Oxfam Briefing Paper

110

EMBARGOED UNTIL 12:00 HRS GMT Monday 21st April 2008

Partnership or Power Play?

How Europe should bring development into its trade deals with African, Caribbean, and Pacific countries

Europe is negotiating new trade deals with African, Caribbean, and Pacific (ACP) countries. A true partnership in trade could radically transform the lives of one-third of all people living in poverty, providing farmers and small businesses with sustainable incomes and workers with decent jobs. But Europe is choosing power politics over partnership. The deals currently on the table will strip ACP countries of important policy tools they need in order to develop. They will fracture regional integration, exacerbate poverty and make it harder for countries to break away from commodity dependence. Despite massive pressure, many ACP countries are holding out for a fair deal. Europe needs to rethink, and agree to change course. Ultimately, it is in its own interests to do so.

Oxfam International

Summary

Six years ago trade talks began between the European Union (EU) and 76 African, Caribbean, and Pacific (ACP) countries. By the negotiating deadline of December 2007, fewer than half the ACP countries had 'initialled' any form of deal with Europe. The deals promised to deliver development, but they fail to meet the development test (see the Scorecard below). As trade ministers from across the ACP stated in December 2007, the 'European Union's mercantilist interests have taken precedence over the ACP's developmental and regional integration interests'.

To date, deals have only been initialled: they are not legally binding agreements. This means change is possible: new, fairer deals can and should be created.

The original aim of these talks was a good one: concluding Economic Partnership Agreements (EPAs) that would promote 'poverty reduction, sustainable development and the gradual integration of ACP countries into the world economy', and which would bolster regional economic integration. Criticism has come from many quarters in late 2007 and early 2008 – including the African Union, the ACP Council of Ministers, ACP heads of state, UN and World Bank officials, elected representatives, coalitions of ACP farmers and businesses, and recognised trade experts. This should have been an important signal to Europe that what it put on the table not only fell short of this aim but in some areas undermined it. These deals may be well-intentioned, but they are far from well-designed.

In the final weeks of 2007, the European Commission (EC) used the expiry of a World Trade Organization (WTO) waiver to coerce ACP countries into accepting free trade agreements (FTAs). Despite tremendous pressure, more than half refused to initial any such deal, because it contained little in the way of meaningful development benefits. Many of those countries that concluded deals did so because they faced immediate costs: hundreds of thousands of jobs in their major export sectors, including horticulture, bananas, and tuna, were put at risk. Europe threatened to raise tariffs on imports from countries such as Côte d'Ivoire, Kenya, Papua New Guinea, and St. Lucia, which are poor but not poor enough to have continued access to Europe's markets through the EU's Everything But Arms preference scheme.

Now that legal texts are available, it is possible to evaluate the EPAs based on content rather than conjecture. Through analysis of the goods, services, investment, and intellectual property chapters of texts concluded last year, this paper draws attention to aspects of EPAs that put future economic development at risk. It subjects them to the kind of development test that should have guided negotiations from the beginning, and puts forward positive policy prescriptions. Each section uses case studies from the history of the integration of ACP countries into the global economy to draw lessons from both the past and the present.

Putting trade at the service of development, as Europe and ACP countries promised to do, is not a simplistic choice between markets being 'open' or 'closed'. It is about ensuring that ACP countries have the institutions, policy instruments, and resources to be able to take advantage of market access and to strategically manage their integration into the global economy in a way that adds value locally and which shares the benefits fairly.

However, the current deals strip ACP countries of some of the very tools they need to develop, kicking away the development ladder that countries across the globe, including many in Europe, have used to build their own economies. They require ACP farmers and businesses to compete under similar rules as European producers without seriously tackling the manifold competitiveness constraints they face. They tie the hands of ACP governments, forbidding them from using a variety of the trade and investment measures that are needed to make openness work to create decent jobs and livelihoods. And they give new rights to European investors

at the cost of local businesses and public interest. Regional integration is threatened by the sheer number of initialled agreements and their mismatch with ongoing integration efforts. In return, Europe gives little. It has further opened its markets, but barriers remain. And while the deals impose high costs, it has made clear that hardly any additional finance will be available to meet them.

In a fair deal that truly reflects partnership, Europe would fully open its markets to all exports without asking ACP countries to reciprocate, thus ensuring ACP countries have the policy freedom to govern their markets in the public interest and pursue regional integration on their own terms and at a pace congruent with regional processes. Europe would further assist ACP countries to tackle pervasive constraints to competitiveness; upgrade institutions; and improve regulatory capacity, particularly in the services sector, to ensure everyone has access to vital services. Europe would ensure that its companies investing in ACP countries bring high-quality investment, generating decent jobs and upgrading skills, and transferring technologies.

A fair deal makes sense for all parties. ACP countries would gain a fairer share of the wealth generated from their interaction with the global economy. Europe would gain too – by supporting ACP countries through fair deals rather than free trade deals, its trade gains with these countries could ultimately be four times higher.

It is time to take a fresh look at the 'initialled' EPAs – before potentially damaging agreements are made permanent. It is time for Europe to stop playing power politics and to work in partnership with ACP countries.

The millions of people across ACP countries living in poverty cannot afford for politicians to get this wrong.

Oxfam International calls for:

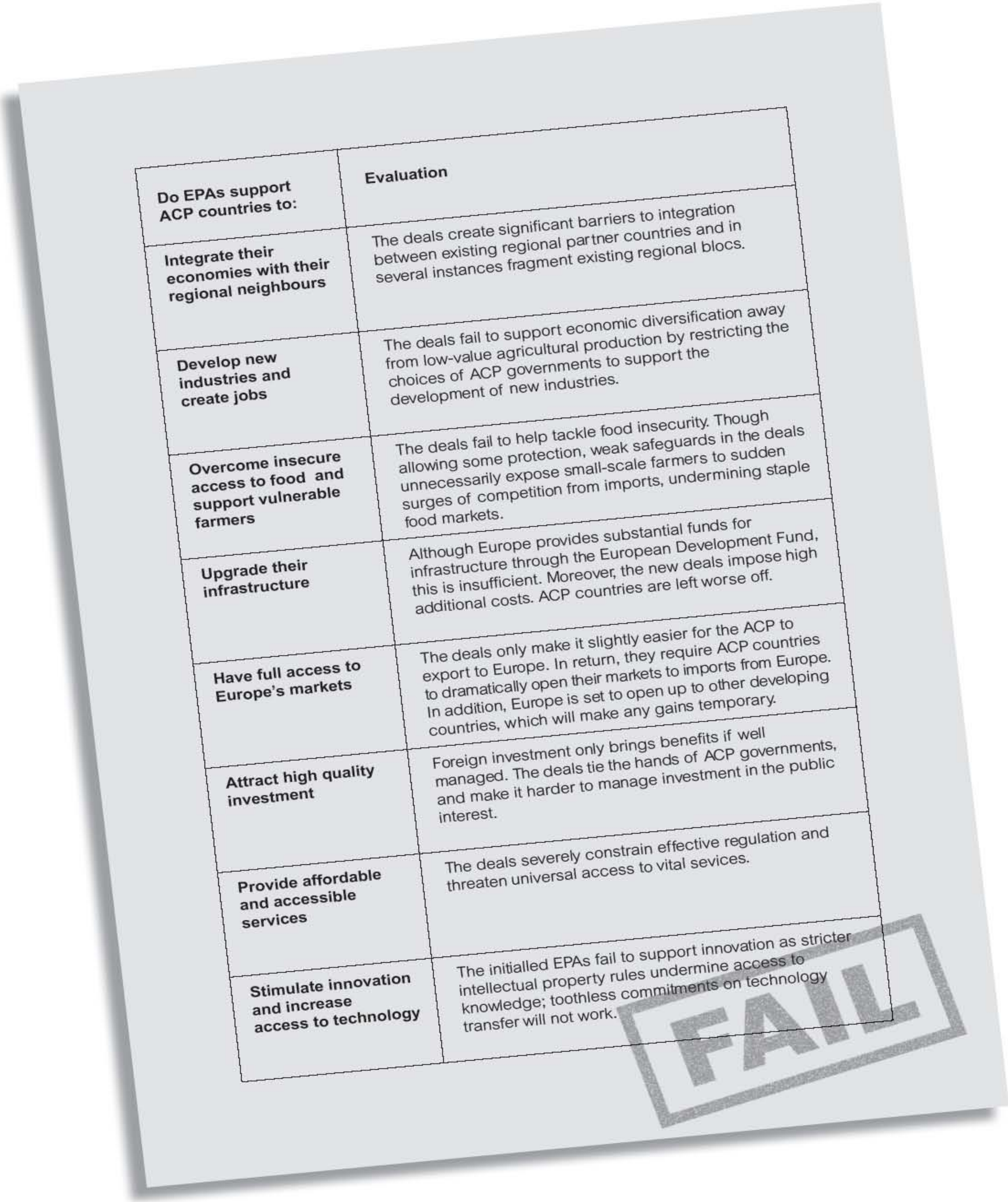
- Thorough and comprehensive independent evaluations and impact assessments of what has been initialled, before any deal is signed and committed into law;
- Vigorous engagement by parliaments across Europe and the ACP and full scrutiny of the deals;
- The EU to offer ACP countries long-term options for trade in goods that would include:

  (i) Adapting its unilateral preference schemes so they further open European markets and are made permanent, ensuring no ACP country is left worse off if it does not conclude a free trade agreement;

  (ii) Renegotiation of any aspect of the initialled EPAs and commitment to reduce the deals to the minimum needed for WTO compliance;
- ACP countries to take stock within their regional blocs and make a strategic decision on which route they want to pursue, fully consulting all affected parties, including workers, producers, and businesses;
- The EU to agree complete flexibility in approaching negotiations on services, investment, technology transfer, and other trade-related areas, with ACP countries taking the lead in setting the pace and content of negotiations;
- The EU to provide additional, binding, predictable, and swiftly disbursed support to tackle infrastructure and competitiveness constraints in ACP countries.

Economic Partnership Agreements

Do The Deals Pass The Development Test?



Do EPAs support ACP countries to:	Evaluation
Integrate their economies with their regional neighbours	The deals create significant barriers to integration between existing regional partner countries and in several instances fragment existing regional blocs.
Develop new industries and create jobs	The deals fail to support economic diversification away from low-value agricultural production by restricting the choices of ACP governments to support the development of new industries.
Overcome insecure access to food and support vulnerable farmers	The deals fail to help tackle food insecurity. Though allowing some protection, weak safeguards in the deals unnecessarily expose small-scale farmers to sudden surges of competition from imports, undermining staple food markets.
Upgrade their infrastructure	Although Europe provides substantial funds for infrastructure through the European Development Fund, this is insufficient. Moreover, the new deals impose high additional costs. ACP countries are left worse off.
Have full access to Europe's markets	The deals only make it slightly easier for the ACP to export to Europe. In return, they require ACP countries to dramatically open their markets to imports from Europe. In addition, Europe is set to open up to other developing countries, which will make any gains temporary.
Attract high quality investment	Foreign investment only brings benefits if well managed. The deals tie the hands of ACP governments, and make it harder to manage investment in the public interest.
Provide affordable and accessible services	The deals severely constrain effective regulation and threaten universal access to vital sevices.
Stimulate innovation and increase access to technology	The initialled EPAs fail to support innovation as stricter intellectual property rules undermine access to knowledge; toothless commitments on technology transfer will not work.

1 New trade deals: in whose interest?

> 'Ministers deplore the enormous pressure that has been brought to bear on the ACP States by the European Commission to initial the interim trade arrangements.'
>
> Council of ACP Trade Ministers, December 2007[1]
>
> 'The EU's goal remains using trade to promote economic development, build regional markets and help lift people out of poverty.'
>
> Peter Mandelson, EU Trade Commissioner, February 2008[2]

If the rules are fair, international trade and investment can be a source of shared prosperity and development. If not, they can be a source of increasing poverty and exclusion. Many African, Caribbean, and Pacific (ACP) countries are trapped in a vicious cycle of selling products of low value and buying products of high value.[3] Most investment in the ACP regions is in the extractive industries, and creates few jobs. ACP countries are home to more than 12 per cent of the world's population, but earn only 2 per cent of global income.[4] In Africa, despite the highest levels of growth for 30 years, the number of people living in poverty or without a job is increasing.[5]

History and deeply intertwined economic relationships have meant that the working lives of people in ACP countries are inextricably linked to Europe, but there is a profound imbalance. Every day, farmers and businesses in ACP countries sell more than a quarter of all their exports to Europe, but these products make up less than 2 per cent of Europe's total imports.[6]

High dependence on Europe means that the right trade and investment rules could radically change the lives of more than 300 million people across ACP countries who live in grinding poverty.[7] However, just as high dependency raises the stakes for these countries, it also limits their ability to hold out for a fair deal.

New trade negotiations: time for a change

In 2002 the European Commission (EC), on behalf of the European Union (EU) member states, embarked on new trade negotiations aimed at establishing Economic Partnership Agreements (EPAs) with 76 African, Caribbean, and Pacific countries. Negotiations were prompted by criticisms raised at the World Trade Organization (WTO) over Europe's long-standing unilateral preferential schemes for ACP countries, which were considered illegal as they discriminated against other developing countries in Latin America and Asia. The WTO gave Europe and the ACP countries until December 2007 to agree on a new arrangement.[8]

Europe's stated intentions were good: it pledged to conclude agreements that would exclusively serve the development interests of the weaker regions, with 'due regard for their political choices and development priorities'.[9] But its insistence that there was no workable alternative to a free trade agreement was misguided (see Box 1) – and as this paper shows, it is an instrument poorly suited to development.

