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Economic Partnership Agreements in the EU's post-Lomé Trade Regime: Negotiations with West Africa

Introduction

Trade is a key element of the development policy of the European Union (EU). As the most important trading partner of developing countries, the EU attempts to facilitate the participation of developing countries in global trade and contribute to economic growth through providing market access and financial assistance. For twenty-five years, the commitment of the EU was largely focused on its former colonies, more specifically in Africa, the Caribbean and the Pacific (ACP). The developing world, in terms of the EU's trade policy, was therefore divided between ACP states with special provisions under the Lomé Conventions and all other developing countries. With the new millennium, this special relationship came to an end. Pressure from several member states¹ and the World Trade Organization (WTO) led to an overhaul of the EU's trade regime vis-à-vis developing countries and to the loss of the privileged position of ACP countries.

The result of this overhaul is still pending. Economic Partnership Agreements (EPAs) – to be negotiated between the EU and several ACP regions – have only been realized in the Caribbean. This article will to examine the

1 This refers particularly to Germany which lost its right to import bananas duty-free from non-ACP countries under the Single European Act in 1993, see Salas, Mauricio & Jackson, John H.: "Procedural Overview of the WTO EC – Banana Dispute", in: *Journal of International Economic Law*, Vol. 3, No. 1 (2000), 145-166. Online at: <http://jiel.oxfordjournals.org/content/3/1/145.full.pdf+html> [16.03.2012], p. 147.

negotiations between the EU and West Africa and discuss the interests involved on the African side.

Following the introduction, the second part of this article is dedicated to the Lomé Conventions with a focus on the change occurring from the third to the fourth revision in order to understand the current situation. The third part is going to take a look at the Cotonou agreement and the trade regime of the EU in general before turning to the negotiations for an Economic Partnership Agreement between the EU and West Africa. The conclusion summarizes the main findings.

1. The relationship between the ACP and the EU under the Lomé Convention

The origins of the special European-African relations date back to the common colonial heritage. Before signing the Treaty of Rome in 1957, France insisted that its overseas dependencies would also be considered in the Treaty and be granted special rights, such as development aid and free trade. One year later, the European Development Fund (EDF) was created in order to channel financial assistance. However, as more and more former colonies gained their independence, the relationship to these countries needed a new foundation.² The result was the Yaoundé Convention in 1963, signed by six European and 18 African countries (mainly former French colonies).³ Following the enlargement in 1973 with the accession of the United Kingdom (UK), Ireland and Denmark, the relationship with these countries was reassessed, as the UK wanted the same favorable treatment for its former dependencies and colonies.⁴ The Lomé Convention, signed in 1975, would then shape the relationship between the EU⁵ and the ACP states for the following twenty-five years.

The Lomé Convention – or rather Conventions as it underwent three revisions⁶ – was a mixture between trade and development aid and was based

2 1960 is known as the Year of Africa as 17 countries gained their independence, see CBC News: 1960: The Year of Africa (2010). Online at: <http://www.cbc.ca/news/world/story/2010/06/07/f-year-of-africa.html> [30.04.2012].

3 See Koulaïmah-Gabriel, Andrea, “Beyond Lomé IV: Future Challenges to EU-Africa Relations”, in: *Review of European Community & International Environmental Law*, Vol. 6, No. 1 (1997), pp. 14-22, p. 15; Gibb, Richard, “Post-Lomé: the European Union and the South”, in: *Third World Quarterly*, Vol. 21, No. 3 (2000), pp. 457-481, p. 461.

4 See Koulaïmah-Gabriel, p. 15. However, some former British colonies, such as India or Bangladesh, were excluded.

5 Until the Treaty of Lisbon, the European Community was responsible for trade-related issues, even so, this article will refer to the European Community and the European Union through the acronym EU.

6 Lomé I lasted until 1980, Lomé II was in place until 1985, Lomé III from 1985 to 1990 and Lomé IV expired in 2000, see Cosgrove, Carol, “Has the Lomé Convention Failed ACP Trade?”, in: *Journal of International Affairs*, Vol. 48, No. 1 (1994), pp. 223-249, p. 223 footnote 2.

primarily on free access of the ACP countries to the market of the EU, however, with special arrangements for some agricultural products.⁷ It raised high expectations and was regarded as a model for North-South-relations as equality, mutual respect and interdependence were essential parts of the treaty. Furthermore, it provided for continued dialogue via three joint institutions: the ACP-EU Council of Ministers, the Joint Assembly and the Committee of Ambassadors.⁸

According to Gibb, Lomé was built on four principles: discrimination, non-reciprocity, partnership and institutionalization.⁹ It positively discriminated in favor of the former European colonies and was therefore a special and privileged relationship between the EU and the ACP states. Additionally, it was non-reciprocal in allowing free market access to the EU without demanding preferential access to the ACP markets in return.¹⁰ The principle of partnership is shown in Article 2 of the Lomé Convention in “the right of each State to determine its own political, social, cultural and economic policy options”¹¹ which meant that each state was able to determine the purpose of the aid received by the EU and the areas for which it wanted to use it.¹² It created the idea of an equal relationship between developed and developing countries.¹³ Institutionalization can be seen in the joint institutions and as the *raison d’être* for the ACP Secretariat.¹⁴

7 See Cosgrove, p. 224. The imports for beef, veal, sugar, bananas and initially also rum were regulated by protocols, see Kerkelä, Leena; Niemi, Janne & Vaittinen, Risto: *Renegotiating the Lome Convention: Trade Policy Schemes and their Effects for African Regions*, 2000, available online at: <http://www.monash.edu.au/policy/conf/48Kerkela.pdf> [29.02.2012], p. 1.

