Why ECOWAS should not sign the EPA[1]

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The Cotonou Agreement, revised in 2010, repeats indefinitely that its central objective is to enable ACP countries to eradicate poverty and hunger and promote regional integration. In reality, demanding that West Africa (WA) - which includes the 15 ECOWAS countries and Mauritania - ratify the regional EPA before 1 October 2014 would have the opposite effects.

This paper summarizes the main legal, economic and political reasons why ACPs must refuse to sign and ratify the EPAs, here that of WA[2].

1) The opening of the WA market to the EU exports must deduct the share of its LDCs

The EU's new 2012 Generalised Scheme of Preferences (GSP), which incorporates the Decision "Everything But Arms" (EBA) of 2001 granting LDCs duty free-quota free market access to the EU and does not require them to open their markets to EU exports, says it is an irrevocable decision: "*The Everything But Arms arrangement already is an open-ended scheme and will not change*"[3]. For the GSP itself "*The scheme applies until 31 December 2023. However, the expiration date does not apply to the special arrangements for least developed countries*".

Therefore WA should open its market to only 43.5% (80% -36.5%) of its imports from the EU in the regional EPA, when taking the average WA imports from 2007 to 2012, or 38.6%, taking the imports in 2012 (80% -41.4%).

Table 1 – Share of WA imports from the EU made by LDCs from 2007 to 2012

In %	2007	2008	2009	2010	2011	2012	Average	% opening
West Africa	35,57	33,83	33,55	34,43	37,86	41,44	36,54	43,46

Source: Eurostat

2) The EU subsidies to its agricultural exports to WA in 2013 accounted for 45% of an annual tranche of EU total funding to WA from 2014 to 2020

The €414.2 million of EU subsidies to its 2013 exports to WA in cereals (€173.8 million, €M), meat (€172.4 M, of which €74.5 M in poultry meat and eggs, €15.2 M in pork and €81.8 M in beef) and dairy products (€68 M) accounted for 50.9% of the €813 M of agricultural subsidies to all ACP countries[4].

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[1] Paper prepared on request of ROPPA (Network of Peasant Organisations and Agricultural Producers of West Africa) during its Convention at Niamey from 15 to 19 June 2014.

[2] We recommend to read the excellent report made by the South Centre to the European Parliament "*ACP countries' positions on Economic Partnership Agreements (EPAs)*", 24 February 2014, http://www.europarl.europa.eu/activities/committees/studies.do?language=EN

[3] http://trade.ec.europa.eu/doclib/docs/2012/october/tradoc_150025.pdf

[4] *The EU28 subsidies in 2013 to its exports of cereals, meats and dairy products to extra-EU28, ACPs and West Africa*, Solidarité, 9 July 2013, http://www.solidarite.asso.fr/Papers-2014#pagination_documents_joints

This is to be compared with the EU false promises of funding the WA EPA. Although the draft EPA – as it was in February 2014 as the one signed in Accra on July 10 is not yet available – devotes 8 articles (53 to 61) to the PAPED (funding Programme for EPA), this promise is totally mystifying since "*PAPED is a programme funded by the EU and designed to support ACP countries in the implementation of EPAs. Aware that EPAs will result in disruptions in their economies (revenue losses, adjustments, etc.), the ACP countries are attached to this programme, which they bind closely to the EPA negotiations; everything that the EU tends to reject. The needs identified in this framework by the West African region for example have been estimated by its Member countries at €15 billion initially before being revised to €9.5 billion over five years. Meanwhile, even if the EU does not dispute the estimation of these needs, it is committed only up to €6.5 billion euros, and this through the already existing European development assistance programmes. The issue of "additionality" of resources in the context of EPAs, to which ACP countries are so attached, has been brushed aside out of hand by the EU which has managed that West Africa has given up the term "additionality" of resources in return for an EU promise to honor its commitment to seek the balance between the expressed needs and funding*"[5]. Even this promise of €6.5 billion will not add one euro to the funds already programmed as the XIth EDF (European Development Fund) has allocated €1.15 billion to the "Regional Indicative Programme" for transversal actions in the WA States[6], while the allocation to the "National Indicative Programmes" has only been decided already for 9 of the 16 States, for €3 billion, and it is likely that total national programmes will reach around €4.5 billion, hence a total of €5.6 billion with the regional programme, implying that the promised €6.5 billion could be reached with the recycling of other already programmed Community funds. That makes a total of €930 M per year, compared to €414 M of EU subsidies as shown above which will impoverish WA farmers and agribusinesses to much higher levels, not to mention the negative multiplier effects on the rest of the regional economy.

