an economy, trade liberalisation creates both winners and losers, and the process can push some (deeper) into poverty while increasing economic opportunities and earnings for others.

Nevertheless, if understood in terms of economic growth, a preponderance of evidence favours the conclusion that trade liberalisation contributes positively to development, although the *“level of proof remains a little less than one may wish”* (Winters 2004). For Winters (2004), the heterogeneity of results and views in the correlation between trade liberalisation and economic growth can be explained through the host of other factors that influence the outcome. These encompass a wide variety of issues, including the existing levels of development and education, the strength of domestic institutions, macroeconomic stability and the existence of measures to tackle corruption. For Kneller / Morgan / Kanchanahatakij (2008), the level of human capital and the structure of trade are of equal importance. For instance, they find evidence that the nature of a country’s imports is important: those liberalisers that increase their imports of goods with high research and development (R&D) levels generally experience higher growth.

As for the link to poverty, the effects of trade are even less clear: Winters, McCullough and McKay (2004) find that there are many causes for being optimistic about the contribution of trade liberalisation to the reduction of poverty, but it is as such not sufficient. There too, *“the ultimate outcome depends on many factors, including its starting point, the precise trade reform measures undertaken, who the poor are, and how they sustain themselves”* (Winters / McCulloch / McKay 2004, 107). This requires in-depth analysis and understanding of the channels and transmission mechanisms through which trade liberalisation will directly impact on the poor, as well as the factors that will indirectly affect the efficiency of its impact, notably the ability of the poor to respond and seize the opportunities created. In sum, *“the impact of trade liberalisation on the poor depends largely on the government policies and*

*interventions that are followed (or not) by governments and that influence the efficacy of the transmission mechanism” (Turner / Nguyen / Bird 2008, 6).*

Taken together, these points suggest that no general conclusion can be made on the effects of trade liberalisation on economic and poverty: country case-studies will offer greater returns on where the linkages and causal relationships are, but will remain specific to the context they are observed in. Thus, the effect of trade liberalisation on the poor mostly depends on the environment in which trade liberalisation will be carried out, not least the policies that accompany it.

Despite the inconclusiveness of the debate, some points of convergence can nevertheless be distinguished. A common thread of the different academic discussions is that trade *can* create opportunities for growth and human development through the expansion of markets, greater competition and the facilitation of knowledge dissemination. It is also commonly accepted that trade can increase aggregate productivity and exposure to new technologies, which in turn spurs growth (UNDP 2003). In fact, that trade liberalisation is a necessary, but not sufficient condition for development, and hence, has a strong *potential* to serve development and poverty reduction objectives is probably as far as the consensus goes. Therefore, the question is not so much whether or not to trade, but rather “what to trade” and “how to trade”. In other words the extent to which trade should be left ‘free’, i.e. entrusted to market forces unencumbered by state interventions, and how much and what type of state intervention is feasible or desirable (Brolén / Wilska / von Bonsdorff 2007, 216). This question, too, has been subject to much debate, as explored in the following section.

### 3.2.2 Insights from country experiences

Different degrees of trade liberalism have been advocated for and experienced by countries over time, with varying measures of success. However, pursuing the path of trade liberalisation appears to have been more conducive for development than inward-looking economies. A crucial requirement to maximise the benefits and offset the negative effects of trade liberalisation lay in the countries’ ability to adequately time and sequence the process with accompanying measures in the first place, and subsequently to monitor and steer its progress and impact on development through well-resourced institutions.

**Box 2: Import substitution policies in developing countries**

On the premise of the “infant industry argument”, several developing countries, including the ACP, focused their development strategies on building import substituting industries, in the period following their independence up to the 1970s. Many followed the import-substitution industrialisation pattern in order to attain the targeted self-sustained growth. State-led development was the norm and governments tightly regulated economic activities and international trade. Developing countries therefore aimed at reducing their dependence on primary commodities and to diversify into the production of manufactures through industrialisation, considered key to development by way of its unemployment-reducing effect (Brolén / Wilska / von Bonsdorff 2007; Razzaque / Raihan 2008). The idea: (temporarily) protect infant industries from outside competition and start exporting once they achieve the necessary scale economies and production efficiencies. Preferential access to richer and more developed countries’ markets, such as that provided under the framework of the Lomé Conventions, was therefore considered essential to support the transformation into diversified and robust economies (Grilli 1993).

Import-substitution policies met with some measure of success in the earlier post-independence period, but their beneficial effects were soon severely challenged by a combination of internal and external factors. On the one hand, the import-substitution policies turned out to be too costly to sustain. Non-tariff measures such as quantitative import restrictions and government licences were used extensively to restrict imports. The protectionist policies pursued kept industries isolated from new technologies, and in many cases equated with rent-seeking activities relating to both imports and production. As for the promotion of exports strategies which were to accompany industrialisation efforts, they often remained focused on industries processing raw materials. Traditional exports were often taxed heavily for revenue purposes, thereby discouraging production. On the other hand, the policies pursued were also fundamentally undermined by the unfavourable international context in which they emerged. The global recession following the two oil shocks of 1973 and 1979 led to the steady decline of prices for primary commodities and raw materials on the world market throughout the 1980s. Slow growth rates for the 1980s and the 1990s and volatility of world commodity prices led to high instability in developing countries’ export earnings, acting as disincentives to investment (UNCTAD 2008a; Razzaque / Raihan 2008). In addition, because of the high interest rates prevailing, many countries contracted unsustainable levels of debt and their economies were soon on the brink of collapse.



The dismal results of the import-substitution strategies (see Box 2) gave an impetus to trade being seen as an ‘engine of growth’, and led to the adoption of pro-trade policies in many developing countries (see also section 4.1.1.1). The emphasis was therefore on market-friendly economic policies as the *“development consensus shifted away from state planning towards markets, away from import substitution towards outward orientation, away from state controls of prices and interest rates toward ‘getting the prices right’”* (Easterly 2001, 135). Proponents of trade as an engine for growth also recognised the benefits of a larger international market. This in turn provided the road-map for developing countries: integration into the world economy through trade liberalisation became one of the major pillars of any sound development strategy. In fact, it was most of the time perceived as an ultimate goal (Rodrik 2001; cited in Nicolas 2004). Liberal trade strategies were therefore called for, as it was believed that they would bring efficiency in resource allocation, eliminate unproductive profit and rent-seeking activities, encourage foreign investment and stimulate dynamic positive effects on the domestic economy (Razzaque / Raihan 2008). The shift was all the more radical in that the failure of the self-centred development strategies occurred simultaneously with the success stories of the outward-oriented East Asian economies.

There are several key aspects that can be taken from the experience of the East Asian and other countries with trade. Quite remarkably, much of their success in pursuing trade liberalisation and export-oriented policies as part of their development strategies relied on the active role played by the state in the process (see Box 3). Most of these countries thus pursued a two-track policy, which – to the least – has shown that *“public action and state intervention is not only compatible but even conducive to economic development, when it is properly mixed with regulation and the promotion of markets”* (Brolén / Wilska / von Bonsdorff 2007, 224). Besides the pace and scope of the liberalisation process, adequate timing and sequencing was important for increasing the prospects of economic growth. More specifically, sequencing adjustment measures and reforms – including from actively protecting and promoting sectors to gradually liberalising imports – and getting the policy mix right appears to have been crucial in maximising the benefits or offsetting the negative effects of trade liberalisation (Turner / Nguyen / Bird 2008, 19).

**Box 3: The role of the state in past success stories building on international trade**

While the experiences of countries such as the East Asian so-called Tigers, and more recently South Africa, Brazil, India, China, or Vietnam are widely different, a common denominator among these countries is probably that they have actively embraced trade liberalisation and export-oriented policies as an integral part of their development strategies. More fundamentally, the state played a crucial role in steering the development process. Gradual trade liberalisation was one of the elements of these countries' economic policies, but was usually combined with some form of government intervention, and even protection. In many respects, their success can be attributed to the role of what was called a 'developmental state' in owning and driving the liberalisation process and strategically using some form of (temporary) protection for certain key sectors of their economy while opening up others (UNDP 2003). It indeed appears that for countries such as China, India and Vietnam, the development of a network of well-resourced institutions to monitor and manage the process of market development has been crucial (Razzaque / Raihan 2008). These were identified as *“responsible for macro-economic management and for developing and implementing economic plans to guide the economy, including strategies for investment, liberalisation and export production. They are also responsible for overseeing regulatory issues such as competition, the functioning of labour markets and customs procedures”* (ibid. , 28).

Institutions able to monitor and steer the liberalisation process for development also have a critical role to play. The sequencing of reforms and support measures indeed needs to be tailored according to when the different short, medium and long term effects of trade liberalisation kick in. For instance, in the process of trade liberalisation, Ackah / Morrissey (2005) argue that import supply from the rest of the world tends to respond more rapidly than domestic export supply. *“Imports increase faster than exports, imposing adjustment costs as jobs are lost in import competing sectors faster than they are created in export sectors, and possibly increasing trade deficit”* (Ackah / Morrissey 2005, 19). While this effect will crucially need to be attended to, time will also need to be factored in to build or reinforce institutions necessary to manage the overall liberalisation process in a truly pro-poor and development oriented manner. Indeed, Busse et al. (2007) find that institutional quality is an important prerequisite for a successful trade liberalisation.

Furthermore, as argued in the UNCTAD Trade and Development of 2007, *“strong institutions are needed to forge the socio-political consensus needed*

*to mobilize and channel resources into productive investment and manage the trade-offs incurred along a dynamic path to development, including those arising from increased external integration*" (UNCTAD 2007, 35). It is therefore crucial that a participatory approach informs the liberalisation process, not least the identification of which sectors to liberalise and when. As argued by Stevens and Kennan (2005, 3), this will be necessary to strike the most appropriate balance between the various interests at play as "different choices will create different outcomes, winners and losers" and determine the impact of reciprocity. Parallel to this, policies will need to be designed and carried out to rapidly and effectively stimulate export response and diversification<sup>28</sup>, while at the same time implementing necessary complementary policies and mitigating measures to accompany the liberalisation process. These could range from the adoption of social safety nets, training programmes for labour mobility or addressing infrastructural bottlenecks, to policies aiming at finding alternatives to compensate for the loss in tariff revenue<sup>29</sup> or providing for the missing credit markets and improving the business environment (Winters 2000).

The question, however, is whether the past experiences of successful developing countries with trade liberalisation can easily be replicated by current low-income countries, in the present context<sup>30</sup>. In terms of trade policies at

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- 28 Drawing from the experience of Bangladesh, some authors have suggested that rather than *export-led growth*, a more appropriate approach to achieve a virtuous trade-poverty linkage may be a development strategy that strives for attaining a *sufficient level* of export growth (Razzaque / Raihan 2008).
- 29 For example, by designing exclusion lists that allow for the protection of products that yield the most tariff revenue, while at the same time factoring in those that need to be protected for domestic competition reasons, or by improving the tax collection and administration system and broadening the tax base through the implementation of value-added tax (see South Centre 2007b).
- 30 One can also wonder whether this would be at all – and if so, to what extent – advisable considering the severe global economic crisis that struck in 2008 and has sent several countries' economies' around the world into recession. While this has added to the urgency of trade talks such as the EPAs or the Doha round of negotiations for developing countries, it also carries the risk of rich countries hardening their positions. In fact, despite rhetorical pledges to the contrary, some worrying signals of a return to high levels of protectionism have been confirmed, amid a general lack of enthusiasm for concluding far-reaching trade negotiations. The European Commissioner for trade, Catherine Ashton, admitted that she "would rather not have to negotiate trade deals during an economic downturn" (Schifferes 2009).

least, because of the increased competition amongst (developing) countries, it has been argued that outward-oriented policies will most likely result in lower returns for countries seeking to jump onto the bandwagon at this stage. As argued by Solignac-Lecomte (2001d),

*“selective protectionism may have been easier to implement and potentially more beneficial at a time when multilateral and regional disciplines were less constraining and technological bias against unskilled labour may have made trade-led growth progressively less beneficial for poor countries where this factor is relatively abundant.”*

In addition, while trade liberalisation entails the elimination of certain policy measures, such as tariffs, trade distorting subsidies, state trading enterprises, export taxes, discriminating government procurement, etc., others have argued that *“the policy space that governments have to formulate and effectively implement policies to promote trade and development”* has been curtailed (South Centre 2007b). By contrast, Page (2007) argues that developing countries still have substantial space within WTO rules to use trade or domestic policy for development. In any case, it remains the case that developing countries that wish to use trade as a development tool will have to do so within a given framework of rules – the formulation of which they could influence, by building alliances and coalitions in the WTO for instance. Whether and to what extent this is feasible raises another set of questions that will not be addressed here.

Rather, it is noteworthy that the EPAs entail a more specific ‘road map’ for the integration of ACP countries into the world economy, and provide for the establishment of a set of *regional* rules within which ACP countries are to design and carry out their trade policies for development. The next section will thus examine how this particularity of the envisaged EPAs, i.e. the promotion of regional integration, relates to the broader multilateral efforts to design trade policy for development.

### 3.3 Multilateral or preferential trade liberalisation for development?

Another core feature of the proposed concept of the EPAs is the parallel promotion of regional integration within the ACP group and the negotiation of preferential trade arrangements (PTAs) between the EU and regional groupings ACP countries, with a view to better integrate these countries into the

world economy. This appears a most ambitious endeavour, not least considering the ambiguities on the effects of trade liberalisation for development in general and the unresolved controversy about the costs and benefits of preferential as opposed to multilateral trade liberalisation. Hence, two facets need to be considered: (a) from a broader perspective, the potential effects of liberalising trade in the framework of a PTA versus doing so within the multilateral arena of the WTO; and (b) more specifically to the EPAs, the potential impact of liberalising trade between a developed 'North' and less developed 'South' *and* between states with similar levels of development, i.e. South-South integration.

### 3.3.1 Preferential agreements as a stepping stone into the world economy?

The level at which to carry out the trade liberalisation process is a contentious issue in theoretical debates: should liberalisation be multilateral or rather start with preferential arrangements in order to integrate into the world economy? More precisely, how does preferential trade liberalisation under the framework of a regional EPA with the EU fit with the aspiration to better integrate developing countries into the multilateral trading system, and what are their respective gains? Views widely diverge as to whether the recent increase of bilateral or regional preferential deals is an alternative, a complement or a hindrance to multilateral liberalisation.

The question as to how PTAs relate to multilateralism is at best inconclusive. As summarised by Schott (2008), PTAs can be:

*“trade creating or diverting, can build support for or divert attention from multilateral negotiations, can enhance or dilute (or both) negotiating resources, and can foster good and bad precedents for other trade initiatives. The overall outcome depends on how pacts are crafted, the commitment of the partner countries to the WTO system, and how much progress is made in parallel WTO talks”* (Schott 2008, 11–12).

In general terms, it is considered that regional integration can carry and strengthen similar benefits to those derived from trade liberalisation. The benefits that are expected to accrue from PTAs are captured in what Viner (1950) labelled the trade creation effect and the increase in welfare it carries. Indeed, preferential trade liberalisation can result in the replacement of inefficient domestic production with low-cost imports from members to the

agreement. It increases the exposure to other producers, hence promoting competition, increased efficiency and the transfer of technology. Consumers are also expected to benefit from welfare-enhancing effects of integrated regional markets through changes in relative prices. Welfare benefits for consumers accrue as they are able to enjoy lower prices through the elimination of tariffs on imported goods, thus accessible to a greater number of them. Pooling resources and expanding their markets is also deemed beneficial because it is conducive to the emergence of economies of scale. Business expansion and the minimisation of costs are in turn facilitated, as well as the relocation of producers within the integrated market seeking to take advantage of the economies of scale created. Hence, the impact of regional integration can also have distributive consequences, with some areas benefiting more than others (South Centre 2007a).

However, the impact of preferential trade is not unidirectional and can also result in trade diversion, with associated welfare reducing effects, as Viner (1950) found. This occurs when imports are substituted from relatively efficient, low-cost producers in non-member countries in favour of less efficient producers from member countries, which become cheaper only due to the preferential treatment they enjoy. In this case, prices stay the same for consumers or may even increase if producers from the preferred country *“are able to exert monopoly power in order to bid up the prices of goods to their previous level before liberalisation”* (South Centre 2007b, 7).

The trade creation and trade diversion effects of preferential trade are at the heart of the debate on how preferential agreements relate to multilateral liberalisation. First, the trade creating effect of PTAs is one of the underlying arguments put forward by proponents of the view that preferential trade is supportive of multilateral trade negotiations, notably because it allows policymakers to build consensus from the gains of partial trade liberalisation (Sindzingre 2008; Schott 2008).

For Söderbaum, since *“development is a multidimensional phenomenon which depends on positive spillovers and linkages between different sectors”* (Soderbaum 2008, 632), the comprehensive and multidimensional nature of development makes it impossible to address it viably on the global level or within the WTO. It is therefore *“both fairer and politically more feasible to address trade liberalisation on a regional level; [...] [not only is it] easier to liberalise towards neighbours than on a multilateral basis, [but] it is also easier to deal with distribution on a regional level”* (Soder-

baum 2008, 632). In a context where the multilateral governance of trade was not designed with the problems of developing countries in mind and its reform has come to a standstill, the pursuance of trade deals on a bilateral or regional basis is considered by many governments *“as a better vehicle for advancing their preferred agenda of economic liberalisation and harmonisation across a broad range of policies, laws and institutions”* (UNCTAD 2007, viii). In this sense, regions also provide the opportunity for smaller countries *“to increase their bargaining power and voice in multilateral trade and in the context of globalisation.”* (Soderbaum 2008, 630–631)

Thus, many consider that regional arrangements can actually operate as ‘stepping stones’ or ‘building blocks’ towards further and better integration into the world economy, particularly for developing countries. It is indeed argued that rather than undermining the multilateral trading system, PTAs have the potential to put the negotiations back on track precisely by including provisions that go beyond the current scope of the WTO rules and regulations – i.e. by covering “substantially all trade” and extending to areas such as investment, competition policy and government procurement that have been excluded from the ambit of WTO talks. Reforms in these policy areas are locked in a more favourable regional environment and will have more weight at the table of multilateral discussions.

By contrast, advocates of a multilateral approach to trade negotiations over a preferential one put forward two main arguments. First, it is argued that the trade diverting effects of PTAs reflect ‘false’ comparative advantages of producers within the PTA at the expense of importers and consumers in member countries, leading to a relatively smaller welfare gain as compared to the multilateral option. Second, it is considered that the proliferation of differential trade preferences has fundamentally weakened the multilateral system by making its cornerstone MFN principle the exception rather than the rule. Furthermore, many are of the view that the ever spreading and complex network of non-MFN trade relations carries the risk of further increasing discrimination in world trade, and may well undermine the overall transparency and predictability of the system (Forientino / Verdaja / Toqueboeuf 2007; UNCTAD 2007). One of the most fervent opponent to the proliferation of preferential agreements, Jagdish Bhagwati, recently depicted PTAs as *“termites [...] eating away at the multilateral trading system relentlessly and progressively”* (Bhagwati 2008, xii).

Because it increases the cost of nonparticipation, trade diversion caused by a PTA may also have the indirect effect of a disengagement from multilateral talks for non-members, as third countries are incited to join PTAs or create their own. More fundamentally, in the case of developing countries, it de facto reduces the motivation of engaging in WTO talks at all once they have secured preferential deals with key trading partners (Schott 2008). Besides diverting often limited resources away from multilateral negotiations (a phenomenon which affects mostly developing countries but also developed countries), the proliferation of preferential deals is also more demanding in comparison to a common and unified multilateral set of rules<sup>31</sup>. Indeed the effects of bilateral or regional agreements are generally more complex and usually less beneficial than for multilateral agreements (Page 2008). Implementing these agreements and managing their various terms and requirements therefore calls on the (limited) capacities of low-income and small countries and enterprises.

Clearly, choices will have to be made by governments wishing to develop through trade liberalisation. Developing countries' governments need to develop their own vision and strategy as to how the country should integrate the world economy, in a way that sustains human development and generates national support (OECD/DAC 2001). As argued by Ackah / Morrissey (2005), trade liberalisation can do no more than provide opportunities while at the same time creating risks: unilateral reform increases relative incentives to exporters, multilateral and regional liberalisation increases market access. The benefits and risks deriving from each are largely different. How to bring about improved export performance and diversification will need to be at the core of the strategy aiming at tapping into the opportunities created at the different possible levels of liberalisation, for any country or regional grouping considering substantial trade liberalisation.

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31 For example, PTAs (hence, EPAs) make it necessary to design appropriate sets of rules of origin (RoO), *"to ensure that goods traded are really from the designated trading partner and do not contain so much material from other countries that they are more like re-exports than home production"* (Page 2008, 2). Besides adding to the complexity of negotiations, this may lead to increasing the production costs in member countries, due to the need to use inputs allowing for compliance with RoO, and the cost of trade in the region, due to the need to provide RoO compliance documentation.



As shown above, theoretical debates do not provide clear indications to inform the choice between preferential or multilateral trade liberalisation as the best way to integrate into the world economy. There appear to be several arguments that support the proposed approach of the EPAs, conceived as a stepping stone towards this objective. However, beyond the fact that the EPAs are PTAs, they specifically also entail two-levels of integration: they combine aspects of South-South integration with North-South integration, and have the overall objective of integration into the world economy. It is thus necessary to analyse further what the potential implications could be of such a combined approach.

### 3.3.2 North-South *and* South-South agreements for development?

In the case of preferential trade liberalisation, another controversial issue in theoretical debates relates to the question as to whether the potential benefits of a PTA accrue irrespective of the level of economic development of the trading partners involved. This is of particular interest in the case of the EPAs, as they aim to combine integration at two levels: on the one hand, preferential trade between a more developed 'North' and a less developed 'South', and on the other hand, regional integration between countries of similar (low) levels of development (i.e. South-South). The question therefore is how conducive the two-level integration potentially is for development.

The supporting idea for the promotion of regional integration in the ACP, i.e. 'South-South' integration, was to overcome the limited size of most ACP economies, and hence establish larger regional markets, more attractive for investment. Looking back at the experience of Yaoundé and Lomé, this seems to be a sensible step towards a more developmental outcome of the ACP-EU trade relations, since the absence of a regional integration component to the partnership was found to have posed serious obstacles to the economic development of the associated countries. Indeed, for Grilli (1993, 148), the autonomous choice that associated countries made to renounce the creation of a single free-trade area with the EC "sanctioned parcelization of trade among [these countries], and eventually led to the acceptance by individual African countries of more protection of domestic markets" than otherwise. EPAs specifically seek to remedy this long neglected effect of the

special ACP-EU relations and put an emphasis on promoting South-South integration amongst the ACP.

However, it is often argued that markets in the developing ‘South’, are not large and deep enough for South-South agreements alone to unleash significant growth potentials, e.g. through economies of scale or scope. In addition, a majority of developing countries, particularly in Africa, tend to have a comparative advantage in the same sectors and hence trade very little with each other. Due to this, it has been argued that the trade effects of South-South agreements will most likely create little additional trade within the region and rather divert exports away from some members to others. The gains for members of PTAs restricted to a South-South scope are thus generally expected to be relatively minor, at least in the short run, as it would require time for developing economies (hence the ACP) to diversify and deepen their markets.

This line of thought has led to the view that, for trade agreements to bring significant developmental benefits to low-income countries, they should involve at least one developed country partner<sup>32</sup>. For Hoekman and Schiff (2002), the expected trade creation and trade diversion effects actually suggest that, at least in the short run, North-South agreements may be more

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32 These arguments have become somewhat blurred given the recent emergence of major regional economic powers in the ‘South’, such as China, India, Brazil and South Africa (Sindzingre 2008), which could play a key role as a driver of regional integration making a Northern partner dispensable. However, as Busse et al. (2007, 61) argue, it is not certain that such regional ‘anchors’ exist within all the regional configurations negotiating an EPA with the EU that are strong enough to exert their political and economic influence in a positive way. In particular, they question whether South Africa could play such a role since it has had its own Trade and Development Cooperation Agreement (TDCA) with the EU since 2000. Since the launch of the EPA negotiations, South Africa joined the process as an observer and the EU has modified its mandate in order to include it fully in the negotiations, but to date, the country has not joined the interim EPA reached in the SADC (Southern African Development Community) region. Furthermore, given the limited impact of initiatives such as the New Partnership for Africa’s Development (NEPAD) in providing “*credible commitment and enforcement mechanisms that are needed to enforce better governance in African countries*”, the authors conclude that “*from this perspective, the concept of promoting deeper regional integration through EPAs seems to be a more promising approach in enhancing institutional quality and governance in many African countries*” (Busse et al. 2007, 60).

welfare-enhancing than South-South agreements, notably in terms of technology transfers for southern members (cited in Sindzingre 2008).

In addition, it is argued that by its presence in the EPA with a regional grouping of ACP countries the EU could act as an ‘external guarantor’ for otherwise stalling South-South integration processes. As argued by Busse et al. (2007, 60), this seems to be a likely requirement for the expected positive effects of regional integration to materialise in the medium and long run: “if economic factors do not play a major role, an external anchor could help a country to implement and, equally important, to lock in the necessary reforms”. In other words, by doubling the stakes for non-compliance to the regional rules, stability and predictability would be increased and contribute to establishing a more conducive framework to tackle the lack of competitiveness, particularly for land-locked countries.

Then again, many have also questioned the beneficial character of North-South agreements, arguing that the fundamental asymmetry between the two groups’ starting points would tend to be reinforced through trade rather than wiped out (Brolén / Wilska / von Bonsdorff 2007). First, it is feared that trade may be diverted from southern to northern members, thus benefiting rather northern (EU) producers and possibly southern (ACP) consumers, at the expense of southern (ACP) producers. Indeed, local and regional producers may lose market shares to the benefit of more competitive European producers. Furthermore, the process of lowering tariffs on imports to southern members of an EPA could severely affect government revenues: many African ACP countries derive 10-30% of their revenues from import tariffs, essentially drawn on imports from their main trading partner, the EU (Hinkle / Newfarmer 2005). By contrast, it was foreseen that the impact on the EU of free trade agreements with the ACP would be “*quite limited and much easier for the EU to adjust*” (ibid., 5).

For this and other reasons elaborated hereafter, the authors of the UNCTAD Trade and Development Report on Regional Cooperation for Development (2007) strongly cautioned developing countries against rushing into North-South bilateral or regional deals to preserve or obtain preferred and more competitive access to developed countries markets. For the authors, most of the disadvantages in concluding North-South bilateral or regional free trade agreements stem from the inclusion of issues that were left out of the ambit of the multilateral negotiations at the request of developing countries. Indeed, as discussed previously, PTAs have generally been found to demand

far-reaching liberalisation of foreign investment and government procurement, new rules on certain aspects of competition policy, stricter rules on intellectual property rights and the incorporation of labour and environmental standards. In fact, it is precisely the drive of many preferential deals towards much broader and deeper liberalisation of trade in goods – and sometimes in services as well – than agreed under the framework of the WTO that has raised concern. In addition, the authors of the UNCTAD report warn against the short-lived and uncertain character of the gains for developing countries from improved market access, inasmuch as more bilateral North-South agreements are likely to be concluded and erode the margin of preference achieved (UNCTAD 2007).

In sum, it can be argued that there is some good justification for the proposed combination of South-South and North-South integration in the EPAs: because most ACP countries' economies are still too small and insufficiently diversified, South-South integration cannot deliver as yet the expected gains and benefits for development. North-South integration will thus provide the necessary impetus in this respect, by 'vouching' for the success and increasing the credibility of the processes of South-South integration and at the same time improving Southern members' access to Northern markets, investment and technologies.