8 See Crawford, Gordon, “Whither Lomé? The Mid-Term Review and the Decline of Partnership”, in: *The Journal of Modern African Studies*, Vol. 34, No. 3 (1996), pp. 503-518, p. 503.

9 See Gibb, p.462.

10 See *ibid.*, p. 457.

11 Fourth ACP-EEC Convention signed at Lomé on 15 December 1989, available online at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:1991:229:0003:0220:EN:PDF> [29.03.2012].

12 See Crawford, p. 504.

13 See Parfitt, Trevor, “The Decline of Eurafrika? Lomé’s Mid-Term Review”, in: *Review of African Political Economy*, Vol. 23, No. 67 (1996), pp. 53-66, p. 53.

14 See Gibb, p. 462.

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In the fourth amendment of the Convention, a shift occurred which changed the importance of these principles. Lomé IV can even be seen as a departure from some of these concepts through the introduction of significant modifications which severely altered the character of the Conventions. In this fourth Convention – which would be the last amendment of Lomé – the EU indicated that it was no longer in favor of preferential treatment for ACP states. This amendment was therefore an important step towards establishing a trade regime which would not discriminate between developing countries. The principle of sovereignty and equal partnership was diluted as the EU achieved to gain more control over the national programs by giving the European Commission a larger role in the administration of programs.¹⁵ Additionally, the EU managed to include a focus on human rights and following a revision in 1995 was able to emphasize further normative values such as democracy, through the ability to suspend development cooperation. In theory, before suspension, there was a mechanism to look for a consensual solution. However, in practice, the EU suspended cooperation unilaterally with several countries.¹⁶

Not only such unilateralism evoked criticism but also unequal treatment of ACP countries and in particular a patronizing attitude that came to light in these suspensions.¹⁷ This attitude is also visible in the new conditionality requirements the EU imposed: the recipient countries of assistance were required to adopt structural adjustment programs – economic policy schemes designed and advocated by the World Bank and the International

15 See Crawford, p. 505.

16 At the end of 1994, the EU had unilaterally suspended cooperation with eight states due to security problems or democracy and human rights issues: Gambia, Equatorial Guinea, Liberia, Nigeria, Somalia, Sudan, Togo and Zaire, although the right to suspend cooperation was only introduced into the Convention in 1995 with Article 366a. On this legal basis, the EU further sanctioned Niger, Sierra Leone, Côte d'Ivoire, and Zimbabwe, see Parfitt, 1996, p. 57; Müller, Gisela et al.: Die Afrikapolitik der Europäischen Union: Neue Ansätze und Perspektiven [The Africa policy of the European Union: new approaches and prospects], Opladen & Farmington Hills 2007, p. 53.

17 See Crawford, p. 510; Parfitt, p. 56.

Monetary Fund.¹⁸ The relationship between the EU and ACP therefore turned out to be no different than any other donor relationship in which the donor imposes conditionality and direction over the use of funds.

Another novelty of the amended Lomé Convention was decentralized co-operation allowing the EU to work increasingly with non-governmental organizations (NGOs) in addition to the formal cooperation via governments. Crawford voiced concern over this development as he saw it as a clear violation of the sovereignty principle and as a way of granting the Commission even more power.¹⁹ In contrast to its predecessors, Lomé IV was valid for ten years instead of five. However, the financial commitments were to be negotiated in two trenches with a mid-term review in 1995. By the time of the review, it became apparent that the EU had lost much of its commitment: An agreement about the financial contributions was only reached at the very end of negotiations and was below the sum that the ACPs had expected.²⁰

What had happened in the run up to the fourth Convention that made the result so different from the other three? As the EU was less and less interested in the ACP region and blamed the region for having “misallocated and abused EU aid because they were generally corrupt, inefficient and authoritarian”²¹, it wanted more control over the funds. Control became more important than partnership and sovereignty. The ACP countries accepted the EU’s demands due to their different bargaining position in the 1980s as opposed to the 1970s. During negotiations of the first Lomé Treaty, the ACP countries profited from high prices of their export commodities such as coffee, sugar or food grains and from Europe’s sense of vulnerability due to the oil crisis which created its strong desire to remain a privileged trading partner in obtaining these commodities.²²

18 See Parfitt, p. 55.

19 See Crawford, p. 512.

20 See Parfitt, p. 61; Crawford, p. 513.

21 Parfitt, p. 56.

22 See Gibb, p. 461.

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A decade later, the African continent had lost much of its negotiating power as a result of an economic recession.²³ Furthermore, for Europe it no longer appeared logical to group such diverse countries together.²⁴

