

Traidcraft submission to the International Development Select Committee post-Cancun inquiry

Bilateral negotiations: the new trade battleground?

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1. Traidcraft is a fair trade organisation whose mission is to fight poverty through trade. We trade with and support small producers around the world whose circumstances effectively exclude or marginalise them from the mainstream system. We also seek to influence the wider trading environment through research, analysis and advocacy.

The EU's twin-track approach

2. Following the collapse of the 5th World Trade Organisation (WTO) Ministerial held from 10-14 September in Cancun, there is concern that key trading blocs, primarily the United States and European Union (EU) will now pursue their interests – including those such as the 'new issues' – more aggressively through a series of bilateral deals currently under negotiation where they possess greater 'arm-twisting' power. The Secretary of State for Trade and Industry, Patricia Hewitt has warned of this, *"A multilateral solution, reached via the WTO, will always be fairer to developing countries than a system composed of bilateral deals, in which the poorest countries can be isolated and pressurised."*¹

3. Despite this and the EU's stated commitment to multilateralism, this memorandum will highlight how the British Government, with its partners in the EU, is already using its collective power to 'isolate and pressurise' developing countries in the bilateral forum through talks with the Africa, Caribbean and Pacific (ACP) countries. The EU is already playing the multilateral and bilateral forums against each other in a 'twin-track' approach designed to maximise gains. This is by no means a new phenomenon, but post-Cancun the question is whether bilateral pressure will be intensified, or whether the EU will use this opportunity to reinforce its commitment to the multilateral system and ease or even rescind its bilateral demands.

The 'EPA' negotiations

4. The Cotonou Agreement, signed in 2000 between the EU and 78 African, Caribbean and Pacific (ACP) countries covers aid, trade and political co-operation. The Agreement marks a fundamental shift in the EU's approach to the ACP group in a number of areas, but it is in the area of trade that the EU's new approach is most significant. Negotiations began in September 2002 to agree new trading arrangements to be called 'Economic Partnership Agreements' (EPAs). Although the nature of these has yet to be decided (and the option of an alternative remains open to the ACP), the EU sees EPAs as reciprocal free trade areas which they will negotiate on a bilateral basis with ACP countries or regions. This is a significant change from the system of non-reciprocal preferences that characterised the previous Lomé Agreements between the parties.

5. The talks were launched over a year ago, but thus far the process has been deadlocked. The ACP wants a number of substantive issues of common interest to be agreed with the EU by the whole ACP group in the first phase of talks, before the second phase of regional negotiations begins. The EU is fiercely resisting this attempt, instead favouring negotiating all substantive issues with individual regions - where, of course, as a powerful trading bloc and major donor - its 'arm-twisting' power is greater.

6. Both the EU and ACP have set out their overall aims and objectives for the talks in their 'negotiating directives'. These set out what they want to achieve above and beyond commitments already made in the main Cotonou Agreement which does contain some provisions on trade. It is clear from the EU's mandate that they intend to use these bilateral talks to lever commitments which are either unlikely to be achievable through the WTO or to build on concessions extracted there, including:

- Increased market access for EU goods and services - including into least developed countries
- Commitments on 'new issues' such as investment and public procurement through the 'trade related issues' or 'second pillar of EPAs'.

The dangers of the 'twin track' approach

7. The EU's policy of pursuing those issues that are difficult to obtain multilaterally, or seeking additional commitments through the EPA negotiations, not only calls into question the EU's stated commitment to the multilateral system, but also poses specific dangers for the ACP group:

- Commitments made in one forum (either the WTO or bilaterals) become a **'floor' rather than a 'ceiling'** from which further concessions are then sought. Of course to a certain extent, all bilateral talks are designed to build on what is agreed in other forums, however this tactic is of concern to the ACP because of the marked imbalance in terms of political and economic power between the negotiating parties - one of whom is the donor and one the recipient.
- The option of getting controversial issues on the table through the **'back door'** is retained. The Singapore issues, which have so far been successfully resisted at the WTO, are being actively pursued by the EU in a number of bilaterals – including the EPA talks.
- The twin track approach further stretches the negotiating capacity of developing countries who have yet another forum in which to defend their interests. Capacity problems are compounded by the EU forcing the pace of the talks – particularly in EPAs - where the EU is pressing for substantive regional negotiations to begin.

