

IN THIS ISSUE!

African Countries – Pawns in the Trade War Between the US and EU Pages 1-3
Margaret C. Lee

Between a Rock and a Hard Place: Africa Faces No-Win Situation in Trade Deal with Europe Pages 3-8
Nancy Kachingwe

Economic Partnership Agreements: The EU's New Trade Battleground Pages 8- 13
Traidcraft

Editorial: From Cancun to Cotonou - The Struggle Continues Pages 13-15
Jane Nalunga

African Countries – Pawns in the Trade War Between the US and EU

*Margaret C. Lee

The long-standing trade war between the United States (US) and the European Union (EU) has intensified recently with the two economic hegemonies competing for access to the markets of developing countries. The hegemony with a decidedly advantage in the fight for market access in Africa is the EU, whose strong trade relations with African countries in the post-independence era dates back to Yaoundé I and II (1963-1974), followed by Lomé I to IV (1975-2000) and now the Cotonou Agreement. Thirty-seven years after the EU began to establish significant trade relations with independent African

countries, the US government agreed to implement its first official trade agreement with these countries, the African Growth and Opportunity Act (AGOA). AGOA was signed into law by former president William Jefferson Clinton on May 18, 2000.

The major objective of AGOA is to increase trade between the US and sub-Saharan Africa. This is to initially transpire through non-reciprocal trade agreements. Eventually, however, such agreements are to be transformed into reciprocal trade agreements in the form of Free Trade Agreements (FTAs), thus giving Americans greater access to African markets. Negotiations for the first US FTA with an African regional

economic organisation commenced in June 2003 with the member states of the Southern African Customs Union (SACU). SACU members are Botswana, Lesotho, Namibia, South Africa, and Swaziland.

The US is not alone in its pursuit of FTAs with African countries. The EU is also in the process of establishing such agreements in the form of economic partnership agreements (EPAs) under the Cotonou Agreement, signed in Cotonou, Benin in June 2000. It has been suggested that the idea of the EU creating FTAs with its African, Caribbean, and Pacific (ACP) partner countries was in response to AGOA and prospective US FTAs with African countries. In turn, the idea of AGOA is said to be a response by the US government to the EU-South Africa FTA that went into force in January 2000. It therefore appears that the EU and US are involved in a trade war over access to markets in Africa.

AGOA has been deemed to be an overwhelming success by the US government. For example, in 2001 the US government reported an increase of 46.6 percent in US imports from AGOA eligible countries. However, the reality is that of the \$7.9 billion worth of goods imported, the majority were energy products, including \$3.7 billion in liquid natural gas, \$2.8 billion in crude oil, and \$271.5 million in refined petroleum products. Less than 10 percent of increased imports were accounted for by other products.ⁱ

In its March 2003 "U.S.-African Trade Profile," the US Department of Commerce reported that although in 2002 US imports from Sub-Saharan Africa fell by 15.7% to \$17.9 billion, AGOA imports actually increased by 10% to \$9 billion. Five countries accounted for 93 per cent of AGOA utilisation in 2002 – Nigeria (\$5.4 billion), South Africa (\$1.3 billion), Gabon (\$1.1 billion), Lesotho (\$318 million) and Kenya (\$129.2 million). Of the total, \$6.8 billion was accounted for by petroleum products, \$803.3 million by textiles and apparel (which was more than

double the 2001 level), \$544.7 million by transportation equipment (primarily South African passenger cars which represented a 81 percent increase), and \$212.4 million by agricultural products (which represented a 38 percent increase).ⁱⁱ

Presenting an increase in AGOA imports by 10 per cent as a "silver lining" in an overall decline of U.S. imports by 15.7 per cent, represents what the author of a recent report on AGOA refers to as the "spin" ⁱⁱⁱ the U.S. government places on AGOA data. The limited AGOA non-petroleum benefits to date can be explained by the reality that, according to the UNCTAD report, the benefits arising from the AGOA preferences are only a modest expansion over the preferential treatment enjoyed by sub-Saharan African countries under the General System of Preferences (GSP). Consequently, with the exception of textile and apparel products, the net effect of AGOA will likely be small, with no significant increase in Africa's access to the US market.^{iv}

It is against this reality that the SACU countries are confronted with the implications of moving from a non-reciprocal trade agreement to a reciprocal trade agreement with the US. A US-SACU FTA will force the SACU countries to further liberalise their trade regime with the US. In his letter to Senator Robert C. Byrd, President Pro Tempore of the U.S. Senate notifying Congress that President Bush plans to commence negotiations for a US-SACU FTA, Robert Zoellick, US Trade Representative, made it very clear that the establishment of such an agreement was not for altruistic purposes. According to Zoellick, "the Administration is committed to bringing back trade agreements that open markets to benefit our farmers, workers, businesses, and families."^v In addition, he notes that "...We will seek to level the playing field in areas where U.S. exporters are disadvantaged by the European Union's free trade agreement with South Africa."

Although both the EU and the US argue that their main objective in creating FTAs

with developing countries is to enhance development, regional integration and the incorporation of these countries into the world economy, the trade policies to date of these two economic hegemonies contradict these objectives. Even before the Doha round of trade talks collapsed in Cancun in September 2003, speculation was rife that both the US and EU were attempting to undermine the multilateral trade regime through a plethora of FTAs. Zoellick, for example, argued that “Washington was negotiating bilateral free trade agreements with various countries to ensure trade liberalization would continue if a row over European agricultural subsidies derailed World Trade Organisation (WTO) talks.”^{vi}

During the Cold War, the US and former USSR fought over spheres of influence in the developing world. In the post-Cold War era, many of these countries remain politically and economically unstable as a result of the wars that were sparked by the East-West conflict. At the dawn of the 21st century, Africa is being used as a pawn in the trade war between the two world economic hegemonies. As they attempt to capture various African countries into their respective economic regions, the outcome of this trade war for African countries could be more catastrophic than that of the Cold War.