Moreover, the imbalance in economic and negotiating power was vast. The nine countries of Central Africa, whose combined economy is smaller than that of the city of Manchester in the UK, found themselves negotiating as a bloc with the EU, one of the most powerful and experienced negotiating entities in the world.[10]

Box 1: Free trade agreements: a choice, not a necessity

The WTO has specific rules for deals between developed and developing countries. For trade in goods, WTO rules provide two broad options:

(1) **Unilateral preferences.** In recognition of the major differences between countries, the WTO allows developed countries to open their markets without requiring developing countries to reciprocate.[11] It also allows differentiation between developing and least-developed countries (LDCs), such as Europe's Everything But Arms scheme. And it allows differentiation between developing countries, so long as any such differences are based on objective and transparent development criteria.[12] To provide ACP countries with preferential access in line with WTO rules, Europe could modify its existing preferential schemes (see Section 6).

(2) **Reciprocal preferences.** It is also possible to negotiate a 'free trade agreement' whereby Europe and ACP countries open up 'substantially all trade' with each other over a 'reasonable length of time'.[13]

Europe has insisted on the latter, but the former remains a perfectly viable option.

Bad news for development

Europe had a very clear vision of the 'pro-development' trade agreements it wanted to forge with ACP countries. Its proposed texts were classic free trade agreements (FTAs), very similar to the EU–Chile and EU–Mexico bilateral deals, and which made no recognition of regional differences across the ACP.[14] They were drafted in line with 'Global Europe', a strategy aimed at maximising the competitiveness of European companies abroad.[15] While the Caribbean negotiators largely accepted the EC's approach, many African and Pacific countries expressed vehement opposition.[16]

Outside of the negotiating room, it was hard to find anyone with a good word to say about the proposals. Trade experts, academics, parliamentarians, World Bank and UN officials, not to mention farmers' organisations, trade unions, and NGOs, raised concerns that the deals would be bad for development, would endanger livelihoods, and would deny ACP countries the flexibility to use the policies that they need in order to develop.

Economic models showed that Europe would be the real winner, with most ACP countries – and many of the third parties in whose interests this renegotiation was supposedly taking place – left worse off.[17] For example, under EPAs European meat exports to most ACP countries were predicted to shoot up by 180 per cent, while every other country grouping measured would see its exports decline by 30 per cent.[18] Overall, European exporters are expected to gain significantly from reciprocity.[19]

At the end of 2007, just weeks before the WTO deadline, tensions ran so high that they overshadowed the EU–Africa Summit. Alpha Konaré, Chairperson of the Commission of the African Union, criticised Europe for trying to 'force' agreements on individual countries, while President Wade of Senegal argued that Europe was trying to push Africa into a 'straightjacket that doesn't work'.[20]

Days later, the 76 ACP trade ministers issued a joint declaration 'deploring' the pressure from Europe and stating that the 'European Union's mercantilist interests have taken precedence over the ACP's developmental and regional integration interests'.[21] At the heart of this acrimony lay two widely different visions of development.

The deadline: a powerful negotiating tactic

In February 2007, reviews of the EPA negotiations made it clear that, due to fundamental differences in position and major capacity constraints, negotiations could not be completed on time in the African and Pacific regions.[22] Rather than acknowledge these concerns, Europe used its economic and political might to coerce countries into concluding an agreement. Citing the WTO deadline as its rationale, the EU threatened to raise taxes on imports from any ACP country that was not classified as least developed and did not initial an EPA by 31 December 2007. Although there were other avenues that Europe could have explored to keep its markets open, it refused to consider them.[23]

Failure to conclude a deal would have put many businesses in ACP countries at risk, possibly plunging hundreds of thousands of people into unemployment (see Box 2). ACP countries with the lowest incomes had a fall-back option as, even without a deal, they could still sell to Europe through the Everything But Arms scheme.[24] For most others, however, the threat of higher tariffs was a major concern.

As the deadline drew close, major export companies, many of them European firms that have invested in ACP countries, lobbied ACP governments to conclude deals, adding to the pressure on negotiators.[25]

By the end of 2007, the African and Pacific negotiating blocs were cracking under the pressure. The majority of countries refused to conclude any form of deal. Finally, 18 African and two Pacific countries – not surprisingly, those that would suffer the most if tariffs against them went up – broke away from their regional negotiating blocs. A flurry of partial bilateral deals was initialled with Europe in a matter of weeks.

Box 2: Namibia: how beef farmers became an unfair bargaining chip

Claus Düvel is a commercial beef farmer in Namibia. He has a cattle herd of 1,000 animals, on a farm of 16,000 hectares. 'In years when rainfall and grazing are good, I sell between 350 and 400 head of cattle. I employ eight permanent workers and four casual labourers, and in total, 46 men, women, and children depend on my farm for a living', he says.

In December 2007, Namibia's government faced a dilemma. It did not agree with the trade deal that Europe had put on the table, but failure to conclude a deal would have put farmers like Claus out of business. 'With only South Africa as a market, I would have been forced to lay off half of my workforce', he says.

With the livelihoods of thousands of farmers and workers at stake, Namibia concluded a deal.[26]

Negotiating such agreements normally takes years, but the immense pressure from Europe meant that on this occasion little real negotiation took place. Although in October 2007 West African ministers asked for a two-year extension of the negotiating deadline in order to complete a regional deal,[27] Europe by-passed the regional negotiators to instigate bilateral deals with Ghana and Côte d'Ivoire. In the case of Côte d'Ivoire, a brand new text arrived from Europe and was agreed within two weeks. There was no national or regional consultation. Even key officials in the country's Trade Ministry were not involved in its negotiation, let alone those businesses, farmers, or workers whose futures were at stake.[28]

The Caribbean was the only region to initial a full deal, covering not only trade in goods but also services, investment, competition, government procurement, and intellectual property.

Most of the countries that did not conclude a deal now export under the Everything But Arms scheme. South Africa continues to export under a pre-existing bilateral deal[29] while others export under Europe's Generalised System of Preferences (GSP) scheme for developing countries. Although some tariffs are higher, the negative impact has been relatively small: seven countries are Pacific islands that export little to Europe, while for Nigeria, Gabon, and Congo the tariff increases on their exports have been small.[30]

Bad news for multilateralism

If finalised as Europe plans, the EPAs will mark a dangerous tipping point for global trade rules. With almost half of the WTO membership involved, they will dramatically increase the 'spaghetti bowl' of bilateral trade agreements that is undermining the multilateral trading system.

Moreover, the EPAs require the majority of the world's developing countries to give up the very flexibilities they have fought for in the Doha 'Development' Round (see Table 1).[31] Least-developed countries that sign would be left much worse off. The deals stand to undercut the negotiating positions of developing-country coalitions including the Group of 90 Developing Countries, the Least Developed Countries Group, and the Small and Vulnerable Economies Group.

The EPAs also threaten South–South integration. Europe insists on a 'most favoured nation' (MFN) clause in EPAs, requiring ACP countries to extend to Europe the benefits of any deal that they might strike in future with other large countries or regions such as India, China, or Mercosur.[32] Ensuring permanent, privileged access to ACP markets might be good for Europe, but it is not necessarily in the interests of ACP countries. Just at the point when historical dependence on Europe is waning, this provision limits the leverage of ACP countries to negotiate favourable deals with the very countries where their exports are growing most rapidly.[33] Brazil, supported by China and India, has raised concerns about this provision at the WTO.[34]

EPAs are set to undermine the negotiating positions of ACP countries in other multilateral forums. The intellectual property provisions in the Caribbean 'full EPA' support positions that Europe has advocated (and developing counties, including the Africa Group, have strongly resisted) in the World Intellectual Property Organization (WIPO).[35]

2008: time for a fair deal

By July 2008, the EU wants all the 35 ACP countries that initialled deals to sign them. During 2008 and 2009, it wants all 76 ACP countries to complete negotiations on 'full' EPAs.[36] Before taking any more steps to turn the deals into legally binding instruments, it is imperative that the EU and ACP countries carefully evaluate the consequences for development.

As the following sections show, all indications are that the deals initialled in December 2007 pose a major threat to the future development of ACP countries. Taking each major element of the texts, Oxfam has analysed the lessons that have been learned from the history of ACP integration into the global economy. This paper puts EPAs to the development test and, using analysis from trade experts, shows that, rather than supporting countries to change the terms on which they engage, the deals risk reinforcing the unequal trade and investment relationships that ACP countries are already struggling with.

A fair deal is possible: to date, deals have only been initialled and are not legally binding.[37] All that is required is political will, and the recognition that it is time to change course.

Table 1: EPAs and the WTO: death blow to development in the Doha Round

Area of negotiation	Doha Round proposals	Full EPA (as initialled by the Caribbean)
Trade in agricultural and industrial products	Least-developed countries exempted from tariff cuts. Formula for cutting tariffs builds in some asymmetry for developing countries' needs. Proposed Special Safeguard Mechanism and 'Special Products' would provide limited protection to vulnerable developing-country producers.	All ACP countries eliminate *applied* tariffs on 80–98 per cent of trade with Europe. No sector exempted. Safeguards are weaker than the Special Safeguard Mechanism proposed at WTO.
Trade in services	Developing countries are required to make further market access and national treatment commitments than currently made under GATS, but least-developed countries are under no obligation to make further commitments this round.[38]	Least-developed and developing countries make commitments that go substantially beyond existing GATS commitments in terms of opening and regulations.
Intellectual property	Developing countries implement TRIPS by 2005; least-developed countries implement TRIPS by 2013.[39]	Both developing and least-developed countries agree to level of intellectual property rules and mechanisms for enforcement far beyond TRIPS.
Investment	Negotiations on an investment agreement were taken off the Doha agenda at the Cancun Ministerial in 2003. Least-developed countries have flexibility to introduce new measures that are inconsistent with the already existing TRIMS agreement. These have to be notified and will be positively considered.[40]	Far-reaching provisions beyond current WTO obligations require ACP to open up markets and treat foreign investors like local ones.
Competition	Negotiations on competition were taken off the Doha agenda at the Cancun Ministerial in 2003.	Substantive commitments to enforce competition policies, including in the area of services trade.
Government procurement	A plurilateral agreement on government procurement exists, but no ACP country is a party to this agreement. Negotiations on further commitments in the area of transparency in government procurement were taken off the Doha agenda in 2003.	Substantive commitments on transparency and to negotiate subsequent opening of government procurement markets.
Aid for trade	Europe has pledged €2bn to help developing countries meet costs of adjusting to outcome of Doha negotiations and EPAs.	No additional commitments beyond those made at WTO, and part of the already committed European Development Fund.

2 Trade in goods: the quest to add value

'Independent Africa stumbled…development policy emphasized the production of primary commodities for export, often at the expense of adequate support for subsistence agriculture. We became subject to the whims of the market without having any say in its functioning.'

Kofi Annan, former UN Secretary-General[41]

Learning from the past and present

The arguments often heard in Brussels and in other European capitals posit EPAs as a simple choice between a country's economy being 'open' or being 'closed'. This is mistaken.

Relative to its income, the average ACP country trades just as much as the average European country.[42] As a proportion of its income, Ghana trades with the rest of the world twice as much as France does – but the average person in Ghana earns 70 times less than their French counterpart.[43] As is the case with many ACP countries, it is not that Ghana trades too little. The problem is that it does not make much from what it sells, because the value is added elsewhere.

Looking at it from a historical perspective, ACP countries are already relatively open. Tariffs in sub-Saharan Africa are now significantly lower than those of European countries or of the East Asian Tiger economies at similar stages of their industrialisation and development (see Table 2).[44]

For many ACP governments, the experience of liberalisation in the past has been a bitter one. Following liberalisation in the 1980s, in many African countries growth rates halved and living standards steadily declined.[45] Instead of making producers more competitive, liberalisation often wiped them out: Senegal, for example, lost a third of its manufacturing jobs.[46] The World Bank now recognises that its advice about the benefits of trade liberalisation was 'too optimistic'.[47]

Table 2: African and European tariffs during industrialisation

Country	**Average manufacturing tariffs (1950)**
Denmark	3%
Sub-Saharan Africa (2005)	**8%**
Netherlands/Belgium	11%
France	18%
United Kingdom	23%
Italy	25%
Germany	26%

Sources: World Development Indicators 2007; Ha-Joon Chang (2005)[48]

Learning from success

Mauritius is one exception to this story, and the island country has been pretty successful in its quest to gain value from integration into the global economy. From the 1970s until the late 1990s, its economy grew at a rate of 6 per cent a year, more than twice as fast as the rest of Africa. Incomes tripled, life expectancy increased by ten years, and inequality declined.[49] The shift from plantation agriculture to export-oriented manufacturing and most recently global services particularly benefited women, as it provided new opportunities for wage earning and thus an independent source of income.[50]

Detailed studies show that success in Mauritius came from the strategic management of international trade and investment relationships, as well as strong and effective government institutions (see Box 3). The economy was open, but like Europe, the USA, East Asia, and Latin America before it, Mauritius used a mix of tariffs, quotas, and investment incentives to govern the market in a way that added value and stimulated development.

Box 3: Mauritius: a strategic approach to opening[51]

Mauritius reduced tariffs on inputs that were needed for manufacturing while simultaneously levying high tariffs on finished products, to provide some protection for infant industries. Throughout the 1980s and 1990s, the country maintained tariffs of up to 80 per cent and quotas on 60 per cent of imports, and it changed its tariffs over time. Even in 1998, Mauritius was still rated among the most protectionist countries in the world.

To overcome an 'anti-export bias', however, it provided subsidies to firms that were contingent on exporting. This strategy was complemented by preferences, with European and US preference schemes combined covering more than 90 per cent of exports. Firms ploughed back the profits they earned into the local economy, fuelling growth.

