The Weak vs. The Strong

African, Caribbean and Pacific countries negotiating free trade agreements with the European Union

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Abstract

This thesis seeks to explain the outcomes of trade negotiations between the European Union (EU) and seventy-six of the world's smallest developing countries in Africa, the Caribbean and Pacific (ACP). Puzzlingly, in spite of its vastly greater economic size, the EU was, for the main, unable to realise its objective of concluding six broad and deep free trade agreements with these countries.

Deploying first historical institutional analysis then statistical modelling and finally by scrutinising a wealth of primary documents and transcripts of interviews with negotiators, the thesis reveals three factors that influenced outcomes. First, coercive pressure applied by the EU on countries dependent on EU for trade preferences and aid. Second, tactics within the negotiating process, with some ACP countries and regions manoeuvring more effectively than others. Third, differences in the underlying preferences of ACP governments, with most opposing major aspects of the EU's proposals, but a minority embracing the EPA approach. Probing the underlying reasons, the thesis finds that, contrary to the prevailing literature, lobbying by domestic economic interest groups only provides part of the answer – the analytical and ideational processes within ACP government institutions also exerted an influence.

The analysis shows that structural factors, particularly the depth of economic and political dependence on the larger state, establish the range of likely outcomes from a given negotiation. However the preferences of small states and the way in which they interact strategically with the larger state can definitively shape the final outcome. In particular, small states can exercise a degree of resistance and blocking power that is often underestimated. It also sheds light on the formation of trade preferences in small developing countries and shows that in addition to lobbying by external groups, information and ideas within government bureaucracies appear to play an important role.

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Contents

Tables

Figures

Boxes

Acronyms

ACP	African, Caribbean and Pacific
AGOA	African Growth and Opportunity Act
BATNA	Best Alternative To a Negotiated Agreement
BRICS	Brazil, Russia, India, China and South Africa
CARICOM	Caribbean Community
CARIFORUM	The Caribbean Forum of ACP States
CEMAC	*Commission de la Communaute Economique et Monetaire de l'Afrique Centrale*
COMESA	Common Market for Eastern and Southern Africa
DG Trade	Directorate General for Trade of the EC
EAC	East African Community
EBA	'Everything But Arms' (an EU trade preference scheme for LDCs)
EC	European Commission
ECOWAS	Economic Commission for West African States
EEC	European Economic Community (renamed the European Community (EC))
EPA	Economic Partnership Agreement
ESA	Eastern and Southern Africa
EU	European Union
FDI	Foreign Direct Investment
FTA	Free Trade Agreements
FTAA	Free Trade Area of the Americas
G77	Group of 77 Developing Countries
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade

GDP	Gross Domestic Product
GSP	Generalised System of Preferences
IMF	International Monetary Fund
LDC	Least Developed Country
MEP	Member of the European Parliament
MFN	Most Favoured Nation
NAFTA	North American Free Trade Agreement
NAM	Non-Aligned Movement
NGO	Non-Governmental Organisation
NIEO	New International Economic Order
ODA	Official Development Assistance
OECD	Organisation for Economic Cooperation and Development
OPEC	Organisation of Petroleum Exporting Countries
PACP	Pacific ACP States
PTA	Preferential Trading Agreements
RNM	Regional Negotiating Machinery
SACU	South African Customs Union
SADC	Southern African Development Community
SPS	Sanitary and Phytosanitary Standards
TDCA	Trade and Development Cooperation Agreement (South Africa – EU)
TBT	Technical Barriers to Trade
TRIPS	Trade-Related Aspects of Intellectual Property Rights
UEMOA	*Union Economique et Monétaire Ouest Africaine*
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
WCO	World Customs Organisation
WTO	World Trade Organisation

Chapter 1. Introduction

This thesis analyses the political economy of trade negotiations between the European Union (EU) and seventy-six African, Caribbean and Pacific (ACP) countries. It focuses on the most recent set of negotiations, launched in 2002, during which the EU sought to conclude a series of free trade agreements, dubbed 'Economic Partnership Agreements' (EPAs), with groups of ACP countries. The EPA negotiations are fascinating as, despite their vastly asymmetric nature, with one of the largest industrialised economic blocs negotiating with groups of small developing countries, the EU failed to realise its interests. In 2012, after a decade of intense negotiations, only fifteen ACP countries had entered agreements of the broad scope and depth that the EU sought, a further twelve had signed agreements covering only trade in goods, while forty-nine ACP countries had not signed anything. Moreover, many of those that had signed agreements, failed to ratify and implement them.

The pattern of EPA outcomes poses an empirical puzzle that this thesis seeks to answer: Why is it that the EU did not see its interests realised in these negotiations, and why do we see such variation in outcomes across the ACP countries? Answering these empirical questions has intrinsic value, as the political economy of the EPA negotiations has yet to be explored in depth.

Close scrutiny of the negotiations also provides an opportunity to explore issues of theoretical importance, particularly the ways that power operates in the context of asymmetric international negotiations. As this thesis shows, the EU was eager to secure ambitious agreements and invested substantial energy and resources in trying to obtain its desired outcomes. The fact that the EU did not succeed, despite profound asymmetry that worked in its favour, provides new insights into the sources of leverage and influence available to small countries when they negotiate with far larger parties.

The major theoretical contribution of this thesis is to elucidate the conditions under which small states influence outcomes even when the playing field is tipped steeply against them. As scholars of international relations we often assume that there is little room for small states to manoeuvre on the global stage - an assumption that the EPA negotiations challenge head on. The negotiations are testimony to the fact that, even in the face of vast asymmetries, small states are far from being at the mercy of much larger states. This is not to suggest ACP countries were successful in getting all they wanted from the EPA negotiations – far from it. Yet they did exercise a substantial degree of resistance, preventing the EU from realising the majority of its negotiating objectives. The ability of small states to resist the agenda of larger states has been underappreciated and understudied in international political economy and it is to this gap in our understanding that this thesis speaks.

1.1. The EPA Negotiations and Their Outcomes

The European Union and ACP countries are long-standing trading partners and, since the 1950s when ACP countries started to gain independence from European colonial powers, trade rules have been the subject of regular negotiation. The Lomé Convention of 1975 was a landmark in post-independence trade relations as it created a system of unilateral preferences under which exports originating in ACP countries were provided with preferential access to the European market on a non-reciprocal basis. This system of preferences lasted, with some modifications, until the end of 2007.[1]

The genesis of the EPA negotiations lies in the mid-1990s, when the EU and ACP countries set out to agree on a new trade regime that would replace the Lomé preferences. Negotiations were prompted by a series of challenges raised at the General Agreement on Tariffs and Trade (GATT) and later the World Trade Organisation (WTO) on the compatibility of Lomé

[1] Lome I (1975-1980); Lome II (1981-1985); Lome III (1985-1990); Lome IV (1990-2000); Cotonou Preferences (2000-2007)

preferences with multilateral trade rules on non-discrimination.[2] A GATT working party was charged in 1993 with evaluating Lomé preferences. Although it did not reach a unanimous verdict, the EU and ACP decided nonetheless to request a temporary waiver from GATT members, which was granted in 1994 and lasted until 2000.

Between 1996 and 2000, the EU and ACP negotiated and agreed on the basic contours of the new trade regime, which were set out in the Cotonou Agreement, signed in 2000.[3] The EU advocated replacing the Lomé preferences with a series of 'Economic Partnership Agreements' (EPAs) that would take the form of free trade agreements between the EU and separate regional groupings of ACP counties.[4] Although ACP countries were initially strongly opposed, seeking instead to preserve unilateral Lomé-style preferences, they ultimately agreed to negotiate EPAs, with the proviso that alternative options would be explored for countries 'not in a position to enter into economic partnership agreements'.[5] The EU and ACP agreed that the details of these free trade agreements would be negotiated between 2002 and 2007, and the new trading regime would be implemented from January 1st 2008.[6] To this end, they applied for a second WTO waiver, which expired on the 31st December 2007.[7]

In agreeing to negotiate regionally-based free trade agreements, ACP countries made the landmark decision to leave behind two pillars of the Lomé regime that they had fought so hard for in the 1970s and resolutely defended during the 1980s and 1990: non-reciprocity and non-differentiation within the ACP group. Yet the Cotonou Agreement contained precious few details on what the new free trade agreements would contain. It only stated that they would conform to WTO rules, which implied the liberalisation of 'substantially all' trade in

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[2] Huber (2000); Bartels (2007)
[3] Article 37, ACP and EU Ministers "Partnership Agreement Between the Members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part" (2000)
[4] Article 36(1), ibid.
[5] Article 37(6), ibid.
[6] Article 37(1), ibid.
[7] Huber (2000)

goods, and, in keeping with the Lomé regime, their primary objective would be to support the development of ACP countries.[8] As a result, many of the most contentious decisions on the scope and depth of the new EPAs were postponed.

Negotiations on the details began in earnest in 2002. In the first year, the ACP countries negotiated with the EU as a single coalition, and after that, they negotiated as six separate regional groupings (Table 1). Discussions were acrimonious from the start. It rapidly became clear that the EU sought free trade agreements that were ambitious in scope, including extensive provisions on trade in goods and services, as well as investment, intellectual property, competition, government procurement, and environmental and social standards. With the notable exception of some Caribbean states, the EU's vision was strongly opposed by the majority of ACP countries. EU proposals also met with a wide range of criticism in the scholarly and policy worlds. Although this criticism varied in its diagnosis of the problems, and some arguments directly contradicted each other, there was near consensus that the EPAs were poorly conceived and would not serve the development interests of ACP countries.[9]

Table 1: ACP Negotiating Configurations

Geographic Region	Name of Negotiating Group	ACP Members
Caribbean	CARIFORUM	Antigua/Barbuda, Bahamas, Barbados, Belize, Dominica, Dominican Republic, Grenada, Guyana, Haiti, Jamaica, St Kitts/Nevis, St Lucia, St Vincent/Grenadines, Suriname, Trinidad/Tobago (15)
West Africa	ECOWAS	Benin, Burkina Faso, Cape Verde, Cote d'Ivoire, Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone, Togo (16)
Central Africa	CEMAC	Cameroon, Chad, Central African Republic, Congo, DR Congo, Eq. Guinea, Gabon, Sao Tome and Principe (8)
Eastern and Southern Africa	ESA	Djibouti, Eritrea, Ethiopia, Malawi, Sudan, Madagascar, Mauritius, Seychelles, Zimbabwe, Zambia, Comoros, Kenya, Rwanda, Burundi, Tanzania, Uganda (16)
Southern Africa	SADC	Angola, South Africa, Namibia, Botswana, Lesotho, Mozambique, Swaziland (7)
Pacific	PACP	Cook Islands, Fed. Micronesia, Fiji, Kiribati, Marshall Islands, Nauru, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu, Vanuatu (14)

[8] Article 34(1), ACP and EU Ministers (2000)
[9] This literature is detailed below

Negotiations with the Caribbean states progressed relatively smoothly, with agreement reached in all but a few areas by mid-2007. In contrast, negotiations became extremely acrimonious in Africa and the Pacific. Despite widespread criticism, the EU did not alter its position. As this thesis shows, it used a variety of tactics to try and pressure and persuade African and Pacific countries to agree to its proposals for the EPA. In 2007, it attempted to use the expiry of the WTO waiver to propel the ACP countries into agreement, arguing that, under the terms of the waiver, it was legally compelled to withdraw unilateral preferences at the end of the year, even if negotiations on a replacement trade regime had not been concluded.

The EU's attempt at coercion largely backfired. Although agreement was reached on a 'full' EPA with the fifteen Caribbean countries, negotiations for regional EPAs broke down across Africa and the Pacific. Forty of the sixty-one African and Pacific countries opted out of an EPA with the EU[10], while twenty-one initialled 'interim' EPAs on a bilateral or sub-regional basis.[11] These were partial in scope, covering trade in goods only, and were intended to avoid trade disruption while negotiations towards 'full EPAs' continued. 'Interim' EPAs proved to be extremely controversial. Many of these countries argued that they had been coerced into making hasty concessions that were inimical to their interests and which would prejudice the outcome of on-going regional negotiations. Between 2008 and 2009, twelve of the twenty-one countries that had initialled 'interim' EPAs went on to sign them, but nine withheld their signature.[12]

[10] 40 did not enter an EPA: Angola, Benin, Burkina Faso, Cape Verde, Central African Republic, Chad, Congo (DRC), Congo (Rep.), Cook Islands, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gabon, Gambia, Guinea, Guinea Bissau, Kiribati, Liberia, Malawi, Mali, Marshall Islands, Mauritania, Micronesia, Nauru, Niger, Nigeria, Niue, Palau, Samoa, Sao Tome e Principe, Senegal, Sierra Leone, Solomon Islands, South Africa, Sudan, Togo, Tonga, Tuvalu, Vanuatu.

[11] Under international treaty law, initialling an agreement demonstrates that the text is authentic and definitive, and ready for signature, but does not itself impose any obligations on the parties. The parties to an agreement are only under an obligation to implement its terms once it has entered into force, which takes place upon (or after) ratification. See Bartels (2008)

[12] 12 signed an interim EPA: Botswana, Cameroon, Cote d'Ivoire, Fiji, Lesotho, Madagascar, Mauritius, Mozambique, Papua New Guinea, Seychelles, Swaziland, Zimbabwe. 9 withheld signature: Ghana, Kenya, Burundi, Rwanda, Tanzania, Uganda, Zambia, Comoros, Namibia

In parallel with heated negotiations over the signature and ratification of the 'interim' agreements, regional negotiations between the EU and five African and Pacific regions resumed in 2008 with the objective of replacing the 'interim' EPAs with permanent regional EPAs. However progress was painfully slow. Negotiators met infrequently, and there was minimal progress on the negotiation of texts.

Table 2: EPA Outcomes (September 2012)

	Caribbean	Africa				Pacific
Name of Regional Grouping	CARIFORUM	CEMAC	ECOWAS	ESA	SADC	PACP
Scope of EPA	Full	Interim / Partial	Interim / Partial	Interim / Partial	Interim / Partial	Interim / Partial
Proportion of States Initialling EPA	15 of 15	1 of 8	2 of 16	11 of 16	5 of 7	2 of 14
Proportion of States Signing EPA	15 of 15	1 of 8	1 of 16	4 of 16	4 of 7	2 of 14
Proportion of States Implementing EPA	8 of 15	0 of 8	0 of 16	4 of 16	0 of 7	1 of 14

By September 2012, after a full decade of negotiations, it was clear that the EU had failed abysmally in its bid to agree broad and deep free trade agreements with ACP countries (Table 2). No regional agreement had been agreed with any of the five African or Pacific negotiating groups, and there was little prospect of concluding any. As an African Union report noted in October 2010, 'the divergences between the EU and Africa seem to be intractable and not resolvable'.[13] Moreover, countries delayed the signature, ratification, and implementation of the 'interim' EPAs. Nine African and Pacific countries continued to withhold their signature, and only five of the twelve countries that had signed 'interim' EPAs, had started to implement them. Even in the Caribbean, the ratification and implementation of the regional EPA progressed extremely slowly, with only eight countries starting to implement the agreement. [14]

1.2. Research Puzzle & Questions

On the face of it, the failure of the EU to see its interests realised in the EPA negotiations is puzzling, as is the degree of variation in outcomes we see across the seventy-six ACP

[13] African Union (2010)P17
[14] 5 African and Pacific countries implementing EPAs: Mauritius, Madagascar, Zimbabwe, Seychelles, Papua New Guinea. See European Commission "EPA State of Play: Updated 03 January 2012" (2012)

countries. Given the vast economic asymmetries that existed between the EU and ACP regions, we might have reasonably expected negotiations to be relatively quick, and to result in more or less uniform outcomes, largely reflecting the EU's interests.

Extreme levels of resource asymmetry between the parties were a defining feature of the EPA negotiations (Table 3). The EU is a rich, industrialised economy and the world's largest market, while nearly all ACP countries are extremely small, and many are very poor.

Their relatively small size might be expected to place ACP countries at a decisive disadvantage in trade negotiations with the EU. Their markets, the main bargaining chip in trade negotiations, are, with the exception of South Africa and Nigeria, all extremely small. The SADC EPA negotiating region, which included South Africa, had a GDP that was 51 times smaller than that of the EU, while, at the other end of the spectrum, the PACP region had a GDP that was more than a thousand times smaller than the EU.[15] This poses obvious political challenges as it means they may have little to offer by way of market access concessions and, thus, limited negotiating power and leverage.[16]

Table 3: EPAs as Asymmetric Negotiations

Negotiating Group	Total GDP (Current US$bn)	Average GDP per capita (Current US$)	Proportion of 'least developed' countries	Total population (millions)	Trade with negotiating partner as share of total (%)	Aid from negotiating partner as share of GDP (%)
EU	15,125	30,570	0 of 27	495	2 (all ACP)	0.0
SADC	295	3,343	3 of 7	94	36	2.3
ECOWAS	221	651	13 of 16	275	35	5.1
ESA	134	1,573	12 of 16	302	35	5.6
CEMAC	107	4,720	5 of 7	97	40	5.2
CARIFORUM	90	6,977	1 of 15	26	30	0.2
PACP	12	3,157	5 of 14	8	16	0.1

Notes: Data is averaged for the period 2005-2007, in the midst of the EPA negotiations. Group averages are the simple mean across member countries. Data was not available for six countries (Cook Islands, Djibouti, Nauru, Niue, Zimbabwe, Tuvalu). *Sources:* World Bank data; UNCTADstat

[15] Author's own calculations based on Table 3
[16] This is a general challenge for small states. See Mattoo and Subramanian (2004) P393; Kotschwar (1999)

Institutional capacity in trade ministries was severely constrained in ACP economies in comparison with the EU. The small population size in many ACP states, particularly the Caribbean and Pacific Islands, tends to reduce the scope for specialization of expertise within governments and small countries generally have fewer people in every profession, and fewer experts to draw on in trade negotiations.[17] At the extreme, seven countries in the PACP negotiating group had populations of lower than 100,000 people. We can reasonably expect that the low level of development in many ACP countries (thirty-nine were classified by the United Nations as 'least developed') compounded these problems, as it often results in weak and severely resourced-constrained institutions. ECOWAS was a particularly poor region, with an average per capita GDP of only US$651 (2005-7), and thirteen of the sixteen countries were classified as least developed.

Finally, many ACP countries were highly economically dependent on the EU, suggesting that the EU would have had recourse to significant coercive power (or at least the threat to use it). During the EPA negotiations, the EU was the largest trading partner for most ACP countries: nearly 30 percent of all ACP exports were destined for the EU market, and the EU was the source of 28 percent of imports (2005-7). Central Africa was particularly dependent on the EU for trade, which accounted for 40 percent of the region's total trade. In addition, many ACP countries were highly aid dependent and in many cases the EU was a major source of aid finance. On average overseas development assistance from the EU accounted for about 3 percent of GDP in ACP countries, with the level of dependence varying widely from 0 percent in Trinidad and Tobago to 18 percent in Burundi (2005-7).[18]

Given these asymmetries it would be reasonable to expect that ACP countries would have little option but to agree to any text that the EU placed in front of them. Yet that is not the pattern we see. Negotiations were protracted, suggesting that the ACP countries had

[17] See Kotschwar (1999) P145
[18] Author's own calculations from IMF and World Bank data

significant holding power, and, on the whole, the EU's interests did not prevail. This thesis asks 'why is it that the EU did not see its interests realised in these negotiations, and why, given that the ACP countries are all so much smaller than the EU, do we see such variation in outcomes?'

1.3. Existing Literature on EPAs

The EPA negotiations have been the subject of significant scrutiny in the policy world and in scholarship.[19] However, analysis has focused on the economic rather than the political dimensions. Where the political dimensions have been addressed, they have been relatively limited in scope and focused mainly on the EU perspective.

