

**The European Union relationship to the Africa, Caribbean and Pacific  
Countries in terms of the Cotonou Agreements:**

**Will the Economic Partnership agreements aid regional integration?**

By

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## Abstract

The main purpose of this minithesis is to explore the role EPAs play in regional integration. The whole minithesis is premised on identifying the nature of EPAs that is conceived as a free trade arrangement.

Therefore the minithesis discusses the feasibility of the reciprocal principle between the EU and ACP countries, and further indicates that there is no need to implement the reciprocity at present. The minithesis also discovers that, due to the fact that unequal trade relations between the EU and the ACP countries still exist, the implementation of the EPAs is most likely to generate the complementary but non-competitive trade relations between the EU and the ACP countries. Such a situation could result in the ACP countries' over-dependence on the EU's market. This is not the integration that ACP countries are expecting. In addition the minithesis ascertains that the EPAs themselves could contain the intrinsic negative impacts on regional integration. For example, the limitation of the original rules can hinder the local processes. Such instances are not yet helpful for integration to a certain extent.

The conclusion of the minithesis provides recommendations for designing a win-win trade agreement so as to maximize the ACP countries' benefits. It is emphasized that before full trade freedom, ACP countries should create a strategic principle concerning economic development. In the meantime they should take positive actions to strive for active and effective safeguards for the integration of various industries.

## Declaration

I declare that this minithesis is my own work and that all the resources I have used or quoted have been indicated and acknowledged by means of complete references.

I further declare this work has not been submitted for any other degree, or at any other university or institutions of higher learning.

Jinxiang Li.....May 30 2005



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## Table of Contents

<b>Chapter 1: Introduction</b>	<b>1</b>
1.1 Background to the study	1
1.2 Problem statement	1
1.3 Aims of the study	2
1.4 Significance of the study	3
1.5 Methodology	3
1.6 Limitation of proposed study	3
1.7 Overview of the chapters	4
<b>Chapter 2 : General perspectives on regional trade arrangements between the EU and ACP countries</b>	<b>5</b>
2.1 Introducing regional free trade arrangements that have proliferated recently in Africa.	5
2.2 An overview of The Cotonou agreement and the nature and substance of EPAs	7
2.2.1 The EU's intention moving from unilateral trade to reciprocal trade arrangement	8
2.2.2 The attitude of ACP countries toward current regional trade arranges	9
2.2.3 The feasibility of the reciprocal principle between the EU and ACP countries	10
2.3 Conclusion	12
<b>Chapter 3: The possibility of smooth regional integration among unequal trade partners in terms of conventional trade theory</b>	<b>13</b>
3.1 Introduction	13
3.2 Assessing trade theory: trade creation and trade diversion	14
3.3 In the context of unequal trade partners, analyzing the possible factors affecting the ACP countries' integration.	16
3.4 Conclusion	21

**Chapter 4: Identifying the dual characteristics of the EPAs, to the extent of ascertaining the effects on regional integration 22**

4.1	Introduction	22
4.2	Positive aspects of EPAs	23
4.2.1	Comprehensive nature	23
4.2.2	Flexibility	23
4.3	Negative aspects of EPAs	24
4.3.1	Exclusivity	25
4.3.2	Conservatism	25
4.4	Conclusion	26

**Chapter 5: Toward a flexible and beneficial EPA negotiation process for the purpose of regional integration 27**

5.1	Introduction	27
5.2	Measures to be taken to minimize the negative impact of reciprocal EPAs	28
5.2.1	A strategic principle	28
5.2.2	Designing the appropriate content	29
5.2.2.1	The initiative propositions	29
5.2.2.2	Active safeguard measures	31
5.3	Conclusion	32

**Bibliography 33**

## List of Abbreviation

ACPs	African, Caribbean and Pacific Countries
COMESA	Common Market of Eastern and Southern Africa
EAC	East Africa Community
EC	European Community
EPAs	Economic Partnership Agreements
EU	European Union
FDI	Foreign Direct Investment
FTA	Free Trade Agreement
GATS	General Agreement on Trade in Service
GATT	General Agreement on Tariffs and Trade
LDCs	Least Developed Countries
NAFTA	North American Free Trade Area
RTA	Regional Trade Area
RoO	Rules of Origin
SACU	Southern African Customs Union
SADC	Southern Africa Development Community
TDCA	Trade, Development and Cooperation Agreement
US	United States
WTO	World Trade Organization

## **INTRODUCTION**

### **1.1 Background to the study**

Countries usually determine and choose trade policies which can aid their regional integration after considering their domestic situations. In this sense, it is extra critical for African countries, due to their current underdevelopment and poverty, to carefully consider the beneficial nature of trade policies. Recently on the African continent, the trend of setting up regional trade arrangements is stronger than ever. The conclusion of these trade agreements is occurring in the context of economic globalization and to avoid marginalization. It is therefore imperative to note that these trade arrangements have played a significant role in regional integration. However, it is apparent that these South-South or North-North agreements have a different impact on regional integration compared to the agreements reached between the North and the South in the form of economic partnership agreements (EPAs).

EPAs are one of the products of the Cotonou Agreement. One of their aims, among others, is to help Africa, Caribbean and Pacific (ACP) countries realize regional integration, which is expected to alleviate poverty and indeed promote development.<sup>1</sup> It should be noted these EPAs would be concluded between the European Union (EU) and the African, Caribbean and Pacific Countries. With the launch of the EPA negotiations, the greatest focus has been on their extreme asymmetric trade relations on the reciprocal basis. In light of the above statement, one doubts whether the EPAs will play their devised role of ACP regional integration.

### **1.2 Problem statement**

The role of regional trade agreements has been one of the themes many researchers have focused on. Relevant documents produced by the WTO (World Trade Organization) affirmatively claim the complementary functions of regional trade measures.<sup>2</sup> However,

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1. Article 34(1), Cotonou agreement 2000

2. See WTO, (1995). *'Regionalism and the World Trading system'*

recent reports of the World Bank clearly show that the economic gap between developing countries and developed countries has continued to enlarge.<sup>3</sup> The real

regional development and integration that developing countries imagine would be achieved with the aid of the EPAs, remains an uncertain situation.

In recent years ACP-EU trade negotiations have created new concerns. It is estimated that the negotiation process could have several uncertain results. The EU persisted in reciprocity without prudent consideration before the negotiations were launched and could subsequently deny alternatives.<sup>4</sup> In contrast with the EU's enthusiasm, ACP countries have lacked definitive and long-term schedules and plans for the negotiations. Moreover for various reasons they do not have enough concern about the impact of EPAs;<sup>5</sup> most important being that they could have blind confidence in the effects of free trade agreements regardless of the foundational condition of reciprocity. This view could ultimately prove an erroneous and dangerous experiment for the integration prospect of ACP countries.

The purpose of this paper therefore is to identify the reciprocal principle under unequal trade relations. It also explores a complementary economy with relative independence and whether a win-win trade agreement could be the premise upon which ACP countries realize real regional integration.



### **1.3 Aims of the study**

ACP countries are in an unequal and weak negotiating position. It is likely that the content of future agreements may disadvantage ACP countries' benefits. The paper therefore firstly plans to conduct an investigation in this regard, and further does an exploratory analysis from a legal perspective to determine how the EPAs should be designed and implemented effectively in order to be helpful for ACP countries to integrate into the world market, which can maximize ACP countries' benefit.

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3. World Bank, world development report 1999/2000 source available at [www.worldbank.org/wdr/2000/fullreport.html](http://www.worldbank.org/wdr/2000/fullreport.html).

4. See "Six Reasons to Oppose EPAs in their Current Form" Sourced at [http://www.oxfam.org.uk/what\\_we\\_do/issues/trade/epas.htm](http://www.oxfam.org.uk/what_we_do/issues/trade/epas.htm)

5. See "EPAs: The Hidden Dangers", Sourced at [www.traidcraft.co.uk/temp/rad53418.pdf](http://www.traidcraft.co.uk/temp/rad53418.pdf)

#### **1.4 Significance of the study**

Successful experience of Free Trade Agreements (FTA) between the North-North or the South-South sets a good example of regional integration. However, EPAs will be concluded between the South (ACP countries) and the North (the EU), therefore it would be irresponsible to conclude arbitrarily that EPAs in general can strengthen ACP countries' overall integration. Actually, so far there has not been empirical evidence, which could prove that EPAs really produce the welfare that ACP countries are expecting. The future of regional integration remains uncertain. Before the new agreements are reached, ACP countries still have to face this unsolved issue.

