

FACT SHEET N°12

EPAs AND DEVELOPMENT ASSISTANCE: REBALANCING RIGHTS AND OBLIGATIONS

September 2008
Geneva, Switzerland

This South Centre Analytical Note is produced by the South Centre to contribute to the better participation of developing countries in trade and development negotiations. Readers are encouraged to quote or reproduce the contents of this South Centre Analysis for their own use, but are requested to grant due acknowledgement to the South Centre and to send a copy of the publication in which such quote or reproduction appears to the South Centre.

This Analytical Note was jointly prepared by Nanda Srikantiah and the Trade for Development Programme.

Electronic copies of this and other South Centre publications may be downloaded without charge from <http://www.southcentre.org>.

EPAS AND DEVELOPMENT ASSISTANCE: REBALANCING RIGHTS AND OBLIGATIONS

TABLE OF CONTENTS

I. INTRODUCTION.....	1
II. OVERVIEW OF COSTS THAT WILL BE GENERATED BY THE ENTRY INTO FORCE OF THE EPAS.....	3
a. Tariff reduction and elimination and the loss of fiscal revenues.....	4
b. Trade facilitation and improvement of the trading infrastructure.....	7
c. Production and Employment Adjustment Costs	8
d. Skills Development and Productivity Enhancement	9
e. Domestication, implementation and enforcement of EPAs.....	9
III. HOW EPAS AND INTERIM EPAS HAVE DEALT WITH ASSOCIATED COSTS.....	10
a. The Umbrella Development Cooperation Clause	11
b. Specific Cooperation clauses	15
IV. UNCERTAINTIES RELATED TO EU'S AID: AID FOR TRADE AND THE EDF.....	18
a. Europe's Aid for Trade Strategy	19
b. The Effectiveness of the EDF.....	24
c. Regional EPA Funds	28
V. CONCLUSION.....	30

EPAs AND DEVELOPMENT ASSISTANCE: REBALANCING RIGHTS AND OBLIGATIONS

I. INTRODUCTION

1. The Economic Partnership Agreements being negotiated between the European Union and several regions of the African, Caribbean and Pacific (ACP) mark a fundamental change in the EU-ACP economic and trade relations. In fact, the agreements will progressively establish a Free Trade Area (FTA) between some of the most advanced economies and some of the most vulnerable economies in the world. As such the EPAs are based on reciprocal, albeit asymmetrical, trade liberalisation. Moreover, EPAs could encompass rules and reforms on a variety of legislative areas, such as services frameworks, competition policy, investment policies, government procurement practices, intellectual property rights, labour and investment. Because of their breadth, content and complexities, not only are the EPAs a marked change in EU-ACP overall relations but they are also an unprecedented challenge for ACP governments.
2. Nevertheless, even the most optimistic observers of EPA negotiations would agree that while the reforms proposed by the EPA could benefit ACP countries in the long term, there are short and medium term costs that could overshadow or even offset potential gains.
3. One of the central problems of the EPAs is in fact that there are high costs related to the implementation of and adjustment to these agreements. On the one hand, little or no reforms will be required from the EU to comply with the EPA and European economies will most certainly not face difficulties after greater liberalisation to ACP products. On the other hand, however, greater competition from EU imports is very likely to exert pressure on ACP producers and governments will need to undertake large regulatory and economic reforms to comply with the EPAs. These implementation and adjustment costs will fall on both the government and the private sector of ACP countries.
4. The European Commission, negotiating the EPAs on behalf of EU's Member States, acknowledges these costs. In the words of EU's Trade Commissioner, P. Mandelson, there is a clear commitment from the EU *"to increase trade-related assistance to 2 billion Euros a year by 2010, with a substantial share going to the ACP. Alongside this is a substantial amount of EPA-related EDF funding. If confirmation was needed, we now have it: the money to accompany EPAs is there"*.¹
5. According to the European Commission, development aid will be provided to comply with the costs of the EPAs, such as loss of customs revenue due to EPA's tariff liberalisation schedules. There is thus no need to apprehend the reforms of

¹ Address to the European Socialist Party Conference on Economic Partnership Agreements by Peter Mandelson, European Parliament, Brussels, 19 October 2006, last accessed on 22 September at http://ec.europa.eu/commission_barroso/mandelson/speeches_articles/sppm123_en.htm

the type the EPAs would introduce because European cooperation will accompany ACP governments in implementing these agreements.

6. For ACP governments, however, development cooperation within the EPAs extends beyond the strict costs of implementation of these agreements. It should also enable ACP productive sectors to actually upgrade and expand their capacity to make effective use of the market access opportunities EPAs could create. After several decades of poor utilisation of the Lomé-Cotonou trade preferences, ACP governments recognise that trade liberalisation alone will not necessarily boost productive capacity and that structural constraints could hamper the ability of ACP exporters to fully utilise market access opportunities. Moreover, particularly because of the economic and competitiveness asymmetries that oppose Europe to ACP producers, flanking measures will be necessary or indispensable to ensure that liberalisation does not marginalise vulnerable sections of the society.
7. While the European Commission acknowledges that development cooperation may be a useful instrument to cover this type of costs too, EU-ACP divergences become apparent as soon as that understanding has to be translated into legal language in the text of EPAs. All the EPA texts initialled at the end of 2007 – whether the EU-CARIFORUM comprehensive EPAs or all other Interim EPAs – only contain vague commitments with respect to development assistance. Language is typically vague and entirely non-binding on the EU. This has generated uncertainties regarding the availability and quality of development assistance. It has, in addition, introduced an imbalance in the agreements whereby ACP negotiators have to accept time-bound and legally enforceable obligations without having legal guarantees that possible costs will be covered by the EU.
8. This study delineates and examines the types of costs usually associated with the implementation of and adjustment to the EPAs (Section 1). It then reviews how EPA texts initialled at the end of 2007 have reflected these costs or assistance to cope with them (Section 2). Finally, this study reviews the two main instruments which the European Commission has argued will be used to channel EPA-related assistance: the European Development Fund (EDF) and the European Aid for Trade (Section 3).
9. The purpose of this study is to highlight the inherent imbalances interim EPA texts contain with regard to development assistance. Its analysis, furthermore, can provide guidance to regions and countries that need to draft language regarding financial cooperation in their EPAs so that they strengthen EPA legal language in that respect.

II. OVERVIEW OF COSTS THAT WILL BE GENERATED BY THE ENTRY INTO FORCE OF THE EPAs

10. The EPAs mark a decisive move away from a non-reciprocal preferential trading relationship to a reciprocal trading relationship between the ACP countries and the EU. In fact, these agreements are akin to Free Trade Agreements (FTA), in so far as they aim at the liberalization of trade in goods and in services between the EU and the ACP parties. They might, moreover, contain additional obligations and rules relating to, for instance, investment, competition policy, government procurement, and intellectual property. The European Commission itself sees the EPAs as an instrument of change. It is this shift in the paradigm of EU-ACP relations that makes the availability of trade and production-related assistance so necessary.
11. In fact, the sheer negotiation of EPAs has demanded unprecedented administrative and negotiating capacity from ACP governments. Many of the areas under negotiation are entirely new for several ACP governments negotiating the EPAs. The initialling of interim agreements at the end of last year and the perspective of their entry into force after signature makes the need for EPA-related development assistance concrete.
12. By now, both ACP and European negotiators acknowledge that EPAs will come at a high cost and that the benefits of the agreement could be severely constrained or even nullified if economic, productive and trade conditions are not favourable. While EPAs can be expected to bring benefits for ACP economies over the longer term, the immediate short and medium term costs are likely to be very significant and may overshadow long term expected benefits from the EPAs.
13. Several studies have tried to anticipate these costs in an effort to provide negotiators with better elements to help them formulate their requests during the negotiations. Some studies have also tried to quantify what these costs could be, both at the national or regional level. The table below offers an illustration of these costs and illustrates the relative weight of the costs by categories.

Estimated Costs of EPAs by Region (Euros)

Region	Total estimated costs	Fiscal adjustment	Upgrade of Export capacity*	Production and Employment Adjustment	Skills and Productivity Enhancement
	<i>Euros</i>	<i>(% of total)</i>			
Caribbean	924,000,000	40.6%	21.5%	15.2%	22.7%
ESA	2,687,000,000	30.7%	28.0%	15.4%	25.9%
SADC	1,073,000,000	31.7%	24.3%	20.25	23.8%
West Africa	2,789,000,000	34.2%	25.5%	15.1%	25.1%
Central Africa	880,000,000	30.7%	29.2%	17.4%	22.7%
Pacific	642,000,000	32.7%	27.3%	12.8%	27.3%

Source: adapted from Chris Milner, "An Assessment of the Overall Implementation and Adjustment Costs for the ACP Countries of Economic Partnership Agreements with the EU," in R. Grynberg and A. Clarke (2006)

* It should be noted that Milner's "export diversification" category covers a narrow definition of trade facilitation and excludes major infrastructural works (energy, transportation, etc.), which would significantly increase the estimates for this heading.