Economic analysis of the EPA negotiations is plentiful. Policy analysts and scholars alike have been preoccupied with the likely impact of the EU's proposals on the development prospects of ACP countries. Numerous studies have examined the trade in goods elements of the agreements including evaluations of the likely impact of trade liberalisation on ACP development prospects and regional integration[20], the extent of EU rules of origin reform[21], the adequacy of agricultural safeguards[22], the EU's proposals on sanitary and phytosanitary measures[23], and questions of WTO compatibility[24]. Others examined provisions on trade in services and rules on investment[25], intellectual property[26], competition[27], and government procurement[28]. A limited number of studies have explored provisions on labour and environmental standards, human rights and aid for trade.[29]

[19] A parallel literature scrutinises trade negotiations between the US and Latin American countries see for instance Kotschwar (1999); Gallagher (2008); Shadlen (2008); Phillips (2005)
[2020] See for instance Fontagne, Mitaritonna, and Laborde (2008); Messerlin and Delpeuch (2007); South Centre (2008); Hinkle and Schiff (2004); Stevens (2006)
[21] Naumann (2008)
[22] Kwa (2008)
[23] Doherty (2005)
[24] Dieye and Hanson "MFN Provisions in EPAs: A Threat to South-South Trade?" (2008)
[25] Sauvé and Ward (2009); Van Harten (2008)
[26] Shabalala (2008); Musungu (2009)
[27] Okediji (2009)
[28] Dawar and Evenett (2008); Woolcock (2008)
[29] Relevant chapters in Faber and Orbie (2009) and also Flint (2008)

In contrast, there is relatively little scholarship on the political aspects of the EPA negotiations. A number of scholars have examined the EU's interests and motivations. Hurt and Farrell for instance, examine the EU's decision in the late 1990s to replace the Lomé system of unilateral preferences with reciprocal free trade agreements, a policy decision that initiated the EPA negotiations.[30] They attribute this to a decline in the strategic importance of the ACP group for the EU and a corresponding weakening of the EU's normative commitment to the development of ACP countries.

More recently, Faber and Orbie (2009) ask why the EU has persisted with the EPA negotiations. This is puzzling as the ACP markets are so small that economic interest alone appears to be insufficient to account for the EU's persistence. They argue that the EU's approach can be attributed to a combination of factors. The Directorate General for Trade (DG Trade) has a significant degree of autonomy and influence within the EU in terms of the agenda it pursues in trade negotiations. It sought ambitious EPAs partly as a means for setting ambitious precedents for future trade negotiations with other developing countries such as India. In addition, the authors suggest that there was a strong ideological commitment within the EU towards exporting its model of deep economic integration to the rest of the world.[31]

Others look at the protracted internal negotiating process that lay behind the EU's position in the EPA negotiations. Elgstrom (2009) suggests that internal negotiations were far more intense for the EPAs than for other trade agreements the EU is involved in. He attributes this to competing trade and development norms. While DG Trade, charged with leading negotiations for the EU has a strong normative commitment to free trade and saw the EPAs as 'a traditional trade negotiation' some of the member states had strong normative commitments to development and argued that DG Trade's position should be substantially

[30] Hurt (2003); Farrell (2005)
[31] Faber and Orbie (2009). See also Hurt (2012)

modified. The EU's position in the negotiations is therefore the product of intense 'negotiated construction'.[32]

In contrast, there has been comparatively little work on the process of interest formation in ACP states, or on understanding how they approached the EPA negotiations. The few insights into the ACP perspective have largely come from publications written by negotiators.[33] The paucity of analysis may reflect an implicit assumption in much of the literature that the EU drives the trade relationship. As Farrell argues in the context of the negotiations towards the Cotonou Agreement 'The Cotonou conditions were largely imposed upon an unsuspecting weaker partner, and the inclusion of certain conditions exposed the latter to legal constraints beyond what might be reasonably anticipated in a partnership of equals'.[34]

A few studies examine the actions of ACP countries in the face of the EU's 2007 threat to end trade preferences, and they reinforce the argument that coercion is a significant driver of EU-ACP trade relations. As Meyn notes, these threats drove several ACP countries to hastily enter into free trade agreements, which 'begs the question as to what extent EPAs are properly negotiated trade agreements'.[35] Stevens confirms this finding, showing that the propensity of ACP countries to enter into an agreement in 2007 and 2008 largely reflected their vulnerability to potential export losses.[36]

While these studies provide valuable insights into the EPA negotiations, no study directly grapples with the task of explaining the reasons why, despite profound asymmetries, the EU failed to see its interests realised, and why we see such variation in outcomes across the ACP. Such an account necessarily entails paying greater attention to the ACP perspective than is found in the existing literature. As Zartman and Rubin note, resistance as well as pressure are

[32] Elgstrom (2009)
[33] See essays in Jones and Marti (2009)
[34] Farrell (2005)
[35] Meyn (2008)
[36] Stevens (2009)

forms of power,[37] and the EU's failure to realise its interests suggests the exercise of significant resistance by ACP countries. This thesis pays particular attention to understanding the motivations and mechanisms through which so many ACP countries were able to thwart the EU's negotiating objectives.

1.4. Thesis Structure and Argument

After this introduction, **Chapter two** sets up the analytical approach used in the thesis. Drawing on the scholarly literature, it identifies three dominant explanations for the outcomes of asymmetric trade negotiations, which attribute causal primacy to domestic lobbying, coercive power politics, and negotiating strategy and tactics respectively. These provide us with three broad plausible explanations for EPA outcomes.

The domestic political economy explanation suggests that likelihood of a preferential trade agreement being reached between two states depends on the balance of forces within the domestic arena, particularly the extent and influence of protectionist economic interest groups. Alternatively put, states fail to enter a preferential trade agreement when their negotiators are unable to craft a deal that simultaneously satisfies the interests of powerful protectionist groups in all countries at the negotiating table. This suggests that, in the EPA case, the failure of the EU and most African and Pacific countries to reach agreement might be attributable to high levels of politically powerful protectionist lobbying. In contrast, the agreement between the EU and Caribbean countries might be attributable to relatively low levels of such lobbying.

The coercive power politics explanation focuses on the degree of power asymmetry between the states at the negotiating table. On the face of it, the fact that so few ACP states complied with the EU's demands, despite the asymmetries between the parties, raises obvious questions about the relevance of an explanation rooted in coercive power - perhaps coercion was absent

[37] Zartman and Rubin (2002)

and had no bearing on the outcome. However a few scholars draw our attention to the fact that small states are not necessarily at the mercy of coercive power tactics employed by large states. For instance, small states may have strong outside options that limit their vulnerability to such pressure. For coercive power politics to be a plausible explanation of EPA outcomes, we would expect to see evidence of the EU applying coercive pressure and those ACP countries in a particularly vulnerable position conceding to the EU's demands, while those in a stronger position being able to 'push-back' and exert greater influence in the negotiations.

The third explanation focuses on the strategy and tactics used by the negotiating teams representing each party. The literature on negotiations shows that even in the context of extreme power asymmetries, the interests of the large state do not necessarily dominate outcomes, as the smaller state can use negotiating strategies and tactics to influence outcomes. This suggests that the EU may have failed to realise its interests because its negotiators were out-manoeuvred by ACP countries in the negotiating room.

These three explanations are not mutually exclusive – in any negotiation we can expect to see lobbying by interest groups, attempts by larger states to draw on relations of trade and aid dependence to coerce smaller states, and strategic and tactical manoeuvring by negotiators. The challenge this thesis takes up is to determine the manner and extent to which domestic lobbying, coercive power relations, and the strategic and tactical moves by negotiators shaped EPA outcomes.

Chapter three opens up the empirical puzzle of the thesis. It examines the history of Europe-ACP trade relations, probing nine sets of trade negotiations between European and ACP countries that took place between 1960 and 2000. A striking finding is that there was substantial variation in outcomes in these past negotiations. In the 1970s for instance, the Lomé I Agreement was heralded as a landmark 'win' for ACP countries, while in the 1980s, the Lomé II and Lomé III Agreements largely reflected Europe's negotiating objectives.

The historical analysis highlights three factors that enabled ACP countries to exert substantial influence over outcomes, even in the face of profound asymmetry. ACP countries had most influence when they were least dependent on Europe for aid and trade preferences, which limited their vulnerability to coercive pressure; when they were considered by Europe to be particularly strategic allies (in the 1970s for instance they were a valuable source of natural resources), which provided them with leverage; and when they used negotiating strategy and tactics to their advantage, most notably when they negotiated as a unified coalition.

Chapter four sets out in detail the pattern of EPA outcomes, the dependent variable that the thesis seeks to explain. Close scrutiny of EPA outcomes reveals two types of variation in outcomes. First, there is variation in the extent to which the various EPA texts were adopted and implemented. Some ACP countries exited from the negotiations without taking any steps to adopt the agreement; a second group concluded negotiations and initialled EPA texts, but the agreements were not signed by the executive branch of government, or were not ratified by parliaments and so they did not come into force; a third group signed and ratified texts so they entered into force on paper, but countries delayed implementation or implemented commitments in a partial manner; and a fourth group signed, ratified and fully implemented the agreements.

The second type of variation is found in the fine print of the texts. The chapter conducts a detailed analysis of the legal provisions in the EPA texts and shows that they vary in their depth (the extent of liberalisation commitments in a given sector), breadth (the number of sectors covered), and flexibility (the degree of stringency in the detailed legal provisions). For instance, the EPA agreement reached with the Caribbean countries broadly reflected the EU's interests in terms of scope and depth, but close scrutiny suggests that the Caribbean negotiators secured some substantial modifications in the details. In contrast, the 'interim' EPAs concluded by twenty-one African and Pacific countries were a major departure from the EU's proposals, as they focused on trade in goods and excluded major areas of interest to the EU such as services and intellectual property. Yet many African countries were less successful than the Caribbean in securing modifications to the fine print. The text signed by Cameroon for instance, had particularly restrictive provisions.

Scholars analysing preferential trade agreements routinely overlook such nuanced variations in outcomes yet this is vital for establishing the extent to which smaller parties are able to 'push-back' in asymmetric negotiations. The existing scholarship on preferential trade agreements typically codes outcomes in a binary manner according to whether or not states entered a PTA. (Typically the dependent variable is coded as 1 in the year a PTA was ratified or came into force, and 0 otherwise).[38] Furthermore, scholars usually assume that signature or ratification is synonymous with implementation.

Such simple treatment of the dependent variable leads scholars to miss the 'push-back' or resistance shown by smaller parties. For instance, even if a smaller country is pressured by a larger state into concluding an agreement (coded '1' in many analyses), it may be able to secure important changes in the fine print of the text which serve to water-down the stringency of the concessions, or it may be able to delay signature, ratification and implementation so that stringent concessions remain on paper and do not come into effect.

Chapter five is a 'first-cut' at explaining these variations in EPA outcomes. As the historical chapter revealed the importance of the depth of trade and aid dependence in shaping the outcome of past negotiations, the chapter explores the role of such dependence in shaping the outcome of the EPA negotiations. It asks 'to what extent can we attribute the variation of

[38] See for instance Mansfield and Reinhardt (2003) Mansfield and Milner "Votes, Vetoes, and Preferential Trading Agreements" (2010). Note that a new database of PTAs codes outcomes in a more nuanced manner according to their scope, depth and flexibility, and shows a high degree of variation in their contents Baccini (2011)

EPA outcomes across ACP states to variations in their vulnerability to coercive pressure from the EU?'

The chapter shows that the EU relied heavily on coercive pressure tactics in a bid to realise its interests. During the EPA negotiations, pressure was applied *directly*, when the EU made threats to withdraw unilateral trade preferences, and *indirectly*, when the EU took steps to limit the range of alternative options available to ACP countries. It also reveals that some ACP countries acted pre-emptively out of *anticipation* that the EU would punish resistance, even in instances where the EU did not make explicit threats, suggesting that coercive pressure can operate in very subtle ways.

The chapter then examines variation in the vulnerability of ACP states to coercive pressure. It shows that on average, changes in the international political and economic context between 1995 and 2010 made ACP countries less vulnerable than in the past. This was the result of relatively high growth rates in ACP countries, which resulted in lower levels of aid dependence; a reduction of indebtedness; and the diversification of trade relations, particularly towards China.

At the national level, the chapter reveals a high level of variation of trade and aid dependence across ACP states. Using a logit regression model, it investigates whether there is a statistically significant correlation between the depth of trade and aid dependence of an individual ACP country on the EU, and the decision of that country's government to sign an EPA. I find that vulnerability to coercive pressure provides a compelling explanation for why some ACP countries entered EPAs while others did not. More precisely, I find a strong positive correlation between the propensity of an ACP country to enter into an EPA and value of the Cotonou trade preferences that would be lost if it exited the negotiations, a finding that is statistically significant and robust, even when controlling for alternative explanations. This suggests that EU's threat to withdraw Cotonou trade preferences was a powerful instrument of coercion. This finding that echoes recent work by Shalden and Manger who find a pattern of 'political trade dependence' in the Americas.[39] This growing body of evidence that coercive pressure is an important driver of PTAs is noteworthy, because coercive power is absent from most scholarly explanations of PTA formation, which focus on national political processes such as lobbying by domestic interest groups.

While the EU's threat to withdraw Cotonou trade preferences was a powerful source of coercive pressure, it only had a limited impact on the overall pattern of EPA outcomes. This is because more than half of the ACP states either had excellent alternative options for accessing the EU market or exported products that did not attract a margin of preference. Rather surprisingly, although there is substantial evidence that ACP negotiators feared reprisals in aid if they exited from the EPA negotiations, the statistical analysis does not find a systematic correlation between dependence on the EU for aid, and the propensity to sign an EPA.

This finding highlights the critical importance of being very specific in our measures of coercive power. If my analysis of the EPA negotiations had relied on relatively crude proxies for international power relations, such as the relative GDP of the negotiating parties, I would have concluded that power relations had minimal impact on outcomes (all the ACP countries had far smaller GDPs than the EU, and yet the majority did not enter an EPA). The thesis highlights the value of a mixed-methods approach to studying trade negotiations. Qualitative work including as process tracing and interviews with negotiators enabled me to identify specific mechanisms of coercive pressure, which enabled a precise specification of international power relations in the statistical analysis.

The statistical model helps explain the broad pattern of EPA outcomes, particularly the decision of why ACP countries opted to enter into an EPA or exit from the negotiations.

[39] Manger and Shadlen (forthcoming)

However it does not explain variation in the content of the EPA texts or variation in the degree to which these texts were adopted and implemented. In addition, the statistical model does not provide any insight into the 'nuts and bolts' – the causal mechanisms through which the EU exerted coercive pressure on ACP countries and through which the ACP exercised resistance.

To account for this, **Chapter six** turns to look inside the negotiating room, examining the negotiating process in detail and tracing the impact of negotiating strategy and tactics on EPA outcomes. More precisely, it asks, 'how did the strategic and tactical moves of the EU and ACP governments shape EPA outcomes?' To answer this question it engages in detailed process tracing, drawing on a raft of material documenting the negotiating process, some of it confidential, as well as interviews with negotiators and media reports. The analysis provides new insights into the conditions under which smaller states can use the negotiating process to their advantage.

A first striking finding is that, in contrast to much of the theoretical and empirical literature on negotiations, the negotiating process was not based on a process of exchanging concessions. The EU adopted a hard-line approach and proved to be extremely reluctant to make concessions, even when negotiations entered protracted periods of stalemate. In a pattern resonant of other highly asymmetric negotiations outside of the trade arena,[40] the EU followed a strategy that suggests it over-estimated its own power and under-estimated the resolve and ability of ACP governments to push back.

At the tactical level, the EU used a range of classic pressure-based moves including divide and rule manoeuvres to undermine the ACP coalition, opening with high demands, refusing concessions, manipulating information, worsening the alternatives available, and making

[40] See for instance Zartman and Rubin (2002)

threats. It combined these with a series of persuasion-based tactics, seeking to change the ways that ACP governments perceived their national interests in order to bring them in line with its own. These included taking out adverts in national newspapers in ACP countries and training ACP journalists on the benefits that the EU perceived would accrue to ACP countries if they entered an EPA.

The chapter shows that, far from capitulating, ACP countries invariably adopted counter-strategies. ACP countries were able to use negotiating moves to exercise a surprising degree of resistance, removing issues from the negotiating table, securing defensive concessions in the details of the text, and evading implementation.

Variation in the response strategies of ACP governments had a decisive impact on outcomes. More precisely, the process tracing reveals that African and Pacific regions rejected many aspects of the EU's proposals and adopted a 'logic of resistance' during the EPA negotiations, which decisively influenced the trajectory of the negotiations. In stark contrast, leading Caribbean states embraced the spirit of the EU's EPA proposals and adopted a 'logic of cooperation', a decision which similarly had a decisive impact on the trajectory of these negotiations.

Political leadership and the availability of technical expertise shaped the counter-strategy that was adopted. For instance, the Caribbean negotiators, endowed with a high level of technical expertise and given a political steer by their heads of state to broadly cooperate with the EU, focused on securing modifications in the fine print of the text; while the West African negotiators, with a lower level of technical expertise and a political steer to resist major aspects of the EU's proposals, focused on removing major issue areas from the negotiating agenda.

A central insight is that much of the resistance occurred after the EPA texts were negotiated, showing that small states can 'game' the adoption and implementation process to a very substantial degree. Among the thirty-six ACP states that initialled an EPA, only a handful fully cooperated during the signature, ratification and implementation process. The majority of ACP governments resisted, using three different strategies to do so: 'open confrontation', where they publically refused to sign and held out for renegotiation, mobilising domestic constituencies to bolster their position; 'playing for time' by postponing signature; and 'false compliance', taking steps to implement on paper but not applying changes in practice.

This manoeuvring after texts had been negotiated meant that, for several years after a reciprocal free trade agreement had purportedly been concluded, more than thirty ACP countries continued to access the EU market on a preferential basis while the EU was unable to access ACP markets on preferential terms. In other words, ACP countries successfully used the negotiating process to their advantage and extended unilateral preferences on a de facto basis.

Overall, this chapter shows that small states can resist the agenda of much larger states to an extent that is greatly underappreciated and understudied in the scholarly literature. ACP countries found it extremely difficult to use strategic moves to secure substantive new concessions from the EU (such as an increase in market access for the temporary movement of workers (Mode 4) and aid). However they were able to exercise substantial blocking power and prevent the EU from realising many of its offensive interests.

Chapter seven is the final empirical chapter, and it explores the political economy of the EPA negotiations in ACP countries. It does so in order to account for a final element of the EPA puzzle, namely 'why did ACP countries adopt very different political responses to the EU's EPA proposals? In particular, why did most African and Pacific countries decide to strongly resist many aspects of the EU's proposals, while most Caribbean countries opted for a much more cooperative approach?'

The scholarly literature suggests that societal pressures on governments, especially economic interest groups, largely determine government negotiating positions. For this reason the chapter starts by seeking to establish whether there is a correlation between the pattern of lobbying and the negotiating positions of ACP governments. The chapter lobbying in eighteen ACP countries that played particularly prominent roles during the negotiations, drawing on interviews with negotiators and national media coverage.

In contrast with the literature, I show that lobbying by economic interest groups is only a partial explanation for government approaches towards the EPA negotiations. For instance, in some ACP countries that displayed a high level of opposition and resistance, the most prominent economic lobby groups lobbied in *support* of an EPA. Moreover, rather than a purely unidirectional process where lobby groups influenced the decisions of governments, in some ACP countries there was evidence of 'reverse-lobbying', with governments actively encouraging the mobilisation of societal interest groups and working with them to exert pressure on the EU.

The chapter shows that in addition to lobbying by economic interest groups, three specific types of information and ideas account for the approach of ACP governments to the EPA negotiations. Where detailed information on the likely impact of the EU's proposals on ACP countries was available, it shaped government decisions. In particular, studies of tariff liberalisation showed that while the overall welfare effects were probably positive, many ACP countries, particularly those in Africa, stood to lose substantial amounts of government revenue. This was, understandably, a major concern for severely budget-constrained (and often aid-dependent) governments.

Economic ideas about the links between trade policy reforms and development also shaped government preferences. For instance, there is credible evidence that the decision of many African and Pacific countries to resist major aspects of the EU's proposals was influenced by criticism in international policy circles of the 'Washington Consensus', on which many of the EU's EPA proposals were based. Leading ACP intellectuals and civil society organisations, who were actively engaged in this international debate, acted as 'ideational entrepreneurs', bringing these ideas home and shaping government positions.

Perceptions of geostrategic interests also shaped negotiating positions. For instance, Caribbean political leaders were mindful of upcoming negotiations with the US. The Caribbean opted to negotiate a broad and deep EPA on the basis that the EU would be a more flexible negotiating partner than the US, and the EPA would set a positive precedent for future negotiations.

Overall, the analysis in this chapter serves as a reminder that information and ideas shape government negotiating positions. When the private sector is weak and disorganised, as it is in many developing countries, governments are not subjected to high levels of lobbying. In these circumstances, we can expect information and ideas to have a particularly strong influence.

The **Conclusion** draws together the theoretical insights from the preceding chapters and presents a series of contingent generalisations that we can expect to apply to other asymmetric trade negotiations. In particular it sets out the conditions under which we can expect small states to 'cooperate', 'resist' or 'exit' from negotiations with a larger state.