Endnotes

- i. UNCTAD, *The African Growth and Opportunity Act: A Preliminary Assessment*. A Report prepared for the United Nations Conference on Trade and Development. New York and Geneva: United Nations, April 2003, p. 9.
- ii. United States Department of Commerce, “U.S.-African Trade Profile,” March 2003, pp. 10-11 and 14.
- iii. UNCTAD, p. 1.
- iv. *Ibid.*, pp. 1 and 7.
- v. Letter from Robert B. Zoellick to the Honorable Robert C. Byrd, n.d., p. 1.
- vi. John Mair, “US seeks allies in push for free trade pacts,” *Business Day*, June 3, 2003.

**Margaret C. Lee is Visiting Associate Professor in the Edmund A. Walsh School*

of Foreign Service, Georgetown University, Washington, DC.

Between a Rock and a Hard Place: Africa Faces No-Win Situation in Trade Deal with Europe

*Nancy Kachingwe

Introduction

Since the end of the Cold War, industrialised countries have been busying themselves with the re-organisation of international trade regimes. Included in this globalisation mission is the setting of trade deals between themselves and developing countries. Supposedly all this is about lifting the poorest of the poor out of their misery. Increased trade liberalisation, it is said, will provide opportunities for developing countries to boost export earnings. The Doha “Development Round” within the WTO is supposed to work towards this goal through deepened liberalisation, covering areas of economic activity that have so far been left out of trade talks – for example government procurement and the privatisation of public services. Offers of increased market access to the lucrative markets in industrialised countries have been packaged in the form of the US Africa Growth and Opportunity Act (AGOA) and the European Union’s Cotonou Agreement and NAFTA. Unfortunately, all this generosity has a price attached to it, in the form of policy conditionalities on signatory countries to liberalise, privatise and deregulate in the name of attracting investment and facilitating increased business activity.

Why the need for a new trade deal?

In September last year, trade ministers from the Africa, Caribbean and Pacific Group met their counterparts from the European Union to start negotiations for a new trade deal. If the European Union has its way, the negotiations will centre around establishment of free trade areas or “Economic Partnership Agreements”, which would constitute the new framework for trade relations between countries and sub-regions of the ACP. Previously, exports from the ACP countries entered the European Union market through the Lome Conventions – a series of agreement dating back to 1975. In 1994, following a trade dispute between the US and the EU over

banana exports from the Caribbean, the WTO ruled that the Lome Convention gave ACP countries an unfair trade advantage over other WTO members and therefore violated WTO rules. There are various legal and developmental arguments around that particular WTO ruling, particularly given that the WTO rules make provision for special and differential treatment for developing countries. In the event, ACP countries were faced with two options. Under the first option, ACP countries could choose to abandon the Lome Convention arrangements and export under the EU's General System of Preferences (GSP).

This option would mean less generous treatment for ACP exports, and therefore a potential loss of export earnings for these countries as their products would become less competitive. Given that the EU is one of the top destinations for ACP exports, losing market share would have fairly serious economic consequences on key export sectors. However, access to EU markets through the General System of Preferences is on a non-reciprocal basis, and therefore the GSP would continue to allow local ACP markets some protection from subsidised EU exports.

The other option involved setting up a free trade area (FTA) with the European Union, euphemistically dubbed "Economic Partnership Agreements" (EPAs). Under this option, ACP exports would enjoy the same preferences as before, BUT, unlike the Lome Conventions or the GSP, ACP countries would have to reciprocate, meaning that they would have to allow virtually unrestricted access to their markets for almost all EU products within a ten year transition period. The danger in the EPA proposal lies principally in the fact that local producers, manufacturers, and service providers, already battered and weakened from Structural Adjustment, would have to face competition from a flood of European imports and companies.

The EPA/FTA model is one that the EU is pursuing under various names as part of its global trade strategy to create more trade and export opportunities for European companies worldwide. The European Commission, which negotiates on behalf of all the EU member states has been mandated

to negotiate free trade areas with the ACP States. The EU argues that EPAs are the only possible option, if the ACP wish to both maintain the existing market access arrangements and comply with the WTO rules. It is also argued by the EU that the EPAs are the best option for "integrating ACP countries into the global economy". In plain language this means trade liberalisation.

Free Trade Areas a disaster for developing countries

From the outset of the negotiations, the ACP countries have found themselves between a rock and a hard place. Basic economics tells us that free trade areas between a highly industrialised, rich regions and economically underdeveloped poor countries will tend to disproportionately favour the economically strong, unless very specific measures are taken to ensure balanced benefits. Certainly this has been validated by assessments of the losses and gains following the entry into force of various WTO agreements. In addition to tariff reduction, the EU is demanding that the ACP agree to policy changes that are similar to its highly controversial proposals within the WTO. An example in the negotiating mandate is the EU proposals in relation to services liberalisation. The EU's strategy is to ensure that what it might not get in the WTO negotiations, it can try to secure through bilateral deals with countries and regions, such as EPAs. Furthermore, if the ACP agree to certain proposals in the EPA negotiations, the EU's hand in the WTO negotiations would be considerably strengthened.

As is the case in the WTO where the new round of negotiations has been called the "development round", there is an attempt to disguise purely mercantilist interests as development. It is said (vaguely) that EPAs will result in increased flows of foreign direct investment and technology transfers and there is an unspecified promise of better market access to the EU. In fact, whereas policy makers have been unable to make any convincing arguments about the benefits of EPAs, there is no doubt about the negative impacts of EPAs on ACP economies.

