

Working Paper

Research Division EU/Europe
Stiftung Wissenschaft und Politik
German Institute for International
and Security Affairs

Evita Schmieg

A Short Assessment of the ECOWAS – EU Economic Partnership Agreement

SWP

Stiftung Wissenschaft und Politik
German Institute
for International and
Security Affairs

Ludwigkirchplatz 3-4
10719 Berlin
Phone +49 30 880 07-0
Fax +49 30 880 07-100
www.swp-berlin.org
swp@swp-berlin.org

SWP Working Papers are online
publications within the purview
of the respective Research
Division. Unlike SWP Research
Papers and SWP Comments they
are not reviewed by the Institute.

Working Paper RD EU/Europe
July 2015, SWP Berlin

Why Economic Partnership Agreements?

The idea of concluding Economic Partnership Agreement (EPA) stems from the late 1990s, when the future of the long standing Lomé Convention had been discussed. At that time, the EU and ACP countries were examining alternative solutions for replacing the WTO incompatible non-reciprocal trade preferences of the EU, which also did not help ECOWAS states diversify their exports. They remain dominated by raw materials and fuels.

EU and ACP states agreed in the Cotonou Convention that negotiating EPAs would be the best possible alternative. The idea had been to create a new type of free trade agreement that should incorporate objectives beyond contributing to increased trade, which could help eradicate poverty and advance regional integration. Theoretically, a further WTO waiver might have been a possible alternative to that kind of agreement, but it is not attractive, as it would imply large compensation by the EU/ACP towards the interested WTO parties. The cost of the last waiver had been to sacrifice the ACP banana preference system, another waiver would be even more “expensive”, since compensation has to be given to interested WTO partners in form of additional market access.

The EPA with the ECOWAS region has been signed 30th June, 2014 and endorsed by the authority of ECOWAS heads of state and government on 10th July, 2014. Until June, 2015, the agreement has not yet been signed by all ECOWAS states.

Can the EPA live up to its objectives?

There is a far-reaching agreement within academia and the international development community¹ that trade and Free Trade Agreements can help to support sustainable development, i.e. contribute to economic growth while respecting and even promoting social development and ecologic objectives. External trade makes up the bulk of especially sub-Saharan economies, for example 89% of GDP in Ghana (World Bank data)². Sub-Saharan countries therefore need to integrate trade policy issues in their development strategies and define possibilities to optimize the contribution of trade to national development objectives, including through Free Trade Agreements. However, trade liberalization also bears risks: Liberalization leads to increased competition, can threaten local production, and thus lead to unemployment and social problems. Trade liberalization and agreements, therefore do have to take into account the economic and social conditions of developing countries and contain instruments necessary to deal with those. The Economic Partnership Agreement ECOWAS – EU does formulate explicitly the objective to contribute to sustained economic growth, poverty eradication and raising living standards, as well as regional integration, amongst others.

Criteria have been developed to assess whether a Free Trade Agreement can contribute to sustainable development.³

¹ Since the beginning of the WTO negotiations within the Doha Development Round, an intense discussion is taking place on the possible contribution of trade to development and how the international community can support developing countries in that regard through „Aid for Trade“.

² <http://data.worldbank.org/country/ghana>

³ Evita Schmiege, *Handels- und Investitionsabkommen als Beitrag zu nachhaltiger Entwicklung? Lehren aus dem Wirtschaftspartnerschaftsabkom-*

Criterion 1: True market access for the developing country partners

Under the EPA, the EU is completely opening its market (100% duty free, quota free market access, DFQF) towards the partners under the agreement. Whereas DFQF is also granted by the EU to all Least Developed Countries under the Generalized System of Trade Preferences (GSP)/Everything But Arms Initiative (EBA), for the more developed countries amongst the ACP, completely free access to the EU market is a major preference in comparison to other developing countries and a major improvement also in comparison to market access under the Lomé Convention. Unilateral trade preferences under Lomé had extended to 97% of ACP exports and excluded mainly agricultural products.

In the ECOWAS region, the EPA is therefore of special interest to Ghana and the Ivory Coast. Without the EPA, there is a danger that some products exported by those countries might not be competitive in comparison to developing country exports from Asia and Latin America and exports would end. Ghana and the Ivory Coast were therefore ready to conclude bilateral (interim-) agreements with the EU after 2007, when the whole region was not yet ready to participate in the EPA.

However, it is important to note, that market access alone usually is not sufficient to increase exports.

