Urgent need for change in Europe's approach to trade negotiations

Currently, 76 of the world's poorest countries are under pressure to sign free trade agreements with Europe, facing threats of tariff increases if an agreement is not in place with by 31 December 2007. As they stand, these agreements would prevent developing countries from making trade work for development.

An urgent change in approach is required to create trade agreements between Europe and poor countries that work for development.

Economic Partnership Agreements: tools for development?

Europe is currently negotiating trade agreements with 76 countries in Africa, the Caribbean and the Pacific (ACP). These so-called Economic Partnership Agreements (EPAs) would create a free trade area between these countries and Europe.

Europe is a major trading partner for developing countries and these agreements will have a decisive impact on the development of the world's poorest economies for years to come.

Leaders of developing countries have consistently raised concerns about Europe's approach to the negotiations. Differing opinions on the nature of development lie at their core. A recent African Union report notes 'European Commission (EC) negotiators have given emphasis and priority to a narrow and inaccurate meaning of development. They see 'development' as the liberalisation of trade and adoption of non-discrimination rules on the Singapore issues of investment, competition and government procurement. Unfortunately, the EC negotiators have failed to appreciate the socio-economic and political philosophy underpinning regional integration processes in Africa, which are likely to be compromised by its narrow definition.'[1] These concerns are shared by a growing number of development experts (please see the attached fact sheets for details).

Unfair pressure

Developing countries have tabled alternative proposals, but Europe has rejected them, undermining the principle of partnership. Instead, Europe is using its unequal bargaining power in the negotiating room to push its controversial vision of development.

Europe insists that if an agreement is not signed by 31 December 2007, tariffs will be raised on exports from developing countries, jeopardising jobs and income for farmers and workers. In Kenya alone 500,000 people employed in the horticulture sector could see their jobs vanish over-night.

This pressure is unfair and unnecessary. Europe has a number of options that it could use to safeguard current levels of access to European markets for these countries' exports. This would allow negotiations to continue in an atmosphere of calm until an agreement is reached that adequately addresses development.

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Europe is also using the incentive of increased aid to encourage developing countries to sign up to these agreements, with barely-veiled threats to decrease aid if they do not. The use of development assistance as a bargaining chip in the negotiations severely undermines the sincerity of Europe's claims to be working in partnership with developing countries.

What would be the impact of Europe's proposed agreements?

The current negotiations are an historic opportunity to rewrite the trade rules between Europe and 76 developing countries, making them work for the benefit of 750 million people living in poverty. However, there is a growing body of expert opinion which shows that many of Europe's current proposals would be detrimental to development:

- Proposals to cut tariffs would undermine food security and local manufacturing.
- New intellectual property rules would limit developing countries' access to educational materials, technology, and seeds for farmers.
- New competition rules would work in favour of large corporations instead of development.
- New rules on government procurement would hinder governments of developing countries from using their expenditure to stimulate local development.
- New rules on services could reduce poor people's access to critical services such as banking and telecoms and make developing countries more vulnerable to financial crises.

Change is possible and urgently needed

Given the short time period remaining and the deep problems with Europe's proposals it is impossible to reach an agreement that addresses the needs of developing countries by 31 December 2007. To prevent a rushed conclusion that would undermine development, it is crucial that Europe changes its approach.

Please use your influence as an MP/MEP to hold your minister(s) and Europe's negotiators accountable for their actions. In particular, we urge you to table questions on Europe's proposals and approach to the negotiations.

Further information and suggestions for questions can be found in the attached fact sheets:

1. Removing deadline pressure: creating space for fair negotiations
2. Aid for trade: empty promises?
3. Intellectual property: reducing access to educational materials, technology, and seeds for farmers
4. Services: reducing poor people's access to key services and making developing countries more vulnerable to financial crises
5. Competition: tailored to benefit European companies
6. Government procurement: undermining incentives for local industries

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[1] Report On Economic Partnership Agreement Negotiations, African Union, 30th August 2007

Fact sheet 1:

Oxfam MAKE TRADE FAIR

Removing deadline pressure: creating space for fair negotiations

Negotiators and politicians on both sides of the table are under tremendous pressure to sign an agreement by the end of the year. In African, Caribbean and Pacific (ACP) countries, exporters are alarmed at the prospect of tariff increases if an agreement is not signed in time, and are calling on their governments to make a clear decision by October so that they can plan exports for 2008. In many export businesses, orders have to be negotiated three months in advance. The current environment of uncertainty is already deterring investment in ACP countries. These export sectors underpin the economies of many ACP countries and the livelihoods of millions of people.

Meanwhile, a growing body of analysis shows that the proposed Economic Partnership Agreement (EPA) texts include numerous binding provisions that erode the policy space that ACP countries need to manage their economies in the public interest, and would be highly detrimental to sustainable development.

Many ACP countries are requesting substantial changes to Europe's proposals, but continue to meet fierce resistance in the negotiating room. The approach of Europe's negotiators is in clear contradiction to the conclusions of the EU Council of Ministers, which stated that Europe 'fully respects the right of all ACP States and regions to determine the best policies for their development'.

This situation is deeply unjust and unnecessary. There is no need for ACP negotiators to be forced to choose between sudden trade disruptions and Free Trade Agreements (FTA) provisions that could jeopardise their future development. There are clear interim measures that could be put in place by the Europe to remove this pressure from the negotiators and guarantee continued market access for ACP exports beyond December 2007. It is critical these measures are put in place immediately.