1.5. Research Methodology

The thesis adopts a mixed-methods approach, and uses both quantitative and qualitative methods in order to analyse the EPA negotiations and develop a compelling account of their outcomes: comparison of legal texts, historical institutional analysis, a large-n statistical model, detailed process-tracing, and a series of mini-case studies. The principle sources are international statistical databases, an online survey and semi-structured interviews of negotiators and representatives from ACP countries, and analysis of a wealth of primary documents including negotiating texts and newspaper reports. The ways in which these methods are employed is briefly explained below.

Comparison of Legal Texts

One of the first tasks that this thesis undertakes is the detailed mapping of the EPA outcomes, the dependent variable that the thesis seeks to explain. This requires analysis at two levels. The first, which is relatively easy to establish, is whether a given ACP country concluded an EPA, and, if so, whether it proceeded to sign, ratify and implement it. The second, which is more challenging, is to determine the extent of variation in the detailed legal provisions of the EPA texts that were concluded.

Between September 2002, when the EPA negotiations started, and September 2012, eight EPA texts where concluded, each with varying numbers of signatory states.[41] The texts are very detailed with the core provisions in each EPA text typically exceeding one hundred pages and the whole agreement (including annexes) exceeding one thousand. The research for this thesis included a detailed provision-by-provision comparison of the main elements of the EPA texts, to establish the extent to which outcomes deviated from the EU's objectives, and the extent of variation in outcomes across the ACP countries.

[41] In Central Africa there was a single 'CEMAC' text involving only Cameroon; in West Africa, Ghana and Cote d'Ivoire had concluded two separate EPA texts; in Eastern and Southern Africa, there were separate 'EAC' and 'ESA' texts; in Southern Africa there was a single 'SADC' text; in the Caribbean there was a single 'CARIFORUM' text; and in the Pacific there was a single 'PACP' text. These involved thirty-six of the seventy-six ACP countries and, as at September 2012, were at various stages of signature, ratification and implementation.

Historical Institutional Analysis

Historical institutional analysis is used to examine nine sets of past trade negotiations between ACP and European countries, which took place between the end of the colonial era in the 1950s, and 2000. The historical analysis helps to set the context for analysing the EPA negotiations, and informs the methodology for analysing the more recent negotiations.

As Lieberman (2001) explains, historical institutionalist analysis typically seeks to account for the ways in which institutions affect political dynamics and, in turn, produce distinctive political outcomes. This approach usually looks at the joint effect of evolving background variables, typically the configuration of economic resources and relationships within society, and institutions, the widely accepted rules of conduct that structure a decision-making or political process.[42] In this thesis, a historical institutionalist approach is used in a slightly different way. The institutional arrangement, in this case the changing nature of formal trade rules between European and ACP states (the institution), is the dependent variable. The explanatory variables include: shifts in the international economic and political relations between European and ACP states, shifts in the domestic society within these states, and the decisions and actions of governments, particularly their use of negotiating strategies and tactics.

By carefully dissecting the chronology of past negotiations into three analytically useful periods, and comparing negotiations within and across these periods, it is possible to trace the ways that changes in the three explanatory variables affected the dependent variable. From this structured comparison within and across time periods, causal inferences can be made as to the factors that have shaped the evolution of trade rules in the past.[43]

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[42] Lieberman (2001)
[43] See ibid. for a useful discussion of the merits of carefully structured periodization strategies

Statistical Modelling

The thesis takes a 'first-cut' at explaining EPA outcomes by exploring the extent to which variation in trade and aid dependence can account for the pattern of EPA outcomes. Using a series of simple logistical regressions, it investigates whether there is a statistically significant correlation between the depth of trade and aid dependence of an individual ACP country on the EU, and the decision of that country's government to sign an EPA. Data on aid and trade dependence is sourced from a combination of international databases, and EPA impact studies.[44]

Ideally, the statistical model would have been used to estimate simultaneously the effect of the other two explanatory approaches (domestic societal pressures and the use of negotiating strategies and tactics) on the EPA outcomes. However it was not possible to establish reliable and credible quantifiable variables that could be used to test these two rival explanations.

A number of recent studies use large-n regressions to explore the impact of domestic political factors on the likelihood that a given country enters into a preferential trade agreement.[45] However close scrutiny of the quality of data available for the seventy-six ACP countries, which are among the poorest and smallest in the world, showed that the quality was too poor to have any confidence in the results of such a modelling exercise. Indeed for some ACP countries, international databases do not even have reliable data on key macroeconomic variables such as their gross domestic product, let alone reliable data on their political systems and the structure of their economy.[46]

[44] Details are provided in Chapter 5

[45] See for instance Mansfield and Milner "Votes, Vetoes, and Preferential Trading Agreements" (2010)

[46] The author invested a substantial amount of time in exploring ways to find proxies for economic interest group lobbying, but to no avail, as data on economic sectors and on political regimes is extremely weak for many ACP countries (the Polity IV database for instance excludes countries with populations of less than 500,000, which includes many Caribbean and Pacific states). I also tried to compile a database of EU direct investment in ACP countries, to test the hypothesis that ACP countries with high levels of EU investment would be susceptible to lobbying by large EU multinationals, and hence would be more likely to enter an EPA, but there was insufficient data.

In the case of negotiating strategies and tactics, the challenge of incorporating this into a statistical model was not so much one of poor data as the fact that it is extremely difficult to quantify and index the deftness of strategic moves in a reliable way. In order to evaluate the impact of negotiating moves, it is important to trace the process of strategic interaction over time, exploring the moves and counter moves of each party. In other words, the impact of negotiating strategies and tactics on an outcome is iterative and path-dependent, and much more amenable to being explored through process-tracing than statistical modelling.[47] For these reasons, the thesis turns from a large-N approach to process-tracing.

Process-Tracing

In the detailed analysis of the EPA negotiations, a periodization strategy is adopted once again, with the negotiations divided into distinct sub-periods on the basis of identifiable interim outcomes. In each period, the principal moves and countermoves of the EU and ACP are identified, and their impact on the outcome of this period of negotiations is assessed, often by making use of counterfactual arguments. In other words, the question is posed: how would the outcome of this negotiating period have been materially different if other moves had been made? The process-tracing draws on a rich and diverse set of primary sources, including media reports, press releases, minutes of the negotiations, interviews with negotiators, draft negotiating texts, and official declarations.

Mini Case-Studies

This thesis uses a 'medium-n' approach to explore the EPA dynamics within key ACP countries. The thesis probes the decision-making processes in eighteen of the seventy-six ACP countries, focusing on those countries that appear to have been most influential in each region. The literature on trade negotiations suggests that lobby groups would strongly influence decisions to 'resist' or 'cooperate'. In theory, evidence of linkages between the positions taken by ACP governments during the EPA negotiations and the demands and interests of lobby groups would provide compelling evidence that lobbying had a causal

[47] Statistical analysis is biased towards structural factors because they are more easily quantified than procedural factors. See Odell (2001)

impact on outcomes. Despite close scrutiny of the evidence, such a linkage is difficult to ascertain. The thesis proposes an alternative, suggesting that factors other than lobbying influenced government decisions, and it draws on interviews and public statements by government officials.

Online Survey and Semi-structured Interviews

Accessing reliable information on what happens inside the negotiating room, and the factors that feed into government decision-making is challenging. As Odell (2006) notes, there is a shortage of empirically grounded analyses of negotiations, particularly involving developing countries. Insiders rarely have the time, liberty or inclination to publish, while outsiders are rarely privy to the process. Researchers have to rely on archives and on interviewing participants, who are often scattered over several continents.[48] Gaining access to trade negotiators is often difficult, particularly those from developing countries as they are extremely stretched and have little time.

This thesis is fortunate in that it is able to draw on the previous professional experience of the author as well a wealth of empirical material collected by the author when leading a research project for the Global Economic Governance Programme, University of Oxford, in collaboration with the Commonwealth Secretariat.[49] The project examined the constraints that small states face in international trade negotiations, and solicited the opinions of more than one hundred negotiators from thirty small developing countries, through an online survey and a series of semi-structured interviews.[50] Although the project was not designed to examine the EPA negotiations, nearly all the survey respondents and interviewees were from ACP countries, so it provides valuable insights into the ways that ACP countries approach trade negotiations.

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[48] Odell (2006)

[49] Prior to starting work on this thesis, the author worked in the Ministry of Trade of the Government of Ghana (as an ODI fellow) and as a trade policy adviser for the non-governmental organisation Oxfam International. Note that some of the information gathered during this time period was sensitive and confidential and has not been used as source material for the thesis.

[50] The findings are published as Jones, Deere-Birkbeck, and Woods (2010)

The online survey was sent to 374 negotiators and stakeholder representatives in 61 small developing countries, 54 of which were ACP countries, and was conducted between June and September 2008.[51] The survey had a mean response rate of 22 percent, with 84 respondents answering all questions, and some questions being answered by as many as 110 respondents. Not all respondents chose to identify the country or region they represent, but of the 93 respondents that did, all came from ACP countries. The final survey covers 30 ACP countries, with a slight bias towards Benin, Comoros, Cook Islands, Jamaica, Mauritius and Zambia. 31 respondents identified themselves as representing regional organizations.

The survey questions addressed, *inter alia*, negotiating objectives, strategies and tactics used by small states and those they negotiate with, the nature of domestic lobbying on trade policy, and the sources and quality of information that negotiators rely on during negotiations. The full survey results are provided in Annex 1.

The online survey had the advantage of bring accessible to negotiators regardless of geographic location and was relatively quick to complete, and the involvement of the Commonwealth Secretariat facilitated access to high-level officials and ensured a good response. In terms of the composition of respondents, three-quarters were directly involved in international trade negotiations and one-quarter indirectly.[52] Seventy-two percent of respondents worked for governmental organisations either in the capital, at regional level or in a mission, while 28 percent worked for private sector organisations and NGOs. Government representatives were drawn mainly from capitals, although there was significant representation from regional negotiating bodies (Table 4).

[51] This survey used www.SurveyMonkey.com
[52] In the majority of survey analyses, all responses were considered. However, analysis of negotiating tactics was restricted to responses from those directly involved in negotiations.

Table 4: Organisations Survey Respondents Represent

Type of organisation	Percentage of respondents
Government in capital	48
Private sector or NGO	28
Regional organisation	19
Government mission in Brussels or Geneva	5

Survey questions were carefully constructed to ensure that terms were clear and unambiguous. To facilitate analysis at the aggregate level answers predominantly took the form of ranking using weighted averages, although space was provided for respondents to add comments. A pilot of the survey was conducted before it was sent out to the larger group of negotiators. While the majority of respondents were public officials, in some countries members of business associations and civil society representatives were also closely involved in negotiations, and their opinions were sought. Only those individuals who were specifically invited to complete the online survey were given access. The survey was available in English and French to facilitate responses from negotiators in anglophone and francophone ACP countries.

Alongside the online survey, semi-structured interviews were conducted with sixty-one negotiators, all except three from ACP countries, and seven international experts, which enabled issues to be probed in greater depth (see Annex 2 for the interview questions and list of interviewees). Twenty-three of these interviews were conducted by the author in the Caribbean, while the remaining interviews were conducted by research assistants in Brussels and Geneva, and over the phone to negotiators in capital, and were carried out under the supervision of the author. All interviews were conducted on the basis of confidentiality, on the understanding that the transcripts would be quoted but the interviewee would not be named, and information would be cited in a manner that ensured interviewees could not be readily identified.

To make greatest use of these sources, each of chapters five to seven of the thesis start by presenting the relevant aspects of the survey and interview results before diving into details of the EPA negotiations. This is particularly valuable given that so little is known about the interaction between small and large states in trade negotiations. The 'baseline' provided by the survey and interview results helps us to be more confident that the analysis of the EPA negotiations is robust, and assists with identifying which features of the EPA negotiations are likely to be more broadly applicable to asymmetric negotiations. In many ways this is a 'nested' methodology, developed along the lines suggested by Lieberman (2005). As he notes, this method 'assumes an interest in *both* the exploration of general relationships and explanations and the specific explanations of individual cases and groups of cases'.[53]

The survey and interview results enables the analysis to move beyond the official, written accounts of the EPA negotiations to gather information about the underlying context and build up to the actions that took place. Significantly, survey and interview results enable the exploration of attitudes, values and beliefs of the negotiators, enabling us to explore the role of ideational factors in deeper ways than is available from scrutiny of written sources alone.[54] However, public officials are not an unbiased source of information. For this reason, care is taken to consider the 'evidentiary value' of this material, and to triangulate the information provided with other sources, including analysis of press releases and reports, minutes of negotiating meetings and draft negotiating texts (where they are available) and public statements by negotiators.[55] Finally, the author knew many of the interviewees and survey respondents, which may have introduced bias, a possibility that was considered in interpreting the results.[56]

[53] Lieberman (2005) P436
[54] Tansey (2007)
[55] George and Bennett (2005)
[56] Since 2004, I have came into regular contact with EU and ACP negotiators in a professional capacity

Chapter 2. Analysing the Political Economy of EPAs

2.1. Introduction

How can we account for the outcomes of asymmetric trade negotiations? A review of the literature reveals that the literature on highly asymmetric trade negotiations, particularly between industrialised and developing countries is surprisingly limited. Although there is a vast literature on trade negotiations, it has historically focused on interactions between major industrialised economies. During the last fifteen years, since the creation of the WTO, this has shifted, and greater attention has been paid to the role of developing countries in trade negotiations. However this has tended to focus on large developing economies including Brazil, India, and Mexico, rather than small developing countries like the ACP countries. It has also focused on WTO negotiations where the negotiating dynamics tend to be very different to those in a bilateral or region-to-region setting. Negotiations at the WTO take place within established rules and practices that are absent from bilateral and regional settings.[1] Despite the proliferation of free trade agreements between industrialised and developing countries in recent years, the political economy of such interactions remains relatively understudied.

Given that the literature on asymmetrical trade negotiations is limited, the chapter draws lessons from the wider literature on negotiations. It shows that the existing scholarship can be conveniently, if somewhat artificially divided into three broad approaches that offer differing explanations for the outcome of trade negotiations, and which give causal primacy to domestic lobbying, coercive power, and the negotiating process respectively.

[1] Odell (2006); Odell (2010)

Each approach gives rise to a distinct and contending causal explanation for the outcome of the EPA negotiations. The first approach, ubiquitous in the trade literature, focuses on societal pressures in the domestic economy, and it suggests that likelihood of a preferential trade agreement being reached between two states depends on the balance of forces within the domestic arena, particularly the extent and influence of protectionist economic interest groups. The second approach focuses on the relative power positions of states at the international level, focusing on the ways in which a larger state can pressure a smaller state into agreement, and the factors that make the smaller party particularly vulnerable to such pressure. The third approach looks at the negotiating process, and suggests that, irrespective of domestic politics and relative power considerations states can shape the outcome of negotiations through the deft use of negotiating strategies and tactics. Each of the three approaches offers a plausible explanation for the outcome of the EPA negotiations.

2.2. Lobbying by Domestic Interest Groups

Lobbying by protectionist interest groups is perhaps the most dominant explanation in the international political economy literature for the outcome of trade negotiations.

The role of domestic interest groups in shaping the policy preferences of states has been a particular preoccupation for liberal scholars who start from the premise that free trade is in the national interest of all states, whether industrialised or developing, large or small, as it leaves all states better off in terms of absolute material gains. The most optimistic liberals have argued that free trade also contributes to peace-building, as it leads to complex interdependence between countries and in turn, this increases the costs of war. This faith in free trade is encapsulated in a famous phrase of Cordell Hull *'I have never faltered, and I will never falter, in my belief that enduring peace and the welfare of nations are indissolubly* *connected with friendliness, fairness, equality and the maximum practicable degree of freedom in international trade'*.[2]

Given this premise, the preoccupation of political scientists has been to find explanations for why states frequently fail to pursue free trade policies (assumed to be in their national economic interest) and engage instead in widespread protectionism. Since the seminal work of Schattschneider (1935) who looked at the rise of protectionism in the early 1930s, scholars have looked to patterns of domestic lobbying to account for the nature and persistence of protectionism.[3]

International trade negotiations are typically modelled as two-level sequential games, with governments first negotiating internally with interest groups to determine trade policy preferences (domestic level bargaining), and then negotiating with other countries towards an agreement (international level bargaining).[4] Models build on trade theory and collective action theory, as well as empirical evidence, to explain which economic interest groups are likely to mobilise in a given situation. To understand interest-based accounts and how they might help us to account for EPA outcomes we need to understand the analytical logic of both types of bargaining.

Domestic level bargaining is modelled in two ways. Under the factor-endowments model, which assumes costless inter-sectoral mobility of productive factors, trade benefits individuals who own the factors with which the economy is relatively well endowed, and hurts the others.[5] Thus we would expect lobbying to be organised around ownership of factor endowments (land, labour and capital), with owners of the relatively scarce factor lobbying for protection. For instance, in a country where land is abundant but capital is scarce, we

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[2]As cited in Irwin, Mavroidis, and Sykes (2008)
[3] Schattschneider (1935) which analysed the domestic politics surrounding the passage of the US Smoot-Hawley Tariff Act in 1930
[4] Evans, Jacobson, and Putnam (1993)
[5] This is the well-known Stolper–Samuelson theorem

might expect manufacturing sectors that are capital-intensive to lobby for protection, whilst agricultural sectors to be supportive of free trade.

In contrast, under the specific-factors model, at least one factor is assumed to be immobile between sectors, and so trade benefits individuals who are employed in the export-oriented sectors and hurts those who are employed in the import-competing sectors.[6] In such models we would expect lobbying to be organised on an industry-specific basis, with workers and investors in a given sector acting in unison on trade policy issues. For instance Milner (1989) shows that firms with greater international connections are likely to be less protectionist than smaller more domestically-oriented firms.[7] A new wave of models based on the insights of 'new-new trade theory' has shown that a similar logic can apply within a sector. Large exporting firms lobby for the liberalisation of sectors marked by intra-industry trade, as they are more competitive and tend to be better organised politically, while small firms in the same sector lobby against liberalisation fearing that they will be unable to compete.[8]

Both approaches appear to have empirical validity. Studies show that some lobbying follows the factor endowments model (with lobbying organised around groups such as farmers, workers, and investors) while in other instances it reflects industry-specific interests.[9] These findings are corroborated by recent survey evidence, which finds that pro-trade preferences are correlated with an individual's level of human capital, in the manner predicted by the factor endowments model, and with the level of trade exposure of the sector in which an individual is employed, as predicted by the specific-factors model.[10] However in developing countries, the specific-factor approach appears to have greater explanatory power.[11]

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[6] These are based on Ricardo-Viner models. For instance, a worker may have skills that are specific to steel making and are not readily transferable to other sectors

[7] For instance Milner and Yoffie (1989)

[8] An excellent overview is given in Baldwin (2006)

[9] See Milner (2013) for the key studies

[10] Mayda and Rodrik (2005)

[11] For details on the relevant studies see Hicks, Milner, and Tingley (Forthcoming)

A series of models link these insights about the likely nature of domestic lobbying to explanations about how interest-group lobbying shapes government policies. Following Grossman and Helpman (1995) two factors are usually assumed to motivate governments: pressures from interest group lobbies and welfare implications for the median voter.[12] Following this logic, a series of recent studies explore the links between political regime types and trade policy, exploring the hypotheses that democracies are more likely to support free-trade as they respond to welfare effects on median voters (who are expected to gain from liberalisation through reductions in prices of consumer goods) as well as interest group lobbying.[13]

Turning to the bargaining at the international level, the presence of protectionist lobbies turns states towards mercantilism, as they seek maximum access to the markets abroad, whilst seeking to appease protectionist lobbies by protecting markets at home. Indeed, the literature suggests that likelihood of an international negotiation resulting in agreement is primarily determined by the ease with which protectionist interests can be accommodated.[14] This leads to expectations that free trade agreements are more likely to be concluded when the domestic 'supply and demand for protectionism' weighs in favour of free trade.[15]

Notably, such approaches often make strong assumptions about the nature of preferences and degree of the information available to negotiating partners about what their 'interests' are. In many instances, models assume that interests are fixed and immutable at the point when international negotiation commences and negotiations occur under conditions of full information. Given these assumptions, the negotiating process at the international level is usually assumed to be a largely technocratic affair, as negotiators merely exchange concessions: the outcome of trade negotiations is determined before the parties start

[12] Grossman and Helpman (1995)
[13] See for instance Mansfield, Milner, and Rosendorff (2002) Milner and Kubota (2005) Milner and Mukherjee (2009) Mansfield and Milner "Votes, Vetoes, and Preferential Trading Agreements" (2010)
[14] Grossman and Helpman (1995)
[15] Baldwin (2006)

negotiating, by the nature of domestic lobbying and hence the degree of complementarity in their underlying negotiating objectives.

