



## **Five good reasons why West Africa should not sign the EPA**

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*The present paper aims only at stressing additional or at least renewed reasons why ACPs, and particularly West Africa, should not sign EPAs, so that it will not cover the full list of arguments against them.*

### **1) West Africa should liberalize only 42.3% of its imports from the EU given that its 12 LDCs are exempted from tariff reduction**

With the EU decision "Everything But Arms" of March 2001, the EU had decided to import duty free and quota free all LDCs exports (but arms), implying that the 12 LDCs of West Africa (11 from ECOWAS plus Mauritania) are not obliged to reduce their tariffs on their imports from the EU. All the same, the WTO admits that LDCs will not be obliged to reduce their tariffs in the Doha Round as they were not obliged to do so in the Uruguay Round.

Therefore, as the EU and the WTO admit that a free trade agreement implies an elimination of tariffs of 90% in both ways (imports + exports) and as the EU has admitted that ACPs will have to liberalize their markets by only 80% since the EU will fully liberalize (at 100%) its imports from ACPs – which does not imply a significant effort since they are already liberalized by 97% –, we have to introduce into this equation the specific concessions for LDCs made by the EU and the WTO. Therefore, as the 12 West Africa LDCs' imports from the EU represent 37.7% of its total imports<sup>1</sup>, West Africa should only liberalize 42.3% (80% - 37.7%) of its imports from the EU in its EPA.

### **2) ECOWAS should not reduce its tariffs at lower levels than the EU on basic food staples**

The minimum that the ACPs, and particularly ECOWAS, should demand is not to be obliged to reduce their tariffs on their basic staple foods at lower levels than those maintained by the EU. They should also demand that the import value of these exempted products should not be included in the import value exempted from reductions.

Indeed whereas ECOWAS is exporting mainly to the EU non staple agricultural tropical products – cocoa, coffee, cotton, tropical fruits, rubber –, and which do not compete with the EU products, on the other hand the EU is exporting mainly food products competing directly with the ACPs staple products: dairy products, cereals and preparations, meats and preparations, fruits and vegetables and preparations, beverages.

Now the EU maintains very high tariffs on its basic food products: whereas its average MFN (Most Favored Nation, i.e. outside preferential tariffs) agricultural tariff is of 22.9%, that on sensitive products is of 52%, of which 69% on meats, 79% on dairy products, 55% on cereals,

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<sup>1</sup> Jacques Gallezot, *Le choix régional des produits sensibles à l'APE soumis au jugement majoritaire des pays de l'Afrique de l'Ouest*, INRA & AgroParisTech, Octobre 2007.

117% on sugar and sweeteners, 64% on vegetables, 29% on fruits and 39% for fruits and vegetables preparations<sup>2</sup>. And 141 EU agricultural tariff lines, about 8% of total, exceed 100%, some exceeding even 250% (for some bovine meat, some cereals preparations and starch, and some wines). And, contrary to the situation in most DCs, the EU applied tariffs are the same as its bound tariffs. This explains why, in the Doha Round negotiations, the EU wants that 8% of its agricultural tariff lines be considered "sensitive".

The ACPs must all the more demand not to reduce their tariffs on these staples under the EU levels that the EU huge domestic subsidies having compensated a sharp reduction in its agricultural prices have a large import-substitution effect, allowing the EU to reduce significantly its agricultural tariffs without questioning its competitiveness.

### **3) ECOWAS cannot sign the EPA before the conclusion of the Doha Round where the issue of agricultural subsidies is a key component**

The EU has refused to deal with the fundamental issue of subsidies in the EPAs on the allegation that it is a matter to be dealt with only at the WTO, particularly in the Agreement on Agriculture (AoA). Thus, in the "stepping stone" interim EPAs signed by Ivory Coast and Ghana, the word subsidy is not even mentioned although it is implicitly implied in articles 23 to 25 on the antidumping and safeguard measures.

