

The development impacts of the new EU trade agenda

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Both ENDS, 2009.

Introduction

This policy note outlines the arguments presented at an international meeting of trade experts held in The Hague on the 10th of April 2008. The issue on the table was the development impacts of recent developments in the field of global trade negotiations. A number of separate but related developments in global trade policy began to unfold during 2007, and the expert meeting aimed to take stock of these processes and assess the potentials and dangers of these processes for developing countries. To achieve this, the expert meeting brought together perspectives from the European Commission, the academic realm and the global south (bringing perspectives from Southern Africa, South East Asia, Central America and India). What, then, were the main issues discussed during the debate?

Background

Besides the trade policy negotiations taking place under the umbrella of the World Trade Organization (WTO) the EU is also in the process of bilateral negotiations of Free Trade Agreement (FTAs). The scope granted by the WTO for such negotiations is quite limited and defined by Article 24 GATT which requires that

"duties and other restrictive regulations of commerce [...] are eliminated with respect to substantially all trade between the constituent territories"

and that Interim agreements should be implemented

"[...] with in a reasonable length of time".

and that the

"the reasonable length of time[...] should exceed 10 years only in exceptional cases."

Besides WTO requirements¹ future agreements might also contain additional provisions not required by the WTO.

One can distinguish between two separate processes of bilateral trade policy negotiations of the EU.

Firstly, there are negotiations on *Economic Partnership Agreements* (EPAs). These negotiations were mandated by the Cotonou agreement. The WTO granted the EU and African, Pacific and Caribbean (ACP) nations a deadline until December 31st 2007 to bring their existent trade relations into consistency with WTO rules.

Secondly, the difficulties in reaching agreement on multilateral trade agreements under the WTO process has led to a parallel process featured by an explosion of bilateral

¹ Besides requirements for the liberalization of trade in goods, other WTO provisions such as the so called *enabling clause* or other provisions will have to be taken into account.

negotiations on the world stage. A key player in this process is the European Union, which launched in 2006 a new trade strategy entitled '*Global Europe: Competing in the World*'.

If concludes as foreseen the resulting agreements from both processes (EPAs and Global Europe) would define the trade rules between 147 countries. If one compare this with the number of members countries to the WTO (151) or the overall number of states recognized by the United Nations (192) it becomes apparent that these EU agreements will set an important reference point for global governance and the relation between trade policies and their contribution to sustainable development.

Key elements of the debate

(1) Insufficiency of existing WTO rules for north-south integration:

The requirement of article 24 GATT that any bilateral trade agreement has to deregulation "substantially all trade" forms a major challenge. This is in particular the case for agreements between countries with different states of economic development. By this the existing WTO rules enforce competition between unequaled economic players. This prohibits developing countries to follow the path chosen in the past by developed countries.

The WTO requirement that such economic integration processes "should not exceed 10 years" is in harsh contrast with the long history of economic integration in Europe². Even more relevant to judge the viability of WTO compatible bilateral trade agreements is the disparity in economic development between the related countries. It will have to be recalled that the economic difference between the signature countries of the Rome Treaty can under no circumstances be compared to the disparity in economic development between the EU, and the ACP countries.

The European Union's \$16 trillion economy has emerged as the largest trading bloc in the world producing nearly a third of the global economy, compared to a share 27% of the U.S. economy or 9% of Japan's³.

In contrast all countries listed in the bottom of the human develop index are exclusively ACP countries⁴. Insufficient protection of weak economic sectors in developing countries against more competitive European imports might have devastating consequences. Beside the agricultural sector which currently ensures the livelihood for the majority of people in developing countries processing industries are most seriously threatened. The EU claimed that they made maximum use of the existing flexibility granted by the WTO to ensure development friendly agreements⁵. In the EPA process the EU requires that ACP countries have to eliminate there import tariffs for at least 80% of their imports. For a limited number of goods for which such liberalization commitment is made transition periods with a maximum varying between 14-25 years have been permitted by the EU.

In the new generation of FTAs the EU is negotiating under the Global Europe strategy, the Commission shows an even further reduced flexibility. The EU for example demands from ASEAN countries duty elimination of at least 90% of trade and tariff lines within 7

² While the Rome Treaty was signed in 1958, the Maastricht Treaty, which is the basis of the current European Union, was ratified only 35 years later in 1993.

