The West Africa-EU Economic Partnership Agreement: a lose-lose agreement

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Genesis of the EPA

The European Commission justifies the Economic Partnership Agreements (EPAs) by an absurd reasoning: the EU preferential trade agreements of the Lomé Conventions since 1975 have not prevented the ACPs (African, Caribbean and Pacific countries, all former colonies of European countries except Liberia) to become impoverished even though 97% of their exports to the EU were exempted from customs duties. Therefore exposing them to free trade with their main trading partner will trigger a salutary reaction which will increase their competitiveness. As if opening the henhouse to the fox would force the chickens to resist, despite an average per capita GDP of the 16 West African (WA) States 17.7 times lower than that of the EU in 2014.

The legal argument advanced to replace the Lomé trade preferences by the June 2000 Cotonou Agreement establishing the EPAs was that the former were not WTO compatible. Indeed the EU has been convicted three times at the WTO for violating the principle of non-discrimination on complaints of 9 Latin American countries exporting bananas which had to pay customs duties to the EU while ACP countries were exempt. Yet if discrimination is prohibited on a geographical basis, it is allowed according to criteria of development level. Hence the implementation of the EU bilateral "Generalised System of Preferences" (GSP) since 1971 for Developing Countries (DCs) – which enjoy lower tariffs of about 30% on average to the so-called normal duties of the "Most Favoured Nation" (MFN) regime applied to the developed countries – and duty free-quota free applied to the "Least Developed Countries" (LDCs) since the EU Decision "Everything But Arms" of 2001. An EU specific status called GSP+, which allows also duty free exports to the EU, is granted to DCs that meet criteria of economic vulnerability and implement 27 international conventions on human and labour rights, protection of the environment and good governance.

But the per capita GDP of the 9 Latin American countries was 2.3 times higher than that of the 3 WA countries exporting bananas (Cameroon, Ivory Coast and Ghana) in 1995 and became 4.7 times higher in 2014. The EU could therefore have asked for a WTO waiver, and could even more do it now, to maintain its non-reciprocal preferences, especially as the "banana war" was doubly buried. First by the WTO agreement in December 2009 when the Latin American countries agreed that the EU maintains its imports at zero duty for ACP countries in exchange for lower tariffs on Latin American bananas. Then they got a further gradual reduction in duties after the conclusion of free trade agreements (FTAs) with the EU in 2012. Even India, which had also sued the EU at the WTO on the GSP+ in 2002, should not oppose the waiver because its per capita GDP in 2015 is 25% higher than that of the average of the three 3 WA DCs exporting bananas.

The EU's trade objectives have taken priority over those of cooperation

But the EU does not want to renew preferential agreements with ACP countries as it has been pursuing since the 1980s and even more since the 2000s a strategy of larger access to markets of DCs, while guaranteeing its supply of raw materials at world prices, and this through the proliferation of FTAs because of the stalemate in the Doha Round multilateral negotiations at the WTO. A strategy clearly stated in the document "Global Europe" of the Trade Commissioner Peter Mandelson in October 2006, and confirmed by the document "Trade for All" of Commissioner Cecilia Malmström in June 2015.

The EU change of stance vis-a-vis ACP countries was already shown by the fact that the EPAs are negotiated by the Directorate General (DG) Trade of the European Commission, while the Lomé Conventions were negotiated by the DG cooperation and development. The first EU tactic to perpetuate its commercial dominance was to impose that EPAs were to be negotiated not with all ACP countries, but with 7 regional EPAs, of which 5 in sub-Saharan Africa (SSA) plus those of Caribbean and Pacific. It is the EU which defined the geopolitical boundaries of the 5 regional EPAs of SSA, ensuring that everyone encompasses LDCs and non-LDCs (or DCs). Since all Member States of each regional EPA will have to remove tariffs on 80% of EU exports, this membership of each regional EPA allowed the EU to cancel the preferences of its Decision "Everything But Arms" recognizing to LDCs the right to continue to tax EU exports. Indeed not to sign regional EPAs to retain the benefits of "Everything But Arms" would imply that the LDCs renounce to regional integration within their Regional Economic Communities (RECs) – here ECOWAS (Economic Community of the West Africa States) which includes three DCs (Ivory Coast, Ghana and Nigeria), 12 LDCs (Benin, Burkina Faso, Gambia, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Senegal, Sierra Leone, Togo), plus Cape Verde which enjoys the GSP+ regime, close to that of LDCs) – as the free movement of goods within the RECs would require LDCs to tax imports from the DCs to avoid being flooded by the products the DCs would import duty free from the EU.