New issues by the back door

8. There has been a great deal of public resistance around EU attempts to force the inclusion of the so-called 'new' or 'Singapore' issues (Investment, Competition Policy, Trade Facilitation and Transparency in Public Procurement) onto the WTO agenda. In fact, European insistence on this led to the breakdown of the Cancun meeting. There has been less of an outcry about their inclusion and further elaboration as part of the EU's agenda for EPAs. But in some ways the dangers within the EPA talks are greater because the EU is pursuing these areas on the basis of the same liberalisation, non-discrimination and national treatment agenda which poses threats to development, but this time from a position of even greater 'arm-twisting' power. It is instructive to note that one of the new issues that the EU seems prepared to drop from the multilateral stage – investment – is already very clearly elaborated as part of their negotiating directives for EPAs. Since ACP countries are clear that they are not ready to talk about *any* of these issues at present in the WTO, Traidcraft and its partners are concerned that it is inappropriate for the EU to use the bilateral route to force the pace on these issues, unless requested by the ACP group.

The EU negotiating directives state: *"The mere removal of tariffs will not be sufficient to fully achieve the objectives of economic and trade co-operation. In particular, the potential gains from trade liberalisation will not be fully realised unless other factors causing segmentation of markets are removed. This is precisely why the Cotonou Agreement has defined enhanced co-operation in all areas relevant to trade as the **second pillar of EPAs.**"*²

Investment

9. In the area of investment, the EU's stated objective is that EPAs should: *"agree to establish, while respecting the respective competencies of the Community and its Member States, a regulatory framework, which shall enhance and stimulate mutually beneficial sustainable investment between them [EU and ACP regions]. This framework will be based on principles of non-discrimination, openness, transparency and stability and on general principles of protection, which will endorse the best results agreed in the competent international fora or bilaterally."*³

The EU is clearly looking for concessions above and beyond what it is likely to achieve at the WTO where developing countries have been firm in refusing to negotiate an investment agreement.

Aside from the fact such an agreement has been rejected by developing countries in the multilateral forum, including such a framework as part of a negotiation whose aim is to *"promote sustainable development and contribute to poverty eradication in ACP countries"*⁴ has two fundamental flaws:

- i) A framework that ensures transparency and stability will not of itself lead to increased investment. The World Bank has concluded: *"Countries that had concluded a Bilateral Investment Treaty (BIT) were no more likely to received additional Foreign Direct Investment than were countries without such a pact."*⁵
- ii) The principles of non-discrimination and openness remove a fundamental tool that most developed countries have used during their period of development. Discrimination between foreign and domestic firms has been a central tool of industrial policy, including in the UK, allowing countries to support small producers and build up national industry through placing limits on foreign ownership, requiring local employment or insisting on joint ventures. The evidence shows that investment liberalisation is a product, rather than a cause of development, being sought once a country reaches a certain level of competitiveness.⁶

Public Procurement

10. Those who were pushing for 'new issues' to be included in Cancun were only arguing for *transparency* in public procurement, so the EU's suggested *liberalisation* of public procurement as part of EPAs is a clear attempt to force an issue through even more aggressively, using their power in the bilateral forum. The EU goes even further in suggesting that such progressive liberalisation should be based on the principle of 'non discrimination': "*EPAs will aim to ensure full transparency in procurement rules and methods at all government levels. In addition the parties will seek progressive liberalisation of their procurement markets on the basis of the principle of non discrimination and taking into account their development levels.*"⁷ Despite the reference to levels of development, there is a concern that if agreed, this could take away the fundamental right of sovereign countries to determine their own domestic economic priorities. Governments may be forced to advertise tenders widely throughout the EU and ACP regions and may no longer be able to support or prioritise local companies for domestic contracts, with devastating longer-term consequences. This offers huge possibilities for European companies and consultants, as well as threatening to squeeze out domestic firms.