However, most of the costs of liberalisation, at least in the early stages, are likely to be borne by the ACP countries. A developmental outcome of the EPAs will depend not least on the existence of measures and policies to offset the potentially negative effects of deeper integration with the EU. Building on the analysis carried out in this chapter, the next section will thus check whether the different elements and the overall 'formula' of the EPAs allow or accommodate for such measures and policies to be taken. Preliminary conclusions will then be drawn as to whether the concept of the EPAs can be found to have strengthened the trade-development nexus in the EU's trade policy towards the ACP and, if not, how this could be done, notably in the course of the negotiations.

### 3.4 The EPA 'formula' for trade and development: An assessment of the concept

The EPA concept provides several opportunities to better address the trade-development nexus in the EU-ACP relations. The EPAs aspire to tackle ma-

jor shortcomings or bottlenecks that had limited the effectiveness of the former regime of Lomé preferences, hence improving the EU's trade and development package for the ACP. In addition, the concept of the EPAs also appears to have strengthened the trade-development nexus by integrating the main points of convergence that theoretical considerations indicate as key in making trade liberalisation supportive of development objectives: capacity to trade and to negotiate, flexibility in the trade liberalisation process (with respect in particular to its timing and sequencing) and a comprehensive approach to address the regulatory framework and the governance of trade. With respect to regional integration, no definite conclusion can be drawn on the expected effects of the EPAs: there are no clear answers to be found in theoretical discussions as to whether carrying out parallel North-South and South-South integration can be taken as development-friendly, or rather development-unfriendly. EPAs might actually work, provided there is scope for some sequencing of the integration processes to take place and adequate support from the EU. But, more fundamentally perhaps, our previous discussion brought to the fore a crucial requirement for EPAs to be conducive for development: whether the opportunities created through the EU's new trade policy instrument for development can be grasped and tailored to their needs will crucially depend on the existence of strong capabilities on the ACP side. In other words, a success of the EPAs is contingent upon the intervention of developing countries' governments in strategically designing and using the available trade policy instruments for development. It is on these bases that the capabilities of the EU's multi-level structure to manage the trade-development nexus in the framework of its trade relations with the ACP can be assessed.

When considering, in the first place, the former trade regime of Lomé, the EPAs can be seen as providing the adequate policy responses to some of the major shortcomings revealed under the previous system. First, the EPAs seek to address core aspects that had limited the effectiveness of the preferential treatment granted by the EU under the Lomé trade regime. On the one hand, they aspire to improve the relative quality and value of the preferential access to EU markets, notably through a revision of the rules of origin. On the other hand, the introduction of reciprocity and the comprehensive coverage of the EPA make it possible to overcome the restrictive approach of a preferential regime focused on tariffs and quotas only and to include all rules and issues relevant to building up the economic governance framework of the ACP. Second, because of the imperative of their compatibility

with WTO rules, the EPAs are better embedded in the regulatory framework of multilateral trade policy, and hence can shelter the ACP-EU regime from being legally challenged by the wider WTO membership.

Considering, in the second place, the proposed EPAs against the backdrop of theoretical debates and experiences of other countries concerning the linkages between trade and development, the key elements of the concept can adequately address many of the difficulties to better link of trade liberalisation to the objectives of development and poverty reduction. First, the EPAs offer to set up a comprehensive regulatory framework within which to address the bottlenecks and enhance the productivity and competitiveness of the ACP, with the assurance of financial and technical support of the EU. Appropriate weight would thus be given to trade development within the ACP States' development strategies, as well as "due regard for [ACP] political choices and development priorities". This suggests that the importance of ownership of the new policy regime has also been factored in. Second, the flexible approach favoured by the EU and the ACP can be understood as allowing for a 'selective protection' of products (notably through the foreseen asymmetrical and gradual liberalisation of ACP trade) as well as the adoption of flanking policies and accompanying measures or reforms necessary to reap the benefits of trade liberalisation. Third, strong capacities will be required to carry out this process and for decisions to be taken and, in the framework of the EPAs as outlined by Cotonou, the EU and the ACP agreed to support and address the negotiating and trading capacities of the ACP in view of the negotiation and implementation of the agreements.

The promotion of regional integration within the scope of the EPAs is arguably more challenging: it will be necessary and important to reconcile the regional dimension of the EPAs with the national level of implementation, while taking into account the realities within each country. Indeed, while arguments can be found in the theoretical debates to support the two-level integration strategy proposed with the EPAs (i.e. within the ACP and between the EU and the ACP), it has to be recalled that establishing positive linkages between trade liberalisation and a developmental outcome is very much country and context specific. In addition, while it seems that more arguments can be found in support of the North-South component, Northern partners (here the EU), should be cautious not to overtake integration processes within the South. Indeed, there is a clear risk that the marginalisation of ACP countries and regions from the world economy would be reinforced

rather than overcome through North-South integration. The cost of a preferential agreement between the EU and the ACP is most likely to be borne mostly by ACP producers, in the short- to medium-term, and could result in reducing the levels of output and contract further intra-African trade in the long-term, if trading partners are not careful in crafting the agreement.

Thus, it has been suggested a monitoring mechanism be established for the EPAs in order to systematically check the design and the implementation of the EPAs against development objectives and the adoption of flanking measures, at both the national and the regional levels. Extensive research has already been carried out in identifying what could be the scope and set-up of such an instrument, and policy circles in the ACP and the EU have on numerous occasions recognised the value of adopting such a mechanism (see Brüntrup et al. 2008). Some have also called for sequencing the two facets of the integration processes, so as to allow for the integration of intra-African markets as a prerequisite to an EPA with the EU, through the elimination of regional tariffs and constitution of customs unions (Sindzingre 2008). Others have suggested that to avoid the diversion of trade from low-cost (non-EU) to high cost (EU) foreign suppliers, ACP countries that sign an EPA and provide reductions on tariffs on imports from the EU should in parallel reduce their MFN tariff levels towards non-EU WTO members (Hinkle / Schiff 2004, cited in South Centre 2007b).

More fundamentally perhaps, our discussion on the various elements captured in the concept of the EPAs has pointed to the need for ACP countries to make clear choices and create their own vision as to which should be the most promising route to development through trade. Deciding that the integration into the world economy can and will be concomitantly achieved through an instrument such as the EPA presumes, on the part of the ACP, the *existence* of comprehensive development strategies, within which trade and regional integration (both between the ACP and the EU) are well-embedded and have a clear function to play. A negotiating strategy would be drawn from these strategies, for discussion with partners within the regional framework chosen in the first place, and negotiated with the EU, in a second. To inform and strategically guide such choices, a whole process has to be set in motion, where careful analysis supports the strategic identification of sectors to be liberalised or excluded from liberalisation. Such a process will need to be carried out in a pro-active and participatory manner by ACP governments, since extensive consultation and collaboration with the civil

society and private sector is essential. It is necessary to ensure the overall sustainability in the implementation of the chosen trade policy, but also because selecting the wrong sectors can have far-reaching negative consequences for development and poverty reduction objectives if not adequately sequenced and accompanied by the right flanking policies. Parallel to this, it will indeed be crucial to:

- a) establish the enabling environment necessary for the private sector to seize the opportunities created and develop, and the economy to grow through the adoption of adequate policies;
- b) ensure the sustainability of growth and prosperity, which includes the ability to react to external shocks and take necessary measures;
- c) distribute the benefits of growth in such a way as to promote diversification and increased employment, thereby contributing to reduce and eventually eradicate poverty.

All in all, this calls for a broad understanding of the capacity to trade and negotiate, since an analytical trade and industrial policy framework is crucially required and must allow for the most efficient use of the policy space available. Indeed, as pointed out by Razzaque and Raihan (2008) if the reduced policy space is certainly a challenge that developing countries face, the proper utilisation of the existing space is perhaps even more challenging.

This implies that the EU will have to be flexible in its negotiating stance if the EPAs are to deliver their development potential. By offering a long-term perspective and a more stable framework than the former unilateral preferences, the EPAs can be seen as providing the right signal that can set in motion the institution-building process that will be needed to support the implementation of the EPA. In prevision of the transformation foreseen with the EPA, institutions will indeed have to be set up and/or made capable of steering and managing the trade liberalisation process in a pro-poor and development-oriented manner. Drawing on the academic discussion on the role of institutions in development, it seems that *“if it is difficult to change deep-rooted institutions through political means, it may be possible to change them by introducing new economic activities that create demand for different kinds of institutions”* (Chang 2007, 13). While the technocratic details matter greatly, building such institutions is an intrinsically political



process and will have to be given due consideration (Chang 2007)<sup>33</sup>. However, if the EPAs can be considered as a trigger for this process, time will be needed to gear up functioning and efficient institutions for economic transformation. Experiences of other countries engaging in economic development has shown that it is not necessary to have full-fledged institutions from the start, and second-best approaches could very well work for the given purpose, and be improved as and when the situation requires to do so (Rodrik 2008). This also means that *“institutions will typically have to evolve locally by trial and error, even though this takes time and can involve mistakes”* (Rodrik, cited in Winters 2004, 14). Thus, assessing the EU’s capabilities to manage trade policy for development in the context of the EPAs – i.e. the second component of this study – will require looking at whether the EU allowed for enough time as well as for the necessary trial and error approach on the road to the EPAs.

Summing up this section of our study, it can be argued that, as a concept, the EPAs have improved the development relevance of the EU’s trade policy for the ACP. However, whether they actually strengthen the trade-development nexus will crucially depend on a number of factors that only a detailed analysis of the outcome of the negotiations can reveal. For instance, whether the ACP were able to adequately sequence the pace and scope of the liberalisation process with the adoption of reforms will be highly relevant in this respect. Another issue relates to the question as to whether the rules defined in the scope of the EPA are in line with and supportive of the development objectives and priorities set by the ACP countries and regions. It will be equally important that the EU be found to be generally supportive in ensuring a developmental outcome to the negotiations, i.e. allow for the right balance to be struck between the key elements identified in section 2.3 of the EPAs (reciprocity, comprehensiveness, flexibility, ACP capacity to trade

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33 At the same time, Chang (2007) argues that developing countries that are still at the early stages of their economic development can reap the ‘late-comer’s advantage’. Indeed, *“being late-comers, today’s developing countries have the benefit of being able to imitate institutions that exist in the more developed countries – of course, taking care that they choose the institutions that are right for their circumstances in the right forms and in the right dosage – and thus cut down the costs associated with developing new institutions de novo”* (Chang 2007, 13). Undoubtedly, and while it is not the only experience that can be drawn from, the EU has a vast and varied knowledge of institution-building to share at both the state and particularly at the inter-governmental level.

and negotiate and regional integration) and accommodate for institution-building in the ACP as and when necessary.

As discussed in this section, a developmental outcome to the EPA negotiations will fundamentally and crucially be contingent upon the role and intervention of developing countries' governments in strategically designing and using the available trade policy instruments for development. This also requires the will and capability to carry this strategy through in negotiations with the EU. In order to craft the EPAs into tools for development which strengthen the trade-development nexus, it is therefore necessary to build on a capable state apparatus in the ACP where it exists. This state apparatus will need to be able to derive a clear road map with priority activities to be undertaken, steer the trade strategy identified through a participatory process, undertake necessary reforms and adjustments and set up the required institutions to monitor and accompany the implementation. All of these actions will have to be taken in a timely and sustainable manner. Parallel to this, it will also be necessary to assess whether the EU was able to provide opportune and sufficient support to these efforts, for instance by being flexible enough to allow for sequencing between liberalisation commitments and adoption of accompanying measures or reforms, or between regional integration within the ACP and liberalisation of ACP markets towards the EU.

The remainder of the study will thus seek to assess whether the conditions for informed decisions to be taken existed during the negotiation process of the EPA and whether they were adequately supported, including by the EU. Because the development challenge is arguably highest for African countries amongst the ACP, the study will have a particular focus on the African states from this point on. The following sections will thus seek to assess whether the conceptual framework of the EPAs has enabled the EU to better address the trade-development nexus in the context of its negotiations with the ACP.

## **4 Trade and development through negotiations**

As is usually the case with international agreements, EPAs are formulated in negotiations, i.e. both sides have to agree on the content and scope of the agreement. This is an opportunity, as both bring their goals and strategies

to the table. It is, however, also a challenge in situations of unequal capacities, if the overall goal is the development of the weaker negotiation partner. Capitalising on the developmental potential held by the EPA as a concept, as discussed in the second chapter, on one side depends on whether the EU, as a development partner, is prepared to and provides adequate and timely support to build ACP capacities in view of the negotiations, not least at the start of the negotiations. This will be decisive for the EU's capabilities as a political actor for global development and the pressure is on the system to deliver in this respect. On the other side, it will also require that the ACP define their strategic priorities to determine their negotiating positions, both at the national and regional levels. For a development-oriented outcome, both sides will also have to base their approaches on the realities on the ground and overcome intrinsic constraints and complexities. The subsequent analysis will be constructed around the process of the negotiations as such, i.e. the preparations for the negotiations, defining positions and the way forward, looking alternatively at the ACP and the EU. In doing so, the elements identified in chapter 2 will be borne in mind, in order to assess the overall ability of the EU's multi-level system to effectively engage in trade and development negotiations with the ACP.

## 4.1 The ACP in the negotiations

Engaging in the EPA negotiations with the EU meant that the ACP countries and regions, and possibly the group as a whole, were adequately prepared to respond to key issues and challenges in the negotiations. This required strong capabilities to formulate trade policy in the first place, which would inform the negotiating positions in the second place. As discussed in the following sections, however, the conditions for such informed decisions to be taken have been crucially lacking throughout the process, and were not sufficiently addressed, not least due to the intrinsic characteristics and diversity of the group.

### 4.1.1 Starting points for the EPA negotiations

A successful preparation in view of the EPA negotiations crucially required that the ACP formulated their goals and priorities ahead of the talks with the EU, on the basis of their own trade policies and within the broader framework of their development strategies. However, at the time the ACP coun-

tries had signed the Cotonou Agreement and had given their assent to the negotiation of an EPA with the EU, trade policies had long been a neglected part of many African countries' economic policies, due to the lack or insufficient support from both African governments and donors, including the EU. Engaging in the negotiation process nevertheless required an informed and strategic decision-making process on part of the ACP, and adequate support by the EU that measured up to these realities. Several provisions of the Cotonou Agreement explicitly addressed the need for capacity building activities in the ACP in view of the negotiating phase.

#### 4.1.1.1 Trade and development strategies in Africa:

##### The rise of the Bretton-Woods institutions and the decline of the state

From the first Lomé Convention in 1975 up to the Cotonou Agreement in 2000, the direct impact of European states on trade policy in Africa declined. This was due to the limited results of the Convention and a stronger focus on maintaining political spheres of influence in a context where world politics was still dominated by the Cold War. Much of the trade-development formulation was done within the Bretton Woods institutions. Consequently, ACP trade policies have generally been dominated or even determined by external actors.

Trade – not least with Europe – has been a central element in generating government revenue in Africa (Page 2006). However rather than pro-actively producing the analysis and formulation of their trade policy, most African countries have implemented or responded to strategies mainly designed by their international and bilateral development partners. In fact, it was considered that *“the bulk of ACP countries have lacked the economic policies and domestic conditions needed for developing trade”* (EC 1996, iv). Indeed, despite their preferred access to European markets, African states were soon to develop the feared ‘anti-export bias’: the competitiveness of African products was hampered by national policies that did not provide the adequate incentives to produce and to export. In addition, as argued by Grilli (1993, 123), international aid resources – and not exclusively Community aid – were used in many African countries to address the financial imbalances in external payments, on an almost constant basis. This meant that such assignment took precedence over necessary domestic adjustments

and kept exchange rates overvalued. Looking at the examples of Malawi and Sierra Leone, Grilli (1993) finds that the efficient use of available resources actually depended on the existence of a competent and dedicated government administration to drive the allocation.

However the EU was not able at the same time to adequately support trade development in the ACP, beyond granting preferred access to its markets. The development strategies determining the allocation of the financial resources comprised in the European Development Funds accompanying the ACP-EU Conventions did not systematically support capacities to trade and specifically address the trade environment in ACP countries until the mid-nineties (see section 4.2.1.2). And while the Lomé ‘model’ had begun to show its limits, interest in the European Community for ACP development actually waned and the disappointing results of aid led to what became characterised as ‘donor fatigue’ (EC 1996).

Simultaneously, international financial institutions, such as the World Bank and International Monetary Fund (the Bretton Woods institutions), became instrumental to the management of a large majority of African countries’ development policies. By the time the Lomé convention was signed, the 1970s and 1980s global recession had indeed sent several African countries’ economies spiralling down into what became known as a ‘lost decade for development’. As it became apparent that Africa’s economic decline was not temporary and could not be solved without deep reforms to address its severe macroeconomic imbalances, African countries increasingly turned to the Bretton Woods institutions for support, in desperate need for convertible currency to service their external debts obligations (UNCTAD 2008a).

Starting in the early 1980s, many developing countries – particularly in Africa – established large scale liberalisation programmes and have since continued with their commitments to more liberal trade regimes, under the so-called ‘structural adjustment programmes’ (SAPs) (see Box 4). Reflecting the extent and widespread effects of the crises many developing countries had fallen into, the SAPs became an omnipresent feature of trade policies in Africa. By 1989, 30 such programmes were in place across the continent; most francophone African countries were to sign into the SAPs in the mid-nineties (Claeys 2004).

**Box 4: The structural adjustment programmes policies and outcomes**

In the early 1980s, the World Bank's Berg Report, "Accelerating Development in Sub-Saharan Africa" diagnosed that the crisis was rooted in the inadequacies of domestic policies and administrative constraints in Africa: overvalued exchange rates, trade regulations and excessive taxation of agricultural exports through marketing boards were among the main factors singled out (UNCTAD 2008a). New market-oriented reforms and disciplines were brought in through the implementation of the structural adjustment programmes (SAPs), together with stabilisation policies prescribed by the International Monetary Fund (for a detailed discussion see (Ohiorhenuan / Keeler 2008).

What was later tagged as the 'Washington Consensus' prescriptions included trade liberalisation and several trade-related measures that could be summarised under the 'triple commandments: stabilise, liberalise, privatise' (Rodrik 2004). This endeavour entailed a wide range of radical policy reforms, which besides trade policy, included industrial policy, monetary and fiscal policy, exchange rate policies, privatisation of state-owned enterprises and promotion of foreign direct investment, and overall reductions in government spending (UNDP 2003).

In carrying out these policies, it was notably sought to tackle the anti-export bias, and thereby encourage the shift of resources from the production of import substitutes to the production of exports.

It was also expected that trade liberalisation would stimulate the setting of an enabling environment for structural transformation of the economy through export-oriented policies, thereby leading to diversification.

The SAPs have been instrumental in addressing and stabilising some of the macroeconomic imbalances hindering the performance of African economies in many respects. The pace and pattern of the trade reforms carried out under the World Bank and IMF-led adjustment programmes varied from one country to the other. In broad terms however, a number of measures were adopted to liberalise imports as well as exports, some countries also seeking to encourage non-traditional exports, notably through the creation of export processing zones. Average tariffs were nearly halved between 1995 and 2006 to about 13%, albeit with "considerable heterogeneity in the extent and even the direction of tariff changes among African countries" (UNCTAD 2008a, 8). Non-tariff measures were converted into tariff equivalents and Africa is one of the regions in the world where non-tariff measures are the least used. In addition, African countries have been largely successful in liberalising their exchange rates, a crucial element considering the deterring effect of overvalued currencies for exports and purchasing the imports needed for economic activity (UNCTAD 2008a).

Nevertheless, a general lack of export response has been observed, and despite the reforms carried out, Africa has remained on the periphery of the global economy and seen its share of world trade shrink. Besides the limited range of destination markets, African exports are still concentrated in terms of sectors and products: primary commodities account for a much higher share of African exports than the world average and the continent's "export problem" is further exacerbated by the narrow range of primary commodities on which it relies (Ackah / Morrissey 2005).

From their inception, SAPs were severely criticised, notably for their disregard of the socio-economic and political fabric of programme countries. Calls for "Adjustment with a human face" were early to be made (Cornia / Jolly / Stewart 1987) and African alternative frameworks suggested (UNECA 1989). As summarised by Ohiorhenuan:

*"The main criticisms of SAPs were that they overestimated the feasibility and efficacy of incentive structure reform (for instance the limited extent to which agricultural exports could respond to price increases or savings to interest rate increases); that they paid too little attention to equity and absolute poverty issues; that they underestimated the continuing need for public goods (especially in the social and agricultural sectors); that they grossly underestimated the financial requirements for an effective structural reform programme; and that they underestimated the importance of structural, and institutional factors"* (Ohiorhenuan / Keeler 2008, 148).

However, while necessary in terms of granting access to much needed financial resources, these programmes were unable to foster the required ownership for a (potentially) successful outcome of the trade policies for development. A survey carried out in 1999 – i.e. shortly before Cotonou and the EPAs – yielded the astonishing result that one third of African officials believed *"that economic policy is formulated outside the country, particularly by the Bretton Woods institutions"*<sup>34</sup> (Court / Kirsten / Weder 1999, cited in Page 2001).

Arguably, but for a few exceptions, the 'pre-SAP' African state was rarely one that was resolutely oriented towards (trade) reforms for a developmental outcome. By the mid-1980s, the rise of the (neo-)patrimonial state in Africa had become the root cause of weaknesses and had prevented many countries

34 These are the World Bank and the International Monetary Fund (IMF).

from adapting to the ‘new economic order’. Some even argued that African States may actually have an incentive to prevent any development or consolidation of institutions since these may threaten their remaining in power (Olson 1993 and Açemoglu / Robinson 2006, cited in Sindzingre 2008). The problem had assumed such wide-spread proportions that political systems in Africa became known for their

*“clientelism, patronage and patrimonialism, with a limited conception of public good and of political power as right for the ruler and his obligés to appropriate the country’s economic resources. At the extreme, some political regimes may be genuinely predatory and kleptocratic”* (Sindzingre 2008, 25).

Against this background, the challenge would have been to transform rather than ‘rolling-back’ the African State. Instead, Ohiorhenuan / Keeler (2008) contend that the SAPs might have gone too far in dismantling the economic functions which can ultimately only be carried out by the state. More specifically, they argue that the programmes

*“underestimated the historical fact that the state had a fundamental role in all aspects of macroeconomic policy: to provide an effective regulatory framework including overseeing the distribution of resources; managing the sequencing of reforms, provide basic relief from poverty, and lay the preconditions for growth”* (Ohiorhenuan / Keeler 2008, 151).

The World Bank and the IMF eventually grew aware that the implementation of the programmes were being met with domestic resistance in Africa, due to the lack of ownership, structural impediments and weak administrative capacity to implement reforms. It was indeed increasingly acknowledged that the overall disappointing performance of Africa’s tradable goods sectors could also be attributed to *“inappropriateness of the reforms to the African context; poor design, pacing, or sequencing of the reforms; unsupportive external environment; or inconsistency of trade and other policies”* (Nash 1993, 1). As Williamson, the “author” of the Washington Consensus, puts it: *“Sub-Saharan Africa moved spottily and grudgingly, too often under foreign pressure rather than out of conviction.”* (Williamson 2004, 11)

For a long time, however, donors held to this policy with few results and did little in adjusting their instruments. As argued by Flint (2008), the grave institutional weaknesses of the African states had in fact already become apparent a few years after their independence. However, *“few analysts chose*



*to take any notice [...] [and] most western governments were extremely well disposed towards these new states*" (Flint 2008, 59). As bluntly put by Bloom / Sachs (1998, 4), *"the ultimate irony of 'structural adjustment programmes' of the Bretton Woods institutions is that they promoted virtually no structural change"* and neither African governments nor the IMF or the World Bank promoted the kind of institution needed for the transition to a stronger export sector.

Eventually, to address some of the shortcomings of the SAPs – and as a prerequisite for debt relief under the Highly Indebted Poor Country (HIPC) initiative –, Poverty Reduction Strategy Papers (PRSP) were adopted in 1999. In what could be seen as a recognition that there could be no substitute for domestic commitment to the policies and programmes supported by aid (Booth 2006), it was announced that the SAPs would be replaced by nationally owned participatory strategies captured in the new PRSPs. Since 2000, these have become the main reference for donors, including the EU, seeking to support national economic development and poverty strategies for concessional loans and debt relief, notably in Africa.

However, with respect to their impact on state structures and ownership of policies, it is uncertain whether the PRSPs can be considered as truly home-grown (Kosack 2008; Ohiorhenuan / Keeler 2008; Booth 2006). For Ohiorhenuan / Keeler,

*"most African countries lack the capacity to pursue both the PRSP and the traditional planning and budgetary processes simultaneously. The result has been that countries have focused more on completing documents, which give them access to resources, than on improving domestic processes leading to the PRSPs occupying centre stage, and marginalising locally developed processes"* (Ohiorhenuan / Keeler 2008, 158).

More strikingly perhaps, it has been found that trade policy issues were simply an absent feature in the first generation of the PRSPs and there was an urgent need to mainstream trade policies into developing countries development strategies, in particular in Africa (see UNECA 2004; Booth 2006; for a detailed analysis, see Hewitt / Gillson 2003).

Eight years into the process, there is some measure of improvement to be observed in terms of policy processes. A recent study has shown that trade features with increasing prominence in the second generation of poverty reduction strategies (Kosack 2008) and a few PRSPs do develop deep and

comprehensive strategies for trade, establishing a mutually supportive link between trade and poverty reduction. However, Kosack also found that *“more often than not, trade discussions dealt mostly, or only, with export promotion and diversification, and did not dig deeper into specific ways to develop competitive advantages”* (Kosack 2008, 17). In fact, there seems to be some kind of hesitation about trade in the PRSPs, and a narrow understanding of the role, benefits and risks of trade. While most of the 72 documents analysed by Kosack are fully consistent with the thrust towards liberalisation, they are not so consistent with the *“corollary advice on the timing, distribution of benefits, or complementary strategies to minimise the losses and maximise the gains from trade”* (Kosack 2008, 17). Hence, the improvements picked up notably by Kosack’s analysis remain a far cry from the existence of carefully designed and coherent trade strategies. For Booth (2006), the valuable gains that were achieved in terms of policy processes under the PRSPs can be noticed mostly *“in countries that were already moving in the direction of greater orientation toward results and accountability”*. Overall, however, such instances of progress appear rather *“modest in character even in the best cases, and still far short of what is needed: local generation of high-quality policy thinking regarding poverty reduction goals and arrangements for ensuring the corresponding action”* (Booth 2006, 46), including those affecting trade.

The resulting capacity gap became clearly apparent in the context of the EPA negotiations with the EU. In a context where many countries’ political situation was still characterised as or recovering from outright or latent wars and instability, trade was not a high priority on the policy agenda. For others, the capacity for trade policy making and negotiation was simply lacking. But, as discussed in this section, it can also be considered that developing countries have often not made trade a top priority of their policies, partly because donors had not made it a priority in their assistance programmes in the first place (UNDP, cited in OECD/DAC 2001, 38). As further argued by Solignac Lecomte (2002), when donors have supported the process of trade policy-making in developing countries, efforts have generally been carried out in an inconsistent manner and rarely with a comprehensive approach, and have failed to address the need for institutional capacity development for trade related issues. Against this background, and as discussed below, the challenge was thus high for the EU and the ACP to bridge the disparity in terms of capacities, as provided by Cotonou, in a successful and timely fashion for the negotiations.

#### 4.1.1.2 Addressing the ACP capacity constraints for the EPA negotiations

Most ACP countries reluctantly engaged in the EPA negotiations with the EU and had limited capacities to do so. Notwithstanding the sheer challenge it represented, the Cotonou Agreement accommodates capacity building activities for ACP countries in view of the negotiations. This required the provision of sufficient, timely and adequate support by the EU to successfully carry out such activities.