Favourable international trade policies were important too. Flexible treatment of developing countries in the WTO meant that Mauritius was able to use export subsidies and maintain high tariffs. Finally, the entire strategy relied on effective government institutions that provided strategic management of the economy.

Regional integration

Regional markets play an important role in supporting economic diversification, especially when domestic markets are small and fragmented. In Europe, trade within the EU has fuelled development, with two out of three exports from European countries bound for other European countries.[52] Among ACP countries, however, the potential of regional trade remains largely untapped. Only 7 per cent of African exports are destined for other countries in the region, and in the Caribbean the proportion is only 13 per cent.[53]

Regional integration is critical for developing manufacturing as it gives companies larger markets, making it easier for them to specialise and add value. Already more than half of all exports from the East African Community (EAC) and the Southern African Development Community (SADC) to other countries in their regions are manufactured goods, compared with only 12 per cent of their exports to Europe.[54]

Overcoming constraints on competitiveness

Effective trade policies and regional integration are essential but insufficient. To transform ACP economies, major investments in infrastructure are also needed.

Due to high transport costs, the price of Ugandan textile exports almost doubles between the factory gate and the port.[55] Irregular electricity supplies force businesses to buy costly generators to keep running.[56] On the whole, businesses in Africa pay two to three times more for their basic infrastructure needs than their competitors in China (see Box 4).[57]

> **Box 4: Ghana: lights out on manufacturing**
>
> 'The worst part is not knowing when the blackouts will hit. When you least expect it, everything comes to a standstill', says Mr. Francis from his factory in Dodowa, on the fringes of Ghana's capital city Accra. 'It is so frustrating and damaging to business production, not to mention our reputation with people who depend on us to deliver orders on time.'
>
> The 36-year-old businessman has produced beverages and food for local consumption since 1992. Lately, his workers have been coming and going with the electricity. His best hope, he says, is to purchase a small power generator from abroad to compensate for the shortfalls. Costing around $18,000, however, this is an investment that few can afford.[58]

It is no wonder that investors rank 'unreliable infrastructure' at the top of their list of barriers to investment in Africa, or that African finance ministers rank infrastructure provision as their highest priority for promoting growth.[59]

European markets: were only half open

The priority for ACP countries is to add more value locally, but this strategy is undermined if international markets are hard to access. Sales to Europe have been dominated by low-value products, partly due to a series of barriers against high-value products:

- Tariffs into Europe increased as value was added, which meant that ACP countries could export raw sugar or fruit without attracting a tariff, but as soon as they combined these commodities into fruit juice the tariffs jumped, some as high as 35 per cent.[60]
- Rules of origin were excessively restrictive and prevented ACP countries from taking advantage of the market access they had.[61] Absurdities proliferated – for example, over the 'nationalities' of fish. Fish caught in Fijian waters, canned by a Fijian cannery, and exported by a Fijian company would still not qualify as Fijian fish, and therefore gain duty-free access to the EU market, if the vessel or crew that caught the fish were not either Fijian or European.[62]
- Exacting standards have also been a barrier. For example, in 2002, Europe imposed new minimum standards for aflatoxins that went beyond international recommendations.[63] This move had minimal estimated health benefits for European consumers (reducing the incidence of death by two people in a billion), but reduced African exports of cereals and dried fruits and nuts by half.[64]

Benchmarks for a fair deal in goods

Lessons from the past and current constraints suggest that breaking away from commodity dependence requires:

- Strategic governance of the economy, particularly in the use of tariffs and other trade policies to protect vulnerable producers and to stimulate new sectors;
- Prioritising regional integration;
- Tackling pervasive supply-side constraints; and
- Effective access to international markets.

A trade deal with Europe can and should help. The trade in goods provisions contained in any trade deal should be measured against the extent to which they support these outcomes.

Putting EPAs to the development test: goods

State of play

The EPAs initialled by 35 ACP countries in December 2007 all contain a chapter on goods. The countries agreed to eliminate tariffs on between 80 per cent and 98 per cent of imports of goods from Europe over periods ranging between 0–25 years (see Figure 1). For the 15 Caribbean countries, these commitments are part of a 'full' EPA. For most of the other 20 countries, these 'partial' deals were needed to avoid the threat of higher tariffs after December 2007.

Unprecedented opening

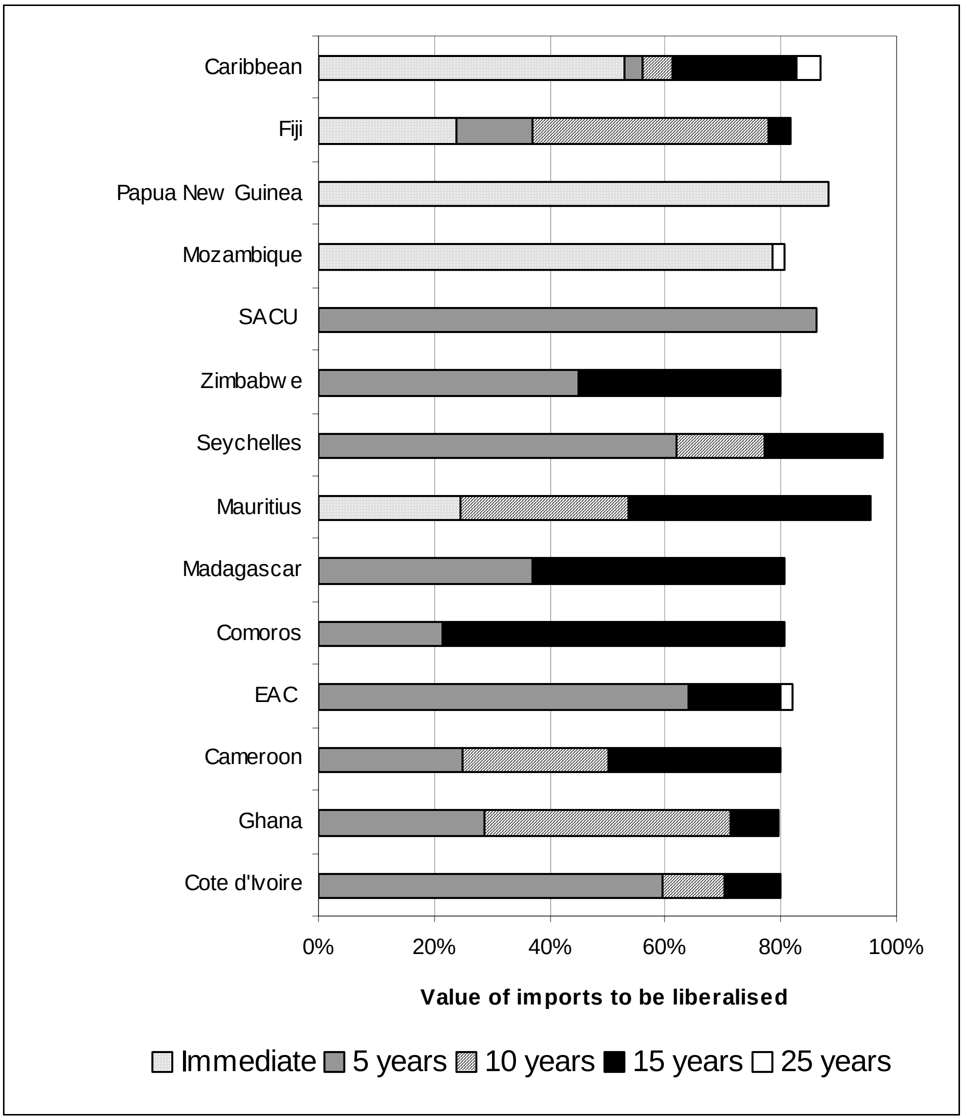
The extent of opening is more than Europe originally proposed – between 67 per cent and 83 per cent of trade[65] – and more than many experts interpret WTO rules to require.

ACP countries are required by the EU to liberalise at least 80 per cent of their imports from Europe within 15 years. Although transition periods of 25 years were promised, these have only been granted to the East African Community and the Caribbean countries and even then apply to only a few products. Other countries will eliminate tariffs within 15 years, while Papua New Guinea will do so immediately. Even least-developed countries such as Mozambique, Uganda, Tanzania, and Rwanda, which do not need to make any tariff cuts in the Doha Round, will open up to more than 80 per cent of imports from Europe.

Rather than development needs of ACP countries, the texts tend to reflect negotiating capacity and EU interests. As a result, Côte d'Ivoire and Mozambique will face some of the largest adjustment challenges and they will appear relatively quickly. Côte d'Ivoire, for example, will have completely removed tariffs on 60% of its imports from Europe two years before Kenya even starts the liberalisation process.[66]

The immediate impact of this opening will vary from country to country according to how open it was prior to the deal. Such impacts have yet to be studied in depth, but some very worrying trends can be discerned.

Figure 1: Pace and scope of import liberalisation in EPAs (deals initialled in December 2007)



Notes: EAC is the East African Community comprising Kenya, Uganda, Rwanda, Burundi, and Tanzania; SACU is the Southern African Customs Union. To date, four SACU members (Botswana, Lesotho, Namibia, and Swaziland) have submitted a common liberalisation schedule. Source: ECDPM; ECDPM and ODI [67]

Say goodbye to manufacturing

Rather than overhaul the way in which ACP countries are integrated into the global economy, providing new opportunities to add value, the new deals extend and permanently lock in current patterns of openness. They remove some of the most important policy instruments from the hands of ACP governments, making it harder for countries to break out of their dependence on commodities, and denying women the opportunity to enter the formal labour force.

Under the deals, only 2–20 per cent of imports are exempted from complete opening and are placed on 'exclusion lists'. Very few of these lists are in the public domain,[68] but those that have been seen are dominated by agricultural products, as ACP countries have understandably prioritised protection of their most vulnerable farmers. The downside is that very few manufacturing or high-value products are included on the lists.[69] While there are safeguards for infant industry protection, these may be difficult to trigger and are ill-suited to supporting the development of new sectors. Coupled with stringent rules on tariffs, this will make it virtually impossible for ACP countries to offer temporary protection to stimulate new value-added sectors in the future (see Box 5).

Box 5: The devil is in the detail: forbidding the use of tariffs

One of the more pernicious aspects of EPAs is the 'standstill clause'. These vary from deal to deal, but in essence they oblige ACP countries to freeze *all* their tariffs at current rates, even on products that are not due to be opened up for another ten or 20 years. In the case of East Africa, this applies even to products on the exclusion list.[70]

The EU has made much of its so-called 'infant industry safeguard' which, it argues, preserves the right of ACP countries to use tariffs to nurture new industries. But close scrutiny shows that this is designed only to protect *current* industries if they are damaged, defeating their very purpose.[71]

If EPAs are signed and ratified as they stand, they will deny ACP countries the ladder to development that has been used in the past by Europe, the USA, and numerous other countries around the world.

Exposing vulnerable farmers

Tariffs have been an important mechanism in protecting farmers in ACP countries from import surges. For example, between 1982 and 2003 Papua New Guinea suffered more than 140 agricultural import surges.[72] Surges of subsidised European dairy products have hit ACP producers hard. In Kenya, the local dairy industry collapsed in the 1990s as prices fell below the domestic costs of production, and 600,000 small dairy farmers were plunged into poverty. The sector is now on its feet again after the Kenyan government raised tariffs from 25 per cent to 35 per cent, and finally to 60 per cent in 2002.[73]

Despite the well-known problems that Europe's trade-distorting subsides cause for ACP farmers, these products have not been automatically exempted from negotiations, and nor has Europe committed to eliminate them immediately.[74] As a result, ACP countries have had to use the limited space on their exclusion lists to protect farmers from unfair European subsidies on products such as dairy, meat, vegetable oil, and sugar.

Moreover, in the event that import surges do occur, the safeguards in the December EPA texts are far too weak to be effective. In world trade talks, developing countries have fought hard for a 'special safeguard mechanism' for developing countries which, in an opened economy, is one of the few remaining means of protecting producers against import surges. These have not been included in the EPAs.[75]

Women farmers will bear the brunt of any import surge. Across Africa men dominate the export crop sector, whilst women tend to grow food crops for local consumption.[76] Opening up to imports from Europe displaces local food crops, exacerbating existing inequalities between women and men.[77]

Double standards

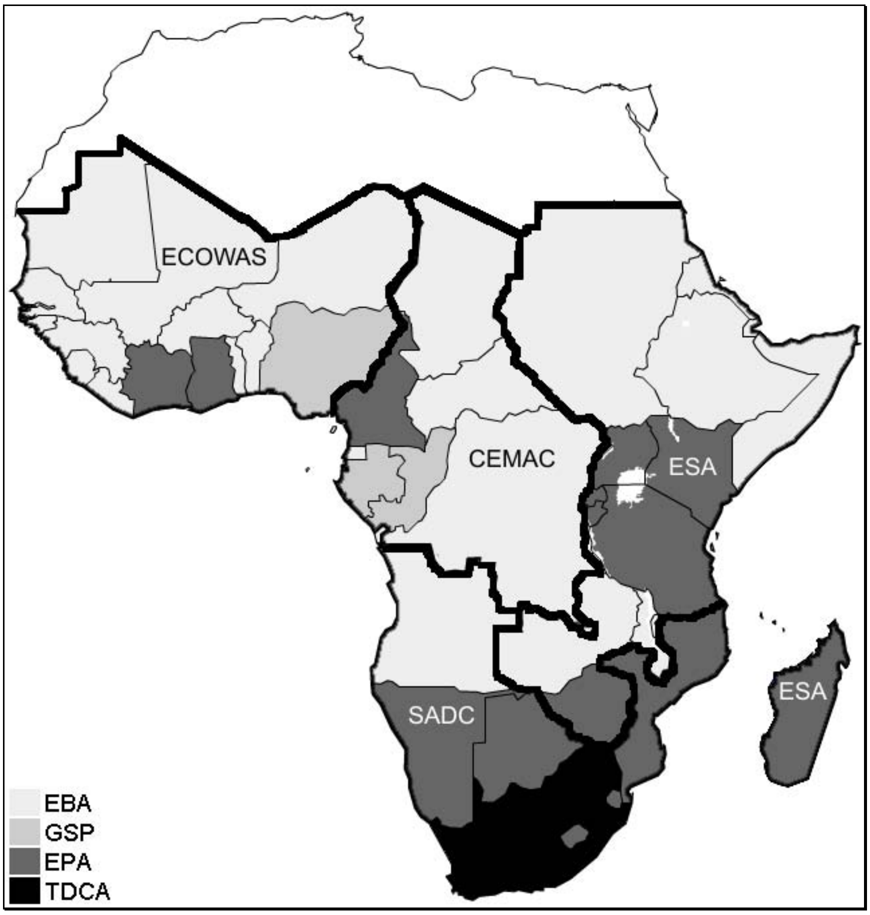
In 2006, Europe spent €50bn on support to its farmers.[78] Even though their producers face many more obstacles than do those in Europe, resource-constrained ACP governments cannot afford to provide subsidies. Tariffs are one of the few instruments they can use to offer a degree of support to their farmers and struggling manufacturing sectors. Yet EPAs allow the use of subsidies and forbid the use of tariffs.