14. This section reviews the main types of costs that EPAs are likely to generate for ACP governments. It also summarises some studies that have attempted to quantify these costs.

a. Tariff reduction and elimination and the loss of fiscal revenues

15. One of the best known types of costs that the entry into force and implementation of EPAs will generate concern the loss of customs revenue due to the elimination of import tariffs. The reduction and eventual elimination of tariffs collected on EU imports is indeed likely to result in significant losses in government revenue. The extent of the impact of tariff reduction on government revenue is difficult to quantify as it depends on several variables. However, two of the most significant elements determining which countries will be most affected include:

- The relative weight of tariffs within a country's fiscal revenues, that is, the more a government relies on customs revenue, the greater the impact is likely to be; and,

- The relative importance of the EU as a trading partner for a specific ACP country. Since tariffs will be eliminated only on EU imports (not imports from other countries), the impact will be greater where the EU is a country's main source of imports.

16. The revenue impact of EPAs will be considerable under both accounts. Firstly, ACP governments are heavily dependent on import taxes as a source of money for their budgets. This dependence is partly because import taxes are relatively cost efficient and easy to administer, and in many ACP countries the formal private sector is small.² A World Bank study estimates that for countries in sub-Saharan Africa, tariff revenues account for on average 7-10% of government revenue.³ The share of tariffs as a total of tax collected can be as high as 53% as reported in the table below.

Import duties as a share of Total Tax Revenue 2001 (not EU specific)⁴

Country	Share (%)	Country	Share (%)
Burundi	16.4%	Guinea	42.9%
Cameroon	31.6%	Mauritius	29.3%
Congo D.R.	33.7%	Papua New Guinea	24.2%
Congo R.	23.2%	Sierra Leone	49.8%
Cote d'Ivoire	27.6%	Swaziland	54.7%
Ethiopia	26.3%	Uganda	50.3%

Source: Table 5.6 of the *World Development Indicators*, 2003, World Bank, p.281.

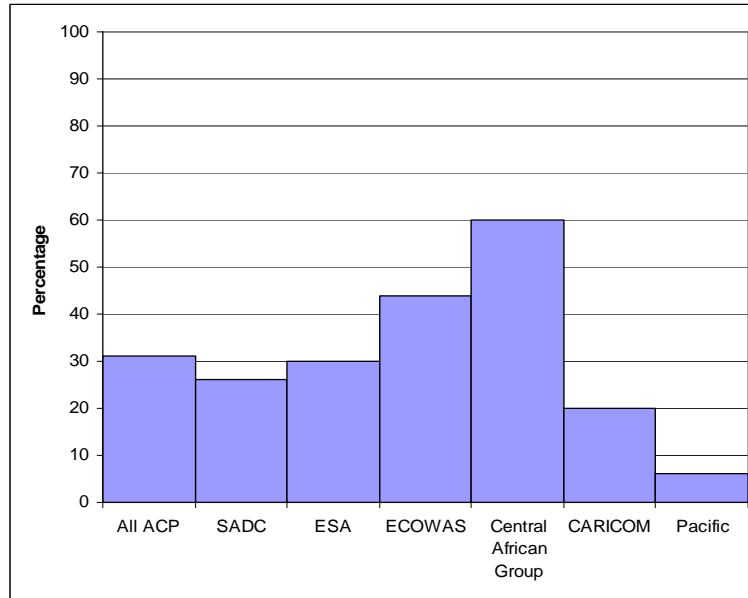
17. Secondly, an EPA will have a significant impact because the vast majority of ACP imports (and hence import taxes), come from the EU. The Diagram below shows the share of total ACP imports from the EU. For countries in Central and West Africa over 40% of all their imports come from the EU. In Cape Verde 74.3% of all imports come from the EU, and in Gambia 61.8%.

² In general, the use of income tax is also a difficult means for collecting government revenue because a large proportion of economic activity in ACP countries is carried out in the informal sector.

³ L. Hinkle et al (2005) *Beyond Cotonou: Economic Partnership Agreements in Africa*. In: Trade, Doha, and Development: A window into the issues, Newfarmer, R. Washington DC: The World Bank: pp. 267-280.

⁴ Import duties comprise all levies collected on imported goods at the point of entry into the country.

Diagram 1: ACP Imports from EU as a share of total ACP Imports (2004)



Source: 2004 COMTRADE data (Note: based on all imports, except oil)

18. Various studies have attempted to estimate the impact of an EPA on government revenue using current levels of applied tariffs to calculate the impact of a fully-phased in liberalisation of all imports from the EU.⁵ It is estimated that tariff revenue loss (from the lowering of tariff barriers against EU products), may amount to as much \$1.9 billion in African countries.⁶ However, the impact also varies among very small, small, medium, and large ACP countries, with smaller countries bearing the heavier side of tariff revenue loss.⁷ A recent analysis based on the African interim EPAs estimates that revenue losses could materialise very quickly for several countries and could amount to \$359 million per year (for African countries having initialled the interim EPAs alone).⁸

19. European financial assistance will be necessary both in the short and long term to ensure the implementation of EPAs will not jeopardise government's financial capacity. Fiscal reforms will certainly be necessary to shift taxation to other bases

⁵ These studies use partial equilibrium models to estimate tariff revenue losses. M. Busse and H. Großmann (2004); P. Khandelwal (2004) 'COMESA and SADC: Prospects and Challenges for Regional Trade Integration', WP/04/227, International Monetary Fund, Washington, DC.; Karingi et al. UNECA (2005a) 'EU-SADC Economic Partnership Agreement: A Regional Perspective', African Trade and Policy Centre (ATPC) Work in Progress No. 28; Karingi et al. UNECA (2005b) 'Assessment of the Impact of the Economic Partnership Agreement between the ECOWAS Countries and the European Union', African Trade and Policy Centre (ATPC) Work in Progress No. 29.

⁶ Stephen Karingi et al, "Economic and Welfare Impacts of the EU-Africa Economic Partnership Agreements," UNECA African Trade Policy Centre, March 2005, available from: <http://www.uneca.org/atpc/Work%20in%20progress/10.pdf>

⁷ Milner 2005 : 17

⁸ C. Stevens et al, "The new EPAs: comparative analysis of their content and the challenges for 2008", ECDPM and ODI (March 2008), available at: www.ecdpm.org/pmr14

(e.g. consumption taxes). However, reforms of fiscal legislation are politically sensitive and implementation can be a lengthy process. Moreover, empirical experience show that, even in developed countries, only a fraction of customs taxes can be recovered through reforms, which indicates that medium to long term budget support from the European donors may also be indispensable.

b. Trade facilitation and improvement of the trading infrastructure

20. Costs related to trade facilitation and export adjustment are associated with the need to invest in potential new export sectors to take greater advantage of the new export opportunities offered by the EPAs. It may entail inducing and financing significant productive changes, often away from low value-added agricultural or mineral exports. It also entails encouraging greater local processing and manufacturing of products. These costs would also encompass the creation of public facilities to support existing or new exporters (standard and quality controls, more efficient customs procedures, etc.).
21. In addition, greater competition of European imports in local ACP markets may also exert pressure on producers which may need to upgrade technologies to remain competitive in local or regional markets. For many ACP countries, developmental gains from the EPAs may in fact come from improvements in productive capacity rather than solely from trade.
22. ACP governments may be strongly involved in building the infrastructure necessary for exports, but it is private exporters who will need to be trained in diversifying exports and marketing to EU markets. The SADC interim EPA, for instance, binds SADC signatory governments to communicate any information regarding customs legislation, procedures and fees to the business community.⁹ They must also ensure that business leaders are prepared to take advantage of the change, through training and technical assistance regarding exports and marketing.
23. With these factors in mind, Milner places the actual cost of trade facilitation at €2.3 billion for all ACP countries. Nevertheless, costs are not evenly distributed. Small import-dependent economies that rely on exports of a single agricultural product would face greater trade facilitation and export diversification costs than larger economies with a more diversified industrial fabric. Moreover, it is difficult to quantify these costs as they depend on the perceived comparative advantages of individual economies.
24. A major challenge of framing development assistance related to this area is that, precisely because of the heterogeneity of ACP economies, it is difficult to capture language that could serve the interests of all ACP countries. Trade facilitation projects would have very different objectives and costs in different countries and the capacity of private sector itself is very different from one ACP economy to

⁹ SADC Economic Partnership Agreement text, Chapter III, Article 40/41

another. Indeed, size is not the only factor that economies must consider in facilitating trade. They also must be aware of their own patterns of comparative advantage and potential for greater exports. Consequently, “one-size-fits-all” trade-related assistance would not be suitable for a heterogeneous group such as that of the ACP countries. This could demand a combination of complementary national and regional trade-related assistance programmes to respond to EPA needs.