³ Steven Hill, *5 Myths About Sick Old Europe*, The Washington Post, October 7, 2007

⁴ The Human Development Index 2008 can be found here:
http://hdr.undp.org/en/media/HDI_2008_EN_Tables.pdf

⁵ For a more detailed discussion and overview of possible scenario's for the future ACP trade relations with the EU see e.g.: S. Bilal and F. Rampa, *Alternative (to) EPAs*, 2006, ECDPM

years. However the remaining less than 10% would not be excluded from liberalization requirements but instead only be open for negotiations of longer transition periods or partial liberalization⁶.

(2) *Undermining regionalism:*

Regional integration is not only a key principle of the Cotonou Partnership Agreement (CPA) and the EPAs, but is widely seen as an important means and sometimes even as an essential precondition for development. This has also been reflected in the *European Consensus on Development*⁷ and various other EU documents⁸.

The EU bilateral trade negotiations as well those of EPAs as most of the new generation FTAs are based on a regional approach⁹.

Several aspects of the foreseen trade liberalization of these regions with the EU, will involve very complex harmonization and coordination processes within the regions. For instance, it is expected that the developing countries in such a region will need to present a harmonized tariff system for all products at the start of the liberalization process with the EU which will need to agree on a regional 'exclusion basket'.

Both harmonization processes, as well the one within a region as the later one with the EU, will limit a country's possibilities to protect sensitive sectors and cause a fall of trade tax revenues.

Southern countries are currently being given very short time horizons to consider their strategic trade options, and they are pressurized to abandon their own regional development efforts and to open their markets to EU member states. Therefore, ensuring coherence of the bilateral trade process with regional integration is a matter of priority concern for the future¹⁰. For the African continent, for example, regional cooperation is a local priority, and both the Southern African Customs Union (SACU) and the Southern African Development Community (SADC) have long been hailed as success stories in regional cooperation despite very substantial differences in the cultural, ideological and political backgrounds of the member states.

Currently, however, individual member states are negotiating tariff reductions individually, and this process is inimical to trade agreements at the regional level. One result so far has been that SACU member states have signed bilateral agreements with the EU, even though the SACU agreement prohibits this. After many years of regional success, therefore, the legitimacy of SACU itself is under threat¹¹.

With the expiration of the EPA deadline of 31 December 2007, the EU agreed with several individual ACP countries on so called Interim-EPAs (IEPAs).

⁶ *EU-ASEAN FTA Negotiations, The EU perspective*, EU presentation, March 2008

⁷ http://ec.europa.eu/development/policies/consensus_en.cfm

⁸ See e.g. Communications from the Commission to the Council, *The European Parliament, The European Economic and Social Committee and the Committee of the Regions*. Brussels, 6.10.2008, **COM(2008) 604 final/2** http://ec.europa.eu/development/icenter/repository/Communication_on_Regional_Integration_COM-2008-604_en.pdf

⁹ Besides the 6 region's of the EPA negotiations (West Africa , Central Africa , East South Africa, Southern Africa, Caribbean, Pacific) the EU started negotiations with several other blocks such as ASEAN, the Andean Community (Bolivia, Colombia, Ecuador and Peru) or Central America (Guatemala, El Salvador, Honduras, Nicaragua, Costa Rica and Panama).

¹⁰ From a presentation by Corina Braun-Munziger, Op. Cit.

¹¹ From a presentation by Dot Keet of the Centre for Southern African Studies of the University of the Western Cape in South Africa.

An overview showed that the list of goods excluded from liberalization requirements in the various individual IEPAs show barely any overlap. In the ESA region for example 5 countries submitted their individual list of the maximum 20% of products excluded from future liberalization requirements. Of the total number of product categories not one has been excluded by all 5 country list. The huge majority of products put on exclusion lists (1066 of the 1347 product categories) have been only excluded by an individual country.¹²

This incoherence creates several challenges. For example EU products on the exclusion list of a country might now freely enter the markets of a neighboring country. In order to prevent that these goods now reach local markets indirectly via imports from neighboring markets, a country might be forced to further restrict and control trade with their neighbors.

By this the need to maintain the remaining possibility of protection from cheap EU imports hinders the possibility to create regional free trade areas and in fact might even lead to a role back of already existing regional trade integration.

The concern formulated during the discussion of the EPAs related to regional integration emerged again during the discussion of the new EU FTAs.

One of the biggest challenges in the ASEAN¹³ region is the huge differences between the countries in the region. Singapore for example has a per capita GDP of US \$25,207 compared to the Philippine's of \$1,042 and Myanmar (Burma) of only \$166 (only 0.6 percent of Singapore's per capita GDP). One key concern is that the EU now considers reaching an agreement with the stronger economies within ASEAN only.