Regional disintegration

Regional integration was supposed to be a pillar of the new agreements, but the December deals have shattered regional integration efforts. From the start, the six designated EPA negotiating regions were problematic, as they cut across ongoing regional integration efforts. SADC, for instance, has 13 members split between three different EPA negotiating blocs.

The pressure of the December deadline led to the fragmentation of the EPA negotiating blocs, making a mockery of regional integration objectives (see Figure 2), and resulted in widely differing texts. All of the African EPAs are different and in only one region, EAC, does more than one country have the same commitments as the others. At the other extreme is West Africa, where the only two EPA countries to have initialled have significantly different texts with different liberalisation commitments.[79]

Figure 2: Regional disintegration in Africa: 'initialled' trade regimes



Note: EBA is 'Everything But Arms'; GSP is 'Generalised System of Preferences'; EPA is 'Economic Partnership Agreement'; TDCA is Trade and Development Cooperation Agreement. The configurations refer to the EPA negotiating groups as agreed with Europe and are not consistent with the regional blocs of the same name; for example, the 'ECOWAS' negotiating bloc includes Mauritania while the 'SADC' bloc does not include all members of SADC.

Across the ACP, major problems are now posed for regional integration:

- In West Africa, moves to a common external tariff will be made impossible if the bilateral EPAs that Côte d'Ivoire and Ghana have initialled are not changed. Their differing texts and tariff schedules as well as standstill clauses preclude the adaptations required for regional harmonisation.
- The Common Market of Eastern and Southern Africa now has a series of different agreements initialled with the EU: five countries have initialled the 'EAC text' and have the same tariff schedules; another five have initialled a separate 'ESA text' and each with different schedules; while six remaining countries have chosen to stay with Everything But Arms. This poses severe problems for the creation of a common external tariff.

- The Southern African Customs Union, the oldest customs union in the world, has been thrown into crisis. South Africa, which accounts for more than 90 per cent of the region's income, has not initialled an EPA, while the others have. Namibia initialled the agreement with the proviso that further changes would be made to the text.[80]
- Even in the Caribbean, which provides the only instance of a regional EPA, elements of the December text appear to be in direct opposition to the region's integration plans. Particular problems arise because 'CARIFORUM', which has initialled the deal, does not exist as a legal entity and differs in membership to CARICOM, the regional common market.[81]

In an attempt to reconcile EPAs with regional integration, African heads of state requested that all deals be brought to the African Union for review before they are signed and committed into law.[82] However, Europe is insisting that the deals are signed by individual countries immediately, leaving no time for such a review.[83]

ACP left financially worse off

ACP countries need to overcome barriers to trade *before* opening to Europe, or their producers will not be strong enough to compete on equal terms with European firms, many of which are global leaders. But ACP countries face a massive resource gap.[84] At least $200bn more is needed just to upgrade Africa's basic infrastructure to competitive levels, before tackling all the other costs associated with boosting competitiveness.[85] Part of the European Development Fund (€23bn over seven years) will be allocated to infrastructure, but this is nowhere near sufficient.

EPAs compound these problems. Even during the first stage of liberalisation, African countries are expected to lose $359m per year.[86] By 2012, Côte d'Ivoire is likely to lose an estimated $83m, equivalent to its current health spending for half a million people.[87] Aside from tariff revenue losses, the deals impose additional compliance costs – estimated at a total of €9bn for all ACP countries.[88] EPAs bring no additional financing to deal with these costs. As Louis Michel, the European Development Commissioner, recently made clear: 'As far as the Commission is concerned, there will be no further financing.'[89]

Short-lived gains

In return for major adjustments to ACP economies, the EU has agreed to provide duty-free, quota-free access to its markets for almost all products.[90] But this is only a marginal improvement on the 97 per cent duty-free access that ACP countries had before, and many barriers still remain.

The EU could and should have done more to reform the rules of origin. The relaxation of rules on textiles is a significant improvement, but similar moves on fish are compromised by onerous qualifications and the most significant changes are confined to the Pacific. [91] On the whole, rules of origin remain very restrictive and will continue to constrain the industrialisation of low-income, small, or geographically isolated countries. In addition, rules of origin governing the initialled EPAs are causing new problems: Mauritius is now finding it difficult to use inputs from Kenya when exporting to Europe.[92]

What is more, in case ACP countries do start to export significant quantities of goods, the EU has recourse to safeguard mechanisms, and unlike the ACP countries, it has the resources to use these safeguards effectively.[93] So if ACP countries do develop and become competitive in spite of EPAs, Europe could penalise them for it.

The limited market access gains are likely to be of transitory benefit. Europe is reducing its tariffs through multilateral and bilateral negotiations. Many ACP exporters are too uncompetitive to survive in the European market if they have to compete on the same terms as other developing countries. Through WTO talks, the EU is set to reduce its tariffs on tuna from 24 per cent to 7–8 per cent, which is likely to displace exports from Papua New Guinea in favour of Thailand and others; Malawi's tobacco exporters stand to lose $3m to subsidised US exporters; Senegal and Mozambique will lose over $8m on prawns and fishery products as Argentina and Brazil increase their market shares; and Madagascar is set to lose out to Hong Kong, China, India, and Tunisia in its garment and carpet sectors.[94]

Finally, internal EU reforms make it unlikely that by 2015 many ACP countries will be competitive enough to export sugar to Europe.[95] Now that Ecuador has been successful in its WTO challenge on European banana tariffs, small island economies such as St. Lucia will struggle to compete.[96] Through EPAs, ACP countries are giving away an independent trading future to maintain market access that is likely to last a few years.

3 Trade in services: serving people living in poverty

Learning from the past and present

In many ACP countries, services account for half of national income. In Africa, one in four people is employed in the services sector; in the Caribbean, the figure is even higher.[97] Services provide valuable sources of employment for women. In Jamaica for instance, 63 per cent of workers in tourism and retail are women, compared with just 19 per cent in agriculture.[98]

Efficient and affordable services help workers and producers to gain a fair share in the global economy, providing access to credit for starting a business, communication with customers, and transportation of goods to the marketplace. Essential services – including water, health care, and education – are fundamental to a decent life everywhere.

Opening up commercial services: mixed results

In a bid to improve the quality, affordability, and accessibility of commercial services such as banking and telecoms as well as generate new employment opportunities, many ACP countries have turned to foreign investors.

But opening up services, without adequate regulation, can run the risk of leaving poor or remote communities without key services – a real problem for people living in rural areas or on relatively small or inaccessible islands. ACP countries have already opened up to foreign banks so as to improve access to credit. Sub-Saharan Africa has the highest level of foreign bank presence in the world (see Table 3).

Table 3: Foreign bank presence (1995–2002)

Region	Foreign ownership
Caribbean	25%
East Asia and Pacific	23%
East Europe and Central Asia	29%
Industrial countries	20%
Latin America	32%
Middle East and North Africa	14%
South Asia	18%
Sub-Saharan Africa	46%

Source: compiled from IADB data[99]

Evidence from the International Monetary Fund (IMF) and others shows that, for most ACP countries, opening up has *reduced* access to credit.[100] Branch networks, where they exist, are poorer, have stringent conditions for loans, and take on fewer people, thus depriving rural communities of access.[101] Countries are advised to open up only if they have appropriate regulations to carefully screen investors and to put in place regulations which guarantee universal, affordable access, particularly for people in the rural or remote areas.[102]

If opening services sectors is not managed carefully, women tend to pay the price. In Kenya, four out of five subsistence farmers are women, and they find it more difficult than men to access loans since they are rarely legal owners of title deeds or businesses and tend to deal in smaller quantities.[103] In South Africa, almost half of all black women are totally excluded from financial services. [104] The entrance of foreign banks can further exacerbate these inequalities if appropriate regulations or conditionalities are not established before opening.

While opening up can generate new employment opportunities for women, it often does little to address gender inequalities. In the Caribbean, women make up the majority of workers in the tourism sector but men dominate the management jobs and earn significantly higher pay. Women are twice as likely to suffer from unemployment as men, as their work is often less secured.[105] Opening needs to be coupled with targeted policies and regulations to ensure that women and other marginalised groups benefit equitably.[106]

Opening up essential services – a dangerous game

In the 1980s and 1990s, there was a push in many European and ACP countries towards the privatisation of essential services such as water. However, when private companies negotiate contracts in developing countries, they often 'cherry-pick' the most profitable market segments, requiring guaranteed profit margins, denominated in dollars, and insisting on full-cost recovery. Once again, the people living in poverty pay, often women, who bear caring and reproductive tasks in the family. [107] When Suez, a French-owned company, was given responsibility for delivering water to a number of townships in South Africa during the 1990s, charges levied for water services increased by 600 per cent.[108]

Experience from across developing countries shows that only governments can achieve the scale necessary to provide universal access to essential services that are geared to the needs of all citizens and are free or heavily subsidised for poor people. Private companies can make important contributions to the provision of essential services, but only when they are properly regulated and integrated into strong public systems, and not seen as substitutes for them.[109]

Benchmarks for a fair deal in services

Lessons from the past and current constraints suggest that delivering affordable, efficient, and accessible services requires:

- Well-regulated commercial services with careful management of foreign investment to ensure universal provision, affordability, and high quality; and
- Strong, publicly owned and well-funded essential services sectors providing universal access, with private sector companies playing a supporting role under effective regulation.

A fair deal with Europe can and should help. The services provisions of any EPA should be measured against the extent to which it supports ACP countries to meet these outcomes.

Putting EPAs to the development test: services

State of play

The Caribbean is the only region to have concluded EPA negotiations on services. Other ACP countries, including all African countries that initialled deals, have committed to negotiate on services during 2008.[110] Under the Caribbean EPA, up to 75 per cent of services sectors have been opened up, with significant variation between countries.[111] The range of sectors is very wide, from accounting, book-keeping, and financial services to medical and health services, and tourism.[112]

Undermining regulation

In the December texts, Caribbean countries agree to open up major commercial services. For instance, many Caribbean countries allow European companies to establish a local presence in telecoms, banking, retail, and courier services.[113] Caribbean countries risk losing the very benefits that foreign investment might bring, because their liberalisation commitments take away their full flexibility to regulate – including in a discriminatory manner - against foreign firms.

Under the deals, governments are largely prohibited from treating foreign and local companies differently, favouring joint ventures over wholly foreign-owned ventures, limiting the number of suppliers, or providing requirements that foreign-service companies train and employ local people or that they provide benefits to local communities affected by the service.[114]

There are only a few exceptions. For instance, the Dominican Republic has stipulated that 80 per cent of employees in foreign companies must be from the Caribbean, and that it reserves the right to use policies to give ‘rights or preferences to socially or economically disadvantaged groups’. This enables the government to address inequalities in the labour market including biases against women. In a similar vein, Grenada has limited government funding and subsidies to Grenadian entities and to services considered to be in the public interest.[115]

Universal service provisions are important in sectors such as postal services and banking to ensure that remote rural populations can access commercial services. In the Netherlands for instance, universal service obligations require TNT, the postal service provider, to establish a full service point in any community with more than 5,000 people.[116] The EPA limits the ability of Caribbean governments to use such universal service regulations, by requiring them to be ‘not more burdensome than necessary’.[117] This means that government policies aimed at ensuring universal service provision can be challenged if the EU feels that they unduly interfere with the activities of its companies.

Endangering essential services

EPAs could hinder the ability of governments to provide quality and affordable essential services. For instance, several Caribbean countries have given European companies the right to provide primary, secondary, and tertiary education, medical and dental services, and sanitation and wastewater services. There are some important limitations: for instance, opening up in education does not apply to non-profit, public, or publicly funded entities; while St. Lucia and Grenada require European companies to enter into joint ventures in waste and wastewater services.[118]

By making an irreversible commitment to private sector provision in these essential services sectors, countries are placing themselves on a slippery slope. In the event that the participation of foreign companies does not assist countries to meet national development objectives and unexpectedly undermine access for the poorest and most vulnerable people in society, the EPA provisions make it very difficult for countries to alter conditions of foreign providers.

Lock-in

Making services commitments is by nature complex and mistakes are made – even by rich countries. Commitments require great caution from governments and a mature regulatory environment with a high level of experience.

Prior to EPAs, within the limits of their services commitments at the WTO, Caribbean countries had the freedom to open up services sectors and change regulations as appropriate to development needs. If things went wrong, governments could change their minds.

