Fragmentation and Dilution of ACP Countries' Negotiating Positions During the ACP-EU Economic Partnership Agreements Negotiations

By:

Abigail Namasaka
Etale Reagan

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Introduction

The transition from the Lomé Conventions to the Cotonou Agreement was seen as an innovative approach to ACP-EU cooperation aimed at addressing the challenges of ACP countries. The Cotonou Agreement expanded the scope of ACP-EU cooperation beyond trade to include politics and development. The ACP-EU Economic Partnerships Agreements negotiations that followed sought to establish a comprehensive framework for ACP-EU trade and development cooperation before the Cotonou Agreement's expiry.

The ACP-EU Economic Partnerships Agreements (EPAs) have received mixed reactions from stakeholders, including scholars and civil society groups (Collins, Oxfam, Louise Curran, Fasan). For instance, whilst EPAs achieve a certain level of trade liberalization, criticism has centred on whether they stimulate development in the ACP countries. Moreover, the fact that ACP countries in the same region liberalize different baskets of products creates barriers to intra-regional trade and derails regional integration. Unsurprisingly, the ratification of the EPAs has stalled, except the EU-Cariforum EPA.

This article examines the EPAs negotiating process in select ACP countries to highlight the fragmentation and dilution of ACP countries' negotiating positions. It outlines how the rigorous negotiation processes whittled down the ACP countries offensive interests and ultimately led to the hesitation by several ACP states to ratify the EPAs. The article concludes that EPAs are one of the factors that explain the low trade volumes between African and Caribbean countries.

Background

The ACP-EU economic relationship is based on the Cotonou Agreement that lays the comprehensive economic, political and development framework for the conclusion of development-oriented and trade liberalization EPAs. The scope of the EPAs transcends trade and includes the Cotonou Agreement's core objectives of sustainable development, human rights and development cooperation. The EPAs were meant to replace the Lomé Conventions trading regime that could violate WTO Most-favoured-nation rules. Initially set to expire on 29 February 2020, the application of the Cotonou Agreement was extended until 30 November 2021, pending the approval of the post-Cotonou Agreement.

The Negotiations

The EPAs negotiations were divided into two phases. The first phase started in September 2002 and focused on the format, structure, principles, and ACP common issues. In this phase, the European Commission negotiated with the ACP as a group. These negotiations were slow due to the fact that the ACP countries, some with little or non-existent bilateral trade or diplomatic relations, were supposed to reach a consensus on common negotiation positions (EPA Review, Annex Documents, p. 7). In the second phase that commenced in October 2003, the European Commission negotiated separately with each

regional ACP zone; West Africa (ECOWAS), Central Africa (CEMAC), Eastern Southern Africa (EAS), Southern Africa (SADC), East African Community (EAC), Caribbean (CARIFORUM) and Pacific (PACP).

The negotiations progressed at different paces with occasional delays. The 1 June 2008 deadline for the conclusion of all negotiations lapsed with only the CARIFORUM-EU EPA having been concluded. In other regions, when it became apparent that the negotiations would go beyond the deadline, the EU offered individual countries the option of signing interim goods-only (stepping stone) EPAs that contained rendez-vous clauses providing for future negotiations into other areas (Peg Murray Evans, pp.1849-1850). The signing of the interim EPAs enabled the continuation of negotiations which unsurprisingly failed to conclude by 1 October 2014 and lasted as late as 2016, when the EU-SADC EPA was concluded. As of 2 May 2021, majority of the EPAs have been concluded and are provisionally applied. The CARIFORUM-EU EPA is the only comprehensive Agreement covering both trade in goods and services; the scope of other EPAs is limited to trade in goods but include *rendez-vous* clauses.

Fragmentation and Dilution of Negotiating Positions

The second phase of the negotiations where the ACP negotiated in regional zones/groups resulted in the fragmentation and dilution of their negotiating positions. This can be attributed to several factors, such as the nature of ACP-EU economic relationships and the negotiating process. The ACP-EU economic power imbalance coupled with the second phase format of negotiating in regional ACP country clusters led to fragmentation and dilution of ACP countries' negotiation positions. The following paragraphs highlight the fragmentation and dilution of negotiating positions in select regions/zones.

Caribbean

The CARIFORUM-EU EPA negotiations started in 2004, and the initial stages focused on strengthening CARIFORUM regional integration and securing implementation capacity. The EU preferred establishing a CARIFORUM Customs Union as the basis for better integration, while the CARIFORUM states considered the CARICOM-Dominican Republic FTA as defining the scope of their integration (Trade Negotiations Insights, Vol. 4, No. 1, January 2005). By the beginning of 2006, the EU changed its position and advocated for a single

CARIFORUM-EU trade regime as the basis of the EPA negotiations, abandoning its earlier preference for a customs union.

Although the CARIFORUM-EU negotiations saw relatively less tension, a key point of divergence from mid-2006 to 2007 was the EU's offensive interest in binding commitments on sustainable development and good governance without corresponding commitments on trade capacity-building support. The CARIFORUM states advocated for the inclusion of a non-execution clause where if the EU promised cooperation was not delivered, they could suspend concessions. The EU rejected this proposal and prevailed (Trade Negotiations Insights, Vol. 6, No. 1, March 2007).