During the 1990s, there had already been indications that Lomé IV might be the last amendment of the Convention, especially as the EU shifted its interest increasingly towards its Eastern borders after the fall of Communism in Europe.²⁵ Nevertheless, the main reason for not negotiating Lomé V came from outside Europe in form of the WTO. The WTO required the EU to negotiate agreements based on reciprocity. In particular the United States, along with several Latin American countries (Ecuador, Guatemala, Honduras, and Mexico) challenged the EU's preferential treatment of the ACP countries.²⁶ In the dispute over the EU's banana regime, the WTO ruled that the Lomé Convention was incompatible with WTO provisions and in particular violates Article I.1, the Most-Favoured Nation Treatment (MFN).²⁷

As a consequence, the EU and ACP states applied for a waiver and were given a grace period until the expiry of Lomé IV on 29 February 2000 in order to come to an agreement in conformity with WTO rules.²⁸ The changes to the Convention, the focus on Eastern neighbors, and the WTO

23 See Crawford, p. 506.

24 See Parfitt, p. 65.

25 See *ibid.*, p. 65.

26 See Salas & Jackson, p. 150.

27 See Grynberg, Roman: The WTO incompatibility of the Lomé Convention trade provisions, 1998, p. 8, available online at: <https://digitalcollections.anu.edu.au/bitstream/1885/40346/3/sp98-3.pdf> [16.03.2012]. The Most-Favoured Nation Treatment states that with “respect to customs duties and charges of any kind imposed on or in connection with the importation or exportation [...] any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties”, The Text of the General Agreement on Tariffs and Trade, available online at: http://www.wto.org/english/docs_e/legal_e/gatt47_e.pdf [21.03.2012].

28 See Huber, Jürgen: The Past, Present and Future ACP-EC Trade Regime and the WTO, in: *European Journal of International Law*, Vol. 11, No. 2 (2000), pp. 427-438, p. 430.

ruling caused the end of Lomé after twenty-five years. The assessment and the effect of Lomé during these years are contested. Undisputed is the fact that the Convention failed to fulfill the high expectations that it had raised in the beginning.²⁹ Nonetheless, the Convention exhibited some unique features which made it innovative in its character: it was predictable in its duration and the financial commitment by the EU and was based on the principle of equal partnership.³⁰ However, after the change from Lomé III to its last amendment, the Convention was not very different from other development programs in which the donor aims to influence the areas of spending.³¹ Lomé was disappointing due to its limited effect on trade: over time, the share of EU imports from the ACP region constantly declined from 7 per cent in 1975 to 4.2 per cent in 1980 and 3.7 per cent in 1991.³² The globalization of international trade and the single market project of the EU both undermined the trade preferences given to the ACP states.³³

The Lomé Convention was an important pillar of ACP-EU relations which over time has become an anachronistic aftermath of colonialism through the clear preference on former colonies. “When the Lomé Convention was signed it stood apart from the Community’s other trade relations in terms of the breath and boldness of its vision. Now it was just one of the EU’s trade agreements that provide some states with access to the European market

29 Some expectations placed in Lomé might have been excessive. Carrington states that it is the responsibility of the EU to “assist[...] the economically weak countries of the South to reduce their economic dependence, and thereby enjoy a more meaningful political independence”, Carrington, Edwin: *The Lome Convention: Its significance and relevance to the agenda for international economic cooperation*, in: *Trocaire Development Review* (1987), available online at: http://www.trocaire.org/sites/trocaire/files/pdfs/tdr/DR1987_theLOMEConvention.pdf [29.02.2012], pp. 7-16, p. 10. This statement assumes that the dependence of the ACP states is attributed mainly to external factors which can therefore only be abolished through changing external surroundings. Nevertheless, internal factors and policies play at least an equal role in achieving political emancipation.

30 See Koulaïmah-Gabriel, p. 16f.

31 See Crawford, p. 516.

32 See Parfitt, p. 59.

33 See Cosgrove, p. 245.

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that is more liberal than that available under MFN treatment.”³⁴ In a critical assessment by the European Commission, the weaknesses of Lomé clearly outnumbered its strengths. On the plus side for Lomé were the considerable amount of funds that were invested into the framework, the improved living conditions in the receiver countries, its uniqueness as a form of cooperation between two groups of countries and the new ideas it provided through exchange. On the side of the weaknesses of the Convention, it is clearly stated that the “principle of partnership has proved difficult to carry through. Dependence on aid, short-termism and the pressure of crises, have increasingly overshadowed relations. The recipient country’s institutional environment and economic and social policy have often a major constraint on the effectiveness of Community cooperation.”³⁵ Additionally, the Commission states that a lack of flexibility, complicated management and the automated granting of funds have impeded the efficiency of the Lomé Convention. While its weaknesses inhibited its ability to play a significant role in trade promotion and constrained its efficiency, its institutionalization achieved solidarity among the ACP countries and regular exchange with the EU.³⁶

34 Stevens, Christopher; McQueen, Matthew & Kennan, Jane: *After Lomé IV: A Strategy for ACP-EU Relations in the 21st Century*, 1998, p. 16, available online at: <http://siteresources.worldbank.org/PROJECTS/Resources/40940-1118776867573/afterlome.pdf> [23.03.2012].

35 European Commission: *Communication from the Commission to the Council and the European Parliament: Guidelines for the negotiation of new cooperation agreements with the African, Caribbean and Pacific (ACP) countries*, COM(97) 537 final, 29 October 1997, p. 7 cited in: Holland, Martin: *20/20 Vision? The EU’s Cotonou Partnership Agreement*, in: *The Brown Journal of World Affairs*, Vol. IX, No. 2 (2003), pp. 161-175, p. 161f.