Yet there is a legal solution consistent with Everything But Arms and the WTO rules which would be to deduct from the total percentage to liberalize the percentage of exports to LDCs. For the WA EPA the 43.5% of EU exports to the 13 LDCs in 2015 should be deducted from the 82% total liberalization rate and, for East Africa, 45.4% of the EU exports to the 4 LDCs in 2015 should be deducted from the 82.6% rate to liberalize. But the EU refuses this legal interpretation as it would thwart its commercial objectives.

The WA EPA negotiations began in 2003 but the WA States expressed reservations quickly, supported by the mobilization of civil societies, and President Wade of Senegal even participated on January 7, 2008 in Dakar to a protest march. But under pressure from EU business lobbies, especially those involved in exports of bananas, pineapples, cocoa and canned tuna from Ivory Coast and Ghana, both countries agreed to sign interim EPAs with the EU in late 2007 and early 2008 to continue to export those products to the EU without paying the GSP duties. Nigeria for its part refused to sign an interim EPA, as it exports few agricultural products but mainly petroleum products that are not taxed by the EU.

Despite these resistences, the WA Heads of State finally initialed (but not formally signed) the regional EPA on 10 July 2014 in Accra and the EU Council of Foreign Ministers authorized the signature on 12 December 2014 subject to its conclusion, which implies that all WA States sign the EPA. The European Parliament held several debates on the progress of the EPA, its prevailing opinion being that it does not see how it could oppose an EPA that the majority of African Heads of States wish to sign. In early June 2016 Gambia and Nigeria have not yet signed, and its President, Muhammadu Buhari, told the plenary of the European Parliament on 3 February that Nigeria could not sign the EPA because it threatens the industrialization of the country. This stance was repeated at the Summit of ECOWAS Heads of States in Dakar on 5

June 2016 by Nigeria's Vice-President Yemi Osinbajo. In fact Nigeria represents 51.6% of the WA population and 78.3% of its GDP in 2014.

Once the EPA signed in WA, the 28 EU States would have to ratify it – because it is a "mixed" agreement as, beside the trade component, there is a "development" component which is not financed by the EU budget but by the EU Member States through the European Development Fund (EDF) – and two thirds of the WA States. In fact the European Commission considers that the absence of ratification would not prevent its "provisional implementation" as this has been the case of the EU-Cariforum EPA, already implemented since 2007 despite that it has not yer been ratified by all EU and Cariforum States. This would be a clear democracy denial vis-à-vis the EU and WA parliaments.

What would be the impact of the EPA and why the EU and WA civil societies have kept denouncing it?

DG Trade has sponsored numerous impact studies but refused to publish the last 3 conducted from April 2008 to January 2016 because their conclusions did not meet its expectations, but they were "leaked" recently[1]. It has finally released its own study in March 2016, which is full of misrepresentations[2], of which we will point out the most important before presenting the main EPA impacts and possible solutions.

The EU claims that the EPA has excluded all agricultural products from liberalization while, on the basis of the EU exports to WA in 2015, 56% of them would be liberalized in the EPA, of which 100% of cereals and 64% of dairy products[3].

