



# Dialogue of the deaf



An assessment of Europe's  
developmental approach  
to trade negotiations



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## EXECUTIVE SUMMARY

**In trade negotiations, the European Union presents itself as an ally of developing countries – sensitive to their concerns and looking out for shared interests as a partner in talks. Nowhere has this rhetoric been loftier than in EPA negotiations. The aim of this research is to test how far Europe’s negotiators are living up to these professed objectives.**

On behalf of ICCO, a representative sample of African Caribbean and Pacific (ACP) negotiators was asked to judge whether or not European negotiators had lived up to the rhetoric surrounding the Economic Partnership Agreement (EPA) talks.

- Nine out of thirteen felt that EPAs did not support regional integration
- Eleven felt that they had been put under pressure to negotiate trade-related issues by the European Commission (EC)
- Eleven felt that EPAs would force ACP countries to liberalise their trade
- Ten confirmed that aid was being made conditional on the signing of an EPA
- Eight felt that the EC did not listen to ACP concerns or proposals
- Only two felt that EPAs would be instruments for development.

Other evidence from academic assessments, formal statements and documents obtained from negotiations seems to support their views.

Unless important lessons are learned from EPA talks so far, the likelihood for a good outcome to these negotiations – that is one driven by ACP concerns and development coherence - looks remote.

Prospects look even gloomier for countries negotiating trade deals with Europe under its Global Europe mandate – the EU’s broader strategy to develop Europe’s global competitiveness and open up new opportunities for its exporters and investors<sup>1</sup>. In these talks flexibility from the EC is more limited (for example with respect to implementation periods), commercial interests are greater for the EU and development rhetoric is sparse. This despite the fact that the majority of poor people live in those countries and regions and that their economies still have significant structural problems.

This research finds that, in the interest of development and poverty alleviation, besides a substantive shift in the its approach to more faithfully pursue the development-friendly objectives of EU policy, the EC must also learn the lessons of the past failures of conditionality and desist from imposing its views of sound development policies via its trade deals. Greater transparency and more active engagement from those who can hold Europe’s negotiators accountable – European member states, parliamentarians and civil society – is clearly needed so that the mistakes of EPA talks are not continued or repeated in “Global Europe” negotiations.

## INTRODUCTION IN TRADE NEGOTIATIONS, THE EUROPEAN UNION (EU) PRESENTS ITSELF VERY DIFFERENTLY FROM, FOR EXAMPLE, ITS US COUNTERPARTS

**It frequently portrays itself as the ally of developing countries – sensitive to their concerns and looking out for shared interests as a partner in talks. This has been notable during negotiations with the African Caribbean and Pacific (ACP) countries to establish Economic Partnership Agreements (EPAs), but is also evident in the “Round for free” offer<sup>2</sup> to the G90 group of smaller developing country economies in Doha Round of World Trade Organisation (WTO) negotiations, for example.**

The EU also presents itself as much less driven by its own commercial interests. In fact it is formal EU policy that these are overridden by pursuit of sustainable development and poverty eradication objectives<sup>3</sup>.

Another feature of EU negotiations is the emphasis on their contribution to building regional markets, to help negotiating partners benefit from regional economic integration in the way that the European Union itself has done.

Finally, the EU takes pride in its “three pillar approach” to its external relations. Trade agreements never stand alone but are flanked by political cooperation and development assistance to maximize benefits and complementarities.

The aim of this research is to test how far Europe’s negotiators are living up to these objectives and the lofty rhetoric that often accompanies them.

Nowhere has this rhetoric been loftier than in EPA negotiations. Yet formal statements from the ACP and African Union Ministers suggest that the experience across the negotiating table has been somewhat different.

This research tests the claims and public positions of the EU with respect to EPA negotiations against experience and perceptions of ACP countries during talks, as well as against other assessments of the EC’s negotiating performance.

We hope this analysis will be useful to the Latin American and Asian countries currently engaging in the negotiation of free trade agreements (FTAs) with the European Union as part of its aforementioned “Global Europe” strategy. As one contributor to this study commented:

*“Going into the negotiation you need to know as much about the other side as you know about your own. To know about what their main interests are and what their scope is, so you know what is possible and what is not.”*

Arguably these countries face a more difficult negotiating environment than the ACP might have expected: European commercial interests are stronger in these regions and these countries’ governments are perceived as being more capable to take care of their own interests in negotiations.

We also hope the evidence contained in this study will be used by those responsible for holding EC negotiators to account for their conduct in trade negotiations – whether in EPA, Global Europe or WTO talks. Greater engagement from European member governments, members of the European Parliament and European citizens might spur the EC to live up to the laudable aims they set out in public.

## METHODOLOGY

This is countered to some extent by the use of other sources in this research.

A documentary analysis supplements the survey. This draws on primary and secondary sources relating to the negotiations. These include draft negotiating proposals, formal documents of the EU, public statements and academic papers. Resources are incomplete, especially as there is much that is kept secret during negotiations. But it is hoped that, together with the survey results, they will help to improve our understanding of the negotiating dynamic surrounding EPAs.

**Structured interviews to test versions of EU statements about the objectives and processes of EPA negotiations and written responses to a survey containing the same questions form the basis of our findings.**

Responses were gathered from thirteen ACP embassies in Brussels. Respondents came from all six regional negotiating configurations, and included both least developed countries (LDCs) and non-LDCs and countries who had initialed interim or signed full EPAs, as well as countries who had not. Respondents were selected on the basis of their active and direct involvement in negotiations<sup>4</sup>. Therefore, although the sample is small, it can be considered representative.

The usual limitations with regard to survey and interview techniques apply here.

Ongoing negotiations might mean that respondents would not wish to “speak out of turn” for fear of repercussions. For this reason, all responses are unattributed and unpublished.

Responses might be politically motivated. A frequent rebuttal used by EU officials against public ACP complaints about EPA negotiations is that these are designed to manipulate, and that different responses are given to different audiences. This corresponds to the more generic problem of survey and interview-based research: that respondents tailor their answers to reflect what they think the interviewer might like to hear or can deliver.