25. It must also be noted that trade liberalisation, particularly in Africa, has not injected the expected dynamism in economies and several countries have failed to improve their export performance following the removal of import barriers. Indeed, as a proportion of gross domestic product (GDP), exports in Africa increased by only 10 per cent following liberalization. In comparison, non-African developing countries saw their exports as a share of GDP increase by 62 per cent. The increase in exports was also smaller than the increase in imports, leaving the trade balance in Africa in a worse situation after liberalization. The trade structure of African countries did not undergo significant changes in the years following trade liberalization and, in comparative terms, sub-Saharan Africa remains the region with the highest dependence on primary commodity exports.¹⁰
26. Finally, it should be noted that trade facilitation costs, in their broadest sense, would cover not only specific trade-support interventions but also major infrastructural projects to make ACP economies – and hence ACP exports – more competitive. This would include colossal efforts to upgrade trading and productive infrastructure, such as roads, transports and harbours, lower telecommunication and energy costs, improve irrigation and increase the utilisation of fertilisers, etc. While this type of financing is not strictly or exclusively related to the implementation of EPAs, it remains, nevertheless, essential for the improvement of ACP competitiveness and export diversification.

c. Production and Employment Adjustment Costs

27. As mentioned above, it is very likely that the greater competition posed by European imports end up displacing domestic production, hence exerting pressure on local labour markets. As a result, a third category of costs covers measures that may be required to adjust production and employment. A UNECA study on the African regions¹¹ as well as Milner’s analysis converge on the fact that the greatest effect of EPAs will be on labour, and ACP countries may have to adjust to the shocks with better social safety nets or government-sponsored skills-training programs. Support for workers affected by EU imports is essential so that the reforms required by the EPAs are not jeopardised by resentment in the productive sectors and the society as a whole. It is also crucial

¹⁰ UNCTAD “Economic Development in Africa - Export Performance following Trade Liberalization: Some Patterns and Policy Perspectives” (2008)

¹¹ Milner 2005: 28; Karingi 2005: 57

in order to mitigate the marginalisation of portions of the society and thus avoid a result where EPAs contribute to greater poverty instead of its eradication. This trade-related assistance cluster relates most directly to minimising the social costs of EPAs.

28. These costs could amount to as much as €1.5 billion.¹² However, the experience in mitigating labour effects after trade liberalisation has had limited success even in developed countries that have put similar programmes in place. Programmes in the USA and Sweden have not been as effective as originally thought.¹³ Thus, by undertaking programs to relieve the pressures on unskilled labour and to support employment in more profitable sectors, ACP countries will incur greater costs over time, and may not recover these costs in effectiveness of adjustment post-EPAs.

d. Skills Development and Productivity Enhancement

29. This category of adjustment costs is closely related to the former category but distinct. It relates directly to the need for ACP governments to foresee the changes that EPAs will bring about in order to encourage a better response from employment markets. This comprises projects to improve education and skills and train workers to support the emergence of new competitive sectors of production. It also entails facilitating the utilisation of innovative management and production methods.
30. These are more difficult to measure than the other categories. However, Milner's study focuses on secondary school enrolment rates as an indicator of how much adjustment a country will need to go through (the lower the enrolment, the more adjustment is necessary for increased skills development) and combines these characteristics with estimated cost of skills enhancement projects the World Bank is currently implementing in different countries. He ultimately concludes that these costs will be €2.3 billion on average.¹⁴ Again, as with the earlier categories, there are great differences based on the size of the country's economy and their particular comparative advantages.

e. Domestication, implementation and enforcement of EPAs

31. The last category of costs generated by the EPAs does not relate to the adjustments that ACP economies have to go through in order to minimise the impact of the agreement and maximise its benefits. Instead, it relates to the strict costs of implementation, enforcement and compliance with the clauses of the agreement.

¹² Milner 2005: 4

¹³ Milner 2005: 28

¹⁴ Milner 2005: 4

32. As a matter of fact, EPAs commit ACP countries not only to eliminate certain trade barriers but also to reform regulatory frameworks and domesticate certain disciplines. This will produce a variety of administrative costs, especially since the disciplines could mirror the European Union's practices and regulations, which are currently not applied in ACP countries. For instance, costs of reforming customs regulations or enacting new government procurement legislation. These are not necessarily one-off costs as the enforcement of EPAs will also draw administrative resources (e.g. establishment and functioning of a Competition authority).
33. To those costs, one must add the costs related to the continuation of negotiations even after the conclusion of the agreements, as, it would seem, subsequent rounds of negotiations may be required under a specific built-in negotiating agenda (e.g. services negotiations or possible revisions).
34. While it is true that the reforms induced by the EPAs could benefit ACP economies as a whole and thus offset these costs, it is undeniable that implementation, monitoring and enforcement of EPAs will put national administrations, that typically count with limited human and financial resources, under strain. For instance, it was only after the negotiation of the WTO Uruguay Round that poor developing countries and least developed countries realised that some of the disciplines they had agreed to were very costly to implement (e.g. protection of intellectual property rights).
35. It is not possible to quantify these costs in the absence of final agreements, but it is possible to affirm that the more areas and disciplines covered by the agreements, the larger the implementation and compliance costs will be.

III. HOW EPAs AND INTERIM EPAs HAVE DEALT WITH ASSOCIATED COSTS

36. The implementation and adjustment costs are quite well understood by ACP negotiators. The European Commission also understands that these costs will be incurred. It is not surprising hence that EPA texts, either those initialled at the end of 2007 and those currently being drafted, comprise legal language on how Europe and ACP countries may cooperate to cope with such costs. Nonetheless, while the notion of development assistance permeates the EPA texts (the word "cooperation" appears 135 times and "development cooperation" appears 15 times in the EU-CARIFORUM EPA text), the interim EPAs initialled so far lack clear guidelines for the delivery of trade-related assistance and in that sense create legal uncertainty concerning financial cooperation.
37. The principal problem with the EPA texts is the lack of legal certainty regarding the disbursement of specific EU funds to flank the implementation of and adjustment the EPAs. While the promise of development aid and "cooperation" permeates EPA texts, specific clauses are crafted in vague and entirely non-

binding language. This is true of the overall or umbrella development cooperation clause (a), the issue-specific cooperation provisions (b), and the regional EPA funds (c) discussed in this section.

38. While the EC has portrayed the interim agreements (or *first step EPAs*) as soft, not very binding, flexible agreements, in reality, the provisions detailed in these agreements create a large number of binding obligations for ACP governments and require important reforms. The implementation of reforms or disciplines is often tied to specific deadlines and non compliance with the terms of the agreements could be sanctioned through a dispute settlement mechanism. Even in the interim agreements, which only cover a limited number of disciplines, specific obligations include the elimination of restrictions on imports (tariffs) and exports (quotas, licenses, taxes), the harmonisation at the regional level of all technical norms, standards, quality conformity requirements and procedures, administrative cooperation and reform of customs practices etc.
39. Vagueness of the language raises questions regarding the ability of ACP governments to enforce development cooperation obligations. Moreover, the contrast between specific and time-bound obligations accepted by the ACP party and the vagueness of commitments taken by the EC introduces a serious legal imbalance in the agreements. These imbalances are compounded by the much larger and structural EU-ACP asymmetries. These imbalances and the lack of clarity over EPA's value addition regarding development cooperation was certainly a consideration that convinced some ACP states not to initial an interim EPA at the end of 2007.¹⁵

a. The Umbrella Development Cooperation Clause

40. All EPA texts initialled at the end of 2007 contain a development cooperation clause that provides a framework for cooperation for the entire agreement (umbrella clause). The clause makes clear that EPAs should constitute one of the priorities of EU-AC development cooperation so that financial and non-financial assistance can maximise the expected benefits of EPAs. The clause also establishes that the Cotonou Agreement shall constitute the framework for development cooperation, and that the programming requirements of existing EU instruments shall remain applicable (in particular those of the European Development Fund (EDF)). Finally, the clause establishes that both the European Community and the EU's member states have a responsibility in the delivery of trade-related assistance to ACP countries in the context of the EPAs.

¹⁵ Hilaire Avril, "EU 'Rushing' EPA lest African States Change their Minds," Inter Press Service, 17 June 2008

Example of a Development Cooperation Clause - EAC - EU interim EPA

The EC Party and the EAC party reaffirm their recognition of development needs of the EAC region, and their commitment to ensure that EPA is a tool for development which will promote and consolidate regional integration and aid the integration of EAC into the global economy. The Parties agree to work together to define and address the development needs associated with the EPA in order to promote sustained growth, strengthen regional integration and foster structural transformation and competitiveness to increase production, supply capacity and value addition of the countries concerned.

The EC Party confirms it will contribute towards the resources required for development under the 10th EDF Regional Indicative Programme, Aid for Trade and the EU budget.

41. However, the exact wording of these provisions can differ somewhat from the text initialled by one region to another. Some clauses, such as that of the EU-CARIFORUM EPA text, are more detailed and identify development “priorities”. Others simply allude to the idea of development cooperation without specifying particular areas of priority. Language can be slightly more or less binding in the different texts, although it must be recalled that, in the case of interim EPAs (initialled by African and Pacific ACP governments), the texts are still subject to improvements. In some cases, (Cameroon, EAC), the initialled texts clearly mention that further negotiations are still needed to finalise the language regarding financial cooperation. Therefore, the clauses, as commented upon in this study, may change in the future. Some of the commonalities and differences are described in the table below.