Most ACP countries, particularly in Africa, seem to have engaged in the EPA negotiations and liberalisation talks with the EU for the wrong reasons. It indeed appears that the ACP group's acceptance of the principle of reciprocity had more to do with "*fatalistic pragmatism*" (Solignac Lecomte 2001c, 26) than a strategic vision of how to use trade for development and a firm belief in the possible gains of an EPA towards this end. Despite some exceptions, like Mauritius and Kenya where international trade is an important part of the economy, most African countries appeared somewhat passive throughout the process leading to the formulation of the EPAs and the negotiations towards the conclusion of the agreements. They have often lacked the capacity – or will – to drive the policy process and fully take advantage of the trade preferences available. Thus, the ACP countries' acceptance of the principle of reciprocity can be understood in three ways (Solignac Lecomte 2001c):

- (i) For some, the priority was to preserve political links with the EU and its member states, and took precedence over their own sovereignty in trade policy matters;
- (ii) Others feared that refusing EPAs would be indirectly sanctioned by the availability of a lower level of aid;
- (iii) Yet others were motivated by the hope of preserving another set of privileges, such as the benefits of the product protocols, a particularly profitable calculation for countries doing little trade with Europe, i.e. the Caribbean and the Pacific.

Nonetheless, EPAs are meant to be comprehensive, covering "all areas relevant to trade" (i.e. not goods-only), and hence are more complex. Therefore, negotiating these agreements crucially required strong capabilities to define their content in a development-oriented manner. This meant that for most African countries, trade policy making needed to depart from the usual

approach of merely “granting import licences” to cover an increasingly diverse and complex range of technical aspects stemming from the inclusion of “new” and “behind-the-border” issues (services, intellectual property, technical barriers to trade, e-commerce, etc.) in the scope of trade negotiations at the WTO and other forums (Solignac Lecomte 2002).

The ACP countries’ starting point in terms of capacities to take up the negotiations and the scope of issues they entailed was clearly unfavourable. The wide range of constraints and limited capacities of many developing countries’ governments, private sectors and civil societies in terms of formulating and executing trade policy, as well as negotiating and implementing trade agreements has been well documented. To name but a few, these range from limited knowledge and technical skills to problems pertaining to the shortage of staff or to the lack of internal coordination between the various ministries sharing responsibility on trade-related policies as well as difficulties in engaging in consensus-building activities with non-state actors (OECD/DAC 2001).

Considering the enormity of the task for building trade capacity in terms of both policy formulation and competitiveness, it is instructive to see how the Cotonou Agreement, particularly its Article 37 (see Box 5) was implemented in the course of the negotiations towards the EPAs.

**Box 5: Article 37 of the Cotonou Partnership Agreement on capacity building**

Upon the signature of the Cotonou Partnership Agreement, the EU and the ACP not only committed themselves to negotiate Economic Partnership Agreements. Linked to this commitment, both parties also agreed to address ACP capacity problems in the ambit of their cooperation strategies. The agreement is to be found in rather prominent and ambitious terms at various points in the Cotonou framework. With the formal negotiations set to start in September 2002 and the new trading arrangements to enter into force by January 2008 (Article 37.1), it was decided to use the period up to September 2002 to make initial preparations for the negotiations, and the one leading to the conclusion of the agreements to build capacity in the public and private sectors of ACP countries, “including measures to enhance competitiveness, for strengthening of regional organisation and for support to regional trade integration initiatives, where appropriate with assistance to budgetary adjustment and fiscal reform, as well as for infrastructure upgrading and development, and for investment promotion” (Article 37.3).

First, it can be noted that the time allocated to put into action such an extensive agenda appears all the more insufficient as the ratification of the Cotonou Agreement was seriously delayed. It was not until the end of May 2002 that the ACP countries themselves reached the necessary two-thirds quorum of ratifying States (51 out of 77) (ACP 2002c), and it took almost another year before the Agreement entered into force (on 1 April 2003) when all fifteen EU member states and institutions (Council, Commission and Parliament) had ratified. Only then could funds from the 9th EDF (including for focal areas and actions identified under the country and regional indicative programmes) start to be released for the envisaged capacity building activities and programmes. Funds under these programmes are disbursed on the basis of demands formulated by ACP countries and regions, hence calling on the capacities of the ACP to strategically identify needs and priorities where research, studies and capacity building activities are required. Timely delivery to feed into the process and allow for synchronised action amongst countries within the regional negotiating grouping, while crucial, could often not happen in practice, due to the lengthy and cumbersome procedures of EDF disbursements (Martí / Rampa 2007).

Throughout the negotiating process, a wide range of impact studies and assessments were carried out, albeit in an often untimely manner. Some were still being produced a few months before the December 2007 deadline. These studies originated from a variety of sources, including in terms of funding, using various methodologies, and assessing diverse aspects of a prospective EPA at the sectoral, national and regional levels (see for instance Fontagné / Mitaritonna / Laborde 2008; Sindzingre 2008; World Bank 2008)<sup>35</sup>.

While it is difficult to comprehensively assess the extent to which the results of these studies were actually used and fed into the negotiations, it is worth noting that by 2007 some significant shortcomings were still outstanding. The Southern African region, for instance, expressed concerns on the lack of thorough assessment of national needs and priorities, calling for an adequate economic and welfare assessment of the impact of an EPA (ECDPM 2007). In the case of the West and Central African region, a strong focus was put from an early stage on the prerequisite to reinforce and build productive capacities. However, although the impact studies had been carried out in West Africa, "there was no detailed follow-up to dig up further at the

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35 A vast number of the EPA impact studies can be found on [www.acp-eu-trade.org](http://www.acp-eu-trade.org)

sectoral level and analyse the needs”, for reasons pertaining to both lack of expertise and lack of funding (UNECA 2007). In Central Africa, the region was still short of implementing the findings of the impact and feasibility studies that had been carried out and validated (ACP-EC 2007).

It can also be questioned whether the EU was able to properly incorporate the results of the sustainable impact assessments required before any trade negotiations. Indeed, the final report was made available in the course of 2007 only, leaving little scope for adjusting its approach according to its conclusions<sup>36</sup>. An additional problem related to the question of methodologies adopted to carry out these impact studies, which led to certain studies being unsuccessfully validated or simply rejected (ACP-EC 2007).

Thus, despite generous and considerable efforts specifically targeted at enhancing the ACP countries’ capacities, on the basis of the Cotonou provisions and with respect to various components of the EPAs, the overall picture nevertheless seems somewhat inconsistent (see Box 6). The EU system, apparently, in the initial phase of EPA negotiations was not capable of reacting in appropriate time for the challenges ahead, or in an adequate enough manner to measure up to these challenges. It also appears that not enough thought was put into analysing and understanding the consequences of such support and its scope, whether systematic or delivered rather for isolated activities<sup>37</sup>.

Much of the responsibility for the limited impact of EU support on capacity building in view of the EPA negotiations appears to have been in the cumbersome procedures in Brussels and inappropriate responses from partner institutions with limited capacities in Africa, rather than in coordination problems between the Commission and member states within the EU sys-

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36 The EC EPA Sustainable Impact Assessments, for instance, were finalised only in 2007. See <http://www.siaacp.org/acp/uk/index.php>

37 For instance, it can be noted here that Kenya’s preparations for the EPA negotiations were supported by the EC, through the setting up of the KEPLOTRADE (the Kenya-European Union Post Lomé Trade programme). The purpose of the project was to strengthen the trade negotiating machinery of Kenya through capacity building and institutional support. It also sought to support the establishment of an effective basis for trade policy analysis and the identification of EPA related adjustment needs. In practice, the fact that the EC was funding the institution and the entire EPA negotiating process was not conducive to transparency and led to some fundamental criticism and recriminations on the agenda setting and interests KEPLOTRADE was actually promoting. (Kenya Civil Society Alliance 2007; Solignac Lecomte 2001a)

tem. This does not send encouraging signals for a sound negotiating process nor implementation of EPAs. However, more detailed analysis is required to fully grasp the nature of the bottlenecks in defining positions at the national and regional level in partner countries.

**Box 6: Capacity building programmes in support of EPAs funded under the EDF: First overview and some bottlenecks**

Several EPA support programmes were set up and funded under the 9th EDF. 24 million were set aside for projects aimed at improving the trade policy formulation and negotiation techniques of the ACP countries, relating particularly to the EPAs. Studies aiming at underpinning negotiating positions, providing technical assistance for regional economic groupings on trade policy or consolidating regional integration initiatives were eligible among other activities. Training in negotiating tactics could also be carried out.

Requests could be made by ACP governments, ACP institutions and regional integration organisations, as well as ACP trade associations or chambers of commerce in association with consumer groups or academic institutions, through their respective governments and regional integration organisations. An ACP-EU Steering Committee and a Programme Management Unit (PMU) were responsible for approving and implementing the projects.

Another programme of 12 million was set up to help ACP countries integrate into the multilateral trading system, focussing on the effective participation in global trade negotiations, as well as on the implementation of the agreements. It was aimed at public officials and private-sector representatives and run in collaboration with multilateral organisations. These programmes ran until the end of 2007 and 2006 respectively.

Capacity building activities have since been continued under the TradeCom Facility, a 50 million programme approved in July 2003 by the Commission to support all ACP countries' capacities for the EPA negotiations. Activities are targeted mainly, but not exclusively, towards the ACP governments and extend from the formulation of trade policies, to trade negotiations as such and the implementation of trade policies and international trade agreements (see [www.tradecom-aceu.org](http://www.tradecom-aceu.org)). A major component of the programme is the grant to the Commonwealth Secretariat (COMSEC) and the Organisation Internationale de la Francophonie (OIF). With the support of the ACP Secretariat, these organisations have been running the "Hubs and Spokes" project. It sets up a network of trade advisers, seconded to the ACP governments and regional integration institutions. It was envisaged that some nine regional trade policy advisers in ACP regions (of which five are in Africa) and up to 48 trade policy analysts would be dispatched in interested ACP countries and regions (see <http://www.thecommonwealth.org/subhomepage/159333/hub>).

Other PMUs were also set up and have funded many trade-relevant capacity building research projects and studies, like the €20 million Private sector enabling environment facility (PSEEF or BizClim), which aims at ‘improving legislation, institutional set up and financial measures (the rules of the game) relating to the enabling environment of the private sector in ACP countries or regions and to the reform of State Owned Enterprises - and to do so by focusing on possible support to ACP governments or regional institutions’ (see <http://acpbusinessclimate.org>). The €110 million programme ProInvest was launched in 2002 and has recently been reactivated. It provides ‘technical support to organisations representing the ACP private sector in their mission of sustainable investment promotion’ (see [www.proinvest-eu.org](http://www.proinvest-eu.org)). Other PMUs aim at providing support on ACP commodities, in horticultural trade, sanitary and phyto-sanitary measures (fisheries and pesticides) and technical barriers to trade (EC 2005c; Solignac Lecomte 2001a). Despite these activities, a number of bottlenecks were identified with the EU activities:

In general, the increased use of PMUs for delivery of support to the ACP, including on trade-related matters, has been found to be unsuitable, especially for support to activities relating to ongoing processes such as trade policy formulation, trade negotiations and capacity building (Martí / Rampa 2007). For instance, *“the need to build trade policy networks among diverse actors (such as ministries, the private sector and civil society) in recipient countries is difficult to match with the centralised approach of a PMU, often based in Brussels, acting as a clearing house for projects”* (Martí / Rampa 2007, 28).

The process of formulating project proposals for submission to the PMU was indeed considered a lengthy process, requiring considerable human and financial resources as such (Solignac Lecomte 2001a). In many cases, the support programmes were actually set up when the process was already well under way: due to several delays, the €50 million TradeCom Facility, for example, could only be established in 2006 and capacity building activities implemented in the course of 2007, i.e. the same year that negotiations were actually concluded. For instance, in the case of francophone Africa, a new batch of trade policy analysts and regional advisers were not dispatched until 2007, a few months francophone Africa, a new batch of trade policy analysts and regional advisers were not dispatched until 2007, a few months before the December 2007 deadline for the conclusion of the EPA negotiations (see <http://www.francophonie.org/ressources/rapport.cfm>). In addition, the understaffing of the PMU was pointed out as a source of concern in the midst of the negotiating process (ACP / Council of the European Union 2005). For a more detailed discussion on general and trade-related bottlenecks of the effectiveness of EC development support, see Martí / Rampa (2007).



#### 4.1.2 Defining positions: The ACP in search of a united and participatory approach

Negotiating positions needed to be defined within the ACP, based not only on technical capacity. Several efforts were needed to promote a participatory process for the negotiations and better prepare the ACP in this view, including from the EU side. One approach attempted by the ACP to tackle the problem of limited ACP capacities was to draw up a common framework on potential issues of shared interest at the all-ACP level, while negotiating details by region. National capacities would at the same time also be required to formulate country positions that can feed into the regional position. However, at the start of the EPA negotiations, African countries were ill-prepared and divergences within the group and within the negotiating configurations prevailed.

##### 4.1.2.1 Unsuccessful (or unrealistic) attempts to draw up common (all-ACP) positions

The ACP sought to enter the negotiations as a group while the European Commission showed reluctance for fully carrying out the ACP proposed approach. More fundamentally, however, the heterogeneity of views and interests at play within the group was soon to reveal the unrealistic nature of the different attempts that were made to draw up common positions.

The ACP group is far from being homogenous, not least in terms of trade interests. Several efforts were however made to define common positions in the course of the negotiations leading to the formulation of the new ACP-EU trade regime and for the EPA negotiations as such. These attempts notably sought not only to build or maintain ACP cohesion but also to overcome the disparities in terms of capacities within the group and in face of a single negotiating body on trade policy on the European side.

This was clearly to be a challenging endeavour, and for most of its existence the great heterogeneity of the ACP has often led the group to react to European suggestions rather than setting the agenda. It is illustrative that the 1996 Green Paper mapping out the options for the future of the ACP-EU partnership, including for its trade regime, can largely be considered as having revived the ACP as a group. Indeed, after having met and formalised their existence in Georgetown, in 1975, the ACP never met again as a group, be-

sides the periodical renegotiation<sup>38</sup> of the Lomé Conventions with the Community. The first summit of the ACP Head of States and Government after Georgetown took place in Libreville in 1997, where the negotiating mandate for the post-Lomé negotiations was finalised.

The ACP position adopted for the new trade regime to govern ACP-EU trade relations was one of “improved status quo”. As argued by Solignac Lecomte, *“this was evidently a defensive – and weak – position, which reflected possibly the only acceptable compromise between ACP member states”* (Solignac Lecomte 2001b, 16). Admittedly, the ACP official position could only be a temporary one, limited by the duration of a possible second WTO waiver that still needed to be requested from the international organisation’s members. It was therefore the best short-term option that the group of more than 70 States could identify as a common position. However, throughout the negotiations towards Cotonou, views diverged from the ‘single common position’ put forward in the mandate, reflecting diverging interests, varying capacity levels and varying degrees of involvement. Indeed, despite the official “status quo” line seen as the first best option, some countries, like Mauritius and the Caribbean, took a more strategic approach and actively prepared for several possible outcomes, including the eventual introduction of reciprocity, and sought to gain as much time as possible to prepare (Solignac Lecomte 2001c). For most of the others, particularly in Africa, the main concern was to maintain or improve the level of their access to the EU markets.

Engaging in negotiations with their most important trading (and main export market) and development partner arguably made it more difficult for the ACP to be offensive in obtaining concessions from the EU in the context of the EPA negotiations. A collective all-ACP phase was envisaged, and could have provided a possible solution to partly overcome the weak and unequal capacities of the ACP to deal with the negotiations, both strategically and in more operational terms. Indeed, at the request of the ACP group, the EPA negotiations were staged in two phases, with a first round of negotiations at the all-ACP level, before the discussions were taken to the regional level.

The rationale of the ACP was actually three-fold. It first aimed at allowing *“ACP States to undertake the necessary back-up research and capacity*

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38 However, as discussed in section 4.2.1, the terms of the Lomé Conventions saw only few changes over the years.

*building actions*” (ACP 2002a, 4). In-depth studies were needed at both the national and regional levels to determine the impact of trade liberalisation on ACP economies and their various sectors, the type and costs of necessary adjustments to be made and measures to be adopted in order to fully benefit from the EPAs. In addition, it was foreseen that a two-stage approach would aim at reaching an all ACP-EU agreement which would provide a common framework for the subsequent regional negotiations and would focus on the objectives, principles and issues of interests shared by all ACP countries. It was therefore deemed that the Committee of Ambassadors could be designated as the ACP negotiators for the first phase. This seemed reasonable since the technicalities of trade negotiations were not to be addressed and the significant costs that would be entailed just to cover for the five-years negotiating period would thereby be alleviated. Finally, it was also considered that it would be easier for the ACP countries to exert political pressure on the EU during the negotiations and to secure a better deal if they negotiated collectively rather than at an individual, regional or sub-regional level. Joint action was also called for at the level of the WTO, given its importance for the EPA negotiations<sup>39</sup>. Ultimately, the ACP Trade Ministers’ wanted the all-ACP phase of the negotiations to result in a “*binding outcome for both the ACP and the EU*” (ACP 2003), but this could not be achieved by the Committee of Ambassadors, not least due to the EC’s position in this respect.

Indeed, the EC was rather reluctant for any decision or binding commitment to be taken at the all-ACP level of negotiations, arguing that “what was meant by a common understanding was a meeting of minds, and not the conclusion of a legally binding agreement” (ACP-EC 2003, 27). Instead, the Commission was eager to engage into substantive negotiations at the

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39 In April 2004, the ACP Group submitted a proposal on “*Developmental aspects of regional trade agreements and special and differential treatment in WTO rules: GATT 1994 Article XXIV and the Enabling Clause*” (WTO 2004). The aim was to create a legal coverage through the WTO that would allow for concrete elements of flexibilities and asymmetry in commitments undertaken in the context of the EPA. However, the proposal did not materialise as discussions at the WTO went into a deadlock over issues which still attract most of the WTO Members’ and main protagonists’ attention, namely agriculture and modalities for non-agricultural market access (NAMA). For a detailed discussion on the importance for the ACP of a review of the provisions of Article XXIV of the GATT, see Ochieng (2007), Lang (2006), ICTSD et al. (2006) and Onguglo / Ito (2005).

regional level (Bilal / Walker 2008), and so were a number of ACP regions. Indeed, while the African Heads of State and Government had recommended the African Group to adopt a common front in the negotiations under the umbrella of the African Union (AU) (Makhan 2007b), some regions – in particular Central and West Africa<sup>40</sup> – were keen to move away from the all-ACP approach and launch the negotiations at the regional level. It actually appears that they were strongly encouraged in doing so by the European Commission (Bilal 2005a).

Thus, the first phase of the EPA negotiations at the all-ACP level allowed for some clarifications and the identification of divergences and convergences to be made, but its overall outcome was rather inconclusive and hardly went beyond reiterating provisions of the Cotonou Agreement<sup>41</sup>. As to whether the ACP Secretariat could have taken a leading coordinating role in this process, it also appears to have been most unlikely. In fact, the ACP institution was caught in a somewhat awkward position as it depended financially on the European Commission; it produced several papers jointly with the EC which supported most elements suggested by the latter (Tekere 2000; Solignac Lecomte 2001c).

The attempts to build a common ACP (and African) approach came probably too early in the EPA process<sup>42</sup>. There were still many unknowns on

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40 Central Africa and West Africa were the first ACP regions to officially launch the negotiations with the EU in October 2003, and were followed by the East and Southern African region (ESA) and the Southern Africa Development Community (SADC) in February and July 2004, respectively.

41 Another tentative proposal made by the ACP was related to the important issue of rules of origin applicable under an EPA. The ACP had recognized the value of having a common set of rules of origin that could apply to all the EPAs concluded between the EU and ACP regions, in order to allow for the ‘cumulation’ of production or products between ACP regions. The group thus sought to reach an agreement with the EU in the course of the first all-ACP phase of the negotiations (Lui / Bilal 2009). However, combined with the reluctance of the EU to make any commitment in the first phase of the negotiations, the group was unsuccessful in agreeing for instance on the methodology to adopt (Pearson 2007) and on the priority sectors: not only did they differ from one region to the other but also within a given EPA configuration (Naumann 2008).

42 It is noteworthy that there are now concrete efforts being carried out for a common African template for the EPA that builds on the texts that have been discussed so far in African countries and regions, and drawing from EPA texts of the Caribbean and the Pacific (see Mangeni / Karingi 2008).

the substance of the negotiations at that stage: the requirement for WTO-compatibility was a moving target, as negotiations were ongoing (and had not yet stalled) and the ACP awaited the outcome of their proposal for an amendment of the GATT Article XXIV. In addition, the group's political activity and identity, having been revived after such a long time, could hardly be consolidated inasmuch as efforts were being directed toward the technical level of the regional EPA negotiations. At the same time, however, and more fundamentally, most ACP countries and regions had not yet initiated the process through which to define their negotiating position and hence specify and substantiate the identification of possible areas of common interest. From this perspective, had the EU not pushed for the negotiations to be taken to the regional level, the EPA process would have likely been further delayed, thus hindering the necessary preparations at the national and regional levels. As discussed in the following sections, however, this preparatory phase turned out to be constrained due to complex institutional and structural realities hampering the formulation of national and regional positions for the negotiations in Africa, and diverging interests fostered notably by competing incentives created by the EU.

#### 4.1.2.2 Preparing at the national level: Institutional set-up and hurdles to the emergence of national positions

The complexity of the endeavour envisaged with EPAs crucially required as broad a participation as possible from both state and non-state stakeholders, even more so considering the foreseen comprehensive character of the agreements. This clearly constituted a challenge on the ACP side due to structural, organisational and funding reasons, as well as limited capacities. But it was equally challenging for the EU's ability to deliver support at crucial moments in this particular setting.

As emphasised in the ACP guidelines for the negotiations, a participatory approach, including all stakeholders was necessary in order to generate public support for the negotiations as well as their outcome, and hence ensure the legitimacy of the process (ACP 2002a). The prospects of reciprocal liberalisation on the one hand, and the scope of the negotiations extending to 'behind the border' issues to tackle the regulatory frameworks of ACP countries on the other hand, meant that choices had to be made that would eventually determine the impact of reciprocity, with associated profound political and social implications. It was therefore important that the

EPA negotiating process be informed through an extensive national debate which would aim at striking the most appropriate balance between all the stakeholders' interests (Stevens / Kennan 2005), and eventually facilitate the adoption of social safety nets. Awareness could thus be raised on the foreseen policy change among those that would be, at the end of the day, the main ones concerned with implementing the EPA.

Except for a few notable exceptions like Mauritius, consultation structures and mechanisms on trade policy were often lacking in LDCs and many other developing countries (OECD-DAC 2001). However, both the EU and the ACP recognised the need to ensure adequate participation of non-state actors in the negotiating process in the framework of the Cotonou Agreement (Article 4). And indeed, in a context where data collection for analysis is weak, such a participatory approach was all the more valuable to gather key information for the design of the trade strategy to follow, ranging from the strengths and weaknesses of the economy and challenges for particular sectors, to the identification of supply-side and productive constraints to be addressed.

In this respect, the EU advised each ACP country to set up National Development and Trade Policy Forums (NDTPF) which would bring together a wide range of government and non-state actors (private sector and civil society) representatives and whose task would be to draw, through an extensive consultation process, a national position for the EPAs. A representative number of the NDTPF members would then transmit this position to the relevant Regional Negotiating Forums where negotiations relating to regional integration and discussions with the EU would take place (UNECA 2007). In addition, in line with the provisions of Article 37.3 of the Cotonou Agreement, joint ACP-EC Regional Preparatory Task Forces (RPTFs) were set up in all negotiating regions in order *"to promote the link between development support, economic and trade policy so as to make them both complementary and mutually reinforcing"* (EC 2005c).

At the national level, many African countries have indeed set up such structures, but only in few cases were they able to effectively involve all stakeholders. Even if they did, meetings were not systematically attended, for various structural, organisational and funding reasons detailed below.

According to a survey commissioned by the ACP secretariat in line with the Article 37.4 EPA negotiations review and conducted by the African Trade

Policy Centre, it was found that NDTPFs in Southern African countries for instance had not been properly constituted or were still at various stages of formation as late as February 2007. On the other hand, non-state actors' participation in West Africa and East and Southern African countries seems to have been more successful. However even in countries where the process was considered inclusive, like Kenya, problems emerged relating to intra-governmental coordination. While the Ministry of Trade and Industry played an instrumental role in steering the negotiations at both the national and regional level, the lack of engagement from other key actors for the finalisation and implementation of the agreement – notably the Ministry of Finance for necessary reforms pertaining to the national macroeconomic frameworks – was deplored (UNECA 2007).

A further question related to the representativeness of the stakeholders involved. In the first place, the private sector in small economies is often poorly organised and its formal end limited in size<sup>43</sup>. Governmental institutions are weak and civil society organisations capable of being a genuine interface with small producers and consumers are few. In addition, both African state and non-state actors saw their capacities stretched thin – for instance, many African trade officials were also responsible for covering WTO-related issues, regional trade negotiations and in some cases, similar reciprocal arrangements with other OECD countries. Often, they simply lacked the technical skills and knowledge to fully grasp the wide range of areas being negotiated and effectively feed into the debate towards the identification of national positions (UNECA 2007). The number of potential participants in the trade policy formulation process was therefore rather limited (Solignac Lecomte 2002). For those that did participate in the consultations, the decision as to which non-state actors would be included in the process

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43 According to a recent OECD study (Lesser / Moisé-Leeman 2009), the informal sector in Africa is estimated to represent more than 40% of official gross domestic product, hence weighing almost as much as the formal economy. A significant proportion of these informal flows occurs at the regional cross-border level. It was for instance found that informal exports to its five neighbouring countries were equivalent to 86% in value of Uganda's official exports to these countries, and informal imports corresponded to 19% in value of official imports from the same countries (Lesser / Moisé-Leeman 2009). The informal character of most African countries' economies also extends to the labour market. In 2002, the ILO estimated that informal employment in Africa stood between 70 and 80% of non-agriculture employment, depending on whether South Africa was included or not (Verick 2006).

was left to the ACP countries. The responsibility was mandated to the National Authorising Officer (NAO), a senior government official appointed to represent the country in all operations financed by the EDF, and working in close collaboration with the EU delegation on preparing and appraising projects and programmes. Hence, as argued by the UNECA report reviewing the negotiations, “with much of the resources for NSA involvement in EPA negotiations coming from the EU, the NAO is effectively in charge of deciding which NSAs are involved in the process” (UNECA 2007, 4). This calls for civil society organisations to maintain close relations with their NAO and their representatives in the NDTPF, itself requiring adequate time and resources to establish the necessary network to do so. Arguably, this requirement is as such a constraining factor that *de facto* limits the range of NGOs in a position to achieve it successfully, particularly in developing countries (UNECA 2007).

Poor attendance by high-level or ministerial level officials at key meetings in the negotiations also made progress difficult as decisions could not be taken. This was observed at both national and regional level and was attributed to conflicting and tight agendas or in some cases even, political unwillingness to actually engage in the negotiations (UNECA 2007). Inadequate levels or untimely availability of funding and the competition for resources were also found to be a limiting factor in terms of attendance, and even resulted in key meetings being missed or skipped. In fact, because of fundamental divergences over the role and mandate of the RPTFs in the negotiations, these structures were not able to efficiently deliver development support for the EPAs (ECDPM 2007; UNECA 2007). Lack of regular and timely communication, including between the national and regional level further hampered participation in the process and progress due to misunderstandings and simplifications.

This often translated into a general public hostility toward the EPA, and increasingly throughout 2007. As a result, the private sector appeared hesitant to embrace the EPAs due to the uncertainties stemming from the lack of preparations at the domestic level. In Central Africa, lack of sensitisation and awareness of the EPA negotiations resulted in many representatives of civil society (including the informal sector, through farmer organisations for instance) and the private sector joining the negotiations at a late stage of the process. Some civil society organisations were nevertheless increasingly active and vocal in the run-up to the December 2007 deadline, and



achieved remarkable mobilisation with constructive inputs to the negotiations, as in West Africa. As for parliamentarians, on whom the eventual ratification process of the agreements is incumbent, it was observed that their participation and involvement in the process was extremely limited (UNECA 2007; for an overview of civil society's participation in the negotiations, see Makhan 2007a).