In order for EPAs to be real instruments which can protect ACP countries from unequal treatment during the process of regional integration, the paper suggests that, with the beginning of negotiations, ACP countries should design this agreement properly and further safeguard its implementation effectively as the main purpose. Hence the significance of the paper is that it plans, on the basis of analyzing the impacts of EPAs, to investigate whether it promotes and impedes regional development and integration.



This paper will be a positive guide to the negotiators and the academic world to realize the effectiveness of the EPAs in the sought regional development and integration.

#### **1.5 Methodology**

This is mainly a literature-based research study. Reliance will, therefore, be placed on relevant primary and secondary sources relating to trade, investment and economic theory. This includes treaties, declarations, books and articles. The paper also makes use of data and statistics compiled by the WTO, the World Bank and other institutes. This study is based on some functions of EPAs for the purpose of strengthening regional integration.

#### **1.6 Limitations of proposed study**

Direct inspiration will be drawn from the twofold role of regional trade arrangements for regional integration in the era of economic globalisation. Considering the similar economic background of ACP countries, the study will only focus on trade cases and data available on ACP countries and the EU. Furthermore on the basis of former

analyses, some attempts will be made to set out definite safeguard measures of aiding ACP countries' regional integration.

## **1.7 Overview of the Chapters**

The study is comprised of five chapters. Chapter 1 serves to highlight the structure of the entire work. Chapter 2 mainly deals with the general perspectives on regional trade arrangements between the EU and ACP countries. It goes ahead to discuss the proliferation of regional free trade arrangements concluded recently on the African continent; the rest of the chapter examines the individual attitudes toward EPAs from the EU and ACP countries and shall also justify the reciprocal principle between the EU and ACP countries.

Chapter 3 examines the possibility of smooth regional integration among unequal trade partners in terms of a conventional trade theory. From an economic theoretical point of view, this chapter will investigate whether EPAs between unequal partners will promote or undermine regional integration in various ACP regions. The chapter firstly discusses the traditional trade theory and further analyses the factors affecting regional integration after the EPAs are concluded. As a result of the research it is clear that traditional trade theory cannot adapt itself to the special circumstances of ACP countries and the EU.

Chapter 4, from a jurisprudential point of view, explores the positive and negative aspects of EPAs, which can impact on regional integration. In the positive aspects of EPAs, the chapter analyzes the comprehensive nature and flexibility of these agreements, which could ensure a stable trading environment in favor of regional development and integration. In the negative aspects of EPAs, the chapter focuses on the exclusivity and conservatism of EPAs. The underlying point is that the abuse of Rule of Origin could produce an unfavorable result of integration.

Chapter 5 points out some concrete tactics and some safeguard measures which ACP countries could adopt for the sake of designing this agreement.

**General perspectives on regional trade arrangements between the EU and ACP countries**

**2.1 Introduction concerning regional trade arrangements that have proliferated recently in Africa.**

Since the late 1990's, a great number of regional trade agreements have emerged. Countries on various levels of economic development in the world are, or are likely to become, involved in negotiating such arrangements. According to the WTO statistics, by the end of 2005, if regional trade agreements reportedly planned or those already under negotiation are concluded, the total number of regional trade agreements in force might well approach 300.<sup>6</sup> In comparison with trade arrangements in earlier years, new resurgent trade arrangements have taken on some noteworthy characteristics. Firstly their complexity is increasing. For instance in Africa many countries have overlapping memberships of regional trade agreements during almost the same period, to the extent that this complex status can hamper the successful implementation of trade agreements; Secondly new trade arrangements have not been expanded between South-South or North-North regions, but instead some asymmetric South-North trade arrangements were also concluded, e.g. the Cotonou agreement between the EU and ACP countries. However, while there appears to be a common acknowledgement that some appropriate free trade arrangements among various trade partners can be reached, the question as regards their role in promoting development and integration remains to be answered.

As far as least developed countries are concerned, the wish of promoting their development and integration through trade arrangements is stronger than in the rest of the world, most notably on the African continent. A few regional trade agreements have existed in Africa since the last century, namely the Southern African Customs Union (SACU), Southern African Development Community (SADC), Common Market of Eastern and Southern Africa (COMESA) and the revived East Africa Community (EAC). Researchers and institutions on the whole have sought to examine the impact these

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6. See [http://www.wto.org/english/tratop\\_e/region\\_e/region\\_e.htm](http://www.wto.org/english/tratop_e/region_e/region_e.htm).

assessments have had on regional integration. It has been the general observation that the said trade agreements have not seriously affected the planned integration because of the economic structure having a similar export and import regime (similar primary goods are exported and similar industrial goods are imported).<sup>7</sup> A recent World Bank research study also shows that South-South regional trade arrangements between two or more poor African countries are very likely to generate trade diversion, which is adverse to regional integration.<sup>8</sup> The reason for this conclusion lies in cost comparative advantage. Within the free trade area, relatively richer African countries cannot yet offer the poorer countries lowest-cost products, which should be supplied externally to the rest of the world. The poorer countries' interest must be still affected. Practically, in light of the fact that these trade arrangements belong to South-South trade arrangement in nature, economic complementarities between them cannot be in parallel to those between North-South trade arrangements. Moreover, in theory these intra-Africa trade arrangements are in a low competitive surrounding, have relatively small comparative advantage and the scale of market can possibly hinder smooth regional integration. It can therefore be determined that the aim in pursuit of intra-integration through South-South trade arrangements remains difficult.



The other is the South-North trade arrangement including the Cotonou Agreement and the negotiating EPAs. It should be said that South-North trade arrangements have in the past offered a good opportunity for African regional integration. For instance, in terms of the Cotonou agreement some African countries have indeed gained more benefits because of the EU's unilateral tariff removal.<sup>9</sup> However, the present issue is that regional development and integration, as one of the aims of the Cotonou agreement, did not achieve an improved performance, which the African countries are expecting.<sup>10</sup> Poor

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7. Wood and Mayer (2001) "Africa's Export structure in a Comparative perspective": 369-94

8. World Bank 2000a: 42

9. The EU allows some ACP countries to export certain Common Agriculture Policy products to the EU duty free, within strict volume limits, e.g. the sugar sector. In 1997/98 as a result of sugar export by ACP countries to the EU at internal EU prices, an extra income of around 500 million euro was transferred to ACP sugar producers. Source available at [www.fos-socsol.be/nl/ero/documenten/trade/TRADECAP.PDF](http://www.fos-socsol.be/nl/ero/documenten/trade/TRADECAP.PDF).

10. See Tangermann, S., 2000. For ACP countries, conditionality such as stringent rules of origin limits their capacity to benefit from the preferential system. As a result the very low rate of utilization of preference can indirectly result in the inefficiency of regional development and integration.

African countries can still be in danger of further marginalization. As a consequence, the following critical issue should be raised: since the Cotonou agreement cannot promise predetermined results, one has reason to ask, whether ACP countries can use the EPAs as a new stepping-stone towards regional integration and development.

## **2.2 An overview of the Cotonou agreement and the nature and substance of EPAs**

The Cotonou agreement was concluded in June 2000. This South-North agreement has defined the trade relations between the ACP and EU countries with the real intention being to grant favourable trade access to ACP countries towards achieving the goal of improved economic performance and subsequently, the attainment of development goals by ACP countries. Evidence however indicates that despite the existence of trade preferences applicable to ACP countries from the EU as well as the operation of the principle of no reciprocity, the economic performance of most ACP countries' has not improved explicitly.<sup>11</sup> In this case, the EU timely brought in a new agreement initiative and stipulated its fundamental principle in the Cotonou agreement. This new agreement is described as an Economic Partnership Agreement (EPA). According to Article 34 of the Cotonou agreement, the EPAs shall concentrate on "the objective of reducing and eventually eradicating poverty consistent with the objectives of sustainable development and gradual integration of the ACP countries into the world economy". However, some key aspects of the EPA are different from the Cotonou agreement. Moreover, these aspects are in a position to directly affect the initial purpose of fostering the regional development and integration as intended by the EPAs.

