

The European Union's trade negotiations with the ACP:

Entrapped by its own rhetorical strategy?

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F50 - General

Abstract

This paper deals with the Economic Partnership Agreements (EPAs) between the European Union (EU) and the group of African, Caribbean and Pacific (ACP) countries. It addresses the question why the EU firmly insisted on upholding the negotiating deadline for these new trade agreements, despite the very damaging consequences these hastily initiated trade deals entailed. Regional integration in the South was hampered, the development friendly image of the EU got a serious blow, the EU did not manage to include the WTO plus issues, and the prospect of full EPAs at later stage is not guaranteed. We first qualify the Union's argument that the expiry of a waiver by the World Trade Organization (WTO), which legitimized the former trade regime, placed an external and insurmountable pressure on the negotiations. There is no rational explanation for Europe's harsh attitude on the EPA deadline since neither legal nor economic interests would have been harmed if the deadline had been postponed. The main argument advanced in this article is that the EU had to push through these trade deals, because it had entrapped itself through its own 'rhetorical action'. In its negotiation discourse, the Commission had so often emphasized the deadline together with the fact that there were no alternatives to EPAs, that it could not change its mind overnight when at the end of 2007 negotiations were still going nowhere. The Union was forced to keep up with the deadline it had imposed upon itself at the risk of losing all its credibility.

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A short introduction

The beginning of the year heralded a new era in Europe's trade policy towards developing countries. After thirty years of non-reciprocal trade preferences granted to the ACP countries, a reciprocal trade regime has been put into place, by establishing several WTO plus trade agreements, better known as Economic Partnership Agreements (EPAs). Or at least, that was the plan. Negotiations on these EPAs turned out to be extremely difficult. And instead of creating the comprehensive regional trade deals, the EU ended up concluding a jumble of bilateral narrow goods-only Free Trade Agreements (FTAs) with countries and groups of countries representing only half of the ACP.² (*ECDPM*, 2008, p. 4-5)

These new trade deals are highly contested. Many Non Governmental Organizations (NGO), but also academics and politicians inside and outside Europe did not have a good word to say about the Interim-EPAs. These so-called 'instruments for development' (Mandelson, 2005a) are sailing under false colors; the trade deals do not have the ability to boost development. Moreover, they are seen as a threat to the ongoing regional integration processes in the South.³ (Kabuleeta and Hanson, 2007, p. 1-2)

But not only the content, also the negotiating strategy of the European Commission came under attack. During the last year of the negotiations, the European Commission seriously increased pressure upon the ACP countries by threatening to apply the less generous Generalised System of Preferences (GSP) to regulate trade relations, if no agreement was reached by the end of 2007. (European Commission, 2007c) This under the guise of WTO compatibility as a highly valued norm that cannot be neglected. The severity of this threat can hardly be overestimated: not only would they have to pay higher import duties to enter the European market, countries as Brazil, China and India would become their direct competitors. (*Overseas Development Institute*, 2007, p. 2)

The harsh attitude of the Commission on that negotiating deadline did not put the EU in a good light. Never before had an industrialized country increased its import tariffs towards the

² There is one exception: the CARIFORUM EPA, this is a comprehensive agreements concluded with all the members of the region, accounting for 16 ACP countries: Antigua, Barbuda, Bahamas, Barbados, Belize, Dominica, Dominican Republic, Grenada, Guyana, Haiti, Jamaica, St Lucia, St Vincent, St. Kitts & Nevis, Surinam and Trinidad & Tobago.

³ www.stopepa.org website of the Stop EPA campaign: a large coalition of ACP and EU civil society organizations aiming at stopping the EU's current approach in negotiating free trade agreements with the countries of the ACP.

third world and the Union was threatening on doing so, and later suited the action to the word. The development friendly image of the EU, which the Commission likes to emphasize so often, was seriously damaged (Jones and Perez, 2008, p. 3, Kabuleeta and Hanson, 2007, p. 1-2). Bearing in mind that the Interim-EPAs also caused a negative impact on regional integration and embittered relations between the EU and the ACP as well as within the ACP regions, the question arises: why did the European Union firmly insist on upholding the negotiating deadline for the new trade agreements with ACP? What interest do these agreements serve that could be worth all this?