EU mandate -- economic expansion and domination

When the EPA option was first tabled by the EU in the Cotonou negotiations, ACP countries put up strong resistance to the proposal because of the many problematic implications for their economies. Rather than agree outright to EPAs as the framework for the trade negotiations, they argued for “alternative trade arrangements” which would comply with WTO rules – while stressing that certain WTO rules should be reviewed in those areas which present difficulties for developing countries. The expectation on the ACP side is that the EU and the ACP Group should use their numbers (soon to be over 100 countries) in the WTO to make a case for greater consideration of developing country needs in the international trade regime. The EU is one of the key players in charting the direction of the WTO. Within the WTO, it has become clear that the EU is more preoccupied with pushing the concerns of big business (ie. accessing markets in other regions) than seriously addressing development questions. The main reason why EPAs – as envisaged in the EU negotiating mandate – can never work for the ACP countries is because they are geared towards meeting the EU’s external trade agenda to expand its share of markets throughout the world. There is a clear coherence and consistency between what the EU advocates in the WTO and what it is advocating in EPAs. As a result, it is not surprising that the EU’s negotiating proposal envisages a situation where ACP countries lift all restrictions to European exports to the ACP regions, and where EU companies would be able to establish themselves and do business freely in ACP countries. The negotiating proposals do not make any mention of the EU’s (highly costly) protectionist policies such as the notorious Common Agricultural Policy (CAP), and its own unfair trade practices (eg. dumping). The EU mandate is above all not about sharing and caring – it is about economic expansion and domination.

EPAs: a reality check

If the EPA proposal is bad enough, what is even worse is the extent to which it has gained acceptability. But it is worthwhile reminding ourselves in plain language of the dangers of EPAs. Under the current EU proposals, EPAs would mean:

- significant declines in government revenue as a result of the elimination of import taxes on EU goods. This will result in less budget funding for social and human development and would probably also result in higher tax burdens for citizens (eg. sales taxes) in order for governments to make up for lost revenue. The EU has already stated that it is not prepared to discuss new debt cancellation initiatives, as a way of compensating for these revenue losses.
- closures of local manufacturing ventures, especially SMEs (small to medium scale enterprises as a result of competition from cheap subsidised imports. We are likely to see increased job losses, unemployment, poverty and loss of livelihoods. Industrialisation strategies to diversify and expand economic production would also be undermined because of the difficulties for new entrants to the market to compete.
- delivery of basic social services in the hands of non-national private sector operators as a result of selling off of essential public services to European transnational corporations under privatisation agreements: the provision of health, education, and other basic social services will only be available to those who can pay for them. Low income groups will have less access to fewer basic social services.
- declines in inter-regional trade as a result of “trade diversion”: countries of the region will lose their markets in neighbouring countries. Instead of regional cooperation, there will be increased competition between countries of the region to attract “investment” from the EU.
- opening up to European competition for all government tenders: local companies who derive their income from government contracts (supplies, services etc) will have to compete with EU companies in bids and profits from these transactions will be repatriated as a result of “investment protection” deals.

- dumping of cheap EU agricultural surpluses (dairy products, cereals, beef etc): will threaten the viability of agriculture and agri-processing industries, particularly for small scale farming sector which does not receive state support. The result will be the collapse of the rural economies, and increased impoverishment and food insecurity particularly amongst women who are the backbone of the agricultural sector.
- losses and collapse of local retail sectors in both goods and services because of the entry into the market of European operators. The small and medium sized businesses, where the majority of formal sector workers are employed will be the most vulnerable because it is easy to undercut them. Local economic actors, particularly SME's and women will be pushed to the margins as informal sector operators.
- investment measures that prohibit restrictions on repatriation of profits will result in continued capital flight from ACP economies. Government would not be able to give different treatment to local entrepreneurs as a means of supporting them to survive competition. There is likely to be increasing resentment towards Europeans and European businesses who will be seen as being treated more favorably and dominating local economies. Social tensions and political conflict will increase, because of widening class divisions between the haves and have-nots as wealthy local elites remain the sole local beneficiaries from liberalisation.
- dispossession of indigenous land owners and lost livelihoods to give way to operations such as European tourism and mining "investors."

ACP countries have all experienced these impacts to a greater or lesser extent as a result of trade liberalisation and deregulation. The human cost has been immeasurable. EPAs are clearly not designed to reverse these impacts – rather they will exacerbate them.

What the ACP are seeking from the trade negotiations

During 2002, the ACP Group established guidelines outlining its objectives in the negotiations. Part of the ACP objectives in relation to the trade agreement are:

- sustainable development and poverty eradication.
- integration into the world economy through development-oriented EPAs.
- sustained economic growth, development of the private sector, increased employment, increased access to the factors of production.
- more beneficial market access.
- enhancing the production, supply and trading capacity of the ACP countries and their capacity to attract investment.
- resolving the problem of ACP indebtedness.

The ACP negotiating guidelines clearly reflect a high level of concern with regard to the domestic impact of trade liberalisation with the EU. In order to mitigate the negative impacts, the ACP have included demands for additional funding and debt cancellation as compensation for the negative impact of EPAs. The ACP also stress that "current WTO rules are inherently imbalanced against the development needs of ACP States." In that sense, they are only accepting WTO compatibility if there are changes within the WTO. There is barely any convergence between the ACP Group and the EU in the substance, approach and objectives of what the trade negotiations should really be about. And while the ACP guidelines clearly show that they do not wholeheartedly embrace the free trade area idea, it is not clear what elements of the EU proposal they consider to be unacceptable. Compromises and meeting each other halfway are supposed to be part of negotiation, but even half of what the EU is demanding is far too much.

What are the chances of a good deal out of these negotiations?