In essence, the EU describes the EPA as a free trade area based on reciprocity.<sup>12</sup> This perspective also represents the most significant change in the EU's approach to the ACP countries. Prior to the Cotonou agreement, the ACP countries enjoyed preferential access into the EU market without being required to do anything in return (non-reciprocal market access). However, future trade relations will experience a shift. In terms of the new trade arrangement, on the one hand, poor ACP countries still have to further open

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11. World Bank, world development report 1999/2000 source available at [www.worldbank.org/wdr/2000/fullreport.html](http://www.worldbank.org/wdr/2000/fullreport.html).

12. Source available at <http://www.traidcraft.co.uk/template2.asp?PageID=1757>  
their markets under pressure from the developed countries; and on the other hand all barriers to trade of goods and services among member countries are progressively removed. It shows the extreme unfair trade relations still existing between the most developed countries and the least developed countries. Looking at this unpredictable scenario, no one can guarantee that the EPAs will contribute to regional integration.

### **2.2.1 The EU's intention moving from unilateral trade to a reciprocal trade arrangement**

Early in 1997, the European Council adopted general guidelines for the negotiation of regional trade arrangements. Although each proposed regional trade arrangement would be judged on its own merits, the key points include: compatibility with WTO rules; the impact on common policies and on other external commitments; the identifiable economic interest of the EU. <sup>13</sup> According to these guidelines, the EU emphasized that the unilateral preferential market access offered in the Cotonou agreement was incompatible with the rules of the WTO. Furthermore, the arbitrary view that this unilateral preference had not generated the expected gains of developing and integrating African countries' economies, offers another excuse to alter the current trade relations between the EU and ACP countries. <sup>14</sup> Of course the outcome of reciprocity should not be neglected. Reciprocity refers to the reduction of a country's import duties or other trade restraints in return for comparable trade concessions from another country. Eliminating tariff duties and other trade barriers in ACP countries directly means more market opportunities for the EU producers. By this definition we can also conclude preliminarily that the reciprocity will aid the EU in achieving relative market access in ACP countries. A recent World Bank research study has also confirmed that the Northern countries would gain significantly more market access in Southern countries compared to what the Southern countries could extract from the North. <sup>15</sup> In consideration of the truth that the EU has been a 'super attractive hub' among many reciprocal trade agreements, we can presume that the EU will never give up the interest that the

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13. Source available at <http://www.ids.ac.uk/tradebriefings> or <http://www.dfid.gov.uk>

14. Rocha M. D. L, (2003) " *The Cotonou Agreement and its Implications for the Regional Trade Agenda in Eastern and Southern Africa.*" 9-10

15. Freund C., (2003) " *Reciprocity in Free Trade Agreements* "available at [econ.worldbank.org/files/26994\\_wps3061.pdf](http://econ.worldbank.org/files/26994_wps3061.pdf)  
reciprocity in the EPAs can present.

## 2.2.2 The attitude of ACP countries toward current regional trade arrangements

It is imperative to note that, in choosing their trade policies, least developed countries largely consider the situation on the ground. If under unfair pressure, it is likely to distort the initial intention of developing their national economies. Even if free trade is conceived as a powerful development tool, providing it works to support poor countries and is based on principles of equity and sustainability, appropriate assessment of the impact of this trade arrangement should be conducted, or else regional integration can suffer the danger of idealism. However, in light of the effect of EPAs, most views expressed are only concerned about the negotiations and nature of EPAs, instead of possible adverse results underlying this arrangement in the future.

The EPAs, in light of the ACP countries, have dual aspects. One aspect lies in inadequate knowledge concerning free trade policies; in the last century many African countries had implemented free trade policies imposed, by the World Bank and International Monetary Fund and under pressure from the EU, which brought disastrous consequences to local economies.<sup>16</sup> And at present the ongoing EPA negotiations will still be premised on the assumption that indiscriminate trade liberalization is best for achieving development and regional integration. It actually means that ACP countries will open 90% of their economies to EU goods and services by way of duty free or quota free access. Disappointing though is the fact that the EU has little to offer in return.<sup>17</sup> This will result in ACP countries failing to protect themselves and their goods against competition from the EU's cheap and subsidized goods. For instance it has been reported that current EPA plans would leave Kenya with a net loss equivalent to 20 percent of its annual trade with the EU.<sup>18</sup>

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16. On the failure of the "Washington Consensus" see, Kohsaka, A. (2004) *New development strategies: Beyond the Washington Consensus*, Palgrave, Macmillan; Stewart, F. et al (1987) *adjustment with a Human Face*, UNICEF, NEW YORK; UNCTAD (2002) *Economic Development In Africa*, UNCTAD, Geneva.

17. See briefing paper series is supported by source at [www.traidcraft.co.uk/policy](http://www.traidcraft.co.uk/policy)

18. See briefing paper series is supported by source at [www.traidcraft.co.uk/policy](http://www.traidcraft.co.uk/policy)

The other aspect is that only a few African countries perceived the EPA as a good opportunity, which could contribute to changing their present unfair trade relations.

More other countries followed the EU's disguised suggestion that if the ongoing EPA negotiations would make the agreements compatible with the rules of the WTO, this trade arrangement would be helpful for integration which can alleviate poverty. In consideration of this aspect, there can be a final result, which can allow ACP countries for the first time to face possible reciprocal EU access into their markets. Apparently such a shift will ultimately change the low market competition situation that ACP countries ever faced. Critically analysed, such reciprocity between unequal trade partners is in a position to play a negative role for the integration of ACP countries. Unfortunately according to the new EU trade commissioner, Peter Mandelson, no African countries have so far requested the EU to examine alternatives to EPAs, and yet on the contrary, all ACP countries are currently actively engaged in the negotiations.<sup>19</sup>

Whether or not these apprehensive things take place, ACP countries are supposed to learn the basic conditions of implementing free trade policy. A country cannot implement any other country's trade policy mechanically or arbitrarily. Real regional integration through free trade policy is not simply the removal of high tariffs and other trade barriers; instead it depends more on the domestic practical demands and situations. As Dani Rodrik, an economist from Harvard University in a series of studies states, 'whilst no country has developed successfully by turning its back on international trade, none has developed by simply liberalizing its trade either'. The critical balance lies in each country adopting its own trade and investment policies and strategies in line with its development needs'.<sup>20</sup>

### **2.2.3 The feasibility of the reciprocal principle between the EU and ACP countries**

Reciprocal trade liberalization is at the heart of the proposed EPAs between the EU and African countries. It means that once ACP countries admit the nature of EPAs as a free

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19. Source available at [www.epawatch.net/documents/doc270-4.doc](http://www.epawatch.net/documents/doc270-4.doc).

20. See Rodriguez, F. and Rodrik, D. (1999) *Trade Policy and Economic Growth: A Sceptic's Guide to the Cross-Country Evidence*, Centre for Economic Policy Research, Discussion Paper Series 2143; Rodrik, D. (2001) *The Global governance of trade as if development really mattered*, UNDP;

trade area, we can imagine that the EU's next step from must be in pursuit of a reciprocal trade principle between the EU and poor African countries in terms of the

rules of the WTO. For ACP countries, whether in the legal or the empirical aspect, it is not necessary to implement this principle.

Firstly, there are many provisions in the WTO's legal texts which recognize the differences between developed countries and less-developed countries of the WTO. These special and differential provisions are based on the premise of an acknowledgement that deals with the huge economic disparities between the member states of the WTO. The real purpose of these provisions is not to require less-developed countries to offer developed countries reciprocal concessions in multilateral negotiations, but instead to offer less-developed countries preferential treatment within a possible scope. This more or less implies the impossibility of the reciprocal principle between the North and the South. As Staiger (1998) stated in his article, 'the notion of reciprocity as intended in the General Agreement on Tariffs and Trade (GATT) does not necessarily carry over to North-South trade arrangements'.<sup>21</sup> In addition it is noteworthy that the Cotonou agreement sets out that the Parties should ensure special and differential treatment for all ACP countries, maintain special treatment for Least-Developed ACP countries and take account of the vulnerability of small, landlocked and island countries.<sup>22</sup> This statement further implies reciprocity cannot be a must for the EPAs in view of African countries' great economic differentiation.