36 See *ibid.*, p. 7.

2. The EU's post-Lomé Trade Regime

The following part is going to have a quick look at the Cotonou Agreement which followed Lomé. It will then turn to the general EU trade regime and the EPAs which are provided for in Cotonou.

2.1 The Successor Agreement

A successor to Lomé proved difficult to negotiate and the two sides could only consent in February 2000 – weeks before Lomé IV expired – to the ‘Partnership Agreement between the members of the African, Caribbean and Pacific Group of States of the one part and the European Community and its Member States of the other part’ also called the Cotonou Agreement, to be valid for twenty years.³⁷ Cotonou links politics, aid and trade and retained many elements of Lomé.³⁸ Among the innovations of Cotonou is the emphasis on political dialogue where both parties assess the respect for democracy, rule of law, human rights and good governance.³⁹ Furthermore, mutual obligations are stressed, as well as the participation of non-state actors. These actors are integrated in the process of deciding on national programs and in their implementation by being direct receivers of funds. The private sector in particular is expected to play an important role in the future.⁴⁰ The main paradigm shift from Lomé is in the area of trade: Cotonou displays a clear commitment to free trade. The idea of negotiating and establishing relationships with several regions and not just one group, was first suggested in 1996 in a Green Paper by the European Commission

37 See European Commission EuropeAid: The Cotonou Agreement, available online at: http://ec.europa.eu/europeaid/where/acp/overview/cotonou-agreement/index_en.htm [03.04.2012]; Huber, p. 431. The agreement was initially planned to be signed in Suva, Fiji, however, due to a coup in Fiji, the ceremony had to be re-scheduled and moved to the capital of Benin, see Holland, p. 164.

38 See Holland, pp. 164, 174.

39 See Babarinde, Olufemi & Faber, Gerrit: From Lomé to Cotonou: Business as Usual? 2003, available online at: <http://aei.pitt.edu/2817/1/084.pdf> [29.03.2012], p. 19f.

40 See Hurt, Stephen R.: Co-operation and coercion? The Cotonou Agreement between the European Union and ACP states and the end of the Lomé Convention, in: *Third World Quarterly*, Vol. 24, No. 1 (2003), pp. 161-176, p. 172.

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and is incorporated into the Cotonou Agreement.⁴¹ So-called Economic Partnership Agreements are to be negotiated and are to replace the trade chapters of the Cotonou Agreement, which could stay in place until 2008 owing to a WTO waiver. The EU therefore had initially intended to have concluded Economic Partnership Agreements by the end of this transition period.

2.2 The current EU Trade Regime and Economic Partnership Agreements

Economic Partnership Agreements are basically free trade agreements. Nevertheless, the EU is anxious to underline that they are in fact “not free trade agreements in the classic sense”⁴² since they will be phased in over long periods of time and certain sensitive products can be excluded.⁴³ It is not surprising that the EU wishes to avoid EPAs being mentioned in the same breath as free trade agreements; after all, free trade agreements in general and in particular among such uneven partners have caused a lot of controversy in the past.⁴⁴ Nonetheless, free trade agreements even in the classic sense do not necessarily apply to all goods and often include a transitional phase (NAFTA was phased-in over 15 years) and safeguard clauses. According to Article XXIV of the General Agreement on Tariffs and Trade (GATT), EPAs have to cover “substantially all the trade” within a “reasonable length of time”.⁴⁵ The wording therefore leaves room for inter-

41 See Green Paper on relations between the European Union and the ACP countries on the eve of the 21st century: Challenges and options for a new partnership, COM(96) 570 final, available online at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:1996:0570:FIN:EN:PDF> [10.04.2012], p. 44f.

42 EU offers full market access to Africa, Caribbean and Pacific regions in EPAs negotiations, 4 April 2007, online available at: http://trade.ec.europa.eu/doclib/docs/2007/september/tradoc_135911.pdf [16.04.2012].

43 See *ibid.*; Hurt, p. 168.

44 The North American Free Trade Agreement (NAFTA) is an example for such a treaty which includes partners of very different economic weight and which has caused much dispute within the single countries.

45 The Text of the General Agreement on Tariffs and Trade, Article XXIV 5.(c); 8.(b), available online at: http://www.wto.org/english/docs_e/legal_e/gatt47_e.pdf [21.03.2012].

pretation. Stevens states that by the use of other trade agreements and WTO statements, these conditions can be specified. The ACP countries will probably be able to exclude about 20 per cent of goods from the liberalization scheme, whereas a reasonable timeframe could be a twelve year period as in the agreement of the EU with Tunisia or South Africa.⁴⁶ As the EU intended to have completed EPAs with seven ACP regions by 2008, they would have expired together with the Cotonou Agreement in 2020. However, this proved to be an overly optimistic plan. In the beginning of 2012, 4 years after the expiration of the WTO waiver for the trade chapters of Cotonou, the Caribbean is the only region which has completed an EPA. Where a full EPA with a region is not yet possible, the EU has advanced with single countries or a 'coalition of the willing' for the adoption of interim or stepping stone agreements.