## TESTING EPA RHETORIC AGAINST REALITIES

**The survey required respondents to state whether they agreed with statements about EPA negotiations and to provide evidence to support their response.**

**Each of the statements corresponded to common assertions by the EU about the impacts, objectives or process of EPA negotiations, and was based directly on public statements or official documents of the European Commission and/or Council of the European Union (European Council)<sup>5</sup>.**

Topics included the extent to which EPAs will support regional integration; how far EPAs can be considered a partnership, the forcing into the negotiations of trade-related issues (including rules on investment, competition, intellectual property and procurement); the deployment of aid as an incentive in the negotiations; the ability of EPAs to coordinate development assistance and aid reforms; and whether EPAs can be called “instruments of development”.

The perceptions of negotiators regarding these issues were supplemented by independent expert assessments of potential and actual outcomes regarding the extent to which expectations had been or were likely to be fulfilled.





A key rhetorical feature of the EU's negotiations with the ACP states has been its support for regionalism as a development strategy:

*"The Council reiterates that EPAs should primarily build upon, foster and support ACP regional integration processes... recognizing the existing political and economic realities and existing regional integration processes, thus providing flexibility."*

**Conclusions of the Council of the European Union on EPAs (9560/07), Brussels, May 2007**

In fact, building regional markets to support development is a formal objective of the negotiations, laid out in the governing treaty, the Cotonou Partnership Agreement (CPA)<sup>6</sup>.

The EU has expressed similar intentions to support regionalism in its Global Europe FTAs, for example with respect to Central America:

*"The objective of this approach is to promote further regional integration already at this stage.. The level of regional economic integration is key to a mutually beneficial Free Trade Agreement. ..Our experience tells us that FTAs between a large market like the EU and small economies are not easily sustainable and often lead to a deficit for the weaker partners."*

**Trade relations between the EU and Central America European Commission, DG Trade website<sup>7</sup>**

The majority of ACP negotiators interviewed and surveyed for this study (nine out of thirteen) disagreed that EPAs would support regional integration. And even those that agreed that they would, were generally optimistic about the potential of EPAs to contribute to regional integration, but expressed concern that much depended on the remainder of the negotiations or, in the case of the Caribbean, implementation.

*"That [regional integration] was the objective but what happened after the conclusion of the interim agreements last December threw that away... Only a few countries have initialled. Only the Caribbean has a full EPA. Regional integration has been drastically affected."*

**Quote from survey respondent**

The main problem seems to be that the configurations of the interim EPAs (iEPAs) agreed in haste at the end of 2007/early 2008 do not correspond to pre-existing regional initiatives. Regions have demonstrably been fragmented in the rush to meet negotiating deadlines.

The Caribbean countries were the only grouping to sign a full regional EPA. The East African Community as a pre-existing customs union managed to broker a single deal with common tariff reduction commitments for all its members, but abandoned efforts to join broader configurations. The other Eastern and Southern African countries that reached an iEPA have only one common sensitive product in their separate exclusion lists. In the Pacific, only two out of fifteen countries agreed bilateral agreements. In Central Africa, only Cameroon reached a deal. The two countries in the regional grouping of West Africa that concluded interim EPAs have significantly different deals<sup>8</sup>. With respect to Southern Africa<sup>9</sup>:

*"The reality is that these EPAs are far from promoting regional integration. They have created severe divisions. SADC[Southern African Development Community] is now in five different negotiating configurations with differences between products and time scales [in their iEPAs]. Why did South Africa join EPA discussions? The TDCA [South Africa's bilateral trade deal with the EU] applied de facto to SACU[Southern Africa Customs Union], we wanted to review the opportunity to harmonize. But now there are divisions even within SACU, which is the world's oldest customs union."*

**Comments by Rob Davies,**

**Deputy Minister of Trade and Industry of the Republic of South Africa, at Oxfam EPA report launch event, Accra, April 2008**

However, Peter Mandelson, Europe's Trade Commissioner, is clear that he does not think the fragmented iEPAs need be an obstacle to continue to work towards regional integration:

*I do not, however, share the view of some that the decision by some ACP to sign individual agreements will obstruct regional integration. The opposite is more likely to be the case. In 2007 the ACP were economically divided by different trade regimes applying to developing and least developed countries. Today, we have removed that division between neighbours in East Africa, SADC and the Caribbean and laid the foundation to do so elsewhere.*

**EU Trade Commissioner Peter Mandelson, speaking to the European Parliament Development Committee Brussels, 28 January 2008**

However, will a move to full regional EPAs be possible, as Mr Mandelson suggests? As one respondent explained, this would depend on the EC demonstrating the necessary flexibility to reopen iEPAs to suit other regional partners:

*"The EC intends that the whole region will sign a full EPA, but we don't know that will happen. Most countries did not initial because of the content of the interim EPAs. If those difficulties are not addressed, it will not happen. And the EC says it cannot be renegotiated."*

Without such flexibility, it will be difficult for countries that have not initialled an iEPA to accede to the agreements. It is unlikely that their lists of sensitive products vis-a-vis the EU will exactly match those catered for in the current arrangements. An extra layer of complication has been added that will require difficult negotiations with both the EC and their regional partners.

Some research suggests that even if the EC would prove willing to reopen iEPA schedules – something they have hinted at in the conclusions of their General Affairs and External Relations Council of 26-27 May 2008 -, it would still be unlikely that sufficient flexibility to achieve regional EPAs with common sensitive lists would be available under the EC's strict interpretation of WTO rules. Calculations by the ODI show that around 40% of tariff lines would need to be excluded to protect all sensitive products of a region like ESA, for example - something the EC has been unwilling to contemplate<sup>10</sup>.