A fortiori the word "dumping" is not mentioned in the interim EPAs. ECOWAS could fear the worst since Article 54 of the Cotonou Agreement on "Food security" states: "*1. With regard to available agricultural products, the Community undertakes to ensure that export refunds can be fixed further in advance for all ACP States in respect of a range of products drawn up in the light of the food requirements expressed by those States. 2. Advance fixing shall be for one year and shall be applied each year throughout the life of this Agreement, it being understood that the level of the refund will be determined in accordance with the methods normally followed by the Commission*". It is absurd that the EU commits itself to fix one year in advance its export refunds to ACPs since it ignores, not only which will be then the levels of world prices and the exchange rates of non CFA francs currencies with the euro, but also which will be the needs of food-deficit ACPs. Such prefixing of refunds will depress agricultural prices in ACPs in all cases, which contradicts the objective of promoting their agricultural development. Although the WTO Ministerial Conference had decided in December 2005 in Hong Kong to eliminate the export refunds by end 2013, as long as the Doha Round will not be finalized the EU will continue to grant them, which it has already resumed to do on dairy products in January 2009, following the sharp drop in their world prices.

This subsidy issue is all the more crucial that the EU agricultural exports continue to be dumped on the world market at a huge rate – particularly those imported by ECOWAS: wheat and flour, dairy products, poultry meat, tomato paste, etc. – although not so much now through formal export subsidies ("refunds") than through huge domestic subsidies benefiting to its exported products. Yet the WTO Appellate Body has ruled several times – since the Dairy Products of Canada case in December 2001 – that domestic subsidies should be included when assessing dumping. Thus from 1995-96 to 2001-02 the share of domestic

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<sup>2</sup> Jacques Gallezot, *Scénarios pour les futures négociations tarifaires à l'Organisation mondiale du commerce*, INRA-INAPG, octobre 2005.

subsidies in total subsidies to the EU exports has reached 75% for poultry, 69% for cereals, 62% for pig meat, 38% for dairy and 52% for bovine meat<sup>3</sup>. For 2006, \$7 billion of domestic subsidies have still benefitted to the EU agricultural exports although the export refunds have been reduced to \$2.5 billion, implying a share of 74% for domestic subsidies in the total subsidies to its exported products<sup>4</sup>.

Which means that the elimination of export refunds, foreseen in December 2013 if the Doha Round is finalized, would be far from stopping dumping. One can clearly make the same acknowledgement for the US, particularly on its cotton exports.

#### **4) Signing the EPA before the Doha Round completion would reduce much the safeguards measures of ECOWAS**

The Revised Draft on modalities for agriculture of 6 December 2008 has proposed that 12% of agricultural tariff lines (TL) could be self-designated by DCs as "Special Products" (SPs) submitted to lower reductions by DCs on the basis of indicators and that 5% of TL would not be submitted to any reduction. Yet these WTO proposals are short of the G-33 demands of 20% of TL as SPs, of which 10% exempt of tariff cut, 5% subject to a 5% tariff cut and 5% to a 10% tariff cut. Besides, the Revised Draft foresees also, beyond the SPs, "*Developing country Members shall have the right to designate up to one-third more of tariff lines as "Sensitive Products"*", that is 5.3% of TL since the proposal for the developed countries is of 4%. On the other hand the "Special Safeguard Mechanism" (SSM) should offer to DCs an advantage at least as high as does the "Special Agricultural Safeguard" (SSG) of the AoA article 5 which benefits in practice only to the developed countries, and particularly to the EU and US.

As the SPs, the sensitive products and the SSM would be available to all WTO developing Members, the additional protection they would enjoy would be *erga omnes* and not challengeable – as long as they would be conform to the agreed criteria. Therefore this additional protection should not count in the level of tariffs reduction required for ECOWAS in the EPA. Otherwise DCs more advanced than ACPs, particularly than ECOWAS, would enjoy a higher level of protection through the SPs and SSM than the ACPs vis-à-vis the EU exports.

The necessity for ECOWAS to avail of the SPs and SSM is all the more founded that the safeguard provisions in the interim EPAs of Ghana and Ivory Coast are more restrictive than those of the AoA "Special Agricultural Safeguard" (SSG) available only to the EU. Indeed if the SSG can be triggered by increased imports volumes or by slumps in import prices, the interim EPAs safeguard can only be triggered by increased imports volumes. And, in that case, the additional duties cannot exceed in the EPAs "*the applied most-favoured-nation customs duty*", whereas for the SSG used by the EU the additional duty can exceed up to "*one third of the level of the ordinary customs duty in effect in the year in which the action is taken*". As the

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<sup>3</sup> J. Berthelot, *The comprehensive dumping of the European Union's dairy produce from 1996 to 2002*, Solidarité, January 31, 2006; *The comprehensive dumping of the EU bovine meat from 1996 to 2002*, Solidarité, 19 April 2006; *Feed subsidies to the EU and US exported poultry and pig meats*, 10 January 2006.