Secondly, from the empirical perspectives, it was an arbitrary decision that the EU denied the unilateral principle and insisted on reciprocity. The EU reaffirms that 'while most African countries have benefited for decades from largely open access to the EU market under preferential access schemes for ACP countries, their development is greatly falling behind both the developed countries and other developing countries. The reason being the difficulty in exploiting offered advantages for ACP countries'.<sup>23</sup> On this

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21. Staiger R. (1998) *Tariff Phase-Outs: Theory and Evidence from GATT and NAFTA: Comment In the Regionalization of the World Economy*, NBER Project Report Series. Chicago and London: University of Chicago Press,

22. Article 35 (3), Cotonou Agreement, (2000)

23. See 'Comments from the Commission' (2002), *Rigged Rules and Double Standards-trade, globalization and the Fight against Poverty*. Oxfam international. Oxford. Source also available at [www.marketradeair.com](http://www.marketradeair.com)

premise, the EU claims again the unilateral preference should be replaced. In reality, the issue lies in ACP countries' supply-side constraints, and not the unilateral preferential principle. Indeed, trade preferences themselves have proved that they

could have been used better, because of some countries' welfare gains from this trade arrangement.

### 2.3 Conclusion

Under the EU's political and economic pressure as well as the ACP countries' weak protest, the ongoing negotiations are in a great position to make EPA an instrument to realize reciprocal trade liberalization. Once reciprocity is accepted by ACP countries, they need to progressively eliminate tariffs and non-tariff barriers; in addition to the existing market access offered from 'Everything but Arms', some least-developed ACP countries cannot get more market opportunities from the EU, instead they must offer the EU more market access.<sup>24</sup> Such concession can further deepen the original unequal economic divide between the EU and ACP countries. In view of the previous unsuccessful experience in the African countries which have implemented free trade policies, one can have reason to fear the replay of the nightmare. Consequently an investigation is essential to reveal whether these new trade arrangements can really integrate ACP countries into the world economy and promotes the regional integration objectives set out in the Cotonou agreement.



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24. According to the Cotonou agreement, the EU provides all least developed countries (LDCs) with duty free access to the EU market for all their exports except arms. It means the ACP countries need not open their own market access to the EU. But once LDC-ACP countries sign EPAs they will have to offer the same level of reciprocal market access to the EU. Source available at [www.publications.parliament.uk/pa/cm200405/cmselect/cmintdev/68/6806.htm](http://www.publications.parliament.uk/pa/cm200405/cmselect/cmintdev/68/6806.htm)

**The possibility of smooth regional integration among unequal trade partners in terms of conventional trade theory**

**3.1 Introduction**

Regional integration denotes a process where groups of countries in a geographic region reduce, and ultimately remove tariff and non-tariff barriers to the free flow of goods, services and factors of production between each other. Such a process is full of complexity due to the differing development levels of various countries'. But on investigation, one can discover that this integration process mainly takes place among countries at relatively similar levels of economic development. A report from the World Bank early in 2000 also noted that most regional integration has been arranged through trade agreements among high-income countries or among low-income countries, the only exception being the North American Free Trade Area (NAFTA) between high-income and developing countries.<sup>25</sup> In light of the above, it can be argued that integration through South-South or North-North regions would be easier accepted by the public and be conceived as more appropriate than North-South integration. With this in mind, the issue as to whether the South-North integration will be in effective order has left much doubt. Many works<sup>26</sup> have set out the factors which can affect regional development and further integration, but the most critical premise can often be neglected among various views. In fact the unequal trade relations at the beginning of such arrangement to a large extent determine the complexity and risk of poor regions.

As far as developing countries are concerned, an experience of long unequal trade relations has existed. If we investigate the world trading negotiation process, clearly this process is indeed a historic one where developing countries consistently strive for their benefit in trying their best to change the existing unequal trading status. The experience

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25. World Bank Report 2000: IX

26. For example: " *Elements for an Economic Theory of Free Trade Areas between Developed and Developing Countries*" written by Iván Martín in 2001; " *Regional integration and Development in Small States*" written by Maurice Schiff in 2002, World Bank Working Papers No.2797. " *Doha and World Poverty Targets*" written by Alan Winters in 2002.

from the Seattle to Canún Ministerial Conference aimed at safeguarding developing countries' rights and economic benefit is good evidence in this regard. In addition, it has recently become visible that developed countries including America and the EU seem to have recognized the truth that regardless of the developing countries' voice, they are finding difficulty in reaching a consensus on some trading issues concerning developing countries within the auspices of the multilateral trade system. Consequently, they divert their interest to poor regions where mere relatively weak bloc trading strength exists. In America, free trade area negotiations have been launched while in Africa EPA negotiations have also commenced. Even if such trade arrangements are reached in the end, there is a possibility that attempts to maintain previous unequal trade relations may still exist among developed countries, with the optimal aim of retaining their advantage within the domain of these less developed regions.

But the present issue is whether ACP countries can be content with the unequal status. Since the aim of trade arrangements is to promote integration and development as the EU claims, they are supposed to gain increasing welfare, and any unequal trading relations can become a factor which impacts ultimately on the desired smooth integration. Hence, solving this problem should be the first priority; or else even if traditional western trade theory can be used to explain the welfare implications resulting in comparable advantages between countries or regions, it will be very tough to reassure the public of the flexibility of arranging such free trade areas, notably between the most developed EU and the least-developed ACP countries.

### **3.2 Assessing trade theory: trade creation and trade diversion**

In theory, the free trade area has a fundamental role to play in the creation of wealth and thus development. This is almost a common fact whether the developed countries or developing countries are in pursuit of such trade arrangements. But with the resurgence of regional arrangements, the disputes regarding the welfare implications of regional integration also continue to a rise. Those disputes mainly build on the most common argument firstly introduced by economist Jacob Viner in 1950.

<sup>27</sup> He set out the

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27. Viner, J (1950), *the Customs Union Issue*, Carnegie Endowment for International Peace, New York, Chapter IV: 43

traditional static trade theory on trade creation and trade diversion. From his point of view, he thought that the optimal regional integration should not only allow member countries to benefit, but also bring to the whole world increasing welfare; and the approach measuring such an overall effect on welfare should be conducted by comparing the trade-creating and trade-diversion effects. According to his arguments, it is only if there exists a certain comparative advantage gap between product costs, that trade creation can occur with high-cost domestic products being replaced by low-cost external supplies within the free trade area. Conversely trade diversion occurs when higher-cost suppliers within the free trade area replace lower-cost external supplies. Trade creation is considered to be good because it means an increase in the welfare of member countries. Trade-diversion is found to have negative impacts, which means a reduction in the member countries' welfare. In addition, he is of the opinion that a regional free trade agreement will benefit member countries if the amount of trade exceeds the amount it diverts. However, if trade diversion exceeds trade creation, the countries will see a reduction in welfare.

Besides the above views, some relevant assumptions are also noteworthy in his theory. Firstly, in the absence of the member countries' initial higher tariffs, and with other things equal, the more trade creation will be induced by the integration and therefore, a likelihood of the integration improving members' welfare exists. Secondly, among the member countries, if their products experience direct competition with each other with a possibility of a substituting production structure, successful integration is more likely.