Commonalities among the Umbrella Development Cooperation clauses

EPA Language	CARIFORUM	CI/GHANA	SADC	EAC	ESA*
Development is a crucial element of cooperation” and can take “financial and non-financial forms	✓	✓	✓	✓ (financial and non-financial forms)	✓ (although with different wording)
Cotonou provides the relevant instruments for cooperation; the EDF will provide programming instruments.	✓	✓	✓	Absent (mention is only made of 10 th EDF RIP, AfT and EU	✓

Implementation of the EPA is a priority				budget)	
The parties shall cooperate to access other financing mechanisms and "other donors"	Absent	✓	✓	Absent	✓
Development matrix (costed enumeration of priorities)	Absent	Absent	Absent	Absent	✓
New Regional EPA Fund	Absent	✓	✓	Absent	✓
Monitoring of EU-ACP cooperation	✓	Absent	Absent	Absent	Absent

**The ESA Agreement also includes information on the Development Matrix, Aid Effectiveness and the Paris Principles, Monitoring of the Development Cooperation Chapter, and refers to the timely disbursement of funds.*

42. First, all of the agreements include the basic development cooperation definition, alternatively indicating that development cooperation is a "crucial element" of the Partnership,¹⁶ or, that the parties will cooperate to address the "developmental needs" of the region or country (for the EAC/ESA agreements). From a textual standpoint, the two definitional provisions indicate slightly different forms of implementation. The second version may in fact be more binding and specific, as it dictates the actions of the different parties. Meanwhile, the first version only "recognizes" the importance of development cooperation to the realization of the agreement. This sets the tone for the remainder of the development cooperation provision, which is wholly non-binding in all of the EPA texts. However, it is important to note that some agreements (e.g. CARIFORUM and SADC) also have more specific information about the types of development cooperation member parties will engage in.

43. The different texts also mention the objectives of cooperation, which consist typically of supporting the implementation of the agreement and the attainment of its (developmental) objectives. An interesting specificity of the EU-ESA interim EPA is that it is much more detailed and specific than other texts, including with respect to the objectives of cooperation:

The economic and development co-operation shall aim at enhancing the competitiveness of ESA economies, building up supply capacity and enabling ESA States in implementing the EPA smoothly.

¹⁶ CARIFORUM, SADC EPA texts

The economic and development co-operation shall aim at the structural transformation of ESA economies by establishing a strong, competitive and diversified economic base in the ESA States through enhancing production, distribution, transport, marketing; developing trade capacity of ESA States as well as capacity to attract investment; and strengthening ESA Group's trade and investment policies and regulations and deepening regional integration.

44. Another commonality in the texts is the promotion of regional integration. In some texts, such as the CARIFORUM text, this regional integration will occur "as provided for in the Cotonou Agreement," while in others regional integration is alluded to without qualifications. In fact, the deepening of regional economic integration and the consolidation of regional markets are said to be at the heart of the EPA strategy. This is consistent with the regional disbursement of aid under the Cotonou Agreement and the implementation of EDF cycles based on Regional Indicative Programmes.
45. The issue of "other financing" and "other donors" is also delineated in nearly all of the texts, albeit in different forms, but this, too, lacks clarity. The SADC and ESA texts provide clear examples of different approaches to the issue of other funding mechanisms. The SADC text notes that "adequate resources" will be required for EPA implementation and thus indicates that the "Parties shall cooperate to enable SADC EPA States to access other financial instruments as well as facilitate other donors willing to further support the efforts of the SADC EPA States..."¹⁷ The use of language such as the "Parties shall cooperate to enable...to access" is fairly weak in terms of implementation, and provides less of a "fall-back" in the event of a dispute. Moreover, the "other donors" and "other financial instruments" are never named or clearly delineated, which makes the section vague.
46. In contrast, the language of the ESA text is more specific and clear: "Both Parties shall cooperate to mobilize resources additional to the financial framework of the EU...in particular expanding Aid for Trade, relating specifically to EPA support requirements and adjustment costs."¹⁸ Not only is a specific funding mechanism - Aid for Trade - referred to in this section, but the text has specified that other sources of funding will be used *in addition to* the financial framework of the EU (probably EU Member States and multilateral donors, although this is not specified).
47. Mentioning "other donors" having recourse to other sources of funding, to some extent lessens the responsibility of the European Commission and the EU's member states in supplying the funds needed to implement and adjust to EPAs. However, this could also be read as a call for greater donor coordination, which would be positive, particularly having regard to the volume of resources that some interventions would necessitate (e.g. infrastructure).

¹⁷ SADC EPA, Chapter II: Development Cooperation

¹⁸ ESA text, Chapter IV, Title I, Article 36

48. Finally, it is worth mentioning that the umbrella development cooperation clause in the EU-CARIFORUM text also lays the foundation for an important aspect of cooperation, namely the review (monitoring) of that cooperation. This is an essential element as an improvement of the timeliness and effectiveness of EU development assistance is as important as an increase of that assistance. It is also important as it offers ACP countries the possibility of linking the delivery of assistance to the implementation of their specific obligations.
49. In this respect, it should be noted, nonetheless, that while the clause creates a clear obligation “*Cooperation [...] shall be kept under ongoing review and shall be revised as necessary*”, it does not set the procedures, timelines or criteria for that review, which clearly diminishes its effectiveness. It should be recalled, in addition, that this type of review clause is not present in all initialled EPAs. However, as mentioned above, some agreements specify that further negotiations in 2009 will take place to clarify the modalities of delivery of assistance (Cameroon, and EAC).

EPA Revision clause (EU-CARIFORUM EPA text)

1. The Parties agree to consider extending this Agreement with the aim of broadening and supplementing its scope in accordance with their respective legislation, by amending it or concluding agreements on specific sectors or activities in the light of the experience gained during its implementation. [...].
2. As regards the implementation of this Agreement, either Party may make suggestions oriented towards adjusting trade related cooperation, taking into account the experience acquired during the implementation thereof.

b. Specific Cooperation clauses

50. Specific chapters of the agreements complement the umbrella development cooperation clause. According to the EU-CARIFORUM EPA text, “*Areas of cooperation and technical assistance are set out, as appropriate, in the individual chapters of this Agreement.*” Given the shortcomings of the umbrella “development cooperation” provision, it could have been strategic to reinforce the language concerning financial cooperation on specific areas of mutual interest.
51. Some initialled agreements do that. For instance, the EU-Ghana’s interim EPA enumerates, in addition to general assistance, the specific areas in which both parties commit to cooperate in. Cooperation areas mentioned are as follows:
- Improvement of the business climate;
 - Support for the implementation of the trade-related rules established by the EPA;

- Strengthening and upgrading of productive sectors, particularly:
 1. the repositioning of private sector vis-à-vis new economic opportunities;
 2. the definition and the implementation of upgrading strategies;
 3. improvement of the environment of private sector and business climate
- The promotion of a partnership between private sectors of both Parties; and,
- Cooperation in respect to financial impact of tariff elimination under the EPAs.

52. With minor drafting differences, an otherwise identical enumeration of these elements is also present in the EPA text initialled by Côte d’Ivoire.

53. An important addition of the ESA interim EPA is that, in addition to the general framework proposed in all other EPAs, the text also mentions that cooperation will be based on a “development matrix” attached to the text and outlining the different development programs the EU funds would go to: “The Parties agree that cooperation will be based on the ESA Development Cooperation Strategy and the jointly agreed Development Matrix”. The ESA text is the only agreement so far that has such a high level of specificity regarding development cooperation, although other regions seem to be seeking a similar outcome. The language of the agreement also calls for “predictable, timely and sustainable” resources based on the development matrix.¹⁹ However, the development matrix is only referred to as an “annex” document, while the ESA negotiators originally wanted it to be integrated into the main body of the agreement.

54. In addition to the areas identified in its development matrix, the EU-ESA EPA text also enumerates an extensive list of 18 broad areas and additional 7 specific areas for financial and non financial cooperation.

55. An interesting difference in the EU-SADC initialled EPA is that, in addition to enumerating some areas for cooperation, it also proposes a non-exhaustive list of possible ways in which cooperation could happen:

- policy development;
- legislation and regulatory framework development;
- institutional/organizational development;
- capacity building and training;
- technical advisory services;
- administrative services;
- support in SPS and TBT areas; and,
- operational support including equipment, materials and related works.

56. However, despite ACP negotiators’ efforts to make development cooperation clauses as issue-specific and as concrete as possible, the extent to which these provisions could be legally enforceable is questionable. The use of carefully chosen words such as “the Parties agree to cooperate to implement this Agreement” and “the Parties agree to work cooperatively towards the realization

¹⁹ ESA-EU EPA, Chapter IV, Title I, Article 36

of sustainable development” (EU-SADC interim EPA) establishes the objectives for cooperation but do not obligate either the EU or the ACP countries to actually realize these objectives. The use of language such as “The parties shall cooperate” or the “the parties will cooperate” combined with an enumeration of specific areas and financing instruments would establish stronger obligations.

57. An additional source of uncertainty is the fact that financial cooperation can be suspended under certain conditions. For instance, in the SADC EPA the EU delineates “exceptions to the obligation for assistance” where the use of language such as “assistance may be refused” or “may be postponed” is much stronger and more binding.²⁰ In the SADC EPA text, assistance “may be subject to the satisfaction of certain conditions”, for instance related to security, public policy, or the sovereignty of a SADC or EU member state.
58. In contrast to unclear language in the development cooperation chapters, two of the EPA texts are extremely clear in one particular chapter: dispute settlement. In the texts initialled by Cote d’Ivoire, Ghana, Cameroon, Papua New Guinea and Caribbean countries, the dispute settlement chapter clearly applies to all matters arising under the EPA, *with the exception of* development cooperation and finance. Disputes arising under development cooperation issues must follow Article 98 of the Cotonou Agreement. Even the more elaborate EU-ESA interim EPAs exclude development finance cooperation from the remit of the EPA dispute settlement procedures. Interestingly, this limitation is not present in the SADC interim EPA.
59. There are thus two possibilities for EPA dispute settlement: a DSM as articulated in the EPAs, and Article 98 of the Cotonou Agreement. Most of the EPAs mandate that the parties use Article 98 of Cotonou. The problem is that in both the Cote d’Ivoire and Ghanaian Agreements, the Dispute Settlement section is comprehensive and well-articulated, with clear timelines for compliance and procedures for appeal for both parties. Article 98 of the Cotonou Agreement, however, is a much simpler form of dispute settlement and is more questionable in terms of objectivity and fairness (see the table below summarizing the differences). The disputes are first taken to the Council of Ministers, and are only referred to arbitrators at the Permanent Court of Arbitration if the Council of Ministers is unable to reach a decision.