This means that, unless a more flexible approach is taken by the EC, maintaining procedures and barriers within a region would become essential for countries (re)joining regional configurations in order to protect their chosen sectors – which would clearly undermine, rather than promote any process of regional integration. Nonetheless, the EC insists on prioritising its interpretation of WTO compatibility. As one interviewee put it:

*"The intention [to support regional integration] is there, but how that is to be accomplished seems to be at odds given a preoccupation with trying to satisfy WTO compatibility. We got lost, that it [regional integration] can be reduced to a mere percentage, when its a more broad and complicated issue about trade and development."*

By supporting regional integration in its trade deals, the EU can provide an impetus and valuable support to an important development tool. However, as has been the experience of some EPA regions to date, it can also undermine the process if it forces the pace and design of those regional initiatives.

The vision of regional integration that is being promoted on the European side is one that prioritizes moves towards common border measures and external tariff (CET) and ideally creation of a customs union as well as adoption of regional rules on trade-related issues.

*" These [regional markets] are the primary source of growth for local economies. They are the basic building block of economic development. ... We want regional groups of countries to act in their own interests by creating stable and transparent regional rules, that are important for economic governance and which encourage growth. .. What will this imply at the end of the negotiations of our agreements? A single trade regime at the regional level, with common and modern custom procedures, that give sufficient protection to larger markets enabling them to expand as trade grows."*

**Peter Mandelson at the Joint Parliamentary Assembly (JPA) in April 2005**

In Africa, the EC's promotion of its vision of regional integration over ACP priorities was identified as problematic during the formal review process in 2006/7.

*"The focus of the development of regional markets was seen to have been on market access rather than*

the development of the production capacities for the regional integration spaces covered by the EPAs negotiations configurations. The focus of approach on market access vis-à-vis regional integration processes emerged as unresolved issue particularly in the ESA and SADC regions. "

UNECA, African continental review, February 2007

And even negotiators from the Caribbean, arguably the most unscathed region, have had differences with the EU over the design and pace of regional integration:

*"Our differences with the Commission have more to do with the way that they see regional integration and the pace of integration than the reality. We are committed to regional integration and we have been working on it for some time."*

Quote from survey respondent

In the EPA negotiations, ACP countries are driven to decide their common trade regimes before negotiations end. Yet historically, successful regional integration initiatives tend to be lengthy and progressive with common border measures taking some time to achieve. The benefits of regional integration will dissipate if EPAs force premature market opening – especially vis-à-vis a much stronger partner such as the EU. Studies by the World Bank and others show that trade diversion impacts will outweigh any welfare gains if ACP countries cannot develop regional trade before opening their markets to the EU<sup>11</sup>. It is unrealistic to expect the ACP countries to achieve effectively integrated markets before the end of the EPA implementation period.



**Good process is an integral part of a good trade deal. It not only ensures that the interests of the weaker party are not disadvantaged, it also assists implementation if both sides are happy that the deal was reached fairly and reflects their concerns.**

The public portrayal is that the EU is a more benign negotiating partner for developing countries - not leveraging concessions or using strong-arm tactics to achieve its aims; willing to be flexible and understanding of developing countries' needs and concerns. Within the EPA negotiations this has manifested itself as a "partnership" approach to negotiations:

*"They [EPAs] are not classical, hard nosed, free trade agreements of the sort that developed blocks negotiate between them."*

Economic Partnership Agreements:  
putting a rigorous priority on development

Speech by EU Trade Commissioner Peter Mandelson  
to the Civil Society Dialogue Group  
Brussels, 20 January 2005

Nine of the thirteen respondents did not agree with a general statement that the EC took a partnership approach to negotiations. Most emphasized the inequality between parties as the defining characteristic of negotiations:

*"A partnership would imply that the EPAs truly included the concerns of the ACP parties, rather than the EU*

*framing negotiations primarily and solely in the context of their own needs and constraints."*

*"The balance of power in terms of economic clout and resources – meaning experts – is horribly tilted against the ACP. So it's very hard to see how to have a balanced negotiation in the circumstances. So it's neither a partnership nor a negotiation."*

*"It's not about partners. It's about big boys and small boys."*

Quotes from survey respondents

Partnership is a very vague concept. We therefore put some more concrete statements relating to partnership to ACP negotiators: two to test whether the EC was using strong-arm tactics against the ACP and a third to test how responsive the EC was to ACP proposals and concerns.



One of the controversial elements of EPA negotiations has been the insertion of negotiations on rules on investment, competition, intellectual property and procurement. It is clear that the EC wished to insert trade-related issues into EPA negotiations as binding commitments on rules and regulations and that, for the most part, ACP regions would prefer to discuss these topics in the context of cooperation.

*There are also divergences between countries on the so-called Singapore issues (investment framework,*

*competition, and government procurement). On the one hand, there are those who are opposed to the EU insistence on rules. In their mind, the Cotonou Agreement focus on the Singapore issues is on cooperation. Even then, the cooperation framework on the Singapore issues for these countries in their understanding were to be dependent on the outcome of the multilateral process and the capacities at the national and regional level.*

UNECA Review (ibid)

Eleven interviewees agreed that they had been put under pressure to negotiate these issues.

The two that did not agree with the statement, did not in fact question that the EC had put these issues forward forcefully in negotiations, but preferred to emphasize that their own lack of preparedness to push back was the root of the problem:

*"First and foremost these are negotiations - you can accept to negotiate or not. For example on the Singapore issues, they haven't put us into jail, it is our weakness to accept those negotiations, not to negotiate as a bloc."*

Quote from survey respondent

For his part, Commissioner Mandelson hotly denies any strong-arm tactics on the EC's part.