Even though it is easy to realise that the above assumptions are far from practical cases, Viner's theory still offers a stepping-stone for later research studies. While other researchers have also used this theory to explain regional trade integration, their research studies were more or less limited to some conditions or assumptions, within which the common premise is that those member countries have relative comprehensive capacity not to fear competition from new regional integration. The truth has proven such assumption is reasonable to a certain extent. For instance, the European Community (EC) is a successful example of integration. During its integration process, while there are various risks or disputes, those member countries indeed have a competitive economic background. This background can also imply, as Mareike Meyn from the Institute for World Economics and International

Management (IWIM) states in her paper, 'a successful economic integration requires a similar level of industrial development, complete industrial sectors and a potential for complementary development of industrial sectors'.<sup>28</sup>

However, in comparison with the EC experience (they are in equal trade status), a critical issue should be put forward whether this trade theory can be applied to explain the EPAs. In attempting to answer this question, some researchers have expressed general views, for instance, Dr. Venables<sup>29</sup> argues that developing countries would benefit from an FTA with an industrial country due to their different factor endowment; namely that trade creation effects can exceed trade diversion effects; but other researchers have thought, in terms of Viner's theory, that trade diversion effects are likely to dominate due to the complementary production and trade structure between developed countries and least-developed countries.<sup>30</sup> The various angles give rise to paradoxical perspectives. In consideration of these theoretical arguments and the important significance of EPAs for ACP countries, seeking regional integration through free trade arrangements between ACP countries and the EU needs to be dealt with as well.

### **3.3 In the context of unequal trade partners, analyzing the possible factors affecting the ACP countries' integration**

In actual fact, regional integration is concerned with variable processes. Whether previous static effects can provide any informal interpretations, any approaches to explain integration should be based on individual practical cases, because less similar experiences can take place among different regional integrations. Hence, in order to investigate integration effects on this new trade arrangement, the exploratory analysis below shall build on the practical trade volume and trading structure between ACP and EU.

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28. Mareike Meyn, (2003) *The TDCA and the proposed SACU-US FTA: Are free trade agreements with industrialised Countries beneficial for the SACU?* Institute for world Economics and International management (IWIM), University of Bremen

29. Venables, J (1999). *Regional integration agreements: a force for convergence or divergence?* World Bank Policy Research Working Paper 2260

30. Mareike Meyn, (2003) *The TDCA and the proposed SACU-US FTA: Are free trade agreements with industrialised Countries beneficial for the SACU?* Institute for world Economics and International management (IWIM), University of Bremen

**Table 1: European Union, the Volume of Imports from...ACP (Excl. South Africa)**

<b>SITC Rev.3 Product Groups</b>	<b>2000 Mio euro</b>	<b>%</b>	<b>2002 Mio euro</b>	<b>%</b>	<b>2004 Mio euro</b>	<b>%</b>
<b>Total</b>	<b>29,187</b>	<b>100.0</b>	<b>30,524</b>	<b>100.0</b>	<b>28,267</b>	<b>100.0</b>
<b>Primary products</b> of	<b>20,891</b>	<b>71.6</b>	<b>20,993</b>	<b>68.6</b>	<b>19,623</b>	<b>69.4</b>
<b>which:</b>	<b>10,214</b>	<b>35.0</b>	<b>10,728</b>	<b>35.1</b>	<b>9,910</b>	<b>35.1</b>
<b>Agriculture prod.</b>	<b>8,775</b>	<b>30.1</b>	<b>8,263</b>	<b>27.1</b>	<b>7,422</b>	<b>26.3</b>
<b>Energy</b>	<b>7,635</b>	<b>26.2</b>	<b>7,463</b>	<b>24.5</b>	<b>7,658</b>	<b>27.1</b>
<b>Manuf. Products</b> of	<b>259</b>	<b>0.9</b>	<b>343</b>	<b>1.1</b>	<b>250</b>	<b>0.9</b>
<b>which:</b>	<b>2,039</b>	<b>7.0</b>	<b>2,332</b>	<b>7.6</b>	<b>2,182</b>	<b>7.7</b>
<b>Machinery</b>						
<b>Transport equipm</b> of	<b>91</b>	<b>0.3</b>	<b>21</b>	<b>0.1</b>	<b>26</b>	<b>0.1</b>
<b>which:</b>	<b>368</b>	<b>1.3</b>	<b>455</b>	<b>1.5</b>	<b>407</b>	<b>1.4</b>
<b>Automotive prod.</b>	<b>1,249</b>	<b>4.3</b>	<b>981</b>	<b>3.2</b>	<b>874</b>	<b>3.1</b>
<b>Chemicals</b>						
<b>Textiles and cloth</b>						

Source: EUROSTAT (Comext, Statistical regime 4)



**Table 2: European Union, the Volume of Exports to...ACP (Excl. South Africa)**

<b>SITC Rev.3 Product Groups</b>	<b>2002 Mio euro</b>	<b>%</b>	<b>2002 Mio euro</b>	<b>%</b>	<b>2004 Mio euro</b>	<b>%</b>
<b>Total</b>	<b>27,019</b>	<b>100.0</b>	<b>27,796</b>	<b>100.0</b>	<b>26,238</b>	<b>100.0</b>
<b>Primary products</b> of	<b>5,359</b>	<b>19.8</b>	<b>5,719</b>	<b>20.6</b>	<b>5,615</b>	<b>21.4</b>
<b>which:</b>	<b>3,690</b>	<b>13.7</b>	<b>4,248</b>	<b>15.3</b>	<b>3,678</b>	<b>14.0</b>
<b>Agriculture prod.</b>	<b>1,228</b>	<b>4.5</b>	<b>989</b>	<b>3.6</b>	<b>1,454</b>	<b>5.5</b>
<b>Energy</b>	<b>21,180</b>	<b>78.4</b>	<b>21,651</b>	<b>77.9</b>	<b>1,977</b>	<b>75.4</b>
<b>Manuf. Products</b> of	<b>5,584</b>	<b>20.7</b>	<b>6,753</b>	<b>24.3</b>	<b>7,183</b>	<b>27.4</b>
<b>which:</b>	<b>8,160</b>	<b>30.2</b>	<b>6,179</b>	<b>22.2</b>	<b>4,390</b>	<b>16.7</b>
<b>Machinery</b>						
<b>Transport equipm</b> of	<b>1,799</b>	<b>6.7</b>	<b>2,230</b>	<b>8.0</b>	<b>1,847</b>	<b>7.0</b>
<b>which:</b>	<b>2,748</b>	<b>10.2</b>	<b>3,118</b>	<b>11.2</b>	<b>3,091</b>	<b>11.8</b>
<b>Automotive prod.</b>	<b>620</b>	<b>2.3</b>	<b>640</b>	<b>2.3</b>	<b>520</b>	<b>2.0</b>
<b>Chemicals</b>						
<b>textiles and cloth</b>						

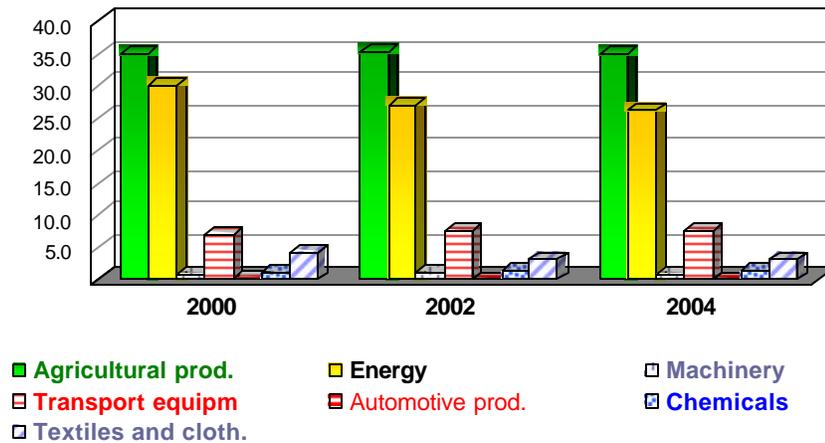
Source: EUROSTAT (Comext, Statistical regime 4)

According to cost comparative advantage, provided that one country usually plans to import goods, these goods imported could mean inefficient domestic production. In

this case, a frequent model would take place, namely home countries would replace domestic ones with imported efficient products (trade creation). The trade relations between the EU and ACP countries are in a position to generate such a model. As table 1 and table 2 above show, the EU's import products from ACP countries since 2000, even earlier, are involved mainly in the primary products in which agriculture products account for 35% in 2000, 35.1% in 2002 and in 2004; energy is 30.1% in 2000, 27.1% in 2002, 26.3% in 2004. While its exported products to ACP countries also include primary products, apparently primary goods only account for a small share. Such trading volume in the aspect of primary products means these types of products for the ACP countries have great cost advantages in comparison with the EU's intra-products. Compared to primary products, ACP countries' manufactured products only account for a small share of the EU's total import volume as table 1 shows. More manufactured products from the EU member countries were imported by ACP countries: 78.4% in 2000, 77.9% in 2002, and 75.4% in 2004 respectively. Such great shares adequately imply that in ACP countries only a few sector manufacture products have relative cost advantage.