In market access negotiations, the EU rejected CARIFORUM's proposal on the 25-years implementation period, forcing an emergency heads of governments meeting on 7 December 2007, which whittled the period down to 15 years, fearing the loss of sugar, bananas, rum, and rice preferences. This ultimately paved the way for the initialling of the EPA a week later (Trade Negotiations Insights, Vol. 6, No. 8, December 2007)

West Africa

From the onset of the ECOWAS-EU EPA negotiations, the West African states considered it not useful to negotiate competition policy, investment, public procurement, and labour standards rules in the EPA. Their main offensive interest was development support coupled with specific action areas (Trade Negotiations Insights, Vol. 4, No. 6, December 2005). However, the inclusion of development support in the EPAs was an EU redline as it considered development support to be adequately addressed in the Cotonou Agreement. Eventually, the West African states agreed to the inclusion in the EPA of a (mere) reference to the Regional Preparatory Task Force (tasked with monitoring EPA negotiations and making recommendations on the support required) as a way to ensure a link to development support (Annex Documents, p. 10). By late 2006, the ECOWAS states had backed down on competition policy and investment, which were now in the scope of the negotiations.

Negotiations on market access for trade in goods started on a frosty note. In March 2007, the EU tabled its goods market access offer, but the ECOWAS states were still hammering out their offer by the June deadline. While still

working out their market access offer, the ECOWAS states proposed transition periods of 25-30 years, which was rejected by the EU (except for extremely sensitive products). The EU piled pressure in September 2007, ruling out the alternatives of extension of WTO waivers and proposed the staged approach of interim EPAs. The ECOWAS intention to continue negotiating as a bloc was undermined when Ghana and Cote d'Ivoire initialled interim EPAs with the EU with the aim that these would be superseded with a regional EPA (EPA Review, Annex Documents, p. 11). The ECOWAS states finally reached an agreement on their common external tariff in December 2008 and tabled their goods market offer in February 2009. The negotiations concluded on 30 June 2014 with the initialling of an agreed text by Chief Negotiators. To date, 13 out of 16 West African States have signed the Agreement (the Gambia, Nigeria, and Mauritania have not signed).

Southern Africa

Negotiations between the EU and the SADC began in December 2004. The EU insisted on negotiating with ACP groupings without double membership. While this could have been construed as the EU's show of support to the regional integration process, it actually disturbed the integration processes as countries with overlapping membership in other regional economic communities had to make the difficult choice of allocating themselves to only one grouping for purposes of EPA negotiations (See Katharina L. Meissner p. 10-11). The result was that the SADC group became highly fragmented, with countries such as Tanzania leaving the bloc for the EAC EPA grouping.

Despite the challenges faced in the configuration of a negotiating group, SADC presented its negotiation proposal in February 2006 proposing the inclusion of all SACU members in the negotiations and the TDCA review to include South Africa in negotiation. This was important as the EU did not consider South Africa as a negotiating party and had granted it observer status. Further, SADC asked the EU to provide full EBA market access to its members and that LDCs be exempted from opening up their goods markets. It also requested specific commitments in relation to financial support and capacity building to address the constraints and losses that member countries would face because of providing market access to the EU.

The EU accepted the inclusion of South Africa in the SADC EPA but rejected the proposal that EBA be considered on a non-reciprocal basis. It stipulated that LDCs in the SADC bloc could remain EBA beneficiaries but be associated with the EPA regarding non-tariff positions. It also rejected the financial support proposal insisting that the level of support would be pegged on the level of commitment taken up in the EPA and that there was no need for further commitments (IDS-CARRIS EPA Review, Annex Documents p.20). Although the parties agreed to establish a regional fund to support EPA related development, the final positions on market access and financial support reflected a watering down of SADC's negotiating positions.

Conclusion

The ACP countries have historically closely collaborated in international fora, most notably on trade issues at the WTO. However, trade between the ACP countries generally, and Africa and the Caribbean (Afro-Caribbean) in particular, has remained marginal. While the low trade volumes can be attributed to several factors, the EPAs and their negotiation process dynamics explain the dismal statistics.

First, the second phase of EPA negotiations which splintered the ACP countries into regions, effectively disrupted the collaboration realized in the first phase. The little Afro-Caribbean trade interactions prior to the negotiations meant there was less incentive and reduced ability to sustain prolonged coordination in the second phase, given the little trade value chains to protect. While the EPAs have deepened economic relations with the EU, they have alienated Afro-Caribbean trade reinforcing the perception that ACP countries got the short end of the stick in the negotiations. Development support and capacity building, which was their offensive interests, were either rejected or are loosely anchored in the EPAs.

Secondly, the provisions of the EPAs hinder Afro-Caribbean trade. The EAC-EU, SADC-EU and ECOWAS-EU EPA *Protocols concerning the definition of the concept of* '*originating products*' *and methods of administrative cooperation* permit diagonal cumulation. This means African producers can source materials from other ACP countries for their production, and upon fulfilling the required processing or value addition thresholds, their products qualify for preferential

treatment upon export to the EU. This is an important tool to incentivize intra-ACP trade. However, the EU-CARIFORUM EPA only permits sourcing materials from the EU, a CARIFORUM state or neighbouring developing countries cutting off potential reciprocal value chain links with Africa. African and Caribbean producers have less incentive to trade with each other if they intend to export to the EU as their products would not qualify for preferential treatment. In this sense, the EPAs are *akin* to the hub-and-spoke FTA model with the EU as the hub and ACP countries as spokes. Empirical analysis has found that in this arrangement, the hub enjoys a competitive advantage in exporting its goods to the spokes, disincentivizing intra-spoke trade.

This is one of the factors that explain the low trade volumes between African and Caribbean countries.

Abigail and Reagan (*Written by the authors in their personal capacity. The views expressed do not represent the views of any government or institution they are associated with.*)

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