DG Trade says the EPA Assistance Program (EPAAP or PAPED) will bring 6.5 billion euros to WA from 2005 to 2020, while DG Development emphasizes that this is a retargeting of the EU aid planned by the EDF (European development Fund), the EIB (European investment Bank) and normal funds of EU cooperation so that there is no specific additional funding for the EPA. And article 60 of the EPA states that the EU will also provide support to fill the loss of import duties, but its implementation is even less credible given that the Cotonou Agreement expires in 2020 and that we don't know if it will be renewed and, if so, at a level in line with the expected large rise of the WA population.

The EU dumping of its agricultural exports

In the EPA the EU commits to eliminate its agricultural export subsidies but it plays with words, as it has done in the WTO and in its other FTAs, since its domestic farm subsidies benefit also to its exported products, which are therefore exported at dumped prices. These subsidies reached 238 million euros in 2015 on the 3.6 million tonnes of cereals exported to WA, plus 72 million euros on dairy products and 162 million euros on meat (in 2014), the subsidies to these

[1] *Four impact studies of the West Africa EPA that the EU Commission does not want you to see*, 20 May 2016, http://www.bilaterals.org/?four-impact-studies-of-the-west&lang=en. In fact the University of Ibadan report of April 2014 was not financed by the EU Commission.

[2] http://www.sol-asso.fr/wp-content/uploads/2016/03/SOLs-comments-on-the-DG-trades-report-on-the-West-Africa-EU-EPA-4-May-2016.pdf

[3] *The EPA would liberalize the majority of EU agricultural exports to West Africa*, SOL, 26 May 2016, http://www.sol-asso.fr/analyses-politiques-agricoles-jacques-b/

animal products being mainly attributable to feed[4]. And, since most EU domestic subsidies are "decoupled" from production and not attributable to a particular product, all EU agricultural products are exported at dumping prices, that is to say at below the EU average production cost without subsidies.

The DG Trade study, as all the impact studies it has commissioned including those leaked, did not take into account the 64% increase in the WA population expected from 2015 to 2035. The computable general equilibrium model used is extremely simplistic, which allowed the IFPRI team who participated in the 3 leaked studies for which they concluded to an overall negative impact of the WA EPA, to arrive at a slightly positive impact in the DG trade study of March 2016: a 0.5% increase of GDP in the year 20 (of which only 0.1% for Nigeria) compared to a situation where the 3 DCs would be under the GSP regime, Cape Verde under the GSP+ regime and the 12 LDCs under the Everything but arms regime.

But this calculation is not credible because it underestimates the tariff losses on imports from the EU and overestimates the GSP duties on the exports of the 3 DCs to the EU.

Losses of import duties for WA countries

The losses of duties on imports from the EU, which would affect all 16 WA countries**,** would rise from 1.3 billion euros in year 6 to 3.2 billion in year 20, with a cumulative loss of 30 billion euros, which would continue to increase to 87 billion euros in year 35 (2050)[5]. The idea that it would be possible to compensate these losses by a shift in taxation is not credible for two reasons. On the one hand the WA enterprises of the modern sector which pay income taxes and value added taxes (VAT) will lose competitiveness against imports from the EU. On the other hand the EPA forbids to increase export taxes without the EU consent, even though they are larger than import duties in Ivory Coast. Furthermore the WA States will need much greater budgetary resources to finance public services in line with the sharp rise of their population. DG Trade claims that the fall in consumer prices linked to duty-free imports from the EU would allow to increase the VAT on consumption but it forgets that sales within the dominant informal sector do not pay VAT and it prejudges that lower import prices will be passed on to final consumers, which is rarely the case.

This will be even less the case as we must expect higher unemployment and lower wages and incomes due to the loss of competitiveness of local production, which had been highlighted by the leaked EPA impact studies of the University of Ibadan of April 2014 and of IFPRI of January 2016.

On the other hand the GSP duties that the exporters of Ivory Coast, Ghana and Nigeria would have to pay (Nigeria is already paying them as it did not sign an interim EPA) to maintain their exports to the EU would have been of 188.5 million euros, based on their 2015 exports, of which 113 million euros for Ivory Coast, 67 million euros for Ghana and 8.6 million euros for Nigeria. These duties relate essentially to processed cocoa for 71 million euros, canned tuna for 61 million euros and tropical fruits (bananas and pineapples) for 41 million euros. The very

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[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 2014, http://www.sol-asso.fr/articles-de-2014/. See also Carlos Gasperin and Ivana Doporto Miguez, *Green box subsidies and trade-distorting support: is there a cumulative impact?* In Ricardo Melendez Ortiz, Christophe Bellmann and Jonathan Hepburn, Agricultural subsidies in the WTO green box, Cambridge University Press, 2009, pp.239-57.

[5] *The foly to implement the EU-West Africa Economic Partnership Agreement (EPA), based on 2015 trade data*, SOL, April 19, 2016.

likely loss of competitiveness of these products in the EU vis-à-vis those coming from countries having signed EU FTAs and the stagnation of the EU's needs, would at best cap the WA exports to the EU and the GSP to pay. These three WA DCs seem unaware that, if the regional EPA is not implemented or if the interim EPAs of Ivory Coast and Ghana are not perpetuated, the GSP duties payable to the EU would be almost 10 times lower than the 1,842 billion euros of duties that they would lose on their imports from the EU in year 20 it the regional EPA is implemented or if the two interim EPAs are perpetuated.

An agreement that would constrain the WA countries

The MFN clause (Article 6 of the EPA) would require WA to give the EU any more favorable treatment, particularly tariff reductions, resulting from agreements with other major developed or emerging countries.

The "rendez-vous" clause (Article 106) provides that, six months after the conclusion of the EPA, negotiations should begin to expand the EPA liberalizations to new issues that all DCs have refused at the WTO: services, intellectual property, investment, competition, government procurement, current payments and capital movements, etc.

Prohibition to change, without the agreement of DG Trade, the classification of WA products between the 5 bands of its Common External Tariff, the period of liberalization and the list of non-liberalized products, regardless of the evolution of competitiveness of the various products, and this in order to give visibility to EU exporters.

Prohibition of quantitative restrictions (Article 34) is even more abnormal that the EU uses them for its agricultural products in its other free trade agreements.

The sharp drop in tax revenues would reduce all budgets devoted to education, health, small farmers and environment protection. The more so as WA is already facing three structural challenges: population explosion, climate change and food deficit (excluding cocoa). To which we could add the collapse in the last two years of most commodities prices except cocoa, of which of oil products.

A long term negative impact also for the EU

The number of WA illegal immigrants arrived in the EU and the number of those drowned in the Mediterranean would explode, probably more and for longer than the current exodus of Syrians, Iraqis, Afghans and Libyans, given the population explosion expected in WA. According to FRONTEX their number increased already from 35,000 in 2014 to 54,085 in 2015. If the EPA is implemented the increase in unemployment, poverty and the lack of long-term prospects could only encourage young people to join terrorist groups like Boko Aram in Nigeria and other jihadist movements like ACMI and Ansar Eddine in northern Mali. It is ultimately the EU who, through the EPAs, would violate human rights in ACP countries, particularly in West Africa.

In insisting to impose the EPAs, the EU is shooting itself in the foot by not understanding that, to enjoy in the medium and long term the huge outlets that WA represents for the EU exports of high value industrial products and services, it is essential to enable it in a first period to ensure its food sovereignty and protect its infant industries. All the developed countries of today have done it and it cannot be different for WA and the ACP countries more generally.

A review of six possible solutions

What solutions then to pull through if Nigeria does not sign the EPA by the deadline of 1 October 2016 when the 3 DCs would return to the GSP regime, the interim EPAs of Ivory Coast and Ghana having become obsolete? Six are conceivable, two of which would be impossible or with negative consequences.

Two false solutions

1) The first impossibility would be that WTO would consider WA, or at least ECOWAS, as a great LDC. Because, since Nigeria has revised in 2014 the way to calculate its GDP, which almost doubled, the per capita gross national income of the 15 ECOWAS States, and of the 16 WA States as well, is more than twice the threshold for inclusion in the UN LDC category in 2015: 2,122 dollars against 1,035 dollars.

2) The second possibility, with detrimental consequences, that DG Trade appears to consider, would be to perpetuate the interim EPAs of Ivory Coast and Ghana after the 1 October 2016. WA regional integration being the first objective of the EPA, this would imply that DG trade does not care about the disintegration of ECOWAS. Indeed the other 13 States would have to raise duties on their imports from these two countries to avoid being flooded by the EU products they would import duty free. Not only the common external tariff (CET) in force since January 2015 would disappear, but also all other common policies introduced with difficulty since 1973, of which the agricultural policy (ECOWAP) given the weight of Ivory Coast in regional agricultural trade. And this country would have to pay 310 million euros of duties to its ECOWAS partners on the basis of its exports in 2015, a much higher amount than the 113 million euros of the GSP duties payable to the EU if the regional EPA or its interim EPA is buried.

Four possible solutions remain

1) The first, mentioned in the introduction, is the waiver to get from the WTO to return to the unilateral trade preferences of the Lomé Conventions as the Latin American exporting bananas and India that had prosecuted the EU on these preferences should no longer oppose it.

2) The second is to recognize the GSP+ status to the 3 DCs, implying to comply with 3 criteria:
- They have not exceeded for three consecutive years the level of 4,126 dollars of per capita income of upper middle income countries according to the World Bank, a criterion fulfilled even by Nigeria.
- They are recognized as "vulnerable" economies whose criteria are also met by the 3 DCs.
- They have signed and implemented the 27 international conventions on human and labour rights, environmental protection and good governance.

The European Commission has recognized in 2013 that Nigeria meets the criteria for GSP+ but we do not know its position for Ivory Coast and Ghana. But, given that Pakistan got the GSP+ status in December 2010, one can conclude that the recognition of compliance with these criteria is primarily the result of a political assessment. Indeed, the EU evaluation report of 28 January 2016 on this country stressed that "*Pakistan is one of the countries with the highest prevalence of child labour... The rights of women remain an area of very serious concern. Major international studies on gender equality rank Pakistan at the bottom of their charts. The Gender Gap Index 2013 of the World Economic Forum has Pakistan as number 135 out of 136* *countries (down from 112 in 2006)… Other areas where the situation has remained particularly worrisome over the last 2 years relate to torture and the failure to protect journalists and human rights defenders. In other areas, grave human rights violations including extra-judicial killings, enforced disappearances and failure to protect minorities continue to occur*"[6].

3) The third solution, the easier to impose, would be to adopt the WA civil society's proposal repeated since 2011 to establish a regional solidarity fund, financed by an anti-EPA levy on extra-WA imports of each of the 16 States. As the GSP duties on exports of the 3 DCs in 2015 would have been of 188.5 million euros, the levy would have represented a contribution of 0.24% of extra-WA imports of each WA Country. Ivory Coast and Ghana would gain greatly since their contributions would correspond to 15.4 million euros and 23.8 million euros against GSP duties of 113 million euros and 66.9 million euros respectively if the regional EPA or the interim EPAs are implemented. Nigeria would certainly be the main contributor to the anti-EPA levy with 83.5 million euros against GSP duties of only 8.6 million euros but it is also the one which would lose the most on import duties from the EU (1.255 billion euros in year 20) if the EPA is implemented.

4) The fourth solution, although less interesting, would be, as we have seen, to deduct from the 82% total liberalization rate the 43.5% of EU exports to the 13 LDCs in 2015, reducing the actual rate to 38.5%. But that would still leave a significant loss of import duties and all the other constraints related to the EPA.

[6] http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52016DC0029&from=EN