In the Pacific, the EU has signed an interim EPA with Papua New Guinea and Fiji. Several members of the South African Development Community (SADC) have also concluded stepping stone agreements: Botswana, Lesotho, Swaziland and Mozambique. The East African Community (EAC) and the EU have consented to an interim agreement but it has neither been signed nor ratified while negotiations for a comprehensive treaty continue. With the region of Eastern and Southern Africa⁴⁷ the EU has signed provisional EPAs with Mauritius, Seychelles, Zimbabwe and Madagascar and in Central Africa with Cameroon.

46 See Stevens, Christopher: The EU, Africa and Economic Partnership Agreements: unintended consequences of policy leverage, in: *Journal of Modern African Studies*, Vol. 44, No. 3 (2006), pp. 441-458, p. 444;

Zouhon-Bi, Simplicie G. & Nielsen, Lyng: ECOWAS – Fiscal Revenue Implications of the Prospective Economic Partnership Agreement with the EU, in: *The World Bank Africa Region Working Paper Series*, No. 103 (2007), available online at: <http://www.worldbank.org/afr/wps/wp103.pdf> [23.04.2012], p. 8.

47 Eastern and Southern Africa includes: Djibouti, Eritrea, Ethiopia, Somalia, Sudan, Malawi, Zambia, Zimbabwe, Comoros, Mauritius, Madagascar and Seychelles.

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Côte d'Ivoire and Ghana are the two countries in West Africa which have concluded interim EPAs; while the agreement with Côte d'Ivoire has been signed, both have not been ratified so far.⁴⁸

Once it became clear that it would not be possible to conclude the agreements within the desired period, the EU passed Regulation 1528/2007. In order to avoid trade disruption, the so-called Market Access Regulation grants duty and quota-free access to countries which are currently negotiating EPAs.⁴⁹ In 2011, the European Commission proposed to amend this regulation and increase pressure on the negotiations through setting a time limit for the signing and ratification of EPAs. According to the Commission, the Regulation – thought of as a temporary solution – provided enough time for the ratification of an agreement. It therefore intends to withdraw the market access offer by January 2014.⁵⁰ If the Commission's proposal is approved by the Council and the Parliament, countries that have not concluded EPAs by 2014 will trade with the EU under the Generalised System of Preferences (GSP).

The GSP is a trade regime which is exempted from the rules of the WTO (in particular the MFN and the requirement of reciprocity) and is designed for developing countries. Those ACP states that are not subject to the Market Access Regulation already trade under the GSP regime. The aim of the GSP is to reduce poverty and foster development by granting preferential market access to certain groups of developing countries. It is a result of a proposal from the United Nations Conference on Trade and Development (UNCTAD) in 1968 and the EU developed the scheme in 1971.

48 See European Commission DG TRADE: Overview of EPA, 3 January 2012, available online at: http://trade.ec.europa.eu/doclib/docs/2009/september/tradoc_144912.pdf [16.04.2012].

49 See Council Regulation 1528/2007 available online at: <http://eur-lex.europa.eu/lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:348:0001:0154:EN:PDF> [16.04.2012], Annex I lists the states which benefit from this regulation. Transition periods applied for rice and sugar. The last restriction on rice was lifted in the beginning of 2010.

50 See Access to EU markets for exporters from African, Caribbean and Pacific Countries, online available at: http://trade.ec.europa.eu/doclib/docs/2011/september/tradoc_148215.pdf [04.04.2012].

GSP comprises three provisions: the General GSP, the GSP+ and the Everything But Arms initiative (EBA). The latter offers duty and quota free market access to the EU for all products from least-developed countries (LDCs) with the exception of arms and ammunition. 48 States currently benefit from the initiative; the majority of which (40 states) are from Africa, the Caribbean and the Pacific.⁵¹ The General GSP covers about 7000 products which can enter the EU market duty free. Whenever the share of the EU market of a product from a developing country represents 15 per cent or more of the exports from this country, the benefits from GSP will cease to apply for this product. The increased share is seen as a success of the GSP scheme which then has fulfilled its purpose and promoted the exports of this country. GSP+ is of interest for developing countries whose economy is vulnerable in the sense that it is not diversified. In order to take account of the situation of these countries, GSP+ is more favorable than the General GSP. Countries are eligible when their five largest sections represent more than 75 per cent of the exports of the country to the EU under GSP and if the GSP-covered exports to the EU represent less than 1 per cent of total GSP-covered EU imports. Additionally, countries must have ratified and implemented a list of conventions on human rights, governance and environmental protection.⁵² Currently, 16 countries benefit from the provisions of GSP+, among these, Cape Verde is the only country from the ACP and benefits from GSP+ since December 2011.⁵³

51 See European Commission DG TRADE: Generalised System of Preferences: Everything But Arms, online available at: <http://ec.europa.eu/trade/wider-agenda/development/generalised-system-of-preferences/everything-but-arms/> [18.04.2012].

52 See Report from the Commission to the European Parliament and the Council: Report on the status of ratification and recommendations by monitoring bodies concerning conventions listed in Annex III to Council Regulation (EC) No 732/2008 applying a scheme of generalised tariff preferences pursuant to Article 8(3) of this Regulation, 17.5.2011 COM(2011) 271 final, available online at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0271:FIN:EN:PDF> [18.04.2012].

53 See European Commission DG TRADE: Cape Verde secures access to EU markets and boosts its development, 9 December 2011, available online at: <http://trade.ec.europa.eu/doclib/press/index.cfm?id=763> [27.04.2012].

