



**The opening of ACPs' markets to EU exports should,
for the regional EPAs, deduct the share of LDCs**

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In the on-going negotiations between the EU and ACPs Regional Economic Communities (RECs) discussing regional EPAs, the EU demands that ACPs RECs open their market to 80% at least of EU exports. This is based on its own interpretation of the GATT article XXIV that a free-trade agreement implies to liberalize about 90% of total trade (imports and exports), the EU committing itself to liberalize 100% of its own market to ACPs exports.

However most WTO agreements exempt LDCs from reduction commitments. This is the case of the Agreement on agriculture (AoA article 15: "*Least-developed country Members shall not be required to undertake reduction commitments*") as of the Revised modalities on NAMA (non agricultural products market access) of 6 December 2008 (article 14: "*LDCs shall be exempt from tariff reductions*"). And in December 2011, the eighth Ministerial Conference adopted a waiver allowing WTO members to deviate from their MFN obligation of non-discrimination in order to grant preferential treatment to service suppliers (including under Mode 4) from LDC members. And most other WTO agreements provide specific exemptions to LDCs¹.

If the Enabling Clause of 1979, incorporated in the GATT 1994, deals mainly with regional FTAs between DCs, it deals also with FTAs between developed countries and LDCs when it writes in paragraph 6: "*Having regard to the special economic difficulties and the particular development, financial and trade needs of the least-developed countries, the developed countries shall exercise the utmost restraint in seeking any concessions or contributions for commitments made by them to reduce or remove tariffs and other barriers to the trade of such countries, and the least-developed countries shall not be expected to make concessions or contributions that are inconsistent with the recognition of their particular situation and problems*".

On the other hand, the Cotonou Agreement, revised in June 2010, contains the following provisions where the EU claims to share the priority given by ACPs to foster their regional integration within their RECs, particularly for their LDCs members:

Article 3: "*Particular emphasis shall be placed on the regional dimension. Special treatment shall be given to the least developed countries... Particular emphasis shall be put on regional integration, including at continental level.*"

Article 28: "*ACP-EU cooperation shall provide effective assistance to achieve the objectives and priorities which the ACP States have set themselves in the context of regional cooperation and integration*".

Article 29: "*2. In the area of regional economic integration, cooperation shall support: a) the participation of Least Developed Countries (LDC) ACP States in the establishment of regional markets and sharing the benefits there from; b) the implementation of sectoral economic reform policies at regional level; c) the liberalisation of trade and payments*".

¹ http://etraining.wto.org/admin/files/Course_361/Module_1609/ModuleDocuments/TD_LDCs-L2-R1-E.pdf;
http://www.wto.org/english/docs_e/legal_e/guide_ur_deving_country_e.pdf

In the area of trade between the EU and ACPs, the Cotonou agreement claims also to maintain a special treatment for LDCs:

Article 35.3: *"The Parties reaffirm their attachment to ensuring special and differential treatment for all ACP countries and to maintaining special treatment for ACP LDCs"*.

And, in regard to the WTO rules, the Cotonou agreement pleads for an increased flexibility in the WTO rules for the more fragile DCs, hence for LDCs:

Article 27.4: *"Negotiations of the Economic Partnership Agreements shall aim notably at establishing the timetable for the progressive removal of barriers to trade between the Parties, in accordance with the relevant WTO rules... Negotiations shall take account of the level of development and the socio economic impact of trade measures on ACP countries, and their capacity to adapt and adjust their economies to the liberalisation process"*².

Article 39.3: *"They also agree on the importance of flexibility in WTO rules to take account of the ACP's level of development as well of the difficulties faced in meeting their obligations"*.

Besides, the highlights of the new EU Generalized System of Preferences (GSP) of 2012, which covers the EBA (Everything But Arms) decision granting to LDCs duty free-quota free (DFQF) access to the EU market, provide: *"The GSP is subject to WTO law, in particular to the GATT and the so-called "Enabling Clause" which allows for an exception to the WTO "most-favoured nation" principle (i.e. equal treatment should be accorded to all WTO Members)... The Everything But Arms arrangement already is an open-ended scheme and will not change... The scheme will no longer end every three years, as it is the case now. Rather, it will last 10 years"*³. And Article 43.3 of the new Regulation on GSP confirms: *"The scheme shall apply until 31 December 2023. However, the expiry date shall neither apply to the special arrangement for the least-developed countries, nor, to the extent that they are applied in conjunction with that arrangement, to any other provisions of this Regulation"*⁴.

Therefore the argument that the EBA is an EU unilateral short term concession not binding at the multilateral level is no longer relevant, the more so as the EU has been pleading that all developed and emerging countries should follow its DFQF position, and in fact China, India and Brazil have already decided to do it.

All these WTO and EU texts imply that, in the EPAs with the EU, the ACPs RECs should not be obliged to open their market to 80% of the EU exports given that their LDCs are exempted to do so. The more so as, according to the WTO, *"The Enabling Clause does not contain a specific requirement regarding the trade coverage of RTAs among developing countries, contrary to Article XXIV:8 of GATT 1994, which requires that RTAs cover "substantially all the trade"*⁵. And it is the same Enabling Clause which has underscored, in the quoted paragraph 6 above, that *"the developed countries shall exercise the utmost restraint in seeking any concessions or contributions for commitments made by them to reduce or remove tariffs and other barriers to the trade of such countries"*.