In a negotiation where the parties are of equal strength, it can be presumed that the give and take from each party will be fairly equitable. This is not the case in this negotiation. The ACP countries are in an extremely weak bargaining position. They

will be in an even weaker position in the second phase of the negotiations when they have to stand against the EU as sub-regional blocs. Unfortunately, this is the point where the detail of the EPAs will be hammered out. Within sub-regional groups, it will be easier for the EU to play one country off against the other in order to get concessions. The ACP mandate stresses the need for unity and solidarity; but given that the ACP Group is made up of 78 countries, with often divergent or competing interests, it will not be very difficult to exploit tensions and rivalries within the Group to force an agreement on difficult issues.

Together the EU and its member states make up over half the aid contributions to ACP countries, giving the EU a major bargaining chip. The ACP on the other hand have very little leverage to extract anything more than minor concessions from the EU. No matter how good a fight the ACP put up, the likelihood that the EU will get most of what it wants is not just high, it is an inevitability. The EU will also have on its side a very skilled team of career negotiators and strategists who will simply run rings around the ACP. When the EU had its way in the past, it has not been because it was right and because the ACP were wrong, it was simply because they are better and stronger negotiators. They can hold out for longer, when things come to a deadlock. The ACP have to worry about short term concerns, which the EU does not have to worry about in the same way.

ACP countries simply do not have the capacity to do a thorough job in these negotiations. Most trade ministries have to deal simultaneously with Cotonou, WTO, AGOA and regional trade negotiations at the same time. The number of issues to cover is vast, and each question is complex. In the time frame that is proposed, the ACP will not have been able to make thorough and independent assessments of the impact of what they are agreeing to – something which the EU has generally been reluctant to assist with. In reality, the ACP side is normally carried by a few strong countries who have the means to get organised.

Within the ACP Group, the weak link in the chain is at the national level, where many countries, have not done adequate

homework to identify their interests and assess which proposals pose risks and which offer real benefits. Another strategic weakness for the ACP Group is that there seems not to be such a thing as a the bottom line or cut-off point. We can not tell which issues for the ACP Group are non-negotiables -- in other words at what stage they are prepared to abandon negotiations. The policy always seems to be that an agreement must be reached at all costs, and so it is hard to know whether, when pushed to the wall, the ACP would buckle under pressure, rather than walk away from the negotiating table with no agreement. It is almost as if, for the ACP Group, any agreement is better than no agreement at all.

Is there a way out?

In EU-ACP policy making circles, the debate on EPAs is currently about damage limitation; in other words, how to ensure that the ACP will not lose out completely from a free trade area/EPA arrangement. But trade liberalisation and WTO experiences to date beg the question: should the ACP be negotiating EPAs at all? While trade preferences have done some good for ACP countries, the economic relationship between Europe and the ACP remains characterised by a very high level of dependency of ACP countries on European markets.

The ACP countries have identified a fairly sound set of objectives as the basis for a trade agenda. It would be nothing short of a miracle if these objectives could be met through a free trade area with such an economically powerful partner, who to all appearances, is particularly unsympathetic to their special circumstances? Policy documents that have been developed within the OAU/AU for example have stressed that the economic transformation and self-reliant development sought by the ACP depend on strengthening economic ties and trade between African countries and regions. Unfortunately, initiatives like the EPAs and AGOA – which continue to entrench unequal relations with industrialised nations always take precedence over regional initiatives like the Africa Economic Community plan that was signed by heads of state in the late nineties. The result is ever increasing dependency on rich countries – for aid, trade and investment.

The challenge for the ACP is not only to reduce dependency on the export of primary products to the EU. It is to reduce dependency on the EU altogether. Certainly, losing the EU's preferential trade concessions would also entail adjustment costs. What governments have to explain to their citizens is why and how the "adjustment costs" of an EPA are less than the "adjustment cost" of losing the special trade preferences. After all it has been rightly argued that countries in Asia which had similar levels of development as ACP countries at independence have now become economic tigers – without any special preferences from the EU. Social movements from all sides have taken the position that within the WTO, there should be no new round of negotiations until the WTO is reformed and development issues are taken on board the WTO agenda more seriously.

The same reasoning should apply to EPA negotiations. Why negotiate a liberalisation agreement with the EU, until it has made commitments to reform its own trade policies and practices towards developing countries? Or until it has agreed to support debt cancellation? Or until it has agreed to substantially increase aid towards ACP economic revival? ACP governments – individually or collectively - do have the option to simply throw out the EPA proposal and look for more viable options to deal with the economic challenges in their countries, as well as a hostile global environment. It is not an easy challenge, but the alternative is even less attractive.

Issues for civil society: is another world possible?

Civil society and social movements have for too long been neglecting issues of multilateral trade. They have a duty to sound the alarm bell when their governments are being pressured or enticed into agreements that are not in the national interest. They also have a responsibility to push governments to address structural inequities and inequalities between North and South in multilateral fora. Not enough pressure is being put on governments to take a firm stand against ill conceived initiatives coming from the North. The ACP Negotiating Guidelines clearly state that "EPAs will have to establish legitimacy in ACP states,

particularly as regards their contribution to sustainable development of those countries." It calls for the involvement of all stakeholders in the negotiations process, public scrutiny of the negotiations including parliamentary follow ups, and inclusive and transparent negotiations process. But the stakeholders can not be involved if they are not up to speed on and informed on the issues. The EPA negotiations are not simply an obscure diplomatic exercise. They are about lives, livelihoods and our regions' economic prospects. The idea of setting up free trade areas with the European Union under the current circumstances is, to put it bluntly, foolhardy. In matters of trade, the EU's indifference and insensitivity to the needs of developing countries makes the whole idea of partnership a ludicrous joke. It should be inconceivable that the EU can so ruthlessly exploit its position of influence to make demands of countries where people live on less than a euro a day simply to further it's the interests of its multi-billionaire corporations. This is what is happening and there should be a public outcry against it. Maybe it is about time we just said "no."