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Eager to prevent criticism about the concept of EPAs, the EU emphasizes their advantages for developing countries. Compared to the alternative scheme, the GSP, an EPA is not a unilateral offer by the EU but an agreement between two partners. It is more stable because an EPA is treaty-based and thus not subject to regular review, it is wider ranging, offers better EU market access and is more ambitious.⁵⁴ Clearly, for the non-LDCs, EPAs are the better choice. However, for those 40 ACP countries which are eligible to benefit from the EBA initiative, the choice between EPA and EBA is not clear. EBA is a very attractive scheme for LDCs in particular as EBA does not require the opening of their markets while benefitting from access to the EU's market. An EPA is based on reciprocity which will lead to a loss in tariff revenue for LDCs once the phasing-in period is over. Consequently, for many LDCs, EBA might be the more interesting option to choose. However, difficulties could arise when these countries are a member of a regional trading arrangement (RTA) which aims to be, or already is, a customs union. The reason is the loss of sovereignty over trade policy which results from a common external trade policy. An EPA will result in free access of EU exports to the market of the region, irrespective of whether a particular LDC in the RTA has opted for the EPA or the EBA initiative. Consequently, LDCs that remain members of an agreement and opt for EBA can de facto not make use of the initiative if the market access of the EU to the region is regulated by an EPA.⁵⁵ This could be the reason why the EPA with West Africa is not progressing: twelve of sixteen countries are least-developed countries and already have very comfortable market access provisions for trading with the EU under EBA.⁵⁶ Their comfortable trading conditions are likely to be jeopardized by an EPA.

In the next part, we will look at the negotiations for an Economic Partnership Agreement between the EU and West Africa in more detail.

54 See Trade for development: EU fully opens its market to African, Caribbean and Pacific countries, online available at: http://trade.ec.europa.eu/doclib/docs/2010/january/tradoc_145752.pdf [19.04.2012].

55 See Babarinde & Faber, p. 23ff.

56 See *ibid.*, p. 25.

2.3 Negotiations for an Economic Partnership Agreement between the EU and West Africa

The EU is currently negotiating an EPA with the 15 members of the Economic Community of West African States (ECOWAS) and Mauritania. West Africa was along with Central Africa the first region to initiate EPA negotiations. They opened on 6th October 2003 in Cotonou, Benin in the presence of the EU Commissioner for Trade, Pascal Lamy, the Commissioner for Development and Humanitarian Aid, Poul Nielson, the President of Benin, Mathieu Kérékou, the Executive Secretary of ECOWAS, Mohammed Ibn Chambas, and the Commissioner for Trade of the Union Economique et Monétaire Ouest Africaine (UEMOA), Soumaïla Cissé.⁵⁷ The ECOWAS and UEMOA Commission were given the mandate to lead the negotiations with the EU. For the EU, trade with West Africa is of marginal importance whereas the EU is West Africa's main commercial partner.⁵⁸ The two parties have an overall balanced trade where the EU exports mostly industrial goods and vehicles, e.g. chemical products, rubber and heavy equipments in return for oil (from Nigeria) and agricultural products such as bananas, pineapples, wood, cocoa and cotton.⁵⁹ An EPA between the EU and West Africa will in any case have a greater effect on the West African economy than on the European. The ECOWAS delegation is therefore careful to negotiate an agreement which is beneficial for the region. There are several concerns that have to be taken into account. The major concern of West Africa is the loss of fiscal revenue arising from lowering

57 See EU-ACPs: opening of trade negotiations with West and Central Africa, 2 October 2003, available online at: http://trade.ec.europa.eu/doclib/docs/2003/october/tradoc_113878.pdf [19.04.2012].

58 See Kone, Youssouf: Economic and Social Impacts of the Prospective EU-ECOWAS Economic Partnership Agreements: The Evidence from Côte d'Ivoire, 2008, available online at: <https://www.gtap.agecon.purdue.edu/resources/download/3876.pdf> [24.04.2012], p. 7.

59 See Adenikinju, Adeola F. & Alaba, Olumuyiwa B.: EU-ACP Economic Partnership Agreements: Implication for Trade and Development in West Africa, 2005, available online at: http://hubrural.ak-project.com/IMG/pdf/adenikinju_alaba.pdf [23.04.2012], p. 5; The EU and Côte d'Ivoire sign stepping stone trade deal, 26 November 2008, available online at: http://trade.ec.europa.eu/doclib/docs/2008/november/tradoc_141437.pdf [25.04.2012].