Please ask your Minister(s) what consideration is being given to interim trade agreements between EU and ACP countries to guarantee continued market access, in the event that an agreement is not signed by 31 December 2007.

Europe could provide continued market access for ACP countries in a way that meets its World Trade Organisation (WTO) obligations, by modifying its existing preferential schemes.

Under its 'Generalised System of Preferences', Europe already provides three levels of tariff in addition to the 'Most Favoured Nation' (MFN) tariff, which is the highest level of tariffs:

- **'Standard GSP'** is available to all developing countries and provides better tariff rates than MFN, but it is not as good as the Cotonou Agreement. Using this scheme would entail heavy costs for ACP countries.
- **'GSP plus'** is currently available only to certain developing countries, but could be expanded to immediately allow ACP entry. As it stands, it provides duty-free access to almost all products currently exported duty-free under the Cotonou Agreement, and it could be adapted to cover all products.[1]
- **"Everything But Arms"** (EBA) is available to all Least-Developed Countries (LDCs) and provides duty-free, quota-free imports of all products except arms (with transition periods for rice, sugar and bananas). This provides better access than the Cotonou Agreement and is equivalent in tariff coverage to the EU's offer under EPAs.

By adapting these schemes Europe could guarantee uninterrupted market access after the WTO waiver expires in December 2007. This would secure the space for negotiations to continue on a fair basis, until an agreement is reached that promotes development.

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Trade Justice Movement

Fact sheet 1:

Interim Options in More Detail

Market Access Under EBA and GSP+

The 'Everything But Arms' scheme provides better tariff coverage than the Cotonou Agreement, and is already available to exporters in Least Developed Countries, so they need not worry about threats of tariff increases. For the remaining ACP countries, the GSP+ scheme would provide market access levels that are very close to the Cotonou Agreement: In 88 per cent of the cases where the standard-GSP applies higher tariffs than the Cotonou Agreement, duty-free access is provided under the GSP+. In the majority of cases where GSP plus is not duty-free, it offers the same level of access as the Cotonou Agreement.[2]

The rules of origin (ROOs) are slightly stricter under all the GSP systems than under the Cotonou Agreement. This is a concern in the long run but will not affect most ACP products in the short-term as they do not currently take full advantage of the ROO flexibility available under the Cotonou Agreement.

Europe could easily improve the tariff coverage and rules of origin under GSP+ and EBA schemes to ensure they provide Cotonou Agreement-equivalent access.

Access to EBA and GSP plus

Exporters in all Least Developed Countries in the ACP group are eligible to start using 'Everything But Arms' (EBA) immediately – exporters simply need to fill in the correct form at customs.

The remaining 'non-LDC' ACP countries, need to request to join GSP+. Currently, all ACP countries meet the "vulnerability criteria" for accession to the GSP plus scheme, and ACP countries have already ratified most of the relevant international conventions for admission.

Given the limited time period, ACP countries have grounds for asking for an exception, and there is precedent in Europe for allowing such a move. When Europe created the GSP+ scheme, it allowed developing countries to join who had not ratified all the necessary conventions, giving them a 'grace period' to ratify the outstanding conventions. ACP countries could ask for similar treatment. Europe is due to review the list of countries benefiting from GSP+ in 2008, but given the exceptional circumstances facing ACP countries, this review could be brought forward, and ACP countries admitted from 1 January 2008.

Withdrawal or Cessation of the GSP schemes

There is no specified expiry date for the GSP system, although it has been reviewed every three years since it started in 1971. The current regulation is due for review on 31 December 2008, but there is no particular reason to suppose that Europe intends to terminate GSP+, particularly since many exporters in Latin America rely exclusively on GSP+ for accessing the European market. Furthermore, EBA scheme, is not subject to review, and is intended to apply for an unlimited period of time. Europe's trade Commissioner – Peter Mandelson – has stated, "Going back on our EBA commitments will not happen."[3] And the EBA is generally referred to as applying for an "indefinite period".[4]

Conclusion

Europe must act urgently to change the approach of its negotiators. European importers and ACP exporters need legal certainty to continue their business operations into 2008, without the threat of disruption, which places many livelihoods in jeopardy. To provide this certainty, Europe should provide all ACP states guaranteed access to the European market in 2008 by adapting the GSP Plus and EBA schemes. This is feasible - it just requires political will on the part of member states. As a result negotiations could continue until a pro-development agreement is reached.

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[1] For further information, see 'A Matter of Political Will: How the European Union can maintain market access for African, Caribbean and Pacific countries in the absence of Economic Partnership Agreements' (2007), by Third World Network and Oxfam International, http://www.oxfam.org.nz/imgs/pdf/a%20matter%20of%20political%20will.pdf

[2] 'The Costs to the ACP of Exporting to the EU under the GSP' Overseas Development Institute (March 2007) <http://www.acp-eu-trade.org/library/files/ODI_EN_010307_ODI_Costs-to-ACP-of-exporting-under-EU-GSP.pdf> accessed at 21 September 2007 p 8

[3] Speaking notes of Commissioner Peter Mandelson INTA Committee European Parliament Brussels 23 May 2005 <http://trade.ec.europa.eu/doclib/docs/2005/may/tradoc_123306.pdf> accessed 21 September 2007 p 2

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Fact sheet 2:

Oxfam MAKE TRADE FAIR

Aid for trade: empty promises?