This is an edited version of a paper prepared for the East and Southern Africa Civil Society Economic Policy Project by Nancy Kachingwe who was then Programme Officer at MWENGO, a reflection and development centre for NGOs in East and Southern Africa. Kachingwe is now with the Third World Network in Ghana. For more information about Mwengo, please contact the project coordinator Thomas Deve on: thomas@mwengo.org.zw, Tel: 263-4-721469 / Fax: 263-4-738310.

Economic Partnership Agreements: The EU's New Trade Battleground

Traidcraft

Introduction

Following the collapse of the 5th World Trade Organisation (WTO) Ministerial held from 10-14 September in Cancun, questions are being raised about the importance key trading nations place on the multilateral system. Prior to the Cancun meeting, the United States had already begun to voice its intention to pursue its trading objectives through a

series of bilateral agreements rather than what it perceives as an increasingly unruly multilateral system. In the immediate aftermath of the Cancun collapse, US Trade Representative, Robert Zoellick confirmed this position stating:

“The United States has an agenda on multiple fronts. We are going to keep opening markets one way or another....We will always be there to engage in it [the multilateral system], but we are not waiting forever. We are going to move elsewhere.” (*The Guardian* 16/09/03)

The European Union (EU), in contrast, initially confirmed its commitment to the multilateral system. However Trade Commissioner Pascal Lamy has also warned,

“We will have to have a good hard think amongst ourselves. Should we maintain multilateralism as our priority....I am still a firm believer in it. But circumstances are such that when you get a bit of a shock we have to make sure that we still all agree on this.” (*The Financial Times* 17/09/03)

The evidence shows that irrespective of recent events, the EU is already using its power to pursue its trade agenda through a series of bilateral negotiations with developing countries (including negotiations with the African, Caribbean and Pacific (ACP) countries and the South American Mercosur bloc already underway while discussions continue with the South East Asian, ASEAN bloc³). What is not clear is whether the post-Cancun period will be characterised by increased determination and aggression from the EU in these talks, or increased respect for developing country negotiators who showed remarkable unity and confidence in the face of considerable pressure in Cancun. The Africa Trade Network has noted that the resistance to such pressures displayed by developing nations,

“should signal the beginning of a new way of interaction in international affairs based on a relationship of genuine concern and mutual respect. We call upon the governments of the powerful to learn the

lessons of this collapse and turn to ways of interaction more appropriate to genuine international cooperation in future trade negotiations.” (ATN Press Statement, 15/09/03).

The real question now is whether the alliances that emerged during Cancun will be able to hold during the bilateral talks to come. What is clear is that both the EU and US will continue to pursue a twin track approach, designed to maximise their gains through whichever forum (bilateral or multilateral) best serves their purpose. To respond to this, developing countries need to pull off a clever balancing act and play the big nations at their own game. They must be careful not give too much away at the WTO, leaving themselves with no political capital to expend in bilateral talks. This is particularly difficult following decades of structural adjustment, which have left many countries with very few bargaining chips. But neither can they completely scupper the WTO process for fear of what an alternative negotiating system would mean for their countries, businesses and people.

Campaigners North and South also have to manage a balancing act. We must expose these ‘twin track’ tactics, closely monitor the progress in bilateral talks whilst reserving the right to critique the undemocratic procedures and pro-liberalisation foundations of the current WTO set-up and supporting the increasingly confident developing country negotiators in all fora. This paper will look in more depth at how the EU has already been using the bilateral forum to pursue its interests using the example of the current Economic Partnership Agreement (EPA) negotiations with ACP countries.

The dangers of the ‘twin track’ approach

The EU’s policy of pursuing those issues that are difficult to obtain multilaterally or seeking additional commitments through bilateral channels, not only calls into question the EU’s stated commitment to the multilateral system, but also poses specific dangers for those countries entering into negotiations.

Commitments made in one forum (either the WTO or bilaterals) may become a **'floor' rather than a 'ceiling'** from which further concessions are then sought. Of course to a certain extent, all bilateral talks are designed to build on what is agreed in other forums, however this tactic is of concern to developing countries:

- Where there is a marked imbalance in terms of political and economic power between the negotiating parties - one of whom is often donor and one, recipient.
- When the additional concessions are consistently demanded by the stronger partner of the weaker.
- When there is no development imperative or framework to the talks.
- The option of getting issues on the table through the **'back door'** is retained. The Singapore issues, which have so far been successfully resisted at the WTO are being actively pursued by the EU in a number of bilaterals – including the EPA talks.
- The twin track approach further stretches the negotiating capacity of developing countries who have yet another forum in which to defend their interests.
- Where developing country regions are negotiating, as in the case of EPAs, it is much harder for them to retain solidarity – which is often their only source of political strength. The best chance of defending the interests of weaker countries may be the multilateral route, however stronger countries may prefer to chance the bilateral route hoping to extract additional concessions - the perfect **'divide and rule'** tactic.

The 'EPA' negotiations

The Cotonou Agreement, signed in 2000 between the EU and 78 African, Caribbean and Pacific (ACP) countries covers aid, trade and political co-operation. The Agreement marks a fundamental shift in the EU's approach to the ACP group. The political dimensions of the relationship have been strengthened. The 'partnership' basis (which was a key principle of the preceding agreements) has been extended to include a legal commitment to involve 'new actors' (civil society, the private sector, trade unions and local authorities) in policy decisions.

The aid regime has been simplified and is now more performance-based.