Criterion 2: Asymmetric liberalization

Trade liberalization shall take into account economic and social conditions of the developing country partner. WTO law therefore grants a certain flexibility. Within the ECOWAS EPA this is defined as a liberalization of 75% of ECOWAS' markets within 20 years of time. Thus, there is a possibility to exclude 25% of trade completely from liberalization. The long time frame shall give the private sector time to gain more competitiveness and the government sufficient time to design complementary policies (to support private sector competitiveness, facilitate changes in the labor market etc.) and carry through necessary reforms to become independent from tariffs as state revenues. Liberalization on the ECOWAS side starts after five years and the full loss of tariff revenues will only be realized at the end of the liberalization period. This provides time for tax reform, but since this is a difficult undertaking, it should be tackled soon.

It is not possible to define theoretically the optimal degree and time frame of liberalization in order to maximize the economic and social benefit. Both issues had been discussed within academic and political process within the region and its member states. The 75% / 20 years solution is criticized by some NGOs as not being flexible enough. But theoretical analysis and empirical research do not support the antithetic position that no liberalization – keeping the *status quo* - would better serve the objective of sustainable development. One should assume that ECOWAS states did consider prudentially their liberalization schedules and identified those sectors for liberalization that help to spur competitiveness and innovation and/or would reduce costs of inputs into production. However, negative effects of liberalization are possible. Moni-

toring the impact of the agreement and having flexible instruments in place in order to be able to react in case of major disruptions is a way to deal with uncertainty (see below).

Criterion 3: Flexible safeguards

The ECOWAS EPA contains provisions to allow for an increase in tariffs and changes in the liberalization schedules in order to react to threats that arise from liberalization. Special reference is also made to infant industries and the importance of food security. The EPA provisions are more flexible than WTO law and safeguard provisions in other trade agreements. Such provisions are contained in Art. 22 (bilateral safeguards), Art. 23 (fledgling industries clause) or Art. 47, which underlines the special importance of food security and the possibility to take appropriate measures.

However, only reality will prove how useful these provisions will be in practice in case they are needed to react to negative evolutions stemming from the agreement. This underlines again the importance of a well-functioning monitoring system, that is able to detect problematic developments and allows for timely discussion of possible solutions.

Criterion 4: Policy space for development

Free Trade Agreements aim, of course, at creating a stable and predictable framework for private actors to take up economic opportunities. Especially in a developing country context, however, it is necessary to keep enough flexibility (or policy space) in order to allow for different policy objectives to be pursued: social issues, support to industry development, preserving ecological diversity and promoting ecological and social values. The ECOWAS EPA does make an effort to strike a balance in that it states principles that shall be observed, but refers to explicit flexibility with regard to development. Some examples can illustrate this:

- Art. 16, most favored nation clause, extends any trade preferences granted by the EU also to the ECOWAS partners. The West Africa party, on the other hand, is only asked not to discriminate EU exports in comparison to other industrialized countries, with a share of world trade above 1.5% (for a group of countries: 10%) and an industrialization rate (manufacturing sector as a share of GDP) above 10%.
- With regard to integration processes within the ECOWAS region, Art. 12 allows for the change of the liberalization schedule, if necessary.
- Art. 13 on export duties and taxes demands to refrain from increasing existing or introducing new export charges, which, at first sight, restricts policy space. The article does, however, allow ECOWAS states to introduce such instruments for reasons like “specific needs for income, promotion for fledgling industry or environmental protection ... on a temporary basis and after consulting the European Union party.” This has been criticized by NGOs as not being flexible enough. The compromise found, does, however, include all possible interests for ECOWAS states to introduce such taxes. And the requirement to *consult* with the EU is not asking for *consent* with the EU. Since for some parts of the European industry, reflected by parts of national and the European parliaments, the abolition of export taxes worldwide is a major policy objective, the formulation on export taxes in the EPA can be

considered a negotiating success of the African regions. Whether export taxes are a useful policy instrument, is, in any case, another question to be determined on a case-by-case basis.

Criterion 5: Integrating sustainable development issues/social standards and human rights

With regard to human rights the ECOWAS – EPA only refers to the provisions of the Cotonou Convention⁴; there is also no explicit mentioning of the core labor standards of the International Labor Organization. Other agreements do contain more far-reaching formulations with regard to human rights and social and ecological issues. One example given, is the EPA with the Caribbean region⁵, which can serve as a model of incorporating new issues in a trade agreement. However, for the African regions, the issue of human rights was politically extremely sensitive, the EU therefore had to restrict its ambitions to include more reference, even though this issue is of high importance, particularly for sections of the European Parliament and parliaments of EU member states.