This would leave poorer countries such as Cambodia, Laos and Burma behind. Since their concerns would not have been include in the final agreement with the EU they would face the difficult choice to either accept a split of ASEAN, or to join an agreement which does not take note of their specific development needs. The Andean Community [*Comunidad Andina de Naciones* or CAN] is composed of Bolivia, Colombia, Ecuador and Peru. (Venezuela withdrew in 2006.)

During the negotiation process the EU has shown a preferential interest to reach agreement with Colombia and Peru. One of the major concerns is that if the EU should decide to reach separate agreements with individual CAN member countries instead of one agreement with CAN as a trading block, this would seriously damage if not destroy this existing trading block. This would be in particular severe for the weaker economies in the region for which a well functioning regional trade agreement would derive more development benefits than an agreement with the EU.

The insistence of the European Commission on a controversial Most Favorite Nations clause (MFN clause) in the interim EPAs, was questioned by CSO. The suspicion that the EU might have done so due to growing competition between the EU and China in the region or that they applied undue pressure on ACP countries was vehemently rejected by the Commission.

(3) Policy rights and transparency:

A key issue raised during the meeting was the issue of policy space. There is currently a push for generalized, *a priori* formulae for such issues as tariff reductions to be laid down

¹² See. C. Stevens et al, *The new EPAs: comparative analysis of their content and the challenges for 2008*, p53-p54, ODI and ECDPM, 31 March 2008

¹³ From a presentation by Joseph Purugganan.

in negotiation texts. However such technocratic measures proposed by negotiators erode the space of national governments to link policy measures to local needs and to take account of variations between countries. No country in history has achieved economic development without government intervention, and an important precondition for further negotiations should be the principle of 'policy rights' or the right of a nation to determine its policy priorities in dialogue with civil society¹⁴.

For example during the discussion one CSO representative highlighted that for the case of Cote d'Ivoire it has been well documented that the time given between the presentation of draft text by the EU and the final agreement, was totally insufficient for a due process of evaluation of the related consequences and did not allow for adequate consultation with the business sector in this country. The Commission responded that the EC has no influence on the internal process in Ivory Coast and that the proposed text had been drafted in the best interest of Ivory Coast.

(4) Overburdening of the negotiation agenda:

Besides the issues required by the WTO to be included in a FTA the EU wishes to include additional issues in these agreements. The insistence of the EU on the inclusion of so called new generation issues in its new FTAs was seen to be highly problematic and have been rejected by developing countries in the WTO. These new generation issues include as well provisions on liberalization requirements in the field of investment, competition and government procurement policies, but also on trade in services and stronger protection and enforcement of Intellectual Property Rights.

Claude Maerten of the European Commission highlighted the example of the reached agreement with the Caribbean region which contains provisions hampering the lowering of social or environmental standards. However there was an apparent doubt about the effectiveness of these included provisions to effectively mitigate possible negative effects from the inclusion of such issues.

For the case of India¹⁵ for example the insistence of the EU that a future agreement would also have to include a ban of export taxes or other types of export regulations are seen to be highly problematic. In the case of leather production the ban on export taxes would undermine efforts to stimulate a related processing industry. The existing export taxes are seen to form an important incentive to diversify the Indian economy and hamper efforts to an industrial policy aiming at more value addition.

The example of anti cancer medicine was used as an example illustrating how already existing international agreements on Intellectual Property Rights threaten to prevent the access for poor people to essential medication. A further increase of intellectual property rights protection would hinder the current praxis of the production of generic medicine. These are essential since costs for cancer treatment would otherwise increase to \$ 25,000 - 32,000 per year per patient, which would prevent access to these essential medicines for the majority of the population.

A quick run down of the number illustrating the already existing foreign control and EU ownership of investment in Bolivia¹⁶ illustrated the challenges the government faces to ensure that they are used in the public interest. Instead of granting even more additional rights to foreign investors as currently foreseen by the EU in the new FTAs, government should reclaim sufficient political space to ensure that this investment contributes to the further development of the country.

¹⁴ From a presentation by Dot Keet, op. Cit.

¹⁵ From a presentation by Mani Candan.

¹⁶ From a presentation by Rafael Barerea.

Concluding remarks

Countries need to have public support to ensure ownership and fully embrace negotiated agreements. Economic agreements cannot be implemented in a climate of social unrest. To gain the stable environment and social climate of public support that is needed, negotiating partners need to ensure ownership for the trade agreements. To do so will only be possible by listening to people's arguments and incorporating these in the negotiation process.

In addition all agreements will have to ensure that they can be adequately modified in case they show inconsistency with the underlying objective of sustainable development. This is in particular the case for the initiated IEPAs which were agreed in haste at the end of 2007 and which should be adequately modified.



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