Aggressive market access demands

11. According to the main Cotonou Agreement the overall objective of EPAs is, "to conclude new WTO compatible trading arrangements removing progressively barriers to trade and enhancing co-operation in all areas relevant to trade".⁸ The EU is choosing to interpret 'WTO compatible' in a restrictive way, arguing that ACP regions who choose to negotiate EPAs may be requested to open up substantially all trade (90 per cent) over a 12 year period.⁹ However under the multilateral WTO Doha Agenda, agreed in 2001, developed countries agreed to demand 'less than full reciprocity' from least developed countries (LDCs) in non-agricultural goods. It is not yet clear how this will be reconciled for those LDCs that have no viable alternative but to join an EPA¹⁰. The ACP has argued that there should be special arrangements for LDCs within the EPA framework and that this should be agreed at the 'all-ACP' phase, but the EU continues to resist any agreement at this level.

12. For the EU the beauty of the twin track approach is that in bilateral talks such as the EPA negotiations, it is in a stronger position to resist the troublesome issue of its own agricultural policies (which was one of the major sticking points in Cancun) even being on the agenda – despite continued calls from ACP countries. In the EPA negotiations, the EU is attempting to use its powerful position to demand improved market access for its industrial and agricultural goods – even from of the poorest ACP countries – without having to mention the contentious issue of the impacts of the Common Agricultural Policy (CAP) – in particular on poorer producers and small enterprises in ACP countries.

Additional services demands

13. The main Cotonou Agreement requires "*progressive and reciprocal liberalisation of trade in services consistent with WTO and in particular Article V of General Agreement on Trade in Services (GATS)*"¹¹. Such liberalisation is to be asymmetrical in both timing and the sectors and sub-sectors included. This means that ACP countries can theoretically decide to open more slowly and exclude certain sensitive sectors altogether (although even this level of policy freedom is questionable). However in their negotiating directives for EPAs, the EU makes its real intentions clear by stating that as part of EPAs it wants to see services "*negotiations begin in all sectors by 2006 at the latest.*"¹²

14. There are two clear concerns for ACP countries:

- i) The inclusion of all sectors undermines the principle in the GATS negotiations that talks are based on positive lists and requests and offer phases – and directly contradicts the principle of asymmetry agreed in the main Cotonou Agreement. The question remains, whether ACP countries will be allowed to preclude liberalisation in important public sectors such as healthcare, education and basic service provision. Will they be allowed to prioritise local firms to provide local services?
- ii) The timing of 2006 suggests that bilateral negotiations under the Cotonou framework will only begin after the GATS negotiations have been concluded in 2005. Thus, commitments given (often under extreme pressure) during the GATS talks may in fact form the floor from which further opening will be prised during the EPA discussions.

15. Summary of key issues

Issue	WTO commitments	Commitments being pursued by the EU via EPAs
Investment	Fierce resistance to an investment Agreement at the WTO from developing countries and campaigners	Pressure to establish an investment protection 'framework' on the principle of 'non-discrimination'.
Public Procurement	Resistance to including an agreement on transparency in public procurement in the WTO from developing countries and campaigners	Pressure to include transparency in public procurement as part of the EPA negotiations, and to move beyond this into progressive <i>liberalisation</i> of procurement markets based on the principle of <i>non discrimination</i>
Services	Positive list approach during GATS so some sensitive sectors can theoretically be exempted	Services negotiations to have started in <i>all</i> sectors by 2006 at the latest thus creating pressure for further commitments
Market Access	EU will demand 'less than reciprocal' market access from LDCs on non-agricultural products Limited EU offers regarding agriculture support measures	If LDCs are part of regional free trade areas, this could mean reciprocal access in some sectors EU resisting discussion of CAP or its impacts as part of the EPA negotiations

The role of the EU

16. As the table highlights, there are at present no areas where the 'WTO-plus' and other commitments the EU is pressing for as part of EPAs are designed in favour of ACP interests. Instead they are all specifically in the EU's interest, proving that the devil is in the detail and calling into question the EU's commitment to ensuring that EPAs contribute to poverty alleviation and eventual eradication in ACP countries.

17. This does not have to be the case and it is important to note that these remain only EU proposals. The ACP group is in a strong position following the breakdown of the Cancun Ministerial to press the EU to take their concerns seriously and flex its political muscle in the EPA as well as the WTO forum.

18. It is now critically important that developing countries and those supporting them reinforce the importance of the multilateral system while closely monitoring the content and process of the EPA talks as this 'new battleground' for international trade unfolds.