The recent proliferation of preferential trade agreements (PTAs) has generated a few studies that look specifically at the ways in which domestic political factors prompt countries to enter PTAs. Economic theory on PTA formation is ambiguous on the likely welfare implications, and although one empirical study suggests that there are clear economic factors driving states to enter PTAs, notably trade-creation effects, the majority of studies turn to politics to explain PTA formation.[16] Baldwin (1997) and subsequent studies argue that the proliferation of PTAs is the result of a 'domino' effect. The creation of a first PTA results in trade diversion that harms exporting firms in third countries, and these firms lobby their governments to join the PTA. As other countries join, more trade diversion is generated, creating incentives for more countries to join, so PTA formation progresses 'like wildfire'.[17] Others look to political regime type for an explanation. Mansfield and Milner (2010) for instance, suggests that democracies are more likely to enter PTAs than other regime types because PTAs provide democratic leaders with a mechanism for signalling to voters that they will not allow trade policy to be guided by special interests.[18]

Finally, in an interesting study, Manger (2009) looks specifically at the recent rise of North-South PTAs and argues that the interests of multinational companies are the primary driver: governments in developed and developing countries pursue regional and bilateral agreements in order to satisfy the political demands of multinational companies. Multinational companies in turn lobby for PTAs as they facilitate vertical integration within firms and, crucially, because PTAs are discriminatory, they raise barriers to competitors from non-member states.

[16] For the theory see Baldwin and Venables (1995); the empirical study is Baier and Bergstrand (2004)
[17] Baldwin (1997); Baldwin and Jaimovich (2012)
[18] Mansfield and Milner "Votes, Vetoes, and Preferential Trading Agreements" (2010)

The analysis focuses on the dynamics between the US, EU, Japan and relatively large developing countries including Mexico, Chile, Malaysia and Thailand.[19]

Protectionist Lobbying and EPAs

Turning to the EPA negotiations, how does this first broad 'lobbying' approach suggest that we might account for the outcome of EPA negotiations?

The main thrust of the interest-group explanations is that powerful protectionist interest groups prevent governments from pursuing free trade policies. In order for this to be a convincing explanation of EPA outcomes, we would expect to see a high level of politically powerful protectionist lobbying against the EPA in the EU and/or ACP countries, and for this lobbying to be particularly strong in African and Pacific countries, either because there is more lobbying, or because the political regime is such that such lobby groups have greater impact. In contrast, we would expect to see a lower level of protectionist lobbying in the Caribbean, or a different pattern of lobbying that was easier for politicians to accommodate.

The literature provides us with a series of expectations about the nature of protectionist lobbying that we are likely to see, and suggests that the insights derived from the specific-factors model are likely to be most applicable to ACP countries. In the EU, we expect to see protectionist lobbying from the owners of the relatively scarce factor (low-skilled labour) and/or from import-competing sectors such as textiles, while in ACP countries, we would expect protectionist lobbying to be concentrated in the import-competing sectors such as manufacturing. In addition, given that the EU heavily subsidises agricultural exports, we might expect lobbying in ACP countries to come from farmers producing for the local market.

How plausible is such an explanation? Although this argument is logical and appealing, a note of caution is required. Prior to the EPA negotiations, ACP countries already had a

[19] Manger (2009)

relatively high level of access to the EU market under the Lomé scheme of preferences, and faced few tariffs and quotas on their exports of mineral and agricultural products. Given the relatively small volumes of additional exports likely to come from ACP countries under an EPA (total trade with ACP countries accounted for less than 2 percent of total EU trade)[20], it is unlikely that the prospect of increased imports from ACP countries would have stimulated a major protectionist response from interest groups in the EU.

How plausible is it that high levels of protectionist lobbying in African and Pacific regions thwarted the EPA negotiations? Although there is relatively little empirical work on the nature of interest group lobbying in ACP countries, the little that there is provides reasons to be sceptical. A study by Bates and Kreuger (1993) found little evidence that lobbying by interest groups was a primary determinant of economic policies in developing countries, including several ACP countries.[21] More recently Soludo and Ogbu (2004) note that in many African countries the indigenous business class is very weak and poorly organised and it is conspicuous for its absence in lobbying government on trade and industrial policy.[22] In other words, in practice, we might not see sufficient mobilisation of protectionist economic interest groups in African and Pacific countries in order for this to be the core explanation for the pattern of EPA negotiations.

The studies based on the 'domino' logic of PTA formation suggest a slightly different logic to lobbying and lead us to focus on the presence (or absence) of politically powerful exporters in ACP countries lobbying *for* an EPA because they were being put at a competitive disadvantage by preferential trade agreements that the EU had entered with third parties. Alternatively, following Manger (2009), it is possible that EU multinationals were the main demandeurs for an EPA, lobbying in both the EU and ACP countries to obtain an EPA that would facilitate vertical integration. For either explanation to be a plausible account for the

[20] See Table 3
[21] Bates and Krueger (1993)
[22] Soludo and Ogbu (2004)

pattern of EPA outcomes, we would expect to see much stronger and more politically powerful lobbying for an EPA in the Caribbean than in African and Pacific regions. Recent studies of North-South agreements in Latin America give some credence to such arguments, as they show that there is often a high degree of lobbying for such agreements from the large exporting companies, which are typically better organised and have greater access to decision-makers than the losers which tend to be small-scale producers.[23] Although this thesis only attributes a limited role to lobbying by economic interest groups in the EPA negotiations, where lobbying did have had an impact, it was broadly in line with this more recent literature.

2.3. Trade and Aid Dependence

The second approach focuses at the international level, on power plays between the large and small countries. Although trade negotiations and the agreements that result are typically analysed in the scholarly literature as the outcome of inter-state cooperation, there is some literature which suggests that coercive power plays a role in trade negotiations, particularly in asymmetric negotiations. As this section explains, in the context of EPA negotiations, trade and aid dependence are the most likely channels through which such coercive pressure can be expected to operate.

At the heart of second approach is the observation that, irrespective of domestic politics, countries may have conflicting interests when it comes to international trade negotiations. John Stuart Mill, although an advocate for free trade, was one of the first scholars to show that the material benefits accruing under free trade are not necessarily divided equally among nations.[24] Building from this insight, Hirschman (1945) showed that this meant that a larger state could use trade policies to turn the terms of trade in its favour, and that international trade could be structured to work to the exclusive or disproportionate benefit of one or few of

[23] For instance Shadlen (2008) and Sánchez-Ancochea (2008)
[24] Hirschman (1945)

the states involved.[25] Further work in the 1980s by 'new trade theorists' including Brander, Spencer and Krugman provided further support for this argument. Their work showed that under conditions of imperfect markets and imperfect competition, a government could increase its nation's welfare at the expense of the other state through strategic intervention in trade.[26]

There is a long tradition of scholarship that suggests that countries at different levels of economic development will have very different interests in trade negotiations. The latest wave of this scholarship emerged after the experience of rapidly growing East Asian countries, and it argues that there is no single 'optimal' set of international trade rules that will maximize the economic welfare of all countries simultaneously.[27] A series of studies make recommendations on the types of trade policies developing countries can use to spur innovation, technology changes, learning at the firm level, and diversification into value-added activities, and these require developing countries to have substantial discretion in the use of tariffs, intellectual property regulations, public procurement, regulation of foreign direct investment and the allocation of financial resources.[28] This research has profound implications for international trade negotiations as it suggests that many of the regulations embodied in contemporary agreements, particularly, those in free trade agreements between industrialised and developing countries may be inimical to development.[29]

This growing body of work suggests that, irrespective of patterns of internal lobbying, countries may have inherently different 'national interests' when negotiating trade rules, particularly if they have very different levels of development. Importantly, this literature also makes the implicit assumption that the way government bureaucrats and politicians *conceive of* the linkages between proposed trade rules and their country's development may shape the

[25] Ibid.P10-11
[26] Krugman (1987)
[27] See for instance Amsden (2003) Chang (2005); Chang (2002); Wade (2004)
[28] For some of the latest work see Cimoli, Dosi, and Stiglitz (2009)
[29] See for instance Wade (2003)Gallagher (2005); Gallagher (2008)

way that national interests are defined. In other words, we can expect that the objectives a government has when it embarks on a given trade negotiation are likely to be the product of both interest group lobbying and ideas held by government bureaucrats and politicians about the type of trade rules that are desirable. This is arguably the case in the EPA negotiations, and the issue is explored in detail in chapter seven.

Coercive pressure and trade relations

Several analytical and empirical studies show that when states perceive their interests to be in deep conflict, large states may resort to coercive power tactics to extract concessions. Within the literature on trade, Albert Hirschman was one of the first scholars systematically to explore the links between power and trade. When he wrote his seminal work 'National Power and the Structure of Foreign Trade', the prevailing wisdom was that the intensification of trade relations was always beneficial to both partners as it led to mutual gains, leaving all parties better off. Countering liberal scholars such as Cordon Hull, Hirschman argued that 'commerce can become an alternative to war… by providing a method of coercion'.[30] As his argument is compelling, it is worth examining in a little depth.

Hirschman identified two different causal linkages between trade and power. First, he argued that large states might use their superior resources or military power to impose adverse trade terms on the smaller party, using adverse trade relations to extract material resources and augment their power. Colonial trade relations, he argued, were the epitome of this tendency.[31] Second, he argued that trade relations can themselves be a weapon of power. Under conditions of unilateral trade dependence whereby 'an identical flow of trade that represents the bulk of a small, poor country's total trade while occupying a small percentage of the large, rich country's trade'[32] then 'the large country, having a much smaller stake in this common trade than the small country, is able to bend the latter to its will by subtle or not-so-subtle

[30] Hirschman (1945) P15
[31] Ibid.
[32] Ibid.Pviii

hints that this trade might otherwise be withdrawn'.[33] For instance, a large state can stop, or threaten to stop, trade with a smaller state, forcing it to seek alternative markets and sources of supply, and, should this prove impossible, forcing on it adjustment and impoverishment.[34]

In his analysis, Hirschman makes the observation that trade preferences exacerbate vulnerability to coercion by increasing the depth of market dependence (this insight is relevant to the EPA case, as ACP countries have a long history of being dependent on the EU for trade preferences). By providing preferences, Hirschman argues that a large state can change the structure of the small state's economy making it highly and artificially complementary to its own. If for instance, through preferential treatment, a large state can induce a small state to produce a particular commodity for export, it will become the small state's only market.[35] From the large state's perspective, this political dependence and the control it gives the large state, may be worth the cost of not buying from the cheapest market.[36] From the small state's perspective, such preferences bring the benefit of economic rents but at the political cost of increased vulnerability to coercion.

Indeed, a recent study by Shadlen suggests one reason that small countries in the Americas decided to enter free trade agreements with the US was that dependence on unilateral trade preferences left them vulnerable to threats from the US, whereas the reciprocal and binding nature of FTAs ruled out the possibility of discretionary withdrawal.[37]

A number of studies show that the extent of coercive power in international trade relations is likely to be underestimated as it often takes subtle forms. For a variety of reasons, the most

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33 Ibid.Pviii Note that if trading partners are equal in size, the threat of widespread trade sanctions is not credible as ceasing trade hurts both parties equally

34 Ibid.P16

35 He assumes that, as the smaller country was not previously producing, it cannot produce competitively at world prices and relies on preferences to make production viable

36 Hirschman (1945) P32

37 Shadlen (2008); also Manger and Shadlen (forthcoming)

public forms of economic coercion such as trade sanctions have often been ineffective[38] and their use has been heavily circumscribed by UN and GATT/WTO rules, with the result that formal trade sanctions are used relatively rarely.[39] There is some evidence that this has prompted large states to adopt more subtle forms of economic coercion such as reducing investment; snags in licensing or other technology transfers; dwindling bilateral and multilateral loans and grants; refusal to refinance existing debts; and changing a country's 'risk category'.[40] Other studies highlight large states making threats to withdraw preferential trade access; putting pressure on officials in national capitals; calling for the removal of unfavourable negotiators from influential positions; divide-and-rule tactics of deploying middle-income countries to convince low-income countries to change their positions; and the use of technical assistance to put pressure on developing countries to sign agreements.[41]

Establishing the extent of coercion poses a challenge for scholars as many of these actions occur behind closed doors and often go undocumented. Jawara and Kwa (2003) illustrate how subtle such threats can be. In one instance, in the run up to a key WTO ministerial meeting, the EC Trade Commissioner 'gently reminded' LDCs of the importance of their trade and aid relations with the EU, and the EC also circulated its own negotiating positions to African countries. In neither case did the EU made an explicit threat or demand for action, yet these moves were interpreted by the small states involved as a clear message that the EU was expecting them to align their positions accordingly, and if they failed to do so, they feared that costly sanctions would be imposed.[42]

A number of studies observe that power asymmetries are often more pronounced in bilateral north-south negotiations than in the multilateral negotiations. Resource asymmetries are magnified in these settings, as there are fewer norms and formal rules to constrain the actions

[38] Olson (1979)
[39] Charnovitz (2001)
[40] Olson (1979) P585
[41] See for instance Jawara and Kwa (2003), Solignac Lecomte (2002)
[42] Jawara and Kwa (2003)P162-3

of the large players[43] and as smaller developing countries are often also dependent on the larger state for aid.[44] In contrast, in the multilateral context, power asymmetries are somewhat mitigated by the opportunities for developing countries to forge alliances to counter the resource power of larger states.[45]

Limits to Coercion

The literature highlights some factors that can limit the ability of large states to coerce small states through trade.

First, as Hirschman explains, the efficacy of trade sanctions as an instrument of coercive power depends partly on the degree of trade dependence of the small state on the large. If the small state conducts 95 percent of its trade with the large state, it is likely to be much harder for the small state readily to find substitute markets for all exports in the event of a trade sanction, with the result that it is much more vulnerable to coercive pressure from the large state. If on the other hand the small state only conducts 5 percent of its total trade with the large state, it is likely to be able to find alternative trading partners relatively quickly if subjected to a coercive threat by the large state. As Hirschman notes, this has obvious strategic implications: to augment their ability to use trade as an instrument of power, large states should seek to deepen trade ties with small states, particularly through the provision of preferences, while the obvious defensive strategy for small states is not to have too large a share of their trade with any single large state, and to minimise their dependence on preferences.[46]

Second, the economic and political fabric within a small state can also have a substantial bearing on the degree of resilience small states are likely to exhibit in the face of coercive power. Two features appear particularly important: the speed with which the economy can

[43] Krueger (1999)
[44] Freund (2003)
[45] Narlikar (2003)
[46] Hirschman (1945) P31

adapt if the small state opts to walk away from the negotiations, and the political consequences of walking away.

The speed of adaptation is likely to be higher for small states that produce export goods with factors of production that are highly mobile and can readily be transferred to other sectors. Similarly, if the negative impact is heavily concentrated in a single geographic region, adjustment may be harder than if the impact is more dispersed.[47] The speed and success of the adjustment process is also likely to depend on the government's ability to provide flanking measures, particularly to workers, as well as its ability to assist firms in previously protected sectors that have long-term viability and to support firms to enter into new high growth/high productivity internationally competitive sectors.[48]

In some instances, strong political responses in the small state help to offset the threat of coercion. For instance, economic sanctions have often been used against small states with the objective of regime change but in some cases they have had the opposite effect to that which was intended, as they elicited a strong nationalist response in the target country, which strengthened rather than weakened the political leadership.[49] The effect of such factors is often overlooked by more powerful states. As Hirschman noted in a fascinating article on the reasons why industrialised countries had not been as successful as he had expected in dominating developing countries 'the ability to inflict deprivation is more easily quantified than the willingness to accept it for the sake of say, freedom from domination, and in the recent past there have been several episodes where this willingness has been underestimated, with disastrous results for those who thought objectively that they would win'.[50]

[47] Ibid.P27-29
[48] Brenton, Hoppe, and Newfarmer (2008)
[49] Olson (1979)
[50] Hirschman (1978)P47

Third, legal rules can act as restraints on the actions of large states. In the trade arena, several scholars argue that the rules-based system of the WTO works in favour of small states as these rules provide legal constraint on the action of large states.[51]

Trade and Aid Dependence and EPAs

The literature examined above suggests that EU and ACP countries may well have deeply divergent interests in trade, and that if this is the case, then the larger state, the EU, may attempt to use a variety of tactics that rely on coercive power in a bid to pressure the smaller ACP countries to bow to its interests. The literature suggests that the EU might be able to use trade asymmetries to coerce ACP states into compliance, by threatening to undertake unilateral policies that would have an adverse effect on ACP states, including the threat to withdraw preferences or to cease trade. It is also plausible that high levels of aid dependence among ACP states on the EU would magnify the EU's ability to exert coercive pressure.

Given the asymmetric nature of economic relations between the EU and ACP countries, the argument that coercive pressure exerted by the EU would allow the EU to shape trade rules in its favour has intuitive appeal. A brief look at the historical record shows that ACP states have been on the receiving end of coercive tactics. During the colonial period, military force was used by European states to impose exploitative trade relations on ACP countries. Since ACP states gained independence the use of military force has been restricted, but trade relations have been used by large states as an instrument of coercion. Trade sanctions have been imposed on several ACP states, including Dominican Republic, Uganda, and Rhodesia.[52] In the context of WTO negotiations, threats have been made by the EU and US against developing countries, including to ACP states, to withdraw trade preferences, withhold technical assistance or other forms of aid, and stall debt relief if they do not align themselves with certain voting positions.[53] Coercion has also taken place at the individual level, with large states requiring the removal of determined and forceful small state

[51] See for instance Krueger (1999); Davis (2006)
[52] Lindsay (1986)
[53] Jawara and Kwa (2003)

negotiators or ambassadors.[54] On a bilateral level, trade preferences have been withdrawn from ACP states for non-compliance with 'good governance' standards, as in the case of Madagascar's recent suspension from the US Africa Growth and Opportunity Act.[55]

As the EU remains a major trading partner and a primary source of aid for many ACP states, it is reasonable to expect that ACP states would readily capitulate to EU demands in the EPA negotiations. Where there is variation in outcomes, we would expect this to result from varying levels of trade and aid dependence, with ACP countries that have low levels of dependence being less likely to enter into an EPA than those countries that are heavily dependent.

The fact that so few ACP states complied with the EU's demands during the EPA negotiations begs the obvious question of how applicable the coercive power argument is in these negotiations. Given that a substantial literature suggests that we should expect it to be important, rather than dismiss coercive power as an explanatory factor, this thesis explores the reasons why coercion appears to have had a limited impact on the outcome of the EPA negotiations. In particular it asks whether the EU did try and use coercive tactics and, if so, what factors led it them to have a limited impact.

2.4. Negotiating Strategy and Tactics

A third body of literature focuses on the negotiating process between states, and the ways in which the tactical moves made during negotiations can shape outcomes.

There are relatively few empirical studies of the process of interaction during asymmetric trade negotiations. As Odell (2006) notes in one of the leading books on the subject, empirically grounded research on trade negotiations involving developing countries (the

[54] Ibid.
[55] Corbett and Wild "Madagascar's Economy Reels as EU Mulls Sanctions (Update2)" (2010)

smaller and weaker players in the global economy) is still in its infancy.[56] As the analysis of asymmetric trade negotiations is limited, valuable lessons are also drawn from the wider literature on negotiation, including from the business world.[57]

The negotiating literature starts from the premise that the *process* of negotiation can have a significant and independent influence over the outcome, and that, even under conditions of material asymmetry, the smaller party can use strategies and tactics to exert a decisive influence over negotiations.

An edited volume (Zartman and Rubin 2002) brings together cases studies of asymmetric negotiations in a range of issue-areas and it shows that while the interests of large states tend to dominate outcomes, tactical decisions by smaller countries can have a decisive influence. As one scholar notes, 'the less powerful party in an international negotiation is not necessarily at the mercy of a more powerful party... The weaker party…can augment its power through skilful tactics, resource mobilisation, third parties, and a variety of other devices.'[58] Thus *'the very act of negotiation serves to level the playing field'* (emphasis added).[59]

The scholarly literature offers its own schema for categorising the tactical moves that are used in international negotiations. 'Distributive' tactics are used to claim value in a negotiation, and tend to be used when the negotiators perceive their underlying interests as being in conflict. Tactics include opening with high demands, refusing all concessions, exaggerating one's minimum needs and true priorities, manipulating information to others' disadvantage, worsening their alternative to an agreement, filing a legal complaint, making threats, and actually imposing penalties. In contrast, 'integrative tactics' are used it a bid to create value, with the parties looking for ways to 'enlarge the pie', rather than to shift or 'distribute' a fixed

[56] Odell (2006) also Odell (2013)
[57] See Jones (2013) for a detailed analysis of how the negotiating literature applies to trade negotiators from developing countries
[58] Salacuse (2002) P257
[59] Zartman and Rubin (2002) P289

value from one party to another. They rely on the parties cooperating, sharing information and brainstorming in order to find ways to design an agreement that will be of mutual benefit.[60] States are more likely to use integrative tactics when their negotiators perceive their underlying interests to be closely aligned or complementary.