The rationale behind Interim-EPAs

The two rational reasons put forward as explanation for Europe's, at first sight, illogical stubborn attitude on the negotiating deadline are WTO-compatibility of the trade regime and the economic potential of the ACP markets. (*Oxfam International*, 2006, p. 4-6) But taking a closer look at these motives it becomes clear that none of them can truly account for the EU's doggedness to conclude EPAs before the end of 2007. Instead, a more constructivist interpretation of the Commission's behaviour can shed a light on the real motivations of Europe's trade negotiators.

The first often quoted rationale is, as noted above, the EU's wish to establish a trade relationship with its former colonies that is WTO compatible and is no longer viable for challenges before the WTO's Dispute Settlement Body (DSB). This trade regime, in line with the WTO principles would make a waiver superfluous. The former trade regime contained discriminating features that were not in line with the WTO principles. A waiver, a temporary exception on WTO law granted through negotiations, gave that trade regime the necessary legitimization in the multilateral trade organization. On the first day of January 2008 this waiver expired. So from that moment on, the former trade agreements became illegal which would lead to numerous cases before the DSB of the WTO. All lost cases for the EU, which means that the Union would have to face economic sanctions from important trade partners. The EU most definitely wanted to avoid this scenario. Thus, that WTO-compatibility is one of the reasons to adjust the trade regime between the EU and the ACP, is not doubted. The cost to legitimize the non-reciprocity is too high and keeping this market access without legitimization would lead to, as said before, harmful economic sanctions. (Stevens, 2006, p. 444) This can, however, only explain the emphasis on the reciprocal character of the new

trade deals, and not the stubborn attitude on the deadline. After all, with a case before the WTO it takes more than two year before a sanction can be applied.

Besides, it took the Union almost two years to get the waiver needed to legitimize their Cotonou trade regime. (Bilal, 2007, p. xii) In other words, the non-reciprocal trade regime had during these negotiations no legal status. Since the EU didn't made a big deal of it then, it is remarkable that this time they are no longer prepared to miss their 'legal' deadline, not even for a few months, regardless the consequences.

Perhaps there were economic motivations to conclude these trade deals in a haste? But only a quick look at the role the ACP is playing in Europe's trade numbers makes it clear: no interests there neither. The share in trade volumes that goes to the ACP is virtually nothing. Some researchers point out the fact that the ACP countries have markets with a lot of potential for the services sector, a economic sector which is very important for the EU. But the EU failed to include the liberalization of services into the trade agreements. So the fact that services are so important to the EU would rather be a reason to extend the deadline in order to get services liberalization into the agreement. And the same reasoning can be made for Foreign Direct Investments,... (Faber and Orbie, 2007, p. 8)

Rhetorical actions and rhetorical traps

Neither the WTO compatibility nor any economic interest of the EU explains why the Commission did not want to budge an inch on the deadline. Instead, this puzzle must be solved through a more constructivist approach towards the negotiating process.

It is beyond doubt that the European Commission really wanted to establish their proposed comprehensive WTO plus Free Trade Areas. Yet, little or no progress was made during the negotiations of the trade deals, while more and more critics were raised, questioning the positive impact of the EPAs. The European Commission, determined to revert this situation, hardened their negotiating discourse. The WTO deadline became the centre of its negotiating strategy: before 2008 a WTO compatible trade regime had to be in place and no other trade deals but EPAs would meet that criterion. (Mandelson, 2007 a, b, c) But no matter how much pressure the harsh rhetoric of the Commission brought about, less than two months before the deadline still no headway was made. However, the Commission had focussed so much on the deadline, repeated so many times that there was no alternative to EPAs and that GSP was

imminent without agreements, that it could only carry on with it threat, irrespectively of the negative impact this would have on its development friendly image. The Commission was trapped in its own discourse. As Schimmelfennig (2001 p. 65) argues; there is a danger in using norm and value based arguments in order to defend or strengthen your own bargaining position.

Schimmelfennig (2001, p. 63) defines the strategic use of norm-based arguments in pursuit of one's self-interest as 'rhetorical action'. This rhetorical action can be helpful in two ways: it adds further legitimacy to the actor position and influences the outcomes of the negotiations in favour of those availing themselves of the values and norms.