The implementation of the EPA will nevertheless open up the possibility to raise social (and ecological) issues during the implementation of the agreement. First, there is reference to human rights via the Cotonou Convention, although this did not play an important role in trade relations of the past. What might turn out to be even more important as an entry point for the discussion of human rights issues in the future is the framework that the EPA will set into operation for regular dialogue and consultations within the EPA institutions. Although the agreement does not open up the possibility to address “human rights” as such, since the term is avoided, it will be possible to raise all issues linked with the implementation of the EPA. Issues like food security (which is explicitly mentioned), labor issues or ecological concerns can thus be dealt with in the Joint EPA Council (Art. 92 of the EPA, the highest organ) or the Implementation Committee (Art. 95) by the European Commission. Parliamentarians themselves will be able to raise these points within the Joint Parliamentary Committee (Art. 96). The Consultative Committee of the ECOWAS EPA (Art. 97) foresees an exchange between the social partners.

Additionally, the fact that the ECOWAS EPA is restricted to goods in a way also limits the possibilities for references to social, ecological and human rights issues. The ECOWAS EPA foresees in Art. 106, rendezvous clause, “to continue negotiations in order to arrive at a full regional Agreement” and to enter into discussions amongst others on services, investment, competition, consumer protection and sustainable development. This “build in agenda” bears a potential to raise again social, ecological and human rights issues in these specific contexts and the CARIFORUM EPA can serve as an example on how to include those.

Even though the ECOWAS EPA does not contain a clear reference to human rights, it can serve as an instrument for continuing discussion. This is an important geo-political argument, especially against the background of the EU’s declining economic and political importance in many developing country regions

⁴ Cf. detailed analysis by Marika Lerch, environmental and social standards in the Economic Partnership Agreement (EPA) with West Africa: A comparison to other EPAs, European Parliament, DG EXPO/B/Polled/Note/2015_85, Brussels, March 2015.

⁵ Evita Schmiege, Human Rights and Sustainability in Free Trade Agreements, SWP Comments 24, Berlin, May 2014.

Criterion 6: Respecting the regional integration agenda

Regional integration is a long standing policy objective within ECOWAS and other African regions. Intra-regional trade between ECOWAS states is about 9.3%⁶ (2013) and did not change much during the last decade. However, a stable regional share in ECOWAS exports means at the same time that intra – regional trade developed as fast as exports overall, which has more than quadrupled since the year 2000. Regional trade does, however, play an important role with regard to economic development and the creation of value added in the region. The share of finished products in ECOWAS' internal trade is 30.6%, in comparison to 3.3% in exports to the EU. These figures show that the argument, regional integration can only take place in diversified economies with complementary production structures, should not be overestimated. A potential for an exchange of goods in the region is available, even when countries are competing with raw materials on third markets. The potential for increased trade is, however, even bigger in the greater African region: ECOWAS trade with Sub-Sahara Africa increased from 3.1 bn. US-\$ in the year 2000 to 16.5 bn. US-\$ in 2013 (UNCTAD).

In that context, a free trade agreement aiming at supporting sustainable development has to respect and support integration ambitions within the region and the African continent. Regional integration is formulated as an objective of the ECOWAS EPA. There are different aspects on how the agreement is linked with regional integration processes:

First, the negotiations with the EU did put pressure on the ECOWAS region (and other regions) to come to terms with political decisions on regional integration which had already been taken. The ECOWAS agreement on a common customs tariff in October 2013 was facilitated by the fact that the region had to decide on a tariff offer within the EPA negotiations.

Second, it is necessary to conclude regional, not bilateral, EPAs in order not to disturb the momentum of regional integration in African regions and not to disrupt regional integration processes.

Third, the fact that during the EPA implementation liberalization steps towards the EU will be carried through puts pressure on further regional liberalization. Art. 103 (regional preference) obliges the Parties that any liberalization has to be extended to the regional partners. This rule is important as to avoid increased imports from the EU displacing imports from neighboring countries (trade diversion). However, it does not avoid trade diversion in favor of the EU with regard to imports from other African countries. This is not an urgent issue, since ECOWAS liberalization only starts after 5 years and is restricted in scope. It is, however, an important issue, since Sub-Sahara African countries today have a share of 18% in ECOWAS external trade. African countries can overcome the problem by liberalizing faster between themselves than towards the European Union. The launch of negotiations of African leaders on Monday 15 June to establish the Continental Free Trade Area by 2017 is the right step in that regard and the EPAs can serve as stepping stones towards that objective. Any progress in that regard depends, however, on the political will of the African regions to integrate further.

Fourth, an agreement which is limited to trade in goods, as the ECOWAS EPA, by definition is limited in the aspects that might advance regional integration. Within the CARIFORUM EPA, besides the regional integration clause, it is mainly the WTO+ issues like competition or government procurement which contain clauses to forward integration within the region, sup-

⁶ All figures, when not mentioned explicitly, refer to UNCTAD, UNCTADstat, 16.06.2015.

ported by means of development co-operation. The build-in agenda of the ECOWAS EPA therefore bears a chance to also realize potential benefits for regional integration. The CARIFORUM EPA can serve as a model in that regard.