EPAs, however, are permanent and binding and countries give away many of their remaining rights. The revision clause in the Caribbean text is aimed at 'broadening and supplementing' the scope of the agreement and does not provide for modifications on the grounds of adverse impacts on development.[119] Any modifications to the agreements have to be jointly agreed upon by Europe and the ACP.[120] This means it will be extremely difficult for Caribbean countries to modify services regulations in future in line with their evolving development needs.

Europe gives very little in return

Caribbean countries were keen to gain greater access to the European market, but in most sectors Europe only gives the Caribbean what it has already offered to other WTO members. Where commitments go a little further, for example on entry for highly skilled professionals, the long list of requirements undermines potential gains (see Box 6).

Box 6: Want to work in Europe? Many conditions attached[121]

In order to enter Europe as a 'contractual service supplier'[122] one needs:

- A service contract for one year maximum and to have worked for the company for at least a year;
- At least three years' professional experience in the sector of activity, a university degree or a qualification demonstrating knowledge of an equivalent level, and professional qualifications;
- Not stay in Europe for longer than six months in any 12-month period.

European and Caribbean negotiators have made much of the 'flexibilities' accorded to chefs, models, and entertainers under the deal. But this does not make their entry to Europe easy: Caribbean chefs need to have advanced technical qualifications and six years' work experience at the level at which they intend to work, while models and entertainers may be required to prove technical qualifications as well.[123] What is more, professionals can only enter the European market after Europe has carried out an internal market audit exercise to see if they are needed, i.e. an economic needs test.

4 Investment: from foreign investor rights to public interest

Learning from the past and present

Many African and Caribbean countries are experiencing a boom in foreign investment from Europe and elsewhere. Africa is experiencing its highest levels of growth for 30 years: foreign investment flows doubled between 2004 and 2006 and foreign presence in key sectors is now higher than in most other parts of the world.[124]

Investment is overwhelmingly attracted to the extractive sectors. Yet mineral wealth has only benefited a few, making little difference to the lives of most ordinary people.

How to manage investment successfully

At its best, foreign investment can create decent jobs, transfer valuable knowledge and skills, generate demand for local producers, and provide capital when it is scarce. Where it has provided most benefit to ACP countries, foreign investment has been effectively integrated into the local economy, and core labour rights have been upheld, ensuring that workers, especially women and ethnic minorities whose jobs are the most vulnerable, gain their fair share. Ensuring such quality from foreign investment often requires the use of performance requirements.

South Africa created a world-class car manufacturing sector, in part by requiring foreign investors to buy from local suppliers and to produce for export. As a result, leading firms such as BMW, Volkswagen, and Daimler Chrysler now use South Africa as a global production base and have created sufficient demand to stimulate the establishment of 200 local auto components companies, creating thousands of jobs.[125] While white workers dominated the sector, the activities of labour unions during the 1980s and 1990s have increased incomes and improved working conditions for black workers.[126]

At its worst, foreign investment has led to human-rights violations and environmental degradation, and has generated very little wealth for host countries. This is particularly true in the case of mining.

Botswana is a notable exception, having managed to turn its diamond resources into development. For 30 years, it was the fastest-growing economy in the world and per capita GDP rose from $70 in 1966 to $5,900 in 2007.[127] Although poverty and AIDS remain major challenges, Botswana is now among the most prosperous countries in sub-Saharan Africa and the first country in the world to have graduated from ‘least developed’ status.

Effective regulation was central to this success. In the 1970s, Botswana renegotiated contracts with foreign mining companies, contrary to the prescriptions of international institutions, which argued that this would drive away future investors. The government gained a 50 per cent ownership in Debswana, the country’s largest diamond company. It ploughed the revenues from this holding back into public investment.[128]

Signing investment treaties does not help – and often hurts

In the hope that they will attract foreign investors, ACP countries have negotiated 179 bilateral investment treaties (BITs) with the EU. But there is no convincing evidence that such treaties work, and great concern regarding the legal problems they can create for governments.[129] Brazil is one of the world's largest recipients of foreign direct investment, attracting $19bn in 2006, yet it has not ratified a single bilateral investment agreement.[130] In contrast, the 48 sub-Saharan African countries have signed over 540 BITs but in the same year, attracted a combined total of only $12bn.[131]

While the benefits of such agreements are often illusory, the costs can be high. When foreign investment does not work in the public interest, governments need to step in to renegotiate contracts or to change regulations. However, when they do so, ACP governments are finding themselves hauled in front of international arbitration tribunals, often by European companies (see Box 7). BITs enable foreign investors to directly enforce their rights through international arbitration tribunals that are characterised by a lack of transparency, unfair process, and aggressive interpretation of the treaties on the basis of commercial law rather than public interest.[132]

Box 7: ACP countries are finding out that BITs bite

- **South Africa** has been taken to court by Italian mining companies who complain that the Black Economic Empowerment scheme required them to divest some shares to historically disadvantaged groups.[133]
- Following a severe water crisis in Dar es Salaam that left millions of people without access to drinking water, the **Tanzanian** government took back ownership of the municipal water supply from a UK-led consortium of foreign investors. Having done so, it promptly fell subject to a lawsuit for $20m before a tribunal of international arbitrators.[134]
- In a dispute linked to the privatisation of Ghana Telecom, **Ghana** was sued by Telekom Malaysia for $175m. Ghana then successfully challenged in the Dutch courts an arbitrator's appointment on grounds of conflict of interest. However, Ghana later had to pay an undisclosed amount to settle the case in 2005.[135]
- Under threat of an arbitration award, **Burundi** agreed in 1999 to pay $3m to a group of Belgian investors to compensate them for tax breaks they claimed they were owed.[136]
- In 1997, an arbitration tribunal ordered the government of Zaire (now the **Democratic Republic of Congo**) to pay $9m to the US owners of a battery factory that was looted by armed groups during the terrible conflict in that country in the early 1990s. Thus, previous funds that could have been used for re-building were diverted to foreign investors who were entitled, the tribunal said, to special compensation for acts of violence.[137]

Benchmarks for a fair deal in investment

As with trade in goods and services, the lesson is that foreign investment can work in the public interest and add value to the development process. But for this to happen, openness needs to be strategically managed. Any agreement must:

- Ensure that foreign investment generates value for the local economy and local people, stimulating development through the creation of decent jobs, reinvestment of profits, training of personnel, linkages to local companies, and equitable sharing of benefits, and by upholding national environmental, labour, and social standards;
- Ensure that the public interest takes precedence over the interests of private investors.

Putting EPAs to the development test: investment

State of play

The Caribbean is the only region to have concluded an EPA with provisions on investment. Other ACP countries have committed to negotiate similar provisions during 2008.

Investment provisions in the Caribbean EPA are mixed into the chapter on 'services, establishment, and e-commerce'. The chapter includes very significant commitments on investment, which vary substantially between countries:

- Countries open up non-services activities, including agriculture, forestry, mining, manufacturing, and the transmission and distribution of electricity and gas;[138]
- The deal covers the pre-establishment as well as the post-establishment phase of investment, going significantly further than existing BITs with the Caribbean, which only cover post-establishment.[139]

The text also includes a commitment to negotiate further liberalisation within five years.

Some gains were made by the Caribbean, including obligations on European investors to uphold labour and environmental standards.[140] However these benefits are far outweighed by provisions that severely tie the hands of governments and make it harder to manage investment in the interests of development.

Tying the hands of governments

In the sectors that they open up, Caribbean governments have given up many of their remaining rights to limit or screen foreign investment and to regulate investors once they establish operations (see Box 8).

For developing countries, the right to use many investment measures is already curtailed under the WTO agreement on Trade Related Investment Measures (TRIMS).[141] Unless Caribbean countries have specifically stipulated otherwise, under EPAs, they have given up the right to use the remaining investment measures. If the deals proceed, many governments will no longer be able to limit the participation of foreign firms or apply performance requirements, including requiring European companies to employ local personnel, or enter joint ventures.

Box 8: Caribbean: opening up to foreign investment, with very few limits[142]

- **Manufacturing** is largely opened, with very few countries placing limits on the entrance of foreign investors or retaining their right to regulate manufacturing activities. In food and beverage manufacturing, for example, only four countries have placed limitations on the activities of European companies.
- **Forestry and logging** are largely opened, with only four countries placing limits, including two that specifically retain the right to 'maintain measures on investment in this sector'.
- **Agriculture** is opened, with eight countries placing some limits on investment – Grenada, for instance, stipulates that foreign companies can invest only in export sectors.
- **Mining** is largely opened. Although nearly all states reserve the right to screen foreign investment, once foreign companies have entered, they will be subject to few measures. For instance, Belize stipulates that foreign mining companies will be 'subjected to performance requirements'.

In the sectors that are subject to opening, the deals specify the regulations on land ownership that European companies have to comply with.[143] This poses the risk that if in future a government wants to change the rules to provide more protection for local ownership of land or to restrict the purchase of offshore islands in a sector that has been opened, it will be very difficult to do so.

Finally, the chapter on 'government procurement' provides for Caribbean countries to grant European investors 'national treatment' in their government spending at a later date. This provides Europe a 'foot in the door' to ACP procurement markets and opens Caribbean countries to negotiating pressure from the EU. Such measures would prohibit ACP governments from using their taxpayers' money to give special preferences to local businesses.[144]

By prohibiting the use of many investment measures that have worked in the past, EPAs knock out another important rung from the development ladder.

More vulnerable to financial crises

Financial crises such as those experienced by East Asia in 1997–98 and by Argentina in 2001 severely impede economic development and invariably hit poor people hardest. In Argentina, poverty rose to over 53 per cent during the financial crisis of 2001–2002, and millions of people lost their life savings.[145] Capital controls can be used to guard against such crises; Malaysia for instance used them effectively to protect itself against the East Asian crisis.[146]

The Caribbean EPA restricts the use of capital controls to an extent that goes well beyond IMF obligations, making Caribbean countries more vulnerable to financial crises.[147]

Widening the scope of BITs

The Caribbean countries already have 27 BITS in place with Europe.[148] Governments need to pay careful attention to the interaction between these BITS and the new scope given to European investors under EPAs. In the sectors newly opened up through EPAs, European companies will be able to use the investor-to-state mechanisms under BITs to enforce this opening.[149] Foreign investors could, for example, bring claims that a requirement to transfer technology, hire local people, or meet higher environmental standards has unfairly reduced the value of assets that they own, even when the regulation applies equally to domestic companies.[150]

5 Technology and innovation: harnessing ideas for development

'If I have seen further it is by standing on the shoulders of Giants.'

Isaac Newton

Learning from the past and present

Ideas fuel growth. No country can start from scratch. Like Europe, East Asia, and others before them, ACP countries need access to technologies and to adapt them to their local context in order to stimulate development.

European companies and public institutions have many ideas and technologies that could support development in ACP countries. But these are increasingly hard to access, protected by ever stronger rules on intellectual property.

Just like tariffs and other economic policy measures, intellectual property rules have a legitimate role to play. However, as the heated debate around generic medicines illustrates, when too much protection is given, innovation can slow down and many people, often those in developing countries, are prevented from reaping the benefits.

Closing the digital divide

As more and more information and ideas are to be found online, closing the digital divide has become central to development. Only one in 20 students in Africa have access to tertiary education, [151] and it is expensive. The cost of a single textbook for a university student in Mali can be as high as 5 per cent of their yearly income – the equivalent of asking a European student to pay more than €800 for a book.[152] Digital and online materials can dramatically reduce the cost of education materials, particularly for university students and researchers.

Information and communication technologies (ICT) are vital for business competitiveness, not least for small and medium-sized enterprises, which are major employers in ACP countries. In Kenya, small businesses contribute one-fifth of national income and employ nearly one in three people. Software companies such as Digital Networks (see Box 9) are springing up across ACP countries. Learning from existing software solutions, such businesses create new products that are carefully tailored to the needs of small businesses.

Box 9: Digital Networks: software solutions for small businesses in Kenya

As technology entrepreneurs go, Kamande Muiruri ranks at the top. Mr. Muiruri runs a successful IT consultancy named Digital Networks. His new web-based software allows small and medium-sized enterprises (SMEs) to outsource their businesses' accounting processes to his start-up company.

'Modern economies run on technology. The economy grows if processes are speeded up and streamlined. Creating that solution for SMEs will translate to larger gains for the economy,' says Mr. Muiruri.[153]

Tackling food insecurity

In most ACP countries, per capita food production has steadily declined. One in three men, women, and children in Africa suffers from hunger.[154] Climate change will exacerbate these problems. Agricultural production and access to food is set to worsen in many African countries – agricultural land will be lost, and there will be shorter growing seasons and lower yields. In some countries, yields from rain-fed crops could be halved by 2020.[155]

New drought-resistant plant varieties and new technologies are essential if ACP countries are to address increasing levels of food insecurity, particularly in the face of climate change. The benefits can be dramatic. In Nigeria in the 1970s, new varieties of cassava were developed by public sector scientists, and increased yields by 40 per cent. Prices fell dramatically, improving the food security of millions of rural and urban households.[156]

Although it is vitally important, in most ACP countries agricultural research and innovation is chronically underfunded.[157]

Benchmarks for a fair deal in technology and innovation

To harness ideas for development, any deal should:

- Increase technology transfer and support local innovation and adaptation in areas such as health, education, agriculture, and ICT.

The provisions of any EPA should be measured against the extent to which it supports this outcome.

Putting EPAs to the development test: technology

State of play

During the EPA negotiations, Europe asked ACP countries to commit to a raft of strict intellectual property rules that go far beyond WTO agreements in terms of scope and enforcement requirements. Caribbean negotiators tried to reframe the discussion towards technology transfer and innovation. As a result, the Caribbean deal has a compromise chapter on 'innovation and intellectual property'.

To date, no other ACP countries have made such commitments, although they are under pressure to do so during 2008.