²⁰ SADC EPA, Protocol II, Article 9

Comparison of the EPA and Cotonou Agreement DSMs

Dispute Settlement Mechanism in the CARIFORUM, Ivorian, and Ghanaian EPA Agreements	Dispute Settlement from Article 98 of the Cotonou Agreement
Consultation process, followed by mediation, followed by the establishment of an arbitration panel	Disputes are immediately referred to Council of Ministers, or the Committee of Ambassadors in between Ministerial meetings
Interim Panel Report, with opportunity for comments by both parties	Arbitration is turned to if the Council of Minister cannot resolve the dispute and the Permanent Court of Arbitration regulations for arbitration will be followed
The decision must be made within 150 days, but if it cannot, an extension can be granted	The decision must be made within three months, no information given about an extension
Clear specifications for the time needed for compliance by the losing party, including temporary remedies in the case of non-compliance	The parties will be bound to carry out the decisions of the arbitrators

60. Another specific issue that arises with the uncertainty surrounding aid is the issue of timelines. Particularly, there are specific guidelines for the obligations of ACP countries in lowering their tariffs and opening their markets, but there are no such specificities regarding the disbursement of aid from the EU. The “development cooperation” chapters of most EPAs, however, simply mandate that there will be “support” for the transition to liberalization, without tying such support to liberalization schedules or types of liberalization.²¹

61. Finally, the specific areas for cooperation contained in the individual EPA chapters tend to delineate areas for technical assistance rather than financial assistance. Their scope is, moreover, on the implementation of the obligations under a given chapter rather than on the broader developmental agenda.

IV. UNCERTAINTIES RELATED TO EU’S AID: AID FOR TRADE AND THE EDF

62. Even assuming that all uncertainties regarding development cooperation language in the EPAs do not become an obstacle to cooperation, there remain fundamental problems with the content of the trade-related assistance instruments that will be used.

²¹ Development Cooperation chapters of SADC, EAC, CDI, CARIFORUM agreements

63. This section discusses the inherent issues and problems in European development aid, particularly as it relates to the European Commission's European Development Fund (a), the EU's Aid for Trade strategy (b), and the new Regional EPA Funds that some interim EPAs have sought to establish (c).

a. Europe's Aid for Trade Strategy

64. The WTO Aid for Trade (AfT) initiative was launched in 2005 by WTO Members and is seen as a major milestone in the formal recognition that trade liberalisation may not translate into concrete export opportunities unless it is accompanied by measures to boost productive and trading capacity. In other words, Aid for Trade aims to *"help developing countries, particularly LDCs, to build the supply-side capacity and trade-related infrastructure that they need to assist them to implement and benefit from WTO Agreements and more broadly to expand their trade."*²²

65. What is important to note about the WTO AfT initiative is that it is not a financing facility and has no financial resources directly attached to it. While some experts had recommended the creation of an ad-hoc global AfT fund²³, the approach that was finally retained is that, instead of creating a fund, the Initiative should consist of a call for greater and more efficient trade-related aid. As such, the Initiative strives to generate momentum and peer incentives so that donors allocate greater and better targeted resources to trade-related projects. Donors, however, maintain entirely their discretion over the thematic and geographical allocation of funds and the conditions of access to their resources. In this sense, the contribution of the WTO is solely to:

- "encourage additional flows of Aid for Trade from bilateral, regional and multilateral donors to support requests for trade-related capacity building from beneficiary countries.
- support improved ways of monitoring and evaluating the initiative"²⁴, particularly by fostering national and regional monitoring mechanisms, as well as an annual global evaluation of trade-related aid.

66. The WTO initiative, or the call for greater Aid for Trade, covers six main categories of trade-related interventions²⁵:

- Trade policy and regulations (TPR): technical assistance to governments on

²² A task force of WTO Members discussed the scope, content, and objectives of Aid for Trade and recorded its conclusions in the document "Recommendations of the Task Force on Aid for Trade" of July 2006 (WTO document reference WT/AFT/1).

²³ For instance, "Prof. Stiglitz also recommended the creation of a self-governing Global Trade Facility (GTF) through which aid for trade would be targeted and delivered to developing countries. [...] The GTF could directly bring a charge of non-compliance through the WTO against any industrialized country not meeting its financial commitments". UNCTAD Press release of 22 March 2006 "Nobel laureate economist backs unified, enforceable aid for trade programme" (UNCTAD/PRESS/IN/2006/007).

²⁴ WTO website: http://www.wto.org/english/tratop_e/devel_e/a4t_e/aid4trade_e.htm (last accessed on 15 September 2008).

²⁵ Scope of aid for trade, according to the WTO Aid for Trade Task Force Recommendations, supra cited.

- issues related to macro-economic and trade policy (e.g. trade facilitation, support on trade negotiations, etc.);
- Trade development (TD): capacity building activities to support both governments and the private sector in order to take better advantage of trade opportunities (trade strategies, business support institutions, standards and quality, etc.);
 - Trade Related Infrastructure: interventions aimed at building or revamping basic trading infrastructure (e.g. transportation, energy generation, telecommunications, etc.);
 - Productive Capacity Building: interventions to boost the productive capacity of the private sector or in priority sectors (upgrading of equipment or techniques, transfer of technology, etc.);
 - Trade Related Adjustment: financial assistance typically to support national budgets in putting in place measures to minimise the fiscal, administrative and social costs of trade liberalisation (e.g. loss of fiscal revenue, retraining of personnel affected by foreign competition, shortfall in balance of payments, etc.)
 - Other trade related needs

67. The European Union has responded to the WTO's AfT call by adopting a joint strategy by the European Commission and the EU's member states in October 2007.²⁶ For the EU Commission, in *"order to fully exploit the benefits from trade, developing countries also need to remove supply side constraints and address structural weaknesses. This includes domestic reforms in trade-related policies, trade facilitation, enhancement of customs capacities, upgrading of infrastructure, enhancement of productive capacities and building of domestic and regional markets."*²⁷

68. According to the Strategy, the EU's total commitments on development assistance specifically targeted at projects designed to help developing countries develop the capacity to trade should reach €2billion a year from 2010 (€1 billion from the European Commission and €1billion from the EU's member states). That pledge covers only the first two categories of the 2006 WTO Task Force Aid for Trade recommendations, that is, trade policy and regulations and trade development, which the EU refers to as Trade Related Assistance (TRA). No specific numerical commitment was announced for the other four categories, referred to as "the wider Aid for Trade agenda", although the EU is a major donor on those categories too.

69. Finally, the Strategy also calls for allocating around half of the pledged funds (i.e. €1 billion/year) to ACP countries, including (but not exclusively) to support EPA-related needs. A major focus of ACP AfT funds should be the integration of trade-related priorities in national and regional development plans (TRA, i.e. technical assistance).

²⁶ See Press Release concerning the Council Conclusions of 15 October 2007, available at: http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/misc/96506.pdf.

²⁷ Towards an EU Aid for Trade strategy - the Commission's contribution", Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions (COM(2007) 163 final, of April 2007)

70. With regard to its content and to the scale of the resources pledged, the EU AfT Strategy is likely to become a central instrument in supporting the attainment of EPA objectives. Some EPA texts initialled at the end of 2007 refer indeed to AfT as one source of European financial cooperation under the EPAs. In that context, the European AfT strategy and its interface with EPAs has, nonetheless, faced a variety of criticisms.
71. First, there is a lack of clarity surrounding the implementation of AfT funds. Since it is now clear that there will be no dedicated AfT global fund, the delivery of AfT would necessarily have to rely on existing financing channels or on the creation of new ones. The EU and its member states already manage a large number of facilities, including the European Development Fund (EDF) (managed by the European Commission) and credit lines managed by EU members states (e.g. support to global initiatives such as the multi-agency Integrated Framework for LDCs, to regional channels such as the African Development Bank, to geographic facilities the African Infrastructure Strategy, NEPAD, and to national governments' budget). This means that the efficiency of the EU's strategy on AfT is contingent on the quality and timeliness of the assistance provided under these various facilities. It also means that the conditions of access or thematic distribution of funds is also dependent on the various facilities. Finally, for governments and EPA negotiators, it means that it can be difficult to understand how the interplay among a multiplicity of instruments will contribute to the attainment of specific EPA needs.
72. Second, EPA-related needs highlight the necessity for greater coordination among EU Member states and the Commission in the operationalisation of aid objectives. This is of course complex and difficult because of the large number of different practices, requirements and institutional cultures involved. It is also a challenge for governments who, confronted with EPA-related costs, have to match their needs with the interests and conditions of a variety of possible facilities and a large number of interlocutors. In fact, the implementation of the strategy will largely depend on the ability of EU local offices in ACP countries to program and allocate funds to EPA-related costs as well as to maintain a fruitful dialogue with governments and other donors.
73. For instance, in the case of Caribbean countries, financial cooperation under the 10th EDF Cycle will add to existing programmes, such as Caribbean Export Development Agency, the Integrated Development Programme for the ACP Caribbean Rum Sector, The Caribbean Regional Sustainable Tourism etc., and contribute to the improved competitiveness of the Caribbean region. The regional EDF allocation is also additional to national funds allocated under the National Indicative programme, the Special Framework of Assistance for the Windward Island banana producing territories and the 2006-2013 Support Measure for Sugar Protocol Countries.²⁸