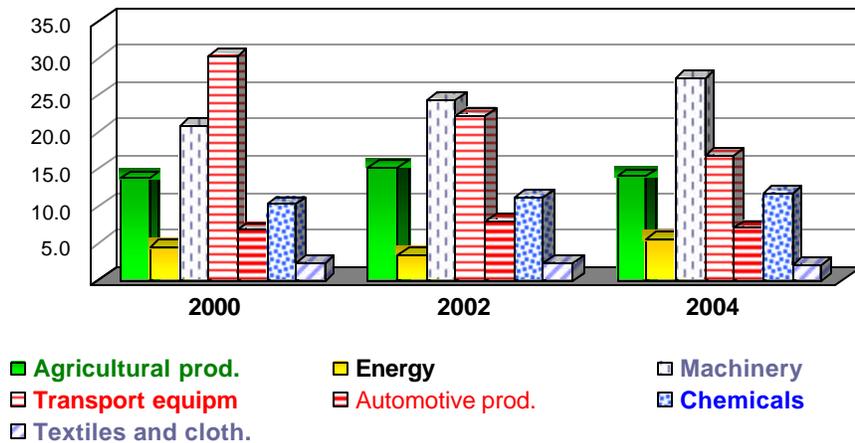


**Table 3: Structure of imports (%) from ACP countries excluding South Africa**



Source: EUROSTAT (*Comext, Statistical regime 4*)

**Table 4: Structure of exports (%) to...ACP countries excluding South Africa**



Source: EUROSTAT (*Comext, Statistical regime 4*)

In consideration of cost advantage it can provide for a stable trade trend in the domains of different industries as well as between the ACP countries and the EU. In the aspect of primary products, the EU has remained concentrated on agricultural products and energy import since 2000; export destined for ACP countries includes machinery, transport equipment, chemicals and manufactured products as table 3 and table 4 confirms. Such trade trends on the one hand can predict that in the following years ACP countries will continue exporting the primary and labour-intensive manufactured products and their imports will be predominantly capital-intensive manufactures. On the other hand, it also implies that at least so far, ACP countries have no adequate capacity to change this truth that their product advantage is only limited to primary and low skilled labour-intensive manufacturing.

However, it is noteworthy, that the above result is premised on the unilateral preference provided in terms of the Lomé Convention and the Cotonou agreement; namely a result under non-free trade competition. With the launch of new negotiations, once the EPAs are essentially concluded as free trade area, ACP countries will have to face up to at least two facts: progressively eliminating tariff duty and opening up larger market access. Moreover, among other things, it can be estimated that after 2008 the present trade structure bring about raise great changes. So in this context, it is worth doubting whether manufactured products or primary products will compete with the congeneric products from the EU on the basis of progressive free-duty tariff.

Without tariff safeguards plus original disadvantageous high costs, it can be identified that for ACP countries in the aspect of high-tech, capital intensive manufactures, their competitive advantage will be greatly reduced; with the result that ACP countries give up competition and further directly import those knowledge-intensive products. Similarly primary products in which agricultural products are regarded as a great cost advantage trade item will have to compete with subsidized ones from the EU. The result that can be imagined is that for agricultural products they will be expected to obtain the subsidies from the governments or import the advantaged agricultural goods from the EU. But apparently the low revenue can lead to the impossibility of subsidies for primary products.<sup>31</sup> The export of primary products will also be affected in ACP countries.

In the light of traditional trade theory, among other things, it can be found that trade creation is in a rather weak position to occur in the high-tech, knowledge intensive manufactures and even in primary products. It can further mean welfare implications such as lower-cost telecommunication products will arise for ACP countries. ACP countries can benefit from such integration. While combined with the above analyses, such integration at the expense of high-tech, knowledge intensive manufactures and merely being content with the manufacture of primary products might distort the real implications of regional integration. For some ACP countries, regional integration not only means making ACP countries increase welfare, but importantly enabling all economic industries to generate stronger competition in the world or in the region as well. The present and subsequent trade trend (high import in high-tech and knowledge intensive industries and low export in labour-intensive primary manufacture) is rather likely to infer complementary but non-competitive trade relations between ACP countries and the EU. This will result in an imbalance in the regional integration to the effect that within free trade areas, ACP countries only continue their primary manufacture for developed markets and yet no improvement will be accrued to the high-tech fields.

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31. Many ACP countries rely heavily on the levying customs taxes for their normal expenditure, eliminating tariff duty progressively means less taxes for social expenditure. Source available at: [www. Traidcraft.co.uk/temp/radAF7D8.pdf](http://www.Traidcraft.co.uk/temp/radAF7D8.pdf)

### 3.4 Conclusion

It is evident from the above discussion that, due to the special circumstances of ACP countries, the conventional trade creation and trade diversion theory cannot fully advance regular integration. Unequal trade relations are supposed to be firstly addressed in order for ACP countries to reap the benefits of integration. Moreover such a complementary but non-competitive integration process is not expected by ACP countries. Rather, it is likely to lead to over-dependence on the EU market. For ACP countries, in order to avoid the above effect, it is imperative to be able to set up a complementary and mutually competitive trading relation with the EU. Provided that the EPAs are reached on a 'win-win' basis, then the ACP countries will thrive on realizing the desired regional integration.



**Identifying the dual characteristics of the EPAs, to the extent of ascertaining the effects on regional integration**

**4.1 Introduction**

Usually when it comes to regional integration most interest is directed towards external factors which normally, among others, include economic, cultural, social and historical aspects, hence, ignoring the role of trade arrangements themselves. Practically when it comes to regional integration, the impact of free trade arrangements is two fold. On the one hand, the ultimate regional trade arrangements cannot emerge automatically, they must involve a comparison of the parties' actual trading power. As a result of mutual concessions, either or both parties can resort to trade agreements so as to establish and protect their own advantage in the form of definite texts. Consequently the result is that such trade agreements will hold various views and hence need be treated flexibly. On the other hand, the intrinsic nature of free trade arrangements must lead to a trend which will exclude benefits of the third countries outside the trade arrangements. In the event of such a scenario is not well resolved; it may affect the sought original regional integration. It is worth noting that such twofold impacts belong to close and undivided relations, and even the latter is more likely to be better concealed. This often leads the public, when they look into the free trade arrangements, to concentrate on favorable conditions (such as larger market access, a long-term stable trading environment) which can promote regional integration. However as in any other arrangements some research studies are focused on the intrinsic impacts of free trade arrangement on regional integration.

From a legal point of view the ongoing EPA negotiations are likely to touch on these issues. It can be emphasized that if new EPAs are concluded aiming at a free trade arrangement, then no doubt they should promote regional development and integration. But considering the above analysis, even though the EPAs may include all the relevant aspects, they cannot fully avoid the possible negative impacts on the integration of ACP countries.

## **4.2 Positive aspects of EPAs and their implications**

The positive aspects of the new agreement are to be found not only in its comprehensive nature, but also in its flexibility as discussed below.

### **4.2.1 Comprehensive nature**

In comparison with old regional trade agreements such as the 1969 SACU agreement which dealt essentially with trade in goods, newer regional trade agreements are likely to be wider and comprehensive in content. Newer agreements cover several issues which include agriculture, services, investment, intellectual property, government procurement, trade facilitation, dispute settlement, as well as limiting the use of quantitative restrictions and safeguards. Though the contents of the EPA remain to be established, it should at least be a tool seeking overall development as the EU Trade Commissioner Peter Mandelson's observes.<sup>32</sup> It is therefore inferred that future EPAs should cope with this trend. This would mean that ACP countries are likely to reach bottom-up EPAs with the EU. The contents of the agreements in issue should be comprehensive; if it is the case, such result will reflect the regional integration envisioned.