As the European Commission has refused to deal with the issue of agricultural subsidies in the text of the EPA, arguing that the matter falls within the exclusive competence of the WTO, ECOWAS will not be able to sue the large EU dumping at the level of EU-WA consultative bodies of the EPA, and ECOWAS will not be able either to sue the EU at the WTO since ECOWAS is not a WTO member. Only some of its member States could do so but this will be much more difficult politically.

The importance of this EU dumping – largely undervalued because it takes only into account part of its agricultural exports – is a sufficient reason not to sign the EPA.

Moreover, although the European Commission has put an end to all its explicit export subsidies – the "refunds" – since 1st July 2013, the revised Cotonou Agreement of 2010 continues to provide in Article 54 that "*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*". The text of the WA EPA as available in February 2014 simply writes in Article 48.6: "*The EU party shall refrain from using export subsidies for products exported to West Africa*". Keeping in mind that, for the EU, export subsidies are strictly limited to "export refunds" at the border but exclude domestic subsidies which are also benefiting exports.

[5] http://www.ictsd.org/bridges-news/passerelles/news
[6] http://www.gouv.ci/actualite_1.php?recordID=4466

In fact all EU agricultural exports are heavily subsidized by the direct aids of the SPS (single payment scheme, renamed BPS, basic payment scheme, from 2015), which, being "decoupled" (not related to a particular product), benefit to all products, whether consumed on the domestic market or exported. Moreover, the BPS implemented from January 2015 will benefit all EU agricultural products without exception. Therefore all WA agricultural imports from the EU must continue to be taxed without having to be included in the 25% of imports not open to the EU, at least through specific compensatory rights within the "Other Duties or Charges" (ODC, see point 4 below).

3) West Africa shall not reduce its tariffs to a level lower than the EU levels

While the EPA requires that ECOWAS eliminates its tariffs on 75% of EU exports, but does not require that the EU eliminate its domestic subsidies benefitting also to its exported products as just seen, WA should not reduce its tariffs on imports from the EU at levels lower than the EU MFN (most favoured nation, i.e. non preferential imports from Western countries) tariffs, particularly on basic food staples.

Table 2 – EU tariffs on imports of some basic staples in 2013

Product code	Imports in 2013			MFN tariff	
	euros	Tonnes	CIF price	Specific or mixed	ad valorem equivalent
1001 wheat	1061680124	38864589	273	148 €/t	54,2%
1003 barley	13322517	552986	241	93 €/t	38,6%
1005 maize	2553665610	111163030	230	94 €/t	40,9%
1006 rice	909054201	14474762	628	175 €/t	27,9%
1101 wheat flour	17339444	310220	559	172 €/t	30,8%
1701 sugar	2254561835	41229071	547	339 €/t	71,3%
0201 fresh bovine meat	1075660827	1203089	8941	12,8% + 1768 €/t	32,6%
0202 frozen bovine meat	422800735	809568	5223	12,8% + 1768 €/t	46,7%
0402 concentrated milk (powder)	26675416	91826	2905	1254 €/t	43,2-46,7%
0405 butter	117153997	415566	2819	1896 €/t	67,3%
0406 cheese	436736798	746931	5847	1852 €/t	31,7%

Source: WTO for tariffs and Eurostat for imports

Thus in 2013 the EU MFN duties were, in *ad valorem* equivalent (ratio of the specific or mixed duty to the CIF value): 54.2% on wheat, 38.6% on barley, 40.9% on maize, 27.9% on rice, 30.8% on wheat flour, 71.3% on sugar, 32.6% on fresh bovine meat, 46.7% on frozen bovine meat, 43.2% to 46.7% on milk powder, 67% on butter and 31.7% on cheese. Yet these ad valorem equivalents have decreased significantly compared to the years before the prices surge since 2007.

Moreover, according to the WTO revised draft on agricultural modalities of 6 December 2008 for the Doha Round, the developed countries will be authorized to keep tariffs above 100% for some sensitive products, and the developing countries some tariffs above 150%.