²⁸ EU Increases by 25% the 10th EDF Allocation for the Caribbean Regional Programme. EU Press Release (August 2007) <http://www.deljam.ec.europa.eu/en/infosources/press/2007/August/August%2015.htm>

74. Third, as far as the volumes of aid are concerned, there is also some uncertainty regarding the capacity of EU member states and the EU Commission to honour the commitments announced. While the overall EU spending on Official Development Assistance (ODA) has increased in 2006, there continues to be a gap between current spending and the 2005 AfT pledge (€2 billion). A 2008 progress report published by the European Commission acknowledges that the Commission has almost attained its share of that pledge but warns that Member states would still need to increase their annual spending by 56% if they are to reach collectively a total spending of €1 billion a year.²⁹
75. With respect to the volume of that aid, it should also be noted that the commitment to allocate approximately half of that aid to ACP countries reflects a pattern that can already be discerned in European AfT. In fact, 45.5% of EU's total aid for trade is already allocated to ACP countries and 43.7% of it is allocated to the four African EPA regions (2006 figures).³⁰ It should be noted, however, that the geographical allocation of EU AfT is not equitable within regions and tends to be concentrated in a limited number of countries in each ACP region.
76. Fourthly, it must be recalled that the attainment of the €2 billion annual spending commitment would only cover the trade policy regulations and trade development clusters, not the other four categories of aid. This reflects the fact that European aid has a strong focus on these two categories and could also reflect a divergence between ACP countries and the EU regarding the objective of financial cooperation under the EPAs. As a matter of fact, the first two categories cover trade policy and planning, trade facilitation, international trade agreements, trade and investment promotion, institutional support for trade in services, public-private sector networking, market analysis and development. Without minimizing the importance of these interventions, the wider AfT agenda encompasses some of the most salient supply-side constraints faced by ACP governments, such as: upgrading of transportation, energy and telecommunication systems, access to trade finance and sectoral policies (agriculture, fisheries, etc.). In relation to these crucial categories of aid, the commitment of the EU is vague. According to the AfT Strategy, the EU should:
- “Continue and strengthen the support to trade-related infrastructure through increased support to national, regional and continental initiatives, including the EU Africa Infrastructure Partnership [...];
 - Reinforce support to productive capacity building on the basis of coherent regional and national strategies, involving local stakeholders and the private sector, and contributing to improving the business and investment climates;
 - Contribute to the absorption of net fiscal impact resulting from tariff

²⁹ “The EU – a global partner for development: Speeding up progress towards the Millennium Development Goals, Aid for Trade monitoring report 2008”. EU Commission staff working paper (SEC(2008) 431), p. 15.

³⁰ *Aid for Trade monitoring report 2008*, calculated from the tables at p.20. That amount is lower for the two categories only of trade-related assistance (32%), p.25.

- liberalisation in the context of EPAs in full complementarity with fiscal reforms;
- Further explore the contribution that could be made by the EIB and Regional Development Banks.³¹
77. Fifthly, a challenge in the interface between EPAs and the EU's AfT strategy is that the bulk of European trade-related funds are allocated to national governments (67.5% of it in 2006). By contrast, many of the costs generated by the EPAs, particularly under the wider AfT agenda, have a cross-border or regional dimension. In fact, if the EPAs are to strengthen regional integration and avoid an accentuation of ACP dependency to the European market, EPA-related aid must foster the development of regional value chains and an improvement of regional infrastructures. While support for regional funds and regional secretariats (e.g. COMESA, UEMOA, CEMAC, and SADC) has already started and is a target of the EU AfT Strategy, it remains a marginal share of overall EU's AfT. The further consolidation of regional actors could be all the more difficult as national EU offices programme and implement most of the Commission's AfT funds.
78. Finally, a problem of European AfT, as for all aid for trade, is the lack of appropriate monitoring and evaluation mechanisms. Currently a joint WTO-OECD monitoring mechanism, based on a self-reporting system ("Monterrey Questionnaire") is almost all that is available to assess the volumes, objectives and efficiency of AfT. However, the mechanism has faced difficulties to yield reliable data (inconsistencies in reporting, lack of participation, etc.). Another tracking system is the OECD Creditor Reporting System, but that system too faces difficulties and has a limited coverage. These difficulties of monitoring add to the fact that few developing countries maintain national systems for a quantitative and qualitative assessment of incoming aid. Consistent and reliable monitoring and evaluation are however needed.³²
79. Monitoring can indeed be crucial in evaluating the overall economic and social impact of the implementation of EPAs. Moreover, short of a better enforcement mechanism, monitoring can also be a fundamental tool to create incentives for the delivery of pledged EPA funds. Finally, monitoring is also important to ensure that any increase in trade-related aid is not made at the expense of other aid commitments (e.g. health, education, etc.). An increase in overall aid for trade flows would in fact be additional only if there is an increase in overall ODA. OECD data show, however, that aid for trade as a share of total sector allocable ODA has consistently declined over the past years.³³
80. Finally, it should be recalled that the EU's AfT strategy and the funds that will eventually be associated to it do not cover only EPA-related needs. The strategy was indeed adopted as a result of the WTO AfT strategy and the discussions in

³¹ EU AfT Strategy, p.14.

³² Darlan F. Marti and Francesco Rampa, "Aid for Trade: Twenty Lessons from existing aid schemes," ECDPM Discussion Paper No. 80, September 2007, 24

³³ Aid for Trade represented 32% of ODA in 2005. See Table A1.1, Annex I of "Aid for Trade at a glance, First Global Review", OECD and WTO (2007)

the context of the WTO's Doha Round of negotiations. While EPAs because of the needs they will generate are likely to figure prominently in any AfT discussions with ACP countries, the specific relationship between AfT and EPAs cannot be taken for granted.

b. The Effectiveness of the EDF

81. The European Development Fund (EDF) has been the main instrument of development cooperation between the EU and ACP countries since its creation in 1958. In fact, the EDF provides large volumes of aid for ACP countries and is the main source of the development aid identified in the current EPA texts. Therefore the effectiveness of the EDF is the real key to the success of financial cooperation in the EPAs. Nonetheless, despite the existence of an undisputed link between the EPAs and the EDF, the relationship between the two is not straightforward and raises several questions.
82. Some of the main criticisms that are often addressed at the EDF and its ability to channel EPA-related support concern the actual availability of funds, the procedural bottlenecks that make access to funds slow and burdensome, and the absence of monitoring and evaluation mechanism.
83. First, while the volume of funds committed under the 10th EDF cycle (22,682 million euros) seems to be sufficient to meet the EPA adjustment costs, deeper scrutiny may suggest a more complex reality. Irrespective of EPAs, it was estimated that 21.3 billion euros would be needed under a new EDF funding cycle to fund the costs of the EU's existing aid portfolio and maintain EU contributions at 0.38 per cent of the EU's gross national income (GNI).³⁴ This means that, however impressive, the nominal allocations under the 10th EDF will need to support many other needs than those generated strictly by the EPAs. This has cast some doubt over the ability of the 10th EDF Cycle to respond to EPA costs without compromising other areas of development cooperation (particularly health and education).
84. As a matter of fact, only an increase in the European Commission's aid envelope would allow expanding its trade-related aid component without compromising spending on other development areas. This means that while the EU Commission, through the EDF, can give priority to regional integration, trade and economic development (which are central to EPAs), additional resources would need to come from non-EDF sources, arguably under the Aid for Trade heading. The realisation that EDF resources will be allocated to a multiplicity of needs and the rigidity of its programming means that the identification of EDF can only play a relative role in balancing rights and obligations under the EPA texts.

³⁴ Roman Grynberg and Alice Clarke, "The European Development Fund and Economic Partnership Agreements," Commonwealth Secretariat Economic Paper No. 75, 2006.

85. Second, because the EU Commission emphasizes the role of national governments in actively taking part in the prioritisation of interventions (principles of partner ownership and donor alignment), ACP governments may be directly confronted with competing policy priorities during the programming of aid. This is not a problem in itself, except for the fact that the EPA negotiating process has extended beyond the EDF programming period. In other words, national governments developing national strategy papers must anticipate EPA-related costs before actually negotiating and finalising EPA texts. The mismatch in sequence and the lack of coordination between the EDF and the EPA processes mean that the extent to which EDF priorities will indeed support the implementation of EPAs cannot be taken for granted.

The European Development Fund (EDF) and its 10th Cycle

The European Development Fund (EDF) is the main instrument for providing Community aid for development cooperation in ACP States. It is funded by the EU's Member States but is managed by the European Commission, which meets Member States in the EDF Committee. Since 1959 there have been nine EDF cycles, each lasting 6 years, and the tenth has started in January 2008 and will last until 2013.