However, following the signature of the Cotonou Agreement in June 2000, ECDPM – an independent think tank but close to, and financed by, the EU Commission and its Member States – made already the following comments in January 2001: *"In accordance with EU proposals, the 39 least developed ACP countries (LDCs), in view of the special fragility of their*

² http://ec.europa.eu/europeaid/where/acp/overview/documents/devco-cotonou-consol-europe-aid-2012_en.pdf

³ http://trade.ec.europa.eu/doclib/docs/2012/october/tradoc_150028.pdf

⁴ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:303:0001:0082:EN:PDF>

⁵ WTO, *Legal Note on Regional Trade Arrangements under the Enabling Clause*, 13 May 2003

economies, are not obliged to sign an EPA in order to retain their present level of access to the EU. If they do not wish to open their own markets to the EU, they can choose to keep existing non-reciprocal trade preferences and are assured that whatever happens they will continue to have free access to the EU market for 'essentially' all products from 2005 at the latest"⁶.

This statement, which reflects the constant EU stance in the negotiations, implies that the ACPs LDCs have to choose between signing regional EPAs – in which case they will lose their right not to open their market to 80% of EU exports – or keep this right, in which case they will renounce to their regional integration in the RECs because their common markets with the non-LDCs imply that the free entrance of EU imports in non-LDCs will flow to their own markets. This shows the huge contradictions in the EU objectives for the EPAs but also with the WTO provisions for LDCs.

Finally we conclude that there are powerful legal and political arguments to deduct the share of imports of the ACPs RECs made by their LDCs members from the 80% of the RECs imports from the EU.

The following table shows that this share exceeded 50% on average from 2007 to 2012 for Central Africa and EAC and was significant for West Africa and ESA. Thus Central Africa should at most import duty free 24.36% of the EU exports, West Africa 43.46% and the average of all ACPs EPAs 50.54%. If we rely only on 2012, the percentages of market opening to EU exports should be respectively of 25.88%, 38.56% and 48.82%.

Share of EU exports to LDCs of ACP EPAs from 2007 to 2012

In %	2007	2008	2009	2010	2011	2012	Average	% to open
Central Africa	54,45	54,60	58,23	57,82	55,06	54,12	55,64	24,36
EAC	50,43	53,29	49,63	46,60	51,95	49,74	50,27	29,73
West Africa	35,57	33,83	33,55	34,43	37,86	41,44	36,54	43,46
ESA	27,53	32,87	30,08	25,20	26,38	27,05	28,14	51,86
SADC	17,15	20,88	25,21	19,06	16,59	20,10	19,61	60,39
Pacific	2,16	2,37	13,95	14,99	9,09	6,01	6,73	73,27
Cariforum	2,11	2,63	3,12	4,87	6,85	3,67	3,78	76,22
Total EPAs	26,30	28,11	30,98	28,10	28,96	31,18	29,46	50,54

Source: Eurostat; CA: Central Africa; EAC: East African Community; WA: West Africa; ESA: Eastern and Southern Africa; SADC: Southern African Development Community.

The following table shows the list of LDCs and non LDCs in the RECs negotiating regional EPAs with the EU (Cariforum EPA has already been signed in October 2008).

	LDCs in blue and italics
CA	Cameroon, <i>Central African Republic, Chad, Congo, Democratic Republic of Congo, Equatorial Guinea, Gabon, Sao Tomé and Príncipe.</i>
EAC	<i>Burundi, Kenya, Rwanda, Tanzania, Uganda</i>
WA	<i>Benin, Burkina Faso, Cape Verde, Ivory Coast, The Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, Togo, Mauritania</i>
ESA	<i>Djibouti, Eritrea, Ethiopia, Somalia, Sudan, Malawi, Zambia, Zimbabwe, Comoros, Mauritius, Madagascar, the Seychelles</i>
SADC	<i>Angola, Botswana, Lesotho, Mozambique, Namibia, Swaziland, South Africa</i>
Pacific	<i>Cook Islands, East Timor, Fidji, Kiribati, Marshall Islands, Micronesia, Nauru, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu, Vanuatu</i>
Cariforum	Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, Dominican Republic, Grenada, Guyana, <i>Haiti</i> , Jamaica, Saint Christopher and Nevis, Saint Lucia, Saint Vincent and Grenadines, Suriname, Trinidad and Tobago

⁶ ECDPM, Cotonou Infokit, *Regional Economic Partnership Agreements*, January 2001, [http://www.ecdpm.org/Web_ECDPM/Web/Content/Download.nsf/0/B5EEAE0D675F9253C1257995004B1F5E/\\$FILE/14e.pdf](http://www.ecdpm.org/Web_ECDPM/Web/Content/Download.nsf/0/B5EEAE0D675F9253C1257995004B1F5E/$FILE/14e.pdf)