But it is in the area of trade that the EU's new approach is most significant. Negotiations began in September 2002 to agree new trading arrangements to be called 'Economic Partnership Agreements' (EPAs). Although the nature of these has yet to be decided (and the option of an alternative remains open to the ACP), the EU sees EPAs as reciprocal free trade areas which they will negotiate on a bilateral basis with ACP countries or regions. This is a significant change from the system of non-reciprocal preferences that characterised the previous Lomé Agreements between the parties. This shift in EU policy has been motivated by: the perceived need for EU-ACP trade to be compliant with current interpretations of WTO rules; the inability of ACP countries to translate market access into development gains and most importantly the EU's desire to further its own aggressive market access strategy. The talks are approaching their first anniversary and are currently deadlocked.

The ACP wants a number of substantive issues of common interest to be agreed with the EU by the whole ACP group in the first phase of talks, before the second phase of regional negotiations begin. The EU is fiercely resisting this attempt, instead favouring negotiating all substantive issues with individual regions - where, of course, its 'arm-twisting' power is greater. Both the EU and ACP have set out their overall aims and objectives for the talks in their 'negotiating directives'. These set out what they want to achieve above and beyond commitments already made in the main Cotonou Agreement which does contain some provisions on trade. It is clear from the EU's mandate that they intend to use these bilateral talks to lever commitments which are either unlikely to be achievable through the WTO or to build on concessions extracted there, including:

- increased market access for EU goods and services - including into least developed countries

- commitments on ‘new issues’ such as investment and public procurement through the ‘trade related issues’ or ‘second pillar of EPAs’.

The EU’s Aggressive Market Access agenda

Goods

According to the main Cotonou Agreement the overall objective of EPAs is, “to conclude new WTO compatible trading arrangements removing progressively barriers to trade and enhancing cooperation in all areas relevant to trade”.

The EU is choosing to interpret ‘WTO compatible’ in a restrictive way, arguing that ACP regions who choose to negotiate EPAs may be requested to open up substantially all trade (90 per cent) over a 12 year period. However under the multilateral WTO Doha Agenda, agreed in 2001, developed countries agreed to demand ‘less than full reciprocity’ from least developed countries (LDCs) in non-agricultural goods. It is not yet clear how this will be reconciled for those LDCs that have no viable alternative but to join an EPA⁷. The ACP has argued that there should be special arrangements for LDCs within the EPA framework and that this should be agreed at the ‘all-ACP’ phase, but the EU continues to resist any agreement at this level.

For the EU the beauty of the twin track approach is that in bilateral talks such as the EPA negotiations, it is in a stronger position to resist the troublesome issue of its own agricultural policies (which was one of the major sticking points in Cancun) even being on the agenda – despite continued calls from ACP countries. In the EPA negotiations, the EU is attempting to use its powerful position to demand improved market access for its industrial and agricultural goods – even from of the poorest ACP countries - without having to mention the contentious issue of the impacts of the Common Agricultural Policy (CAP) – in particular on poorer producers and small enterprises in ACP countries .

Services

The main Cotonou Agreement requires “progressive and reciprocal liberalisation of trade in services consistent with WTO and in particular Article V of General Agreement on Trade in Services (GATS)”. Such liberalisation is to be asymmetrical in both timing and the sectors and sub-sectors included. This means that ACP countries can theoretically decide to open more slowly and exclude certain sensitive sectors altogether (although even this level of policy freedom is questionable). However in their negotiating directives for EPAs, the EU makes its real intentions clear by stating that as part of EPAs it wants to see services “negotiations begin in all sectors by 2006 at the latest.”

There are two clear concerns for ACP countries:

First the inclusion of all sectors undermines the principle in the GATS negotiations that talks are based on positive lists and requests and offer phases – and directly contradicts the principle of asymmetry agreed in the main Cotonou Agreement. The question remains, will ACP countries be allowed to preclude liberalisation in important public sectors such as health care, education and basic service provision? Will it be allowed to prioritise local firms to provide local services?

Second the timing of 2006 suggests that bilateral negotiations under the Cotonou framework will only begin after the GATS negotiations have been concluded in 2005. Thus commitments given (often under extreme pressure) during the GATS talks may in fact form the floor from which further opening will be prised during the EPA discussions.

Intellectual property

Intellectual property rights are re-affirmed in the main Cotonou agreement to cover “patents, including patents for biotechnological inventions and plant varieties or other effective *sui generis* systems”. This is a more rigid understanding than many are seeking from the re-thinking taking place around the

Trade-Related Aspects of Intellectual Property Agreement (TRIPS) under the Doha Round - but was written and signed before. Although there is no explicit mention of intellectual property rights as part of the EU's negotiating directives, this does not preclude the EU from raising these issues during bilateral discussions. Indeed the EU has already pledged to 'deepen' co-operation with ACP countries on intellectual property, whilst conforming with the agreement at Doha. It is unclear yet what this might mean in practice, but the example of the US is instructive here. The US has a track record of demanding 'WTO-plus' intellectual property commitments through bilateral talks, including the NAFTA negotiations.

New issues by the back door

There has been a great deal of public resistance around EU attempts to force the inclusion of the so-called 'new' or 'Singapore' issues (Investment, Competition Policy, Trade Facilitation and Transparency in Public Procurement) onto the WTO agenda. In fact, European insistence on this led to the breakdown of the Cancun meeting. There has been less of an outcry about their inclusion and further elaboration as part of the EU's agenda for EPAs. But in some ways the dangers within the EPA talks are greater because the EU is pursuing these areas on the basis of the same liberalisation, non-discrimination and national treatment agenda which poses threats to development, but this time from a position of even greater 'arm-twisting' power. It is instructive to note that the two issues that the EU seems prepared to drop from the multilateral stage – investment and transparency in public procurement – are the ones most clearly elaborated as part of their negotiating directives for EPAs. Since ACP countries are clear that they are not ready to talk about *any* of these issues at present in the WTO, some are concerned that it may be inappropriate for the EU to use the bilateral route to force the pace on these issues unless requested by the ACP group.