Hence, the overall capacity of the EU to deliver in this particular setting was constrained by the extreme difficulties and realities on the ground, and not so much due to its own internal set-up. Arguably, however, the EU as the stronger partner failed to grasp (or act upon) shortcomings on the ACP side that were not simply due to a lack of political will. This was particularly apparent at the regional level of the negotiations, where the complexity of the integration processes in African regions significantly hampered the stated objective of the EPAs to promote regional integration, and diverging interests were emphasised by competing incentives created by EU trade policies for developing countries.

#### 4.1.2.3 Regional integration: The stumbling block of EPAs

Regional integration is one of the cornerstone principles of the EU trade policy and is also enshrined in ACP-EU cooperation strategies. It is, as argued in Chapter 2, considered to be a springboard to the world market for ACP countries. Thus, the new ACP-EC trade regime was to reinforce ongoing integration initiatives in the ACP and hence incorporate existing intra-regional liberalisation plans. Ideally, the EPAs would build on well-embedded and viable processes in the first place and, by concluding EPAs as the EU-ACP trade framework, reinforce these agreements in a second step. This also meant that several obstacles needed to be overcome, stemming from both the intrinsic characteristics of regional integration processes in Africa, and competing objectives of EU policies for regional integration and development.

##### *Intricacies of African regional integration processes*

In the case of Africa, the problem is which regional plan to consider. Given the multifaceted and wide range of political and economic challenges of regional integration in Africa, the prospects for EPAs – or any other externally-driven trade agreement for that matter – to instill a more dynamic and sustainable regional integration process in Africa seemed rather bleak.

Regional integration has long been nominally high on the African agenda, first with the 1980 Lagos Plan of Action adopted by the former Organisation for African Unity (OAU), and later with the Abuja Treaty of 1991, in preparation for the establishment in 2027 of the African Economic Community (AEC). This would be achieved through prior integration at the regional level, amongst the eight<sup>44</sup> regional economic communities (RECs) recognised by the African Union, the successor of the OAU. On average, however, 95% of the members within a single community also belong to at least another community, mostly driven by strategic and political considerations.

The multiple and overlapping membership of African countries in regional organisations with sometimes conflicting objectives has reduced the credibility and viability of the initiatives (see Figure 3). Efforts have been made towards the rationalisation of the regional economic communities, under the coordination of the African Union. But for many observers, regional integration in Africa consists of merely signing treaties and protocols (UNECA / AU 2006).

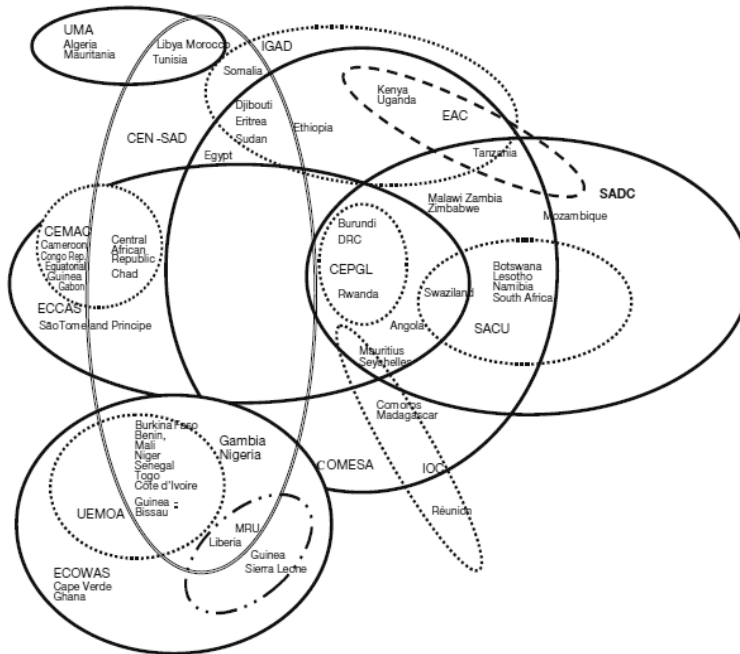
Despite a marked increase in the 1980s and early 1990s – and more recently in the COMESA (Common Market for Eastern and Southern Africa) region – intra-regional trade in Africa accounted for only 8 percent of total African exports in 2006 (UNCTAD 2008b), compared to 75% for intra-EU trade and 51% for intra-Asian trade. Overall, African regional integration can largely be found to have a poor record, for reasons of both political and economic nature. It is important to understand these in order to grasp both the challenges for a successful implementation of the EPAs and issues that should be addressed either within the scope of the agreement or through development cooperation.

The state and success of regional integration is highly dependent on effective implementation of the policies adopted by member governments. Although much has already been achieved in removing obstacles to trade, African countries have, in general, been reluctant to reduce tariff and non-tariff barriers to intra-regional trade, fearing a significant revenue loss. Indeed, African governments' public revenues are highly dependent on taxes

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44 Out of fourteen inter-governmental organisations working on regional integration issues. See (UNECA / AU 2006)

**Figure 3: The spaghetti bowl of overlapping regional economic community membership in Africa**



The African Union recognizes eight regional economic communities. These are the Arab Maghreb Union (UMA/AMU), Community of Sahel-Saharan States (CEN-SAD), Common Market for Eastern and Southern Africa (COMESA), East African Community (EAC), Economic Community of West African States (ECOWAS), Economic Community of Central African States (ECCAS), Inter-Governmental Authority on Development (IGAD), and Southern African Development Community (SADC).

In total, there are fourteen intergovernmental organizations working on the integration agenda. In addition to the eight mentioned above, there is also the Central African Monetary and Economic Community (CEMAC), Economic Community of the Great Lakes States (CEPGL), Indian Ocean Commission (IOC), Mano River Union (MRU), Southern African Customs Union (SACU) and West African Economic and Monetary Union (UEMOA).

Source: UNECA / AU (2006)

drawn on foreign trade: trade taxes still account for about 25% of total tax revenue for many African countries, and the value-added tax (VAT) collected at the border often accounts for more than 50% of total VAT revenues (Lesser / Moisé-Leeman 2009). In addition, the translation of regional policies and goals into national plans and budgets has often been hindered by the weak capacity of the national institutions or simply the lack of commitment (UNECA / AU 2006). As a result, there are chronic problems in managing trade flows at the borders, also in terms of data collection<sup>45</sup>. Despite the proliferation of preferential trade arrangements in Africa, substantial policy barriers still remain within established free trade areas and custom unions (World Bank 2008). But more than trade policy *per se*, Stevens / Kennan (2005) argues that it is “the paraphernalia associated with physical barriers at land borders” that have proven the most serious constraint on intra-regional trade in Africa. “*Custom procedures, the delay they create and the opportunities for corruption are more important than the fact that a tariff may be payable*” (Stevens / Kennan 2005, 4).

Another set of reasons explaining the low levels of intra-regional trade are of economic nature. As argued by the authors of the UNCTAD report on Economic Development in Africa of 2008, trade liberalisation policies pursued by African countries have had little effect on intra-African trade, partly because of preference erosion: by reducing the preference margins given to other African countries, tariff cuts have acted as a disincentive for increased exports within Africa (UNCTAD 2008b). In addition, besides their concentration on a few commodities that do not cater for the needs of other countries on the continent, a high degree of similarity still characterises

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45 Given the importance of informal cross-border trade, this also points to the need for African countries’ governments to encourage informal traders to formalise their activities. However, any measures aimed at doing so will have to give due consideration to the likely negative social and economic effects on poor people as the informal trade can, in the short and medium term encourage entrepreneurial activity and regional trade, contribute to greater food security and enhance income earnings and employment opportunities for poor households (Lesser / Moisé-Leeman 2009, 5).

African export products and markets<sup>46</sup>. Weak transport and communication infrastructure and a lack of skilled workforce further constrain integration with countries or linking with more accessible diversified economies, like Egypt and South Africa, for instance. Medium term prospects for expanding intra-African trade are therefore modest (World Bank 2008) and incentive is thus not strong.

Finally, the political economy of regional integration in Africa should not be overlooked as it also heavily influences the process. While they had not been very efficient and effective regional partners, African countries were, with the thrust of the EPA negotiations with the EU, propelled to enter into ‘deep integration’ discussions, while being at various stages of development with differing interests and priorities. For many, trade policy – let alone trade agreements – was not high on the agenda. Some countries were (and still are) dealing with domestic political tensions or conflicts (Côte d’Ivoire, and more recently Kenya and Mauritania), others are slowly emerging out of a situation of war and internal turmoil (Liberia, Sierra Leone). In these countries, trade integration or other regional issues were not among the short or medium-term priorities of the governments. The agenda was rather overtaken by concerns of varying degrees and intensity relating to peace and security or (re-) building the local economy (UNECA 2007). Furthermore, in a context where African states are institutionally weak, geographically vast, and populations are principally rural and dispersed, internal political control is tenuous; *“hence, rulers are primarily concerned with maintaining that control. This naturally limits the extent to which they are prepared to cede control to others, internal or external [...] So the state apparatus barely controls national borders, never mind a concerted development process”* (Draper 2007).

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46 Such characteristics were actually already to be found in the early stages of post-independence and exacerbated with the implementation of import-substitution strategies, as they required protectionist measures against potential competitors in the region. External influences also had their share: the creation of an Europe-Africa free trade area foreseen by France and provided for by Yaoundé II failed partly through the action of former metropolitan companies eager to preserve their monopoly position against European competitors; and partly because the US feared that Europe would thereby have an exclusive access to Africa’s markets and extensive natural resources (Solignac Lecomte 2001b).

While it is probably not for the EU to directly address the political economy dimension of African integration in particular<sup>47</sup>, it is nevertheless necessary that all these constraints be factored in when designing a policy that involves a regional dimension. Indeed, the result of such dynamics is that in some cases, the “block” EPAs are supposed to build on is *de facto* absent: unresolved inter-country rivalries (e.g. between Cameroon and Gabon) or lack of solidarity and competing aspirations for leadership (despite recent progress, underlying tensions between Francophone and Anglophone countries in West Africa for instance) often impede regional integration processes (ECDPM 2006b; UNECA 2007).

However, operating on the basis of its own experiences in Europe, the EU might have gotten the story wrong in the African context – which impede the EU’s capability to deliver in a complex setting on otherwise well-founded policies. And indeed, for most of the EPA negotiating process regional configurations in Africa have lacked consistency.

#### *The EPAs as drivers of regional integration?*

None of the regional groupings in which the African States chose to negotiate their EPA with the EU actually matched the existing RECs, with the notable recent exception of the East African Community (EAC). Arguably, this outcome was not what the EU intended, since EPAs were expected to contribute to the rationalisation and the effectiveness of integration schemes in Africa.

In West Africa, the Economic Community of West African States (ECOWAS) Secretariat, assisted by the Commission of the West African Economic and Monetary Union (WAEMU/UEMOA<sup>48</sup>), led the negotiations for the fourteen member states plus Mauritania. In Central Africa, while the AU formally recognised the Economic Community of Central African States (ECCAS) as the REC for the region, negotiations were led by the Communauté Economique et Monétaire d’Afrique Centrale (CEMAC), vice-chaired by the ECCAS for eight Central African EPA members, including Sao-Tomé e Principe and the Democratic Republic of Congo (DRC). The East and Southern African (ESA) configuration is probably the most hetero-

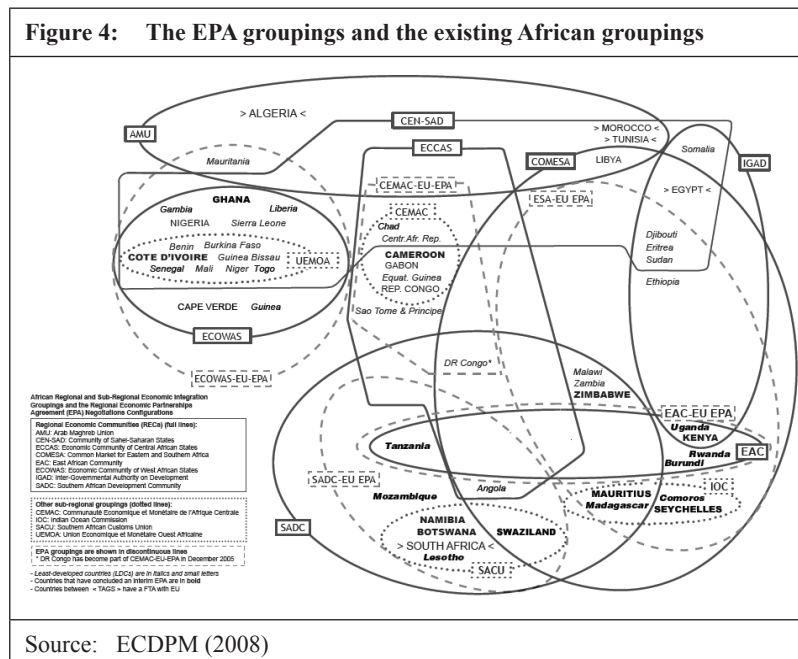
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47 For a discussion on how and whether the EU is capable of addressing the security-development nexus, for instance, see Gaenzle (2009).

48 Union Economique et Monétaire Ouest-Africaine.

geneous EPA grouping, and is not a regional entity as such. It consists of sixteen countries, each belonging to one or more economic integration communities. Each of these communities' secretariats was formally involved in the structure of the EPA negotiations, under the leadership and coordination of the Common Market for Eastern and Southern Africa (COMESA) Secretariat. Finally, of the fourteen members of the Southern Africa Development Community (SADC), seven countries are negotiating under the leadership of Botswana and technical assistance from the SADC Secretariat (for a discussion on the overlapping memberships in African groupings, see Meyn 2007; Jakobeit et al. 2005).

Adding the EPA groupings to the spaghetti bowl of African integration gives a mind-boggling picture (see Figure 4). As such, this already suggests the tremendous harmonisation and convergence efforts that will be required if the EPAs are to be supportive of African integration processes, let alone build on them. But it also calls for a better understanding of the underlying rationale of African countries' in choosing their negotiating configuration for the EPA.



Source: ECDPM (2008)

When facing the EPAs, African countries seem to have chosen their negotiating configuration according to political considerations aimed more towards the EU than their regional partners. Some regional sub-groupings – like the UEMOA within ECOWAS, or EAC within ESA and SACU<sup>49</sup> within SADC – have achieved a deeper state of integration than the EPA configuration many countries have opted for. In the case of West Africa, the choice of ECOWAS as the negotiating configuration was consistent with the broader regional integration plans envisaged, where the UEMOA is to converge towards the ECOWAS settings. Elsewhere, many other countries however ultimately favoured national interests over regional solidarity when considering which EPA grouping to join, some even shifting configurations several years into the negotiations (Stevens et al. 2008).

For some, the lack or absence of a strategic vision for trade policy (a ‘wait-and-see’ approach) contributed to such indecisiveness. For instance, though it is a member of the SADC and the COMESA regional economic communities, DRC decided to join the Central African configuration late 2005 (ECDPM 2006a). Or to take the example of Tanzania, a formal member of the EAC customs union, the country was negotiating until the end of 2007 within the SADC configuration, before initialling an interim agreement with the EU under the framework of the EAC.

For others, in particular in Eastern and Southern Africa, the decision as to which configuration to negotiate an EPA under was a highly politicised one and hotly debated (ECDPM 2006c). For instance, whereas Malawi, Mauritius, Zambia and Zimbabwe have strong interests within the SADC region, they chose to negotiate under the ESA configurations out of the concern that their room for manoeuvre would be limited by South Africa’s FTA with the EU (CUTS 2008).

Garnering the necessary support from the national level to feed into the negotiating process – for instance through the identification of national market access offers and the list of sensitive products to exclude – and maintaining regional cohesion and coherence was therefore likely to be a strenuous task. This is not to mention the many hurdles to overcome for a national position to emerge (see section 3.2.2), or the general lack of institutional, technical

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49 The South African Customs Union (SACU) consists of South Africa, Botswana, Lesotho, Namibia and Swaziland.



and financial capacity of most regional negotiating structures (Stevens et al. 2008; UNECA 2007; Rusare 2006).

However, it is noteworthy that in some cases, the EPA process has actually stimulated the regional integration dynamics, and contributed to pushing regional integration up the agenda, for instance in West Africa and the ESA (Stevens et al. 2008). After several years of delay, the former has recently achieved substantial progress, most notably with the recent alignment of the common external tariffs of ECOWAS and the UEMOA<sup>50</sup>. While the ESA region did not constitute a legal entity as such, it was nevertheless successful in achieving substantial progress throughout the negotiations, and the negotiating structure was found to have been instrumental in moving central elements of its agenda forward (UNECA 2007). The recent initiative to create a vast free trade agreement between the EAC, the COMESA and the SADC towards continental (instead of limited regional) integration can also be seen as having been stimulated by the EPA negotiations.

Against this specific background, it can be stated that the EU was able to trigger some movement within the regional integration settings. However, besides advancing the harmonisation efforts of regional integration schemes in Africa, these dynamics have arguably also added to the complexity of the processes at play, not least for the EU. It remains to be seen whether the endeavour of the EAC-COMESA-SADC to overcome inconsistencies and ease trade will be effectively implemented and to what extent it is intended to be more than just a political signal<sup>51</sup>. However, while the envisaged free

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50 ECOWAS had committed in 2006 to establish a CET within a two-year timeframe, building on the UEMOA CET, and in order to coincide with the entry into force of the regional EPA. Despite a “fast-track approach” this was not achieved, notably due to the political controversy over the addition of a “fifth band” to the existing levels of custom duties of the UEMOA. This had initially been proposed by Nigeria and was aimed at accommodating its products (Ukaoha 2008).

51 Considering the enormous disparities in the approach to integration in this “region”, in terms of exclusion baskets, details of the liberalisation schedules and classification of goods between COMESA countries – including the EAC –, harmonisation efforts will be extremely challenging (Stevens et al. 2008). Member countries seem to however be taking up the task as the completion of the COMESA CET, intended for December 2008, has been postponed to June 2009, to allow for harmonisation work between the COMESA and EAC CET. In addition, an ambitious model Aid for Trade programme, the “North-

trade area initiative has yet to deliver its results and its timetables are ambitious, it might well ultimately require some adjustment of the set of EU's trade and regional integration policies towards Africa as a continent<sup>52</sup>. Particularly specific contexts and incentives might thus have to be rethought – including for the country level and not least in terms the overall coherence of EU policies. Indeed, as discussed below, the unilateral adoption of the EU's Everything But Arms initiative in 2001 stood at odds with the principle of regionalism the EU claimed to promote in the EPAs.

*Everything But Arms: A competing incentive for LDCs*

The EBA initiative is important as such for the greater group of least developing countries. However, the EU's unilateral adoption of the instrument stood in contradiction with the policy objective of regional integration envisioned by the EPAs. As a result, there was little incentive for LDCs – i.e. most countries on the African continent – to fully engage in the EPA negotiations, and the process has been mainly driven by the non-LDCs which had a clear interest in the negotiations, i.e. not losing market access to the EU.

The principle of differentiation was introduced under the Cotonou Agreement in accordance with WTO rule, on the initiative of the EU, and provided for the possibility of special treatment for ACP countries that were also amongst the group of Least Developed Countries (LDCs). While important as such, this resulted in LDC countries among the ACP taking little interest in the post-Lomé negotiations that led to the adoption

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South Corridor Programme", was developed on the basis of the October 2008 Tripartite and has already caught the attention and praises of donors. From the broader perspective of the Africa-EU relations, some challenges will need to be overcome. For instance, the initiative is likely to create some political tensions, as the COMESA includes non-EPA negotiating countries, namely Libya and Egypt. At a more technical level, there is also a fundamental divergence in the approach to the identification of sensitive products between all African EPAs and the EU-South Africa Trade, Development and Cooperation Agreement (TDCA) (Stevens et al. 2008).

- 52 Besides unilateral schemes such as the EBA and GSP, the EU trade and regional integration policies towards Africa cut across the continent: Mediterranean countries are engaged in talks with the EU under the Barcelona process, African countries south of the Sahara are negotiating the EPAs, and South Africa has its own TDCA with the EU.

of Cotonou. Indeed most African countries negotiating an EPA were also eligible for the EBA initiative and hence could choose to keep their non-reciprocal preferential access to the EU market. Such a deterrent for LDCs to engage in the EPA process was further reinforced when the EU Council unilaterally adopted the ‘Everything But Arms’ (EBA) scheme of preferences in February 2001, i.e. before the start of the EPA negotiations.<sup>53</sup>

<b>Table 1: Number of countries classified as LDCs in African EPA configurations</b>			
<b>EPA configuration</b>	<b>Number of countries</b>	<b>Number of LDCs</b>	<b>Proportion (%)</b>
<b>West Africa</b>	15	13	87%
<b>Central Africa</b>	8	5	62.5%
<b>East and Southern Africa*</b>	16	12	75%
<b>SADC</b>	7	3	43%
<b>Total Africa**</b>	46	33	72%
Notes: * includes the East African Community (EAC), which eventually concluded a separate agreement with the EU (see section 4.1.1). Out of its 5 members, 4 are LDCs. ** excluding Somalia, as it did not take part in the negotiations			
Source: Author			

Under the terms of the scheme, (ACP and non-ACP) LDC countries are guaranteed non-reciprocal duty-free quota-free access to the EU markets

53 Besides the fact that the real motivations of the EU in formulating the EBA scheme can be questioned (see footnote 8), the initiative was adopted without prior consultation with its intended main beneficiaries, and despite the principle of partnership and political dialogue upheld by Cotonou. More importantly, this stands in stark contradiction to the provisions of Article 12 of the Cotonou Agreement on the coherence of Community policies, whereby it commits to “inform in good time the [ACP] States of its intentions” when, in the exercise of its powers, it considers taking a decision which might affect the interests of ACP States. Article 12 also outlines procedural measures for a consultation mechanism to be set in motion in this respect.

for all their export products with the exception of arms<sup>54</sup>, and with transition periods for rice, sugar and bananas. As such, there was little inclination for the LDCs to actually embrace, or even seek to build the capacity for engaging in liberalisation talks and/or offering reciprocal concessions to the EU (Hinkle / Hoppe / Newfarmer 2006). In view of this unilateral policy initiative of the EU, the risk was high that ACP negotiating configurations would split along the LDC versus non-LDC line. Indeed, it should be recalled that almost half of the ACP group of countries are classified as LDCs, and are hence eligible for non-reciprocal access to the EU. This proportion rises to more than 70% in Africa (see table 1).

However, several factors of a political and technical nature – but also stemming from the negotiated character of the new trade regime – can be found to have made a regional approach preferable and to have kept both LDCs and non-LDCs at the table of the negotiations, at least until the late hours of 2007. First, the EPA framework presented the advantage of offering a more certain and predictable long-term option, the content and scope of which the ACP could also influence. In a context where the WTO-compatibility requirement limits the number of possible alternatives, those LDCs or non-LDCs that would decide not to negotiate an EPA at all would have to fall back to the GSP scheme. Non-LDCs would thus be granted the standard GSP access to EU markets, and LDCs would receive access under the EBA initiative, which is a component of the GSP. Not only would they then be competing with the 176 other GSP beneficiaries, many of which have greater productive and trading capacities, but they would have also be trading with the EU under less favourable terms than under the Cotonou preferences. Indeed, because it is granted unilaterally, the GSP regime is less predictable. Moreover, as it is based on terms defined by the EU alone, it is subject to protectionist forces and periodic product revocation (Hinkle / Newfarmer 2005; Brenton 2006), with no scope for the ACP to discuss and improve the modalities of these terms.

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54 It is somewhat startling that the EU wanted to prevent LDCs from exporting arms to its markets. As noted by Holland (2002, 227), this exception provoked criticism even among the group of LDCs: *“rather than excluding the duty-free export of third world arms to Europe, it was argued that greater benefits would result from a cessation of European arms sales to the developing world!”*

In addition, negotiating an EPA with the EU held the promising prospect of addressing the problem of rules of origin, one of the main reasons why ACP countries had not been able to benefit from the preferential access to the EU markets so far. According to the Cotonou provisions, the EU had committed itself, in the context of the EPA negotiations, to improve the existing market access for the ACP countries, notably through a review of the rules of origin (Article 37.7). Such a prospect could prove particularly appealing to LDCs within the ACP: the rules of origin under the EBA initiative turned out to be less generous than the ones prevailing under the Cotonou preferences and the overall rate of utilisation of the EBA has been relatively low, in particular for LDCs in the group of ACP countries (Brenton 2006; Bartels 2007). Indeed, for countries to benefit the EBA, a substantial and costly amount of paperwork was required and a stringent set of conditions had to be met that was unfavourable to cumulation of production or products, at the regional level for instance. Because they were so restrictive, *“rules of origin have not induced integrated industrial developments in ACP countries or contributed to more dynamic export performance”* (Hinkle / Hoppe / Newfarmer 2006, 276).

Besides considerations relating to the quality of the access to EU markets, preserving ‘good neighbourhood’ relations with partners within the region could be seen as another motivation for LDCs to ‘stay in the game’. Some non-LDC ACP countries have identified the EPA as the most beneficial option available to them and had a clear interest in signing an EPA from the beginning, negotiating hard for their interests. For them, signing an EPA would maintain access to EU markets or even improve it by covering products not included in the Cotonou preferences, notably in sensitive sectors (Hinkle / Hoppe / Newfarmer 2006). For instance, Kenya and Mauritius have been instrumental in driving the negotiating process in the ESA region (UNECA 2007). But these countries also had the capacity – or saw the importance – to mobilise the required human and technical resources and to gather the necessary clout to push their agenda forward. It is questionable whether, in this process, the interests and concerns of LDCs were adequately factored in and reflected in the regional stance, not to mention whether they were able to articulate them in the first place. However formally opting out of an EPA would have undermined prospects for regional integration from the beginning and would have been a politically costly option for a single LDC, unless perhaps in the context of a concerted – albeit unlikely – move. Such an attempt could have proven particularly harmful for landlocked countries or small island

states, since they would face the risk of political isolation – considering the importance of political and strategic considerations in establishing regional ties in Africa - and economic isolation from (bigger) regional partners – in terms of access to major port infrastructures for landlocked countries for example, or by being subject to different EU exporting schemes<sup>55</sup> (Bilal 2007). Hence, overall, the EU was not capable of building sufficient capacities in the ACP in view of the negotiations or tackling the challenge of regional integration in Africa. This was due to considerations pertaining to the complex realities in these countries and regions but also to the competing character of EU policies for development, which put the focus either on regional integration (EPA) or on differentiation according to the level of development (EBA). While clearly not an easy task to achieve, it was nevertheless of prime importance for the EU to get the incentives right in view of the negotiations with the ACP, if the EPAs were to be the EU's flagship trade instrument for development. More fundamentally, and considering the extent of the challenges for the successful negotiation and implementation of development-oriented EPAs in the ACP discussed in this chapter, it was crucial that the EU be adequately prepared, as a system, in order to take up the negotiations and respond to these challenges in a consistent and effective manner.

## 4.2 The EU in the negotiations

The Cotonou mandate required that the multilevel system of the EU be streamlined towards the formulation of a consistent response in the course of the negotiations and in support of the EPAs. Coherence between trade and development policies within the institution's internal set-up must thus be established as a prerequisite. The spotlight is more directly on institutional issues, particularly the shared competencies on trade and development within the policy framework of the EU. This section will particularly focus on the influence of the multilevel system of governance in the formulation

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55 For instance, while there were some indications that, including in the regional press, Cape Verde was willing to withdraw from the negotiations (UNECA 2007), this was not confirmed subsequently and the country was reportedly asked to backtrack on its unilateral decision. See *Cape Verde ignores ECOWAS, wants direct deal with the EU*, 5 September 2006 (afrol News / A Semana 2006), and *Cape Verde wants special status at ECOWAS*, 2 January 2007 (afrol News 2007).

of the concept of the EPAs as well as in shaping the EU's response on core elements of the EPAs in the course of the negotiations.