All the more again that the EPA Draft – at least that of the Ivory Coast's interim EPA because we do not know the final Draft of the regional EPA – forbids West Africa to raise its present applied tariffs, which implies that it could not negotiate bound tariffs at the WTO which would be higher. There is here a double contradiction: on the one hand, the EU will remain free to raise its own applied tariffs as long as they remain below its bound tariffs, and, on the other hand, this EPA rule would prevent de facto the possibility for ECOWAS to apply for a WTO membership or at least to get then the benefit of bound tariffs fixed at the weighted average of the bound tariffs of its Member countries. In other words the regional EPA would deny to ECOWAS the WTO rule that regional economic communities can apply for membership, as the EU has done in the past. Which means that the EPA provision that

ECOWAS would not be allowed to raise its present applied tariffs can be challenged at the WTO with the largest chance of success.

4) ECOWAS must get bound tariffs for its common external tariff (CET) at the WTO, including for the bound "Other Duties and Charges" (ODC) of its member countries

The following table shows the bound tariffs on rice of ECOWAS' Member countries, knowing that Liberia has no bound tariffs as it is not yet a WTO Member (on going application). Besides tariffs proper most ECOWAS Member countries have also bound "Other Duties and Charges" (ODC), with the exception of Ghana and the Gambia.

Table 3 – Tariffs and Other Duties and Charges on rice of the ECOWAS member States in 2013

Imports in tonnes	Bound tariff (1)	ODC (2)	All bound duties (3=1+2)	Aver. imports 2009-11 (4)	% of imports (5)	Total weighted bound (6=3*5)
Benin	60%	19%	79%	547154	9,7%	7,66%
Burkina Faso	100%	50%	150%	271197	4,8%	7,20%
Cape Verde	10%	0,5%	10,5%	55410	0,9%	0,9%
Ivory Coast	15%	20%+5000FCFA/t Ou 20%+7,62 €/t¤	35%+7,62€/t ou 2% soit 37%	983214	17,4%	6,44%
The Gambia	110%	10%	120%	117063	2,1%	2,52%
Ghana	99%	0%	99%	415845	7,4%	7,33%
Guinea	40%	23%	63%	207804	3,7%	2,33%
Guinea-Bissau	40%	25%	65%	69323	1,2%	0,78%
Mali	60%	50%	110%	90016	1,6%	1,76%
Niger	50%	50%	100%	174349	3,1%	3,10%
Nigeria	150%	80%	230%	1743616	30,9%	71,07%
Senegal	30%	5%	35%	761812	13,5%	4,73%
Sierra Leone	40%	0%	40%	124476	2,2%	0,88%
Togo	80%	7%+200 FCFA/t	87%+200FCFA/t	84858	1,5%	1,31%
Total	884%	341,5%	12255	5646137	100%	118%
Average	63,1%	24,4%	87,5%			
Libéria*				222948		
Mauritania	75%	15%				

Sources: WTO, FAOSTAT; * Libéria is not a WTO Member, hence has no bound duties; Guinea ODC: Entrance tax (DFE): 8% + Tax on import turnover (TCA): 13% + fees on border overheads (RTL): 2%; Ivory Coast ODC: TSR: Tax on rice (20% + 5000 CFAF or 7,62 €/t, i.e. 2% of the average CIF prices over the 2009-11 period); Senegal ODC: 5% including fiscal duty, VAT and border fee; Togo ODC: statistics tax of 3%; Tax on maritime freight of 200 CFAF/indivisible tonne; border fee on liquidated duties of 4%

The simple average *ad valorem* bound tariffs on rice of the 14 ECOWAS Member States is of 63.1% and that of their ODCs of 24.4%, making an average of 87.5% for their total bound duties on rice. However it is more appropriate to take the average of their bound tariffs and ODCs weighted by the rice imports of each Member State, based on the average FAOSTAT data from 2009 to 2011, the last available year. Which gives an average of 118% for the weighted bound tariffs on rice of the 14 ECOWAS States which are WTO Members.

The table shows that the level of ODCs helps to raise the Ivory Coast simple bound tariff on rice of 15% to total bound duties of 37% whereas that of Senegal raises from 30% to 35%. The only problem concerns Cape Verde with a simple tariff of only 10% and only of 0.5% for ODC, but this State accounts for only 0.9% of total ECOWAS imports of rice.