Recommendations

The role of the UK Government

19. Following the EU Member States' agreement on the European Commission (EC)'s negotiating directives for EPAs, the British and other European Governments have taken a back seat and the negotiations are stalling. The collapse of Cancun (which some blame on mishandling by the EC) points to the danger of allowing Commission officials a free rein to negotiate without high-level scrutiny, input and direction from the Member States and parliaments. Similarly the Sustainability Impact Assessment that the Commission has instigated on the EPA talks (at a cost of €1 million) is stalled and the process had a number of fundamental flaws that need the urgent attention of member states¹³. It is vital in the post-Cancun climate that member-state and parliamentary scrutiny of this process is increased significantly.

20. Traidcraft calls on the UK government to markedly increase its engagement in the EPA negotiation process and in particular to insist that the European Commission:

- Ensures that 'WTO-plus' commitments are only sought at the request of the ACP or are proved to be supportive of the EPAs' aim to promote sustainable development and poverty alleviation in ACP countries.
- Works in consultation with the ACP to institute an independent and participatory impact assessment of EPAs and refrains from forcing the pace of negotiations until all parties have had sufficient time to understand the findings of this.
- Commits to a formal agreement with the whole ACP group covering their issues of concern before regional negotiations begin.
- States its commitment to exploring alternatives to EPAs for those countries that, in 2004, do not wish to pursue this option, as provided for in the Cotonou Agreement.

- Shows commitment to a developmental outcome by stating a willingness to explore the re-opening of aspects of the main Cotonou Agreement if the ACP requests it.

The role of the International Development Select Committee

21. Traidcraft urges the members of the International Development Select Committee to:

- Note that the EU, as well as the United States, is using bilateral negotiations to aggressively pursue its interests.
- Step up scrutiny of the EPA negotiation process and strengthen links with parliamentarians across the ACP region.
- Work closely with colleagues on the Trade and Industry Select Committee (for example through a joint working group) to ensure coherent scrutiny of the development impacts of UK and European trade policy.

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Footnotes:

¹ "Learning the Lessons of Cancun", Secretary of State for Trade and Industry, Patricia Hewitt writing in *The Guardian* 23/09/03

² "Recommendations authorising the Commission to negotiate Economic Partnership Agreements with the ACP countries and regions". Agreed by the EU General Affairs Council 17/06/02.

³ "Recommendations authorising the Commission to negotiate Economic Partnership Agreements with the ACP countries and regions". Agreed by the EU General Affairs Council 17/06/02.

⁴ The Cotonou Agreement

⁵ "Global Economic Prospects and the Developing Countries 2003: Investing to Unlock Global Opportunities". World Bank, 2003

⁶ For further information on this point see "Unwanted, unproductive and unbalanced: Six arguments against an investment agreement at the WTO". Oxfam, Action Aid, Christian Aid, CAFOD, World Development Movement and Save the Children. 2003

⁷ "Recommendations authorising the Commission to negotiate Economic Partnership Agreements with the ACP countries and regions". Agreed by the EU General Affairs Council 17/06/02.

⁸ "Recommendations authorising the Commission to negotiate Economic Partnership Agreements with the ACP countries and regions". Agreed by the EU General Affairs Council 17/06/02

⁹ The EU is choosing to use the current interpretation of WTO rules for Regional Trade Agreements, despite the fact that these were designed for agreements between parties of broadly comparable levels of development and are being re-evaluated as part of the Doha Round.

¹⁰ LDCs who are part of a regional trading bloc that decides to negotiate an EPA may be faced with a stark choice – either open up to European competition - despite the fact that they have nothing to gain from such an arrangement - or leave their neighbours in the bloc.

¹¹ The Cotonou Agreement

¹² "Recommendations authorising the Commission to negotiate Economic Partnership Agreements with the ACP countries and regions". Agreed by the EU General Affairs Council 17/06/02.

¹³ European civil society groups have raised concerns that the European Commission's current Sustainability Impact Assessment of EU-ACP trade is, at present, neither participatory nor sufficiently independent. It places the onus for coping with impact on the ACP countries and is insufficiently linked to the negotiation process. The European Commission's response civil society concerns has been inadequate. For more information on this see www.epawatch.net