The case studies suggest that in asymmetric negotiations, large states typically rely on their structural power position, using distributive tactics and adopting a 'take-it-or-leave-it' approach. If they encounter opposition from smaller states, rather than make a concession, they increase the pressure with a 'take-it-or-suffer' strategy.[61] In such situations, larger states often have the upper hand by virtue of their larger market size, greater resources, and, in many cases, stronger alternative options.

Rather than respond by acting submissively, smaller states often adopt counter-strategies of their own. 'For every action by the powerful, the weaker developed a counter-action' and while the weaker party rarely, if ever saw all their interests realised, they often managed to turn events in their favour. Tactics of the smaller states included blustering, dawdling, appealing, borrowing power, exercising their veto power temporarily (by walking out) or longer (by threatening withdrawal).[62]

An interesting insight from Zartman and Rubin (2002) is that the larger party typically overestimates its own power, and underestimates that of the smaller party. Blinded by the disparity in the two sides' aggregate resources, the larger party often failed to full examine the sources of leverage and influence available to the smaller party, and the degree of commitment and priority that the smaller party had placed on obtaining a particular objective.[63] As a result, large states tended to adopt a strategy that was hard-line, prompting

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[60] Odell (2000)P31-33
[61] Zartman and Rubin (2002)
[62] Ibid. See for instance how small countries used Cold War politics to their advantage Keohane (1971)
[63] Salacuse (2002)P269

resistance from the other party, and this posed two types of risk: in some cases, it resulted in the collapse of the negotiations, as the small party dug its heels in and refused to compromise. Alternatively, where the large state succeeded in imposing an agreement on the smaller, then the latter invariably looked for ways to avoid implementing the agreement on the basis that it was imposed and was therefore unfair.[64]

Turning to the tactical moves that small countries can make, the literature highlights the following: improving alternative options, collective bargaining, framing and influencing the agenda-setting process. These are briefly examined below.

Improving Alternative Options

The negotiating literature draws attention to the central role that alternative options can play, particularly the negotiator's 'best alternative to a negotiated agreement' or BATNA.[65] The core insight is that the more powerful country in a negotiation is the one that has the most attractive alternative options and can walk away most easily. In the negotiation literature, the BATNA is the primary indicator of a negotiator's relative power in a given negotiation, and empirical research suggests a strong causal relationship between the attractiveness of a negotiator's BATNA and their ability to claim resources in a given negotiation.[66]

Before entering a negotiation, it is imperative that a negotiator knows their BATNA, and has evaluated it as objectively as possible. Once the BATNA is clear, a 'walk-away' point or set of 'red lines' can be determined, beyond which it is better for the country to exit the negotiations and resort to using this alternative course of action rather than make any further concessions. It is crucial that a negotiator does not reveal their BATNA or 'walk-away' point to the other side. When the other side knows the point at which you will walk away, they have

[64] Ibid. P268
[65] Fisher and Ury (1981); Thompson (2012)
[66] Thompson, Wang, and Gunia (2010) P495

no incentive to offer anything more than this.[67] This said it is equally important that the other party sees them as ultimately being able and willing to walk away. When the counterpart perceives a credible increase in their willingness to walk away, the concessions that they are willing to make often improve.[68]

This argument parallels that of Hirschman in that it draws attention to the importance of diversifying trade relations and securing alternative options. The negotiating literature draws attention to the fact that states can influence the alternatives available, both to themselves and to others, an argument that is pursued in recent work by Lloyd Gruber.

Gruber (2005) shows that large states can compel smaller states into an agreement that leaves them worse off in absolute terms by a large state constraining the choice sets of a smaller state.[69] At the heart of Gruber's analysis is the 'going it alone' power of large states which enables them to act unilaterally to remove the status quo option from the choice set of smaller states. As a result, small states are forced to choose between two or more least-worst options, all of which leave them worse off in absolute terms than before.[70]

Gruber uses the example of the formation of free trade agreements to illustrate his argument. Suppose two prime mover states, A and B, enter a free trade agreement that leads to positive material gains for both parties. Other states in the region, C and D, may be adversely affected (as the result of trade diversion for instance) and may strongly prefer the original, non-cooperative state of the world, yet this option is no longer available.[71] They may join the free trade agreement not because they are compelled by force, or because it would leave them better off than they were originally, but because it is now the least-worst option. In effect, the

[67] Thompson (2012)
[68] Lax and Sebenius (2006)P87
[69] Gruber (2005)
[70] Ibid.P104
[71] For instance, if the creation of the free trade area has led B's trade to be diverted away from C and D, in favour of A

actions of A and B have left C and D with a bad option (cooperate with the winners) or an even worse alternative (incur the costs of exclusion).[72] As is discussed in later chapters, the idea that a small state can be compelled to act by a large state unfavourably constraining its options resonates very strongly with the EPA negotiations.

On a positive note, smaller parties can increase their leverage in a negotiation by strengthening the alternative options that are available to them. Indeed, the negotiating literature argues that this is probably the most significant step that can be taken to increase negotiating power, particularly when negotiating from a position of relative weakness. Negotiating texts recommend that the smaller party should do everything possible to improve its BATNA and to ensure that it is ready to be implemented if needed.[73]

Collective Bargaining

Collective bargaining in coalitions, alliances, or regional groups is widely acknowledged in the scholarly literature as a primary mechanism that smaller or weaker states have used to influence the bargaining outcomes in negotiations.[74]

Coalitions provide weaker parties with several distinct advantages. First, by acting together states combine their limited resources, increasing the bargaining chips they can bring to the table and helping to offset power asymmetries. While small states cannot on their own deploy coercive threats against large states of sufficient magnitude to prevent coercive action, it may be possible for them to engage in collective action with other small states, or to form a strategic alliance with other large states, such that they can issue credible counter-threats. In negotiations where decisions are made by consensus, the formation of a coalition increases the credibility of threats to block agreements.[75] Second, the security of bargaining from a jointly held position can partially insulate small states from external pressures. Third, having

[72] Gruber (2001)
[73] Thompson (2012); Lax and Sebenius (2006); Fisher, Ury, and Patton (1991)
[74] See Narlikar (2003). Also relevant chapters in Odell (2006), Tussie and Saguier (2011)
[75] Odell and Sell (2006)

a common negotiating platform allows countries to engage in joint capacity building as delegations can offset their individual technical resource constraints by sharing the organizational costs of negotiations.[76]

For coalitions to be effective, small states face the political challenge of initiating and sustaining collective action. There is some evidence that coalitions are likely to be more effective when goals are narrowly conceived or when they are organised around specific issue areas (as opposed to being identity-based).[77] The efficacy of a coalition depends crucially on the credibility of its threats to veto or block agreement, which rests on two attributes: its size, and its ability to remain united in the face of attempts by other parties to try and exploit factions within it (so called 'divide and rule' strategies). While a larger coalition size increases the credibility of its threats to block agreement, larger and more heterogeneous coalitions are also more vulnerable to fragmentation.[78]

Framing

In a significant departure from the approaches that focus on interest-group lobbying and structural power, negotiation theory posits that subjectively held ideas and perceptions are important determinants of outcomes. Assuming negotiators are operating in accordance with bounded rationality[79] there are uncertainties and biases on all sides, and part of the negotiating process is to inform and persuade the other party, as well as other constituents, as to the 'right' outcome. Shaping the way that negotiations are framed, in other words the mental windows through which negotiators and the key stakeholders in a negotiation view reality or a particular problem, is a particularly powerful way of influencing outcomes. While ideas can be a potent source of power in a trade negotiation, this is often overlooked.[80]

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[76] Patel (2011)
[77] Deere Birkbeck and Harbourd (2011)
[78] Narlikar and Odell (2006) Once a coalition is established, it is also possible to minimise potential for fragmentation through active diplomacy and side-payments: Odell and Sell (2006)
[79] See Simon (1983)
[80] Tussie and Saguier (2011)

Successfully framing or re-framing issues during a negotiation can change the way that the parties and other relevant groups perceive them. For instance, during TRIPs negotiations, developing countries successfully shifted the debate from one about piracy and the theft of ideas, to one about health and access to lifesaving medicines.[81] While it is possible for the framing of an issue to directly influence the perceptions of negotiators, reframing often works most effectively when it operates via public opinion.

Framing issues in terms of widely held values such as 'fairness' or other types of objective criteria is particularly powerful,[82] and this tactic is often used by developing country negotiators. Appealing to concepts of 'fairness' or 'justice' is particularly likely to elicit support from the broader public when there are obvious vast asymmetries in power or levels of development between the negotiating parties. In the trade context, developed countries have long argued that the norm of reciprocity is fair because it ensures that all countries undertake the same level of commitment. Developing countries have countered this by pointing out that reciprocity is only fair when the parties are equal, proposing a new norm of proportionality on the grounds that it is a fairer way of determining commitments when the parties are fundamentally unequal.[83]

Agenda-setting

In many negotiations, large countries set the negotiating agenda and issues of greatest concern to developing countries are marginalised. To counter this, Odell and Mena (2004) stress the importance of developing countries offering their own technical proposals instead of merely reacting to agendas proposed by others.[84]

A very common tactic used by stronger parties is to try and capture the agenda by presenting their negotiating partners with a completed agenda or even a fully drafted final agreement, to

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[81] Odell and Sell (2006)
[82] Fisher, Ury, and Patton (1991)
[83] Narlikar (2006)
[84] Odell and Mena (2004)

which the other party is asked to react. For instance, most bilateral investment treaties are negotiated on the basis of the 'model treaty' of the stronger country. This immediately places the other party in a defensive position and, if the tactic is successful, the completed agenda or template agreement distracts the other party from focusing on their negotiating objectives and becomes a focal point around which the negotiations become centred. To counter these effects, negotiators can try and pre-empt such moves by putting forward their own draft agendas or, if they are sufficiently prepared, a draft agreement. If the other party moves first, then they are advised to make a counterproposal as quickly as possible. The competing documents can then be used as the basis for forging a compromise.[85]

Negotiating Strategy and Tactics and EPAs

Negotiation theory provides us with a third possible explanation, namely that the strategic and tactical decisions that EU and ACP countries made during the EPA negotiations accounts for the pattern of outcomes.

Within this general argument, three possibilities stand out. First, it is possible that the ACP states were able to improve their alternative options and thereby increase their leverage inside the negotiating room. Second, it is possible that the ACP states manoeuvred deftly and 'out-witted' the EU, by, for instance, letting the EU set basic structure of the agreement, and then gnawing away at the details. Third, it is possible that the EU underestimated the power of the ACP states, adopted a strategy that was overly hard-line, given the underlying relative power positions, prompting resistance from the ACP, and ultimately the collapse of the negotiations. In so far as there is variation in outcomes across the ACP countries, we might expect this to reflect differences in the skill and deftness with which they negotiated.

How plausible is such an explanation? As there has been little analysis of the strategic interaction between EU and ACP states, it is hard to say on an *a priori* basis. However given that studies of asymmetric international negotiations, including those taking place in a North-

[85] Salacuse (2002); Odell and Mena (2004); Thompson (2012)

South context, typically show that the smaller party is able to exert an influence through the strategic decisions it makes, it is an avenue that is worth exploring.

2.5. Conclusion: Three Contending Explanations

This chapter has reviewed the literature on asymmetric negotiations, and it has identified three broad analytical approaches, and each yields a series of possible explanations for EPA outcomes. These all appear, on an *a priori* basis, to have some plausibility, although no single approach appears to be particularly convincing. The three approaches are not mutually exclusive – they merely emphasise different aspects of the negotiating process. The main features of these three contending explanations are summarised in (Table 5).

Table 5: Existing Scholarship: Three Broad Explanations

Type of Explanation	Interest Formation	International Negotiations	Outcome	Causal Primacy
Protectionist Lobbying	All states assumed to have an underlying common interest in free trade, but pursue a mercantilist trade policy because of lobbying by protectionist interest groups	Envisaged as a largely technocratic exercise	Agreement is likely, and will be of mutual benefit, *if* the interests of protectionist groups on both sides can be accommodated	The prevalence and nature of protectionist interest groups
Trade and Aid Dependence	Large and small states assumed to have underlying divergent interests (there are various possible explanations for this)	Large states apply coercive pressure, including trade and aid threats	Agreement is likely and will reflect the interests of the large state *if* the small state is economically dependent on the large state (as the costs of exiting the relationship are high)	The asymmetric interdependence between two states
Negotiating Strategy and Tactics	No presumption about underlying interests. States negotiate under conditions of asymmetric information and bounded rationality, so negotiation is necessary for discovering the interests of others. Interests can be shaped by the negotiating process.	Complex interaction where states make influential strategic and tactical decisions	Asymmetric arrangements are conducive to agreement, and typically reflect the interests of large states. Small states can manoeuvre at the margins for concessions.	The strategic and tactical decisions made during the negotiation

The Next Chapter

It is not clear, *a priori,* which of these three contending explanations is likely to have the greatest explanatory power in the case of the EPA negotiations. Moreover, investigating the power of each explanation warrants a different methodological approach, and points us to draw on very different source material.

The next chapter turns to history. Historical institutional analysis is used to explore the explanatory power of these three approaches in previous trade negotiations between European and ACP countries. In addition to setting the context for the rest of the thesis, the historical analysis informs the methodological approach used in subsequent chapters.

Chapter 3. EU-ACP Negotiations in Historical Perspective

3.1. Introduction

Over the last fifty years, there have been a series of trade negotiations between Europe and ACP countries. While vast resource asymmetries have been a constant feature of these negotiations, there has been significant variation in outcomes. In some negotiations ACP countries extracted substantial concessions, while in others, Europe largely dictated the terms.

Drawing on the scholarship of others, as well as a limited number of interviews and other primary sources, this chapter explores nine sets of negotiations that took place between 1960 and 2000, and draws out suggestively the main factors that influenced outcomes in each case.[1] The chapter provides a valuable base for subsequent chapters as it sets the stage for the EPA negotiations and enables comparisons to be made between the contemporary period and the past. It also provides a compelling reason for starting the detailed analysis of the EPA negotiations with an exploration of the role of trade and aid dependence, and the vulnerability of ACP states to coercive pressure from the EU.

The chapter is structured as follows. This introduction ends with a brief description of the colonial trade regimes, as these are the starting points for subsequent negotiations. Four analytical sections follow, divided into key time periods. The first explores three sets of negotiations that took place in the 1960s, in the immediate aftermath of independence. What is particularly striking is that the three negotiations had very different outcomes; while the eighteen former French and Belgian colonies were unable to exert significant influence over the EEC, Nigeria, and to a lesser extent three East African countries, managed to extract significant concessions.

[1] There were ten sets of negotiations in total. Two were re-negotiations that resulted in minor modifications (Yaoundé II and Arusha II), which are not examined.

The second section explores the mid-1970s, when forty-six African, Caribbean and Pacific countries formed a coalition and negotiated with the EEC as a single group for the first time. The resulting Lomé I Convention was arguably the high-water mark of negotiating influence for ACP countries, as they managed significantly to restructure relations with the EEC, and set a powerful precedent for subsequent negotiations. The third section examines the four sets of negotiations that renewed the Lomé Convention between the late-1970s and mid-1990s, and it shows how Europe steadily increased its influence over the outcome, to the detriment of ACP countries. The final section looks at the negotiations that culminated in the Cotonou Agreement of 2000, during which the EU and ACP countries agreed to restructure radically their trade relations and negotiate EPAs. (See Table 6 for details of the parties to each of these agreements). The chapter ends with a conclusion that draws out the lessons learned.

Colonial Trade Relations

The colonial relationship was at heart an extractive one, and the French and British governments structured the economies of the colonies to their countries' needs, including in the area of trade. However there were significant differences in the French and British trading regimes, particularly over the degree of reciprocity that was required from the colonies, and this became a critical issue in the post-independence era. The French system was centred on a principle of deep reciprocity, which took the form of an empire-wide Free Trade Area, with a common external tariff determined in France and applied uniformly across the empire. In contrast, under the British system of Imperial Preferences, Britain provided deep preferences to the Commonwealth countries and although they in turn applied preferential tariffs on imports originating within the empire, full reciprocity was not required.[2]

[2] Glickman (1947) P444. While these systems were distinct on paper there was significant variation in the degree to which they were implemented. See Cosgrove Twitchett (1978) P60

Table 6: Major Trade Agreements between Europe and ACP Countries (1960-2000)

1963 Yaoundé I Convention and 1969 Yaoundé II Convention	
EC (6) Belgium, France, Federal Republic of Germany, Italy, Luxembourg, The Netherlands	*ACP Associates (18 in Yaoundé I; 19 in Yaoundé II)* Burundi, United Republic of Cameroon (later the Federal Republic of Cameroon), Central African Republic, Chad, Congo-Brazzaville (later the People's Republic of Congo), Congo-Leopoldville (later Zaire), Dahomey (later Benin), Gabon, Ivory Coast, Madagascar, Mali, Mauritania, Niger, Rwanda, Senegal, Somalia, Togo, Upper Volta (later Burkina Faso); Mauritius (joined in 1972)
1966 Lagos Convention	
EC (6) Belgium, France, Federal Republic of Germany, Italy, Luxembourg, The Netherlands	*ACP Partners (1)* Republic of Nigeria
1968 Arusha Convention and 1969 Arusha II Convention	
EC (6) Belgium, France, Federal Republic of Germany, Italy, Luxembourg, The Netherlands	*ACP Partners (3)* Kenya, Tanzania, Uganda
1975 Lomé I Convention	
EC (9) As before plus: Denmark, Ireland, United Kingdom	*ACP Partners (46)* Signatories to Yaoundé II plus: *Commonwealth Countries:* Bahamas, Barbados, Botswana, Fiji, Gambia, Ghana, Grenada, Guyana, Jamaica, Kenya, Lesotho, Malawi, Nigeria, Sierra Leone, Swaziland, Tanzania, Tonga, Trinidad and Tobago, Uganda, Western Samoa, Zambia *Non-Commonwealth Countries:* Equatorial Guinea, Ethiopia, Republic of Guinea, Guinea-Bissau, Liberia, Sudan
1980 Lomé II Convention	
EC (10) As before plus: Greece (joined the EC in 1981)	*ACP Partners (59)* As before plus: Cape Verde, Comoros, Djibouti, Dominica, Kiribati, Papua New Guinea, St Lucia, Sao Tome and Principe, Seychelles, Solomon Islands, Suriname, Tuvalu; Zimbabwe (joined in 1980 after Convention signed)
1985 Lomé III Convention	
EC (12) As before plus: Spain and Portugal (joined the EC in 1986)	*ACP Partners (66)* As before plus: Antigua and Barbuda, Belize, Mozambique, St Christopher and Nevis, St Vincent and the Grenadines, Vanuatu; Angola (joined in 1985 after Convention signed)
1990 Lomé IV Convention and 1995 Mid-Term Review	
EC (15) As before plus: Austria, Finland, Sweden (joined the EC in 1995)	*ACP Partners (70)* As before plus: Dominican Republic, Haiti, Namibia; Eritrea (joined in 1993)
2000 Cotonou Agreement	
EC (15)	*ACP Partners (79)* As before plus: The Cook Islands, Cuba, Marshall Islands, States of Micronesia, Nauru, Niue, Palau, South Africa, Timor-Leste (East Timor)

Source: Adapted from P9-10, and the author's own analysis

When the EEC was formed in 1957, France successfully lobbied other EEC members to adopt the basic contours of its colonial trading system.[3] The French, Belgian and Italian colonies were to be treated as if they were participants in the evolving customs union of the EEC itself, as the Treaty aimed to eventually create a 'EurAfrica' common market.[4] Reciprocity remained an essential feature and the associated colonies, 'Associates', were obliged to abolish customs duties and other restrictions on imports from the EEC.[5] The Treaty required the 'Associates' to provide all EEC countries with preferential treatment in the areas of services and investment and, in striking contrast to heated contemporary debates over migration, it stated an intention to gradually introduce the free movement of labour from the Associates into the EEC and vice versa.[6] Finally, the French succeeded in convincing the other EEC members to contribute to a 'European Development Fund', which would support development projects in the colonies.[7]

The reciprocal trade relations between the EEC and the francophone Associates were heavily criticised, including by Ghana's President Nkrumah, who famously called the EEC 'a new system of collective colonialism'.[8] Several countries, including the United States, raised concerns that the regime was inconsistent with Article XXIV of GATT, which set out conditions for the formation of Free Trade Agreements.[9] As this and subsequent chapters show, the compatibility of EEC-ACP trade arrangements with GATT rules became a perennial challenge, and one which decisively shaped the EPA negotiations.