<sup>4</sup> J. Berthelot, *Questions to Pascal Lamy on the transparency and consistency of the WTO rules*, Solidarité, 15 January 2009.

EU applied agricultural tariffs are equal to its bound tariffs, the EU can exceed by one third its bound tariffs on 31% of its tariff lines covered by the SSG, knowing that the SSG does not cap the number of tariff lines which can be invoked in a given year.

Besides, the interim EPAs provisions state that the safeguard measures cannot exceed two years or at most another two years period if the reasons for the volume trigger still hold at the end of the first two years. However FAO has shown that *"There are some cases where a SSG has been triggered for some products on an almost permanent basis, i.e. every year since 1995"*. The necessity of the prices trigger in the EPA is all the more obvious that, as seen above, the EU has artificially lowered its domestic prices through huge compensatory domestic subsidies.

Capping the EPAs safeguard measures to the applied MFN (most favoured nation) tariff is particularly detrimental for ECOWAS as they would be much below the contemplated Import Safeguard Tax (IST) in the new ECOWAS CET (common external tariff). Indeed not only the IST could be triggered for slumps in import prices as for surges in import volumes but also *"The rate of additional duty under the IST will be either 100% of the amount of price reduction on imports, or 50% of the percentage surge in import volume, whichever is higher. This additional duty will be assessed as a percentage of the c.i.f. unit value of the imported product, alongside the relevant customs duty and other applicable fees and taxes (Statistical Fee, Community Levy, Value Added Tax, excise taxes, etc)"*<sup>5</sup>.

The necessity for ECOWAS to avail of the SPs and SSM before signing any EPA is all the more acute that ECOWAS has not yet bound its agricultural common external tariff (CET) which would allow it, instead of using safeguards, to raise the applied tariffs of the vulnerable products. Indeed FAO has shown that one of the reasons why most of the 22 DCs which could avail of the SSG did not actually use it was because *"the levels of the bound tariffs were high enough for countries to raise applied rates to the extent required to offset the effects of depressed import prices and import surges. There is some evidence that many countries followed this approach, in particular during 1998-2000, when world market prices of several basic foods declined to low level"*<sup>6</sup>.

#### **5) West Africa cannot sign an EPA without knowing the level of its preference erosion on the EU market stemming from the Doha Round and EU bilateral trade agreements**

EPAs are supposed to stabilize the ACPs preferential access to the EU market, and even to increase it as the EU commits itself to import duty free and quota free all ACPs exports. However this might end up an empty vow since the Doha Round finalization, as the signature of many bilateral trade agreements, will reduce much the EU tariffs for all countries on agricultural (and non agricultural) products, thus eroding the ACPs, and namely the ECOWAS, preferences on the EU market. This would be particularly verified for tropical products for which the Revised Draft (paragraph 148) proposes that *"Where the scheduled tariff is less than or equal to 25 per cent ad valorem, it shall be reduced to zero. Where it is greater than 25 per cent ad valorem the applicable tariff cut shall be 85 per cent"*. Even if

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<sup>5</sup> ECOWAS Common External Tariff – Accompanying Measures, An Introduction, ROPPA Ouagadougou seminar on sensitive products, January 2007.

<sup>6</sup> FAO, A special safeguard mechanism for developing countries,  
<ftp://ftp.fao.org/docrep/fao/008/j5425e/j5425e01.pdf>

paragraph 149 adds that, for the list of products with long-standing preferences, *"There shall be no tariff cuts on the items in that list for 10 years. Tariff cuts shall commence only after that point and shall be implemented over five years in equal annual instalments thereafter"*. In other words, these preferences will have disappeared at the same time when Ivory Coast will open its market to 81% of the EU exports, representing 87% of its tariff lines, as written in the "stepping stone" interim EPA signed the 26 November 2008 in Abidjan and which has added one section on development aid to the previous interim EPA signed in December 2007. The "stepping stone" interim EPA signed more recently by Ghana and Cameroon have similar provisions except that they would open their market at 80% only instead of 81% for Ivory Coast.