Weak commitments on technology transfer

Although Caribbean negotiators succeeded in getting technology transfer into the December EPA text, the language is toothless. Europe promises only to 'share information', 'exchange views', and 'endeavour to promote measures that ensure technology transfer'.[158] This wording is arguably less binding than existing multilateral provisions to which Europe has signed up. While WTO agreements stipulate that developed countries should 'provide incentives' to their companies for technology transfer to LDCs, in the EPA Europe agrees only to 'promote and facilitate' such incentives.

Europe makes no binding commitments to ensure that its companies transfer technology, but binding provisions in the services and investment chapter of the EPA tie the hands of Caribbean governments, making it extremely difficult for them to ensure that European investors do so.

Widening the digital divide

In stark contrast with provisions on technology transfer, commitments made by Caribbean countries on intellectual property rules are very stringent, oblige a high level of enforcement, and are very close to Europe's original requests.[159] One of the most worrying elements is the obligation to adhere to very strict rules on digital content. Caribbean countries are asked to enforce the WIPO Copyright and the WIPO Performers and Phonograms Treaties, which developing countries have been strongly advised against by intellectual property experts.[160]

The provisions are likely to undermine access to digital materials for students and researchers. Unlike WTO rules, which have exceptions that allow educational institutions to make copies of digital information, these treaties do not have such exceptions, preventing legitimate access. The watchdog organisation Consumers International notes that such expanded intellectual property rules on digital content have 'grave implications' for access to education, further widening the digital divide.[161]

The treaties also introduce strict rules that will make it far harder for ICT companies in the Caribbean to learn from existing software, slowing down the innovation process and making it harder to develop tailored products for small businesses.

Threatening rural livelihoods

The draft EPA texts proposed by the EU to the Caribbean and other ACP countries requested them to adopt 'UPOV 1991', a treaty that provides strong protection to plant breeders.

The international intellectual property system has generally privileged large agri-businesses over farmers – who have historically been responsible for the development of new plant varieties. The treaty prevents farmers from saving and exchanging seeds, and locks them into vertical relationships with seed corporations rather than allowing them to build co-operative and sustainable relationships within their local farming communities. In Africa, where 75 per cent of seeds are obtained through informal channels, adhering to the treaty would reduce the adaptation, localisation, and diversification that underpin small-scale sustainable farming. [162]

In low-income, food-insecure countries, the World Bank strongly advises against UPOV 1991, and recommends increasing public sector research instead.[163] These recommendations have been ignored by Europe in its EPA proposals.

Given these concerns, in the final December text the Caribbean agreed only to 'consider acceding' to the UPOV 1991 Convention.[164] However, in 2008 other ACP countries are likely to come under similar pressure to accept it.

6 Playing fair: the way forward

'Like slavery and apartheid, poverty is not natural. It is man-made and it can be overcome and eradicated by the actions of human beings.'

Nelson Mandela[165]

The initialled EPA deals fail the 'development test'. Far from restructuring economic relationships to stimulate development, they risk locking ACP countries into current patterns of inequality and marginalisation, and further bias the multilateral trading system against the interests of developing countries.

A fresh approach is needed.

Imagining a fair deal

A fair trade deal would support ACP countries to change the terms on which they are integrated into the global economy, so that value is added locally and is fairly shared to benefit workers and producers as well as local and foreign investors. Such a deal would catalyse long-term sustainable change, helping countries to diversify and break out of commodity dependence.

Learning the lessons from the past and the present, it is possible to imagine what such a deal would look like (see Box 10). Unfortunately, this is a far cry from the texts that have been initialled.

Complying with WTO rules

The only constraint on a fair agreement between the EU and ACP countries – apart from political will – is that any deal needs to be in compliance with World Trade Organization rules.

Working out a fair approach to trade in goods is most complex as the WTO provides a relatively wide margin for manoeuvre in other areas. For goods, there are broadly two options:

1. Negotiate a free trade agreement which only includes the very basics needed for WTO compatibility;
2. Adapt Europe's preferential schemes so that ACP countries have full access to Europe's markets in line with WTO rules.

The first option is significantly better than the current texts as some of the most worrying clauses could be removed, including the standstill provision and most-favoured nation clause, and safeguards could be improved. However, depending on how flexibly the WTO requirements are interpreted, it still requires ACP countries to give up significant autonomy over trade policy, which is not in their development interests.

Box 10: Fresh thinking: ideas for a fair deal

Goods

Europe would fully open its markets to all exports from ACP countries without asking ACP countries to reciprocate and, to ensure predictability for the private sector, opening would be permanent and binding (this could be done in line with WTO rules by modifying existing preferential schemes – see below). Europe would end all trade-distorting subsidies.

ACP countries would have the freedom to use trade policies strategically to stimulate value addition and economic diversification.

Services

Europe would further open its markets to exports of services from ACP countries, without asking ACP countries to reciprocate. It would help to strengthen government regulatory institutions in ACP countries and facilitate learning from European experience of services regulation.

ACP countries would use their regulatory capacity to ensure affordable and efficient service provision to all people, particularly rural women, who are most likely to be excluded.

Investment

Europe would support ACP countries to attract quality investment to value-added sectors and ensure that it is strategically linked to the local economy in ways that generate jobs and upgrade skills.

ACP countries would uphold the rights of foreign and national investors through a just and transparent system of courts that adjudicate on the basis of public interest law. They would use the wealth generated from mineral extraction in the public interest.

Technology transfer and innovation

Europe would provide incentives for its companies to transfer technology, particularly in the ICT sector. It would help education and research establishments in ACP countries to access digital and online materials. Support would be provided to upgrade innovation and research centres in ACP countries, particularly to develop new varieties of drought-resistant crops that would help tackle food security and adaptation to climate change.

ACP countries would develop and uphold intellectual property rules that are appropriate to their local context.

Aid for trade

Europe would deliver significant additional support for infrastructure and tackling competitiveness constraints to finance nationally owned plans.[166] This aid would be granted independent of the concessions made by ACP countries in trade deals or other economic policy conditionalities. Europe would also dramatically improve the efficiency, predictability, and accountability of aid for trade disbursements.

Adapting Europe's unilateral preference schemes, on the other hand, would enable ACP countries to access Europe's markets while retaining autonomy over their trade policies. It would also enable ACP countries to pursue regional integration at their own pace and to open up to foreign investment gradually and with the freedom to change regulations in line with development needs. While this approach would entail some preference erosion for ACP countries, in comparison with the long-term costs of free trade agreements, these costs would be minimal. Such preferences would be the building bloc for a fair deal in other areas (such as that outlined in Box 10).

Adapting Europe's preferences

It would be relatively simple for Europe to adapt its existing preferences to accommodate the interests of ACP countries. With the expiry of the preferences for ACP countries under the 'Cotonou Agreement', Europe now has three preference schemes for developing countries (see Table 4).

ACP countries could use these schemes to gain a similar level of access to Europe's markets as they had previously. The 41 ACP countries that are classed as 'least developed' qualify for the Everything But Arms scheme and have duty-free, quota-free access to Europe's markets, even without a free trade agreement. The most favourable scheme available to the other 35 countries is 'GSP Plus', which provides duty-free, quota-free access for 88 per cent of exports. All ACP countries are 'economically vulnerable', so they are eligible to apply for the scheme. The only requirement is to ratify the relevant international conventions, and many ACP countries have already ratified the vast majority of these.[167]

Table 4: Europe's existing preferential schemes

Scheme	Benefits	Countries eligible
Everything But Arms (EBA)	Duty-free, quota-free access for all products except armaments, with phase-in periods for sugar and rice	Least-developed countries
Special incentive arrangement for sustainable development and good governance (GSP Plus)	Duty-free, quota-free access for approximately 88 per cent of products[168]	'Economically vulnerable' developing countries that sign and implement 27 international conventions on good governance and human rights
Standard Generalised System of Preferences (GSP)	Duty-free, quota-free access for 66 per cent of products[169]	All developing countries

For most products, the coverage under 'GSP Plus' is very close to the access that ACP countries had under the Cotonou Agreement.[170] The drawback of the scheme is that it does not cover bananas, sugar, rum, or beef, all exports that are of real importance to ACP countries, particularly in the Caribbean.

In pursuit of a fair deal and to ensure no ACP country is left worse off if they choose not to pursue a free trade agreement, Europe could enhance its GSP Plus scheme to include all these products, and make it equivalent to the Cotonou arrangements. Or, if it was playing really fair, it would simply merge the Everything But Arms and GSP Plus schemes to give both 'least developed' and 'economically vulnerable' countries duty-free, quota-free access to its markets. This would be an administratively simple move, only requiring a decision by European ministers.[171]

Many products could be incorporated into Europe's preferential schemes without problem. However, such a move would entail severe preference erosion for a few products, most notably banana exporters from the Caribbean.[172] To ensure that the 40,000 banana farmers in the Caribbean are not left worse off, mitigating steps would need to be taken, such as supporting diversification away from banana production or providing a long-term guarantee to purchase a minimum quantity of Caribbean bananas at a fair price.

Finally, to give businesses certainty, Europe could remove the discretionary aspects of its schemes and bind them so that they become permanent arrangements.[173]

Given the high costs of the EPAs that Europe is insisting on, ACP countries should seriously consider applying for entry to the GSP Plus scheme during 2008. Economic models suggest that, even without reform, on average, GSP Plus would be more beneficial for ACP countries than EPAs as, although market access to Europe is reduced, it does not entail all the negative costs of free trade agreements.[174]

Ultimately, everyone gains

Ultimately, it is in Europe's interests to play fair: for diplomatic and geopolitical reasons, but also economic.

Six years of insisting on free trade agreements have not worked. Europe's inflexible approach risks jeopardising an important set of long-standing relationships based on history, economics, and development policy. Aggressively pushing EPAs is costing Europe goodwill across the ACP. And it is not as if ACP countries have nowhere else to turn. Rapidly developing countries in Asia and the Americas are already replacing Europe as the number one trading partner of many ACP countries.

Moreover, the trade gains for Europe could be four times higher from a fair deal than a free trade agreement – as prosperous ACP countries make for good trade and investment partners. Economic models of free trade agreements show that by 30 years time, Europe stands to gain an additional $1bn per year in exports to ACP countries. [175] If ACP countries were given the flexibilities to strategically govern their integration in the global economy and were able to make the same development strides as South East Asian countries like Malaysia, Europe's exports could increase by $4bn per year.[176]

It is also in the interests of ACP countries to hold out for a better deal. As Europe's importance to the ACP is waning and emerging markets are growing rapidly as a source of investment and trade, it is an inopportune moment for ACP countries to lock themselves into a bad deal with Europe.

It is time to take a fresh look at these deals – before well-intentioned but badly designed deals are made permanent. It is time for Europe to stop playing power politics and to work in partnership with ACP countries.

The millions of people across ACP countries living in poverty cannot afford for politicians to get this wrong.

Oxfam International calls for:

- Thorough and comprehensive independent evaluations and impact assessments of what has been initialled, before any deal is signed and committed into law;
- Vigorous engagement by parliaments across Europe and the ACP and full scrutiny of the deals;
- The EU to offer ACP countries long-term options for trade in goods that would include:

  (i) Adapting its unilateral preference schemes so they further open European markets and are made permanent, ensuring no ACP country is left worse off if it does not conclude a free trade agreement;

  (ii) Renegotiation of any aspect of the initialled EPAs and commitment to reduce the deals to the minimum needed for WTO compliance;
- ACP countries to take stock within their regional blocs and make a strategic decision on which route they want to pursue, fully consulting all affected parties, including workers, producers, and businesses;
- The EU to agree complete flexibility in approaching negotiations on services, investment, technology transfer, and other trade-related areas, with ACP countries taking the lead in setting the pace and content of negotiations;
- The EU to provide additional, binding, predictable, and swiftly disbursed support to tackle infrastructure and competitiveness constraints in ACP countries.

Notes

[1] ACP Council of Ministers, 'Declaration of the ACP Council of Ministers at its 86th Session Expressing Serious Concern on the Status of the Negotiations of the Economic Partnership Agreements', Brussels, 13 December 2007, ACP/25/013/07

[2] 'Mandelson in Southern Africa to deepen trade and development ties', *DG Trade,* Brussels, 28 February 2008.

[3] Data from TradeMap, International Trade Centre, UNCTAD/WTO, http://beta.trademap.net/

[4] United Nations (2006) 'World Population Prospects: The 2006 Revision', http://esa.un.org/unpp, and UNCTAD (2007) 'Total GDP by expenditure', http://stats.unctad.org/Handbook/TableViewer/tableView.aspx?ReportId=1322

[5] UN MDG Indicators at: http://mdgs.un.org/unsd/mdg/Default.aspx; UNDESA (2007) 'The Employment Imperative: Report on the World Social Situation 2007', ST/ESA/319, New York, p.15.

[6] TradeMap, op. cit.

[7] In 2004 Africa alone accounted for 30 per cent of all people living on less than $1 a day, and this proportion is set to increase to 46 per cent by 2015. World Bank Global Economic Prospects 2008, p.46.

[8] 'Decision 14 November 2001', WTO Ministerial Conference, Doha, WT/MIN(01)/15.

[9] Cotonou Agreement, Article 34; P. Mandelson, 'Economic Partnership Agreements: Putting a rigorous priority on development', speech, Brussels, 20 January 2005.

[10] Data from World Bank, World Development Indicators Data: http://go.worldbank.org/EG66WXF2N0; and City Mayors www.citymayors.com/statistics/richest-cities-2005.html and www.citymayors.com/gratis/uk_topcities.html

[11] A Keck P Low 'Special and Differential Treatment in the WTO: When, Why and How?' *WTO Staff Working Paper* (May 2004); GATT Article XXXVI Para8 (1947)

[12] L Bartels 'The WTO Legality of the EU's GSP+ Arrangement' 10 *Journal of Intl Economic Law* (2007) 1-18 p5

[13] GATT, Article 24.