Let us take a look at the first function. Political actors who formulate their goals in line with collective norms and values of their institution can simply refer to them as a justification for their position and by doing so gain further legitimacy. In our case we could argue that the Commission used the fact the EU is a strong supporter of the multilateral trade regime to justify their harsh focus on the negotiating deadline of the EPAs. Regardless of the real reasons why they wanted to push through these trade deals. Indeed, on the first of January 2008 the WTO waiver would expire and the former trade regime towards the ACP countries would become illegal, so it was easily argued that the EU could no longer use that regime to regulate their trade relations.

The second effect can be found in negotiating outcomes. Political actors who can defend their bargaining position in terms of collective norms and values, might get a more positive result out of the negotiations than when outcomes would be based on interest and power alone. Or as Schimmelfennig (2001 p. 63) puts it: 'Rhetorical action changes the structure of bargaining power in favour of those actors that possess and pursue preferences in line with, though not necessarily inspired by, the standard of legitimacy⁴'. So again, the Commission focussed on the WTO compatibility of the trade regime as a legitimized reason to push through the EPAs: It stated that it did not want the deals for their own interest, the agreements were necessary in order to have a trade regime in line with the WTO.

Though it is not the subject of the paper we could assume that the rhetorical action of the European Commission did not produce the intended effects because the political actors from

⁴ The standard of legitimacy is the term Schimmelfennig uses to refer to a standard 'based on the collective identity, the ideology, and the constitutive values and norms of the political community.'

the ACP countries have not institutionalized the collective norms and values of the EU. So referring to the importance of the WTO to legitimize their position had no effect here since the ACP countries do not value the multilateral trade organisation that high. Or it is, at least, not a collective norm in the institutions where these political actors are working.

But political actors who use the constitutive norms and values to pursue their goals should be careful: if, in the future, it would suit the actor more to act against the norms he used before to justify his goals, he will not be able to. If he truly believed in the norm, the potential shame would stop him from going against its own principles. But 'even if community members only use the standard of legitimacy to advance their self-interest, they can become entrapped by their arguments and obliged to behave as if they had taken them seriously.' (Schimmelfennig, 2001, p. 65) These actors abstain from violating the before supported norms because it would severely damage their reputation and credibility. So why the Commission focussed so hard on the WTO compatibility does not even matter. The point is that after more than a year grabbing every opportunity to highlight the WTO deadline together with the threat to imply GSP, they had no choice but to continue what they had started, despite its negative consequences.

In order to reduce the negative impact caused by this entrapment, the political actors can of course again use rhetorical action. 'They may, for instance, downplay community values and norms or reinterpret them to their advantage, questioning their relevance in a given context, or bring up competing values and norms that support their own preferences. There are, however, limits to strategic manipulation.' First, the norm in question is part of a coherent group of values and norms. So it is not that easy to break up the norm construction or isolate one. Secondly, It is not wise to manipulate the norms you once firmly defended if you would like to stay a credible actor. (Schimmelfennig, 2001, p. 65) In other words, the Commission had some space to adjust their attitude, but was restricted. The possibility they created for the ACP countries to sign an EPA light instead of a comprehensive trade agreements must be seen in this light.

The following part of the paper will illustrate these theoretical assumptions. Describing the negotiating process towards the Interim-EPAs, I will point out how the Commission tried to influence the course of the negotiations by using a specific discourse. Subsequently, I elucidate the rigorous outcomes of this negotiations showing how the Commission entrapped itself through its rhetoric, and in trying to solve the problems this entrapment caused upon them, opted for a solution that brought along its own unintended consequences. Instead of

signing a comprehensive EPA with a whole region, countries could also sign a bilateral only-goods trade agreement with the EU in order to avoid a trade disruption through GSP. These narrow trade agreements had negative effects on both the regional integration as the trust between the trading partners. But before I exemplify my theoretic reasoning I will give a short sketch of where EPAs came from.

The EPAs and the WTO

For more than three decades, the former African, Caribbean and Pacific colonies of the EU member states could enjoy a non-reciprocal preferential market access to the European Union. This trade policy was put into place with the establishment of the Lomé convention in 1975: a far-reaching partnership agreement that aimed at steering and reinforcing the economic, social and cultural development of the ACP.