#### 4.2.1 Starting points for the EPA negotiations

If the EU is meant to be a responsive system, a successful preparation in view of the EPA negotiations crucially required that the diverse multi-level system be able to effectively engage as a coherent actor for trade and development with and in the ACP. Several efforts were required to better link trade and development within the system, while still leaving enough scope to take on board ACP concerns. The complexity of the EU multilevel structure, however, seems to have hampered its ability to be more responsive to an ACP perspective, as can be observed in the reform process of the Lomé Convention that paved the way to the EPAs.

##### 4.2.1.1 Integrating trade into development policy:

##### The EU's policy framework to improve coherence

In the background of the EPA negotiating process, the EC and member states have been stepping up efforts to improve the effectiveness and coherence of the EU's development policy, notably through increased coordination. The EU has thus, over the years, gradually equipped itself with policy instruments and means to deal with trade and development as a nexus. In doing so, the EU has improved its capability to deal with these two policy areas in a coherent manner. The main challenge, however, lies in putting into operation these commitments, in a timely enough manner to support a developmental outcome to the negotiations with the ACP.

Competencies over trade and development policies in the European Union are shared between the European Commission (EC) and EU member states. On the one hand, with the envisaged creation of a customs union between the six founding members of the European Community, the European integration agenda launched in Rome in 1957 called for a common commercial policy. The European Community was thus given exclusive competence to deal with trade matters, with the EC executing and to some extent instigating policy. While the Treaty of Rome entrusted the European supranational entity with the authority to formulate, negotiate and enforce all aspects of trade relations with the rest of the world with regard to trade in goods, international negotiations on services and on commercial aspects of intellectual

property became an exclusive competence of the Community with the 1995 Treaty of Nice. Some exceptions<sup>56</sup> were however included in the field of services where competencies are shared with member states. This means that if the Commission is the EU's main representative in the context of negotiations taking place at the WTO level, for instance, or in the framework of the EPA negotiations, it is also under more controlled procedures imposed by member states (Kernohan / Schneider 2006).

Development policy, on the other hand, is a shared competency between member states and the European Community. In contrast to trade and trade policies, development cooperation is a more recent EU competence and was formally incorporated into the European legal framework with the 1992 Maastricht Treaty. Since that time, the EU – through the European Commission – has been entrusted with both the implementation of its own development policy and the coordination of member states initiatives in this area (Orbie / Versluys 2008). Indeed, besides the newly acquired competence for development policy, the Community was assigned the task of implementing all policies likely to affect developing countries in a coherent, complementary and coordinated manner. In addition, the Treaty stipulates that the Community policy in the sphere of development cooperation should be complementary to the policies pursued by member states (Article 177 to 181 of the TEU). Article 130x of the Treaty further calls on the Community and the member states to coordinate their policies on development cooperation and consult each other on their aid programmes.

The introduction of the three concepts of policy coherence, coordination and complementarity (known in the EU as the '3Cs') was a welcome step, not least with respect to trade. Indeed, until the Maastricht Treaty, the linkages between trade and development cooperation policies in the EU had remained rather loose. The Community "*sought to realise development objectives via its long-standing trade competence and the construction of a complicated pyramid of preferences*" (Orbie / Versluys 2008, 72), while member states strove instead to maintain autonomy in their national aid policies and control of the destination of their bilateral aid resources (Grilli, 1993, 341). For Grilli, this resulted in "*an ever-present dichotomy between the Community and member countries' aid policies and practices [that]*

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56 These are trades in cultural and audio-visual services, educational social and human health services and transport (Kernohan / Schneider 2006).



*seems to have contributed to the relative inefficacy of their overall aid efforts, even in Africa where most of the EC resources were directed.”* (1993, 342) In other words, the diverse multi-level structure was not adequately equipped to manage the trade-development nexus in a consistent and effective manner. Careful coordination was thus required among all actors involved, to ensure policy coherence and to address development challenges in an effective and sustainable manner.

This was likely to be a challenging task even under the best of circumstances. As argued by Holland, the Maastricht Treaty obligations can “*only modify rather than resolve the genuine differences in objectives, priorities and mechanisms on development issues*” (2002, 171) that exist within the Community, i.e. its increasing number of member countries and the European Commission. For instance and quite notably, the objectives and priorities of member states’ development policies often have different focus. In broad terms (and therefore contestable broad-brush sketching): while France’s approach is still very much following a comprehensive ‘special relationship’ pattern, the United Kingdom puts much emphasis on good governance; Sweden strongly highlights poverty reduction objectives and Italy could rather be seen as linking policy to its own commercial interests (Holland 2002; Carbone 2007). Clearly, the differentiated focus of member states’ development policies need not be problematic if the policies are carried out in such a way that they can be or are complementary, and hence conducive to policy coherence for development. Yet again, for such coherence to be achieved, good coordination among member states is required.

Such a discrepancy takes on more significance when the financial implications for development that it carries are considered. In 2002, one-fifth of the EU’s total aid budget (€28.7 billion in 2002) was managed by the European Commission on behalf of the Community (EC 2003a). In fact, while the EU as a region provides more than half of global development assistance, the volume of bilateral aid provided by EU member states by far exceeds the resources channelled through the EDF. In the first three decades of European development cooperation (beyond the community framework, in cooperation policy with former European colonies), EDF funds accounted for less than 10 percent of total aid originating from member countries and gradually increased to stand at approximately 15% by the end of the 1980s (Holland 2002). In the mid-nineties, the combined sum of the Fifteen’s bilateral programmes was around four times the Lomé figures, and the EU’s col-

lective aid has traditionally been exceeded by the bilateral programmes of both Germany and France (Holland 2002, 153). Today, the EC is entrusted with a smaller share of one-sixth of the EU's Member States aid, thus constraining its level of influence and/or leverage in coordinating the whole set of policies comprising EU development cooperation. As Grilli points out, *"coordination of member countries' aid policies, though often recognised as desirable, was never entrusted to any significant degree to the EC Commission. EC members also exercised the equivalent of strict control over the Community's purse by never accepting the budgetisation of financial assistance to the associated countries, and thus continuing to contribute to the European Development Fund from their national budgets"* (Grilli, 1993, 341). The debate over the budgetisation of the EDF is still ongoing. However it is crucial that the Commission be enabled to successfully deliver on its coordination mandate, given the development challenges ahead and in order for the EU as a whole to engage as a coherent and effective actor for (trade and) development. Some efforts – and arguable improvements – have been made in the last decade for a better coordination role of the Commission with the EU aid system (as argued below; see also Grimm 2008).

At the same time, however, it should be pointed out that the Commission had a difficult start in taking up any coordination task due to its own internal set-up. The first post-Maastricht Commission led by Jacques Santer complicated the distribution of administrative responsibility for development issues (Holland 2002), and no less than seven directorates were dealing with different aspects of development. Turf wars between the various directorates were not uncommon, not least frictions between the directorates in charge of administering the Lomé Conventions (Directorate General – DG – VIII, now DG Development) and external economic relations (formerly DG I, now known as DG Trade).

Over time and more intensively in recent years, the EU has undertaken several efforts to meet the Maastricht provisions on development cooperation. Indeed, furthering the European integration process and the successive waves of recent enlargement (2004 and 2007) has made it more pressing to develop a more consistent approach between the European Commission and the EU Member States, i.e. across the EU system, including the area of development cooperation.

Since 2000, a number of key policy documents have paved the way for a more coherent European policy for development to emerge. Trade and de-

velopment became one of the six priority areas for the European Commission's development cooperation with the 2000 Development Policy Statement. More notably, since 2005, the European Consensus on Development explicitly refers to all EU aid, i.e. including member states' bilateral assistance, providing for a common vision to guide the action of the European Union (EU) as a whole in development cooperation (EC 2005b). Twelve areas, including trade, were therefore identified "where the challenge of attaining synergies with development policy objectives is considered particularly relevant" (EC 2005b, 4). In addition, with the adoption of the Consensus, and building on the impetus provided by the Millennium Declaration and Development Goals, the eradication of poverty became the primary and overriding objective of the EU's development policy for the first time, clearly a more forceful one than that of fostering "the campaign against poverty in developing countries" provided for in the Maastricht Treaty. Of particular interest to the EPAs is paragraph 36 of the Consensus (Box 6a).

**Box 6a: The EU's vision on development with respect to the EPAs  
(paragraph 36 of the EU Consensus on Development)**

*The EU strongly supports a rapid, ambitious and pro-poor completion of the Doha Development Round and EU-ACP Economic Partnership Agreements (EPAs). Developing countries should decide and reform trade policy in line with their broader national development plans. We will provide additional assistance to help poor countries build the capacity to trade. Particular attention will be paid to the least advanced and most vulnerable countries. The EU will maintain its work for properly sequenced market opening, especially on products of export interest for developing countries, underpinned by an open, fair, equitable, rules-based multilateral trading system that takes into account the interests and concerns of the weaker nations. The EU will address the issues of special and differentiated treatment and preference erosion with a view to promote trade between developed countries and developing countries, as well as among developing countries. The EU will continue to promote the adoption by all developed countries of quota free and tariff free access for LDCs before the end of the Doha round, or more generally. Within the framework of the reformed Common Agriculture Policy (CAP), the EU will substantially reduce the level of trade distortion related to its support measures to the agricultural sector, and facilitate developing countries' agricultural development. In line with development needs, the EU supports the objectives of asymmetry and flexibility for the implementation of the EPAs. The EU will continue to pay particular attention to the development objectives of the countries with which the Community has or will agree fisheries agreements.*

As can be observed, the commitments made in the ambit of the Consensus take up many of the key issues that can make trade liberalisation conducive to development, notably ownership, sequencing of the liberalisation process, and flexibility.

More recently, in the framework of international initiatives such as the Paris Declaration on Aid Effectiveness in 2005 and its follow-up with the Accra Agenda for Action of 2008, and the adoption at the European level of the 2007 Code of Conduct on the Division of Labour in Development policy, efforts have been stepped up for a more harmonised and complementary approach with regards to aid (Box 7). Large amounts of work having already been put into operationalising these policy commitments but these are still recent and the targeted consistent approach has arguably yet to emerge in practice.

**Box 7: EU multilateral and unilateral commitments relevant to the EPAs**

Numerous new policy commitments have been made since 2005 by the EU, some originating in multilateral negotiations, some taken unilaterally. 2005 in particular was a busy and pivotal year for EU development policy as it provided a new framework. In March, the EU (Member States and the EC) committed themselves to abide by the principles of the Paris Declaration on Aid Effectiveness (2005), which encompass those of ownership, alignment, harmonisation, managing for results, and mutual accountability. According to the OECD, “more than a statement of general principles, the Paris Declaration lays down a practical, action-oriented roadmap to improve the quality of aid and its impact on development.” (OECD). In July, EU Member States pledged to mobilise increased official development assistance for Africa under the framework of the G8, aiming to double the 2004 level of €20 billion by 2015. In addition, the Hong Kong WTO Ministerial meeting of December 2005 launched the Aid for Trade initiative, with increasing anticipation on the expected outcomes. In this context, the EU pledged financial support for developing countries to help them implement and benefit from trade agreements, without making the availability of Aid for Trade funds conditional upon the conclusion of either the WTO Doha round of negotiations or the EPAs.

At the internal level, 2005 marked the adoption of the EU Consensus on Development. Furthermore, in the context of the first revision of the Cotonou Agreement in 2005, the European Commission was able to convince EU Member States to

at least maintain the existing levels of ACP funding for the 10th EDF financial envelope<sup>57</sup> (Bilal 2005b).

Beyond 2005, under German Presidency in early 2007, the EU also adopted the Code of Conduct on Complementarity and the Division of Labour in Development Policy (EC 2007a). This initiative calls for the EC and Member States' common action, albeit on a voluntary and flexible basis, and seeks to address the lack of effectiveness of donors' collective input and support a successful implementation of the Paris Declaration. The EU thereby aims at capitalising on the experiences and specific strengths ("comparative advantages") of the Member States, and helping to reduce the bureaucratic strain on the recipient countries. At the same time, agreements on the division of labour will "*strengthen the role of development cooperation in EU external relations and contribute to the construction of a European identity based on the values contained in the European Consensus on Development.*" (EC 2007a, 12).

Thus, instilling more coherence into the European system by better integrating trade into development policy – while welcome and necessary – is a long-winded process and the related Maastricht Treaty provisions arguably still need to deliver on their agenda. More importantly in the context of this study, it should be noted that this process has taken place at the same time as the ACP-EU trade negotiations. The question therefore is whether the various efforts and commitments of the EU can be translated into concrete and timely measures in the context of the ACP-EU relations, not least with respect to the development of trade in ACP countries and in the formulation of the concept of the EPAs.

#### 4.2.1.2 From model to mainstream: Reforming Lomé for ACP development?

The multilevel structure of the EU and the interplay within the system have been instrumental in shaping ACP-EU relations throughout the years. At about the same time as efforts were initiated to better link trade and de-

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57 In nominal terms, the amount allocated to the 10th EDF represented an increase of 35% from the 9th EDF to reach €22.7 billion, but a significantly smaller one in real per capita terms (World Bank 2008).

velopment within the EU system, Lomé became more concerned with the policy environment in recipient countries, including economic and trade governance. However, as in the case of the reform of the trade pillar of the ACP-EU relations (see Section 3.1), external factors – rather than development considerations as such – can be found to have triggered the change. Mainstreaming the Lomé Conventions with multilaterally-led initiatives thus became the targeted objective, and dynamics that were internal to the EU multilevel structure played an influential role in shaping the new trade and development package for the ACP countries as embodied in the EPAs. In combination with the ACP side's limited capacity in terms of policy formulation (see section 4.1), consultations with the group of countries could thus offer only limited results.

While the non-reciprocal trade preferences of the Lomé Conventions have been a major feature of the ACP-EU relations, measures to address the policy environment of trade in ACP countries have for long been a relatively absent feature of EU development cooperation policies. For most of the life span of the Lomé framework, the model was frozen and the Community's efforts were reduced to managing the existing relationship and its mechanisms, with some marginal adaptation of its specific goals or the resources allocated to it, but without any actual innovation (Grilli 1993). For Grilli (1993), the limited changes that had been brought to the Lomé model over the years can be linked to the tension between the communitarian approach to development cooperation and member states' bilateral policies. But, as further argued by the same author, it also had to do with the bureaucratic apparatus of the Community as such. Indeed, *"like any bureaucracy, the [European] Commission is normally more inclined to preserve the status quo, or to marginally improve upon it, than to attempt to innovate or radically change it. This tendency is more pronounced in a situation where the Commission's role in shaping development policies is neither constitutionally clear, nor well accepted by the Council"* (Grilli 1993, 40). Thus, by Lomé IV in 1990, the Convention *"was arguably brain-dead, if a Convention can so be. [It had become an] increasing embarrassment and slowly slid down the scale of the Commission's priorities"* (Hewitt / Whiteman 2004, 144).

With the end of the Cold War, the European Community went through a set of internal structural changes that triggered a series of reforms with far-

reaching consequences for, among other things, the European model of development cooperation towards the ACP<sup>58</sup>. The collapse of communism in Eastern Europe shifted the old continent's centre of gravity slowly but steadily towards its Eastern neighbours. Europe's borders grew to encompass new member countries that contributed new perspectives on development cooperation. It therefore became increasingly difficult to justify the special links with the ACP, both in policy and financial terms, to the enlarged Community. In the process, Africa formally lost its last asset of geopolitical importance and economic appeal to Europe (as remnants of colonial relations). Concurrently, bilateral aid became less guided by donors' interests (Claeys 2004; Grilli 1993).

From then on, the cooperation gradually shifted from a relatively technical agreement to acquire a more political dimension (Grimm 2003). The Community increasingly sought to influence the policy environment in recipient countries and became more explicit in linking the provision of aid to sound economic management. As formulated by a former Commission high official, "the style of our relations changed over time: benevolent paternalism was followed by a rather freer approach (It's your money!) which gave way in turn to a more demanding approach" (Frisch 2008, 18). A clear shift was thus to be observed in Europe's approach to trade and development cooperation with the ACP, as the EU became more assertive of a policy formula alongside the multilateral system.

Hence, the Community started becoming concerned with the incentives provided to production and trade policies in ACP countries, particularly regarding exportable goods (Grilli 1993). This was first reflected through the specific earmarking of funds for the multilaterally-led structural adjustment programmes (SAP) in Lomé IV. Later, in the context of the review process of Lomé IV in 1995, the EU insisted on extending issues to be tackled beyond those pertaining only to the revision of the financial envelope (Holland 2002). A comprehensive approach was more resolutely introduced with the objective of creating a better trade environment in ACP countries. Preferential access was no longer the sole focus of the trade dimension of the ACP-EU relations (Holland 2002). New articles relating to trade development

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58 For an overview of the impacts of EU enlargements on the ACP-EU relationship, see Babarinde / Faber (2005).

were inserted into the revised text of Lomé IV (Lomé IV-bis) which called for ‘developing, diversifying and increasing ACP States’ trade and improving their competitiveness domestically and internationally’ (Art. 15a). In addition, since the adoption of the Maastricht Treaty had formally incorporated development cooperation within the scope of communitarian policies, any adjustment to the ACP-EU relationship had to take into account the new European legal framework for action. Emulating Article 177.1 of the Maastricht Treaty<sup>59</sup>, the revised Convention aimed at the gradual integration of the ACP economies into the world economy, further describing the function of trade as ‘energizing the development process’. Preferential access was extended in terms of beneficiary products and relaxation in quantitative restrictions. On rules of origin, changes were modest but sought to encourage regional cooperation between member and non-member states (Holland 2002).

This fundamental shift away from the declared policy neutrality of the European aid in the development strategies and economic policy choices of the recipients can actually be seen as addressing the effectiveness of its preferential trade policy. Indeed, as argued by Grilli,

*“There is strong evidence that most of the beneficiaries of [the European Community] trade preferences failed to put in place the domestic policies that would have maximised the value of privileged market access to the Community. However by not becoming concerned with production and trade policies in associated countries, and especially with the economic incentives afforded to the production of exportable goods, the Community in effect renounced the possibility of helping beneficiaries maximise the advantage of the trade privileges that it granted.” (Grilli 1993, 342)*

The EU’s approach therefore became largely consistent with the mainstream policies of the international financial institutions. The introduction of the first set of economic conditions linking the disbursement of European funds to the adoption of an SAP was sending a strong signal: financial assistance would be extended only if ACP countries created and maintained

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59 The article stipulates that the Community policy, in coordination with Member States policies, will notably aim at fostering the smooth and gradual integration of the developing countries into the world economy.



the conditions for more efficient and effective use of aid funds by meeting the macro and sector conditions specified in the SAP (Grilli 1993, 345). The Commission has also committed itself to use the PRSPs as the starting point in designing its own response strategies in the Country Strategy Papers (CSPs) (see for instance European Commission 2003a and the latest CSPs for 2008–2013)<sup>60</sup>.

Interestingly, the Commission and the member states actually had different positions on the issue of the SAP. The Commission was initially reluctant to the idea and appeared to promote the Lomé principles of partnership over the heavily criticised adjustment programmes, in line with ACP demands for autonomy from the Bretton Woods institutions. But the EC's attempt to influence the design of the SAPs through its member states was limited by a lack of resources (Holland 2002). More importantly perhaps, many member states were in fact more favourable to the World Bank's approach (Brown 2004). Both European and bilateral development policies thus became increasingly linked to multilateral initiatives, gradually mainstreaming with the emerging international consensus. For Hewitt and Whiteman (2004, 144), never again was the Commission to be on the side of international radical thinking on development. *"The running was later taken up by the Parliament, and then by leading NGOs."*

Some have argued that such policy convergence could also be seen as an additional aspect of coordination (Holland 2002). It is for instance crucial in building the image of the EU as an international actor and can help overcome internal tensions within the multilevel structure, notably in providing common policy objectives. It can be questioned, however, whether this policy convergence actually strengthened the trade-development nexus within the EU's policies towards the ACP, inasmuch as the SAP and the PRSPs have been found to offer an arguably weak reference point in this respect (see chapter 3.1). In addition, it can also be argued that anchoring the EU's policies to multilateral initiatives could not leave much room for coordination with the ACP countries' "development principles, strategies

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60 Available online at [http://ec.europa.eu/development/geographical/methodologies/strategypapers10\\_en.cfm](http://ec.europa.eu/development/geographical/methodologies/strategypapers10_en.cfm)

and model for their economies and societies” which they were to determine in all sovereignty (Article 3 of the Lomé Conventions; Article 4 of the Cotonou Partnership Agreement). ACP countries, however, did not adequately denounce this – or did not realise the importance of doing so. Since international finance was conditional on the fulfilment of certain condition (such as adopting PRSPs), the ACP states went with the flow. These various aspects were clearly illustrated in the Green Paper process regarding the reform of the Lomé ACP-EU partnership.

Indeed, by the end of the nineties, the need for a fundamental reform of the ACP-EU relationship had become more pressing for the EU. Options to be considered were first formulated in the *Green Paper on Relations between the European Union and the ACP countries on the eve of the 21st century. Challenges and options for a new partnership* (EC 1996). The paper notably set the tone for a much-needed reform of the ACP-EU trade regime, purportedly better adapted to a changed international trade framework. Without going into the details of its proposed options<sup>61</sup>, it is worth highlighting some key considerations on the process it initiated. Indeed, the outcome has already revealed many aspects of the capacity problems faced by the ACP later in the EPA negotiations, as well as the influence of the multi-level structure of the EU in shaping the new trade and development package for the ACP.

Quite notably, the proposed bilateral negotiation of WTO-compatible preferential trade agreements with the ACP, and the substantial aid package it would be accompanied with, can be seen as stemming partly from bureaucratic and political considerations within the Commission (Solignac Le-comte 2001c). The Green paper triggered a wide consultation, carried out not only at the European level but also with the ACP. However, considerations linked more to the European construction were the main drivers in the policy options outlined, rather than ACP perspectives. Besides challenges emerging at the international level, including the rising influence of the U.S. in Africa through the adoption of the African Growth and Opportunity Act

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61 These have been analysed in much greater details elsewhere. See for instance, Holland (2002).

(AGOA)<sup>62</sup>, other internal considerations contributed to shaping the EC's proposals. For instance, making African markets more attractive to European firms could make it easier to "buy in" the support of reticent member states for a renewed aid package (Solignac Lecomte 2001c). In addition, DG Development had a strong interest in keeping, if not magnifying, the trade dimension of the ACP-EU relations. Indeed, the institutional setup within the Commission was such that the ACP portfolio was administered by DG Development (ex-VIII). However as many observers have concurred, the move towards free trade as the basis of trade relations with the ACP countries was rather spurred by the Directorate for Trade (Holland 2002; Hewitt / Whiteman 2004). DG Development's position within the Commission would have been further reduced if trade and development had been delinked and the Lomé Convention had become a simple aid treaty. Likewise, development policy-making would have been weakened if the EU's trade policy had been multilateralised, either by extending Lomé preferences to all developing countries or through a global offer to all WTO members on a MFN basis.

Member states also played a key role by introducing some flexibility in the Council's negotiating mandate to the Commission for the successor to the Lomé trade regime, with the principle of differentiation in the scope of the relations with the ACP. Indeed, while the general thrust towards liberalisation proposed by the EC was supported by member states, LDCs were given the possibility of temporarily retaining existing Lomé preferences, along with policy "options" identified for non-LDCs that were unable or unwilling to move towards reciprocity and liberalisation. Yet again, these were more the outcome of intense discussions and negotiations between member states than a reflection of ACP views and demands (Holland 2002). In addition, as discussed in section 4.1.2.3, this initiative and its follow-up instrument, the EBA, were to prove rather disruptive for the objective of regional integration contained in the EPA.

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62 Adopted in 2000, the AGOA provides African exports improved access to the US market on a non-reciprocal basis, to encourage them in pursuing their efforts to open their economies and build free markets. The initiative covers a wide range of products and has been particularly beneficial for textile and apparel industries. The AGOA also explicitly aims at benefiting US firms: "*by creating tangible incentives for African countries to implement economic and commercial reform policies, [it] contributes to better market opportunities and stronger commercial partners in Africa for U.S. companies.*" See [www.agoa.gov](http://www.agoa.gov)

Overall, while the EU has gradually equipped itself with policy instruments and means to realise its ambitions in using trade policy as an instrument for development, it is questionable whether it did so for development, not least of the ACP. Even if the ACP as a group had been able to reach a true and realistic consensus for their negotiating stance, there was little additional flexibility they could have obtained from the EU's position, as this was the result of a difficult compromise reached between EU institutions and member states. Thus, in the formulation of the concept of the EPAs, there was little room to accommodate the ACP perspective, and in this respect it can be stated that the EU was not successful in managing the trade-development nexus. However as discussed in Chapter 3, there are some good foundations for the EPA agenda to be found; however, only greater consultation and responsiveness to ACP development needs and concerns can ensure a successful outcome of the EPAs, i.e. one that is resolutely development-oriented. Hence, the EU will have to get the incentives for the EPAs right in the negotiating process leading towards the conclusion of the agreements and must more concretely integrate a development perspective into the EU's trade policy.

#### 4.2.2 Defining positions: Is the EU capable of getting the incentives for EPAs right?

Formulating a consistent response for development-oriented EPAs required that the EU integrate trade policy into development endeavours, but also vice-versa. The question therefore is that of the capability of the system to be sufficiently flexible in defining its positions for the negotiations, this brings the nature of the EU as a multi-level system driven by different interests more prominently to the fore. Such a capability would be measured, *inter alia*, by considering whether the EU is able to better take on board or reflect ACP positions and concerns in the course of the EPA negotiations – more so than in the course of the formulation of the EPAs –, and hence to combine trade and development *for development (of the ACP)*. The system's capacity to ensure a development-oriented outcome for the EPA negotiations would also be assessed through its ability to iron out inconsistencies – such as the one that occurred with the adoption of the EBA initiative – notably through a flexible response to trade liberalisation and market access issues in the negotiations. Of equal importance is the European response to the Aid for Trade (AFT) initiative in the framework of the EPAs. The latter, a unilateral

commitment of the EU, will be all the more revealing in that its implementation calls for a combined action of the EU and member states regarding bilateral policies. Hence, while this brings internal coordination problems back on the agenda, related possible bottlenecks will crucially need to be overcome in order to position the EU as a coherent actor for development and get the incentives right for the EPAs, the EU's flagship instrument for trade and development.

#### 4.2.2.1 Integrating development into trade policy: Addressing ACP concerns?

Ownership constitutes one of the main challenges of EPAs from a development perspective. The ability of the EU as a system to adequately respond to the development dimension of the new agreements is thus closely linked to its ability to ensure ownership of the proposed trade regime on the ACP side. This could notably be done by improving the responsiveness of the system and showing more flexibility in accommodating some of the core demands of the ACP. In the course of the negotiations, these concerns can be found to have crystallised around two main issues: that of the EU's financial support for the EPAs, and the extent and scope of trade liberalisation required on part of the ACP. However, neither when the regime was overhauled under the Cotonou Agreement in 2000 nor since the negotiations were launched (at the all-ACP level and subsequently at the regional level) were the EU and the ACP able to reach a common understanding on the approach towards development in the framework of the EPA. Throughout the formal period of the negotiations (i.e. until December 2007), the EC's emphasis on the comprehensive character of the agreements came at the expense of flexibility and the promotion of regional integration, thus hampering the prospects for a successful conclusion of the negotiations.