[14] The text tabled in the Pacific was even mistakenly titled (in its document properties) 'West African EPA'.

[15] European Commission External Trade, 'Global Europe Competing in the World: A Contribution to the EU's Growth and Jobs Strategy'; J.C. Maur (2005) 'Exporting Europe's Trade Policy', *The World Economy* 28 (11) pp.1565–1590.

[16] Fijian Minister Tavola stated that 'as things stand now, the agreement is threatening to overwhelm our fragile economies'. Cited in: P. Dhondt 'Trade: Small Nation's Doubts About EU Get Bigger', Inter Press Service.

[17] A. Bouet, D. Laborde, and S. Mevel (2007) 'Searching for an Alternative to Economic Partnership Agreements', IFPRI, Research Brief Number 10, December 2007; C. Delpeuch (2007) 'One Minute To Midnight: Is There Still Time To Rethink EPAs?', GMF Policy Brief, December 2007.

[18] A. Bouet (2007) 'Searching for an Alternative to EPAs', op cit., Powerpoint presentation, Evian meeting, December 2007.

[19] S Karingi et al 'Economic and welfare impacts of the EU-Africa Economic Partnership Agreements' *Africa Trade Policy Centre, Economic Commission for Africa* (March 2005)

[20] 'Trade Talks Reach Impasse At Europe–Africa Summit', *Africa Renewal,* Vol. 21 No 4, January 2008, p.23.

[21] Declaration of the ACP Council of Ministers, op. cit.

[22] 'EPA Negotiations: African Countries Continental Review', African Trade Policy Centre Review Report, 19 February 2007, pp.1-9; *Trade Negotation Insights*, Volume 7 No 1, ICTSD and ECDPM, Geneva, February 2008.

[23] S. Bilal et al., 'Doubt over EU Development Credentials', letter to the editor, *Financial Times*, 17 October 2007; E. Jones and T. Hormeku (2007) 'A Matter of Political Will', Oxfam and Third World Network April 2007, p.2.

[24] The EBA initiative allows almost all products from least developed countries into Europe without duties or quotas.

[25] A. Smith (2008) 'The Usual Last-Minute Banana Peels' in *Trade Negotation Insights*, Volume 7 No 1, ICTSD and ECDPM, Geneva, February 2008, p.11.

[26] Interview conducted by Wallie Roux, independent trade adviser, Namibia, March 2008 see also M Ngavirue 'Namibia: Beef Deadline Looms' New Era (Windhoek 15-2-2007)

[27] F Rampa 'EU offers ACP Two-Step EPAs' *Trade Negotiation Insights* Vol.6 Nr.7 November 2007 p1

[28] Interviews conducted by Eric Hazard, Oxfam GB West Africa Office, Senegal, March 2008.

[29] Trade, Development and Cooperation Agreement (TDCA): http://europa.eu/scadplus/leg/en/lvb/r12201.htm

[30] Data from TradeMap, op. cit. and UNCTAD/WTO, Market Access Map, International Trade Centre, www.macmap.org.

[31] A. Keck and P. Low op. cit.

[32] For instance, in the Caribbean EPA the MFN clause applies to all 'major trading economies' defined as 'any country accounting for a share of world merchandise exports above 1%'. See article 79 of Caribbean EPA.

[33] L. Ensor and M. Le Roux (2008) 'Southern Africa: Minister in Scramble to Ease EU Trade Row', *Business Day*, Johannesburg, 28 February 2008.

[34] 'EU EPAs could inhibit South–South trade integration, Brazil alleges', *Bridges Weekly Trade News Digest*, Vol 12 No 6, ICTSD, Geneva, 20 February 2008.

[35] D. Shabalala (2008) 'IP Provision in EPAs', Centre for Environmental and Investment Law, Geneva, March 2008.

[36] For example, the EAC deadline for concluding a comprehensive EPA is set at 31 July 2009 see 'Joint Conclusions EAC-EC Senior Officials Meeting on Negotiations of a Comprehensive EPA' (Arusha 6-3-2008)

[37] L. Bartels (2007) 'EC Proposal for a Council Regulation on Economic Partnership Agreements – Options for Flexibilities', 12 December 2007, p.4.

[38] GATS: The General Agreement on Trade in Services.

[39] TRIPS: Agreement on Trade-Related Aspects of Intellectual Property Rights; note LDCs have until 2016 to implement rules on pharmaceutical patents (see IP/C/25)

[40] Hong Kong Ministerial Declaration, WTO, Doha Work Programme WT/MIN(05)/DEC, 22 December 2005. TRIMS: Agreement on Trade-Related Investment Measures.

[41] K. Annan (2007) 'Championing Africa's Renaissance', Ghanaweb News Website, 26 January 2007.

[42] Trade as a percentage of GDP is 71 per cent for Sub-Saharan countries, 78 per cent for Europe. Data from World Bank, World Development Indicators database, op. cit.

[43] Ibid.

[44] H.-J. Chang (2007) *Bad Samaritans: Rich Nations, Poor Policies and the Threat to the Developing World*, Random House Business Books, London; H.-J. Chang (2005) *Why Do Developing Countries Need Tariffs?*, South Centre.

[45] H.-J. Chang, op.cit.;

[46] World Bank (2001) 'Proposal on Market Access for Non-Agricultural Products' WT/GC/W/453

[47] Independent Evaluation Group (2005) 'Assessing World Bank Support for Trade 1987–2004', World Bank.

[48] Weighted average tariffs.

[49] A Subramanian 'Mauritius: A Case Study' Finance&Development IMF (December 2001) Vol38 Nr4 p1-2

[50] D Lincoln 'Beyond the Plantation: Mauritius in the global division of labour' in J. of Modern African Studies, 44, 1 (2006), pp. 59–78.

[51] A. Subramanian and D. Roy (2001) 'Who can explain the Mauritian miracle? Meade, Romer, Sachs or Rodrik?' IMF working paper

[52] TradeMap, op. cit. Intra-regional trade accounted for 66 per cent of the EU total in 2006.

[53] Ibid. Data based on intra-regional exports.

[54] Ibid.; UNECA (2004) 'Assessing Regional Integration in Africa: ECA Policy Research Report', Addis Ababa, p.97.

[55] T. Ridley, L. Yee-Cheong, and C. Juma (2006) 'Infrastructure, innovation and development', *International Journal of Technology and Globalisation*, Vol 2 No 3/4, pp.268-278.

[56] For data on electricity availablity in ACP see World Bank (2007) *The Little Data Book on Africa 2007*, Washington: World Bank.

[57] World Bank 'Spearding and Sustaining Growth In Africa' News Release No. 2008/112/AFR, Washington DC

[58] I. Madamombe (2005) 'Energy key to Africa's prosperity', *Africa Renewal*, Vol 8 No 4, January 2005.

[59] Report of the Commission for Africa (2005) 'Our Common Interest' p 51

[60] Market Access Map, op. cit.

[61] Rules of origin are needed to ensure that a product really does originate from a beneficiary country and that it has not merely been transhipped from a third country.

[62] For details of rules of origin for fish see Liam Campling, Elizabeth Havice and Vina Ram-Bidesi (2007) 'Pacific Island Countries, The Global Tuna Industry and the International Trade Regime - A Guidebook', Honiara: FFA.

[63] Aflatoxins are found in food products (for example, peanuts) and can be very harmful to health.

[64] J. Wilson and T. Otsuki (2003) 'Food Safety in Food Security and Food Trade', Focus 10 Brief 6 of 17, September 2003.

[65] C Maerten 'EPAs; A New Approach to ACP-EU Economic and Trade Cooperation' Presentation at TRALAC Conference (11-11-2004)

[66] Although both Cote d'Ivoire and Kenya will undertake some liberalisation during the first 5 years, Cote d'Ivoire has frontloaded the process. See ECDPM and ODI (2008) 'The new EPAs: comparative analysis of their content and the challenges for 2008'

[67] *Trade Negotation Insights*, Vol 6 No 8, December 2007/January 2008, p.22; ACP-EU Trade website at: www.acp-eu-trade.org/index.php?loc=frame_main.php/ Supplementary information on schedules for Cote d'Ivoire, Cameroon and Ghana is drawn from ECDPM and ODI (2008) op. cit..

[68] See ECDPM and ODI (2008) op. cit. for a summary

[69] South Centre, 'Market Access For Trade In Goods In Economic Partnership Agreements', February 2008.

[70] EAC EPA, Article 13.

[71] South Centre, op. cit.; Oxfam International, 'Oxfam International Concerns With Initialled "Interim EPA" Texts', December 2007.

[72] An import surge is defined as a 30 per cent deviation from the three-year moving average, or is calculated on the basis of WTO volume-based methodology. See FAO (2006) 'Import Surges: What Is Their Frequency And Which Are The Countries and Commodities Most Affected?'.

[73] Gender and Trade Commonwealth Secretariat, 'EU Set to Milk East Africa with Subsidised Goods?',15 November 2007.

[74] In WTO talks, the EU has agreed to end export subsidies by 2013, but many problematic domestic subsidies remain. See South Centre, op. cit.

[75] Ibid.

[76] 'C Doss (1999) 'Twenty-five years of research on women farmers in Africa' *International Maize and Wheat Improvement Center*, Mexico

[77] Z Randriamaro (2002) 'The WTO Agreement On Agriculture And Food Security For Small Scale African Farmers From A Gender Perspective' *Third World Network*

[78] Eurostat Agriculture Handbook p.70

[79] ECDPM and ODI (2008) op. cit.

[80] M. Le Roux (2008) 'Uncertainty over Trade Agreement Threatens SACU', *Business Day*, Johannesburg, 26 February 2008.

[81] H. Brewster, N. Girvan, and V. Lewis (2008) 'Renegotiate the EPA', memorandum submitted to CARICOM Council for Trade and Economic Development, February 2008.

[82] Assembly of the AU, 'Declaration on EPAs', Addis Ababa, DOC.EX.CL/394(XII), 31 January 2008.

[83] Peter Mandelson speaking to the European Parliament, Brussels, 28 January 2008.

[84] C. Milner (2006) 'An assessment of the overall implementation and adjustment costs for the ACP countries of EPAs with the EU', in R. Grynberg and A. Clarke (2006) 'The European Development Fund and Economic Partnership Agreements', Commonwealth Secretariat.

[85] Africa needs an additional $20bn a year in investment in infrastructure for ten years; see Commission for Africa, op. cit., p.234.

[86] ECDPM and ODI (2008), op. cit.

[87] ECDPM and ODI (2008), op. cit.; In 2004 Côte d'Ivoire spent $33 per capita on health, so $16.6m of annual revenue losses is the equivalent of spending for 500,000 people see 'World Health Indicators

[88] C. Milner, op. cit.

[89] Interview with Louis Michel in *Trade Negotation Insights,* op. cit.

[90] Armaments are excluded while rice and sugar will become duty-free quota-free in 2009;

[91] E. Naumann (2008) 'Rules of Orgin in EPAs', Tralac, South Africa.

[92] 'EC Review of the State of Play on EPAs and Key Issues for 2008', *Agritrade,* March 2008.

[93] L. Bartels (2007) 'Safeguards in the Commission's Proposed Council Regulation', COM 717 Final, 23 November 2007.

[94] UNCTAD (2007) 'Erosion of trade preferences in the post-Hong Kong framework' From 'Trade is better than aid' to 'Aid for Trade'', Geneva: UNCTAD, p.41.

[95] P. Goodison (2007) 'The ACP Experience of Preference Erosion in the Banana and Sugar Sectors', ICTSD Issue Paper No 7

[96] 'WTO ruling on EU banana tariffs opens door to sanctions from Ecuador', *International Herald Tribune*, 10 December 2007.

[97] International Labour Organization (2007) 'Key Indicators of the Labour Market, 5th Edition', ILO KILM Indicator 4.

[98] S Seguino (2003) 'Why are women in the Caribbean so much more likely than men to be unemployed?' *University of the West Indies*

[99] A. Micco, U. Panizza, and M. Yanez (2004) 'Bank Ownership and Performance', Inter American Development Bank, November 2004.

[100] E. Detragiache, T. Tressel, and P. Gupta (2006) 'Foreign Banks In Poor Countries: Theory and Evidence', IMF Working Paper, January 2007.

[101] Ibid.

[102] L. Martinez-Diaz (2007) 'Banking Sector Opening: Policy Questions and Lessons for Developing Countries', The Brookings Institution, February 2007.

[103] 'Village Banking', *Africa Now*, www.africanow.org/projects/villagebanks.htm

[104] Department of Trade and Industry, International Finance Corporation and FinMark Trust (2006) 'Access to Finance for Women Entrepreneurs in South Africa: Challenges and Opportunities'

[105] J Hollingsworth 'Barbados: Gender and Tourism Development' *Commonwealth Secretariat* see http://www.genderandtrade.org; S Seguino (2003) op. cit.

[106] S Seguino (2003) op. cit.

[107] K Bayliss 'Privatization and Poverty: The Distributional Impact of Utility Privatization' Public Services International Research Unit (PSIRU) (January 2002)

[108] D. Cronin (2008) 'Water Aid to Go Public, A Little', IPS, 7 March 2008.

[109] Oxfam (2006) 'In the Public Interest: Health Education and Water and Sanitation for All'.

[110] African texts that contain commitments are: ESA (art. 53); EAC (art. 37); SADC (art. 67); Ghana (art. 44); Cote d'Ivoire (art. 44); Cameroon (art. 54)

[111] 'The EPA: Fact vs Fiction' Caribbean Regional Negotiating Machinery (CRNM) (2008)

[112] See, for instance, Caribbean Forum of African, Caribbean and Pacific States (CARIFORUM) EPA, Article 83.

[113] CARIFORUM EPA – Annex: Caribbean Services Offer (market access and national treatment).

[114] CARIFORUM EPA Article 76.

[115] CARIFORUM EPA – Annex: Caribbean Services Offer (market access and national treatment).

[116] P de Blij et al (2006) 'Universal Service In Banking' Tilberg University, Netherlands P7

[117] CARIFORUM EPA, Article 91

[118] CARIFORUM EPA – Annex: Caribbean Services Offer (market access and national treatment).

[119] CARIFORUM EPA, Article 246.

[120] CARIFORUM EPA, Articles 227 and 229.

[121] CARIFORUM EPA, Article 83.

[122] CARIFORUM EPA, Article 83.

[123] CARIFORUM EPA, Article 83.

[124] UNCTAD (2007) 'World Investment Report:Transnational Corporations, Extractive Industries and Development'', New York and Geneva: UNCTAD.

[125] International Marketing Council for South Africa (2008) 'South Africa's Automotive Industry', March 2008.

[126] A Desai and A Habib (1997) 'Labour Relations in Transition: the Rise of Corporatism in South Africa's Automobile Industry' *Journal of Modern African Studies*

[127] World Bank (2007) Botswana Country Brief <http://go.worldbank.org/8P9IVY6270>

[128] Ibid; UNCTAD (2007) 'World Investment Report: Transnational Corporations, Extractive Industries and Development', New York and Geneva: UNCTAD, p.139.

[129] M. Hallward-Driemeier (2003) 'Do Bilateral Investment Treaties Attract FDI? Only A Bit And They Could Bite', World Bank.

[130] Ibid; UNCTAD (2007) op. cit. p252

[131] UNCTAD online BITS database see <http://www.unctad.org/Templates/Page.asp?intItemID=2344&lang=1 >; UNCTAD (2007) op. cit. p251

[132] L E Peterson & K R Gray 'International Human Rights in BITsand in Investment Treay Arbitration' IISD (April 2003); see G. van Harten (2007) *Investment Treaty Arbitration and Public Law*, Oxford University Press.

[133] 'Piero Foresti, Laura de Carli and others v South Africa' cited in International Institute for Sustainable Development, *Investment Treaty News*, 28 September 2007.

[134] K Blagojevic 'Tanzania Wins Legal Battle Against British Water Company' 11 January 2008

[135] 'ICC nixes Argentina's bid to disqualify arbitrator in financial crisis case' cited in International Institute for Sustainable Development, Investment Treaty News, 12 January 2006

[136] Antoine Goetz and others v Republic of Burundi, ICSID Case No. ARB/95/3, 10 February 1999

[137] American Manufacturing & Trading, Inc. v Republic of Zaire, ICSID Case No. ARB/93/1, 21 February 1997

[138] 'Schedule of Commitments on Investment (Commercial Presence) of CARIFORUM States in Non-Service Sectors', Explanatory Note, 16 December 2007 P1

[139] Widening the scope to include pre-establishment means that the provisions govern the entry and admission of foreign investors as well as their activities once they are established.

[140] G. Van Harten (2008) 'Investment Provision in EPAs', Osgoode Hall Law School, March 2008.

[141] TRIMS Article 2 and Annex

[142] 'Schedule of Commitments on Investment (Commercial Presence) of CARIFORUM States in Non-Service Sectors', Explanatory Note, 16 December 2007.

[143] 'Schedule of Commitments on Investment (Commercial Presence) of CARIFORUM States in Non-Service Sectors', Explanatory Note, 16 December 2007.P4

[144] S. Woolcock 'Public Procurement and the EPA' Paper for The High Level Technical Meeting, Cape Town, South Africa, 7-8 April 2008, London School of Economics

[145] J Grugel and J P Rigirozzi (2007) 'The Return of The State In Argentina' *International Affairs* 83:1 P93

[146] J K Sundaram (2004) 'Malaysia's Pathway Through Financial Crisis' Global Economic Governance Project, Oxford University P7

[147] CARIFORUM EPA, Part II Title III, Articles 1-3.

[148] UNCTAD Investment Database, op. cit.

[149] G. Van Harten (2008) op.cit.

[150] Ibid.

[151] Data from World Bank, World Development Indicators (2007)

[152] Estimate based on the minimum amount of money (income) needed for 1 year of studying humanities in Ireland: € 9,100 tuition fee + € 7,500 living expenses = € 16,600 a year. 5per cent of 16,600 = € 830. See - http://www.educationireland.ie/index.php?option=com_content&task=view&id=37&Itemid=48

[153] K. Kinyanjui (2007) 'Tech start-up aims to root out freelance accountants', *Business Daily Africa*, 17 August 2007.

[154] Alliance for a Green Revolution in Africa (AGRA) 'About AGRA: The Challenges and Opportunities', www.agra-alliance.org/about

[155] Oxfam International (2007) 'Adapting to Climate Change: What's needed for poor countries, and who should pay' Briefing Paper 104

[156] F. Nweke (2003) 'New Challenges in the Cassava Transformation in Nigeria and Ghana'.

[157] *World Bank* (2007) 'World Development Report 2008: Agriculture for Development'; UNDP (2006) 'Millennium Project: Recommendations for the international system to support country-level processes' <http://www.unmillenniumproject.org/reports/int_actions4.htm>

[158] D. Shabalala, op. cit.

[159] Ibid.

[160] Commission on Intellectual Property Rights (2002) 'Integrating Intellectual Property Rights and Development Policy', London, September 2002.

[161] Consumers International (2006) 'Access to Knowledge', *Asia-Pacific Consumer* Vols 43 and 44 1&2/2005 p.17.

[162] D. Shabalala, op. cit.

[163] *World Development Report 2008*, p.167.

[164] CARIFORUM EPA, Article 149(2).

[165] N Mandela, Make Poverty History Speech on Trafalgar Square, 3 February 2005

[166] Oxfam International (forthcoming, 2008) 'Fast Forward, How the European Commission can take the lead in providing high-quality budget support for education and health', Briefing Paper

[167] L Bartels 'The EU's GSP+ arrangement as an alternative to the EPA Process' (12 November 2007)

[168] ODI (2007) 'The Cost to the ACP of Exporting to the EU under GSP'.

[169] Ibid.

[170] Ibid.; E. Jones and T. Hormeku (2007), op. cit.

[171] L Bartels (12 November 2007) op.cit.

[172] ODI (2007), op. cit. Including bananas in GSP Plus would provide Ecuador (which is also 'economically vulnerable') with the same level of access to Europe as Caribbean producers. Ecuador produces bananas at a far lower cost, and is likely to push many Caribbean farmers out of the European market.

[173] L Bartels (12 November 2007) p. 3 op.cit.

[174] IFPRI, op. cit.

[175] IFPRI. *Searching for an alternative to Economic Partnership Agreements.* Page 4, table 1. December 2007. The research estimates that, with the implementation of the current EPA texts, EU exports to the ACP would be $ 29.4 bn higher in 2035.

[176] This estimation makes the supposition that the ACP countries would be able realise similar gains as Malaysia has during the last 30 years. In the ACP GDP per capita in 2005 was approximately 27 per cent of Malaysia's GDP per capita in 1975 (ppp constant 2000 US$), ACP per capita trade with the EU would be in 30 years a 27 per cent of Malaysia's per capita trade with the EU in 2005.

Used data: EU exports to Malaysia: € 10.3bn in 2005. Population of Malaysia: 26.4 millions. EU exports to the ACP: € 53.9 bn. ACP population: 773.7 (European Commission Trade Stadistics). Malaysia's GDP per capita in 1975 (in ppp constant 2000 US$): 3010 $ (World Perspective Monde. Université de Sherbrooke).

This paper was written by Emily Jones. Oxfam acknowledges the assistance of Lieke Sjerps Bertram Zagema, Alexander Woolcombe, Javier Perez, Joy Kategekwa, Nick Braxton, Sharon Shemesh, Isabel Mazzei, Luis Morago, Colin Roche, Marita Hutjes, Eric Hazard and Wallie Roux in its production. It is part of a series of papers written to inform public debate on development and humanitarian policy issues.

For further information on the issues raised in this paper please e-mail advocacy@oxfaminternational.org.

Oxfam International is a confederation of thirteen organizations working together in more than 100 countries to find lasting solutions to poverty and injustice: Oxfam America, Oxfam Australia, Oxfam-in-Belgium, Oxfam Canada, Oxfam France - Agir ici, Oxfam Germany, Oxfam GB, Oxfam Hong Kong, Intermón Oxfam (Spain), Oxfam Ireland, Oxfam New Zealand, Oxfam Novib (Netherlands), and Oxfam Québec. Please call or write to any of the agencies for further information, or visit **www.oxfam.org**.

Oxfam America 226 Causeway Street, 5th Floor Boston, MA 02114-2206, USA +1 617 482 1211 (Toll-free 1 800 77 OXFAM) E-mail: info@oxfamamerica.org www.oxfamamerica.org	**Oxfam Hong Kong** 17/F., China United Centre, 28 Marble Road, North Point, Hong Kong Tel: +852 2520 2525 E-mail: info@oxfam.org.hk www.oxfam.org.hk
Oxfam Australia 132 Leicester Street, Carlton, Victoria 3053, Australia Tel: +61 3 9289 9444 E-mail: enquire@oxfam.org.au www.oxfam.org.au	**Intermón Oxfam (Spain)** Roger de Llúria 15, 08010, Barcelona, Spain Tel: +34 902 330 331 E-mail: info@intermonoxfam.org www.intermonoxfam.org
Oxfam-in-Belgium Rue des Quatre Vents 60, 1080 Brussels, Belgium Tel: +32 2 501 6700 E-mail: oxfamsol@oxfamsol.be www.oxfamsol.be	**Oxfam Ireland** Dublin Office, 9 Burgh Quay, Dublin 2, Ireland Tel: +353 1 635 0422 Belfast Office, 115 North St, Belfast BT1 1ND, UK Tel: +44 28 9023 0220 E-mail: communications@oxfamireland.org www.oxfamireland.org
Oxfam Canada 250 City Centre Ave, Suite 400, Ottawa, Ontario, K1R 6K7, Canada Tel: +1 613 237 5236 E-mail: info@oxfam.ca www.oxfam.ca	**Oxfam New Zealand** PO Box 68357, Auckland 1145, New Zealand Tel: +64 9 355 6500 (Toll-free 0800 400 666) E-mail: oxfam@oxfam.org.nz www.oxfam.org.nz
Oxfam France - Agir ici 104 rue Oberkampf, 75011 Paris, France Tel: + 33 1 56 98 24 40. E-mail: info@oxfamfrance.org www.oxfamfrance.org	**Oxfam Novib (Netherlands)** Mauritskade 9, Postbus 30919, 2500 GX, The Hague, The Netherlands Tel: +31 70 342 1621 E-mail: info@oxfamnovib.nl www.oxfamnovib.nl
Oxfam Germany Greifswalder Str. 33a, 10405 Berlin, Germany Tel: +49 30 428 50621 E-mail: info@oxfam.de www.oxfam.de	**Oxfam Québec** 2330 rue Notre Dame Ouest, bureau 200, Montreal, Quebec, H3J 2Y2, Canada Tel: +1 514 937 1614 E-mail: info@oxfam.qc.ca www.oxfam.qc.ca
Oxfam GB Oxfam House, John Smith Drive, Cowley, Oxford, OX4 2JY, UK Tel: +44 1865 473727 E-mail: enquiries@oxfam.org.uk www.oxfam.org.uk	

Oxfam International Secretariat: Suite 20, 266 Banbury Road, Oxford, OX2 7DL, UK
Tel: +44 1865 339100 Email: information@oxfaminternational.org. Web site: www.oxfam.org

Oxfam International advocacy offices:
E-mail: advocacy@oxfaminternational.org
Washington: 1100 15th St., NW, Ste. 600, Washington, DC 20005-1759, USA
Tel: +1 202 496 1170.
Brussels: Rue Philippe le Bon 15, 1000 Brussels, Belgium
Tel: +322 502 1941
Geneva: 15 rue des Savoises, 1205 Geneva, Switzerland

Tel: +41 22 321 2371.
New York: 355 Lexington Avenue, 3rd Floor, New York, NY 10017, USA
Tel: +1 212 687 2091.

Linked Oxfam organizations. The following organizations are linked to Oxfam International:
Oxfam Japan Maruko bldg. 2F, 1-20-6, Higashi-Ueno, Taito-ku, Tokyo 110-0015, Japan
Tel: + 81 3 3834 1556. E-mail: info@oxfam.jp Web site: www.oxfam.jp
Oxfam Trust in India B - 121, Second Floor, Malviya Nagar, New Delhi, 1100-17, India
Tel: + 91 11 2667 3 763. E-mail: info@oxfamint.org.in Web site: www.oxfamint.org.in
Oxfam International and Ucodep Campaign Office
Via Masaccio, 6/A 52100 Arezzo, Italy
Tel +39 0575 907826, Fax +39 0575 909819
email: ucodep-oi@oxfaminternational.org

Oxfam observer member. The following organization is currently an observer member of Oxfam International, working towards possible full affiliation:
Fundación Rostros y Voces (México) Alabama 105, Colonia Napoles, Delegacion Benito Juarez, C.P. 03810 Mexico, D.F.
Tel: + 52 5687 3002 / 5687 3203 Fax: +52 5687 3002 ext. 103
E-mail: comunicación@rostrosyvoces.org
Web site: www.rostrosyvoces.org

Published by Oxfam International April 2008
Published by Oxfam GB for Oxfam International under ISBN 978-1-84814-521-4