The fact however is that regional integration is a complicated process, which depends to a large extent on specific provisions aimed at achieving it and how they are implemented. In light of this comprehensive requirement and to avoid marginalization, almost all the industries need to be integrated. This consequently requires the ACP countries to adjust their domestic law to suit the new situations. Direct results of such legislation will provide the whole regional integration with a credible and stable trading environment. As such, this will ensure the integration takes a course that has said foundations in the rule of law.

### **4.2.2 Flexibility**

Flexibility should not only ensue in the negotiation process, but it should also be seen in the implementation of EPAs. The ongoing negotiations between the EU and six different ACP groups offer a good example. Such arrangements imply that the ACP countries

32. Source available at [www.epawatch.net/documents/doc270-4.doc](http://www.epawatch.net/documents/doc270-4.doc).  
should either individually or collectively consider their domestic situations, when deciding on their future trade links with the EU. Likewise, as to the flexibility during the EPA implementation, the Cotonou agreement explicitly emphasizes that either party should take into account the different levels of development in both the EU and ACP countries.<sup>33</sup> The EPAs will be open to asymmetrical liberalization which matches the levels of development in the ACP countries.<sup>34</sup> Essentially these provisions can be regarded as a real reflection of economic differentiation among ACP countries.

It should be admitted that no one-size-fits-all measures can resolve economic differentiation in the world; the flexibility of EPA appears more important and practical. By virtue of this negotiating opportunity, ACP countries can decide on the levels and procedures which are more appropriate for their needs, and indeed determine policies to suit their own development needs by building into the agreement, any proper provisions for special treatment, e.g. sensitive sector protection. Once such requirements are established in the EPAs, and then it means the integration would be built on the down-to-earth economic levels of ACP countries, and as a result of being implemented well, the integration is likely to obtain further safeguards.

#### 4.3 Negative aspects of EPAs



When it comes to the negative aspects of the EPAs, it is necessary to examine its nature. In terms of the Cotonou Agreement, both parties are required to progressively remove the trade barriers between them and thus enhance cooperation in all areas relevant to trade.<sup>35</sup> Such provisions have publicly recognized that the EPA belongs to a free trade arrangement in nature. A free trade arrangement means that countries forming a regional trade area (RTA) must eliminate tariff and other restrictive regulations on 'substantial all trade' taking place among them. In addition to this, members of the RTA must also have a trade policy with respect to third countries that is not on the whole higher or more restrictive than the individual policies prior to the agreement.<sup>36</sup>

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33. Article 35 (3), Cotonou Agreement

34. Article 37(7), Cotonou agreement

35. Articles 36(1), Cotonou Agreement

36. Article 24, GATT

### 4.3.1 Exclusivity

Stemming from the above, in the real world, such trade arrangements are prevalent, but discriminatory exclusivity for the third countries is a rationale of regional integration agreements. This rationale reveals that, within the free trade area, the EU and ACP countries are likely to merely provide and implement some trade measures, which are in favor of intra-regional firms. But the consequences on the one hand are that those measures can produce export barriers for non-member firms so that their exports step by step forfeit the competition; on the other hand, while the intra-regional investment environment can be improved, it cannot always attract foreign direct investment (FDI) inflow from non-member countries. In this sense, capital inflow can be more limited especially because of ACP countries' long-term underdevelopment profile. As a new World Bank report states 'not all agreements create new trade and investment. Those RTAs with high external border protection are particularly susceptible to the adverse effects of trade diversion. Many agreements cost the economy more in lost trade revenues than they earn, for they discriminate against efficient, low-cost suppliers in non-member countries'.<sup>37</sup> Whether this scenario can emerge in the EPA, it is arguable that the agreement exclusivity more or less can affect or impede ACP countries' integration with other "southern" groups. After all, South-South integration is helpful for enhancing their collective voice and bloc strength.

### 4.3.2 Conservatism

Likewise, conservatism can also affect the participation of non-member countries in regional integration. It is mainly presented in the form of Rules of Origin (RoO). So-called RoO are originally the criteria used to define where a product was made. The original goal is that home countries create important trade policy instruments on a non-discriminatory basis in order to protect domestic industries from international competition. But within the free trade area, it has happened that the nature of RoO has changed gradually. The whole process is transformed into protecting member countries more intentionally, yet discriminating against non-member countries.

The RoO in the EPAs are well intended. In the light of the Cotonou agreement provisions, \_\_\_\_\_

37. Source available at [http://www.bilaterals.org/article-print.php3?id\\_article=984](http://www.bilaterals.org/article-print.php3?id_article=984)  
future EPAs should build on the current EU's RoO regime. While we know that the

EU's RoO are complicated, ACP countries cannot demand the EU's RoO due to inadequate capacity. Simultaneously, even though ACP countries can meet requirements, the EU member states, with the aim of protection, can strictly prescribe that ACP countries must use domestic original material or that products must be processed locally and only in conformity with the EU's RoO, can they qualify for the EU's preferential market treatment. Such provisions can prevent ACP countries' domestic producers from sourcing inputs in the most cost-effective and efficient way. Some industries may have to be abandoned because ACP countries do not have the competence to process products locally. As a result, intra-regional industries can be protected, yet intra-integration can take place on a non-fully advantageous basis; non-member countries benefit while the member countries incur a loss.

#### **4.4 Conclusion**

It can be inferred that while the flexibility and comprehensive nature provide the reliable surroundings for the implementation of this new trade arrangement, it is also necessary to recognise the negative impacts such as discrimination against the third countries not to be avoided. For ACP countries, therefore recognizing the negative impacts of EPAs will be helpful for them to act on this rationale and further take concrete measures to minimize them. Ideally, with this done, the present negotiations start to offer a good opportunity for the formulation of a beneficial agreement in terms of content.

**Towards a flexible and beneficial EPA negotiation process for the purpose of regional integration**

**5.1 Introduction**

Regional integration, which will occur between the ACP countries and the EU, must be involved in many sectors or industries. This situation would complicate the final conclusion of the new trade arrangement. Considering the complementary and non-competitive unequal trade relations as the third chapter discusses, plus the intrinsic conservatism and exclusivity of free trade areas, the role of the EPAs possibly take on uncertain effects. In order to avoid adverse impacts to a large extent, it is necessary for ACP countries to facilitate the current negotiations toward a flexible and beneficial EPA negotiation process.

One of the focuses of the current negotiations between EU and ACP countries is on the market economy system transition. ACP countries will face a critical trade strategic approach change; namely the transition from import substitution industries towards a sustainable competitive industrial economy (trade freedom). However, a lack of experience, combined with their insufficient capacity and generally weak bargaining power, could prevent ACP countries from effectively defending their interests during the negotiation process.<sup>38</sup> Furthermore, the present negotiations between them look like an unfair match between a healthy and sturdy athlete and a disable person. The same start, the same distance, but it goes without saying that the former will win the match, and importantly within short time ACP countries cannot yet thoroughly change such unequal relations. Such a scenario provides the public with reason to doubt whether such disadvantageous preconditioning can guarantee ACP countries' ultimate interest during the process of integration. Hence, for the purpose of maintaining stable trading relations and maximizing ACP countries benefits, before embarking on trade negotiations, it is essential for ACP countries to define a comprehensive strategic principle so as to guide the establishment of EPAs.

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38. Bilal S. and Laporte G. (2004) How did David Prepare to Talk to Goliath? South Africa's Experience of Trade negotiating with the EU. ECDPM Discussion Paper NO.53.

## **5.2 Measures to be taken to minimize the negative impacts of reciprocal EPAs**

As a guideline, a comprehensive strategic principle should be closely related to ACP countries' current economic situations. Some measures to be taken on such a basis are more persuasive and convincing.