*"I also hear a lot about the EU using this final phase of the EPA negotiations to push the so-called "Singapore" issues back onto the table - the questions of investment, competition and procurement - as well as services.*

*I can't and won't crowbar these issues into final deals. But I am in no doubt that these are development issues."*

Peter Mandelson speaking to the European Parliament  
Development Committee,  
Brussels, 28 January 2008

However, there is evidence to support the view that the EC's approach has been a long way from what constitutes true partnership. In trying to force the Singapore issues onto the agenda, the EC has shown itself not to be above tactics such as exploiting the ACP's lack of negotiating capacity or disjunctures in negotiating structures:

*On trade related and investment rules, I understand your teams have not been prepared to engage in negotiations, despite the agreement we reached in Yaoundé to do so. I believe we agreed there that the development rationale for improving your business climate through rules was clear and that we needed a process to build those rules in the region, and between the region and the EU. I regret that at technical level, the ministerial decisions have not been followed up.*

**EPA Ministerial Meeting with Central Africa  
Introductory Statement by Peter Mandelson,  
Brussels, 29 October 2007**

ACP ministers have expressed their grave concerns over the EU's approach:

*"The ACP council of ministers... urge the European Commission to respect the formal negotiation process and to desist from exerting pressure at the highest political level by taking advantage of the information gap that may exist between the negotiators and the political leadership."*

**Decision N°2/Lxxxiii/06 of the 83rd Session of the ACP Council of Ministers on the Economic Partnership Agreements (EPAs),  
Port Moresby 2006**

The EC has not been shy to admit that it is "promoting" the inclusion of the Singapore issues in EPAs, as it believes in their development value. However, this approach ignores the basic development understanding that domestic-led reforms that have genuine political (and popular) buy-in yield better and more sustainable results, or expressed more strongly:

*"In particular, EPAs should not be seen as a return to policy conditionality: the reluctant acceptance by African governments of policy change in return for promises of aid. Nor should it be a device for re-introducing the Singapore issues of investment and procurement in fora where these governments are more susceptible to asymmetries of power. Nor indeed, should the EU insist on using EPAs to impose those rules on trade in services and intellectual property which are still highly contested in the context of the Doha Round. This way lies a car crash: African governments unwillingly agreeing to changes in which they do not believe."*

**'EPAs: an Opportunity or Car Crash?'**

**Paul Collier, Director of the Centre for the Study of African Economies and Kalypso Nicolaidis, Director of the European Studies Centre, University of Oxford**

Unfortunately, the EC has a tendency to conflate the trade-related aspects of EPAs with the "development component". In this context, it has been clearly intimated, and sometimes made explicit, that the provision of aid is linked to deals that include these rules based issues. Bluntly put:

*"Assistance could be provided against clear commitments on rules."*

**EC Staff Working Document SEC (2006)1427**

And more politically phrased:

*First, our objective remains to conclude comprehensive, full economic partnership agreements with all interested ACP countries and regions. These agreements have a WTO-compatible goods agreement at their core, but also cover other issues in order to maximise their development potential. These issues include services and investment and trade-related areas such as trade facilitation, intellectual property and cooperation on competition policy.*

*Those completing these full EPAs will benefit from the full development potential of these agreements. They will enable us to target EDF funding at the commitments ACP countries have taken. And they will set the clear priorities that European Member States need to help them direct their additional Aid for Trade commitments - which as you know will total €1 billion by 2010.*

**Comments by Peter Mandelson at the INTA Committee European Parliament Strasbourg, 22 October 2007**

Accusations of using aid as leverage have dogged the EC during EPA negotiations but have been continually refuted by them. What is the evidence that the EC is using aid bribes?

All but one of the ACP negotiators interviewed for this study held the view that aid was being made conditional on the signing of an EPA – although they thought that this conditionality was not necessarily brazen or explicit.

One negotiator felt that the lack of a clear answer on the issue from the EC was enough to raise concerns:

*"We have asked and asked, if we do not sign an EPA would we continue to get development funds? They have never provided a good answer."*

Another noted that the channelling of regional funding to EPA configurations, rather than regional economic communities, as had been formerly the case, also interfered with negotiating dynamics:

*"They are going to put their money through channels that are governed by EPAs."*

Yet another mentioned that conditions relating to procurement rules were now being suggested:

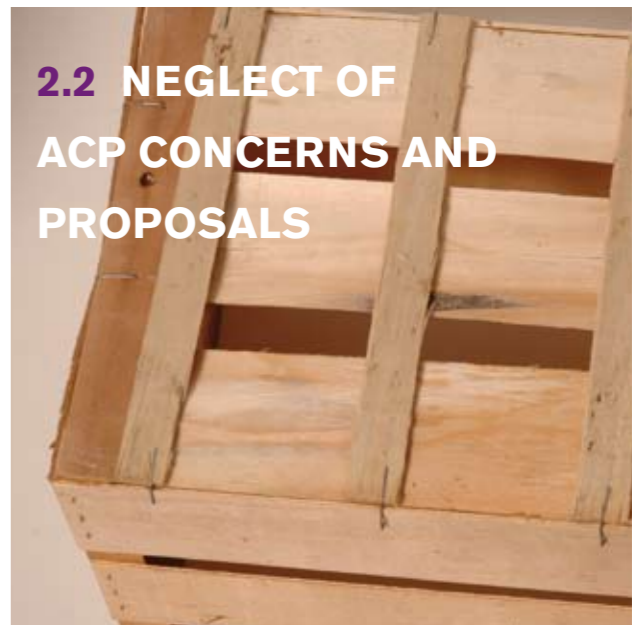
*"They are putting a condition on financial assistance, saying, 'We cannot give you financial assistance if you don't have transparency in government procurement.'"*

ACP Ministers have complained explicitly of aid conditionality from Europe's negotiators:

*It has been brought to the attention of the Pacific ACP Trade Ministers [...] a communication from the European Commission that explicitly implied a conditionality for the development of the regional programming under the 10th EDF, which was not the position understood initially, being contingent on the finalization of the EPA negotiations [...]. The communication makes reference to the 10th EDF RIP [Regional Indicative Programme] being conditional to the outcome of the EPA negotiations and that the two are inseparable. Of particular concern is the proposed reprogramming of the resources of approximately 48% of the RIP in the event an EPA is not negotiated successfully and also a reprogramming of approximately 26% of the RIP resources should a "Goods only EPA" be negotiated.*

**Letter dated 1 August 2007 from James Bule, Chair, Pacific Trade Ministers Meeting & Minister for Trade, Vanuatu, to Louis Michel, Development Commissioner, EC**

It is difficult to definitively prove that the EC has used aid bribes in negotiations, without greater access to negotiations or increased transparency. Even if ACP Ministers and other observers are mistaken, if this situation is left ambiguous, then the EC risks repeating the problems of past aid conditionality: commitments on paper that are not successfully implemented, that are locally inappropriate, have negative impacts and are not sustainable.



