



Economic Partnership Agreements: The EU's New Trade Battleground

September 2003

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."*¹

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."*²

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."*⁴

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 co-operation in all areas relevant to trade”.⁵

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.⁶ 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 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)”⁸*. 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.”⁹*

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 co-operation 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."*¹⁰

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 as 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"*¹¹ 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."*¹²
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.¹³

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.”¹⁴

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.

*“Negotiations shall aim at simplifying all requirements and procedures related to imports and exports, in particular with regard to customs processes, import licensing, customs valuation, transit rules and pre-shipment inspection, drawing on the **highest international standards** and in conformity with the provisions of the WTO, including those elaborated pursuant to the Doha Development Agenda.”¹⁵*

Article 45 of the main Cotonou Agreement commits parties to:

“implement national or regional rules and policies including the control and under certain conditions the prohibition of agreements between undertakings.....which have as their object or effect the prevention, restriction or distortion of competition.”

Summary of the EU's 'twin track' approach

Issue	WTO commitments	Commitments being pursued by the EU via EPAs
Market Access	EU will demand 'less than reciprocal' market access from LDCs on non-agricultural products Limited EU offers regarding domestic agriculture support measures	If LDCs are part of regional free trade areas, this could mean reciprocal access in some sectors EU resisting discussion of CAP or its impacts as part of the EPA negotiations
Services	Positive list approach during GATS so some sensitive sectors can theoretically be exempted	Services negotiations to have started in <i>all</i> sectors by 2006 at the latest thus creating pressure for further commitments
Investment	Fierce resistance to an investment agreement at the WTO from developing countries and campaigners	Pressure to establish an investment protection 'framework' on the principle of 'non-discrimination'.
Public Procurement	Resistance to including an agreement on transparency in public procurement in the WTO from developing countries and campaigners	Pressure to include transparency in public procurement as part of the EPA negotiations, and to move beyond this into progressive <i>liberalisation</i> of procurement markets based on the principle of <i>non-discrimination</i>
Intellectual Property Rights	Clarification of flexibilities – in particular with regard to TRIPS and public health confirmed at the Doha Ministerial in 2001	Currently reinforces a more restrictive understanding of TRIPS
Trade facilitation	Resistance to inclusion of trade facilitation negotiations at the WTO	Pressure for trade facilitation negotiations as part of EPAs
Competition Policy	Resistance to competition policy as a 'new issue' on the WTO agenda	Suggesting closer co-operation in this area, but no formal agreement.

Conclusion

As the table highlights, there are at present, no areas where the 'WTO-plus' and other commitments the EU is pressing for as part of EPAs are designed in favour of ACP interests. Instead they are all specifically in the EU's interest, proving that the devil is in the detail and calling into question the EU's commitment to ensuring that EPAs contribute to poverty alleviation and eventual eradication in ACP countries.

This does not have to be the case and it is important to note that these remain only EU proposals. The ACP group is in a strong position following the breakdown of the Cancun Ministerial to press the EU to take their concerns seriously and flex its political muscles in the EPA as well as the WTO forum. Glenys Kinnock MEP has noted that:

"ACP bargaining power and influence is more significant than ever before".¹⁶

It is now critically important that developing countries and those supporting them reinforce the importance of the multilateral system while closely monitoring the content and process of the EPA talks as this 'new battleground' for international trade unfolds.

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.

Footnotes:

¹ "Europe urges shakeup of 'medieval' WTO", Charlotte Denny, Larry Elliott and David Munk. *The Guardian* 16/09/03

² "EU may rethink multilateral trade role", Tobias Buck, *The Financial Times* 17/09/03

³ For more information on preliminary discussions with ASEAN see The European Commission's Communication "A New Partnership with South East Asia" adopted 09/07/03

⁴ "Statement on the collapse of the 5th Ministerial Conference of the WTO", Africa Trade Network, 15/09/03 (see www.twnafrica.org) The Africa Trade Network is a network of civil society groups from across Africa.

⁵ "Recommendations authorising the Commission to negotiate Economic Partnership Agreements with the ACP countries and regions". Agreed by the EU General Affairs Council 17/06/02

⁶ The EU is choosing to use the current interpretation of WTO rules for Regional Trade Agreements, despite the fact that these were designed for agreements between parties of broadly comparable levels of development and are being re-evaluated as part of the Doha Round.

⁷ LDCs who are part of a regional trading bloc that decides to negotiate an EPA may be faced with a stark choice – either open up to European competition – despite the fact that they have nothing to gain from such an arrangement – or leave their neighbours in the bloc.

⁸ The Cotonou Agreement

⁹ "Recommendations authorising the Commission to negotiate Economic Partnership Agreements with the ACP countries and regions". Agreed by the EU General Affairs Council 17/06/02.

¹⁰ "Recommendations authorising the Commission to negotiate Economic Partnership Agreements with the ACP countries and regions". Agreed by the EU General Affairs Council 17/06/02.

¹¹ The Cotonou Agreement

¹² "Global Economic Prospects and the Developing Countries 2003: Investing to Unlock Global Opportunities". World Bank, 2003

¹³ For further information on this point see "Unwanted, unproductive and unbalanced: Six arguments against an investment agreement at the WTO". Oxfam, Action Aid, Christian Aid, CAFOD, World Development Movement and Save the Children. 2003

¹⁴ "Recommendations authorising the Commission to negotiate Economic Partnership Agreements with the ACP countries and regions". Agreed by the EU General Affairs Council 17/06/02.

¹⁵ "Recommendations authorising the Commission to negotiate Economic Partnership Agreements with the ACP countries and regions". Agreed by the EU General Affairs Council 17/06/02.

¹⁶ Glenys Kinnock speaking at "Reshaping European partnerships: what future for the ACP?", a seminar organised by the Overseas Development Institute 17/09/03

¹⁷ European civil society groups have raised concerns that the European Commission's current Sustainability Impact Assessment of EU-ACP trade is, at present, neither participatory nor sufficiently independent. It places the onus for coping with impact on the ACP countries and is insufficiently linked to the negotiation process. For more information on this see www.epawatch.net

Traidcraft is a fair trade organisation whose mission is to fight poverty through trade. We trade with and support small producers around the world whose circumstances effectively exclude or marginalise them from the mainstream system. We also seek to influence the wider trading environment through research, analysis and advocacy. This paper is a contribution to an on-going programme of research, awareness-raising and advocacy work on the impacts of the Cotonou Agreement on marginalised producers.

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