Criterion 7: Monitoring with a view to sustainable development objectives

Liberalization bears opportunities, but also risks. Monitoring mechanisms can accompany the implementation of an Agreement in order to identify problems which can arise as a consequence of liberalization, e.g. threats to local production that might in consequence lead to social problems.

Within the ECOWAS-EPA, a monitoring role is given to the institutions established by the agreement, esp. the Joint Implementation Committee (Art. 95). A role is also foreseen for the Joint West Africa-European Union Consultative Committee (CC), which is designed to promote dialogue between the economic and social partners of the two Parties. In this way, at least, part of civil society (social partners) is involved in EPA implementation. The CARIFORUM-EPA is going further in that the CC additionally comprises representatives from academia and non-governmental organizations. In setting up the monitoring system for the ECOWAS EPA the inclusion of further institutions of the civil society should be considered.

The ECOWAS-EPA also foresees to put in place a special monitoring system. Art. 2.8, demands to “establish a permanent management and monitoring/evaluation arrangement to make possible any adjustments that are necessary for achievement of the objectives of this Agreement.” Monitoring is also linked (Art. 57) to the development co-operation package (PAPED) that accompanies the EPA. A “Competitiveness Observatory” (Art. 61) is foreseen as one instrument to be put in place for monitoring.

Since liberalization from West African states only starts after some years, a time-frame is given to put in place such a monitoring system.

Criterion 8: Support by Aid for Trade

Many developing countries lack the capacities to really take advantage of trade opportunities which are created within the WTO or Free Trade Agreements. This has been emphasized by the international discussion on Aid for Trade within WTO and OECD since the beginning of the century. The EPAs are a new type of trade agreement, in that they combine closely trade liberalization with support through development co-operation.

Technical co-operation is e.g. explicitly and intensely dealt with in chapter 3 (Technical Barriers to trade, sanitary and phytosanitary measures), Ch. 5 (trade facilitation and customs co-operation), Ch. 6 (agriculture, fisheries and food security). Even more importantly, Part III of the agreement deals in detail with objectives, arrangements and instruments of development co-operation. A specific EPA development fund (PAPED) has been created to support implementation of the agreement.

The EPA also allows to pick up issues of general concern, which are not necessarily linked to the trade agreement. The “exchange of views for a better understanding and monitoring of private

standards in force in the European Union”, foreseen in Art. 51 (Ch. 6 on agriculture) is an example.

Experience, also with the CARIFORUM EPA shows, that development co-operation can be instrumental in overcoming capacity problems and achieving benefits of trade agreements. The new approach of the EPAs to combine a trade agreement closely with development co-operation provisions is therefore promising. There was a long discussion, whether “additional” funding would be necessary to bear with the arising implementation and, possibly, adaptation costs. But experience with the European Development Fund, which still contains large sums that could not be spent, shows, that the implementation of large sums in sensible projects is a challenging task.

Also in the area of Aid for Trade, the build in agenda of the EPA bears additional opportunities. Internal reforms are necessary to increase competitiveness and realize the opportunities of the agreement. They could be linked to development co-operation support in the areas that are foreseen for discussion in the build-in agenda.

Overall Conclusions

In applying the identified theoretical criteria to the ECOWAS EPA it can be concluded that, in theory, the agreement has the structure and instruments available that would allow to use it as an instrument to support sustainable development. But the agreement will only show its value during implementation. An effective monitoring system can play an important role in observing real developments and identifying need for action.

Even the best trade agreement can only create a framework that bears opportunities. In the CARIFORUM region other external and internal factors than the EPA were dominant in explaining changes of real trade flows. This underlines the importance of internal factors and the restrictions stemming from capacity constraints. Development co-operation can be instrumental in providing funding but also transferring technology and enhancing capacity at all levels, if it can build on local actors willing to contribute to reform and change.

The EPA provides trade preferences within an unlimited time frame, but they will be of economic value for a limited period only. The EU continues free trade negotiations with the objective of liberalizing further with the USA on TTIP, with other developing countries like Vietnam and within the WTO. An EPA which is limited to goods like the ECOWAS EPA will thus gradually lose its value. If the ambitious objectives shall be reached, it is of utmost importance to soon start implementation and especially to continue negotiations along the build in agenda in order to exploit their potential to sustainable development. The CARIFORUM EPAs can serve as a useful model in that regard. The African regions should build on that experience.