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or abolishing tariffs. Despite trade liberalization measures in the past, income from import and export duties continues to play a significant role in overall national budgets. The countries of ECOWAS collect on average 15 per cent of government revenue from import duties.⁶⁰ Busse and Großmann calculated that liberalization resulting from EPA will decrease government revenue by 4 to 7 per cent and will particularly affect Ghana, Gambia and Cape Verde.⁶¹ Lang showed that Ghana and Guinea-Bissau could even lose up to 20 per cent of their national budget revenue from the loss of import duties.⁶² In order to compensate for this loss, ECOWAS needs to diversify its tax system and in particular increase its efficiency: the import duty collection efficiency amounts to only about 67 per cent on average.⁶³

Another concern of West Africa is the effect an EPA may have on trade. It is desirable in any free trade agreement that trade is created while trade diversion is kept to a minimum. Trade diversion means that trade is merely shifted from a country not participating in the free trade agreement to a participating country. In the case of West Africa, trade diversion would occur if producers from non-EU countries were replaced by less efficient suppliers from the EU. Trade diversion reduces welfare as the replacement of importers occurs only due to the preferential treatment. Trade creation on the other hand occurs when new trade flows are created due to tariff reductions.⁶⁴

60 See Adenikinju & Alaba, p. 16.

61 See Busse, Matthias & Großmann, Harald: The trade and fiscal impact of EU/ACP economic partnership agreements on West African countries, in: *Journal of Development Studies*, Vol. 43, No. 5 (2007), pp. 787-811, p. 808.

62 See Lang, Rémi: A partial equilibrium analysis of the impact of ECOWAS-EU Economic Partnership Agreement, 2006, available online at: http://www.hubrural.org/IMG/pdf/uneca_partial_equilibrium_analysis_of_impact_of_ecowas_eu_epa.pdf [24.04.2012], p. 28.

63 See Adenikinju & Alaba, p. 16.

64 See Zouhon-Bi & Nielsen, p. 9f.; Calí, Massimiliano & Willem te Velde, Dirk: The Potential Effects of Economic Partnership Agreements: What Quantitative Models Say, in: *Overseas Development Institute Briefing Paper*, June 2006, available online at: <http://dspace.cigilibrary.org/jspui/bitstream/123456789/22876/1/The%20Potential%20Effects%20of%20Economic%20Partnership%20Agreements%20What%20Quantitative%20Models%20Say.pdf?1> [20.04.2012], p. 2.

Several studies concluded that an EPA between the EU and West Africa would lead to more trade creation than trade diversion.⁶⁵ Nevertheless, several measures can reduce trade diversion effects even further. West African countries are advised to reduce their tariffs to non-EU importers in parallel with the preferential treatment of the EU.⁶⁶ This would maintain competition between the EU and other producers ensuring that lower prices are passed on to the West African customers as consumer surplus.⁶⁷ West African policy-makers are particularly concerned that EPAs might exert pressure on their already low manufacturing capacities. While on the one hand, the manufacturing sector can benefit from lower tariffs and thus reduced costs of input materials, the sector might be left vulnerable and exposed to European competition. Possible implications would be the closure of factories and displacement of workers. It is therefore important to ensure that the EPA does not endanger the industrialization efforts of West African countries. This is of particular importance as there is a strong interrelationship between the degree of industrialization and the level of development and poverty reduction.⁶⁸ Therefore, West Africa needs to choose wisely which sectors need to be protected and excluded from the EPA and which policies can support industrialization. The phase-in time of the EPA has to be used by the respective countries to implement reforms which will ease the effects of liberalization.

We have seen that adequate policy measures may increase the positive impacts of an agreement and in general that West Africa could benefit from a more liberalized trade relationship with the EU. However the question is whether these benefits are enough for West Africa to conclude an EPA.

65 See i.a. Calí; Busse & Großmann; Lang.

66 See Busse & Großmann, p. 809.

67 Andriamananjara, Soamiely; Brenton, Paul; Uexküll, Jan Erik von & Walkenhorst, Peter: Assessing the Economic Impacts of an Economic Partnership Agreement on Nigeria, in: *The World Bank Policy Research Working Paper*, No. 4920 (2009), available online at: <http://elibrary.worldbank.org/docserver/download/4920.pdf?expires=1335436555&id=id&accname=guest&checksum=58E50A72DE4BAF1FD811108EC74CEDF4> [26.04.2012], p. 3, whereas a dominant supplier might choose to maintain high prices despite tariff reductions.

68 See Adenikinju & Alaba, pp. 3, 9, 17.

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The following part deals with the interests West Africa has in such an agreement. Within the region, only Nigeria, Côte d'Ivoire, Ghana and Cape Verde do not qualify as LDCs. The other eleven ECOWAS member states and Mauritania already have quota and duty free access to the EU market under the EBA initiative. What would be their incentive to negotiate an EPA and as a result having to open their markets to the EU as well? The EU cannot answer this. It merely states in the Market Access Regulation that instead of trading under EBA, "it is preferable that those least-developed countries which are also ACP States base their future trade relationship with the Community on Economic Partnership Agreements. In order to facilitate such a development, it is appropriate to provide that such countries which [...] can benefit from the arrangements provided under this Regulation may continue to benefit, for a limited period of time, from the special arrangements for least-developed countries [...] in respect of those products where the transitional arrangements set out in this Regulation are less favourable."⁶⁹

The difference between an EPA and the EBA initiative apart from the scope and reciprocal market access is the technical and financial support given to EPA signature countries and the rules of origin. These rules are likely to be stricter under EBA requiring the LDCs to use fewer input materials from other countries.⁷⁰ Even so, these slight differences cannot obscure the fact that the EU seems to be the major beneficiary if LDCs choose an EPA instead of trading under EBA: it would allow the EU to have free access to the market of these countries.⁷¹ Calí states that for "the ACP countries that are LDCs [...] an EPA] is de facto the elimination of tariffs on EU imports as they already have tariff-free access in the EU through Everything But Arms".⁷² Somehow, the question of incentives for LDCs has not been properly addressed in the construction of EPAs. Turning to the four countries in West Africa which are not LDCs, we can see