During the nineties, however, this beneficial trade regime came under attack for being neither effective nor in line with the principles of international trade law. While ineffectiveness was claimed because of the marginalization of the ACP in the overall trade statistics of the EU, the regime was also being criticized for its discriminating character towards non-ACP development countries. Indeed, the trade preferences were internationally legitimized through a waiver negotiated in the GATT and later WTO, but they infringed the core principles of these multilateral trade organizations. The trade relations were even more contested when more assertive developing countries successfully challenged parts of Europe's trade regime before the DSB of the WTO (successor of the GATT) and the Union considered the time ripe for a new policy towards the ACP. (Holland, p. 169-172)

From the very beginning it was already clear that the WTO would play an important role in drawing out the new trade regime between the EU and their former colonies, as it was proclaimed as one of the main reasons to abandon the Lomé fundamentals. In 1996 the Commission published a green book 'on relations between the European Union and the ACP on the eve of the 21st century'. This was the unofficial start of the negotiations on a new partnership, including a new trade chapter. By the time an overall agreement was reached, on July 23 2000 in Cotonou, trade remained an unsolved issue. The parties did agree that a new trade regime had to be established after a transitional period of 7 years, during which non-reciprocal market access would be continued. (Cotonou Partnership agreement 2000/483/EC)

A waiver covering this period was obtained, expiring on the 1st of January 2008. The deadline for the trade negotiations was set. (Daerden, 2007, p. 12-13)

But not just the date, also the content of the trade agreements was negotiated and a general blueprint was included in this Cotonou Convention. The compatibility with the WTO principles was a condition sine qua non for the European Union, but excluded the options most wanted by the ACP. After all, to be in line with the WTO rules would mean the end of the favorable, non-reciprocal market access that the only ACP could enjoy.

The principle of non-discrimination, inherent to the international trade law, implies that countries must give all other WTO members the same market access as the one given to the most favored nation (MFN). Departing from this principle is allowed when preferential access is used as a means to foster development. Preferences have to be based on objective development indicators (the GATT enabling clause). Another possibility to abandon the MFN principle is establishing a free trade area or customs union (Article XXIV of the GATT/WTO). In this case, preferences must be reciprocal. Europe's trade relations didn't qualify for any of these scenarios. Their granted preferences, based on historical ties, can hardly be called objective and since the Union exported under less favorable conditions to the ACP than the ACP to the Union, the trade regime didn't meet the conditions of reciprocity either. (Draper, 2007, p. 10)

The Lomé trade regime had always been legitimized through a waiver. Many ACP countries preferred a status quo of the former situation where ACP countries paid no or lower import tariffs than the EU applies under the GSP and MFN regime. This was untenable according to the EU. Getting a waiver always ended in ordinary horse trading where WTO members who did not benefit from this trade regime demanded expensive concessions in exchange for their support. Besides, during the Uruguay round, more restricted voting rules to obtain a waiver were adopted. Thus, the only options were granting market access depending on the level of development, or installing a free trade area implying reciprocal market access.

Abolition of the ACP as a group, granting non-reciprocal trade preferences to countries based on their development status, such as the GSP and Everything But Arms regimes, was perhaps the most 'objective' option. However, both the ACP and the EU had their reasons to avoid such an outcome. The EU and the ACP had to face more competitors in the European market if the favorable tariff lines were granted to non-ACP development states such as Brazil and India. Exclude several more developed ACP countries from the most generous tariffs seemed

also politically infeasible. Europe's image as a development friendly actor would get a serious blow and ACP countries would not sign an agreement under this condition. (*Overseas Development Institute*, 2007, p. 2)

In other words, reciprocal market access in line with the WTO requirements under Art. 24 seemed inevitable. Few ACP countries were keen to conclude a reciprocal trade agreement with the EU. But at least they managed to get some respite by convincing the Union to negotiate a last waiver legalizing the continuation of their discriminating trade relations. In exchange the ACP committed itself to establish a reciprocal trade agreement by the end of 2007.