The tenth EDF covers the period from 2008 to 2013 and provides an overall budget of 22,682 million euros. The allocation of funds is done on the basis of country strategy papers, regional strategy papers and an intra-ACP strategy paper, adopted by the Commission. Implementation of these papers will be monitored annually and the strategies will be reviewed at mid-term (2010) and at end-of-term (2012).

Source: <http://europa.eu/scadplus/leg/en/lvb/r12102.htm>

86. As a matter of fact, support for the implementation of and adjustment to EPAs will come mainly from a specific EDF heading (regional programmes) whereas it is up to individual ACP governments to utilise national EDF envelopes³⁵ for EPA-support. EDF resources fall into the following main components³⁶ (see table below):

10th EDF Cycle components	
National and regional indicative programmes	17,766 million euros (80.9%)
Intra ACP and intra regional cooperation	2,700 million euros (12.3%)
Investment facilities	1,500 million euros (6.8%)
Total 10th EDF	21,966 million euros (100%)

³⁵ European Commission, "Framework for Strategy Papers," http://ec.europa.eu/development/icenter/repository/scanned_gh_csp10_en.pdf

³⁶ « European Development Fund (EDF) in brief », Agence Française de Développement: <http://www.afd.fr/jahia/Jahia/lang/en/home/AFD-Europe/pid/5385>

- A national and regional budget managed by the European Commission: the European Commission and relevant ACP States design a strategy document and national/regional indicative programmes (NIP/RIP) in close consultation. Regional and national programmes and the respective strategy papers have been recently or are still being finalized, but it is clear that Regional Integration and Infrastructure/Interconnectivity were given particular focus in regional strategies.
- An Investment Facility managed by the European Investment Bank (EIB): which supports the economic development of ACP States through private sector investments at market conditions (venture capital, ordinary loans, guarantees and interest subsidies). It also finances commercially run public sector companies, in particular those responsible for essential economic infrastructure.
- An "intra-ACP" budget managed jointly by the European Commission and the ACP Secretariat: this line will amount to 12.3% of the total 10th EDF. Intra-ACP programs finance thematic actions which are common to a number or all ACP States, as well as investments in multilateral funds. Regional projects have been supported by intra-ACP cooperation particularly through Facilities (Water, Energy, Peace, Migration), but also through global funds and international organizations (Global Aids Fund, Education For All-Fast-Track Initiative, support to the African Union, HIPC Facility, Infrastructure Trust Fund within the framework of the EU-Africa Partnership on Infrastructure, etc.).

87. Third, even in the event national governments utilise a substantive portion of national and regional EDF resources for EPA adjustment costs, procedural difficulties in accessing the funds could trigger delays in their delivery. This calls into question the usefulness of the development strategies if there is an administrative disconnect between the receipt of funds and the timeline of a project's implementation.

88. For instance, during 9th EDF cycle, the EU had promised 15billion to ACP countries, but only 28 per cent of that amount could actually be disbursed. Under the 8th EDF, funds only started to be disbursed in the third year, and only 20 per cent of the pledged amounts were paid out at the end of the five-year cycle. A 2006 study on EDF allotments from the 7th to the 9th EDF notes the overall gap between pledges (nominal allocations) and spending (delivery), the shrinking pool of real EDF resources, and uncertainties involving which sectors are given priority in the deployment of EDF aid.³⁷

89. In fact, the beginning of the 10th Cycle is already delayed by the late ratification of the Revised Cotonou Agreement by ACP countries. In order for the 10th EDF to be valid, two-thirds of the ACP countries must ratify the Cotonou Agreement so that implementing legislation can be passed to bring the funds into force. Although the deadline for ratification was 31 December 2007, not enough countries had ratified the agreement, and it is only later in the course of 2008 that

³⁷ Grynberg and Clarke 2006: p.14

the two-thirds ratification requirement was met. Countries that have not ratified the agreement, however, will not have access to the EDF funds until they do so.³⁸

Criticisms and Weaknesses of the EDF

- Difficulty in accessing funds and poor timeliness of fund availability
- unequal distribution of aid across countries and thematic priorities
- shift in sector priorities to sectors where the EU has more “discretionary” control
- allocation based on unclear indicators
- gap between commitments and actual disbursements
- aid volatility
- insufficient monitoring of effectiveness of aid
- administrative and implementation problems

Source: Roman Grynberg and Alice Clarke (2006) and Tine Van Crielinge (2007)

90. Moreover, there is a discrepancy between the stated objectives of the EDF funds and the manner in which they have been distributed. Despite a stated objective to support the neediest and best-performing ACP countries, some have noted that EDF allocations are driven by more covert EU interests instead. For example, despite sharing similar development and governance characteristics, there have been significant aid discrepancies and volatility between Namibia and Botswana.³⁹ A possible explanation for the lack of aid could relate to the fact that Botswana has remained less dependent on foreign aid and support *over time*, while Namibia has attributed much of its success to foreign aid. Therefore, in a geopolitical sense, the EU might see Namibia as a stronger ally in the region than Botswana, which they may consider more self-sufficient. A complementary explanation pertains to administrative inefficiency and a lack of monitoring at the country-level.

91. These contradictory aid practices are further reflected in issues of conditionality for aid disbursement. The EU often explains that a failure to meet conditionality of aid may lead to lower aid disbursement in some countries, yet the “conditionality” explanation seems to be applied inconsistently. Again, a good performer such as Botswana suffers from high aid volatility, with very little aid disbursed until late into the EDF cycle. Meanwhile, “under-performers” such as the Congo, Ethiopia, etc. have very low volatility rates.⁴⁰

92. In spite of being well known and recognised, these and other difficulties (see table) still persist and could further weaken the capacity of the EDF to provide

³⁸ *Trade Negotiations Insights* of July 2008; EC website seems to indicate that ratification has gone through and that the agreement will enter into force on 1 July 2008: http://www.consilium.europa.eu/cms3_Applications/applications/Accords/details.asp?cmsid=297&id=2005033&lang=EN&doclang=EN

³⁹ Tine Van Crielinge, “Aid Allocation to the ACP under the European Development Fund: Rhetoric versus Practise,” Paper presented at the British International Studies Association, 17-19 December 2007, 2; available from: <http://www.bisa.ac.uk/2007/pps/vancrielinge.pdf>

⁴⁰ Van Crielinge 2007: 14

comfort to delegations accepting time-bound obligations under the EPAs. The uncertainties surrounding the EDF and the procedural bottlenecks associated to it are not unknown to ACP negotiators and indeed have motivated many ACP EPA regions to seek a separate and additional EPA financing facility. However, even when a new EPA Regional Fund was explicitly acknowledged in EPA texts, the implementation or operational details of such a fund are yet to be developed.

c. Regional EPA Funds

93. In addition to the general or specific development cooperation areas which rely on the framework established by the Cotonou agreement and particularly the programming procedures of the EDFs, some regions have sought to secure additional and predictable resources through a separate, specific EPA Regional Fund. This is certainly a reflection of the fact that many negotiators have anticipated the shortcomings of relying solely on the EDF and AfT channels to secure financing.
94. This type of Regional Fund is currently present in the interim texts initialled by the EPA SADC countries, and Cameroon only, although there are indications that such a fund will also be set up in ESA and West Africa EPA regions.
95. One limitation of the initialed texts with respect to ad-hoc Regional Funds is that the modalities of operation of the Funds are not defined. Cameroon's language regarding the source of Regional Funds is more specific as it states that the new Regional Fund (FORAPE) should be fed by:
 - resources to be mobilized by both the EU and the Cameroonian parties;
 - funds from the EDF;
 - Contributions of the EU's member states; and,
 - Possible other contributions of other donors.
96. Although further details could be added in the negotiations scheduled for 2008 or 2009, these Funds suffer from two main shortcomings.
97. First, they will be fed by EDF and AfT funds. The EDF, as has been stated, suffers from several procedural bottlenecks and the volumes of aid are limited to those under the Regional Indicative Programmes (assuming they are channelled through and managed by the Regional Funds). In the case of AfT, there are even greater uncertainties regarding regional, national and thematic allocation of funds, not to mention the lack of clarity over the overall volume of aid that will eventually be available (particularly under the wider AfT agenda).
98. Second, from the negotiating point of view, the Funds can only partially restore the balance of rights and obligations between the ACP and EU parties. In fact, the establishment and operation of the Fund is not tied to the implementation and enforcement of the agreement. As a result, ACP countries would still be required to commit to reforms and new disciplines before knowing the exact support they

would receive to accompany such reforms. This limitation is compounded by the fact that there is a disconnect between the sequencing of EPA negotiations and that of the programming of European aid. While Regional Preparatory Task Forces (RPTF) were established to draw linkages between EPAs and European development cooperation, these Task Forces have had little or no influence over the EPA negotiating process. Moreover, they became a means of keeping “development cooperation” out of the core EPA negotiations.⁴¹ Indeed, had the RPTFs been more involved, it is likely that greater specificity in the EPA development cooperation chapters would have been achieved, particularly regarding the sources and destinations of aid.⁴²

99. An exception, perhaps, to the work of the RPTFs is the Caribbean EPA experience. In the CARIFORUM, the RPTF was charged with tracking EPA negotiations and seeking to translate the development cooperation commitments into operational effect. It was composed of the EU’s DG-Development, DG-Trade and AIDCO. On the Caribbean side, it was composed of the CARICOM Secretariat (as CARICOM EDF Regional Authorising Officer), the Caribbean Regional Negotiating Machinery (as EPA negotiators), National Authorising Officers from four CARIFORUM countries, representatives of trade unions, employers, university and NGOs.
100. The joint EC-CARIFORUM RPTF met during the negotiations and produced a number of reports. These reports included feasibility studies (in SPS; TBT; Trade Facilitation; Government Procurement and Competition Policy), which identified assistance needs and linked these needs with costed interventions. The results of the feasibility studies have informed the programming of the 10th CARIFORUM Regional Indicative Programme (CRIP) of which 32% and the indicative tranche was reserved for EPA support.
101. Even in the Caribbean case, nonetheless, negotiators have had to commit to obligations (and indeed initial the agreement’s text) before having clarity about the modalities of EU-CARIFORUM development cooperation.
102. Finally, in ACP regions, the concept of a Regional Fund would necessitate the clarification of several questions, among which the most prominent is probably the list of eligible regional members. This is of course essential for the attribution of funds, but has made complex after the splintering of EPA ACP regions at the end of 2007. How can countries that fundamentally disagree on the terms of the EPA (e.g. divergences of perspectives in the SADC region) coordinate a regional strategy paper on trade-related assistance?