The final aspect of "partnership" tested in the survey was whether the EC was giving ACP proposals and concerns equal weight in discussions. Eight out of thirteen disagreed that the EC listened to ACP concerns and proposals. Of those that agreed, some felt that the EC listened by either did not "hear" or failed to address them.

In particular, EC negotiators were criticised as high-handed by negotiators:

*"Those negotiators have made up their mind on what to say and what to do and regardless of what the politicians say they still follow what they made up their mind to do in the first place. "*

*"They have to reach agreement at the EC level first. What is amazing is they met the EC council to adopt them and then they bring it to the ACP and then say no – it's been adopted by the Council and you can't change it. This is a negotiating tactic for them. The ACP council also give us a mandate – does this mean things cannot change?"*

*"It's always, if it s a proposal that comes from us, it is difficult, if it is a proposal from them we will have to compromise. It's that simple."*

**Quotes from survey respondents**

A lack of responsiveness on the part of the EC was identified as an obstacle to progress during the EPA review<sup>12</sup>. ACP Ministers have felt compelled to speak out about EC conduct in talks:

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*“So my point is that the common impression that you left on all of the Pacific Island Trade Ministers and the PACPI/Forum Secretariat was that you were insensitive to our protocols, issues and the result was that division occurred between Pacific Island countries.”*

Letter to Peter Mandelson from Willie Rasmussen, Minister of Foreign Affairs, Cook Islands

*We, Ministers responsible for Trade of Member States of the African Union.. therefore call upon the European Commission in the spirit of partnership to show flexibility and to positively and adequately respond to key concerns of Africa,*

Addis Ababa ministerial declaration on Economic Partnership Agreements negotiations, January 2007

ACP missions, in their survey responses, gave telling examples of issues on which they felt that they had not

received a fair hearing. These examples demonstrate that EC has failed to respond in a meaningful way to several ACP concerns – including several supported by commitments made under the CPA.

### TRANSITION PERIODS AND COVERAGE REQUIREMENTS

Several regions asked the EC to be more flexible in its interpretation of liberalisation commitments required by WTO rules. For example, the Central African (CEMAC) region put forward a proposal to liberalise 60% of its trade over up to 25 years. The EC’s response was to insist on its own interpretation of WTO rules – which has no legal basis and that ignores a CPA obligation to work with ACP countries within the WTO to change those rules if necessary:

*As I have said over again, limiting trade opening to 60% will not survive WTO scrutiny. And I would not consider signing an agreement I could not successfully defend in Geneva. [...] I believe that your development objectives are best served by going far beyond 80%. But if that is your limit, it is your decision. What I have made clear is what I believe to be the minimal acceptable level of liberalisation in WTO terms - that is at least 80% coverage over 15 years.*

EPA Ministerial Meeting with Central Africa  
Introductory Statement by Peter Mandelson,  
Brussels, 29 October 2007

By insisting on such a strict interpretation of WTO rules, the EC is forcing the ACP to make difficult choices – with respect to regional integration (as already seen), but also in choosing whether to maintain revenue, protect sectors important to jobs or food security or to retain flexibility to develop new industries later<sup>13</sup>. These are serious dilemmas, made harder by the EC’s stance. Incredibly, Mr Mandelson claims to have worked out what is in the best interest of the Central African region.

### SINGAPORE ISSUES AS COOPERATION ONLY

As we have already seen, the EC has been actively promoting inclusion of rules-based commitments on trade related issues in EPAs, whilst most ACP regions are seeking a different approach.

The Southern African region (SADC) proposed that, without regional policies in place, it should only discuss cooperation elements of trade-related issues. In its advice to the Council the EC stated that:

*“In our response to SADC it should be made very clear that to base the future EPA on market access provisions only, and leave aside all references to regulatory[...] commitments is not an acceptable option[...]. It should also be made clear to SADC that if, in the end, the region would choose not to make an effort in addressing those issues, then the EC would find it difficult to improve SADC access to its market.”<sup>14</sup>*

### ALTERNATIVES

Perhaps one of the most publicly controversial and criticized failures by the EC to respond to ACP concerns and proposals relates to the way they handled ACP requests to fulfil the CPA commitment to provide an equivalent alternative to an FTA EPA to those countries that did not feel in a position to sign by the deadline<sup>15</sup>. The EC failed to deliver on this commitment, despite instructions from Council and repeated requests from the ACP<sup>16</sup>.

*I know some think that an alternative should be found for those who do not sign up to a WTO- compatible agreement: a roll-over of the existing waiver for example. The legal, technical and political reasons why this is not possible, and will not happen, are clear. In the ACP regions, our negotiating partners have now understood this. Unfortunately, some European commentators, NGOs and others, continue to create false expectations that some such alternative exists. No legally viable alternative is possible and they must know it does not. What they are really arguing for - but are not prepared to say - is that the EU should ignore its multilateral obligations, go back on its commitments, to other developing countries and defy the WTO membership.*

Comments by Peter Mandelson to the European Parliament Development Committee on EPAs, Doha trade talks, Brussels, 5 November 2007

However, legal and technically feasible alternatives were identified by several external experts, ranging from multilateral liberalization by the ACP to changes to preference schemes to cover the few countries and products that would be affected or seeking an extension to the waiver at the WTO<sup>17</sup>.

The EC’s reluctance to consider alternatives in good time seems to have its basis in its belief that an arrangement that makes the ACP swallow the bitter pill of liberalization is superior to preference schemes that have not delivered. The second reason for EC apathy to alternatives

is political cost. Improving or extending preferences to ACP countries is a harder sell in a 27 member state EU, where the majority lack historical ties to these regions. The cost of a waiver or other accommodation at the WTO was clearly distasteful to the EC, and they refused direct requests from ACP countries to seek such.