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[3] Fieldhouse (1986)
[4] Cosgrove Twitchett (1978) P21
[5] Article 133(3) Part Four, Treaty of Rome. In practice neither side fully liberalised imports: the EEC exempted many agricultural products and a safeguard clause allowed the colonies to retain tariffs for revenue purposes and to protect their fragile economies. See ibid.; Bartels (2007)
[6] Cosgrove Twitchett (1978) P67
[7] Ibid. P24-5
[8] Grilli (1993)P334
[9] See Bartels (2007)

3.2. The 1960s: Variations in Outcomes

In the 1960s, as ACP countries started to obtain independence, trade relations with Europe became the subject of formal negotiation. Three sets of trade negotiations took place between European and newly independent ACP states: between eighteen Francophone African countries and the EEC (resulting in the 1963 Yaoundé Convention); between Nigeria and the EEC (resulting in the 1966 Lagos Convention); and between Kenya, Uganda, Tanzania and the EEC (resulting in the 1968 Arusha Convention). These negotiations resulted in strikingly different outcomes.

Yaoundé Negotiations

Negotiations between the eighteen newly independent 'Associates' and the EEC (see Table 6) were triggered by the expiry in 1962 of the trade provisions under Part IV of the Treaty of Rome.

When they embarked on negotiations with the EEC, the eighteen Associates had little room for manoeuvre as the deep bilateral links between their economies that had been forged in the colonial era remained. In 1960, for instance, an estimated 72 percent of exports from the eighteen Associates went to the EEC market, and for fourteen of these countries more than 90 percent of their exports was destined for the EEC market.[10] In many cases exports were dominated by a single product, which meant that the trade policy in the former colonies was largely beholden to the interests of a single product and the companies that dominated its production and trade, which were typically European.[11] Many governments were unable to guarantee even their own administrative existence without financing from France and the wider EEC, on whom they depended for 98 percent of aid.[12]

[10] Okigbo (1967) P122
[11] See Manning (1988). On Senegal, see Boone (1992)
[12] Grilli (1993) P15

For nearly all Associates, exiting the relationship of association with the EEC was inconceivable. The costs of giving up preferences into the vital EEC market (without which many of their companies were uncompetitive) and cutting themselves off from their main source of financial aid would have been extremely high. Moreover, in countries like Ivory Coast with relatively conservative governments, the political elite had strong political ties with France. With the notable exception of Guinea, the Associates opted to try and improve the terms of their relationship with the EEC rather than abrogate it.

Within Europe, some key groups were also keen on maintaining strong ties to the former colonies. French companies had significant investments in the former colonies and the colonies were a valuable source of raw materials and an important export market, and there was a strong commitment among the political elite to the vision of a Euro-African Union.[13] The European Commission favoured a continuation of the relationship for institutional reasons, as managing relations with the Associates was a core part of their work. In addition, the independence movements in ACP countries had growing popular support in Europe for policies that would support their development, particularly from the European Parliament.[14]

Other groups in the EEC opposed a continuation of the relationship. In particular, Germany and the Netherlands wanted it to be dismantled, as they had or sought economic interests elsewhere in the developing world and were adamant that these would not be prejudiced. The Dutch company Unilever for instance, had large investments in Nigeria and exerted pressure on its government and the EEC to water down the preferences granted to Francophone Africa.[15]

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[13] Fieldhouse (1986)
[14] European Parliament "Conference of the European Parliament with the Parliaments of African States and Madagascar: Activities of the Conference" (1961)
[15] Cosgrove Twitchett (1978) P61-81

The prospect of negotiation with the EEC was daunting for the newly independent governments who had severe capacity constraints and, as these were the first formal negotiations they had been party to, precious little experience. Recognising that they could only hope to influence the EEC by speaking with one voice, the Associates established the *Union Africaine et Malgache* (UAM). Despite the heterogeneity of the group, were able to reach common positions and, for the most part, were successful in maintaining a united front. Senegal was elected to act as a spokesperson, with its Embassy in Brussels acting as the informal headquarters.[16]

The Associates converged on three basic demands: negotiating on a basis of parity and equality of representation; maintaining advantages at least equivalent to the Rome Treaty regime; and extracting an EEC-financed commodity price stabilisation scheme. Recognising that they held no 'trump cards', the Associates relied on appealing to the honour and moral integrity of the EEC to see through their development commitments. Their demands tended to be rather vague, reflecting technical weaknesses, as well as a conscious decision not to make very specific demands for fear of alienating any good will towards them in the EEC. Indeed, for technical and strategic advice, the Associates were heavily reliant on the EEC Commission and France.[17]

While formally a negotiation between the Associates and the EEC, in practice it was largely an intra-EEC affair, with the French negotiating on behalf of the Associates, just as they had during the Treaty of Rome. France successfully lobbied for the continuation of the relationship, but there were some important modifications. Following strong opposition from Germany and the Netherlands, the degree of protection given to tropical imports from the Associates was watered down. The EEC agreed on aid allocations that fell far below the amount requested, and brushed aside demands from the Associates for joint management of

[16] Ibid. Zartman (1971)
[17] Cosgrove Twitchett (1978); Zartman (1971)

aid and proposals for the creation of a commodity price stabilization mechanism. At the last minute, the Dutch, Germans and Italians secured a Declaration of Intent, which provided for other developing countries at similar levels of income to become associated to the EEC, either by joining the Yaoundé Convention, or by negotiating a separate agreement.[18]

The offer was presented to the Associates as a *fait accompli*. Given their desperate need to continue their relationship with the EEC, the eighteen Associates had little option but to accept, despite the fact that none of their core demands had been met. On aid allocations, the Associates did try to stand their ground by rejecting the EEC's offer, prompting the EEC to make very modest changes, which the Associates reluctantly accepted.[19] Subsequent studies show that the Yaoundé Convention had limited impact on trade relations, and the Associates remained heavily dependent on the EEC.[20]

The outcome of the negotiations was largely the product of structural power asymmetries. The Associates were deeply dependent on the EEC, and, crucially, they had no alternatives with which to threaten: when Mali tried, they were not taken seriously.[21] While the positions of companies were clearly a major driving factor in the positions that governments on both sides adopted, in many ways these interests were themselves a product of the structural asymmetry that had developed during the colonial era. To their credit, and despite severe capacity constraints, the Associates did take steps to turn the negotiating process in their favour, clearly articulating their demands, forming a strong coalition, making moral appeals to the EEC member states, and walking out in response to the EU's offer on aid allocations. Indeed, they were significantly more united in their position and their approach than the EEC. Although this did result in minor gains in aid allocations, overall these steps were not sufficient to have any significant impact on the outcome.

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[18] Zartman (1971); Cosgrove Twitchett (1978)

[19] Yaoundé I lasted until 1969 and was replaced by the very similar Yaoundé II Convention, which lasted until 1975

[20] See Grilli (1993) P159

[21] Zartman (1971) Cosgrove Twitchett (1978)

Lagos Negotiations

Following hot on the heels of the Yaoundé negotiations came a set of negotiations between Nigeria and the EEC, which culminated in the 1966 Lagos Convention (Table 6). Unlike the Associates, Nigeria managed to obtain significant concessions.

The Lagos negotiations started in 1963, when Nigeria opened up discussions with the EEC, to explore the option of joining under the terms of the Declaration of Intent attached to the Yaoundé Agreement. These talks were somewhat surprising given that Commonwealth African countries had been extremely critical of the Yaoundé Convention.[22] Indeed, Nigeria had been very outspoken against preferential trade regimes, calling for them to be dismantled at a variety of international meetings including UNCTAD and GATT, where it held a running battle with France on the elimination of the EEC's tariffs on tropical products.[23]

Nigeria's request was driven by the pragmatic realization that the EEC was rapidly becoming its most important export market. In 1954, 72 percent of Nigeria's exports had gone to Britain, and only 14 percent to the EEC. By 1960, Britain's share had almost halved, falling to 38 percent, while that of the EEC had almost doubled, accounting for 26 percent.[24] However as a result of the Yaoundé Agreement, Nigeria was treated less favourably on the EEC market than its key competitors, and it was determined to obtain equal treatment.

Unlike the Associates, Nigeria sought to negotiate an agreement with the EEC that was focused solely on trade, thereby insulating itself from the prospect of aid being used for political manipulation. In addition, it set itself the ambitious goal of avoiding reciprocity. This was a challenge as the GATT rules on free trade agreements required Nigeria to liberalise 'substantially all' of its trade with the EEC. However Nigeria didn't want to give preferential treatment to the EEC and thereby upset Britain and the United States, its other key trading

[22] Zartman (1971)
[23] Okigbo (1967)
[24] Ibid. P95

partners, and nor did it want to lose the 60% of its government revenue which came from import tariffs.[25]

Nigeria devised a creative solution and, by making a clear and detailed proposal to the EEC, it took the initiative in the negotiations. Nigeria requested access to the EEC market on terms equivalent to Yaoundé, and, in return, it offered to reduce all its tariffs to zero on an MFN basis, with the exception of twenty-six products on which it offered the EEC a margin of preference between 2 and 5 percent. Nigeria carefully selected these products to ensure that they were of interest to the EEC exporters, but not to Britain or the United States, thereby avoiding any trade diversion in favour of the EEC.[26] To safeguard its revenue, it created a system of fiscal charges that were levied on all imports on a non-discriminatory basis, which generated income equivalent to the import tariffs it had just removed.[27] In essence, while it asked for meaningful access to the EEC market, the reciprocity it offered was merely symbolic.

Despite strong protests from the French who sought 'real commercial advantages', after eighteen months of hard negotiation, the EEC accepted Nigeria's proposal, subject to a few minor modifications.[28] As Nigeria's chief negotiator noted at the time, the outcome was dramatically different to Yaoundé. Aid was excluded from the relationship, and Nigeria preserved the ability to use tariffs for revenue.[29]

Several factors account for Nigeria's relative success. The most important was that Nigeria's structural position was dramatically superior to that of the Associates. Unlike the Associates, Nigeria was not dependent on the EEC in any manner, its dependency being on Britain, which

[25] Ibid.
[26] Britain had reportedly threatened to remove Nigeria from the Commonwealth Preferences if it entered a preferential agreement with the EEC
[27] Okigbo (1967)
[28] Nigeria agreed that four of its exports to the EEC would be subject to quotas and it agreed to make minor modifications to its tariff offer.
[29] Okigbo (1967)

was not yet a member. For this reason, it could walk away from the agreement and not be any worse off. Thus while the EEC could whittle away at the benefits accorded to the Associates knowing that the exit costs were high, it had to offer attractive concessions in order for Nigeria to join. (This said, Nigeria's position was not entirely unencumbered; it did have to consider Britain's response.)

Moreover, although France was bitterly opposed, other EEC states actively sought and championed Nigeria's association, even threatening to veto the mandate for negotiations with the Maghreb countries unless France backed down. As the second largest economy in Africa, Nigeria was a very attractive market and investment destination, and Germany and the Netherlands were keen to use Nigeria's association as a test case for widening the EEC's preferences.[30] The EEC also hoped that if Nigeria were to associate, this would help dampen the virulent criticism of the Yaoundé Agreement among Commonwealth African countries, thereby improving Europe's international image.

While these background conditions favoured Nigeria, it was the political and technical moves by Nigeria's negotiators that enabled it to capitalize on these advantages and influence the final outcome. A less prepared negotiating team may simply have accepted the Yaoundé terms offered by the EEC. The negotiators were very aware of their relative strengths and weaknesses, anticipated the concerns of the EEC, the Associates, and third parties, engaged in active diplomacy with the Associates to allay their fears, and by proposing innovative and detailed technical solutions, managed to maintain initiative and control over the negotiating agenda.

Arusha Negotiations

The third and final case study from this era provides for interesting comparison.

[30] Zartman (1971) P108

In 1963, Tanganyika (which became Tanzania during the negotiations), Uganda, and Kenya also initiated talks with the EEC (Table 6), and like Nigeria they sought an agreement exclusively focused on trade. To enhance their negotiating leverage, the East Africans formed a coalition, establishing a joint mission and adopting common negotiating positions. They appointed Tanzania as lead spokesperson on the basis that it was least interested in an agreement with the EEC and would therefore adopt the most robust approach.[31]

The negotiations were much more arduous and arguably more fraught than those between Nigeria and the EEC, with disputes centred on the principle of reciprocity. Initially, like Nigeria, they opted to embark on negotiations for a free trade area, and in doing so, implicitly accepted the principle of reciprocity. However negotiations were slow to start and suffered from a series of delays, not least because both sides had other priorities.[32] Significantly, during the delays, the East Africans changed their position on the crucial issue of reciprocity. They were strong advocates of the principle of non-reciprocity between developed and developing countries, a norm that gained considerable traction in the mid-1960s. Following the acceptance of this norm by UNCTAD and GATT in 1964, the East Africans decided to reject all forms of reciprocity in their negotiations with the EEC, however 'symbolic'.

The EEC members swiftly rejected the East African's position, insisting on reciprocity. Although the EEC modified its initial position, declaring itself prepared to accept reciprocity that was partial or even symbolic, the East Africans rejected this offer.[33] With neither side wishing to back down, negotiations stalled.

Finally, in 1967, the East Africans informed the EEC that they would accept reciprocity. France called for deep and meaningful reciprocity that was equivalent to Yaoundé, but backed

[31] Ibid.
[32] The EEC was engaged in a series of internal disputes and negotiations with Nigeria, which it considered more important. East Africans were negotiating a regional market.
[33] Zartman (1971) P99

down under pressure from other member states. The EEC made an offer that was more generous than the Yaoundé Convention but slightly less generous than the Lagos Convention and after a few moderate concessions on both sides, agreement was reached.[34]

The outcome obtained by the East Africans can be explained by two main factors. First, like Nigeria, their structural power position was far stronger than that of the Associates because they were not dependent on the EEC in any way (their dependence was also on Britain, which was not yet a member). However, unlike Nigeria, they had neither the economic attraction and nor, once the Lagos Convention was agreed, did they have first-mover advantage, so no EEC member state actively championed their association.

Second, East Africa had a relatively weak negotiating strategy. Although they formed a coalition, thereby increasing their leverage the East Africans kept changing their negotiating demands. Adopting a hard-line stance but then capitulating enabled the EEC to take the initiative in the negotiations and eventually dictate the terms. It is plausible that they would have obtained a more favourable outcome if they had accepted 'symbolic' reciprocity when it was first offered.

3.3. The mid-1970s: ACP States Gain the Upper Hand

Between 1973 and 1975, a major trade negotiation was held between the newly enlarged EEC and forty-six ACP countries (Table 6). The latter group comprised the Yaoundé II signatories, Commonwealth states in Africa, the Caribbean, and the Pacific, as well as countries that had not been affiliated with either trading regime. The negotiations had global significance, as the 55 states comprised nearly half the membership of the United Nations, and half of the G77 bloc of developing countries.

[34] In the final Arusha Convention, East Africa gave EEC a margin of preference ranging between 2% and 9% on 59 products, covering 16% of imports from EEC. Ibid. This compares with the Lagos Convention, where Nigeria gave the EEC a preference of 5% on 26 products, equivalent to 15% of imports from the EEC. Okigbo (1967)P136

Negotiations were prompted by Britain's entry into the EEC in 1972, which had left unresolved the question of what would become of Commonwealth Preferences. The only stipulations made in the Accession Treaty were that negotiations would be held with the affected countries, and that the option of association would only be open to Commonwealth countries in Africa, the Caribbean, and Pacific.[35] The EEC then invited these countries to join in negotiations on the successor to Yaoundé II, with the clear presumption that they would agree to similar accession terms as those of the francophone Associates. In parallel negotiations would be held on the future of the Commonwealth Sugar Agreement, which was due to expire at the end of 1974.

The Lomé I negotiations proved to be the high point in ACP negotiating influence, and the resulting Lomé I Convention became the template for relations between the ACP and European states until 2000. The analysis shows that while structural factors were important, the negotiating strategy and tactics of the ACP were decisive in turning structural advantage into negotiating success.

Lomé I Negotiations

From the outset of the Lomé I negotiations, the forty-six ACP countries spoke with one voice, and this enabled them to gain the upper hand. ACP unity came as a surprise, particularly to the EEC, but also to many ACP representatives; only three months ahead of the launch of the negotiations, there was a presumption that, given their divergent interests, francophone and anglophone countries in Africa would negotiate as two different groups, and that separate negotiations would be held with the Caribbean.[36]

Divergences in the interests of ACP states were very apparent. The francophone Associates sought to preserve the status quo, arguing that reciprocity symbolised parity in their relationship with the EEC, and to exclude Commonwealth countries from association on the

[35] Cosgrove Twitchett (1978) P147.
[36] Hall and Blake (1979); Whiteman (2008)

grounds this would erode their trade preferences and lead to reductions in aid allocations.[37] In contrast, many Commonwealth ACP countries remained deeply suspicious of any form of association with the EEC. Although Britain's entry to the EEC provided a compelling reason to negotiate out of fear of losing their preferences, they were keen to preserve their policy autonomy and strongly advocated non-reciprocity.[38]

ACP unity was the result of concerted diplomacy. A meeting of African and Caribbean foreign ministers, in the fringes of a meeting of the Non-Aligned Movement, led to an initial agreement that their countries would try to adopt a coordinated position in negotiations with the EEC. This was followed by visits by Caribbean officials to several African countries, and by African Ministers to the Caribbean, where common positions were identified.[39]

In Africa, the active diplomacy of Nigeria helped to bridge the historic Anglophone-francophone divide, and African states came together under the auspices of the Organisation of African Unity to agree on a collective approach as well as the fundamental principles that would guide forthcoming negotiations with the EEC.[40] Crucially, at the suggestion of the Jamaican Prime Minister, representatives from the Commonwealth Caribbean were invited to the key African meetings.

Perhaps the most decisive meeting was held in mid-1973, hosted by Nigeria. ACP ministers agreed that they would speak with one voice, and that they would refuse to be constrained by the straightjacket of options set out by Europe, particularly a free trade agreement, and seek instead a *sui generis* arrangement based on a series of key principles.[41] The principles included non-reciprocity in tariffs and trade; that rights of establishment should be opened to third parties on a non-discriminatory basis; improved access to the EEC market; the non-

[37] Gruhn (1976)
[38] Hall and Blake (1979)
[39] Ramphal "Remembering to Score: A Retrospective" (1995)
[40] Ravenhill (1980)
[41] Ramphal (1995)

politicisation of aid; export price guarantees; the renegotiation of provisions on movement of capital; and that the agreement should not undermine ACP regional integration.[42]

In their first meeting with the EEC in July 1973, the ACP made it clear that they would negotiate collectively, with Nigeria speaking on behalf of all ACP states, and they asked for formal negotiations to be delayed until October to allow further preparation.[43] ACP Ambassadors in Brussels started to hold regular coordination meetings and a series of ACP institutions were created: the Yaoundé Secretariat in Brussels was dismantled and its head moved to lead a newly established ACP Secretariat; an ACP Council of Ministers and ACP Committee of Ambassadors were created to provide political leadership; while a series of working groups were formed to provide technical input.[44]

The collective approach of the ACP put the EEC on the defensive. The EEC started to refer to the ACP as 'partners' rather than 'associates', and backed down from its position that ACP countries would have to form a relationship based on one of its prescribed template options.