The EU negotiating directives state:

“The mere removal of tariffs will not be sufficient to fully achieve the objectives of economic and trade co-operation. In particular, the potential gains from trade liberalisation will not be fully realised unless other factors causing segmentation of markets are removed. This is precisely why the Cotonou Agreement has defined enhanced cooperation in all areas relevant to trade as the **second pillar of EPAs.**”

Investment

In the area of investment, the EU is seeking for EPAs to: “agree to establish, while respecting the respective competencies of the Community and its Member States, a regulatory framework, which shall enhance and stimulate mutually beneficial sustainable investment between them [EU and ACP regions]. This framework will be based on principles of non-discrimination, openness, transparency and stability and on general principles of protection, which will endorse the best results agreed in the competent international fora or bilaterally.”

The EU is clearly looking for concessions above and beyond what it is likely to achieve at the WTO where developing countries have been firm in refusing to negotiate an investment agreement. Aside from the fact such an agreement has been rejected by developing countries in the multilateral forum, including such a framework as part of a negotiation whose aim is to “promote sustainable development and contribute to poverty eradication in ACP countries” has two fundamental flaws.

1. A framework that ensures transparency and stability will not of itself lead to increased investment. The World Bank has concluded:

“Countries that had concluded a Bilateral Investment Treaty (BIT) were no more likely to receive additional Foreign Direct Investment than were countries without such a pact.”

2. The principles of non-discrimination and openness remove a fundamental tool that most developed countries have used during their period of development. Discrimination between foreign and

domestic firms has been a central tool of industrial policy, allowing countries to support small producers and build up national industry through placing limits on foreign ownership, requiring local employment or insisting on joint ventures. The evidence shows that investment liberalisation is a product, rather than a cause of development, being sought once a country reaches a certain level of competitiveness.

Public Procurement

Those who were pushing for 'new issues' to be included in Cancun were only arguing for *transparency* in public procurement, so the EU's suggested *liberalisation* of public procurement as part of EPAs is a clear attempt to force an issue through using their power in the bilateral forum. The EU goes even further in suggesting that such progressive liberalisation should be based on the principle of 'non discrimination':

"EPAs will aim to ensure full transparency in procurement rules and methods at all government levels. In addition the parties will seek progressive liberalisation of their procurement markets on the basis of the principle of non discrimination and taking into account their development levels."

Despite the reference to levels of development, there is a concern that if agreed, this could take away the fundamental right of sovereign countries to determine their own domestic economic priorities. Governments may be forced to advertise tenders widely throughout the EU and ACP regions and may no longer be able to support or prioritise local companies for domestic contracts, with devastating longer-term consequences. This offers huge possibilities for European companies and consultants, as well as threatening to squeeze out domestic firms.

Trade facilitation and Competition Policy

The EU makes explicit reference in its EPA negotiating mandate to pursuing trade facilitation and the Cotonou Agreement refers to further co-operation around competition policy. Irrespective of

their development implications it is questionable as to whether it is appropriate for the EU to be pursuing these issues in the bilateral forum, where it can exert considerable 'arm-twisting' pressure, when they have been explicitly rejected by ACP countries on the multilateral stage.

Recommendations

Traidcraft calls on the EU to:

- Commit to seek 'WTO-plus' commitments only if these are requested by the ACP or are proved to be supportive of the EPA's aim to promote sustainable development and poverty alleviation in ACP countries.
- Work in consultation with the ACP to institute an independent and participatory impact assessment of EPAs and refrain from forcing the pace of negotiations until all parties have had sufficient time to understand the findings of this.¹⁷
- Commit to a formal agreement with the whole ACP group covering their issues of concern before regional negotiations begin.
- State its commitment to exploring alternatives to EPAs for those countries that, in 2004, do not wish to pursue this option.

**This is an abridged and edited version of a paper prepared by Traidcraft Exchange. Traidcraft is a fair trade organization whose mission is to fight poverty through trade. This paper is a contribution to an ongoing programme of research, awareness-raising and advocacy work by Traidcraft on the impacts of the Cotonou Agreement on marginalized producers. We carry it in our Bulletin with their kind permission. The full report can be accessed online: www.traidcraft.co.uk.*

Editorial: From Cancun to Cotonou - the struggle continues

*Jane Nalunga

With the collapse of the 5th Ministerial Conference in Cancun in September, the Cotonou negotiations have taken on a new and more dangerous dimension. Both the EU and the US will continue to use their power to pursue their trade agenda through

a series of bilateral negotiations with developing countries. As the US Trade Representative, Robert Zoellick succinctly put it:

“The United States has an agenda on multiple fronts. We are going to keep opening markets one way or anotherWe will always be there to engage in it [the multilateral system], but we are not waiting forever. We are going to move else where” (*The Guardian* – 16th September 2003)

It is clear that the EU will use the ACP – EU negotiations to get what they have failed to get in Cancun; especially increased market access for EU goods and services; and commitments on the New / Singapore Issues” (See articles by Margaret Lee and Traidcraft in this *Bulletin*). What is not clear is whether the post Cancun period will be characterised by increased determination and aggression from the EU or increased respect for developing country negotiators who showed remarkable unity and confidence in the face of considerable pressure in Cancun. Yet given the history of arm-twisting characterising the various trade negotiations, ACP countries in general and Africa in particular must be ready for some tough negotiations. As Nancy Kachingwe points out in this *Bulletin*, “In a negotiation where the parties are of equal strength, it can be presumed that the give and take from each party will be fairly equitable. This is not the case in this negotiation. The ACP are in an extremely weak bargaining position”.