From an institutional perspective, a major novelty for the ACP in dealing with the EPAs was their counterpart in negotiations. Until then, the ACP had engaged mostly with EU member states and officials from the Directorate General (DG) for Development in charge of administering the Lomé Conventions. But with the EPAs, the Directorate General for Trade, entrusted with trade policy and negotiations for the Community, became the main interlocutor of the ACP. Negotiations at the ministerial level have thus been carried out by the Commissioner for Trade and at the ambassadorial level by

a senior official of DG Trade. Preparations on the technical level of negotiations are coordinated by the geographical responsible unit in DG Trade.

Ensuring that the development dimension is adequately reflected in the process and the negotiated texts of the EPAs was likely to constitute a delicate task, considering the more technocratic nature and general market-opening stance driving the European Commission's DG Trade (see section 2.2). Reconciling trade and development in the framework of the long-standing – and somewhat politically sensitive – ACP-EU relation by negotiating with the ACP such a special 'breed' of development-oriented reciprocal trade agreements as the EPAs was likely to create many tensions. In the course of the negotiations, it was indeed soon felt among ACP diplomats that there was an

*"increasing dichotomy between the political rhetoric at the EU level, where the pro-development component of EPAs [was] repeatedly emphasized, and the pragmatic approach adopted by EC trade negotiators, who focussed on a narrower definition of development, based mainly on trade-related gains. [Not only did the ACP regions] regret the de facto sidelining of DG Development officials in the EPA negotiations; but the regional ACP negotiators apparently fail[ed] to see the political commitments made by Development Commissioner Louis Michel and even Trade Commissioner Peter Mandelson translated in the approach and content of the negotiations led by DG Trade officials" (Bilal 2005a, 4–5).*

In fact, a significant and fundamental divergence can already be observed when comparing the objectives of the EPAs as spelt out in the respective negotiating guidelines of the ACP and the EU in 2002 (ACP 2002a; EC 2002b). Whereas for the ACP the focus should be on the sustainable development of ACP States and the eradication of poverty, the EU put the emphasis on the smooth and gradual integration of ACP States into the world economy (ACP 2002b), just as formulated in the Maastricht Treaty. It is however noticeable that following the adoption of the EU Consensus on Development policy where poverty eradication became the overriding objective for EU development policies – later reiterated by the Consensus on EPAs between the EU and the ACP in March 2007 (ACP / German EU Presidency 2007) – the EC's mandate was not reviewed and adjusted accordingly. The rather substantial difference in focus between the ACP and the EU took its toll on the constructiveness of the negotiations, as was well documented by observers

following closely the negotiating process<sup>63</sup>. But the divergence over how to achieve the development objective of the EPA was, and somewhat surprisingly, never resolved (Stevens et al. 2008).

Throughout the negotiations, much of the EC's focus with regard to trade liberalisation seems to have been on the need to achieve comprehensive and regional EPAs between the EU and the ACP. This, however, was to come at the expense of the equally important flexibility for a successful, i.e. development-oriented, outcome of the negotiations. It can indeed be recalled that, for the EC, the development dimension of the EPAs would accrue from the establishment of a stable, predictable and transparent framework conducive to local economic activity and attractive for regional and international investment. Concerning the inevitable social and economic adjustments that the EPA would entail, the EC recognises that the potential gains from trade liberalisation will not be achieved unless other factors causing segmentation of markets are removed. In this respect, it was proposed to address the need for appropriate flanking measures to be adopted by the ACP through economic and trade cooperation in all areas relevant to trade, and assist the adoption and implementation of accompanying measures and policies through appropriate EU support from the European Development Fund (EDF) (EC 2002b).

ACP negotiators and stakeholders on many occasions expressed serious concerns regarding the development dimension of the EPAs and called for more flexibility of the EU on key issues of trade liberalisation and development support. They indeed argued for the liberalisation process and assistance to be adequately sequenced for both the negotiation and implementation of the EPA, and in order for the ACP to prepare for the negotiations and meet the adjustment costs and challenges as and when they arose (Stevens et al. 2008). Specific components of such support might even need to come prior to the implementation of the trade liberalisation itself, in order to strengthen data and tax collection and administration systems and allow participants to address the still widely informal character of many African economies, or to buffer the effects of the loss of custom revenues, for example. In many

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63 See for instance the European Centre for Development Policy Management (ECDPM)'s extensive coverage of the negotiating process at [www.ecdpm.org](http://www.ecdpm.org) and [www.acp-eu-trade.org](http://www.acp-eu-trade.org)

instances, such inflows would actually be necessary just to maintain the status quo, i.e. non-reciprocity (Stevens et al. 2008).

Thus, with respect specifically to development financing in support of an EPA, the ACP argued for the need to discuss the issue in the course of the negotiations sessions. In order to tackle the productivity and competitiveness constraints and bottlenecks – so called supply-side constraints –, and take full advantage of the improved market access promised by Cotonou<sup>64</sup>, the ACP argued, funds on top of the EDF had to be made available and accessible under more flexible procedures. Diversion of resources from ongoing or future non-trade- related development programmes could thus be avoided. It was for instance suggested that EPA Adjustment Facilities be set up to accompany the implementation of the EPA, and that the additional resources be channelled through regional structures (ECDPM 2007). The ACP also called for the financial commitments to be binding and predictable so that they would match the binding trade liberalisation commitments taken in the scope of the EPA (Stevens et al. 2008).

DG Trade proved reluctant to respond to ACP core demands on the development dimension of the EPAs (i.e. sequencing and additionality) (Stevens et al. 2008; UNECA 2007). The EC indeed claimed that it did not have the mandate to negotiate on behalf of Member States on development assistance for EPAs, and contended that it should rather be addressed through the RPTFs, as the purpose of these structures was precisely to link the EPA negotiations with the programming of EC development finance from the EDF. Furthermore, during most of the process, the EC persisted that ACP expectations with regards to the availability of additional funds to support the implementation of the EPAs were misled (Stevens et al. 2008). The EC was particularly careful on this issue also out of the concern that “*a discussion of policies would turn into a negotiation over money*” (Hinkle / Hoppe / Newfarmer 2006, 274). In a context where the negotiations and the process of the EPAs became increasingly denounced from all sides (see sections below), it is understandable that the EU was wary that concessions on the aid package might be viewed as a way to lure the ACP into concluding an EPA.

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64 Under Article 37.7 of the Cotonou Agreement, it is stipulated that “on the Community side, trade liberalisation shall build on the acquis [of the Lomé Convention] and shall aim at improving the current market access for the ACP countries, through inter alia, a review of the rules of origin.”



This concern appeared all the more well-founded in that the aid component of the EPA was the main reason that guided many ACP countries' decision to enter into negotiations with the EU.

But, as argued by Hinkle / Hoppe / Newfarmer (2006, 274), the EC's approach might have left "negotiators from the EPA groups with diminished incentives to engage in the process and without the certainty that an EPA agreement will contain provisions to address supply-side constraints". As for the RPTFs, these structures were not part of the negotiation setting and hence had no binding power on the negotiators (Bilal 2005a; UNECA 2007). In most regions, the Task Forces did not turn out to be the effective tools between the EPA negotiations and related financial support (UNECA 2007; ECDPM 2007). Thus, until 2007, regions like West Africa that had put a strong focus on building productive capacities as a prerequisite to trade liberalisation and had argued for financial support over and above that of the EDF received little response from the EU. In the course of 2007, however, the EC sought to address some of the ACP concerns by acceding to the inclusion of development chapters in the ambit of the negotiated texts. However, these did not include any binding commitment matching the liberalisation commitments of the ACP nor a clarification as to the possible availability of additional funds. As Stevens et al. (2008, 101) observed, *"instead, compromises were made on rather vague pledges to increase development resources spent on trade-related sectors within the existing frameworks"*. It can thus be argued that the EU, as a system, fell short of formulating a consistent and coordinated response with regard to this specific aspect of the development dimension of the EPAs in the understanding of the ACP.

With respect to the extent and scope of trade liberalisation required on part of the ACP, there also seems to have been little response from the EU in accommodating for ACP national and regional specificities and concerns. As argued by Lui / Bilal (2009, 6), *"the extent of tariff liberalisation demanded in the EPAs was the single most important reason why the majority of African and Pacific countries – particularly LDCs – decided not to sign an agreement, jeopardising inter alia their ongoing respective regional integration processes"*. The main divergence stemmed from the interpretation of Article XXIV of the GATT, which the EPAs were to comply with. According to Article XXIV of the GATT, the reciprocity in a regional trade

agreement entails the liberalisation of “substantially all trade”<sup>65</sup> within a “reasonable length of time”; a rule that is also applicable for the EPA.

The problem is that these two components of the WTO provision regulating the EPAs are a matter of interpretation. The attempt carried out by the ACP to induce more flexibility in Article XXIV of the GATT did not succeed (see section 4.1.2.1). The benchmark interpretation was thus that of the EC, according to which ‘substantially all trade’ means eliminating tariffs on 90% of total trade<sup>66</sup> between the EU and the ACP. This threshold can, however, be taken as an average which, in the case of FTAs with developing countries like the EPAs, allow for an asymmetrical approach to liberalisation. Hence, the EU would liberalise 100% of trade originating from the ACP – with transition periods for rice and sugar – and the ACP would liberalise 80%, keeping the other 20% of their trade with the EU protected from liberalisation, for example. As for the ‘reasonable length of time’ requirement, an understanding reached at the level of the WTO in 1994 indicates that it should not exceed 10 years, although a longer period of time may be applied in exceptional cases. These cases are however not defined in the WTO understanding. However practice shows that this interpretation is generally not strictly applied. The exact share differs from one FTA concluded by the EU to the other, and many FTAs – also between developed countries – have included longer transitional periods<sup>67</sup>. In the context of the EPAs, the EC’s position has been that the greatest share of the liberalisation process should occur within a 10-year period of time, with a limited number of ‘exceptional cases’ in which sensitive goods are allowed a longer time frame of 15 years, especially for LDCs.

Throughout the negotiations, ACP countries have called for more flexibility in the EC’s interpretations of the provisions of Article XXIV of the GATT, arguing for lower coverage of liberalisation and longer transition periods. The ACP states pointed to the low levels of competitiveness of their economies and the greater adjustment costs they would incur when implementing

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65 For a discussion of this particular component, see Scollay (2005).

66 This can be measured in terms of both value of mutual trade and tariff lines (i.e. products).

67 For example, EU FTA with developing countries South Africa and Morocco provide for a 12-year transition period, whereas the FTA between developed US and Australia allows for an 18-year implementation period.

the EPA. For instance, the recent West African EPA market access offer to the EU was to liberalise 60-70% of the regional economy for European goods over a transition period of 25 to 30 years, preceded by a 5-to-7 year moratorium during which no liberalisation would take place (Julian 2009b). With the same starting point as West Africa, Central African negotiators have tabled a revised proposal for 71% of products traded with the EU to be liberalised over 20 years<sup>68</sup> (Julian 2009a). Regarding these (and other) proposals, the EC has invariably claimed that only offers entailing the liberalisation of 80% of trade on the ACP side, over 15 years<sup>69</sup>, would pass the 'reciprocity' test of the WTO and be deemed compatible to Article XXIV. At the same time, however, and read in the light of section 1.2 on the EU's general approach to trade policy, such insistence could also be understood as stemming from the EC's concern to preserve an already faltering multi-lateral trading order.

Finally, with respect to the promotion of regional integration, achieving the comprehensive character of the EPA also seems to have taken precedence in the EU's stance throughout the negotiations. As a result, the EU was not sufficiently flexible to allow for sequencing the liberalisation processes. Indeed, several regions argued for a sequenced approach where priority would be given to the development of regional capacities to produce and trade over liberalisation towards the EU. The EC was generally unsupportive of such an approach, not least because it also comprised financial support demands. Admittedly, the historically experienced reluctance of African regions to undertake needed reforms was not playing in their favour. But even in those regions that had picked up and formulated their own reforms for a devel-

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68 The EC's response to the offer was again to invite Central African negotiators to improve their offer towards the 80% level of liberalisation to be implemented over 15 years (Julian 2009a). Interestingly, especially from the perspective of policy coherence for development, the EC indicated that in return, it would be ready to negotiate the suspension of export subsidies on products liberalised by Central Africa. The real value of this offer can be questioned, however, considering that the EU has pledged to do away with all its farm export subsidies by 2013. However, this may also provide the opportunity to lock out 'reversals' such as the re-introduction of EU export subsidies for dairy products in early 2009 in the context of the current global economic and financial crisis (Zahrnt 2009).

69 ESA Ministers have recently maintained that there is a precedent where the liberalisation of less than 80% of EU imports over a longer period of time than 15 years was deemed WTO-compatible and argue for this to be allowed for LDCs under the principle of special and differential treatment (Julian 2009a).

opment agenda, the Commission was often considered slow or unresponsive (Stevens et al. 2008). In addition, EC proposals were often found to pre-empt existing regional initiatives, including more successful ones. The pressure was high on countries and regions to negotiate on trade-related issues, such as government procurement and investment, or services, in cases where they would argue that there was little capacity or incentive at either the national or regional level to do so. And if they did, the process would actually draw on already limited capacities in general, diverting efforts and focus away from initiatives stemming from the region itself (Stevens et al. 2008).

Hence, for most of the negotiating process and with respect to the development dimension of the EPAs, the EC's lack of responsiveness and flexibility in accommodating for some of the main concerns of ACP countries and regions has arguably hampered the developmental value of the EPA in the eyes of the ACP. Towards the end of the formal period of the negotiations, however, the EU was in a position to provide an important policy response of direct developmental relevance for the ACP and the EPA context on the issue of trade- and EPA-related development assistance. Whether this response could constitute a valuable enough incentive to the ACP became contingent on whether the system could be streamlined towards delivering on a common endeavour and operationalising the Aid for Trade initiative.

#### 4.2.2.2 The EU's response on Aid for Trade – streamlining the system for development?

The EPA process has arguably provided an opportunity for more internal collaboration and coordination to occur within the EU on key policy issues for its aspiring role as a coherent actor for development. However, while much of the policy framework has been set, the system still has to deliver more on the substance of its endeavour and commitments taken (see section 4.2.1.1). In this respect, the recent Aid for Trade initiative could well provide the right setting for concrete coordination with more immediate results to take place. The provision of Aid for Trade in the context of the EPAs could furthermore act as a strong incentive for regional agreements. So far, however, the result in the context of the ACP-EU relations, is one of limited success. Much of the focus has been on coordination efforts within the EU system, which – while necessary – has come at the expense of being more responsive to ACP concerns.

The 'Aid for Trade' (AfT) initiative came as reaction to the request made by developing countries for additional financial support to specifically address their trade-related needs and supply-side constraints. Not all countries that have sought to increase their trade flows – and by the same token, their development prospects – by opening up their markets to international trade have been able to reap the benefits this theoretically had to offer. In many cases this has actually had negative consequences for development, particularly in Africa. This limited export response to trade liberalisation initiatives has brought to the fore the various supply-side bottlenecks constraining the capacity of low-income countries to produce and trade effectively. Indeed, as the experience of East Asian countries has shown, supply-side factors have played a significant role in the economic success of these countries: successfully engaging in export activities requires prior knowledge about marketing activities, access to production and distribution networks, as well as improved infrastructure facilities (Razzaque / Raihan 2008). The 2005 WTO Ministerial Conference therefore stated that “Aid for trade should aim to help developing countries, particularly LDCs, to build the supply-side capacity and trade-related infrastructure that they need to assist them to implement and benefit from WTO agreements and more broadly to expand their trade” (WTO 2005, paragraph 57).

Read in the light of the theoretical considerations discussed in Chapter 2, the emergence of the AfT initiative is particularly interesting and important, as it both illustrates the realisation that the gains from trade liberalisation are by no means automatic, and captures the range of capabilities required for developing countries to fully benefit from trade liberalisation (see Box 8). In other words, the AfT concept links to the general discussion on trade and development and has concomitantly brought back into focus the importance of government intervention in designing trade policy for development. Indeed, as argued by Page (2008), the WTO criteria for AfT can be considered as indicating the areas in which government intervention can operate, in a measure that will be accepted by the wider WTO community of members.

As such, Aid for Trade activities as defined within the ambit of the WTO Task force (Box 8) are nothing new to development cooperation, and have been part of every donor's portfolio, albeit under different headings and often with little conceptual underpinnings (Pongracz s. a.). Nevertheless, it is certainly a welcome development that trade-related constraints and needs

of developing countries will be more systematically addressed. Since the formulation of AfT as a concept, several pledges have been made to support the initiative either on a bilateral basis by the EU, through a joint commitment of the European Commission and EU member states, Japan and the US, or under other instances such as the G7/G8<sup>70</sup>.

**Box 8: The WTO typology of Aid for Trade**

- (a) **Trade policy and regulations, including:** Training of officials, analysis of proposals and positions and their impact, support for national stakeholders to articulate commercial interests and identify trade-offs, dispute issues, institutional and technical support to facilitate implementation of trade agreements and to adapt to and comply with rules and standards.
- (b) **Trade development, including:** Investment promotion, analysis and institutional support for trade in services, business support services and institutions, public-private sector networking, e-commerce, trade finance, trade promotion, market analysis and development.
- (c) **Trade-related infrastructure, including:** Physical infrastructure.
- (d) **Building productive capacity**
- (e) **Trade-related adjustment, including:** Supporting developing countries to put in place accompanying measures that assist them to benefit from liberalised trade.
- (f) **Other trade-related needs.**

Source: WTO (2006)

The EU has spearheaded the AfT process initiated at the global WTO level and was amongst the first to act on the pledge. Following up on multilateral discussions and the Hong Kong pledge of December 2005, the EU took a first commitment to implement the Aid for Trade initiative in October 2006. The October 2006 General Affairs and External Relations Council (GAERC)

70 Japan has announced development assistance spending on trade, production and distribution infrastructure of 10\$ billion over three years, the US announced AfT grants of 2.7\$ billion a year by 2010, and the EU committed to deliver 2€ billion per year by 2010 of trade-related assistance. Under the framework of the G7/G8 – grouping, i.e. France, the United States, the United Kingdom, Germany, Japan, Italy, Canada, Russia and the European Community – it was announced that these countries' spending on AfT would be increased to 4\$ billion.

of member states agreed to devote a substantial share of the increase of the Community and member states' trade-related assistance<sup>71</sup> to ACP countries. The target is to reach a yearly collective sum of €2 billion by 2010, with nearly all of the increase to come from the member states. Indeed, the EC has already provided almost €1 billion in trade-related assistance.

This commitment was further refined in October 2007 with the adoption of the EU's joint Aid for Trade Strategy (i.e. engaging both the EC and member states). Under the framework of the Strategy, the EU decided to allocate about half of the increase for the ACP and EPA- implementing countries. Besides its financial commitment, the Council presented the EU's Aid for Trade strategy as embodying two important principles:

*“the first is improved strategic coherence between the EU's aid, trade and development policies. Secondly, it puts into practice the EU code of conduct on ‘complementarity and division of labour’ in development policy (agreed in May 2007), whereby EU action will be taken by the Commission and member states acting together on a voluntary and flexible basis.”* (Council of the European Union 2007a, 3)

While important as such for its emphasis on coherence and coordination as guiding principles, it was clear from the outset that implementing the strategy and achieving concrete results was likely to be a complex task in the given EU multi-level system. Looking at the progress so far in operationalising the initiative, in the context of the EPAs, it indeed seems that the process has suffered some hitches.

In terms of timing, the AftT initiative, carried by the discussion at the international level, came into the ambit of the EPA debate rather late in view of the agreed-on December 2007 deadline for signature of the agreements. Emerging at the international level in 2005, the Aid for Trade discussion took place parallel to the EPA negotiations and it was not until late 2006 that an explicit connection with the EPAs was made with the October 2006

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71 The EU announced at the 2005 WTO Ministerial of Hong Kong an increase of its trade-related assistance (TRA) to support trade policy and regulations and trade development. The pledge came before the WTO Task Force on Aid for Trade had issued its typology of Aid for Trade activities. It then appeared that the EU's pledge covered the “narrow” agenda of Aid for Trade, i.e. categories 1 and 2. In its 2007 Aid for Trade Strategy the EU has committed itself in more general terms to address the “wider” Aid for Trade agenda, to extend its support beyond activities pertaining to trade-related assistance only.

pledge, further specified with the 2007 joint Aid for Trade strategy. There was thus little time for both the EU and the ACP to prepare or act upon the strategy accordingly within the timeframe of the formal period of negotiations, let alone bring much-needed clarifications with respect to the levels, scope and delivery mechanisms for AfT in the context of the EPAs.

The AfT debate in the context of the EPAs has been characterised by a significant level of confusion and mixed signals from within the EU system. The EC appears to have a fairly clear view of how to implement the pledge, notably through the establishment of ‘regional aid for trade packages’ (see Box 9). Broadly, these packages aim at providing a framework for “coordination among all donors and recipients” as well as “an effective, coherent and concrete EU response to needs and priorities expressed by the ACP countries and regions, including in national and regional development plans” (Council of the European Union 2008a, 3). The elaboration of coordinated regional packages has become the focus of EC and member states current activities on aid for trade, but much still needs to be figured out before any potential can unfold: what will the packages consist of, how will member states contribute, how will the packages fit with other existing or planned assistances programmes (Lui 2008). EU Member States, however, while overall rather supportive of the EC’s proposal, “continue to raise questions about the exact type of coordination needed for an effective response, the most effective ways of delivering AfT and the process for reaching agreement with ACP countries on AfT programmes” (Lui 2008, vi).

**Box 9: Aims and principles of the Regional AfT packages for the ACP**

The conclusions adopted by the Council on the EPAs in May 2008 and relating specifically to the implementation of the EU AfT strategy read as follows: “The Council encourages the Commission and the Member States to continue working together [...], and welcomes the Commission initiative for the joint design with our ACP partners of specific EU Regional AfT packages for the ACP, including accompanying measures of regional EPAs, building on the 10th EDF regional programming process. These packages would be based on the following aims and principles:



- Supporting ACP owned regional integration agendas, including addressing needs arising from EPAs as well as from interim agreements;
- Providing an effective, coherent and concrete EU response to needs and priorities expressed by the ACP countries and regions, including in national and regional development plans;
- Fostering coordination among all donors and recipients;
- Covering, as appropriate, programmes falling under the six categories of AfT;
- Covering actions, ongoing and planned at national and regional level by the Commission, the Member States and, as far as possible, other donors; in this context, the Commission is invited to further involve Member States during the 10th EDF programming.

When planning and designing these packages, due consideration will be given to the principles and best practices agreed in the Paris Declaration on Aid Effectiveness and in the Code of Conduct on Complementarity and Division of Labour in Development Policy. To this end, the Council reconfirms that the EU will support the technical capacity of regional and national ACP institutions for identifying, prioritising, designing, implementing and monitoring AfT programmes.”

Source: (Council of the European Union 2008a, paragraph 9)

As mentioned above, most of the efforts that are needed to meet the EU AfT pledge are to come from member states. However, since the inception of the initiative, the level of details has been limited. Since the turn of 2008, more details have become available, notably with respect to member states' engagement. Some donor countries have already tabled their *Aid for trade* strategy; others are refining theirs at the time of writing of this study (Pongracz s. a.). The picture should become more precise in the course of 2009, but it remains to be seen whether it will be a coherent one for development, and to what extent it responds to the calls made by the ACP for additional and more predictable funds to address their trade-related needs.

In fact, since the discussion was initiated, signals have shifted as to what should be the delivery channels for Aid for Trade, indicating the lack of a coherent vision within the EU on this particular aspect. For instance, in the context of the Consensus on EPAs reached under the German Presidency, the EU had given a rather enthusiastic response to the “*ACP proposal for the creation of regional Economic Partnership Agreements funds. The preferred delivery mechanism will be the existing regionally owned financing mechanisms.*” (ACP / German EU Presidency 2007, 1). In the May 2008 Council, however, the Union seems to have taken a step aside from the pre-

vious commitment, while not discarding it completely. The Council conclusions indeed put the emphasis on the proposed EU regional AfT packages and “*encourages the Commission and Member States to continue working together to this purpose [...] building on the 10th EDF regional programming process*”. As for the regionally-owned funds, the Council adopts a very cautious approach considering that “*if transparent, demand-driven and pro-poor*” such funds can be considered as instruments to support development strategies and to deliver efficient and flexible EPA related assistance. In any case, while certain EU Member States seem to have some reservations on the value of regionally-owned funds, others have expressed strong interest<sup>72</sup>. Here, the EU seems to favour what results in a wait-and-see approach, indicating that “*progress in [the area of the regional funds] is mainly in the hands of the ACP regions*” (EC 2008a, 7).

Thus, much of the burden is actually on the ACP “*to develop convincing and useful approaches to AfT that enjoy widespread stakeholder support and strong approval by governments at the national as well as regional level*” (Lui 2008, 26). At the same time, EU expectations in this respect can be argued to be fairly high inasmuch as the ACP response on the AfT agenda is determined by the capacity of the countries and regions that are part of the group to do so. Indeed, engaging in the process required that a complex range of activities be carried out by the ACP regions, from commissioning studies to supporting member countries, seeking agreement on approaches to adopt, or liaising with donors. However coordinating the regional AfT effort still depends on one or two officials in most regions (Lui 2008). Overall, and partly due to the lack of clarity in the size and scope of the regional packages, it seems that there has not been enough “*thinking on methodology and approach to assessing trade needs [which has resulted in the] ACP regions [being] accused of producing uncoded ‘wish lists’*” (Lui 2008, 25).

Understandably, because the AfT initiative is quite recent, time was needed (and still is) to allow for clarification of what it entails for both donors and recipients, not least because it should entail a strong regional dimension in support of the EPAs. The lack of clarity on the extent of existing AfT fund-

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72 (for a discussion on the prospects of regional funds for channelling aid for trade funds in the ACP, see Braun-Munzinger 2009)

ing for the EPAs, however, has led to the creation of much confusion also on the ACP side, even raising expectations with regard to the additionality of aid for trade and the linkages to the EPAs. Arguably, higher expectations make it even more difficult for the EU to be more responsive to ACP demands and concerns.

Indeed, since the EU has endeavoured to address trade-related capacity building needs of ACP countries in the framework of the EPAs, the Union seems to have consistently treated the question *“as an exercise in reprogramming already committed aid flows and in coordinating support with other donors”* (World Bank 2008, 26). In doing so, it has indicated that no additional funds would be available under the AfT initiative, hence falling short of ACP expectations. However confusion over the availability of additional funds to support the implementation of the EPAs has persisted throughout the negotiations. This belief even appears to have been sustained by the Commission, which *“has often been criticised for deliberately encouraging some ACP negotiators to conclude an EPA if they wish to receive additional related support”* (Lui 2008, 26). ACP expectations, already high throughout the process, thus increased with the emergence of the AfT initiative in the EPA debate, even though the EU has insisted that the availability of AfT funds would not be conditional on the conclusion of an EPA. The initiative is still perceived by many ACP countries as *“representing something new or additional in terms of a work agenda and in terms of resources.”* (Lui 2008, vii)

Clearly, the provision of AfT holds a strong potential as an incentive for *regional* agreements, and could convince especially LDCs to seek an EPA with the EU on a regional basis. While keeping up ACP expectations might have served as negotiating tactics to keep countries and regions engaged in the negotiations, it has been reported that some countries are realising that the EU is falling short of expectations with regards to the development dimension of the EPA. Indeed, *“since no additional resources will be provided by the EU for the conclusion and the implementation of an EPA, several LDCs in the ESA have informally been suggesting that they are not interested in signing an EPA with the EU”* (Bilal / Braun-Munzinger 2008, 23).

Thus, to support a successful outcome for the EPAs, the EU needs to make more tangible progress in operationalising its Aid for Trade commitments. This would mean being more cautious about raising ACP expectations (as these would need to be managed or responded to), while at the same time

providing more clarity in the EU's own expectations from developing country partners. As argued by Lui (2008), outlining their broad expectations of needs assessments or other AfT identification exercise does not necessarily violate the principle of ownership. Carrying out this process is likely to be a complex endeavour considering the different qualities, rationales and interests driving the various actors within the system, as well as the need to successfully deliver AfT at both the national and regional level while ensuring that the two levels are adequately interlinked.