Europe is using the incentive of increased aid to encourage African, Caribbean and Pacific (ACP) countries to sign up to EPAs, as well warning that aid will decrease if they do not. Despite ACP countries repeatedly stating that they are not ready to sign up to Economic Partnership Agreements (EPAs), Europe is pushing for the negotiations to be completed by 31 December 2007.

Aid For Trade (A4T) are aid packages that channel resources to a country to ease the costs of adjustment to trade liberalisation, and to increase their capacity to take advantage of the benefits of trade.[1]

Europe pledged that if ACP countries sign an EPA, they would be supported to address competitiveness constraints and compensated by resources from the European Development Fund (EDF) to meet the costs of implementation. However there is concern amongst ACP countries that the funds offered would not be sufficient.
Given the severe resource constraints that ACP governments face, before taking on burdensome commitments, they have asked Europe to make binding commitments in the legal text of each EPA to provide the resources necessary.[2] However, Europe argues that EPA negotiations are about trade and trade-related issues only, not development financing.[3]

Please ask your Minister(s) for details of how the ACP countries will be financially supported to upgrade their economies, as the current allocations are clearly insufficient.

Trade and development are intrinsically linked, and development assistance is essential if developing countries are to benefit from any trade agreement and integrate properly into the global economy. ACP countries face the challenge of upgrading their export sectors and their domestic industries to climb up the value-chain and become internationally competitive. Estimates from the Commission for Africa suggest that an additional $10–20 billion per year is needed for African countries alone to become competitive.[4]

Europe's proposals would be very costly. Tariff liberalisation would cause substantial losses to governments: conservative predictions suggest that the Gambia would lose about 22 per cent of government revenue as a result of loss of import tariffs under an EPA.[5] In addition, the EU's proposals would place a costly administrative burden on ACP economies. A recent study financed by the Commonwealth Secretariat estimates that the overall cost of adjustment for the entire ACP would amount to €9.2bn.[6]

Europe claims that money from the 10th EDF (covering the period 2008-2013) and pledged at €22.7 bn,[7] will be enough to cover both ongoing development assistance plus additional EPA adjustment costs. The European Commission (EC) claims that EDF10 is far larger than EDF9 and that this additional money can offset EPA adjustment. However, there is strong evidence that this is not the case, as explained overleaf.

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Fact sheet 2:

Aid for Trade and EPA negotiations in detail: The problems

Based on figures from the EU and the Commonwealth Commission there appears to be a funding gap of €7.8bn to meet the estimated costs of implementing an EPA (€9.2). Many ACP countries have an extremely low level of development and require all of their available resources to cover existing public expenditures. For example in 2005 the GDP per capita in Sierra Leone was €399 vis-à-vis €20,745[8] in the European Union. To meet the costs of implementing the EU's EPA proposals, funds could be diverted away from services such as education and health care, making them less accessible to poor people and striking a serious blow to development as a whole.

The EDF has been the main financing instrument of ACP-EU co-operation for several decades and is financed by voluntary contributions from EU member states. These are agreed at the beginning of each five-year financing cycle. Funds are then distributed in accordance with the Cotonou Agreement through national, regional and all-ACP programmes.

The EC suggests that funds to compensate ACP countries for the costs of implementing EPAs would come from the 10th EDF funding cycle (2008-13), for which a total of €22.7bn has been pledged. Yet even before EPAs came onto the scene, it was estimated that €21.3bn would be needed for the 10th EDF portfolio and maintain EU contributions at 0.38 per cent of the EU's national income (GNI).[9] If this is the case, the 10th EDF is merely business as usual. Rather than provide new funds for EPAs, the EC will cover EPA adjustment costs from its existing aid budget diverting money away from other areas, such as health, education and rural development. This also shows that the EU is failing to deliver on the promises made at the Gleneagles G8 meeting where EU member states committed themselves to increase their aid levels to 0.7 per cent of their GNI by 2015.[10]

Even if ACP countries decide to use existing aid money for EPA adjustment costs, it might be very slow in arriving. During the last five-year cycle (2001-06), the EU promised €15bn in aid to ACP countries. By the end of the cycle, only 28 per cent of this money had been disbursed. The record for the previous cycle was even worse. For 1995-2000 a promise of €14.6bn was made. Funds only started to be disbursed in the third year, and by the end of the five years only 20 per cent had been paid out. Furthermore, it is unlikely that EU Member States will ratify both the revised Cotonou Agreement (2005) and EDF10 Internal Agreement (2006) by November 2007:[11] the deadline to avoid a funding gap between EDF9 and EDF10.

Since ACP countries will quickly feel the impact of EPAs on their economies, the EU's disbursement mechanisms clearly need a major overhaul if EU assistance is really to make a difference. ACP governments are wary of the EC's 'smoke-and-mirrors' approach to development assistance and have called for a separate and additional financing facility,[12] so that the EC can be held to its promises and funds can be clearly tracked. To date, this has not been agreed and the promise of assistance remains a mirage.

Beyond the obvious lack of adequate funding for EPA-related adjustment, ACP countries require substantial additional financing to overcome growth bottlenecks if they are to benefit from increased openness. The EU Member states must act urgently to address these very real challenges and avoid these agreements undermining the EU's credibility as a leader in development.