The EU has agreed to reduce its agricultural tariffs by 54% on average, knowing that DCs and the US are demanding more drastic cuts, even if, as we have seen, the EU sensitive products – which are not among those exported by West Africa – would be subject to much lower cuts. And, to these Doha Round threats on West Africa trade preferences erosion, we must add those stemming from the bilateral trade agreements that the EU has already signed but not fully implemented and those which it is still negotiating with many other DCs, such as of Mercosur, in Central America and Asia.

Above all the main reason why Ivory Coast had agreed to sign an interim EPA in December 2007, confirmed by the "stepping stone" interim EPA of 26 November 2008, is to benefit of the duty free quota free access to the EU market for its agricultural products, and first for its 220,000 tonnes of bananas (not to speak of its pineapples, mangos, processed cocoa and coffee and canned tuna), against a duty of €176 per tonne of Latin American bananas. However this EU promise is already obsolete since the WTO Appellate Body ruling of 14 November 2008 – the very day when the stepping stone interim EPA was signed ! – in the bananas case sued by Ecuador and the US that : *"EC Bananas Import Regime, in particular, its duty-free tariff quota reserved for ACP countries, was inconsistent with Article XIII:1 and Article XIII:2 of the GATT 1994"* and that *"the tariff applied by the European Communities to MFN imports of bananas, set at €176/mt, without consideration of the tariff quota of 2.2 million mt bound at an in-quota tariff rate of 75€/mt, is an ordinary customs duty in excess of that provided for in the European Communities' Schedule of Concessions, and thus inconsistent with Article II:1(b) of the GATT 1994"*.

Indeed since January 2006 the banana trade for non ACPs rests on a tariff only regime because the tariff rate quota has disappeared. Dollar-bananas pay a specific duty of 176 €/t when, before, they paid only 75 €/t within the tariff rate quota that American countries did not exceed because the bound out of quota tariff, at 680 €/t, was deterrent. Furthermore the dollar depreciation by 30% against the euro from January 2006 to July 2008 has increased the tariff in dollar on Latin American bananas, even if the dollar recovery since July 2008 has limited the depreciation to 10% from January 2006 to the 16 January 2009.

The compromise concluded the 26 July 2008 at the WTO, under the aegis of Pascal Lamy, between the Members concerned with the EU bananas trade regime – of which the 11 Latin American exporting countries – has led to the EU commitment to reduce gradually its tariff on Latin American bananas to €16 (185 dollars) per tonne by 2015 (of which 26 €/t from the first year). This compromise would be an integral part of the overall negotiation concluding the Doha Round and would be sheltered by a "peace clause" from challenges by Latin American countries. In 2015 also ACPs bananas would pay the same tariff so that their tariff

rate quota of 775,000 tonnes would disappear. Ivory Coast's ambassador to the WTO, Guy Gauze, said that ACPs had accepted this tariff of €16 per ton but wanted it to be introduced for them from 2020 instead of 2015. Indeed ACPs are very anxious for their competitiveness and stress that, despite the tariff of 176 €t paid by "dollar-bananas" (but also by ACPs when they exceed their national quota within the overall quota of 775,000 tonnes), Latin American exports have increased by 635,000 tonnes from January 2006 to November 2007 when ACPs' exports have increased by only 74,000 tonnes.

According to ACPs *"Such plans are out of kilter with what the EC has been trying to safeguard with the signing of a new EPA free trade agreement with CARIFORUM states. Some African banana producers; Cameroon and Côte d'Ivoire and Ghana have also individually initialled 'goods only' EPA agreements with the EU to avoid the reintroduction of tariffs on bananas when the waiver for Cotonou agreement's preferences in the WTO expired on 31 December"*<sup>7</sup>. Gerhard O' Hiwat, Surinam's Ambassador in Brussels and head of the ACP working group on bananas, adds that *"a new free trade agreement between Central American nations and the EU in the pipeline foresees deeper cuts than those in the Geneva compromise. "The ACP preferential margin on bananas will be further eroded when the EU-Central America FTA comes into effect given that is more favourable than envisaged in the Geneva Agreement," he told Baroness Ashton who is chief negotiator for the EU in WTO talks... Further cuts within just 10 years to just €95 per ton would mean that the ACP nations would be "unable to sell bananas on any market"*<sup>8</sup>.