### **5.2.1 A strategic principle**

From an economic viewpoint, it must be admitted that reciprocal free trade arrangements are not in place and are not appropriate at present since there are not any protective measures. ACP countries must firstly adopt and maintain an import substitution policy so as to develop national industries within an asymmetric open time and framework. (So it depends on their current domestic characteristics) During this period, ACP countries must energetically develop manufacturing, especially agricultural industries. Only such development and progress in this regard can provide the basis for implementing trade freedom afterwards. The historical experience has proven that East-Asian new industrial countries' economic growth cannot be attributed to export-oriented policy completely, instead domestic economic policy appears more important than full trade freedom.<sup>39</sup>



From a legal point of view, the present mutual complementarities, but not competitive economic relations between the EU and ACP countries, offer a good opportunity for ACP countries to strive towards reaching a complementary, relatively independent and win-win trade arrangement. Whereas it cannot be neglected that equality between unequal trade partners is in reality unequal, ACP countries have the rights to seek better safeguarding for some industries including infant industries, sensitive sectors, in the mean time striving for more preferential treatment than provisions in the WTO regime. Briefly, they can only make reciprocity or concessions in conformity with their economic development level. In the long term, such agreements can be considered to be a fair and appropriate arrangement.

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39. East-Asian countries including China implemented a 'chaseable' economy development tactic late in the last century. They introduced the present mature manufacture technique so as to gain a higher jumping-off point. Domestic policies were made to encourage producers to actively manufacture light industry products, especially consumable industry products. Such great adjustment in economic policy caused infant industries' development in a relatively effective safeguard context. Furthermore it also led to stronger competition before full trade openness. Article available at China Economic Times 2003-11-4. Source also available at [www.cass.net.cn/webnew/yanjiusuo/cszx/show\\_News.asp?id=282](http://www.cass.net.cn/webnew/yanjiusuo/cszx/show_News.asp?id=282) - 18k

## 5.2.2 Designing the appropriate content

According to the above principle, definite measures could be divided into two aspects: the initiative propositions and active safeguard measures.

### 5.2.2.1 The initiative propositions

In the way of trade in goods, attention needs to be paid to agricultural trade-distorting measures from the EU market and market access to non-agriculture manufacturing in new trade arrangements.

In the area of agriculture, agricultural products are traditional industry sectors with common advantage in ACP countries. It is estimated that, with agricultural products–subsidized by the EU, substantial surge in ACP countries' markets will bring further pressures to ACP countries' exporters and make agricultural products from ACP countries lose out on the export competitive advantage. In terms of the relevant provisions of the Doha Development Round of multilateral trade negotiations, since the EU call for EPAs compatible with the rule of the WTO, ACP countries can push their claims on the EU to further substantial reductions in trade-distorting domestic support in agriculture. At the same time it is recommended that least-developed ACP countries will not be required to undertake reduction commitments.

In the field of non-agriculture manufacturing, the critical point is on the revision of the EU's RoO. In actual fact, RoO may to a large extent determine market access. Some researchers have shown that while the EU offers non-reciprocal preference access to ACP countries, the complications of RoO have limited ACP countries' exporters access to fully enjoyment of the EU market.<sup>40</sup> More importantly in consideration of RoO compulsory guidelines, some products that need to be processed overseas have to move into intra-region through a local process. As a consequence, ACP countries not only spend more costs in processing products, but decrease products' competition value in the EU market as well. Another point as discussed in the third chapter, is that the

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40. See Naumann E. (2004) *Issues around Rules of Origin in the context of EPA negotiations*. tralac working paper.

lack of new and high technique, also restrains ACP countries from conducting other industries' processes, except for agriculture manufacturing at the present stage. The dependence on the EU market still holds a large proportion. So now that RoO can govern the market access in some sense, the revisions should be done so as to realize the original integration intention. The current RoO might be simplified into a single regime. The EU definitely allows ACP countries to implement a single criterion of full regional accumulation. For the ACP countries, full accumulation would be more beneficial since all ACP countries would be treated as one single customs territory and any processing operation carried out in any ACP country would qualify for determination of RoO and in effect determine market access.

In the way of trade in services, trade freedom in service would mean that each member country is required to open substantial sectors.<sup>41</sup> Considering the weak position of ACP countries' in the aspect of trade in service, inappropriate or too fast freedom is likely to generate adverse impacts on ACP countries' service integration. With the launch of negotiations, at present it seems imperative that ACP countries ask the EU member states to offer them any relevant materials about domestic trade in service. In comparison with these materials, ACP countries should firstly conduct objective assessments on trade freedom in service. Further in the analysis, ACP countries should set out an overall service development plan or strategy. In doing so, it can at least be guaranteed that specific commitments cannot diverge from their practical competence.

In terms of the General Agreement on Trade in Services (GATS), ACP countries can also require the EU to consider the flexible stipulations about the definite sectors to be opened.<sup>42</sup> The reason is that many sectors such as banks, communication, information, law affairs etc. belong to capital-knowledge intensive industries, but in ACP countries these sectors are relatively weak or over-monopolized; premature freedom in service can lead to a collapse due to the fact that ACP countries cannot afford drastic competition from the EU service market. It is therefore recommended that ACP countries should try their best to obtain more time so as to prepare for the openness of the above similar sectors.

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41. See article 5 (1), GATS.

42. See article 5 (3), GATS

and further during the transitional periods, the optimal tactics to be undertaken should concentrate on export specialization of certain service sectors; at the same time the EU should also give special attention to sectors and modes of supply of export interest to ACP countries. For example, the EU takes measures to broaden professionals' entry to the EU service market, because this mode 4 is most important for their trade in service for ACP countries.<sup>43</sup>

#### **5.2.2.2 Active safeguard measures**

The GATT and the WTO Agreement on safeguards have formulated many definite measures, but a central issue is how to take advantage of these provisions so as to facilitate more ACP countries to maximize their benefit. In light of their sole trade structure and weak competitive ability, the design of appropriate safeguard measure s needs to take careful account of the lack of capacity in ACP countries. Accordingly, in order to take the best safeguard effect, infant industry protection should firstly be put in a central position. The reasons are that provided that ACP countries do not take protective measures in advance, in ACP countries some weak and key industries are most likely to be seriously injured so that these industries cannot be established and attain further development at all; and furthermore an advantageous precondition is that a measure for the purpose of infant industry protection hardly requires any prior investigation.

It is therefore arguable that ACP countries can quote article 18, GATT, especially article 18 (b) to protect the domestic market from drastic competition from the EU market. For instance, some sectors with key or strategic significance for ACP countries' economic development such as the automotive industry, and high-tech industry can resort to article 18, GATT. For other sectors with important significance such as the material industry and equipment manufacturing, ACP countries can also consider quoting article 18, GATT to a certain extent. Regarding the sectors with common significance, the optimal approach for ACP countries is to refer to article 19, GATT. When these industries with common significance are seriously injured or are under threat of serious injury, despite

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43. See article 1 (d), GATS. Mode 4 means that "providing a service through the presence of staff or employees, but not a commercial presence in another country".

some series of preliminary and full investigations prior to the necessary provisional and definite safeguards to be taken by the ACP countries, <sup>44</sup> it cannot affect their focus of building capacity in the area of safeguards during the traditional periods, and at that time ACP countries can have adequate ability to deal with long-term trade conflicts with the EU.

In the way of service, GATS do not provide for definite safeguard measures. But in terms of article 4 and article 19, GATS, developing countries enjoy legal rights to determine whether and to what extent market access commitments can be undertaken in a specific sector relating to particular modes of supply. Accordingly it is recommended that ACP countries should take advantage of these provisions adequately. For instance: ACP countries still maintain or adopt further restrictions on market access in a specific scheduled sectors before final agreement is reached, even including the right not to further freedom in certain sectors. Such arrangement can also play a role of safeguards at the outset.

### **5.3 Conclusion**

In general the EPAs' negative impact on the economy can be embodied through the integration of various industries. Safeguard measures related to various sectors can only lessen those negative impacts, but cannot eliminate them completely. While in theory ACP countries can explore a complementary economy with relative independence, and a win-win trade agreement can be reached between them, the present biggest problem, which needs to be resolved, is unequal trade relations between the EU and ACP countries. Furthermore the reciprocal arrangement on this base can result in safeguard measures being invalid. Seeking real regional integration through trade arrangement still relies more on the individual efforts of ACP countries

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44. See the WTO Agreement on Safeguards for the requirements for the imposition of provisional and definite safeguard measure.

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