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[1] J Nielson 'Aid for Trade' in R Newfarmer (ed) 'Trade, Doha and Development: A Window into the Issues' (Washington DC 2006) The World Bank Trade Department p 324

[2] 'EPA Development Support: Consequences of GAERC conclusions for EPAs' European Center for Development Policy Management (2006) < www ecdpm.org/inbrief16a> accessed 24 September 2007 p 3

[3] Article 37 of Cotonou Agreement

[4] 'Our Common Interest: Report of the Commission for Africa' Commission for Africa (March 2005) p 234

[5] Busse and Grossman 'The Impact of ACP/EU Economic Partnership Agreements on ECOWAS Countries: An Empirical Analysis of the Trade and Budget Effects' (July 2004) HWWA p 27

[6] C Milner 'An assessment of the overall implementation and adjustment costs for the ACP countries of Economic Partnership Agreements with the EU' in R Grynberg and A Clarke 'The European Development Fund and Economic Partnership Agreements' Commonwealth Secretariat Economic Affairs Division (2006)

[7] At Port Moresby ACP Council of Ministers, May 2006

[8] Both amounts converted from US dollars to Euros at a rate of 1.4076 on 24 September 2007 <http://www.x-rates.com> accessed 24 September 2007

[9] R Grynberg and A Clarke 'The European Development Fund and Economic Partnership Agreements' Commonwealth Secretariat Economic Affairs Division (2006)

[10] 'The Mystery of the 'Lost' 10th EDF' European Research Office (Jan 2007) <http://ero.at10.be/content/documents/trade_negotiations-01/pdf/1.1.epa general/Lost10thEDFjan07.pdf> accessed 21 September 2007 p 3

[11] Paper 10415/07 Council of the European Union Brussels, 5 June 2007

[12] Nairobi Declaration on Economic Partnership Agreements, African Union Conference of Ministers of Trade, April 2006

Fact sheet 3:

Oxfam MAKE TRADE FAIR

Intellectual property: reducing access to educational materials, technology, and seeds for farmers

Europe is proposing to include intellectual property (IP) rules in the Economic Partnership Agreements (EPAs) threatening the African, Caribbean and Pacific (ACP) countries with reduced access to educational materials, technology, and seeds for farmers: all crucial issues for development.

Europe's IP proposals are causing grave concerns. In a recent open letter to the *Financial Times*, 17 international experts, including a Nobel Prize winner, warned that including strict IP rules in EPAs "may retard rather than foster [ACP countries'] social and economic improvement".[1] Europe's proposals could prevent students in ACP countries from using digital and online materials and raise the cost of education dramatically. The proposals could also stifle innovation in digital technology through eliminating the possibility of using reverse engineering. Moreover, they would prevent African farmers from engaging in informal seed-sharing and exchanging practices, which provides for 90 per cent of all seed requirements in Africa.[2] These exchange and sharing practices allow for community self-sufficiency even during emergency periods such as drought.

It is not surprising that Europe sees reinforcing IP rules abroad as a key interest: European American corporations own 97 per cent of all patents and the vast majority of copyrights and trademarks.[3] However, there is no obligation under the Cotonou Agreement for IP to be included in EPAs at all. Moreover, for 39 ACP countries Europe's proposals would be an entirely new obligation since they are 'Least Developed Countries' (LDCs) and not subject to any WTO rules on intellectual property until 2013. Also, 21 ACP States are under no international obligation to develop IP rules, as they are not even members of the WTO.

Please ask your Minister(s) to justify the inclusion of Intellectual Property (IP) rules in EPAs that threaten people in ACP countries with reduced access to educational materials, technology and seeds for farmers.

The impact the suggested IP rules will have on access to education undermines Europe's claims that EPAs are an instrument for development. Education in ACP countries is expensive. A student in Mali can pay five per cent of their yearly income for one textbook, which is equivalent to asking a European student to pay €1,363.28[4] for a single book. Digital and online materials could dramatically reduce the cost of education materials, particularly for university students, but EPAs would prevent students using such resources. Increasingly, software companies use digital barriers to prevent copying. By using these barriers, companies are able to restrict and even charge for information that is legally and freely available to everyone. WTO rules have exceptions that allow educational institutions to make copies of digital information for educational purposes. The proposed EPA would eliminate these flexibilities, allowing companies to directly prosecute anyone who found a way around these controls, even if they were doing so for educational reasons.

The watchdog *Consumers International* has noted that expanded IP protection, such as that in the proposed EPAs, has "grave implications" for access to education.[5]

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Trade Justice Movement

Fact sheet 3:

IP and EPA negotiations in more detail: What else is wrong with Europe's proposals?

Restricting technological transfer

Technology and innovation are corner stones of development. Innovators in EU, the USA and South-East Asia had the right to access foreign technologies to learn from, imitate and develop them in a process called 'reverse engineering'. The EU's proposals under EPAs threaten to undermine innovation by eliminating the possibility of using reverse engineering methods in digital technology. This is vital to technological transfer as it allows entrepreneurs to learn, compete on an equal footing and contribute their own innovations to the market, increasing competition and development.