The reciprocal trade regime was to be established through the creation of several comprehensive FTAs: EPAs. These EPAs are, as the Union stipulates, 'above all instruments for development'. Development that had to be reached through supporting and enhancing regional integration between ACP countries and the integration of these regional markets into the world economy.

To do so, the ACP would have been divided into six groups – west Africa, central Africa, east Africa, south Africa, the Pacific and the Caribbean- with whom the EU would negotiate separate FTAs. The compliance with the international trade law was guaranteed; the agreements would contain liberalization schemes establishing a free market access for 80 % of all trade ('liberalization of substantially all trade'), and this within a period of 15 to 20 years ('within a reasonable length of time'). Thus, from then on, the ACP would be obliged to open up their markets for European products. But free trade in goods is not enough to stimulate economic development. EPAs ought to be a lot more than just FTAs. The so called WTO plus issues such as services, intellectual property rights, government procurement, trade facilitation, competition policy would also be included. (Mandelson, 2005b; European Commission, 2007 b) Both the reciprocity of the trade relations and the inclusion of the WTO plus issues were very controversial items for the ACP countries.

The negotiations or non negotiations

It was obvious that the trade negotiations between the EU and the ACP were not going to be easy. Indeed, both on European side as among the ACP countries, there was little enthusiasm

for establishing a new trade regime. For the European member states a lack of interest was the main reason. Direct economic interests hardly existed. Besides, they had a new bilateral trade agenda that was far more important. (De Ville, 2008, p. 89) Many ACP countries on the other hand, saw in the EPAs more harm than good. They were not convinced of the fact that the benefits would outweigh the costs. The most important critic they addressed was the obligated removal of import tariffs. This had baleful consequences for their estimates as well as for the burden for their domestic producers due to the enhanced competition in their markets. Besides this, the ACP countries were not eager to include the WTO plus issues either, because this would imply a big interference in the countries internal affairs and a curtailing of the national governments possibilities to intervene in their economy.

That there was little enthusiasm to carry through these EPAs was painfully demonstrated when a year before the deadline little or nothing had been reached. There was not a single indication of progress towards an agreement (except for the Caribbean region); FTAs and CUs in Sub-Saharan-Africa were but paper tigers and regions were internally divided about what should be included and what not. (Bilal, 2008 p. 2) Some countries were still pleading for a waiver postponing or even replacing the EPA. In other words, the EPAs were going nowhere. Meanwhile, criticism was growing stronger when more and more NGOs, researchers, politicians,... had doubts about the positive impact of the trade agreements.

It goes without saying that the Commission wanted to revert this situation. First of all, it is their job to conclude trade deals. The Commission is granted exclusive negotiating power for the establishment of trade agreements. When it is, however, no longer effective in concluding solid trade agreements, the Commission loses legitimacy and the member states might increase their involvement. (Meunier and Kalypso, 1999, p. 479) Furthermore, these new trade deals would be in line with the core principles of the WTO. This means that the EU would get rid of the expensive waiver they needed to obtain in order to legalize their discriminating trade regimes. But there is also another reason why WTO compatibility is important for the Commission, and especially DG trade, who leads the negotiations towards a new trade regime with the ACP for the first time.⁵ During the Nineties, the EU's position in the WTO shifted from a more defensive actor towards an offensive leader. (Orbie, 2008, p. 46-51) After all, 'it is probably the only international organization in which the EU acts like a superpower and shares equal status with the VS.' (Van Den Hoven, 2004, p. 258) But it is

⁵ Before, it was DG development who was in charge of the trade negotiations with the ACP.

difficult to defend the importance of multilateral trade law and at the same time not to obey the rules yourself. In particular, with the ongoing Doha round, the EU has good reasons to stay credible. Establishing trade regimes that do not follow the basic principles of the WTO, would not support that credibility. (Faber and Orbie, 2007, p. 16) Finally, it is true that the EU has no direct economic interests in the ACP countries. But that is not to say that the ACP markets do not hold any potential, specially with regard to trade in services and FDI. Two issues that are included in the comprehensive EPAs.