69 Regulation 1528/2007 (7).

70 See Busse & Großmann, p. 789.

71 See Adenikinju & Alaba, p. 9f.

72 Calí, p. 2.

that Ghana and Côte d'Ivoire profit from individual EPAs or rather from the Market Access Regulation since the agreements have not yet been ratified. A Ghanaian trade expert, Augustine Adongo, explains why his country pressed ahead: "To harmonise the interest of all 16 West African countries would not have been the best for Ghana as interests differ from country to country"⁷³. Ghana and Côte d'Ivoire can profit greatly from an EPA as they aim to secure the European market for their agricultural exports. However, it will not be easy to negotiate an EPA which covers all the differing interests of the individual West African countries. Cape Verde benefits from the GSP+ scheme and so far has not attempted to negotiate an individual agreement.

The same is true for Nigeria which has so far avoided any talk about concluding an individual EPA.⁷⁴ The country already exports the majority of its goods (95 per cent) duty free to Europe and has on the other hand restrictive trade policies with high import tariffs. Nigeria in fact has more to lose from liberalizing the Nigerian economy than it has to gain in form of market access. Furthermore, the importance of Europe as a destination for Nigerian exports has been decreasing as the share of exports to India and China has increased steadily.⁷⁵ It is therefore not surprising that Nigeria has no interest in negotiating an individual EPA. It seems that the West African countries are more or less satisfied with the status-quo. Interestingly, apart from urging its member states to take the necessary steps to conclude an agreement with the EU, the issue of an EPA was hardly discussed at the last meeting of West African heads of state and government.⁷⁶ It has been

73 Daily Graphic: Interim EPA Not A Threat, 22 January 2008, available online at: http://trade.ec.europa.eu/doclib/docs/2008/february/tradoc_137721.pdf [20.04.2012].

74 See Ivory Coast says EPA deal will lead way for region, 13 February 2008, available online at: http://trade.ec.europa.eu/doclib/docs/2008/february/tradoc_137752.pdf [27.04.2012].

75 See Andriamananjara et al., p. 2ff.

76 ECOWAS: 40th Ordinary Session of the Authority of Heads of State and Government, 16-17 February 2012, Final Communiqué, available online at: http://www.ecowas.int/publications/en/communique_final/40eme/comfinal.pdf [30.04.2012].

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shown that the degree of interest in concluding an agreement with the EU varies greatly among the individual West African countries. The countries have different priorities about the sectors which demand protection, they possess different trading schemes after Lomé and have diverging views on the content and necessity of negotiating EPAs. It is possible that ECOWAS is split between those that are willing to liberalize towards the EU and those that are unwilling. Stevens sees clear evidence that EPAs may weaken regionalism and regional integration.⁷⁷ In fact, negotiations of an EPA can only be successful if LDCs abstain from using the EBA initiative and are willing to open their economies to “highly competitive (and possibly dumped) EU imports.”⁷⁸ Whether ECOWAS will successfully negotiate an agreement with the EU will depend on whether the West African countries choose the same option: to accede to an EPA and not trade under GSP. Much also depends on whether economic integration is a priority within the region. As soon as ECOWAS completes a customs union, LDCs lose their ability to trade under EBA, as high border controls are not feasible. Until then, the majority of West African countries trade comfortably under EBA, while Ghana and Côte d’Ivoire have market access under the regulation until at least 2014, Cape Verde managed to be one of the beneficiaries under GSP+ and Nigeria shows little interest in offering market access to the EU under an agreement. Only if regional integration is a top priority, is an EPA necessary and imperative.

77 See Stevens, 2006, p. 441ff.

78 Ibid., p. 446.

Conclusion

The spirit of the relationship between ACP countries and the EU has changed considerably from Lomé to the current regime. In fact, the present development of Economic Partnership Agreements is the continuation of the changes which were already introduced in the last amendment of the Convention. The trade regime with developing countries is also the result of the learning process of Lomé, which had most disappointing effects on trade. Where unilateral market access has not achieved the desired results, reciprocity guarantees the WTO's blessing and presents another approach in the design of trade agreements with developing countries. While Lomé was clearly shaped by colonial ties which resulted in preferential treatment and market access to the EU, the current trade regime has overcome the colonial past and offers all developing countries market access under GSP. With the ACP states, the EU is in the process of negotiating reciprocal agreements; a movement that has caused much criticism in developing countries, in particular among protectionists, who believe that reciprocal trade can only harm these countries. Studies and surveys reach a different conclusion: Trade liberalization can benefit developing countries *if* certain measures and policies are implemented which cushion its negative effects.

However the unresolved issue is the different interests of the individual countries. This can clearly be shown in West Africa. Many West African states do not feel the urge of completing an agreement with the EU as soon as possible. Furthermore, preferences over which goods to protect vary substantially. An EPA therefore might only be realizable when West Africa has progressed to form a customs union. Considering that the deadline for the customs union has been moved several times, it is unclear whether ECOWAS will have implemented a customs union according to schedule by the end of 2012, despite the progress made in the last years. The level of economic integration within West Africa is therefore closely related to its ability and interest in negotiating an agreement with the EU.

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