When technical negotiations stalled, the ACP took the initiative and invited the EEC to a ministerial meeting in Jamaica. This proved to be pivotal. The EEC dropped its insistence on reciprocity (as did the few Associates who were still lobbying for it); agreed to the creation of a commodity price stabilisation scheme; and agreed that the Convention would give priority to industrialisation and technical aid. Areas of continuing disagreement, including the size of aid allocations and arrangements for sugar, were taken back to Brussels for further discussions at the technical level.[45]

[42] Hall and Blake (1979)
[43] Whiteman (2008)
[44] Hall and Blake (1979) Gruhn (1976)
[45] Gruhn (1976)

Once again, technical negotiations failed to make progress. On the eve of the expiry of Yaoundé II, another joint ministerial was held, and after intense negotiations through the night, agreement was reached on financial aid and sugar.[46]

Outcome

The final Lomé I Convention was a landmark 'win' for ACP countries and, although they did not get all they sought, it was a major improvement on the Yaoundé relationship, and 'a good deal more than Europe had contemplated'.[47]

The Convention committed the parties to a relationship governed by 'complete equality' that would be a 'new model for relations between developed and developing States'.[48] In trade, ACP countries obtained significant levels of duty-free, quota-free access into the EEC, without any requirement to reciprocate.[49] Moreover, unlike many previous agreements, ACP countries were not required to provide national treatment to European companies or to guarantee the free flow of capital. Finally, ACP countries secured a 'STABEX' facility, which guaranteed the stabilisation of the earnings of ACP countries from major commodity exports. This was perhaps the most novel aspect of Lomé I, and it met one of the long-standing demands that developing countries had made in their advocacy for a new international economic order. [50]

In the area of aid, which had been so contentious, EEC commitments fell well below the demands of ACP states. However the ACP still managed to secure aid per capita allocations that were double those that had prevailed under Yaoundé II.[51] More importantly, the EEC agreed to the principle that that aid would be granted automatically, without any form of political or other conditionality. Finally, a series of Commodity Protocols for sugar, rum and

[46] Ibid.
[47] Ramphal (1995)
[48] Preamble, ACP-EEC Council of Ministers "ACP-EEC Convention of Lome" (1975)
[49] Sugar aside, 99.2% of ACP current exports faced no duties into the EEC
[50] Any ACP country dependent for more than 7.5 percent (2.5 percent for the poorest members) of their export earnings on one of a list of commodities was eligible for financial help if earnings fell below a certain level
[51] Gruhn (1976)P257

bananas (and later beef/veal) were annexed to the Convention. Based on British arrangements with the Commonwealth ACP, these were to last indefinitely and provided ACP exporters prices based on the internal EEC market, which were significantly higher than world prices. The benefits were substantial, as the beef price was 50 percent higher than the world price, and the sugar price between two and three times higher.[52]

For its part, the EEC gained a guaranteed supply of major raw materials. In addition, it succeeded in watering down concessions in the fine print of the agreement (in many cases this only became apparent during implementation).[53] Moreover, the EEC retained the right to use safeguards if exports posed a threat to its domestic manufacturers.[54] In addition, when the EEC later reneged on its industrial cooperation commitments, the ACP states found themselves powerless to enforce the terms of the Agreement as Lomé I contained no dispute settlement mechanism or provision for compensation.[55]

Analysis

While structural factors worked to their advantage, it was arguably the negotiating strategies and tactics of the ACP that were decisive in shaping Lomé I outcomes.

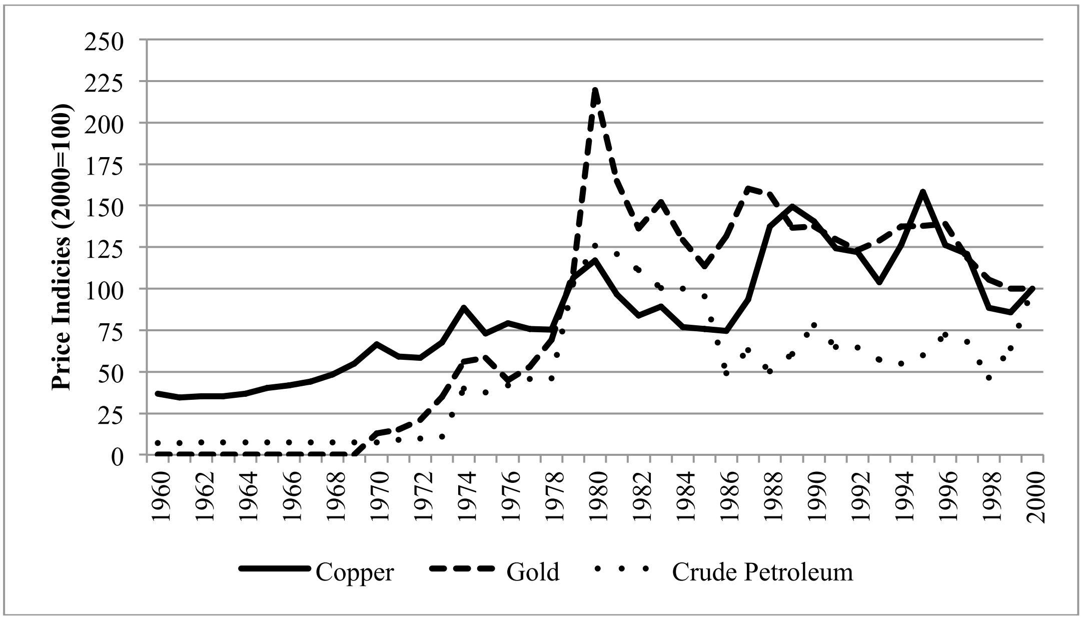
All ACP states faced significant costs if they opted to exit from a special relationship with the EEC (as Britain had joined the EEC, loss of preferences was now a major concern for the Commonwealth ACP too). However, the OPEC crisis of 1973 and rise in oil prices (see Figure 1) made the EEC acutely aware that there was the potential for 'reverse dependence' on developing countries for raw materials and energy, and the ACP countries were rich in oil and uranium deposits that could be used for nuclear energy.[56] The EEC was eager to conclude

[52] Ravenhill (2002)
[53] For instance while preferences appeared generous, more than 75 percent of ACP exports were primary commodities that would not face tariffs anyway and rules of origin proved to be an 'almost impossible' hurdle for manufactured exports to meet
[54] In the late 1970s Mauritius was asked to impose voluntarily export restraints on textile exports
[55] Ravenhill (2002)
[56] Gruhn (1976) P259

an agreement that would guarantee continued access to ACP raw materials, and it was prepared to make substantial concessions to ensure this happened.

In sugar, the rapidly increasing world price, which rose eightfold between 1972 and late 1974, dramatically improved the negotiating position of the ACP sugar exporters, many of whom were highly dependent on sugar exports to Britain (see Figure 2).[57] Almost overnight, the dramatic price increases turned Commonwealth sugar exporters into major exporters of an essential foodstuff that was in short supply.[58] By the end of the Lomé negotiations, they had capitalised on this shift, negotiating for a generous quota and, crucially, for the price to be index-linked to that of EEC beet sugar.[59] The sugar arrangements turned out to be one of the most beneficial aspects of the Lomé regime.

Figure 1: Price Indices of Key ACP Mineral Exports (1960-2000)



Source: data extracted from UNCTADstat

At the international level, some political and normative factors also favoured the ACP. In the Cold War context, the EEC was keen to keep ACP countries within the West's 'sphere of influence'. The 1970s was also the height of Third World activism on the international stage.

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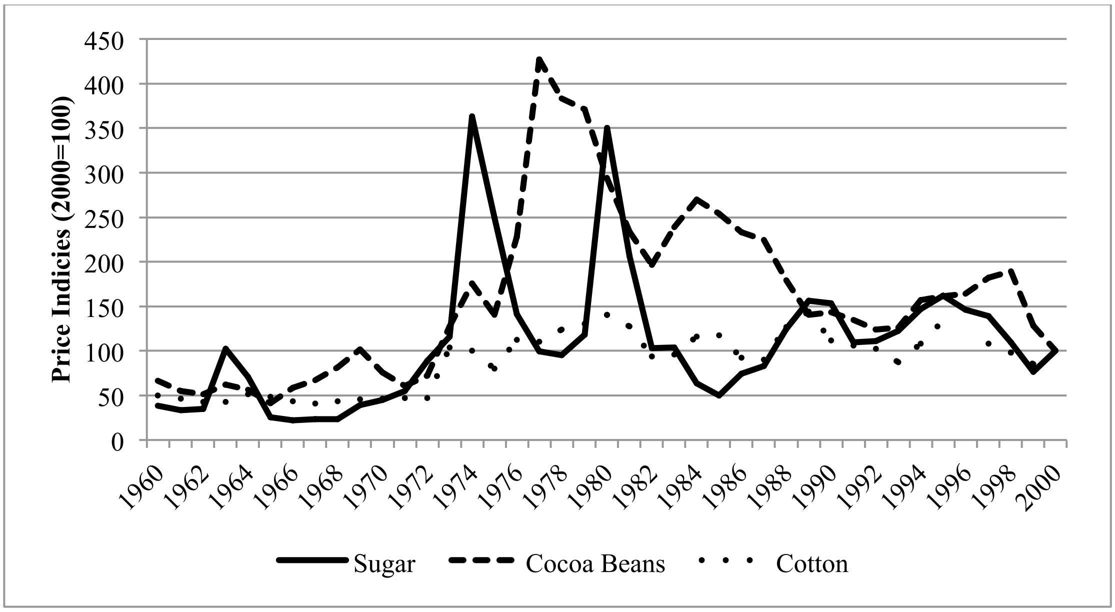
57 In 1974, for example, sugar was 89 percent of Mauritius' total exports; 59 percent of Fiji's; 45 percent of Guyana's; 36 percent of Barbados'; 12 percent of Jamaica's.
58 Mahler (1981)
59 Gruhn (1976)

ACP countries had just gained independence and were at the core of the Non-Aligned Movement (NAM) and the G77.[60] These fora provided an impetus for organisation at the ACP level, while the movement around the 'New International Economic Order' provided a source of ideational inspiration. The principle of non-reciprocity in trade had gained widespread recognition, making it far harder for the EEC to insist on reciprocity.[61] As 'Sonny' Ramphal, who was a leading Caribbean negotiator explains, ACP negotiators were emboldened by these developments 'There was a mood of hope at large…We may have lacked experience of the world, but we did not lack boldness or energy.'[62]

Figure 2: Price Indices of Key ACP Agricultural Exports (1960-2000)



Source: data extracted from UNCTADstat

In Europe, the ACP coalition gained from the support of influential stakeholders. The British government was supportive of the ACP in some key areas, as it had long-standing economic and political ties that it did not want to disrupt. This predisposed existing EEC members towards concessions, as they did not want to provide Britain with a pretext for walking away from the EEC. The development directorate of the European Commission was a useful ally,

[60] Zang (1998); Ramphal (1995)
[61] The GSP was granted a GATT waiver in 1971 and then a permanent waiver under the Enabling Clause in 1979. See Hudec (2011) P69-70
[62] Ramphal (1995)

as many of its officials were sympathetic to the development aspirations of ACP states, and the management of a new scheme of trade preferences was a means to expand their mandate and influence.[63]

Finally, European companies with large investments in ACP countries were influential players, working with the ACP to preserve preferences, not least because they were often the principal beneficiaries. In sugar for instance, Tate & Lyle lobbied vigorously for access to the enlarged EEC market for Commonwealth sugar exports, and even encouraged its own workers to engage in a brief strike to put pressure on the British negotiators, and it was handsomely rewarded with monopsony rights under the Sugar Protocol.[64]

The negotiating moves of ACP countries, particularly the creation of the ACP coalition, turned these advantages into gains at the negotiating table. In the words of one scholar 'the new ACP grouping provided an adversary with whom a true dialogue had to occur, and whose negotiating skills were unexpected'.[65]

Unity enabled the ACP to leverage the EU's interest in the natural resource endowments scattered across the ACP, francophone countries had an intimate knowledge of EEC bureaucracy, and the Caribbean was able to provide a dynamic and skilled team of experienced negotiators, many of whom had negotiated independence treaties with Britain. The ACP obtained and maintained control of the negotiations, putting the Europeans on the defensive. They delayed negotiations until they were ready, took the initiative to convene Ministerial meetings when negotiations stalled at the technical level, and made concrete proposals rather than merely identify problems.[66]

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[63] Green (1980); Ravenhill (2002)
[64] Mahler (1981)
[65] Ravenhill (1980) See also Ramphal (1995)
[66] Note that this analysis diverges from Cosgrove-Sachs who argues that the ACP Group was 'created by the European former colonial powers' See Cosgrove Sacks (2001)P277-8

Crucially, the ACP coalition proved largely resilient in the face of external pressure. It did not bow to pressure when the Europeans attempted to undermine ACP unity by circumventing officially appointed negotiators and negotiating bilaterally with presidents of countries with whom they had traditionally had a close relationship. In addition, the coalition held out on issues that only mattered to a few members, including the inclusion of iron ore in STABEX for Mauritania, and ensuring that the Caribbean countries achieved a reasonable settlement in negotiations on rum.[67]

3.4. The late-1970s to late-1990s: The Tide Turns Against the ACP

Between the late-1970s and late-1990s there were four sets of negotiations between the ACP Group and the EEC (which became the EU in 1993). The Lomé Convention was renewed three times: Lomé II (1981-1985), Lomé III (1986-1990), and Lomé IV (1990-2000), and the mid-term review of Lomé IV in 1995 turned into a full-scale negotiation. With each negotiation, the membership of the European and ACP sides grew (Table 6).

As this section shows, the negotiating influence of the ACP in the mid-1970s proved to be short-lived, and the EEC largely determined the terms of the agreements.

Lomé II and III Negotiations

During the 1970s, it soon became clear that Lomé I would not live up to its promises. In addition to the substantive inadequacies of the relationship (such as the extremely restrictive rules of origin), it became clear that the EEC intended to adopt a very narrow legalistic approach, rather than interpret Lomé I in line with the principles in its preamble. For instance, the EEC failed to safeguard the interests of ACP countries in its negotiations with third parties, unilaterally interpreted provisions to suit its own interests, and failed to work with ACP countries in the management of aid projects.[68]

[67] Ravenhill (2002); Interview with Sir Shridath Ramphal, September 2008; Gruhn (1976)
[68] Ravenhill (1989)

During the Lomé II and Lomé III negotiations, ACP countries sought to further improve the terms of the relationship, and to stipulate in more precise terms the contractual obligations of the EEC in a bid to reduce its room for discretionary interpretation. Meanwhile, the EEC had three main objectives: to minimise the costs of the Lomé Convention by ensuring that it did not make any further concessions that would harm European producers and avoiding increases to its aid obligations; to avoid making any concessions to ACP states that might set a precedent for negotiations with third parties; and to secure economic and political concessions from the ACP.[69]

During the negotiations, the ACP pursued a 'maximalist negotiating strategy'. Couching their demands in terms of general principles, they called, *inter alia*, for the EEC to provide completely free access to its markets; to remove safeguards on industrial products; treble aid allocations; and agree to the joint management of aid.[70] While such principled demands made it far easier to obtain consensus across the ACP Group, they were readily rebutted by the EEC, which stated that the broad principles were 'not serious' and 'extreme' and that it would only make concessions on a case-by-case basis. This made it look conciliatory and pushed the ball back into the ACP court, where the EEC knew the ACP didn't have the technical expertise.[71]

The EEC meanwhile made a series of proposals. In Lomé II, it proposed the creation of SYSMIN, a scheme that would guarantee its access to mineral exports; funding for the exploration of mining exploration and development in ACP states; reciprocal investment promotion and protection agreements; and the conclusion of bilateral fishing agreements.[72] It also sought to introduce conditionality, proposing clauses that would permit it to suspend aid and trade preferences to ACP countries involved in the violation of human rights or

[69] Ibid.
[70] Cosgrove Twitchett (1980)
[71] Ravenhill (1989) P235
[72] Ibid.

international labour standards, and seeking to introduce restrictions on the way that ACP governments used STABEX funds.[73] Demands for conditionality increased further during the Lomé III negotiations, with the EEC proposing the inclusion of 'policy dialogue' where the EEC and ACP would discuss major policy initiatives and jointly decide how aid would be spent.

Both sets of negotiations were 'extended', 'abrasive' and for a significant period characterised by stalemate. European negotiators were perceived by ACP countries as 'rude and aggressive' and as treating ACP representatives as 'very junior and very troublesome partners', suggesting that the cooperative atmosphere and sense of partnership that had characterised negotiations during the 1970s had evaporated, replaced by the paternalism that had historically characterised Europe's approach. [74]

In striking contrast to the Lomé I negotiations, the ACP negotiating position was weakened by disunity. Its negotiating position did not have the unanimous support of ACP states, as many regarded the principled and ambitious demands as unrealistic. The EEC capitalised on these divisions, often bypassing the formal negotiating structures and going directly to the heads of state in more 'moderate' ACP governments.[75]

The ACP negotiators relied on a few core tactics. Like the Yaoundé negotiators, they relied heavily on arguments that capitalised on their weakness, making moral arguments that appealed to the promises that the Europeans had made but not delivered, and the plight of their economies and people.[76] In both sets of negotiations the ACP also walked out in a bid to increase aid allocations (a tactic of last resort), which led to moderate increases.

[73] Bartels (2008)
[74] Green (1980); Ravenhill (1989) P237
[75] Ravenhill (1989)P232
[76] Ibid. P234

Recognising the weakness of the ACP side, the EEC's primary tactic was to apply pressure and to try and force quick capitulation. In addition to making direct appeals to heads of state, it imposed time constraints and then delayed announcing its position on important issues until the last minute, giving ACP countries little time to respond. In other instances, it quietly buried ACP proposals by mandating an expert committee that lacked any powers to examine them. Unlike the Lomé I negotiations, the ACP found themselves on the defensive. They eventually dropped back from their principled positions and accepted to negotiate on the EEC's terms. [77]

In both sets of negotiations, agreement was reached, and while neither side fully realised their objectives, the outcome was closer to the EEC's negotiating objectives than those of the ACP. Most ACP demands were rejected, although there were minor improvements in access for some ACP exports, to rules of origin, to the safeguard clause, and STABEX. The EEC's proposal for the establishment of SYSMIN was accepted in Lomé II. On aid, the EEC's commitments increased in nominal terms but measured in real per capita terms, they were lower than they had been in Lomé I (see Table 7). In Lomé III, ACP countries also agreed to a joint statement of willingness to negotiate investment protection agreements, an issue that the EEC had been pushing since the start of Lomé.[78]

Proposals on conditionality proved to be most contentious, and while the ACP Group successfully resisted their introduction in Lomé II, they eventually accepted modified forms of the EEC's proposals on policy dialogue and human rights in Lomé III.[79] Notably the EEC refused to bring discussions on debt relief under the auspices of Lomé and when it took steps

[77] Ibid. P237 also Ravenhill (1980)
[78] Article 243(1) and the 'Joint Declaration on Article 243(1)', Annex XXVI of ACP-EEC Council of Ministers "Third ACP-EEC Convention" (1984)
[79] See Article 8 of Lomé III and the annexed 'Joint Declaration on Article 4'. Ibid. See also Green (1980), Cosgrove Twitchett (1980), Hill (1985)

in 1988 to reduce the debt of ACP countries, it did so in collaboration with the G7 (the seven largest industrialised nations) without even consulting ACP states.[80]

Table 7: Evolution of Aid Under Successive Lomé Agreements (€ millions) (1975-2000)

EDF Tranche	Total Allocation (Nominal)	Total Allocation (Real)	Aid Allocation Per Capita in ACP Countries (Real)	Percentage disbursed during period allocated
Lomé I (4th) 1975	3390	2696	8.46	43%
Lomé II (5th) 1980	5227	2586	6.65	39%
Lomé III (6th) 1985	8400	3264	6.74	40%
Lomé IV (7th) 1990	12000	3514	6.41	37%
Lomé Vibe (8th) 1995	14625	3463	5.06	20%
Cotonou Agreement (9th) 2000	15200	3131	3.99	28%

Source: Extracted from Table 1, Table 3, and Table A1
Note: Real values are calculated based on the average inflation index for the corresponding 5-year period. As aid is disbursed at a slower rate, these figures over-estimate the real value of aid received by ACP countries.

Analysis

Once again, shifts in the underlying structural position of the parties influenced outcomes, and this time they moved in favour of the EEC.

By the end of the 1970s, developing country control over raw materials and energy was no longer see as such a threat by Western countries, who had greatly reduced their reliance on imports from developing countries. Meanwhile ACP countries entered a period of protracted economic crisis. High oil prices and dramatic reductions in the price of some exports left many oil-importing ACP states in an extremely fragile position (Figure 2), and governments focused on day-to-day economic survival. These challenges were compounded by the onset of the debt crisis in the early 1980s. In sub-Saharan Africa, GDP per capita dropped 12 percent on average between 1980 and 1986, and as much as 30 percent in some countries.[81]

[80] Grilli (1993)P39
[81] Ravenhill (1980); Helleiner (1985)

At a bilateral level, these shifts led to deepened asymmetries between the ACP and EEC. Although there had been some trade diversification, the EEC remained the principal partner for most ACP states, accounting for more than 30 percent of total trade in 1986, down from 40 percent in 1975 (Figure 3). More importantly, the debt crisis made ACP states highly dependent on external finance, and their external debt to GDP ratios rose from 10 percent in 1970 to more than 50 percent in the mid-1990s. The EEC was their main source of loans, either directly, or through the IMF and World Bank (Figure 4).

ACP countries, particularly Africa, remained of strategic interest to Europe for raw materials, but in other areas, they became increasingly marginal to the EEC.[82] Their share in total EEC trade dropped sharply from almost 5 percent in 1975 to just over 2 percent in 1989 (Figure 3). Economic collapse in most ACP countries, and growth elsewhere in the developing world meant they were no longer an attractive investment destination. Thus while EEC countries did not wish to dismantle the Lomé regime, seeing it as their flagship development policy, neither did they have any interest investing additional resources or making new concessions.