Discourse as a negotiation strategy

Enough reasons thus for the Commission to turn the tide and get the negotiations going. Its motives to do so are, however, not all reconcilable with the noble goals put forward by the EU as reasons to pursue these comprehensive trade deals. The Commission needed a legitimization to increase the pressure on the ACP to sign a trade deal, that could conceal their more egoistic motivations. And that 'perfect excuse' was found in Europe being a strong proponent of the multilateral trade system. Indeed, on the first of January 2008, a WTO waiver legitimizing their former discriminating trade agreement would expire and the trade regime would become illegal. So if the EU did not want to violate the WTO rules, it needed to install a WTO compatible trade regime before the waiver expired.

This point became the centre of the Commission's argumentation: on the first day of 2008 a WTO compatible trade regime had to enter into force at all costs. It was beyond the EU's ability to postpone this deadline, so it had to be met. The Commission left the ACP two choices: either would the ACP countries sign the comprehensive EPAs or they would fall back on the only trade regime legitimized by the WTO: the GSP. This was of course not a choice but a serious threat: if the ACP did not approve the proposed trade deals, they would be forced to pay higher import tariffs to enter Europe's market and would have to face direct competition from countries as Brazil, China and India. Products that the ACP countries exported to the EU, sometimes representing a significant share of their exports, could now be easily pushed out of the market.

This reasoning was pet subject of the Commissions negotiating rhetoric: in every speech, press release or statement the WTO deadline and the EPA as the only valid alternative were prominently put forward, this together with the threat to impose GSP upon the reluctant ACP countries:

' We have a responsibility to act just as we promised in the Cotonou agreement, we also have a WTO obligation to do so. This is unavoidable and everyone should be clear on this when they talk of alternatives or of making agreements that are not rules based... Our deadline to negotiate EPAs is January when the Cotonou waiver expires... we have no magic alternatives to offer...Let us be very clear that there is no way back, no retreat from where we are now without harming the very interests of trade and development that we are seeking to champion.' (Mandelson, 2006)

The Commission even made a quick calculation on how much it would cost the ACP countries if they should fall back on GSP:

'We need to move ahead with substantive negotiations... One important influence is that not all West African Ministers appear fully aware of the risks of delay and lack of legal options available to the EU to offer them market access after 2007...If we do not [get to an agreement] it is not in the control of the EU to grant trade preferences equivalent to the Cotonou agreement. Both the Least Development Countries (LDCs) and non-LDC's will be affected... If an EPA is not signed and GSP preferences apply then some exports would pay higher customs. This would cover 36 % of exports to the EU in Côte d'Ivoire, 25% for Ghana, 69% for Cape Verde.'(European Commission, 2007a)

It was also continually underlined that the WTO deadline was imposed upon them, and that it was beyond the Commissions reach to prolong the negotiating time:

'That deadline is imposed by the expiry of the legal protection at the WTO for our existing trade agreements which are based on preferential access and break WTO rules. If we don't have the new system in place we will have to fall back on alternative with less generous market access...So the importance of a new agreement by 2008 is not a threat – it's a reality.'(Mandelson, 2007a)

And, the Commission claimed, alternatives to EPAs were none existent:

'I have no hat and no rabbit to pull out of it, if we have no new trade regime in place by the end of the year in each of the regions, [...] the Commission has no legal option but to offer the region concerned GSP preferences. The 31 countries of the ACP who are not Least-Development Countries will lose the tariff advantage Cotonou gives them over their competitors in key areas such as textile, cacao, tuna, bananas and horticulture...The deadline

is not a bluff or some negotiating tactic invented in Brussels. It is an external reality created in the WTO in Geneva.' (Mandelson, 2007b)

This discourse definitely increased the pressure upon the ACP dramatically during the last year of the negotiations. Pressure that dominated the negotiations and induced an incredibly chaotic negotiating process. But two months before the deadline the Commission realized that, no matter how much pressure they brought to bear on the ACP countries, only the Caribbean region could reach an EPA on time. (O'Sullivan, 2007) Countries within the same region were expected to establish a Free Trade Area or Customs Union, which meant that they needed to agree on the liberalization schemes for their integrated market. This turned out to be very difficult, especially when you take into account the fact that the markets within a region had sometimes very different structures, so all the countries wanted to exclude different products from liberalization. (Goodison, 2005, p. 170) In addition, some countries within the same region are far more dependent on the European market, and were less reluctant to sign a deal. Besides, several countries had an alternative when no agreement was reached: The Least Developed countries could resort to the Everything But Arms trade regime (EBA). This is the most favorable kind of GSP, that gives all the products from LDC countries a quota and duty free entrance on the EU market, except for weapons. Non LDCs did not have that possibility so they had more to lose if they did not conclude an EPA. It is clear that these differences between the countries could constitute a major obstacle on the way towards a new trade deal. Moreover, most ACP countries were still not convinced of the benefits that the EPA's would bring about. (Meyn, 2008, p. 524)