⁴¹ South Centre Fact Sheet 6

⁴² Stevens 2008: 111

V. CONCLUSION

103. The European Union's Commission must recognize that the problems that have arisen as a result of the negotiations – the internal splintering of ACP regions, the lack of ACP countries signing before the deadline, and the concerns continually brought up by ACP negotiators - as indications of the problematic issues inherent within the EPAs. The definition of clear responsibilities on development cooperation – and the rebalancing of rights and obligations within EPAs – is bound to take negotiating time. Instead of pressuring ACP countries to finalise the agreements as soon as possible, the Commission must accept that development cooperation should countries sign the EPAs, is a central and integral part to the EPAs, not a marginal complement to these agreements.
104. More effective and better targeted trade-related financial assistance from the EU is certainly seen by many ACP governments as one of the main value-additions of the EPAs. This is natural as ACP producers already enjoy a preferential access to the European market under the Lomé-Cotonou preferential scheme. It is all the more natural as existing preferences have been poorly utilised and have generally not always contributed to the economic diversification and improvement of export performance of ACP economies. The expectation for greater and more effective trade-related assistance is also normal since the bottlenecks that have hindered ACP producers from making better use of market access into Europe relate to their productive capacity and macro-economic policies – not to their trade capacity *stricto sensu*.
105. In this sense, it is unfortunate that development cooperation provisions, both financial and non-financial, to support the implementation of the texts agreed to are barely developed, if not absent from the EPA legal text. The details of development cooperation instruments (e.g. Regional EPA Funds) remain to be negotiated at a later stage. Other instruments cited (e.g. EDF) are not linked in a binding manner to the costs of implementing or adjusting to interim agreements. Sometimes, the delivery by the EU of development assistance was explicitly excluded from the remit of the interim EPA dispute settlement mechanism (e.g. texts initialled by Ghana and Ivory Coast).
106. If development cooperation is not clearly articulated within the texts without binding commitments to provide development assistance, and as ACP countries economically. As ACP countries deal with the cost of liberalization and implementation of the greater standards of trade and exchange demanded by the EPAs, their fiscal losses will multiply over time and the promise of aid from the EU may not match or mitigate the costs they bear. More articulate and legally-binding language will greatly help the ACP in ensuring that the EPAs are a tool of economic development and growth rather than stagnation.

REFERENCES

- 📖 ACP Legal Experts. "Meeting of the ACP Legal Experts on EPA Negotiations." ACP House 9-11 October 2007.
- 📖 Avril, Hilaire. "EU 'Rushing' EPAs Lest African States Change their Minds"
- 📖 Dodd, Liz. "Real and hidden costs of EPAs: a short briefing for Finance Ministers." *South Bulletin: Reflections and Foresights* No.17 (16 June 2008).
- 📖 Draft table on the RIP, CONCORD work in progress
- 📖 European Commission. "Aid for Trade Monitoring Report 2008." 2008.
- 📖 European Commission. "Framework for Strategy Papers." Available from: http://ec.europa.eu/development/icenter/repository/scanned_gh_csp10_en.pdf
- 📖 Gonzalez, Javier Perez. "Clarifying Misunderstandings about EPA Negotiations and its relationship with EU's Aid for Trade and EDF funds for ACP countries." Work in progress for Oxfam.
- 📖 Gruber, Lloyd. "Ruling the World: Power Politics and the Free Trade Bandwagon." *Comparative Political Studies* (2001).
- 📖 Grynberg R. and Clarke A. "The European Development Fund and Economic Partnership Agreements", Commonwealth Secretariat. 2006
- 📖 Julian, Melissa. "EPA Negotiations Update." *Trade Negotiations Insights*. 7, no. 5 (June 2008).
- 📖 Karingi, Stephen et al. "Economic and Welfare Impacts of the EU-Africa Economic Partnership Agreements." UNECA African Trade Policy Centre. March 2005. Available from: <http://www.uneca.org/atpc/Work%20in%20progress/10.pdf>
- 📖 Kwa, Aileen. "Chaos on Eve of EPA deadline." Inter Press Service. December 2007.
- 📖 Marti, Darlan F. and Francesco Rampa. "Aid for Trade: Twenty Lessons from existing aid schemes." ECDPM Discussion Paper No. 80. September 2007.
- 📖 Nicolaidis and Collier. "Europe, Africa, and EPAs: opportunity or car crash?" *Open Democracy*. 7 January 2008. Available from: http://www.opendemocracy.net/article/future_europe/europe_africa_EPA
- 📖 Raustiala, Kal. "Form and Substance in International Agreements." 99 *American Journal of International Law*. 581-591 (2005).
- 📖 Smaller, Carin. "The Hitchhiker's Guide to 'Aid for Trade': Everything you need to know to prepare for the upcoming Global Review." Institute for Agriculture and Trade Policy. 13 November 2007.
- 📖 South Centre, "Fact Sheet No. 1: Understanding the Economic Partnership Agreements," available at www.southcentre.org
- 📖 South Centre. "Face Sheet No. 6: Aid for Trade and Financial Assistance to Implement the EPAs." May 2007. Available from: www.southcentre.org
- 📖 Stevens, Chris et al. "The new EPAs: comparative analysis of their content and the

challenges for 2008." ODI and ECDPM Final paper. 31 March 2008. Available at: www.odi.org.uk/iedg/Project/0708010_the_new_EPAs.html and www.ecdpm.org/pmr14

📖 *Trade Negotiations Insights*. "EPA Negotiations Update: 10th EDF Finally Enters into Force." 7, no. 6 (July-August 2008).

📖 Van Criekinge, Tine. "Aid Allocation to the ACP under the European Development Fund: Rhetoric versus Practise." Paper presented at the British International Studies Association. 17-19 December 2007. Available from: <http://www.bisa.ac.uk/2007/pps/vancriekinge.pdf>

📖 Wade, Robert. "Is Globalization Reducing Poverty and Inequality?" *World Development* 32, 4 (April 2004): 567-589. Available from Elsevier: <http://www.sciencedirect.com/science/article/B6VC6-4BT8DPT-1/2/f21c66c21cdde59e408223dce6f9ee2e>

📖 WTO Meeting: Seventh Session on Aid for Trade, 11/7/08

READERSHIP SURVEY QUESTIONNAIRE
South Centre Analytical Note

EPAS AND DEVELOPMENT ASSISTANCE: REBALANCING RIGHTS AND OBLIGATIONS

An important objective of the South Centre is to provide concise and timely analytical inputs on selected key issues under ongoing negotiation in the WTO and other related multilateral fora such as WIPO. Our publications are among the ways through which we try to achieve this objective.

In order to improve the quality and usefulness of South Centre publications, we would like to know your views, comments, and suggestions regarding this publication.

Your name and address (optional): _____

What is your main area of work?

- | | |
|---|--|
| <input type="checkbox"/> Academic or research | <input type="checkbox"/> Media |
| <input type="checkbox"/> Government | <input type="checkbox"/> Non-governmental organization |
| <input type="checkbox"/> International organization | <input type="checkbox"/> Other (please specify) |

How useful was this publication for you? [Check one]

- Very useful Of some use Little use Not useful

Why? _____

What is your assessment of the contents of this publication? [Check one]

- Excellent Very Good Adequate Poor

Other comments: _____

Would you like to be on our electronic and/or hardcopy mailing lists? Yes No

If yes, please indicate:

- Electronic** - please indicate your name and email address:
 Hardcopy - please indicate your name and mailing address:

Personal Information Privacy Notice: Your personal contact details will be kept confidential and will not be disseminated to third parties. The South Centre will use the contact details you provide solely for the purpose of sending you copies of our electronic and/or hardcopy publications should you wish us to do so. You may unsubscribe from our electronic and/or hardcopy mailing lists at anytime.

Please return this form by e-mail, fax or post to:

South Centre Feedback
Chemin du Champ d'Anier 17
1211 Geneva 19
Switzerland
E-mail: south@southcentre.org
Fax: +41 22 798 8531



**Chemin du Champ d'Anier 17
Case postale 228, 1211 Geneva 19
Switzerland**

**Telephone : (41 22) 791 8050
Fax : (41 22) 798 8531
Email : south@southcentre.org**

**Website:
<http://www.southcentre.org>**