Nobel Laureate – Joseph Stiglitz – highlights the importance of an IP regime sensitive to technology transfer, stating since "knowledge itself is the most important input in the production of knowledge, a badly designed IP regime can stifle innovation".[6]

Applying reverse engineering to software allows innovators to build on existing software to create new technologies and to ensure that the new technologies they create are compatible with existing software systems.[7] To use reverse engineering on modern software, it is necessary to access its "source code", which is usually hidden behind the same digital barriers. Under the EU's proposals, anyone that managed to overcome the digital barriers would be liable to direct and private prosecution by the software company, undermining innovation. Despite WTO rules allowing for public interest exceptions, ACP governments would have to enforce this prosecution.

Seed sharing and exchanging

Under WTO rules, countries must implement some form of property rights' protection for plant varieties. This means that farmers must pay for new varieties of seed that have been patented or otherwise protected. However, they are allowed to choose their method of protecting plant varieties, which can include exceptions to allow farmers to save their seed. EPAs propose a particularly strict method, which threatens these exceptions.

Saving, sharing and exchanging seed is a vital traditional method that enables farmers to cope with high levels of poverty and food insecurity. With an average income of just US$409 per year[8] a Ghanaian farmer for instance, cannot always afford to buy new seeds, especially if crops fail. Under EPAs, farmers will have to pay not just the first time they use the seeds, but every time they share, exchange or sell the seeds they save. The World Bank has noted that such rules can threaten development and strengthen the power of large seed companies.[9] Strict IP rules allow seed companies to extend their market power, driving up seed prices, and encourages national agricultural research agencies to direct research towards cash crops rather than staple foods. To get the latest plant varieties, poor farmers find themselves increasingly dependent on the cash economy, and, in chronically poor areas, enmeshed in vicious cycles of debt.[10]

Conclusion

The proposed IP provisions present a clear threat to the development of ACP countries. The European Member states must act urgently to change the EC's approach to negotiations. They must ensure that all pressure is removed from ACP countries to negotiate commitments on IP. Instead, ACP states should be granted the time to implement their TRIPS obligations (where these exist), determine future policy directions with regard to IP and then decide if they want to take on extra IP obligations.

This Fact sheet is based on the technical advice of Dalindyebo Shabalala, CIEL, Geneva.

Further Reading: 'The European Approach to Intellectual Property in European Partnership Agreements with the African, Caribbean and Pacific Group of Countries', available at www.ciel.org, CIEL, May 2007

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[1] C Correa and others, 'Will EU break promise to poor?' Financial Times (24 May 2007) <http://www.ft.com/cms/s/b237b340-0a62-11dc-93ae-000b5df10621.html> (accessed 24 September 2007)

[2] J Wobil, 'Seed Security Initiatives in Southern Africa' Food and Agriculture Organisation <http://www.fao.org/ag/agp/agps/georgof/Georgo19.htm> (accessed 21 September 2007) p 2

[3] H J Chang 'Bad Samaritans: Rich Nations, Poor Policies & the Threat to the Developing World' (Random House Business Books London 2007) p 141

[4] Price for "New Heinemann Maths Year 5: Textbook", based on prices found at <www.amazon.co.uk> and <www.kalahari.net>. GNI per capita (Atlas method) based on €282.99 for Mali, €23,903.04 for EU, using World Bank figures converted at from US dollars at rate of 0.744701, current on 27 June 2007

[5] Consumers International 'Access to Knowledge' Asia-Pacific Consumer Volume 43 and 44, 1&2/2005, p 17

[6] J E Stiglitz, 'China's New Economic Model', Project Syndicate <http://www.project-syndicate.org/commentary/stiglitz86/English> accessed 24 September 2007

[7] GDP per capita: Human Development Report 2006 UNDP <http://hdr.undp.org/hdr2006/pdfs/report/HDR06-complete.pdf> accessed 24 September 207 p 333

[8] 'Intellectual Property Rights: Designing Regimes to Support Plant Breeding in Developing Countries' World Bank Agriculture and Rural Development Department (2006) <http://siteresources.worldbank.org/INTARD/Resources/IPR_ESW.pdf> accessed 24 September 2007 p 46

[9] G Downes, 'Implications of TRIPS For Food Security In The Majority World' (2004) 106(5) British Food Journal p 34

Fact sheet 4:

MAKE TRADE FAIR

Services: reducing poor people's access to key services and making developing countries more vulnerable to financial crisis

Europe is asking 76 African, Caribbean and Pacific (ACP) countries to open up key services sectors to foreign investors under a set of rules that could undermine development.

The services sector is an important source of employment and income. In 2002, the services sector accounted for an average of 49 per cent of GDP in developing countries.[1] Banking, telecoms, postal and other services are critical to the development of the economy, whilst sectors such as water, education and health are vital for social development and poverty eradication. Given the importance of the services sector, developing countries have been very reluctant to agree further liberalisation at the World Trade Organisation, and have consistently voiced their concern about including services in the negotiations with Europe.

Europe recognises that global competitiveness is linked to export performance of its services industries.[2] European companies are amongst the world's biggest service exporters, and according to Trade Commissioner Peter Mandelson, 'Europe's companies know that their competitiveness depends on access to these rapidly expanding markets'.[3]

Developing countries are not required by the WTO or the Cotonou Agreement to negotiate binding commitments on services as part of these negotiations. Furthermore, the rules Europe is proposing on services go beyond the commitments that ACP countries made under the existing WTO agreement on services (GATS). As a result ACP negotiators are deeply concerned about Europe's proposals. Several ACP regions wish to exclude services altogether, whilst others say they cannot possibly conclude negotiations by the end of the year.