These underlying economic shifts had a differential impact on ACP states, which placed great strain on the ACP coalition. Sugar-exporting Caribbean countries were in a relatively strong negotiating position as the Sugar Protocol and its system of guaranteed prices was not up for renegotiation, and they advocated a strident approach. In contrast, many African countries were in an extremely fragile position, leading them to adopt a more conciliatory approach in negotiations, with francophone African countries seeking closer ties and more financial assistance from France.[83]

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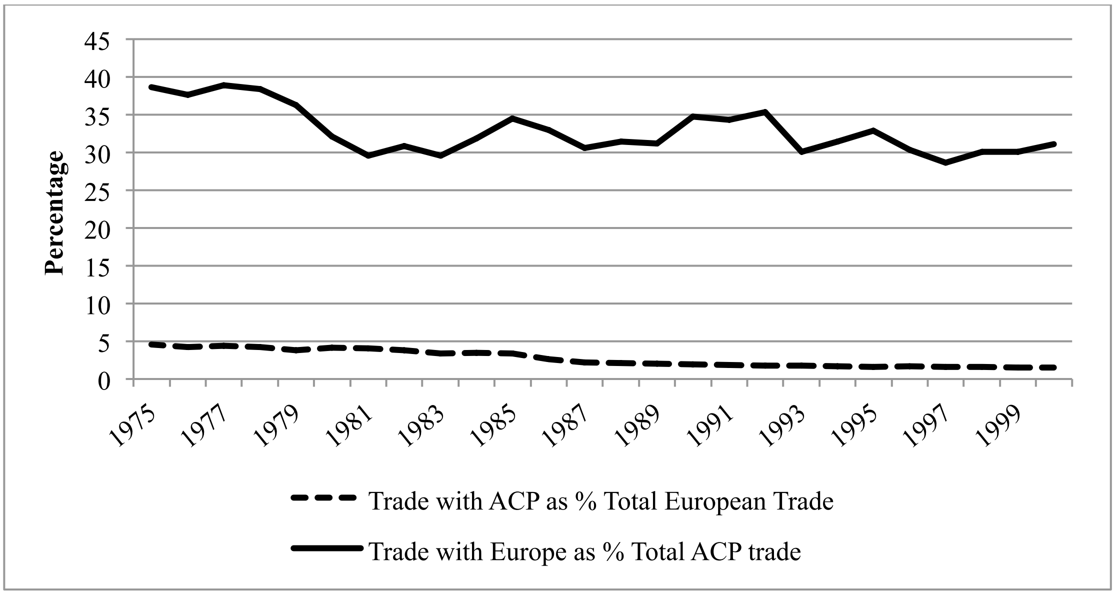
[82] The European Commission noted: 'Of all the world's major industrial powers, Europe is one of the poorest in terms of mineral resources; of all the vast mineral reserves in the world Africa's have been the least explored and the worst exploited'. See European Commission "Memorandum on the Community's Development Policy" (1982)P18

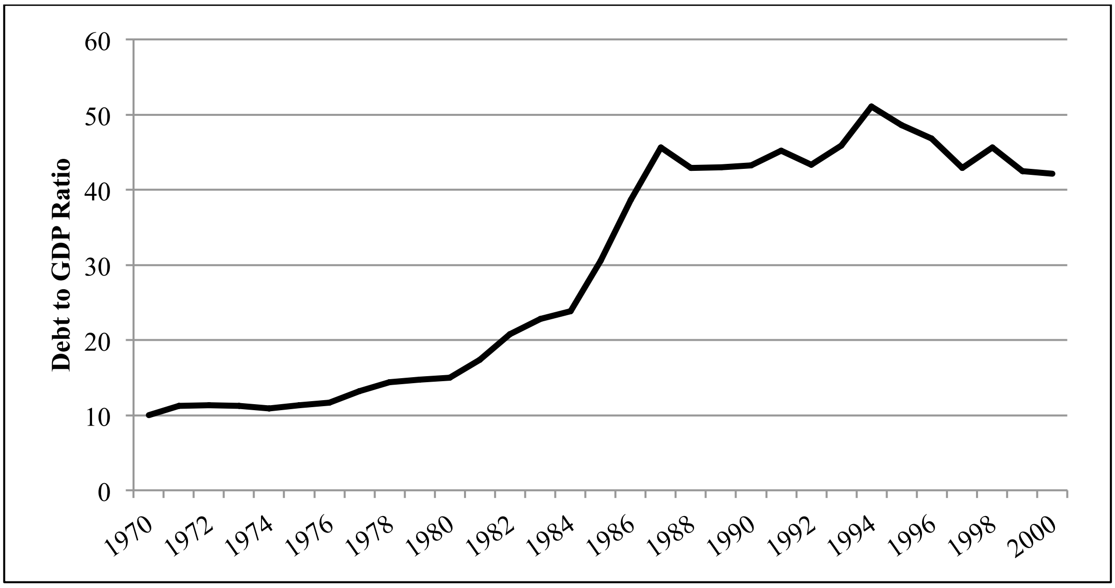
[83] Ravenhill (1980)

Figure 3: Relative Importance of Mutual Trade For Europe and ACP (1975-2000)



Source: Calculated by the author, data extracted from UNCTADstat
Note: The figures are indicative. The composition of the ACP and EEC/EU changed markedly during the period. This trade data is calculated on the basis of the members of Lomé IV (EEC12; ACP69)

Figure 4: Levels of External Debt Among ACP Countries (1970-2000)



Source: Extracted from UNCTADstat

Political and normative shifts also strengthened the hands of EEC negotiators and weakened those of the ACP. Recession in Europe and a sharp electoral shift to the right meant that there was little appetite in the EEC for discussions of global inequality or increases in aid.[84] Meanwhile, the turn towards conditionality in the international donor community was the source of inspiration and justification for its introduction by the EEC into the Lomé negotiations.[85] Third World activism, which had greatly strengthened ACP unity in the 1970s, had waned dramatically.[86]

The economic crisis facing ACP states took its toll on the ACP coalition. There was an absence of leadership among ACP states and the ACP Secretariat in Brussels was severely under-resourced. Many ACP countries had not paid their contributions, partly because of financial constraints, but also due to distrust among many of the francophone countries as its key officials were largely drawn from the Caribbean. With a staff of only twelve, the Secretariat could not provide the technical analysis that ACP negotiators required.[87]

Although external organisations including the Commonwealth Secretariat and UNCTAD provided some technical analysis, the ACP Secretariat turned to the European Commission for financial support as well as data and information, which was inevitably compromising. The lack of unity, leadership, technical capacity and direction combined with a profound sense of vulnerability was 'reflected at negotiating table as lack of self-confidence' and allowed the EEC to largely determine the outcome of the negotiations.[88]

Lomé IV Negotiations

By the time the Lomé IV negotiations started in 1988, there was growing disillusion among ACP leaders about the ability of the Lomé regime to deliver on its development promises.

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84 Zartman (1987); Fraser (2008)
85 See Whitfield (2009)
86 Zartman (1987)
87 Ravenhill (1989)
88 Ibid., Ravenhill (1980)

Although trade preferences had stimulated some export diversification among ACP countries, including in canned tuna, flowers, vegetables, and textiles,[89] the value of these products was very low, and exports remained dominated by primary commodities. While this is partly attributable to pervasive supply-side constraints in ACP countries, many studies at the time pointed to the 'lack of potency in EC tariff preferences'. With the notable exception of the Protocols (particularly sugar) the real value of trade preferences was very low: they applied to little more than a third of ACP exports, and their value declined dramatically over time.[90] Moreover, aid disbursement was extremely slow (Table 7) and the STABEX scheme had been plagued by chronic shortages of funds.

As they embarked on negotiations, ACP states faced an extremely challenging situation, and the ACP Group was weaker and more distracted by domestic economic problems than at any time in the past. It was also poorly prepared technically. While some studies were commissioned by the ACP secretariat, they were not very extensive, and external agencies provided less support than in the past. As one journalist noted at the time 'never since 1973 has there been so much criticism of the technical preparation of the negotiation on the ACP side'.[91] Anglophone-francophone divides resurfaced, with the former advocating a robust approach, and the latter seeking a quick settlement to ensure continuity of aid flows.[92]

In the run-up to the negotiations, the EC was deeply divided, and unable to decide on clear objectives. The main cleavage was between Germany, the UK, and the Netherlands, who sought to grant additional market access to the ACP, but did not want to increase their aid allocations; and Spain, Portugal, and Greece, who were opposed to further trade liberalisation. France in contrast supported both additional trade liberalisation, and greater aid allocations. Lengthy discussions were held over conditionality and the use of EDF funds. The European

[89] McQueen and Stevens (1989)
[90] On sugar see Herrmann and Weiss (1995). On preferences see Grilli (1993)P165-8
[91] 'News round-up: the ACP-EEC negotiations for Lomé IV', *The Courier* 117, Sep-Oct 1989 P1, cited in Lister (1997) P113
[92] Zartman (1993)

Commission, supported by the UK and Germany, made a strong case for increasing conditionality and for using EDF funds to support the structural adjustment programmes of the World Bank and IMF.[93]

The Lomé IV negotiations were strikingly similar to Lomé II and III, suggesting that the interaction between the parties had almost become ritualistic. The EC adopted a hard-line approach, brushing side the principled arguments of the ACP, and requesting negotiations on specific details, knowing full well that the ACP were poorly prepared. When the ACP negotiators took a strong stance, the EU threatened to go above their heads. For their part, ACP negotiators concentrated on playing on their weakness, arguing that the ACP were so small that additional concessions could not possibly harm the EC, and that support was needed to address their dire domestic situation.[94]

Agreement was reached relatively easily on many issues, leaving trade and the size of the aid package as the focus of negotiations. In trade, the EEC made minor concessions for some products, although this was largely due to intra-EEC politics rather than the negotiating leverage of the ACP.[95] Moreover, areas of importance to the ACP were not addressed, including increases in quotas for sugar and bananas, and a decision was made to phase out the rum protocol by 1995.[96]

In aid, the ACP anticipated the EC's tactic of leaving the announcement of its aid offer until the last session, and threatened to refuse the other elements of the convention until the EC had presented its aid package. However Germany and Britain countered by arguing that no aid offer would be made until the ACP had agreed on trade, and the latter backed down. As a

[93] Ibid.
[94] Ibid.
[95] See Lister (1997) P119-20; Zartman (1993).
[96] Lister (1997) P119

result, the EEC largely determined the aid package, which was barely enough to maintain the real value of aid flows (see Table 7).[97]

The EC succeeded in obtaining deeper conditionality and disbursement of European aid was to be explicitly tied to the support of the controversial structural adjustment policies of the World Bank.[98] This gave the EEC a source of leverage over the wider economic policies of the ACP states, a shift which sat uneasily with the long-standing Lomé principle, repeated in Lomé IV, that ACP states 'shall determine the development principles, strategies and models for their economies and societies in all sovereignty'.[99] Finally, it was agreed that Lomé IV would run for ten years, from 1990 to 2000. This was largely at the behest of the Europeans, who had become tired of long protracted negotiations every five years.[100]

Mid-Term Review

The 1995 Mid-Term Review of Lomé IV was originally envisaged as a perfunctory affair, but the European Commission tabled proposals for a series of modifications that resulted in thirteen months of heated negotiations between the EU and ACP states.[101]

The European Commission's proposals sought dramatically to deepen the conditionality that had been introduced in Lomé IV. It sought to introduce a 'democracy clause', which would allow the EU to suspend aid and trade preferences not only in the case of human rights violations, but also on the grounds of a failure to uphold democracy, good governance, and the rule of law. It also sought greater control over aid through performance-related tranching, setting aside aid for projects that the EU considered high priority, and taking control over project preparation and appraisal away from ACP states.[102]

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[97] Zartman (1993)
[98] See Article 246(2) ACP-EEC Council of Ministers "Fourth ACP-EEC Convention" (1989)
[99] Article 5, ibid. See also Crawford (1996) P505; Lister (1997) P115-7
[100] Ravenhill (2002)
[101] May 1994 to June 1995
[102] Arts and Byron (1997)

European Ministers broadly welcomed these proposals, although they made some modifications. In particular, the Ministers suggested that the 'democracy clause' should also require ACP states to establish market economies and develop their private sector. Several EU states, notably Germany and the UK, saw the mid-term review as an opportunity to reduce their aid contributions to the European Development Fund.[103]

The initial approach of the ACP to the mid-term review was largely reactive. They decided to accept the notion of a 'democracy clause' and to focus on clarifying the procedures and criteria that would be used to determine when suspension would take place. However they strongly objected to proposals for the reform of aid, particularly the introduction of performance-based tranching, and the increased powers for the European Commission. In addition, when they realised that the EU was placing a series of new issues on the table, the ACP asked for debt relief to be included on the negotiating agenda, and as in previous negotiations, they made a series of requests for improved market access.[104]

As had become the norm, the EU agreed to make some minor changes to market access, but brushed aside the wider concerns of the ACP.[105] Agreement was reached rapidly on conditionality, which was deepened significantly. The final provisions allowed the EU to suspend aid and trade if there was a violation of human rights, 'democratic principles', and the 'rule of law'.[106] However ACP states successfully opposed the EU's proposal to include 'good governance' on the grounds that it had no clear definition and was open to arbitrary interpretation. The ACP also advocated successfully for joint decision-making, out of concern that the EU would otherwise use its ability to impose sanctions in an arbitrary manner.

[103] Ibid.
[104] Ibid.; Greenidge (1997)
[105] For instance, minor modifications were made to rules of origin. See Lister (1997) P135 and Greenidge (1997)
[106] See Articles 5 and 366a in ACP-EEC Council of Ministers "Agreement Amending the Fourth ACP-EC Convention of Lomé" (1995)

However only two months after the agreement was concluded the EU Council of Ministers suspended development cooperation to Niger without consulting the ACP. [107]

Despite agreement within a few months with the ACP, the EU member states could not agree on the size of the financial aid package. While the UK, Germany, Italy and the Netherlands were not prepared to increase their allocations in line with inflation, France advocated an increase in allocations.[108] Failure of the member states to reach agreement led to a five-month suspension of negotiations. The final package was presented as a fair accomplish and, in real per capita terms, it was a marked reduction on the previous period (Table 7).

Analysis

In many ways, the dynamics of the Lomé IV negotiations resemble those of Yaoundé in the 1960s. Not only did the European side have the upper hand, but the core decisions were made through intra-European negotiation, and presented to the ACP as a *fait accompli*. The influence that the ACP states had been able to wield during the Lomé I negotiations seemed very remote, and the notion of Lomé as a platform for north-south dialogue became increasingly vacuous.

Once again, the explanation lies largely in shifts in the international context, which had deepened structural asymmetries. The economic fortunes of ACP countries continued to be bleak. Growth was sluggish or even negative, commodity prices continued to fall, and debts escalated, with many ACP countries struggling to service them. Although the bilateral trade dependence of ACP states on Europe declined, this was more than compensated by the fact that many ACP countries were heavily dependent on Europe for aid and concessionary loans.[109] Significantly, following the end of the Cold War, the position of the ACP states was

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[107] Crawford (1996)

[108] In the final agreement France increased its allocation while the UK reduced its allocation by 25 percent in real terms. Lister (1997) P133-4

[109] In 1989 for instance, 26 percent of outstanding ACP debt was with the European Commission, and a further 29 percent with its member states Greenidge (1997)

further weakened as their major alternative sponsor disappeared, and the Europeans and United States increasingly coordinated their relations with developing countries.

The EU's strategic interest in the ACP also declined and they lost their place as privileged partners. Expansion of the EEC in the mid-1980s to include Spain and Portugal resulted in a push to for Europe to intensify its relations with Latin America, while the end of Cold War, reduced the geopolitical importance of ACP countries, and presented Central and Eastern Europe as compelling new partners for the EU. In line with its new foreign policy priorities, Europe took a series of steps that dramatically eroded the benefits of Lomé for ACP countries, particularly the value of trade preferences.[110]

Although the ACP were of reduced interest to the EU, they remained an important source of mineral resources. As a 1989 report by the Commission noted, the European Community would always 'depend on the formidable mineral resources of the South' and that 'Africa, especially well-endowed possesses reserves of primary products which are largely in tact'.[111] Furthermore, Europe continued to promote the Lomé Convention as its flagship development policy[112]

A notable feature of the Lomé IV negotiations was that European NGOs and research institutions entered as significant actors in the negotiating process for the first time, (mostly) bolstering the ACP position. They heavily criticised the European Commission's proposals for undermining the sovereignty of ACP countries, and lobbied member states.[113] Although

[110] Europe reduced its tariffs during the Uruguay Round negotiations, negotiated a series of bilateral and regional free trade agreements, and reformed its generalised system of preferences to provide greater access to non-ACP developing countries. In addition, a series of challenges to the EU-ACP Banana Protocol at the GATT and WTO led the EU to make significant concessions to other developing country banana exporters. See Page and Davenport (1994); Koning (1994); See Bartels (2007)
[111] Commission of the European Communities (1989) *The Europe-South Dialogue.* Office for the Publications of the European Community, Luxembourg cited in Lister (1997) P152
[112] The EEC Negotiating Mandate for the Lomé IV Convention noted that the Convention remained 'the main pillar of the Community's development policy' cited in Zartman (1993) P56
[113] Arts and Byron (1997)

these groups did not have much impact on Lomé IV, their engagement at this stage laid roots for them to become influential actors in the subsequent Cotonou and EPA negotiations.

3.5. The Late 1990s: Victory for the EU

The final set of negotiations analysed in this chapter started in 1998 and culminated in the Cotonou Agreement of 2000.

By the mid-1990s, there were clear signs that the EU was determined to end the Lomé relationship.[114] The European Commission drafted a Green Paper that set out proposals for dramatic reform of EU-ACP relations. It presented four options, and the one that it clearly preferred was the negotiation of free trade agreements with various geographical groupings of ACP countries, an option the Commission labelled 'Regional Economic Partnership Agreements'.[115]

ACP countries were strongly opposed to the EU's proposal to radically restructure trade relations. ACP states convened their first ever meeting of heads of state, in 1997 to determine how they would respond. In their strongly worded declaration, ACP heads of state warned against EPAs, arguing that reciprocity raised the 'prospect of disruption in our fragile and vulnerable economies and disintegration of the social fabric of our countries'.[116] They called for a continuation of the key features of the Lomé regime, including unilateral trade preferences and the commodity protocols, evoking the core principles of the Lomé I Agreement and calling for a 'renewed, true and more equitable partnership'.[117]

However, despite this display of unity at the highest political level, in practice there was substantial disunity in the ACP coalition. There were reports during the Cotonou negotiations

[114] See *The Courier ACP-EU* March-April 1995, cited in Cosgrove Sacks (1999) P351
[115] European Commission "Green Paper on the Relations Between the European Union and ACP Countries on the Eve of the 21st Century" (1996)
[116] ACP Heads of State "The Libreville Declaration at the First Summit of ACP Heads of State and Government, 7th November 1997" (1997)
[117] Preamble, ibid.

that the francophone countries in West Africa (UEMOA), whose governments were heavily dependent on France, had agreed to negotiate an EPA and were even discussing its contents, behind the back of other ACP members.[118] Even in the Caribbean, which played a lead role in forging the ACP negotiating position and where one might have expected a unified position, there were stark divergences.[119]

Disunity was reflected in the ACP negotiating mandate. On the crucial question of whether to move to free trade agreements, it merely noted that ACP countries should 'consider carefully the implications' and leave the door open to the possibility of 'alternative trade arrangements'.[120] Moreover, Caribbean and Pacific countries, together with Mauritius, arguably the most skilled negotiators in the ACP coalition, were focused on averting the EU's proposed changes to the Commodity Protocols, rather than opposing the shift to an EPA.

The ACP coalition was also weakened by the fact that the negotiating resources of ACP countries were thinly stretched. The peak of the Cotonou negotiations coincided with the WTO Ministerial in Seattle, in which most ACP countries were engaged, while the Caribbean trade negotiators were simultaneously involved in strenuous FTAA negotiations with the US, and were embroiled in a lengthy legislative battle for NAFTA parity for the Caribbean Basin Initiative.[121]

Negotiations on the trade aspects of Cotonou were extremely contentious and, after almost a year, they broke down.[122] Agreement was finally reached through a series of high-level informal meetings between EU and ACP ministers.

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[118] Cadot, Melo, and Olarreaga "Asymmetric Regionalism in Sub-Saharan Africa: Where do we Stand?" (1999)
[119] