14 Towards rethinking the Economic Partnership Agreements

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Trade policy engagement between the EU and Africa has for some 20 years been around the Economic Partnership Agreements (EPAs). Only one of the five African EPAs that were envisaged is operational. The current situation is a hotchpotch of fixes essentially to ensure market access continuity for those countries that are not covered by Everything But Arms (EBA), which grants duty-free and quota-free market access to the EU for products from least developed countries (LDCs), while maintaining the impression that the remaining EPAs will eventually come on stream.

More recently, the EU itself has been rethinking its relationship with Africa both as a 'neighbour' and as a strategic partner, while in Africa determined steps are being taken to consolidate its balkanised markets and to accelerate economic integration. In this context, the objective of this chapter is to consider the reasons behind the failure of the EPAs and the possible future direction of EU–Africa trade relations.

What are the EPAs and how did they come about?

The EPAs are reciprocal, asymmetric free trade agreements between the EU and African, Caribbean and Pacific (ACP) countries. They were introduced to replace the traditional trade preferences granted by the EU to ACP countries with a new arrangement supposedly consistent with the requirements of the WTO.

The negotiations for the EPAs were launched in 2002. The African countries were corralled to negotiate in five regional blocs which, with the exception of the East African Community (EAC), are not consistent with the membership of the regional economic communities officially recognised by the African Union (AU). Three African negotiating groups – West Africa,[1] the East African Community (EAC)[2] and the Southern African Development Community (SADC)[3] – have concluded their negotiations. Negotiations are suspended for the remaining two blocs – Central Africa[4] and Eastern and Southern Africa[5] – with few countries having concluded interim agreements. Outside Africa, negotiations have also been concluded for the Caribbean bloc, and with few Pacific countries.[6]

The conclusion of negotiations on the African EPAs has been followed by only scattered signature, ratification and implementation of the agreements (Figure 1). Of the three blocs where negotiations have ended, only countries in SADC are implementing the agreement (the Southern African Customs Union since October 2016 and Mozambique since February 2018).

In West Africa and the EAC, the EPAs divided the countries. Nigeria, the regional economic power in West Africa, has not signed the agreement. This has been driven by the opposition from the Manufacturers Association of Nigeria and the private sector more widely, which has expressed concerns over the ability of the local producers to compete with European products. This has caused the regional process to stall, which in turn led Ghana and Cote d'Ivoire – concerned about losing market access to EU – to ratify their respective 'stepping stone' (i.e. interim) agreements with the EU. These bilateral agreements are being implemented while waiting for the regional process to catch up.

In the EAC region, signing of the EPA was scheduled to take place on the sidelines of the 14th session of the United Nations Conference on Trade and Development (UNCTAD XIV) in July 2016. This was however postponed as Tanzania expressed the need for further consultation on concerns over Brexit and the impact of the agreement on the industrialisation process. As the EAC EPA provides for entry into effect only

1 Comprising Mauritania and the Economic Community of West African States (ECOWAS) (i.e. Benin, Burkina Faso, Cabo Verde, Côte d'Ivoire, the Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, the Niger, Nigeria, Senegal, Sierra Leone and Togo).

2 Burundi, Kenya, Rwanda, Uganda and the United Republic of Tanzania. South Sudan joined the East African Community in 2016, with commitments to gradually adopt all the Community policy instruments.

3 Mozambique and the Southern African Customs Union (SACU) (i.e. Botswana, Lesotho, Namibia, South Africa and Eswatini – formerly called Swaziland) signed on 10 June 2016. Angola has an option to join. See European Commission, "EU signs economic partnership agreement with southern African countries", 10 June 2016 (http://trade.ec.europa.eu/doclib/press/index.cfm?id=1509).

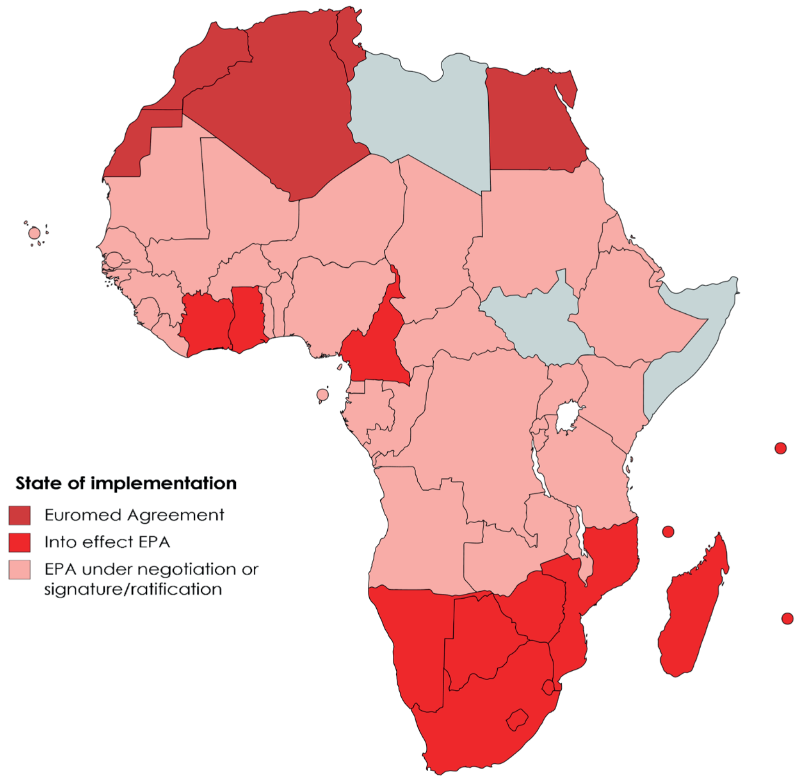
4 Cameroon, Central African Republic, Chad, Congo, the Democratic Republic of the Congo, Equatorial Guinea, Gabon and Sao Tome and Principe; also referred to as the Central African Economic and Monetary Community (CEMAC) interim economic partnership agreement.

5 Comoros, Djibouti, Eritrea, Ethiopia, Madagascar, Malawi, Mauritius, Seychelles, the Sudan, Zambia and Zimbabwe.

6 See the European Commission's overview of EPAs at http://trade.ec.europa.eu/doclib/docs/2009/september/tradoc_144912.pdf.

upon ratification by all EAC countries, the agreement is yet to be implemented in the entire region, although Kenya and Rwanda signed on 1 September 2016.

Figure 1 Status of EPAs in Africa



Source: Economic Commission for Africa*, using mapchart.net.*

In relation to the interim agreements, implementation is also limited. The interim Central Africa agreement was signed (in January 2009) and ratified (in July 2014) by Cameroon only. The agreement entered into provisional application in August 2014. In the ESA region, four countries (Madagascar, Mauritius, Seychelles and Zimbabwe), concluded an interim EPA in 2009, which has been provisionally applied since 2012, while "the Parties are exploring the scope and objectives of a possible deepening of the current agreement".[7] Comoros has also been implementing the agreement since February 2019.

7 See the European Commission's overview of EPAs at http://trade.ec.europa.eu/doclib/docs/2009/september/tradoc_144912.pdf.

The majority of African countries therefore access the EU market through other means. The most significant is the Everything But Arms (EBA) initiative, which provides access to all LDCs – including 31 African LDCs, which benefit from duty-free and quota-free access to the EU market for all products expect arms and ammunitions. In addition, two African countries (Gabon and Libya) use the WTO most-favoured nation (MFN) regime, two countries (the Republic of Congo and Nigeria) the Generalized System of Preferences (GSP) arrangements, and Cabo Verde, which graduated from LDC status, an enhanced GSP+ regime. In North Africa, Algeria, Egypt, Morocco, and Tunisia are part of the Euro-Mediterranean Association Agreements.

What is behind the limited implementation?

The drawn-out process and the existing divisions – even at the very late stages of the negotiations – clearly indicate that not everything has gone to plan with the agreements. The most obvious reason is the contradiction built into the EPA itself. As many African countries are LDCs, they already had preferential access to the EU market through the EBA initiative. From the African side there was therefore little need for agreements of asymmetrical reciprocity, even if they included transitional periods and options for protection of sensitive sectors.

The objective of WTO compliance was never fully convincing. Securing a waiver for non-reciprocal agreements in the WTO is essentially a political process interacting with WTO law. For example, the United States African Growth and Opportunity Act (AGOA) was granted a waiver, and the EU itself had a waiver in place for the Fourth ACP–EC Convention of Lomé until 2000, and for the initial years of the successor Cotonou Agreement (until the end of 2007). There was no indication from the WTO that a further waiver would not be granted, even as the EU was required to dismantle specific schemes such as for sugar or bananas. Meanwhile, the EU was not an enthusiastic supporter of African demands in the Doha Round and trade frictions continue to exist, particularly in the area of agricultural domestic support.

In terms of the impact of the EPAs on the industrialisation prospects in Africa, African concerns are justified. An ex-ante impact study by the Economic Commission for Africa (ECA), based on the EPAs for West Africa and ESA, concluded that the implementation of the agreements would result in gains in bilateral trade between EU and the African countries. However, in absolute terms the gains for the EU were twice as much as for the African partners. The benefits to African countries were limited to a few non-LDCs (which do not have access to EU markets through EBA) and were focused on a few non-industrial sectors (Mevel et al. 2015).

The impact of the agreements on Africa's industrial development is of interest because of the continent's structural transformation aspirations. The composition of Africa's trade with the EU has remained relatively unchanged over time, with mineral products, including oil and gas and related products, accounting for around 58% of all exports.[8] At the same time, intra-African trade has developed so that about two thirds of trade is in manufactured goods. The more diversified nature of intra-African trade presents stronger potential for the development of regional value chains as a driver of industrialisation and structural economic change on the continent.

This is why boosting intra-African trade has become a priority. At the African Union Summit in January 2012, the heads of state adopted the Boosting Intra-African Trade Action Plan. The document identifies the priority actions to be taken to overcome barriers to trade between African countries, including in trade policy, trade facilitation, productive capacity, infrastructure, trade finance, trade information and factor market integration. At the same time, countries adopted the decision to fast-track the establishment of the African Continental Free Trade Area (AfCFTA). Negotiations were launched in June 2015, culminating in Kigali, on 21 March 2018, in the signing of the agreement on the establishment of the AfCFTA by 44 African Union member states. Since then a further 19 have signed. The required 22 ratifications were reached in April 2019 and the Agreement entered into force on 30 May 2019.

The previously mentioned ECA impact study also examined the dynamics between the EPAs and intra-African trade. It was found that the implementation of the EPAs ahead of the AfCFTA would result in losses in trade between African countries. On the other hand, if the AfCFTA were to be put in place first (i.e. fully implemented) before the EPAs, this negative impact would be mitigated. Trade gains by both African countries and the EU would be preserved, while intra-African trade would expand considerably, benefitting trade in industrial goods in particular. This points to clear benefits from strategic sequencing of trade policy, prioritising the AfCFTA process.

Another key issue is that the estimates for the impact on African exports to EU under the EPAs may not be fully realised. The sanitary and phytosanitary (SPS) requirements of the EU are known to form a barrier to trade from African countries. In the context of Brexit, another ECA paper (Luke and MacLeod 2017) suggests that EU technical barriers to trade have restricted the UK market for products in which Africa has a

8 Average of the 2009-2017 period, calculated using ITC data.

comparative advantage, such as tropical fruits and vegetables, fish, and bovine meats. In the fish and beef sectors, African exports to the EU have fallen following compulsory and expensive regulations. Regulations to prevent bovine spongiform encephalopathy (BSE) are being applied to African countries in which BSE has never been diagnosed.

What is the possible future direction?

Further progress on the EPAs is expected to be limited. At the same time, there is strong momentum on the AfCFTA as the ACP and the EU prepare to negotiate a post-2020 successor partnership to the Cotonou Agreement. It is therefore an opportune time to redefine the relationship between Africa and the EU. There is a strong case for a continent-to-continent approach, building on the deeper integration of the African continent under the AfCFTA. This would have the benefit of simplifying the hotchpotch trade arrangements between the two continents and set the foundations for an arrangement that would be consistent with Africa's aspirations.

Such an approach also has traction in Europe. In his State of the Union speech in September 2018, European Commission President Jean-Claude Juncker called for the "development of the numerous European-African trade agreements into a continent-to-continent free trade agreement, as an economic partnership between equals".[9] German Chancellor Angela Merkel has also expressed the opinion that certain EU–Africa trade agreements should be renegotiated. The post-Cotonou negotiating framework proposed by the European Commission notes the need for the new ACP agreement to take into account the strengthened regional frameworks that have emerged, proposing a structure where the common foundation is complemented with three regional compacts as protocols to the agreement.[10] Trade, however, is not a central part of the envisioned agreement, and the EPAs have been assumed as the foundation of any new arrangement.

The evidence points to the need for a proper sequencing of trade liberalisation with the EU, after the AfCFTA is fully in place. In addition to this, going forward African countries will need to be clear on what the future relationship should look like to ensure it supports their developmental objectives. The current trade arrangements all involve an element of asymmetry in favour of the African parties. It seems fair to assume that this shared element would also be incorporated into any future agreement. Furthermore, moving towards a unified approach could encourage regional value chains through harmonisation and simplification of market access conditions and processes between

9 See https://ec.europa.eu/commission/sites/beta-political/files/soteu2018-speech_en_0.pdf.
10 See https://ec.europa.eu/europeaid/recommendation-council-decision-authorising-negotiations-partnership-agreement-between-european_en.

Africa and Europe. For example, it would help to redress the asymmetries that currently exist between the various sets of rules of origin, through a pan-African cumulation system. This would ultimately have the potential to increase the preference utilisation rates, boost intra-African trade, and ensure better trade policy coherence, in line with continental strategies. African countries could also emphasise the need for stronger assistance on the issue of standards and SPS, which currently act as barriers to access the European markets.

In terms of the process, a continent-to-continent agreement implies a trade agreement between the two Unions. The modalities of the process would form a part of the negotiations. Until the new agreement is in place, the existing market access arrangements could be used to avoid disruption to trade. A transition period could also be agreed upon to facilitate the move to the new unified regime.

There is scope for a true partnership between Africa and the EU. Africa's integration agenda serves the interest of the EU, as lower intra-African tariffs, reduced non-tariff barriers, improved trade facilitation, and integrated markets will be a more dynamic environment for EU trade and investment. The EU has recognised this and is a strong supporter of the AfCFTA process. Some of this support was indirect in the sense that through the EPA negotiations, African negotiating capacities were built and honed. This served many African countries well in the AfCFTA negotiating rooms.

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