Please ask your Minister(s) to justify the inclusion of strict rules on services in EPAs that completely fail to support national and regional development in ACP countries.

Opening up the services sector to foreign investment can contribute to development. However, if liberalised in the wrong way, the impact of foreign services companies on a developing country's economy can be negligible or even (very) negative. For example, inappropriate liberalisation of the banking sector can undermine poor people's access to credit. In 1993, Mexico liberalised its financial services sector as part of a free trade agreement with the US and Canada (NAFTA). By 2000, foreign ownership of the banking system had increased to 85 per cent, but lending to Mexican businesses had dropped dramatically – from 10 per cent of GDP in 1994 to a mere 0.3 per cent in 2000. The impact was devastating for poor people in rural areas. In southern Mexico, the number of small farms with access to credit halved, and where finance was available it came only at exorbitant rates. Lack of access to finance in the state of Sonora, drove 70 per cent of community farmers to sell up.[4]

To take advantage of the opportunities that foreign investment can provide and avoid costs, any liberalisation needs to occur in a carefully sequenced manner, and countries need to have the appropriate level of administrative and regulatory capacity to ensure this opening is beneficial. For example, Malaysia successfully avoided the worst of the East Asian financial crisis through the use of prudent bank regulation and capital controls, and was the only East Asian country that did not need emergency financing from the IMF.[5] Europe's proposals are in direct contradiction with such an approach. Most worryingly, the proposals would lock in the process of liberalisation, making it impossible for developing countries to retract or adapt commitments later.

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Trade Justice Movement

Fact sheet 4:

Services and EPA Negotiations in More Detail: What's Wrong With Europe's Proposals?

National treatment

Europe's proposals include a request for so called 'national treatment' in all sectors. This means that the ACP governments would not be able to provide treatment in favour of local companies to enable them to compete successfully with foreign companies. Some bilateral investment treaties have provisions to exclude small- and medium-sized enterprises (SMEs) from national treatment.[6] By not including any such sensitivities EPAs could enforce the current unequal power relations between EU and ACP companies.

Foreign ownership

To integrate successfully into the global economy, least-developed countries need to stimulate 'technology catch-up' with the rest of the world, and UNCTAD recommends joint ventures as effective ways to stimulate technology transfer.[7] The EU's proposals require ACP governments to allow 100 per cent foreign ownership and prohibit ACP governments from requiring foreign companies to enter into joint ventures with local companies unless specific reservations are made to that effect. This would deny ACP countries the use of an effective tool for development with a proven track record in, for example, China, Finland, Italy, Japan and Korea.[8]

Universal access

In many countries, governments require service companies to provide 'universal access' so that poor people and people in rural areas will have access. Europe's proposals state that universal service obligations should not be 'more burdensome than necessary' when liberalising postal services and telecommunications. This again imposes a 'necessity test', that would require an arbitration panel to judge the appropriateness or legitimacy of a government's stated policy objective. In the case of telecommunications, ACP countries may even have to consider compensating EU suppliers or share the cost of universal service obligations if universal service represents an "unfair burden".[9]

Financial markets

Europe's proposals on financial markets are particularly worrying. The EU is proposing restrictions that would prevent ACP governments from taking many measures in the financial services sector that would support development, such as differential treatment of local and foreign banks in order to improve access to credit and savings facilities for poor consumers. Moreover, the EU proposals would constrain the ability of ACP governments to regulate capital flows. Such strict rules do not allow the prevention of capital flight or preventive or long-term measures which the East-Asian financial crisis has shown to be necessary, and would leave ACP countries unduly exposed to international financial market fluctuations.

Regional integration

Europe's proposals on services do not support regional integration, in spite of oft-repeated claims that they do. The EU text has extremely few provisions that will endorse regional development in services and ironically, the sections that do, do not work to benefit the regions. If the EU wanted to promote regional integration it could, for example, incorporate provisions in the EPA that would allow ACP countries to give preferential treatment to regional service providers over EU ones. However, no such proposals are on the table. If the ACP were to liberalise only amongst themselves, they would be able to allow more discrimination in favour of their own service providers and develop regional regulations that would better suit their needs.

Conclusion

The European member states must act urgently to change the approach of Europe's negotiators. They must ensure that all pressure is removed from ACP countries to negotiate commitments on services. Instead, the Europe should focus exclusively on providing ACP governments with co-operation assistance to improve their ability to regulate the services sector in the interests of development.

This fact sheet is based on the technical advice of Myriam Vander Stichele, SOMO.

Further Reading: 'Technical analysis of the problems resulting from liberalisation of services in EU- ACP Economic Partnership Agreements (EPAs)', Myriam Vander Stichele, SOMO, September 2007

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[8] H J Chang 'Bad Samaritans: Rich Nations, Poor Policies & the Threat to the Developing World' (Random House Business Books London 2007) 14, 29, 59, 60.
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Fact sheet 5:

Oxfam MAKE TRADE FAIR

Competition: tailored to benefit European companies

In the Economic Partnership Agreements (EPAs), the Europe is proposing competition rules that work in favour of large corporations instead of development. Neither the WTO regime nor the Cotonou Agreement requires negotiation on competition policy in EPAs. Despite repeated requests from African, Caribbean and Pacific (ACP) countries to leave competition out of EPAs, the Europe insists on including a very strict agenda modelled on its own competition rules.