The Cotonou negotiations, launched in September 2002 and ending on December 31st 2007 with the formation of reciprocal Economic Partnership Agreements (EPAs) represent a significant shift from the system of non-reciprocal preferences of the previous Lome Conventions. The EU explains this shift as a measure to make the EPAs WTO-complaint and also because of the inability of ACP countries to translate market access into development gains. However, the actual reason is the EU’s desire to further its own aggressive market access strategy. In fact the ACP countries were in no hurry to get

rid of the preferences as Sutiawan Gunesse, the Mauritius ambassador to the EU pointed out that the ACP Group took a political decision (to negotiate the EPAs) “not without reticence for various reasons . It was based more on pragmatism rather than the belief or conviction that the ACP states would benefit from the EPAs.” (*SEATINI Bulletin* Vol 5. No. 18). Thus the ACP countries neither wanted the negotiations nor were they ready for them. One year after the launch of the negotiations most ACP regions and countries are still as confused as they were at the beginning of the negotiations.

In the above cited *Bulletin*, which came out at the launch of the negotiations – 30th September 2002, it was clearly pointed out that the negotiations were a farce. The negotiations are between two very unequal parties i.e the ACP countries are among the poorest of the world’s nations and they were also former colonies of the EU. They still depend heavily on the trade and aid with the EU. In fact even for the negotiations the ACP countries are looking to EU for funds for impact assessment studies!. The negotiating capacity of the ACP countries is low and over stretched given the many related negotiations at different fronts i.e WTO, and at the regional level. However, most important of all, most ACP countries do not know what, why and how to negotiate. Take an example of Uganda which has been vacillating between negotiating as part of COMESA and East African Community (EAC). These configurations also have their own complications as there are overlapping membership and as some members, in the case of EAC, are classified as LDCs (Uganda and Tanzania) and developing (Kenya). The actual outcomes and implications of these negotiations are not clear.

The First Phase of the negotiations (September 2002 – September 2003) which was supposed to come up with a binding agreement on a number of substantive issues, according to the ACP negotiating mandate, have so far come up without anything substantial.

Although regions like ECOWAS are ready to negotiate the EPAs, a decision which has greatly undermined the unity of the ACP group and the outcome of the first phase, it is clear that the Eastern and Southern African region is not ready for these negotiations.

Way Forward

The ACP cannot stop the negotiations because the EU will not let them, unless it is the EU that does not wish to negotiate. There is no doubt that the EU wants to negotiate, so the ACP countries have to negotiate whether they want it or not. In these difficult circumstances, the ACP countries must demand from the EU more time to prepare adequately. For example *independent* impact assessment studies must be done, although there is ample evidence on the ground as to the outcome of the EPAs, i.e. the beef industry in southern Africa is in trouble as a result of the EU-South Africa FTA and the economies of developing countries are suffering as a result of liberalisation.

The negotiations are also supposed to take into consideration the regional integration process of the ACP countries. In the Eastern and Southern Africa, the process is still in its nascent stage; for example the EAC does not have a Customs Union as yet. The regional integration efforts must be strengthened, as this is the only way to deal with Africa's marginalisation in the global economy. The currently promoted Free Trade Agreements (FTAs) between countries at different levels of development will only serve the interests of the developed nations but will thwart the development efforts of the developing

countries as it locks them up in low productive activities. Thus, the long-term plan must be sub regional and regional (Africa) integration.

The negotiations in Geneva and Brussels must be closely linked in order to avoid the ACP-EU negotiations being WTO+; and also to ensure that what has been rejected in the WTO i.e. the New Issues, do not resurface in the EPA negotiations. The linkage will also help in utilising the limited resources available. The Phase 1 negotiations must be extended in order to come up with a binding agreement on the substantive issues; or else the EU will arm twist the regions individually.

Civil Society Organisations must fully engage in these negotiations. Cancun was just the lull before the storm; the storm is now here in the form of the EPA negotiations, it is the new battleground and we must be fully involved. Governments must also ensure that all stakeholders are involved in these negotiations; the WTO negotiations are an indicator that government and other stakeholders can work together for a common purpose.

**Jane Nalunga is in charge of the SEATINI Office in Uganda.*

**Produced by SEATINI Director and Editor: Y. Tandon; Assistant Editor: Percy F. Makombe
Advisor on SEATINI: B. L. Das**

Editorial Assistance: Helene Bank, Rosalina Muroyi, Jane Nalunga and Raj Patel
**For more information and subscriptions, contact SEATINI, Takura House, 67-69 Union Avenue,
Harare, Zimbabwe, Tel: +263 4 792681, Ext. 255 & 341, Tel/Fax: +263 4 251648, Fax: +263 4
788078, email: seatini.zw@undp.org, Website: www.seatini.org**

Material from this bulletin may be freely cited, subject to proper attribution.

ⁱ UNCTAD, *The African Growth and Opportunity Act: A Preliminary Assessment*. A Report prepared for the United Nations Conference on Trade and Development. New York and Geneva: United Nations, April 2003, p. 9.

ⁱⁱ United States Department of Commerce, "U.S.-African Trade Profile," March 2003, pp. 10-11 and 14.

ⁱⁱⁱ UNCTAD, p. 1.

^{iv} *Ibid.*, pp. 1 and 7.

^v Letter from Robert B. Zoellick to the Honorable Robert C. Byrd, n.d., p. 1.

^{vi} John Mair, "US seeks allies in push for free trade pacts," *Business Day*, June 3, 2003.