Nonetheless, a successful implementation of the AfT initiative holds great returns for development and is a pivotal element for successful EPAs as well (and hence the EU's trade policy for development). For the targeted formulation of a consistent EU response to emerge, more thought needs to be put into elaborating the details of the implementation of the initiative, possibly along the lines of a workable division of labour. Such an endeavour will also crucially need to accommodate for the ACP partners' perspectives to be taken on board and allow for a partnership over a common strategy to emerge, which would require more flexibility in the EU's development cooperation policies as well<sup>73</sup>.

By supporting the ACP in developing their capacities to produce and export, the Aid for Trade initiative can at best contribute to realising the development potential of the EPAs. More fundamentally, a major component of the EPAs as a development package of relevance for the ACP is contingent upon the quality of the market access countries and regions are granted with. As discussed previously, while being nominally vast under the former trade regime, such access has been in effect limited due to the relative quality of the preferences granted and the restrictive rules of origin regulating their use (see section 3.1). It was thus crucial that the EU be able to substantially improve these in the context EPAs.

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73 Drawing on the experience of performance-based assessments and the MDG contracts, one idea that has been floated in this respect is that of Aid for Trade contracts (Stevens et al. 2008) as a way to address both the need for predictability of resources and for implementation of EPA-related trade reforms. Similar objectives can also be achieved through the adoption of an well-designed monitoring mechanism for the implementation of the EPAs, which would provide for the necessary accompanying measures and financing (see Brüntrup et al. 2008).

#### 4.2.2.3 The EU's response on market access and rules of origin – engaging the Commission and member states

According to Cotonou, the EU would improve market access for ACP countries, notably through a review of the rules of origin applicable to products originating from these countries. As argued in Chapter 3, this commitment of the EU is a key component of what makes the EPAs a relevant development package for the ACP. Redefining the rules of origin regulating access to EU markets for ACP exports would also be a key incentive even for LDCs to sign EPAs, as it would improve market access for them. However, it was only in the final year of the validity of the WTO waiver that the EU was in a position to provide details on these two important variables for development-oriented EPAs, i.e. whether a more favourable access to the EU markets than under Cotonou would indeed be granted and to what extent the rules of origin would be relaxed. The influence of the multi-level system was particularly apparent in the course of the formulation of the EU's response on these core issues.

Under Article 37.7 of the Cotonou Agreement, the EU had committed to liberalise trade for the ACP in such a way as to improve the existing “market access for the ACP countries, through inter alia, a review of the rules of origin.” This commitment was of particular importance, as any significant improvement in the quality of ACP countries' access to EU markets could essentially come from a far-reaching reform of the EPA rules of origin. Since the ACP has already benefitted from a fairly liberal access to the EU, only a review of the rules of origin could make the EPA package more attractive, especially to the current beneficiaries of EU unilateral preferences. This did not mean, however, that the improvement in the coverage of products to freely access EU markets was given nor a straightforward process. Indeed, the EU's responses on both aspects of market access and rules of origin occurred at a late stage of the negotiations, and the organisational set-up for trade policy-making within the EU can be found to have contributed to the EU's belated offer.

In April 2007, i.e. the year of expiry of the WTO waiver and the year in which a date was set for completion of the EPA negotiations, the EU tabled its formal market access offer to the ACP: duty-free and quota-free access to its markets to all EPA signatories, starting from the agreement's taking effect, except for a few commodity products like rice and sugar that would

be phased in over a transition period. The only exception would be South Africa, where a number of globally competitive products will continue to pay import duties. The Commission further indicated that, parallel to its offer, it had begun discussions with the ACP on developing a simpler and more development-friendly set of rules of origin (EC 2007c).

Despite the fact that trade policy in the EU is an area of exclusive competence to the Community, it can be assumed that member states have played an active role in shaping the EU's positions in the course of the negotiations with the ACP. As discussed by the authors of the 2006 CEPS report on Policy Coherence for Development in the EU Council (see Box 10), there are several avenues through which EU member states can influence trade policy-making. Identifying to what extent such dynamics have played out in the course of the EPA negotiations would require a more specific and in-depth investigation. However, some general remarks can be made in this respect that, as discussed below, indicate that it is reasonable to assume that the delay was due to the need to reach an internal compromise which all involved could agree to.

**Box 10: The role of member states in policy-making procedures on EU trade policy**

Trade is often described as an exclusive competency of the European Community. While it is arguably correct that the Commission is the driving force in trade-policy making, member states still do play a (decisive) role in the process.

If the European Commission negotiates trade agreements on behalf of the Union, trade policy as such is decided in the Article 133 Committee, a special committee appointed by the Council to assist the European Commission in the negotiations of agreements (named after the Amsterdam Treaty article setting out the aims and objectives of trade policy). However, the Article 133 Committee is perceived to be the real power behind and decision-making centre for the EU's trade policy. It is composed of trade experts from each member state and chaired by the country holding the EU presidency. The European Commission consults regularly with the Committee and acts upon its recommendations.

Prior to international trade negotiations, the Commission must agree on its negotiating mandate with the Council, through the Article 133 Committee. In the process, "the Commission in some respects operates as an 'agent' of the member states' bidding and in practice acts on the basis of a subtle mixture of exclusive and shared competences, [throughout the three stages of] the design of the negotiation mandate, the representation of parties during the negotiations and the ratification

of the agreement once negotiated.” [...] At this last stage, member states can, if necessary, reassert control with powers of veto.

Once DG Trade has elaborated the proposals for trade negotiations, the key Council policy discussions take place within the Article 133 Committee, whose main responsibility is thence to ensure any necessary amendments on behalf of the member states to the Commission’s proposals in the negotiations. [...] “In sessions of the 133 Committee, the Commission’s DG Trade representatives present their proposal and assess the requirement for a change to their text following a ‘tour de table’ of members states’ views. Since Council decisions on trade policy are made by qualified majority, any objections of the Article 133 Committee usually need to be supported by a number of members in order for the Commission to amend its proposal. However, the objections of a major member state on a significant issue have been said to be sufficient to prompt a change. Moreover, when the Commission refuses to amend its proposal, the Council can change the mandate for the negotiations only by unanimous agreement.” [...]

“To provide expertise on issues concerning trade and development, an informal group has been established within the Article 133 Committee. [It is] composed of representatives from the EU member states and the European Commission [and is playing an increasingly important role]. It is organised by DG Trade, with input from DG Development and sometimes DG Aidco and Relex (External relations). It is convened on a monthly basis and has recently focused on the issue of Aid for Trade.” [...] [In practice,] most of the concerns regarding policy coherence for development in the area of trade policy are addressed by the Commission in the course of preparing the proposals. [...]

The Council itself (at all levels and in all of its bodies) can however propose changes to the proposal to include aspects of development. The Commission will then decide if and how to amend the proposal in order to reach a consensus. However, requests for changes have to be decided unanimously by the Council of Ministers if the Commission objects to a suggested change. In addition, the Council can also unanimously request the Commission to prepare new proposals.

Although its meetings have increased in frequency over time and its involvement now takes place at earlier stages of the policy-making process, the informal expert group on trade and development status is still somewhat unclear (e.g. its position in the hierarchy, etc.) and the topics it can address are limited since DG Trade is very much preoccupied with its competences, particularly in the areas where an exclusive EC competence exists.” It is interesting to note that the authors of the report on Policy Coherence for Development have recommended, in this respect, that “the work of the informal expert group receive stronger backing by the higher political levels”, and that the latter cooperate more closely in order to ensure that development concerns are taken into account at the early stages of thinking about new proposals. In addition, these proposals could be drafted by project groups bringing together officials from DG Trade and DG Development, at a minimum, to ensure a genuine cross-sectoral character.

For the negotiated deal to come into effect, “all EU member states have to sign and conclude (ratify) international trade agreements, which usually implies a vote in the national parliaments. [While] this does not tend to cause much problem, the possibility means that the EU member states and their parliaments can exert a de facto veto when the outcome of the negotiations is not to their liking. The European Parliament (EP) is specifically excluded from consultations on international trade agreements concluded under Article 133,” although its assent is required when areas fall within its domain of competence, e.g. on issues requiring co-decision or where there are important budgetary implications. In practice, however, the Commission does inform the EP during the negotiations. The EP has notably played a particularly active role in the context of the EPA negotiations, calling on various occasions for more flexibility on part of the Commission and to ensure a more development-friendly outcome for ACP countries, while also providing a platform for ACP countries to voice their concerns and raise awareness in the negotiations (Gaenzle et al. 2009).

Source: Except when specified otherwise, most of the text above draws extensively on the Fiche on EU trade policy by D. Kernohan and A. Schneider, written for the 2006 CEPS report on Policy Coherence for Development in the EU Council (CEPS 2006, 51–61).

Looking first at the process for formulating the EU’s market access offer to the ACP, the EC had actually submitted a first proposal to the Article 133 Committee (see Box 10) in October 2003. The proposal suggested that when an EPA goes into effect, ACP countries should be granted access to the EU market equivalent to that accorded to LDCs under the EBA initiative (European Research Office 2007). This was of particular relevance for a successful outcome of the EPAs, since competition with the incentive posed by the EBA initiative for LDCs would have been resolved, increasing by the same token the prospects for actual regional integration between ACP countries. However, the Article 133 Committee did not respond positively to this proposal and eventually gave the green light to a somewhat toned-down version with the April 2007 offer. It remains to be determined what were the exact dynamics and powers at play in shaping the EC’s offer in April 2007 and the cause of the delay between the two offers. It is illustrative in this respect to consider that, in the SADC, the negotiations were plainly frozen throughout 2006, as the region awaited the EC’s response as to whether it would formally accept (more competitive) South Africa at the table of the



EPA negotiations<sup>74</sup> - which it did – and would grant the non-SACU LDCs in the region non-reciprocal access to the EU market due to their LDC status<sup>75</sup> – which it did not. The crucial point, however, is that member states can, through the Article 133 committee, influence the content of the trade agreement and, hence, the course of the negotiations. This was perhaps even more visible in the context of negotiations pertaining to rules of origin.

Already in the context of the EBA preferences, EU member states had played a clear role in determining the rules of origin that would be applicable, seeking to shield their markets from the potential for fraudulent imports under the initiative given the broader scope of the EBA (Holland 2002). In order to address this concern, a specific set of RoOs was designed, albeit one that turned out to be extremely restrictive. In the context of the Cotonou process towards the EPAs, negotiations for a revised set of RoOs officially began in the course of the EPA negotiations in 2004 (EC 2003b), but it was not until 2007, that the issue was seriously discussed. Delays were due on the ACP side to the inability to articulate a clear vision for revised EU-ACP RoOs through a coordinated all-ACP approach (see footnote 40), and partly due to a lack of capacity in the regions (Naumann 2008). The European side was confronted with both the need and the difficulty to reach an internal compromise acceptable to all EU Member States (Cadot / de Melo 2007). Hence, the interim EPA RoO are largely similar to the Cotonou rules, due to *“the absence on either side of a clear, bold vision of more liberal rules of origin”* (World Bank 2008, 11). The most significant improvement pertains to the liberalisation of the rule of origin for textiles and clothing<sup>76</sup>. There have also been some product-specific changes notably in the rules for fish and a few processed agricultural products. It should be noted, however, that while ACP preferences in these areas are also greatest, the risk exists that such improvements might not materialise into concrete benefits because the ACP group is now divided into regions and, as discussed below, not all countries have signed an EPA (Lui / Bilal 2009).

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74 It should be borne in mind here that the EU’s duty-free quota-free offer tabled in the context of the EPA excludes products from South Africa.

75 As a member of the SACU, Lesotho’s access to the EU markets has de facto been determined, since 2000, by the terms of the EU-South Africa TDCA.

76 For the World Bank (World Bank 2008), what ultimately motivated the EC to act on RoOs for this particular sector is the success of the AGOA scheme of preferences granted by the US to all African countries.

Hence, complex dynamics and diverging interests within the multilevel EU system have played a determining role in shaping key positions of the EU towards the ACP in the course of the EPA negotiations, resulting in their formulation late in the process. Arguably, this gave little incentive and left little time for African countries to initiate, on their end, the long overdue – and neglected – design of their own national market access offer and galvanise support for a regional approach. In fact, by the end of 2006, only the ESA region had engaged in text-based negotiations with the EC (ECDPM 2007). Considering the many limitations in terms of capacity highlighted previously, and despite the repeated political commitments from both sides to meet the looming deadline – with some effect in activating the process – it was unlikely that the negotiations would be comprehensively concluded by the end of December 2007.

## **5 The unresolved development dimension of the EPAs**

As discussed in the previous chapters, the key components of the EPAs as a development package were severely tested during the course of the negotiations. The ability of both the EU and the ACP to deliver on these elements was constrained by the weak capacities of most ACP countries to shape and implement (their) trade policies for development, the stark complexities of trade negotiations as such and the multilevel nature of the EU system of governance. In the face of the imminent expiry of the WTO waiver and limited progress on the substance of the negotiations, the EU tabled a pragmatic proposal putting the comprehensive and, in many cases, the regional scopes of the EPAs on the back burner. Since that time, the development dimension has become an unresolved challenge.

### **5.1 Comprehensiveness (temporarily?) sidetracked: Pragmatic considerations with detrimental effects**

As the December 2007 deadline set by Cotonou for the conclusion of the EPAs neared, it became clear that none of the African configurations were in a position to conclude comprehensive agreements on a regional basis with the EU. Progress was limited on substantive issues such as market access, accompanying measures and financial resources necessary to strengthen

ACP capacities. For some observers, regional integration and development were simply no longer amongst the priorities for the EPAs (Stevens et al. 2008). Instead, it appeared that the main objective was to meet the WTO-compatibility requirement at all costs. The EC tabled a two-staged approach, consisting of the conclusion of WTO-compatible interim and partial agreements with predisposed regional groupings or individual countries, albeit with far-reaching consequences, particularly for the objective of regional integration.

The insistence on meeting the December 2007 deadline was arguably a negotiating position of the EC, possibly meant to increase pressure on the ACP to get organised. It is even suspected that the EU has played regions and countries off against each other (Stevens et al. 2008; UNECA 2007), apparently for the sake of signing an agreement and proving the success of the EPA approach. Towards the end of the year, however, it became obvious that none of the African regions<sup>77</sup> would be in a position to conclude a comprehensive EPA with the EU.

In recognition of this, the EC tabled a two-staged approach proposal in October (EC 2007b), endorsed by the Council (Council of the European Union 2007b): in order to meet the requirement of WTO-compatibility within the set timeline, interim or “stepping stone” agreements, would be concluded with ACP countries. These agreements would cover provisions relating mainly to goods and areas where the parties were able to reach an agreement. This would also make it possible to prevent trade disruption for non-LDC ACP countries. This objective was met and most ACP countries have not lost their preferential access to the EU markets. But out of the 78 ACP States that set out to negotiate an EPA in 2002, 42 have not initialled an agreement with the EC. The current signatories of interim EPAs are nineteen African countries, of which five under a common framework, and two Pacific countries. The Caribbean is the only region to have concluded a comprehensive EPA.

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77 Nor the Pacific. The Caribbean region on the other hand was determined to conclude a comprehensive EPA deal with the EU and initialled an agreement on 16 December 2007. After several months of delay due to technical work that still needed to be done and conflicting meetings at the WTO level. Some Caribbean States also expressed second thoughts and wanted to hold consultations. The agreement was signed in October 2008.

The two-steps approach was probably the most pragmatic one to adopt given the little progress on substantive issues in the negotiations. But it also came at a cost, most of which is borne by the regional integration objective. As a whole, the African continent now exports under four WTO-compatible schemes: Mediterranean countries are covered by the Barcelona process which notably provides for the establishment of free trade areas between the EU and Mediterranean countries (most of which have been achieved) and aims at the creation of a Mediterranean free trade area by 2010; South Africa exports under the TDCA with the EU, also providing for the liberalisation of substantially all trade between the two parties; the nineteen interim EPA signatories benefit from duty free quota free access to the EU for most of their exports; the remaining African countries export under the Generalised System of Preferences (GSP), either in its standard form or under the special regime for LDCs, the Everything But Arms (EBA) scheme. As such, this poses a significant challenge for any prospective African integration.

More specifically, as shown in Table 2, one region, the EAC – which emerged as an EPA configuration only in the last months of 2007 – has survived the process: the region preserved its cohesion, and has grown by two additional Members (Rwanda and Burundi). Provided the EPA implementation is effective and well managed, the new trade partnership with the EU should be supportive of economic integration in the EAC. Indeed, all its members have initialled a common text, with common liberalisation schedules and exclusion baskets. But this is the exception to the general rule, for all other interim EPA signatories, although part of regional frameworks, have concluded agreements with significantly divergent liberalisation commitments towards the EU, both in terms of product coverage and schedules. Ultimately, the ‘toned-down’ interim version of the EPAs proposed by the EU, instead of reinforcing regional integration initiatives, revealed how loosely knitted African regions were in the first place. In Central and West Africa, three countries (Cameroon, Côte d’Ivoire and Ghana) initialled country-specific agreements, with no reference to the regional structure within which they had been negotiating (for a detailed analysis, see Stevens et al. 2008).

<b>Table 2: Overview of African EPA signatory States</b>					
	<b>Members</b>	<b>States having concluded as of October 2008<sup>a</sup></b>	<b>Countries falling into EBA/<u>stand-ard</u> GSP</b>	<b>Proportion of signatory countries</b>	<b>Number of liberalisation schedules</b>
ESA EPA	Comoros Djibouti Eritrea Ethiopia Madagascar Malawi	Mauritius Seychelles Sudan Zambia Zimbabwe	<i>Comoros</i> <i>Madagascar</i> Mauritius Seychelles <i>Zambia</i> Zimbabwe	Djibouti Eritrea Ethiopia Malawi Sudan	55% 6
EAC EPA	Burundi Kenya Rwanda Tanzania Uganda	<i>Burundi</i> Kenya <i>Rwanda</i> <i>Tanzania</i> <i>Uganda</i>	-	100%	1
SADC EPA	Angola Botswana Lesotho Mozambique Namibia South Africa Swaziland	Botswana <i>Lesotho</i> <i>Mozambique</i> Namibia Swaziland	Angola	71%	2
CEMAC EPA	Cameroon Chad Central African Republic Congo DR Congo Eq. Guinea Gabon Sao Tomé e Príncipe	Cameroon	Chad Cent. African Rep. <u>Congo</u> DR Congo Eq. Guinea <u>Gabon</u> Sao Tomé e Príncipe	12.5%	1

ECOW- AS EPA	Benin Burkina Faso Cape Verde Côte d'Ivoire Gambia Ghana Guinea Bissau	Liberia Mali Maurita- nia Niger Nigeria Senegal Sierra Leone Togo	Côte d'Ivoire Ghana	Benin Burkina Faso Cape Verde <sup>b</sup> Gambia Guinea Bissau Liberia Mali Mauritania Niger <u>Nigeria</u> Senegal Sierra Leone Togo	13%	2
<p><b>Notes:</b> (a) Countries in italics are classified as LDCs. In the table compiled by the Commission (<a href="http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/08/15&amp;format=HTML&amp;aged=0&amp;language=EN&amp;guiLanguage=en">http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/08/15&amp;format=HTML&amp;aged=0&amp;language=EN&amp;guiLanguage=en</a>), Somalia and Timor Leste are listed as LDC non-signatories (in the ESA and PACP groupings respectively). Since neither has played any part in the negotiation of EPAs, they are omitted here.</p> <p>(b) Cape Verde has been classified as non-LDC since January 2008 but will be able to export to the EU under the EBA initiative for a transitional period of three years.</p>						
Source: Bilal / Stevens (2009, 29–30)						

In the late weeks of 2007, the pressure was indeed high on both ACP and EC negotiators to finalise agreements that would pass the WTO-compatibility test – as understood by the EC – hence affecting the overall quality of the texts for development (see Box 11). In Africa, this left little time for scrutiny or for the parties to exchange information on the content that was being agreed upon, for instance to ensure that regional integration was not jeopardised.

**Box 11: Contentious issues in the EPA negotiations for development**

Negotiators are still struggling with the consequences of the rush to conclude interim EPAs with the EU. While some issues have since been resolved, a number of clauses, regulating mostly trade in goods, have been identified as contentious by African negotiators and policy makers at the highest level. These illustrate particularly well the difficulty in reconciling trade and development in the scope of a negotiated trade agreement. Besides the definition of ‘substantially all trade’ and the transitional periods for tariff liberalisation (see section 3.4.1), they include provisions pertaining to export taxes, national treatment, infant industries, bilateral safeguards, free circulation of goods within ACP regions, the non-execution clause, the standstill clause and the most favoured nation clause (see Lui / Bilal 2009). However it is of particular importance for a developmental outcome to the EPA that these issues be adequately addressed, with flexibility on part of the EU. For instance, if African negotiators were able to exclude the majority of their vulnerable agricultural sectors from trade liberalisation, this achievement is undermined by the standstill clause included in the EPAs. The clause requires that countries bind their tariffs at applied rates and in some cases also apply to products on the exclusion lists. As argued by Jones (2009), the ability of governments to respond to surges in agricultural imports is thus severely constrained. Many concerns were also raised with respect to the inclusion of an MFN clause in the EPA, which is believed to constrain the ACP countries’ policy space in concluding future trade agreements with other major partners, most notably with emerging economies like India and China. According to this clause, any EPA signatory that grants to a non-EPA signatory a more favourable access to its market to a major trading national or regional economy should then extend this more favourable treatment to other EPA signatories. In view of the EU, however, the MFN clause acts as insurance that it would be treated fairly in the case where ACP countries or regions would conclude a trade agreement with its major trading economies competitors, given that the EU would be granting duty-free quota-free to ACP products under an EPA (see Stevens et al. 2008; Lui / Bilal 2009).

More fundamentally, there seems to be no clear pattern that poorer countries have longer periods to adjust than countries that are better off. The current picture actually reveals that if some of the ‘better off’ countries have to adjust more quickly, so do some of the poorest (see Table 3). For Stevens et al. (2008, 56), *“the picture that emerges is entirely consistent with the hypothesis that countries have the deal that they could negotiate: countries able to negotiate hard with a knowledge of their interests obtained a better deal than those lacking these characteristics.”*

<b>Table 3: Comparison of liberalisation schedules</b>			
<b>Duration</b>	<b>Under 15 years</b>	<b>15-20 years</b>	<b>20+ years</b>
	BLNS Cameroon Comoros Côte d'Ivoire Ghana Madagascar Mauritius Mozambique Seychelles	Zambia Zimbabwe	All EAC
<b>Liberalisation starts for positive-tariff goods</b>	<b>Under 2 years</b>	<b>2-5 years</b>	<b>6+ years</b>
	BLNS Côte d'Ivoire Mauritius Mozambique	Cameroon Ghana Madagascar Seychelles Zimbabwe	All EAC Comoros Zambia
<b>Impact of early tranche(s)</b>	<b>High</b>	<b>Medium</b>	<b>Low</b>
Adjustment	BLNS Côte d'Ivoire Mozambique Zimbabwe Seychelles	Ghana Madagascar Mauritius Zambia	All EAC Cameroon Comoros
Revenue	<b>30%+</b>	<b>10-30%</b>	<b>Under 10%</b>
	Côte d'Ivoire Madagascar Mozambique Seychelles Zambia Zimbabwe	Cameroon Ghana Lesotho Mauritius Namibia	All EAC Botswana Comoros Swaziland



Exclusions	Under 15%	15–20%	20+%
	Botswana Lesotho Mauritius Seychelles Swaziland	Côte d'Ivoire Comoros Kenya Madagascar Namibia Tanzania Uganda	Burundi Cameroon Ghana Mozambique Rwanda Zambia Zimbabwe
Source: Bilal / Stevens (2009, 29)			

Interestingly, while there is a marked difference in participation between LDCs and non-LDCs, it is not as sharp a schism as one could have expected. In fact, another dimension seems to have materialised: one that distinguishes between oil and non-oil exporters. For most non-LDCs ACP countries, the GSP alternative to the EPA was an unattractive one. For these countries, the motivation rested in securing an unchanged preferential access to the EU markets for a limited number of commodities, notably bananas (e.g. Cameroon and Côte d'Ivoire), sugar (e.g. Mauritius), beef (e.g. Namibia) and fisheries (e.g. Mauritius and Seychelles) (Stevens et al. 2008); and indeed, ten out of the fourteen African non-LDCs have initialled an EPA. The three other non-LDCs that have decided not to sign an EPA are Gabon, the Republic of Congo and Nigeria, in other words, oil-producing countries. It is illustrative to consider that in 2006, oil accounted for 73% of the African EPA countries (signatories and non-signatories) total exports (World Bank 2008). These oil-producing countries have lost “virtually nothing from the switch from Cotonou to GSP preferences” since their principal export products consist of oil and other primary products which face zero or very low MFN or GSP tariffs in the EU (World Bank 2008, 6). The fourth non-LDC country is South Africa, which has its separate TDCA with the EU.

As for the LDCs, the market access incentive was not a strong one and most did not have an immediate need to enter into interim agreements with the EU. However despite having the possibility of retaining non-reciprocal preferences under the EBA initiative, nine of the 33 African LDCs initialled a text and submitted market access offers. Four of them (the four LDCs that are members of the EAC), entered into an interim EPA as a custom union, and seem to have done so “*under the leadership of Kenya, a non-LDC with strong incentives to sign an EPA.*” (World Bank 2008, 6). The other LDC

EPA signatories seem to have been motivated out of a concern regarding less favourable RoO for some of their key products otherwise (such as fisheries for the island states of the Indian Ocean, for instance, or textiles for Lesotho) (Stevens et al. 2008).

Since the 2007 deadline, political commitment and current efforts have been directed towards the conclusion of comprehensive and regional EPAs: the EU and *all* African countries concerned by the EPA process have committed themselves to pursue the negotiations. More importantly, the EU's approach to the EPAs seems to have taken a more open and flexible turn while moving from interim agreements towards regional EPA. Indeed, the EPA process so far has brought to the fore and further accentuated the diverse qualities of the African partner countries. As the deadline for the conclusion of the EPAs neared, the negotiating process became extremely agitated and tense – including within the EU (see Box 12).

**Box 12: Towards the December 2007 deadline – mixed signals from the EU**

Outside the negotiating room, tension was building up within the EU as the December 2007 deadline neared. Increasingly strong yet mixed signals were being sent from the EU as a whole: in sum, the less EU institutions were directly involved in the negotiations, the more they were critical about the EPAs (Grimm / Brütrup 2007). While the EC was actively reiterating that EPAs were putting the priority on development (EC 2005a), civil society organisations stepped up the “Stop the EPA” campaign<sup>78</sup> and were more and more successful in reaching out and supporting their peers in ACP countries, particularly in Africa<sup>79</sup>. As for the European Parliament, it voiced increasing concern over the approach adopted in the negotiations, calling on the EC to be more flexible and to ensure that the development objectives of the EPAs be realised (European Parliament 2007). As for Member States, their approach throughout the negotiations can be seen as somewhat confusing and rather timid. While many, particularly in the ACP, expected France and the UK to take a strong stand in the EPA process, the two kept a relatively low profile. When they did speak out, the message was ambivalent (Sempéré 2008). In March 2005, for instance, the UK spoke along lines similar to the Parliament (DFID 2005), but EC

<sup>78</sup> See [www.stopepa.org](http://www.stopepa.org)

<sup>79</sup> Remarkable in this respect is the mobilisation of farmers' associations in West Africa and East and Southern Africa, where these organisations made useful contributions to the negotiating processes at both the national and regional level, through well functioning networks (for an overview of the civil society's participation in the negotiations, see Makhan 2007a)

and EU Member States officials have suggested that such a position “was intended more for domestic use to appease NGOs [coalesced in the ‘Stop EPA campaign’] during the elections” (Bilal 2005a). On the other hand, a reflection group was set up and led by the Netherlands, Denmark and Sweden echoing ACP concerns and with a view toward influencing the course of the negotiations (Sempéré 2008). Under the German Presidency – i.e. in the run-up to the December 2007 deadline –, an informal dialogue was held and led to a “Consensus on the EPAs” between the EU Development Cooperation Ministers and ACP representatives, in the presence of the EC Commissioners for Trade and for Development, Peter Mandelson and Louis Michel. The Consensus stressed the commitment to development-oriented EPAs as instruments to fight poverty and foster a fair share in the global economy for the ACP and to conclude the negotiations by the end of 2007. Concretely, EU and ACP representatives agreed to set up monitoring instruments to assess the development impact and ensure implementation of the development component of the EPA; in addition, the EU agreed – at least nominally – to provide improved market access, with long transition periods and asymmetrical tariff dismantlement and coverage to the benefit of the ACP (ACP / German EU Presidency 2007). Considering the eventual outcome, this however seems to have been more of a political signal aimed at easing tensions than one that would truly change the course of the negotiations to more concretely address the development challenge.