Let us remind that Ivory Coast is not the only ACP country exporting bananas (for 220,000 tons), particularly from Sub-Sahara Africa where Cameroon exports 250,000 tonnes and Ghana 50,000 tonnes. Among the other ACPs the Dominican Republic exports 200,000 tonnes. Besides we should not forget the exports of pineapples and mangos to the EU: 72,000 tonnes of pineapples and 14,000 tonnes of mangos by Ivory Coast and 71,000 tons of pineapples by Ghana. Now there are generally the same producers who export bananas and pineapples, and sometimes even mangos, and those fruits are exported on the same specialized cargos which ship them also in the three countries<sup>9</sup>.

Let us underline that the "stepping stone" interim EPAs recently signed by Ivory Coast, Ghana and Cameroon, but also the full regional EPA signed by CARIFORUM, are supposed to guarantee a duty free quota free access to the EU market for their products, particularly bananas. Yet these interim EPA, at least those signed in December 2007, but also the compromise concluded at the WTO the 26 July 2008, were not even mentioned in the WTO Appellate Body ruling of 26 November 2008 having condemned the EU to eliminate its duty free quota for ACPs.

<sup>7</sup> Debra Percival, *New tariff cut proposal spells demise of ACP banana industry, say ACP Ambassadors*, The Courier, 12 November 2008, [http://www.acp-eucourier.info/Actualite.79.0.html?&tx\\_ttnews\[tt\\_news\]=708&tx\\_ttnews\[backPid\]=6&cHash=5728a1f045&L=0](http://www.acp-eucourier.info/Actualite.79.0.html?&tx_ttnews[tt_news]=708&tx_ttnews[backPid]=6&cHash=5728a1f045&L=0)

<sup>8</sup> Debra Percival, *ACP says EU must not give way on bananas*, The Courier, 4 December 2008, [http://www.acp-eucourier.info/Actualite.79.0.html?&tx\\_ttnews\[tt\\_news\]=724&tx\\_ttnews\[backPid\]=6&cHash=7b5e7c04cb&L=0](http://www.acp-eucourier.info/Actualite.79.0.html?&tx_ttnews[tt_news]=724&tx_ttnews[backPid]=6&cHash=7b5e7c04cb&L=0)

<sup>9</sup> *Exposé de M. N'Goan Aka Mathias, Président de l'ANOPACI, président du Groupe de produits tropicaux sur la situation des producteurs de bananes ACP*, <http://www.ifap.org/fr/about/documents/CongresMondialAgriculteurs/SituationProducteursBananesACP.pdf>

Taking note of the condemnation of the EU banana trade regime, EU Commission spokesman Peter Power stated: *"The EU considers the Doha Round to be the right forum to find a resolution, and we are ready to take up the negotiations on a deal on bananas with all suppliers where they were left in July"*<sup>10</sup>. However, it is not clear to what extent the Latin American countries will continue to agree on the WTO compromise of 26 July 2008 on a tariff of 114 €/t. According to CTA, *"With the EC insisting that the underlying dispute in the banana sector should be resolved in the context of a wider Doha Agreement, it is far from clear what the immediate implications of the WTO appellate body ruling will be. Nevertheless it seems likely to strengthen the hand of Latin American governments in any 'bilateral' negotiations around this issue"*<sup>11</sup>.

In any case, it is clear that the EU insistence to solve the banana issue in the context of the Doha Round final negotiation is an additional argument for ECOWAS not to sign a full regional EPA before the conclusion of the Doha Round and it is at the same time a snub to Ivory Coast, Ghana, Cameroon and CARIFORUM which have had the naivety to accredit the EU's promises. Instead of stepping stones these EPAs would be a stumbling block for these ACPs and the other Members of their regional groupings, particularly in ECOWAS.

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<sup>10</sup> AFP, *WTO rejects EU appeal over banana ruling*, <http://www.france24.com/en/20081126-wto-rejects-eu-appeal-over-banana-ruling-0>

<sup>11</sup> <http://agritrade.cta.int/fr/Produit-de-base/Secteur-de-la-banane>