### NEGOTIATING DEADLINE

As deadlines loomed for signing up to EPAs, several regions asked the EC for an extension to preference arrangements so that they could continue to negotiate without jeopardizing key export industries. West Africa formally asked for a three year extension to continue to negotiate. The EU might have conceded by submitting a formal request to extend the WTO waiver, or by issuing an informal assurance that should the deadline be missed, tariffs would not be raised. Instead, the EC was adamant that the deadline would be respected, despite the enormous pressure and strain to ACP relationships that this involved:

*If we don’t have the new system in place we will have to fall back on alternative with less generous market access. Meeting the deadline is not just about complying with WTO rules. It means not having to go, cap in hand, to other WTO members asking for further concessions - that they are likely to refuse.*

Economic Partnership Agreements: tackling the myths,  
Comment by Peter Mandelson published in The Standard,  
Kenya, 23 April 2007

The ACP countries clearly felt they were being steam-rollered into the negotiations:

*The ACP Council of Ministers, meeting in Brussels from 10 - 13 December 2007 Ministers deplore the enormous pressure that has been brought to bear on the ACP States by the European Commission to initial the interim trade arrangements, contrary to the spirit of the ACP-EU partnership.*

Declaration Of The ACP Council Of Ministers At Its 86th Session Expressing Serious Concern On The Status Of The Negotiations Of The Economic Partnership Agreements

The lack of an alternative became urgent as the deadline for expiry of the WTO waiver approached, so that countries that did not feel ready to sign EPAs did not risk disruption of their exports to the EU market.

This threat to export industries was cited in our survey as the major motivation for signing up to full or interim

EPAs. Even for LDCs, that did not face a tariff hike if they did not sign, the decision to remain within their regional grouping was given as the reason for signing – not the perceived positive development benefits claimed by the EC.



**The EU has made much of the fact that its trade agreements do not stand alone, but work together with a programme of development assistance and cooperation - particularly during EPA negotiations. This is a feature of its “three pillar approach” to external relations that unites trade relations with political dialogue and development assistance.**

Commissioner Mandelson is very forthcoming in promises of how development assistance will accompany EPAs:

*Finally, a word on development assistance. There is a lot of it, and as much as necessary to accompany the EPAs. But development assistance is not an objective in itself - its role is to help Africa to benefit from the opportunities offered by the EPAs and adjust to change”.*

**The Challenges and Opportunities of the Economic Partnership Agreements Speech by Peter Mandelson to the EU-Africa Business Forum, Brussels, 16 November 2006**

The Council reaffirm this complementary approach and the need for increased coherence between these policy areas:

*“ The Council emphasizes the close interdependence between trade policy, development policy, economic development, food security, good governance, democracy, rule of law and legal security and calls on the parties to strengthen coherence between these areas.”*

**Council of the European Union (9560/07), Brussels, 15 May 2007**

However, out of our thirteen respondents, nine respondents disagreed that the EC had succeeded in achieving a coordinated approach to trade and aid within the EPAs:

*“They want to connect the two, but they have not made real commitments.”*

*“EPAs have done nothing additional. They have just tried to play around with how you define development assistance. They are talking about aid for trade and development fund, but there is nothing much there.”*

The EC has made some specific pledges regarding aid flows to the ACP countries: the amount of development assistance available under EDF10 has been announced as €23billion. In addition, half of Europe’s aid for trade pledge (€2 billion) will be targeted to the ACP.

However, according to the ACP, this funding is inadequate<sup>18</sup>.

Independent assessments would tend to support their views. According to research by the Commonwealth Secretariat, of the €23 billion pledged under EDF10, €21.3 billion is already needed to fund the costs of the existing aid portfolio. Also, an OECD study<sup>19</sup> has pointed out that aid for trade commitments are not additional to previous pledges to increase aid. Therefore, instead of additional funding, aid is being redirected to trade spending and will potentially act as a “carrot” to prioritise trade reforms and even trade agreements.

At the same time, a sound mechanism for delivering aid for trade in coordination with ACP EPA commitments is not yet established. No binding commitments on aid or delivery mechanisms are included in the iEPAs.

The right mechanism to deliver aid for trade is at least as critical as providing sufficient resources for adjustment and capacity building. As trade agreements are legally binding, ACP countries need to be confident that promised assistance to implement their commitments will be forthcoming, or that they can delay implementation if it is not. It is only in this way that trade reforms can be properly sequenced and successfully implemented<sup>20</sup>.

The EC has proposed a monitoring mechanism for EPAs - partly to monitor aid spending. However, the provisions as laid out in the CARIFORUM EPA - the only full EPA concluded to date - would be inadequate for this purpose since it does not give ACP governments sufficient rights to reverse or delay implementation of commitments if the right conditions or accompanying measures are not yet established.

In conclusion, the provision and delivery of sufficient and effective financial assistance and the need to put in place the mechanisms to ensure that trade and aid can be properly coordinated are two issues that largely remain to be addressed, if the EU is to be successful in achieving a coherent approach to growth, trade and development in the ACP regions.



As already discussed, the EU’s formal policy is that its trade policy must be coherent with its development policy, and that commercial interests should not take priority over development aims.

In the EPAs the EC goes further and claims that EU offensive commercial interests do not exist in ACP markets. By implication, its pursuit of development objectives in these negotiations is beyond question:

*I often hear claims that the EU is looking out only for its own commercial interests with EPAs. But Europe trades very little with ACP countries - we don't have offensive commercial interests in these negotiations. Even in the highly contentious area of investment, the EU's chief*

*concern is putting in place the rules that will help ACP countries attract the new capital they urgently need.*

**EPAs: tackling the myths, Comment by Peter Mandelson, The Standard €, Kenya, 23 April 2007**

Respondents were unanimous in disagreeing with this view. Evidence seems to support them. Procurement markets, including in developing countries are of significant commercial value, particularly in sectors of interest to the EU, such as construction. ACP markets are also a significant market for value-added agricultural products from EU countries and exports are rising<sup>21</sup>.

It must be noted that few of those interviewed felt that it was necessarily problematic that the EU should have commercial interests to pursue in negotiations. These need not conflict with development aims.