The Commission had, however, focused too hard on the deadline, repeated so many times that there was no alternative, underlined constantly that GSP would be implied and claimed that it was beyond their reach to postpone that deadline, that it could not simply recant what they had stated for such a long time. They would lose all the credibility they had, and not only towards the ACP, but also towards the other European institutions, the civil society, ... and even towards other, more important, trading partners. But they could, on the other hand, not apply the GSP regime on half of the ACP countries. The implication of this decision upon the economy and development of these countries would be incalculable. Moreover, Europe's normative power image, which grants the EU legitimacy and credibility, would shatter to pieces. And that is something the Council and the European Parliament would not allow to happen. Besides, it was never the Commission's intention to push through that threat, it was only a trick used to convince the ACP to sign the trade deals. But whether intended or not,

the Commission got stuck with it, entrapped in its own rhetoric. And though the Commission had some maneuvering space, it was little: The Commission could not act against the rules of the WTO, which the EU hold in such great esteem, since this was the argument used to legalize and legitimize their negotiation position.

So with only a few months left before the deadline, the need for a solution was pressing. The Commission had to propose an alternative without saying that it was one –cause they claimed there was no alternative to EPAs- and this to postpone the deadline without saying they postponed it since they claimed that this was not possible. Obviously, this was not about to be easy. Yet they found a way, by introducing the Interim-EPAs. As the word indicates, the agreement would still be an EPA, so not really another option and these Interim EPAs had to be signed before the end of 2007, thus also the deadline was respected. (European Commission, 2007d)

These agreements –also known as ‘two phase agreements’, ‘stepping stone agreements’, ‘only goods agreements’ or ‘EPA-light’- covered only trade in goods and the commitment to conclude a full EPA within an in the interim-agreement specified period of time. Contrary to the original EPAs, these interim-agreements were not only open to the six regions, but also to individual countries or sub-regions. In this way, the Commission let the non LDC countries and countries whose economy strongly depended on their trade with Europe the choice to conclude a trade deal and avoid a trade disruption through the implementation of the GSP. (Bilal, 2008, p. 1)

If you read between the lines, you will notice that both the content has changed and the deadline partly postponed. But the Commission explained this shift in such a way that, at least at first sight, Interim-EPAs are consistent with the commission’s discourse:

‘Some regions will need a little more time to complete full EPAs. To avoid disrupting ACP exports from 1 January, we need WTO compatible agreements for all regions soon. Where a full EPA is not yet complete, we have to capture those issues negotiated so far on an agreement with a goods market access arrangement at its core and then move on to finalise negotiations on other areas in the early part of 2008...It is also possible that in some regions, not every country member is able or willing to sign an agreement now. So where some within a region have real concerns about securing their EU market access, and were they propose WTO-compatible agreements, we will try to respond constructively to those countries... We will have to see whether we are looking in these cases at stepping-stone agreements covering

goods only or whether more comprehensive EPAs are possible with some groups of countries within a region.’ (Mandelson, 2007c)

Interim EPAs and their Unintended Consequences

The Commission had, however, not anticipated some less positive effects that these interim-EPAs brought about. Besides the impact on regional integration, the EPA-lights also impaired the trust between both the ACP Countries and the EU as between the ACP countries mutually. Which in turn damaged what was left of the development friendly image of the EU.

Not one region, except the CARIFORUM (16 countries) who signed a comprehensive EPA, was kept upright. Most of the countries didn't reach an agreement in time. While 32 Least Developed Countries (LDCs) decided to stick to the EBA regime, 10 countries, who didn't qualify for LDC status, were forced to trade under the less favorable GSP schemes. And 19 countries, individual or within a subgroup, signed an interim-EPA. (ECDPM, 2008, p. 4-5) The option to conclude an EPAs-light instead of a full EPA rather hampered then stimulated the regional integration projects. Because some ACP countries were more dependent on the European market than others, they had more incentives to reach an agreement and thus to make more concessions. The possible EBA alternative for LDCs magnified this problem. When the Commission announced that individual countries could also sign an interim-agreement, all but the Cariforum region fell to pieces.