In the aftermath of what was described by the ACP Secretary-General as a process “*fraught with panic, confusion and disagreements*” (Kaputin 2008a, 12), the European Council acknowledged the need to address the concerns of the ACP and called on the EC to favour a flexible approach when moving from interim agreements towards regional EPAs, including when addressing outstanding problematic issues. In addition, the ACP were given the assurance that “*countries and regions who so wish could draw, if appropriate, on provisions agreed by others in their EPA negotiation*” (Council of the European Union 2008a, 2). More recently, the Trade Commissioner Catherine Ashton<sup>80</sup> declared that her approach to the EPAs would be one where she would “*listen to and learn from our ACP partners how best to take forward final agreements*” (Ashton 2008). Efforts will particularly need to aim at engaging both the communitarian and bilateral development policies within the EU multilevel system more successfully towards the promotion of regional integration in the ACP.

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80 In October 2008, members of the European Parliament appointed Catherine Ashton as EU Commissioner for Trade, in replacement of Peter Mandelson who had resigned following his appointment to the British government.

## 5.2 Regional integration in the balance

After the first round of the EPA negotiations, much work will have to be carried out to make up for and patch-up regional integration in Africa if the EU commitment to regional integration is to be delivered upon. Besides measurable flexibility in the content of the agreements, the availability of adequate development assistance – notably under the Aid for trade initiative – is one of the incentives the EU can provide to get LDCs and potentially oil-exporting non-LDCs back into the EPA picture, which will be essential for regional integration objectives. A second step would be to significantly improve the remaining market access through a more liberal set of EPA rules of origin that would make the EPA package more attractive to the current beneficiaries of EU unilateral preferences and allow for regional integration<sup>81</sup>. Getting the required ‘policy mix’ right will remain a challenge. The recent EC Communication on regional integration for development in ACP countries can facilitate this process. By suggesting a ‘global EU approach’ to regional integration, the EU has the capacity to coordinate the ‘27+1’ actions. Its ability to do so and to cast a coherent image will be under the spotlight and closely observed.

The challenge for African countries and regions with respect to integration processes is daunting. Most African countries will have to deploy tremendous efforts to rationalise and harmonise their regional integration processes. Besides this more technical agenda ahead, they will also need to find a political common ground and vision where the stark contrast in their interests towards the different options that EU trade policy has to offer is reduced. In this context, recent initiatives such as the harmonisation of regional integration agenda efforts in West Africa, those emanating from the Tripartite EAC-COMESA-SADC Summit or the potential utilisation of

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81 Because they can also entail vested EU domestic interests, it will be particularly important to analyse future developments on the issue of rules of origin with respect to the EU’s capability to formulate responses in line with the principles of coordination and policy coherence for development, as well as the ability of the multilevel system to do so in close cooperation with the ACP. Indeed, the texts of the interim EPAs initialled so far provide for the revision of RoO within three years, and the Council recently encouraged the Commission “to continue to negotiate rules of origin in the EPAs which reflect the development needs of the ACP States and regions, promotes regional integration in and between ACP regions and ensure the overall consistency of the different preferential systems” (Council of the European Union 2008b, 3).

an African template for the EPA could be seen as positive. However, some measure of scepticism can hardly be avoided here, given the numerous obstacles to policy implementation originating from both within and outside Africa. It therefore remains to be seen whether such initiatives, as welcome as they are, will deliver on results and be sufficient to make African countries and regions ‘pro-active integrators’ (World Bank 2008, 19). Until then, because many African’s trade (and political) interests lie more beyond the continent’s borders – in Europe, the US but also increasingly in China – than in their neighbourhood, it is most likely that the EU will *de facto* continue driving the agenda.

The recent EC Communication on regional integration for development in ACP countries (see Box 13) can be seen as a welcome step for a more consistent response to the current challenges posed by the EPA on regional integration. In a context where the scope of the EPAs differs from one region to the other, and sometimes even between countries in a given region, the Council has indeed acknowledged (or reiterated) the value of a flexible and pragmatic approach. EU Member States have thus assured that “ACP requests for adjustments [would] be taken into account where appropriate, to the benefit of regional integration” (Council of the European Union 2008a, 2).

While it is beyond the scope of this study to thoroughly analyse the content and possible implications of the Communication, some preliminary conclusions on the policy proposal are worth drawing here. For instance, throughout the document the emphasis is put on the need to better articulate the national and regional levels of support: a most relevant but also ambitious stance considering the many hurdles and bottlenecks to effective national-regional linkages, in particular in the African context. The commitment is nevertheless a positive one and comes as recognition of the essential role of the national level in the implementation of regional commitments, an aspect “*that may not have been sufficiently taken into account in past interventions.*” (EC 2008b, 47)

In terms of the objective of economic development, the EC’s proposal focuses on the creation of larger and more harmonised markets, where the free movement of goods, services, capital and people enables economies of scale and stimulates investment, thereby spurring economic growth and south-south trade. While it endorsed the Communication, the Council reminded that “*in the light of past experience, policies of this kind yield the best results when*

**Box 13: Main characteristics of the EU's vision and role in supporting regional integration in the ACP**

Three benefits:

- *Political stability*: to help solve conflicts and prevent new ones; improve governance structures of regional integration and set the basis for economic development;
- *Prosperity*: through the creation of larger and more effective markets that will encourage trade and investment, economies of scale and support smoother integration into the world market;
- *Tackling common challenges*: like AIDS, the protection of natural resources and migration;

Five priorities for EU's support:

- Strengthen regional institutions: to address the lack of ownership and institutional capacities at regional and national level;
- Build regional markets: to overcome the continued fragmentation of regional markets;
- Support business development: to address insufficient economic diversification;
- Connect regional infrastructure networks: to address inefficient infrastructure interconnections;
- Develop more effective regional policies for sustainable development.

Three instruments:

- Political dialogue: building on the joint EU-Africa Strategy and other regional strategies towards a "fully joined-up" EU approach to regional development;
- Development cooperation: through an increased support to regional integration, matched by Member States' support, notably on "regional aid for trade packages" and joint programming
- Trade policy: through the negotiation of full EPAs that build upon and foster existing regional integration processes.

Source: EC (2008b)

*combined, supported and generally backed up with the simultaneous implementation of sectoral policies agreed at national and regional level"* (Council of the European Union 2008b, 2). As discussed previously, the implementation – if not the formulation – of such policies still needs to be stimulated in Africa and the Council's emphasis on the importance of greater ownership of integration by the ACP can also be read as a positive signal. In this respect, it further calls on the Commission and the Member States to intensify dia-

logue with the ACP countries, while strengthening national public institutions and ensuring better involvement of the private sector and civil society in the process.

In addition, by suggesting a “global EU approach” to regional integration, it is the capacity of the EU to coordinate the “27+1” actions and to cast a coherent image that will be put in the spotlight and closely observed. It is indeed foreseen that the *“EU concept of support for regional integration will help support regional priorities, avoid inconsistencies in the institutions/projects funded, allow a critical mass to be reached and efficiency and effectiveness to be increased.”* (EC 2008b, 47) Arguably, this proves a most ambitious agenda considering the impact of the EPA process so far on regional integration, particularly in Africa. These objectives will indeed need to be achieved by ensuring coherence of action on the European level and with the regions concerned. The challenge is thus to get the multilevel EU system to work for development at the regional level in partner countries. As also illustrated throughout the EPA negotiations so far, the EU’s approach will be determinant for a successful conclusion of the process. Remarkably, the communication also seems to have factored in the importance of tackling the development challenge at the regional level, in a flexible and coordinated manner. It is indeed argued that, because *“it depends on each regions’ own priority, a mix between the three approaches of elimination of barriers to trade – according to a deep integration agenda – policy coordination to foster sustainable development and political cooperation to ensure the effectiveness of regional integration will be applied”* (EC 2008b, 24).

This most ambitious agenda for a ‘policy mix’ calls upon various qualities and competencies within the EU and between different actors, and will therefore be highly relevant for the efforts towards a more effective division of labour within the EU for development. For instance, with regard to the delivery of development assistance, EU Member States can in many respects be considered to have had the “upper hand” at the country level, while in the recent past, and more particularly since the launch of the EPA negotiations, the European Commission has gained experience at the regional level. It is interesting to note that the Council suggests that coordination efforts within the EU, with other donors and with the ACP could take place within the Regional Preparation Task Forces (RPTF). However, as observed previously, these task forces have not proved efficient in linking trade and development

in the context of the EPA negotiations, nor have they adequately involved Member States (Lui 2008). As more details will become available, particularly during the course of 2009 when Member States present their overall framework for their responses on Aid for trade, a critical assessment of the performance of the RPTFs will be necessary to address the identified bottlenecks. But in the process of doing so, it is important not to overlook the risk it entails of reinforcing yet another parallel structure to that of the state, and diverting capacity from governmental ones and regional endeavours.

Interestingly, the EC also acknowledges that a different rationale drives regional integration processes in Africa, stating that the “methods used in ACP regions more often rely on consensual cooperation and coordination than on supranationalism and sovereignty-sharing” (EC 2008b, 3). While this seems to mirror the realities of African integration highlighted in Section 3.2.3, the Commission however then takes a clear position, and clarifies in the Staff Working Document accompanying the Communication that *“the effectiveness of a number of policies is predicated on the acceptance that sovereignty is to be shared [...] An important realisation in this respect is that in a globalised world, pooling sovereignty is increasingly the only way to actually exercise this sovereignty”* (EC 2008b, 46). Having committed itself to support a “rationalisation exercise that strengthens the building blocks of an eventual single economic African entity” (EC 2008b, 10), the question in the current context is whether the proposed EU approach can do so while encouraging enforcement of integration endeavours and ownership at the same time.

Clearly, it is too early to tell what effects of the eventual implementation of this policy response will have and whether it will indeed strengthen the trade-development nexus within the EPAs for the ACP, in particular for Africa, as well as the capacity of the EU system to deliver this policy *for development*. It is crucial, however, that this overall positive step to address regional integration be concretely acted upon and pursued, in combination with aid for trade and a generally more flexible approach in the negotiations and implementation of the EPAs, notably on market access issues. This ‘package’ of commitments will indeed be determining for the development relevance of the EPAs for the ACP and needs to be successfully delivered towards this objective. Careful coordination will be critical in this view, within the multilevel governance structure of the EU *and* with the ACP.



## 6 Conclusions

The approach of this study in assessing EPAs as a tool strengthening the EU's trade policy for ACP development was two-fold. First, it examined the development relevance of the EU's trade policy towards the ACP countries as formulated in the EPAs, assessing the concept in light of the former regime in place and key insights from theoretical debates and country experiences beyond the ACP. Second, it sought to assess whether the concept of the EPAs has enabled the EU as a multi-level system to successfully address the trade-development nexus within the framework of its relations with the ACP. After summing up the main findings for each of the two streams of research captured in this study, this concluding chapter will provide an outlook on the EU's ability to better link trade and development and make some final remarks in this respect.

This study argues that, as a policy concept, the EPAs hold a strong potential to strengthen the EU's policy for global development, in the specific context of its trade relations with the ACP. At the same time, however, it finds that the development potential of the EPAs has not been fully capitalised on in the process of the EPA negotiations, due to (i) inconsistencies stemming from the multi-level governance structure of the EU system, notably in the formulation of the EPAs and the design and delivery of related development assistance, and (ii) complex realities in ACP countries and regions, not least the limited capacities for trade policy for many of them, which have not been sufficiently and systematically addressed so far by policy makers, including the EU.

*With regard to the relevance the EU's trade policy for the ACP's development, the concept of the EPAs appears to tackle the main bottlenecks of the previous regime (notably, market access and rules of origin) and takes on board the main points of convergence in theoretical debates. However, these considerations do not send an unequivocal message on the overall developmental outcome of the EPA.*

Indeed, the developmental outcome of the EPAs is not guaranteed. What can be distilled from our discussion on the concept of the EPA (Chapter 3), however, are three determining factors upon which the success of EPAs is contingent. First, whether the EPAs can be conducive to development fundamentally depends on how well the agreements are crafted, with regard to the entirety of the EPA development package's key elements identified in

this study, i.e. reciprocity, comprehensiveness, flexibility, capacity to trade and negotiate and regional integration. Second, EPAs are designed in the course of negotiations, i.e. they are not just based on unilateral EU policy. Hence, due consideration must be given to the trade and development strategies of ACP countries. Finally, a third determinant lies in the ability of the EU to provide adequate support for the EPA concept, notably through the delivery of development assistance and aid for trade, within the wider development strategies of the ACP.

Capitalising on the development potential contained in the EPAs thus requires that the right balance be struck between the key elements identified in this study as comprising the EPA development package, i.e. comprehensiveness, flexibility and the capacity to trade and negotiate, in order to make trade liberalisation and regional integration supportive of development for the ACP. Most importantly perhaps, when looking into the process of the negotiations, flexibility, in particular on the EU's side (as the stronger partner), appears to be at the core of a development-friendly outcome of the EPA framework. This flexibility was required in the formulation of the terms of each agreement (i.e. their content, scope and pace). Providing flexible responses to market access and rules of origin could for instance improve the value and 'attractiveness' of the development package of the EPAs, in the short- to medium-term. It would also provide a stronger basis and incentive for countries still concerned by such negotiations (i.e. African and Pacific countries and regions) to pursue negotiations towards a comprehensive agreement with the EU, on a regional basis.

The EPA process has arguably highlighted that consistent trade and development strategies in and for Africa are still crucially missing. As the negotiations gained momentum, more awareness was created in ACP countries and regions on the EPAs – not least in the run up to the December 2007 deadline, notably through what was perceived as 'bullying tactics' of the EC. These tactics were understandable from a trade negotiation perspective (build up pressure to make the other side move), but less clearly so from the development perspective (were ACP states convinced that policy change would increase their development prospects (ownership)? If not, why?). Given the diversity of the ACP group, the answer necessarily would have to be differentiated country by country. Overall, however, capacity on the ACP side arguably is scarce. This lack of capacity is more than lack of funds; it might be helpful here to invoke the Accra Agenda for Action

of September 2008 where developing countries' capacity is understood as strong institutions, systems and local expertise (i.e. the adequate setup and knowledge to formulate policies, understand their implications and to consistently implement them). However how to create this capacity? For some, the EPA debates as such were actually instrumental in setting in motion or revitalising a much-needed trade policy process in view of the negotiations. This, however, is no statement about African countries and regions becoming sustainable 'pro-active integrators' and convinced free-traders. Nor does it mean that positions and demands formulated by the ACP are necessarily more conducive to development and should thus automatically receive an adequate support and response from the EU.

Nevertheless, flexibility was necessary in the actual negotiation process, so as to more effectively reflect the ACP perspective on the development dimension of the EPAs and be more responsive to it. Chances of achieving a comprehensive agreement will be increased if there is a stronger focus on the capacity of ACP countries and regions to fully engage in the relevant negotiation areas. Hence, adopting as flexible an approach as possible should thus be the core priority for the EU – as the stronger partner –, as it will allow them to build (on) ACP capacities on trade policy in a timely and carefully sequenced manner in the process towards a comprehensive liberalisation of markets between regional groupings of ACP countries and the EU. Such flexibility would thus be necessary with regard to the possibility to sequence EPA commitments with those taken at the regional level, or to the availability of sufficient and effective financial support for the EPAs. In turn, this approach could ensure greater ownership on part of the ACP. Hence, much arguably depends on the EU's ability to substantiate its trade policy by accompanying measures and deliver assistance for the negotiation and implementation of the EPA, in order to create additional incentives and provide support for change. One such approach is aid for trade. Because it links aid policy and trade policy – respectively, a shared and exclusive competence within the EU system –, the spotlight is thus on the internal coordination of the EU's multilevel governance structure.

*This leads us to the second part of our analysis, which focused on the capabilities of the EU, as a multilevel system, to address the trade-development nexus for global development.*

The EU's multilevel governance system creates a great challenge for linking trade and development. With respect to the EU's trade policy objec-

tives (i.e. cushioning the expiry of the WTO waiver and reaching transition agreements by end-2007), the EU's internal coordination was rather successful in the course of the negotiation process up to December 2007. But coordination within the system was rather unsuccessful with respect to the achievement of development objectives (i.e. reaching comprehensive and regional agreements that provide a regulatory framework conducive for development).

From the conceptual design of the EPAs to the content of the current agreements, the EU has been the main driver of the EPA process. However at least with respect to the formulation of the concept of the EPAs, this outcome was not exclusively due to the EU pushing its own agenda and being inflexible to ACP demands. That the Community (i.e. the Commission and Member States) played a dominant role in shaping the EPAs and their elements, had also to do with the fact that there was little capacity on the ACP side to formulate well-informed strategies and policies. Within the trade agenda, the EU was thus relatively coherent and acted as one body. At the same time, however, there had been, over the years, too little and inconsistent support from the donor community – including the EU system – for trade policies and trading environment in ACP countries. Trade and development were thus not sufficiently coordinated. This shortcoming played a non-negligible role in the capacity and political will of the ACP side and was not adequately addressed until almost the start of the EPA negotiations, i.e. at a time when the information was already needed.

Overall, the complex and multilevel structure of the EU has prevented it from providing timely responses on crucial details for the development relevance of the EPAs and was found to have hampered the coordination of non-trade elements, i.e. aid components, with the ongoing trade negotiations. Until more substantial answers could be provided on the issues of market access and aid for trade for instance, the development benefits to be derived from the EPAs remained largely hypothetical for the ACP. In other words, as the Commission insisted on meeting the December 2007 for WTO-compatibility of the EU's trade regime with the ACP, an objective that was understandable from a trade negotiation rationale and which was eventually met, there was little development incentive for the latter group of countries to fully engage in the liberalisation talks with the EU.

Throughout the negotiations, the EU has shown an increasing willingness to concretise a flexible approach, i.e. there arguably was some institutional

learning involved. The change of attitude is necessary if the EU is to live up to its promises and its aspiration to be a 'global partner for development'. But it also means that the EU system will have to address its own capacity to more effectively and flexibly respond to problematic issues of development concern in the negotiations. This will need to be reflected in the 'technical' details and provisions of the EPAs. Again, for the EPA to be more than plain trade negotiations would require that the EU give greater consideration to or better accommodate, in concrete terms, the concerns and requests which have increasingly been formulated by the ACP. The EU's stance on the terms of access to ACP markets (the inclusion of an MFN clause and the strict interpretation of WTO rules) hints that this is rather not, or not yet, the case. Besides the content of the agreement, the EU could improve the quality of the market access it has granted, through a more liberal and flexible set of rules of origin, and provide stronger additional incentives with the Aid for Trade instrument.

*Where does this assessment lead us to with regard to linking trade and development, and, more specifically, the EU's ability to better link the two policies?*

In broadly sketched terms, and provided that concluding comprehensive and regional EPAs remains the ultimate objective of both the EU and the ACP (as the current political commitment to pursue the negotiations suggests), two possible routes are imaginable for the negotiations in the short- to medium-term, a rather cautious one and a more optimistic one.

The rather cautious scenario illustrates the risk of being stuck in the status quo. Given the rocky road that has characterised the negotiations process so far, this risk is a real one. In this scenario, no comprehensive and regional EPAs in Africa or the Pacific would be concluded beyond the interim agreements covering mainly goods, and/or unilateral scheme of EU preferences would prevail in the short- to medium-term. However even if this were the case, not all would be lost for making use of trade policy for development, as envisaged under an EPA. Efforts should then be geared first towards fostering regional integration, particularly between African countries, considering that regional integration has suffered the most in the current outcome of the negotiations. This could be done if the EU provides strong incentives in this view, notably through a reform of the rules of origin applicable and effective Aid for Trade targeted explicitly at the facilitation and establishment of regional trade linkages. Those regions actively seeking

to harmonise their regional integration endeavours should at the same time received adequate support from the EU, in the form of technical assistance and capacity building. Such support should also be targeted at the objective of overcoming the fundamental ‘implementation gap’ between the regional and national levels, and not least to ensuring the actual formulation of well-informed trade policies within the wider development strategies at both the national and regional policy levels. Eventually, and on these stronger bases, the EU and the ACP could pursue a new road map towards the conclusion of comprehensive and regional EPAs.

In a more optimistic scenario – provided the EU is sufficiently flexible in the ongoing negotiations on the same issues mentioned above, i.e. market access/rules of origin, Aid for Trade and regional integration – the negotiations are concluded in the short- to medium-term, and EPAs can deliver their development potential for the ACP. By offering a long-term perspective and a more stable framework for trade with the EU than the unilateral scheme of Lomé preferences, the EPAs can indeed serve as an opportunity inasmuch as they would offer the possibility to fundamentally reform entrenched – and developmentally rather unsuccessful – policies and habits, for the ACP but also for the EU system.

With regard to the ACP, the EPAs could provide the signal that can trigger the much-needed institutional change and provide a road map for the institution-building process required to tap into the potential benefits of trade liberalisation. Indeed, the forthcoming opening up of markets could generate the necessary impetus for ACP countries and regions to build up administrative capacity and cope with the loss of revenue from tariffs and duties. However, there is a clear risk that administrations in partner countries are incapable of dealing with the additional requirements stemming from the implementation of EPAs. Even in the best of cases, the EU thus needs to provide targeted and efficient support to establish these capacities, e.g. to improve data collection, the design of a tax structure to circumvent losses from import duties revenues, or more fundamentally address the issue of the still widely informal character of many African economies. More broadly, better integrating trade and development through the EPAs and with the support of Aid for Trade also calls for adequately monitoring and accompanying the negotiation and gradual implementation of the EPAs. It would for instance be necessary to ensure that, besides the availability of existing capacity, flanking measures, necessary reforms or safeguards and

safety nets are in place or can be adopted to maximise the positive effects of the liberalisation process and offset the negative ones, hand-in-hand with support from the EU. By the same token, the necessary ‘trial and error’ aspect of the process could also be factored in.

The EPAs thus also provide a learning opportunity for the EU institutionally inasmuch as they increase the urgency for more systematically and effectively addressing trade-related capacity needs in the ACP within development policy. Both ‘scenarios’ above point to the importance and supporting role that needs to be played by the broader set of EU development cooperation policies parallel to but also in a close relationship with the EPA process. Indeed, a developmental outcome and the effective use of the trade opportunities at hand in any of the EU’s trade policies towards developing countries crucially depend on the capacity in the countries and regions concerned. This emphasises again the need for the EU system to formulate timely responses and to provide consistent, well targeted and sufficient development support that measures up to the challenges posed by the negotiations and implementation of the EPAs<sup>82</sup>. In other words, the challenge for the multi-level system is thus to successfully strengthen the trade-development nexus from the ‘development angle’. Again, the spotlight is on the capacity of the multilevel system to formulate a consistent response to better integrate trade into its development policies.

Clearly, there have been some crucial changes in the way the system operated in the course of the negotiations. Increasingly, and not least in the context of the Aid for Trade initiative, internal coordination and consultations between member states and the European Commission were required – with the European Parliament also, albeit in a less decisive manner. However, analysis of past policy behaviour make caution advisable before a more centralised management of trade and development within the EU system is suggested. This might not necessarily be better for development, since in the past, well-concerted positions or difficultly reached compromises between the EC and Member States often left little room for ACP concerns to be taken on board (in the Green paper process for instance). In addition, greater centralisation appears to be a politically unviable alternative, given

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82 Once the negotiations are concluded, however, the question remains as to whether and to what extent both the EU and ACP countries will actually implement the agreement. For a discussion, see Meyn (2008).

the difficulties with EU treaty changes in general. However too little coordination has also proven counter-productive for the development objectives aspired to through trade policy, not least for building adequate capacities on trade policies in developing countries. This is notably apparent when considering how little trade has been integrated into development policies and donor priorities, before the Aid for Trade instrument and the second generation of PRSPs recently and significantly addressed this shortcoming. At the same time, the focus on the past leaves the EU in a quagmire: better results require partners' ownership, but it is not clear how they are to come to ownership if it is not already established beforehand.

In this context, incentives are a key point to investigate. The Aid for Trade initiative appears to provide a most relevant setting to further investigate on how to strengthen the EU multilevel system to improve the trade-development nexus. The Aid for Trade agenda indeed calls for an inclusion of the perspectives of member states and the Community, as well as those of developing countries. In the context of the EPAs in particular, the initiative brings together the national and regional levels of implementation. More research should thus be geared towards analysing the coordination of the different actors' interests and approaches for development in the framework of the Aid for Trade initiative. If successful, this would instruct the EU on how best to organise the multilevel system of governance on trade and development. One such solution, beyond greater centralisation in development policy, might be a sharper division of labour.

The urgency for meeting the development objectives set internationally has increased, especially at a time when the attainment of the Millennium Development Goals is not faring very well. More fundamentally, proving the effectiveness of the set of policies carried out for development has become more pressing in a context characterised by global recession which comes with increasing strain on national budgets. This pressure exists for both developed and many developing countries. Clearly, if EPAs are the preferred trade tool for development, the general context in which the negotiations are continuing is no easy one. Poor countries are hit the hardest and are suffering the effects of a global crisis regarding which they have no policy leverage. At the same time, the global economic and financial crisis has sent many donor countries into recession, creating additional risks for financing for development from their side. This holds true for development financing in general, and for the Aid for Trade initiative, more specifically. The



crisis has already put under strain resources available for development – a number of European donors have cut their aid budgets – and it could further delay the Aid for Trade pledge being met, as some early indications seem to suggest. In its recent Aid for Trade monitoring report (2009), the European Commission could not draw from member states' responses a clear forecast concerning future spending on Aid for Trade. Predictability – or the lack thereof – was identified as a major shortcoming.

This is somewhat worrying inasmuch as only the provision of predictable and long-term support can operate as a clear positive incentive and thereby provide a long-term perspective necessary for the willingness to implement (and risk) changes in trade policies. The change might, however, also have to occur at the side of donors. Could this translate into the broader paradigm shift in development policy called for in the 2008 LDC Report of the UNCTAD, i.e. a change in approach to put production, productive capacities and productive employment at the heart of policies to promote development and poverty reduction? And how would this fit with other emerging priorities relevant for sustainable development, i.e. climate change and the strive to achieve low-carbon economies? In any case, the efficient use of available resources to ensure the effectiveness of trade policy for development will crucially depend on a stronger and concrete focus on building the necessary capacities in recipient countries regarding produce, trade and export. A common understanding of how to provide this support and with what focus, will thus be crucial on the EU side, not least if a better division of labour is aspired to. More empirical work on Aid for Trade endeavours of the Commission and member states at partner country level is thus required for an assessment of the capabilities of the EU system in better linking trade and development.

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