However, only two of respondents agreed that EPAs would be instruments of development.

The EC has a recipe for EPAs to deliver development:

*Because the fact is, we have to recognise, while well-intentioned, the Cotonou trade arrangements that lapse at the end of this year have not succeeded in their objective of promoting sustainable development in the ACP. ..That is why EPAs aim to reverse this decline and put the relationship on to a more sustainable basis - one that turns good intentions into development reality. They aim to bring together:*

- *improved trade preferences for the ACP, based on a complete opening of the EU market, with progressive regional opening by the ACP to each other, and then on a highly asymmetrical basis, to the EU;*
- *extensive EU support for this regional integration;*
- *building of rules of good economic governance;*
- *targeted development assistance to support the fiscal and other adjustments necessary to ensure this change is successful.*

*None of this EPA content would be possible without WTO protection for ACP access to our markets from attack by other developing countries - attack which is guaranteed without the EPAs, especially for ACP banana growers. Combined with the right domestic policies, this is an innovative development package which has the potential to help us achieve the objectives which Cotonou set, but which it has not met.*

**Comments by Peter Mandelson to the European Parliament Development Committee on EPAs, Doha trade talks, Brussels, 5 November 2007**

The EC's recipe is not necessarily shared by the ACP. During interviews for this study the most commonly cited factor that would determine the development value of EPAs was the capacity to address production and supply-side constraints. The emphasis in the EC recipe appears to be on assistance for adjustment only - not necessarily directly supporting competitiveness of ACP firms or tackling infrastructure problems, for example.

The EC recipe also ignores the value of policy space in a development friendly trade deal. It has already been seen in this report that policy space in terms of use of tariffs to protect sensitive sectors and develop new industries is likely to have been undermined by the EPA process, especially at a regional level. In areas such as investment, countries are cautioned that trade agreements can limit the tools available to properly select and manage investment to suit development strategies<sup>22</sup>.

And irrespective of the content of the EC's recipe the use of trade deals to push the design or pace of trade reforms in developing countries is a questionable practice as we have seen earlier in this report.

Fundamentally, the EC needs to subordinate its own "development recipe" to a greater recognition of the need for policy space for the ACP and an improved negotiating process that is guided by ACP priorities and proposals.



**In many respects it is too early to tell what the impacts of EPAs will be – negotiations are ongoing and much will depend on implementation, including aid delivery. It is also outside the scope of this study to make a full assessment of likely impacts.**

**Nevertheless, areas of concern have been highlighted by negotiators that suggest the EC is not on the right track:**

- **EPAs risk undermining rather than supporting regional integration**  
A UNECA study shows that if ACP regions are allowed to integrate their markets before opening to the EU welfare gains can reach US\$270 million. Without this flexibility, ACP states stand to lose out from trade diversion effects by US\$559 million. In the Eastern and Southern Africa (ESA) region, member countries stand to lose out on US\$212 million worth of trade with each other, while the EU will increase its exports to the region by US\$1.1 billion<sup>23</sup>.
- **There are questions as to whether the EC will deliver sufficient assistance in an effective way**  
A key lesson of negative impacts of 1980s and 1990s liberalisation in developing countries is the need to carefully sequence trade liberalisation with building production capacity and competitiveness and to put in place appropriate accompanying measures. The lack of an adequate aid provisions or monitoring mechanism within the EPAs means that ACP countries' ability to coordinate trade reforms with putting in place the right conditions and policies is severely limited.

- **A real and meaningful partnership approach is lacking**

Arguably the most serious failing of EPAs, has been the EC's inability to shift its negotiating practice to a "partnership" approach. Its own interests and convictions of what is "best" for ACP development prospects have overridden to listen and response to the ACP's own views and proposals.

clearly states that the EC is pursuing significant commercial and strategic interests in these FTAs, with little mention of development objectives.

**In order to improve prospects for development-friendly EPAs, the EU needs to tackle some fundamental shortcomings in its approach:**

- **Increased flexibility needs to be shown, particularly with respect to market access commitments, but also to consider cooperation-only provisions in trade-related areas;**
- **The transparency of the negotiating process needs to be improved, to remove any question of inappropriate tactics, but also so that external assessments of the development value of EC proposals can inform progress;**
- **ACP proposals should more regularly form the basis of negotiations, and their priorities should be driving the agenda.**

While it is evident from our reports' findings that the EC has failed to live up to its rhetoric relating to trade negotiations with the ACP countries, it needs to be mentioned that negotiators interviewed for this study also emphasized that **there is also much that needs to be done on the part of developing country partners to increase the prospect of better results from talks**. Being well-prepared is critical. Working out regional positions and knowing EC interests and processes as well as your own were cited by negotiators as keys to success.

It is vital that lessons learned from the process to date be taken on board in the on-going EPA negotiations. In addition, they urgently need to be taken on board by the developing countries currently engaging FTA negotiations under the EU's Global Europe Strategy. In these negotiations stronger commercial interests and the perception of negotiating among "equals" could further erode any prospect of adopting a partnership approach to achieve shared development objectives. In the draft negotiating mandates for these deals, there is even less willingness to show flexibility on the part of the EC, and the strategy