It is crucial to tailor competition policy to a developing country's needs. Competition policy is a critical tool enabling governments of developing countries to nurture and support new industries until they mature and can withstand international competition.[1] Europe claims that strict competition rules are needed to prevent unfair government support of national companies. However, this ignores the fact that many developed countries and many now-successful Multi-national companies (MNCs) benefited from such support. For example, *Nokia* received support from the Finnish government to offset the losses of its electronics department, consistently incurred for the first 17 years of its existence. This support is the backbone of the company today.[2] All of today's developed countries used protection and subsidies, while discriminating against foreign investors to stimulate economic development.[3] These proposals will deny ACP countries the ability to use the same tools as European countries used in the past to stimulate economic growth.

Europe's proposals will force infant industries in ACP countries to compete, without government support, with fully-grown European companies. It is obvious that many new industries will lose this battle and go under. This would reinforce the already existing imbalance of economic power between European and ACP countries.

Please ask your Minister(s) to justify the inclusion of competition provisions in EPAs that will reinforce existing economic imbalances between European and ACP companies.

Inappropriate competition policy places constraints on the ability of governments to govern the economy in social and environmental responsible ways. In 1977, India forced *Coca Cola* to leave for failing to comply with Indian law. Local soft-drinks companies flourished, particularly *Thums Up*, which also exported to other countries in Asia, Africa and the Middle East. When *Coca Cola* was allowed to return in the 1990s, it bought out these local brands. There are now only two competitors in India's domestic and export markets: *Pepsi* and *Coca Cola*, prices have increased substantially and profits are not reinvested in the local economy.[4] The adverse environmental practices of *Coca Cola* has since led to the government trying to ban its presence, but the Multi-national Company was able to challenge this in the courts.[5]

Oxfam is campaigning to stop Europes' Unfair Trade Deals in association with Trade Justice Movement.

Trade Justice Movement

Fact sheet 5:

Competition and EPA negotiations in more detail: What's wrong with Europe's proposals?

Restricting Support and Protection of Local Firms and Industries

Multi-National Companies (MNCs) and the EU claim that strict competition rules are necessary to prevent national firms being supported unfairly. But in reality the playing field is already tilted in their favour because of their market power.[6] The example of *Pepsi* in India shows the damage that can be caused by an inappropriate competition policy. A flexible competition policy on the other hand is likely to have a positive effect on a developing country's economy, as the following example illustrates:

The French cement MNC *Lafarge* was planning on taking over the Zambian *Chilanga* Cement manufacturers and then turn it into an importing company, because it would be more efficient to import cement from neighbouring countries. However, the Zambian public and the government did not want to lose the socio-economic benefits of the cement industry, so the Zambian Competition Commission allowed the takeover only on specific conditions. They demanded that *Lafarge* maintain and improve production at the Zambian factory, and that it would not take any decision that would have the overall effect of reducing the production of cement in Zambia. Through facilitating appropriate investment the government ensured the future of the Zambian cement industry.[7] Under the EU's proposals, it would be unlikely that an ACP government would have the ability to harness the benefits of MNCs operating in their countries in this way.

Inappropriately Strict and Costly System

The implementation of a competition policy modelled after the EU requires a strong state and is very costly. However, most developing countries do not have the resources and administrative capacity to uphold strict procedural requirements. How can Burundi, with an annual income of €300mn,[8] spare enough money to create a competition authority comparable with European enforcement agencies such the UK Office of Fair Trading, which alone has a total budget of €81mn?[9] It is therefore important that any competition policy for an ACP state takes into account the specific financial and capacity constraints of the country concerned to make sure that the rules can be enforced. The current EU proposals do not live up to this requirement.

Failing to Tackle Abuse of Market Power by Large Multinationals

Some ACP producers are likely to be victims of European corporations forming cartels or oligopolies through mergers and acquisitions, abusing market power (e.g. big EU supermarket chains pressing down prices of ACP suppliers) and restrictive business practices.[10] An appropriate competition policy could help stop such abuses of market power by MNCs and at the same time allow governments to support local firms. However, the EU's proposals would do the opposite.[11]

Conclusion

The 'one size fits all' proposals of the EC modelled after its own competition policy might be appropriate for countries with fully developed economies, but they are inappropriate in the ACP context and do not meet developmental needs. The European member states must act urgently to change the EC's approach to negotiations. They must ensure that all pressure is removed from ACP countries to negotiate commitments on competition. Instead, the EC should focus exclusively on providing ACP governments with co-operation assistance to improve their ability to create competition policy that is in the interests of development.

This Fact sheet is based on the technical advice of Vicente Paolo B. Yu III, South Centre.

Further Reading: 'Development Challenges of Competition Policy in the Economic Partnership Agreements', Vicente Paolo B. Yu III, South Centre, June 2007

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[7] CUTS Centre for Competition Briefinig Paper 2/2005 (n 4).
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[9] *55mn, OFT Annual Plan 2006-2007 <http://www.oft.gov.uk/news/press/2006/62-06> accessed 21 September 2007
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Fact sheet 6:

Oxfam MAKE TRADE FAIR

Government procurement: undermining incentives for local industries

A government's ability to purchase goods from firms of its own choice can be a powerful development tool. Public procurement practices can be used to direct expenditure at locally produced materials, or to achieve developmental aims, and constitutes between 10 and 20 per cent of GDP in developing countries.[1] Europe's proposals on government procurement could stop African, Caribbean and Pacific (ACP) governments from using their expenditure to stimulate development.