According to WTO Appellate Body report in the Chile "Price bands system" case: "*We further note, in examining Article 4.2 of the Agreement on Agriculture, that the second sentence of Article II:1(b) of the GATT 1994, does not specify what form "other duties or charges" must take to qualify as such within the meaning of that sentence. The Panel's own approach of reviewing Members' Schedules reveals that many, if not most, "other duties or charges" are*

expressed in ad valorem and/or specific terms, which does not, of course, make them "ordinary customs duties" under the first sentence of Article II:1(b)"[7].

Therefore ECOWAS should avail fully of the bound "Other Duties and Charges" of its member States to raise its CET on rice, although this could only be possible once ECOWAS has been admitted as a WTO Member. But political will must prevail.

5) The World Bank and the IMF warned in 2005 that, to avoid trade diversion in favor of the EU, ACP countries must reduce their DD to third countries to no more than 10%[8]

Besides, according to the Washington Trade Daily of 3 June 2014,: "*During the African trade ministers meeting in Addis Ababa last month, a Washington-based trade official suggested there will be two new criteria for the renewal of the AGOA program – quickly adopting the recently negotiated WTO Trade Facilitation Agreement and providing US companies with the same terms negotiated with the European Union under its new economic partnership agreements, an African trade official told WTD yesterday*".

6) The AO cannot sign the EPA given the strong erosion of its preferences in the EU market that will result from the Doha Round and the other EU bilateral agreements

The same WTO draft of 6 December 2008 provides that developed countries would have to reduce by at least 54% their average tariffs on all products – from a minimum of 50% to a maximum of 70% – even if they could keep 4% of their tariff lines as sensitive products but then they would have to increased tariff quotas at low or zero rates on the same products.
An equally serious threat comes from bilateral free trade agreements (FTAs) that the EU continues to negotiate with the majority of countries, particularly developing countries, in which the EU opens tariff quotas at zero or low duty. But the main threat comes from the on-going negotiations for an EU-US transatlantic FTA (TTIP) which aims at greatly reducing global tariffs and non-tariff barriers to free trade.

Therefore the erosion of trade preferences for ACP countries, of which WA, will be accompanied by a sharp drop in tariffs – a key resource of their national budgets – because they will be forced to further open their market.

7) A request for a WTO waiver to return to the non-reciprocal preferences of the Lomé Conventions could hardly be denied

If the EU was forced to replace the non-reciprocal trade agreements with ACP countries in force in the Lomé Conventions by reciprocal EPAs of the Cotonou Agreement of 2000, it was because the producers of "dollar bananas" of Latin American countries complained at the WTO of their unequal treatment vis-à-vis the ACP countries that did not have to pay customs duties to the EU. The "banana war" in which the EU has been repeatedly condemned at the WTO finally ended with the agreement of 19 December 2009 concluded at the WTO between the EU and the bananas exporters of Latin America, an agreement entered into force on May 31, 2010: EU tariffs will be reduced from 176 €/t in 2009 to 114 €/t in 2017. In addition, the

[7] Chile, *Price band system and safeguard measures relating to certain agricultural products*, Appellate Body report, 23 September 2002, OMC, WT/DS207/AB/R, http://docsonline.wto.org/imrd/gen_searchResult.asp?RN=0&searchtype=browse&q1=%28%40meta%5FSymbol+WT%FCDS207%FCAB%FCR%2A+and+not+RW%2A%29&language=2

[8] http://www.imf.org/external/pubs/ft/AFR/REO/2005/eng/01/SSAREO.htm

EU concluded in early 2012 bilateral agreements with Colombia, Peru, Costa Rica, El Salvador, Honduras, Guatemala, Nicaragua and Panama, in which tariffs on bananas will be reduced gradually to 75 €/t by 2020. Offsets, but insufficient, were granted to ACP and EU banana producers to cope with increased competition from these countries.

Since Latin America countries are no longer opposed that ACP countries keep their duty free quota free access to the EU banana market, the EU and ACP countries would have the greatest chance of getting a WTO waiver to return to non-reciprocal trade preferences with the EU. A fortiori if the application for a waiver were limited to food products. It is only a matter of political will.