# NOTES

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- 1 For more on the Global Europe strategy and its accompanying regional trade negotiations, see: [http://ec.europa.eu/trade/issues/sectoral/mk\\_access/global\\_europe\\_en.htm](http://ec.europa.eu/trade/issues/sectoral/mk_access/global_europe_en.htm)
- 2 In a joint letter, the European Commissioners for Trade and Agriculture "offered" the smallest developing countries a reduction in their trade distorting subsidies (which had in fact already been established in EU agricultural policy) without demanding concessions for access to their markets in return (although some would argue that significant demands were still being asked of even least developed countries). see: [http://www.europa-eu-un.org/articles/en/article\\_6137\\_en.htm](http://www.europa-eu-un.org/articles/en/article_6137_en.htm)
- 3 The Treaty of Amsterdam (1997) states that the EU's development policy should not be subordinated to other external policies, including trade. The principle of "policy coherence for development" was introduced by the EC Treaty (Article 178).
- 4 The Brussels Ambassadors of the ACP are given a formal role in negotiations by the Cotonou Agreement.
- 5 Occasionally an assertion originally expressed as a negative statement has been reversed to avoid confusion of double negatives.
- 6 According to the CPA: *"Economic and trade cooperation shall build on regional integration initiatives of ACP states, bearing in mind that regional integration is a key instrument for the integration of ACP states into the world economy."* Article 35.2.
- 7 Available at [http://ec.europa.eu/trade/issues/bilateral/regions/central\\_america/index\\_en.htm](http://ec.europa.eu/trade/issues/bilateral/regions/central_america/index_en.htm)
- 8 ECDPM and ODI (2008), The New EPAs: Comparative analysis of their content and the challenges for 2008
- 9 This region negotiated as the Southern African Development Community (SADC) and included countries from the South Africa Customs Union (SACU)

- 10 Stevens and Kennan (2007) ACP Tariff Policy Space in EPAs: The possibilities for ACP countries to exempt products from liberalization commitments under asymmetric EPAs Final Report
- 11 See for example: Karingi et al (2005), Economic and Welfare impacts of the EU-Africa Economic Partnership Agreements, UNECA, ATPC Work in Progress No 10
- 12 *"An important element that is contributing to the slow progress in all regions it was felt was the delay by the EU to respond to issues and proposals raised/prepared by the African countries. Several examples were cited at the sub-regional level, leading to the generalisation of this as a crosscutting issue. The first example given was the eleven months that SADC countries had to wait in relation to their proposal on the SADC EPA framework. The ESA countries on their part noted that the EU took a lot of time to respond with regards to the issues relating to fisheries, rules of origin, development and agriculture. And in the case of ECOWAS, the sidelining of the priorities in the sub - regions roadmap in the negotiations with the EU was felt to be contributing to the delay as there were pre-conditions in the roadmap that are now not likely to be met."* UNECA Review (ibid)
- 13 Although there is an "infant industry" safeguard in name in the CARIFORUM EPA, this clause contains no new definition of an infant industry and would only apply to existing industries. The clause is also only temporary.
- 14 EC Staff Working Document, SEC(2006)1427
- 15 CPA provision (article 37.6) which requires that: *In 2004, the Community will assess the situation of the non-LDC which, after consultations with the Community decide that they are not in a position to enter into economic partnership agreements and will examine all alternative possibilities, in order to provide these countries with a new framework for trade which is equivalent to their existing situation and in conformity with WTO rules.*
- 16 See for example Port Moresby Declaration of ACP Ministers, 2006, Addis Ababa ministerial declaration on Economic Partnership Agreements negotiations, 2007

# NOTES

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- 17 Bouet et al (2007), Searching for an alternative to Economic Partnership Agreements, IFPRI; Hinkle et al. (2005) 'Beyond Cotonou: Economic Partnership Agreements in Africa', in R. Newfarmer, 'Trade, Doha, and Development: A Window into the Issues', Washington DC: The World Bank; Messerlin and Depleuch (2007), EPAs Plan A+, GEM-Sciences-Po (Paris)
- 18 The ACP have consistently called for an additional EPA adjustment fund to be provided. See for example: Decision N°2/Lxxxiii/06 of the 83rd Session of the ACP Council of Ministers on the Economic Partnership Agreements, Port Moresby, May 2006
- 19 OECD Report on aid for trade: Making it effective, 2006
- 20 For more on these issues see The Risks and Opportunities of Aid for Trade, Christian Aid, 2007
- 21 See Christian Aid EPA Research Update, 'The Interests of EU Agri-Business in Better Access to African Markets', October 2004
- 22 UNCTAD, Economic Development in Africa: Rethinking the role of Foreign Direct Investment, 2005
- 23 Karingi et al (2005), Economic and Welfare impacts of the EU-Africa Economic Partnership Agreements, UNECA, ATPC Work in Progress No 10

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## SPEECHES AND ARTICLES BY PETER MANDELSON, EU TRADE COMMISSIONER

- *Speech to the Civil Society Dialogue Group, Brussels, 20 January 2005*
- *Peter Mandelson at the Joint Parliamentary Assembly (JPA) in April 2005*
- *Economic Partnership Agreements: putting a rigorous priority on development*
- *The Challenges and Opportunities of the Economic Partnership Agreements Speech by Peter Mandelson to the EU-Africa Business Forum, Brussels, 16 November 2006*
- *Economic Partnership Agreements: tackling the myths, Comment by Peter Mandelson published in The Standard, Kenya, 23 April 2007*
- *Comments by Peter Mandelson at the INTA Committee European Parliament Strasbourg, 22 October 2007*
- *EPA Ministerial Meeting with Central Africa, Introductory Statement by Peter Mandelson - Brussels, 29 October 2007*
- *Comments by Peter Mandelson to the European Parliament Development Committee on EPAs, Doha trade talks, Brussels, 5 November 2007*
- *Peter Mandelson speaking to the European Parliament Development Committee, Brussels, 28 January 2008*

For speeches and articles of Trade Commissioner Peter Mandelson:  
[http://ec.europa.eu/commission\\_barroso/mandelson/speeches\\_articles/sppm136\\_en.htm](http://ec.europa.eu/commission_barroso/mandelson/speeches_articles/sppm136_en.htm)

## COUNCIL CONCLUSIONS RELEVANT TO EPAs

- *Conclusions of the Council of the European Union on EPAs (9560/07), Brussels, May 2007*

## ACP AND AU DECLARATIONS

- Decision N°2/Lxxxiii/06 of the 83rd Session of the ACP Council of Ministers on the Economic Partnership Agreements (EPAs), Port Moresby 2006
- Addis Ababa ACP ministerial declaration on Economic Partnership Agreements negotiations, January 2007
- *Declaration Of The Acp Council Of Ministers At Its 86th Session Expressing Serious Concern On The Status Of The Negotiations Of The Economic Partnership Agreements Brussels, December 2007*

## CREDITS

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