The role of effective government procurement policies in stimulating development is recognised by leading economists, including Joseph Stiglitz, former chief economist of the World Bank:

'Government procurement policies have important economic and social roles in developing countries which would be curtailed if governments were mandated to observe national treatment principles. The level of expenditure and the attempt to direct the expenditure to locally-produced materials is a major macro-economic instrument, especially during recessionary periods, to counter economic downturn. [...] Additionally procurement policy might be used to boost domestic industries or encourage development in specific sectors of national interest. Social objectives could also be advanced by preferences for specific groups or communities, especially those that are under-represented in economic standing'.[2]

Europe's proposals would prevent governments from following these types of policies. Europe is requesting national treatment principles and its proposals would restrict the granting of special preferences. They would also impose procedural requirements that would be very costly for ACP countries that may not be institutionally or financially prepared. It is unfair to expect a country like The Gambia, with a GDP of US$ 0.4bn,[3] to comply with the same level of procedural strictness as Europe.

Please ask your Minister(s) to justify the inclusion of rules on public procurement in EPAs that would hinder ACP countries from using their expenditure for local development aims.

It is hard to see what advantages there could be for ACP countries from negotiating procurement commitments in an EPA, since it is unlikely that small ACP firms would be able to benefit from greater access to European procurement markets. Europe has also refused to include binding obligations to provide technical and financial assistance to help the ACP comply with the new rules.

There is no requirement for ACP countries to negotiate on procurement regulation, either under WTO rules or under the Cotonou Agreement. ACP countries have repeatedly expressed their reluctance to include it, stating that they first need to establish national rules on government procurement and build regional regulatory capacity in this field.[4] Yet Europe continues to insist on including government procurement liberalisation in EPAs, in line with its "Global Europe Strategy"[5] to open markets abroad for European companies.

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Trade Justice Movement

Fact sheet 6:

Government procurement and EPA negotiations in more detail: What's wrong with Europe's proposals?

Here are some examples of successful use of government procurement for development aims. Such initiatives could be undermined by Europe's proposals in EPAs:

South Africa

The South African utility, *Eskom*, supplies around 95 per cent of the country's electricity. Under current South African Government policy, 'Previously Disadvantaged Individuals' are given preference in the allocation of government and large-scale contracts. This policy, known as 'Black Economic Empowerment' (BEE), endeavors to repair the inequities of South Africa's past apartheid regime. BEE Charters are now being applied across many sectors of the local economy, and large companies now have prescribed target quotas for procurement from black-owned businesses. Back in 1994, *Eskom* set up its own highly-successful BEE project. This type of initiative, which provides preferences to particular communities, could be constrained under the EU's proposals.[6]

United States of America

The USA uses government procurement to support small businesses under the Small Business Act. Through this Act 'the Government should aid, counsel, assist, and protect, insofar as is possible, the interests of small business concerns [...] to insure that a fair proportion of the total purchases and contracts or subcontracts for property and services for the Government [...] be placed with small business enterprises, to insure that a fair proportion of the total sales of Government property be made to such enterprises, and to maintain and strengthen the overall economy of the Nation'.[7] To realise these aims, the US Government sets a goal that 23 per cent Government Procurement will go to small business concerns, including small businesses owned and controlled by socially and economically disadvantaged individuals and small business concerns owned and controlled by women.[8]

European Union

For decades, government procurement has been used in Europe to support local producers and industries, to the extent that in May 1993, the US government imposed sanctions against EU Member States. The US alleged that the EU's 1993 Government Procurement Directive, allowing Member States to give a 3 per cent price preference to EU companies in some sectors, discriminated against US operators, especially in the telecoms sector. As a direct response, the EU imposed equivalent counter-measures. These sanctions were only lifted in March 2006 when the EU was seen as having fully liberalised its telecoms industry. [9]

Conclusion

The European member states must act to change the EC's approach to EPA negotiations. All pressure should be removed from ACP countries to negotiate commitments on government procurement. Instead, the EU should focus exclusively on co-operating with ACP governments to improve their ability to use government procurement policy in the interests of development. It is important for the future of ACP countries that they do not lose government procurement as a key tool to benefit local firms and support development.

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[6] 'BEE: Empowering New Entrepreneurs in South Africa' Case study Prepared by Impris for InWEnt/World Bank Institute 11th International Business Leaders Forum (2006) <http://www.businessactionforafrica.org/documents/CaseStudiesEskom.pdf> accessed 24 September 2007

[7] Small Business Act, Public Law 85 – 536 as amended, para 2

[8] 'Government Procurement' Transition Assistance Program <http://www.transitionassistanceprogram.com/portal/transition/lifestyles Entrepreneurship/Government_Procurement> accessed 24 September 2007

[9] 'EU lifts longstanding public procurement sanctions against the US' Brussels (1 March 2006) <http://trade.ec.europa.eu/doclib/docs/2006/march tradoc_127634.pdf> accessed 24 September 2007