With some countries trading under the EBA regime, some of them under the reciprocal interim-agreements and a few falling back on the GSP regime, regional integration was hindered by both economic as technical barriers. Creating a free trade area between a number of ACP countries and the EU implied a trade diversion disadvantaging to those whom had not joined. Especially when subgroups, as the EAC, concluded an EPA. Moreover, the countries falling back on GSP are facing increased competition on the European market since their products are subject to import tariffs, the products of the countries that signed an EPA are not. And the LDCs trading under the EBA regime are confronted with more restricted rules of origin than the ones trading under an interim-EPA. (Meyn, 2008, 524)

On political level, trust between the ACP countries got a serious blow. It is difficult to maintain a good bargaining position as a region if in the meanwhile countries have started bilateral talks with the EU. In the future, these interim-EPAs could also become an obstacle that divides countries within a region. Countries that already signed an agreement will not be prepared to renegotiate their given concessions. This induced a 'take-it-or-leave-it' situation,

where ACP countries can only choose to join an agreement without any involvement in the negotiating process.

EPAs were meant to stimulate the regional integration, turned out be counterproductive. A perfect example of the ‘divide-and-rule’ strategy was displayed by the EU. One country after another signed an agreement out of the fear of being excluded from favorable market access. What the Union did reach by imposing the interim-agreements was a more WTO-compatible trade regime, which was no longer, or at least less vulnerable for contestation before the DSB of the WTO.

The course of events originating from certain decisions is, however, not always foreseen. The EU never had the intention of either hampering regional integration nor damaging their development friendly image. These are unintended consequences of their negotiating strategies. Above all, the Union wanted to establish a new trade regime. When the deadline approached, nothing was indicating substantial progress towards a trade deal and none of the ACP countries were eager to change this situation. So the EU tried to increase pressure though their negotiating discourse: if no agreement was signed, the less beneficial GSP would be applied. Besides pressure, this threat also brought dissension within the regional groups, composed out of both LDCs, who could resort to the EBA alternative, and more developed countries. In order to keep the latter from trade disruptions caused by a more resisting group of LDCs, the EU allowed individual ACP countries to sign an interim-EPA. This had serious consequences, as explained before: instead of a boost for regional integration it hindered the process. Yet the EU was left no choice but to carry through their threat. Otherwise, the EU would lose the all credibility it had left and the countries who did not sign an agreements would see no reason to do so in 2008.

The Conclusion

Why did the European Union firmly insist on upholding the negotiating deadline towards the new trade agreements with the former colonies in African, Caribbean and Pacific countries (ACP), despite the very damaging consequences these hastily initialed trade deals entailed? Because they had no choice but to do so. Too long and too many times had the Commission emphasized the unavoidable WTO deadline to change their mind overnight and prolong the negotiations towards EPAs. Even if this would had been a better option in rational terms. And this because the Commission would lose all their standing and credibility as negotiators.

They tried to set the situation right, while minifying the losses in credibility through the introduction of interim-EPAs. The WTO deadline was kept upright, while the full EPA negotiations could be extended. A solution that, however, had some unintended consequences that on their turn affected Europe's credibility as a development friendly power. The regional integration was hampered, and the trust between the negotiation partners got a blow .

But this is not the only effect the Interim EPAs induced. They indeed solved the problem of the WTO compatibility, but this implies that the Commission can no longer use that argument in order to push through comprehensive EPAs. In other words, by signing the narrow only goods agreements, the Unions trade regime towards the ACP countries became in line with the WTO-principles and by this all the pressure to conclude an comprehensive EPA evaporated. No full EPAs means no WTO plus issues included, thus no liberalization of services, no rules on FDI, public procurement,... All issues that were so important to the EU. So the question remains, what rabbit will the Commission pull out of its hat this time in order to get the negotiations back on track towards full EPA?

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