8) Recognizing West Africa as a large LDC

It is possible to negotiate at the WTO recognition of ECOWAS and WA as a "large LDC" because 12 of 16 of its Member States are LDCs and because the weighted average of the UN criteria for LDC recognition are met. If the demographic criteria peaking at 75 million inhabitants, but recently raised at 100 million, excludes Nigeria, this criterion had not been taken into account to exclude Bangladesh whose population reached 153 million in 2012, slightly less than the 168 million of Nigeria. However, this criterion is already taken into account in the synthetic indicator of economic vulnerability index (EVI).

Table 3 – CEDEAO and WA comply with the criteria of a large LDC in 2012

	GNI per capita*	Population 2012 (1000)	GNIxPop	HAI**	EVI***
Benin	763	10051	7668913	41,1	34,8
Burkina Faso	507	16460	8345220	29,2	36,9
Cape Verde	3110	494	1536340	86,8	35,1
Ivory Coast	1130	19840	22419200	43,8	22,3
Gambia	433	1791	775503	49,2	67,3
Ghana	1190	25366	30185540	70,1	29,5
Guinea	377	11451	4317027	36,8	27,4
Guinea Bissau	547	1664	910208	34,2	59,8
Liberia	190	4190	796100	38,5	51,5
Mali	563	14854	8362802	30,2	35,3
Niger	347	17157	5953479	24,3	37,9
Nigeria	1180	168834	199224120	48,9	36,3
Senegal	1063	13726	14590738	47,0	36,4
Sierra Leone	333	5979	1991007	24,8	50,1
Togo	460	6643	3055780	45,5	33,5
ECOWAS total		318500	310131977		
ECOWAS aver	958		974****	45,6****	
Mauritania	987	3796	3746652	47,1	45,7
WA total	962	322296	313878629		
WA average			974****	45,6****	

Source: * http://www.un.org/en/development/desa/policy/cdp/ldc/ldc_data.shtml;
** http://www.un.org/en/development/desa/policy/cdp/ldc/ldc_graduation_criteria.pdf
*** http://www.ferdi.fr/en/publication/i09-economic-vulnerability-index-2010-update
**** weighted average

The 3 criteria defining a LDC in 2012 are:

- A gross national income (GNI) per head (average of the last 3 years 2009 to 2011 for the last identification of LDCs in 2012) lower than $992, $1190 being the ceiling beyond which one can be upgraded from LDCs. Therefore for this criterion ECOWAS and WA are a large LDC.

- A human assets index (HAI) lower than 55 and not higher than 61. This composite index combines 4 indicators: (a) the percentage of population; (b) the mortality rate for children aged five years or under; (c) the gross secondary school enrolment ratio; and (d) the adult literacy rate. The HAI simple average of ECOWAS was 43.4 in 2012 and 45.6 for the HAI average weighted by population. Therefore for this criterion ECOWAS and WA are a large LDC.
- An economic vulnerability index (EVI) higher than 37. It is a combination of 7 indicators: (a) population size; (b) remoteness; (c) merchandise export concentration; (d) share of agriculture, forestry and fisheries in gross domestic product; (e) homelessness owing to natural disasters; (f) instability of agricultural production; and (g) instability of exports of goods and services. The FERDI established the movement in the index until 2011. The EVI simple average of ECOWAS was 39.6 in 2012 and 35.3 for the EVI average weighted by population. However, it seems illogical to weigh this composite index with population since the population indicator weighs for 1/8 in the 7 indicators of the EVI. Therefore for this criterion also ECOWAS and WA are a large LDC. The more so as the exclusion of the LDCs list assumes that EVI is at most equal to 32.

9) ECOWAS Solidarity Fund

Losses for WA non-LDCs (Nigeria, Ghana, Ivory Coast, Cape Verde) of the non-ratification of the EPA and the simple GSP (Generalized System of Preferences) status on the EU market would be largely offset by an ECOWAS Solidarity Fund. For Ghana its loss of tax revenue would be $ 374 million if it ratifies the EPA against a loss of $52 million with the status of GSP if the EPA is not ratified. The Solidarity Fund would pay $52 million to its exporting companies, corresponding to duties that they would have to pay on their exports to the EU.

These €52 M are largely lower than the €70.9 M of subsidies granted to the EU exports of cereals, meats and dairy to Ghana in 2013. And the €73.8 M of subsidies to the same EU exports to Ivory Coast are also likely larger than the duties it would have to pay to maintain its exports to the EU if it does not sign the regional EPA.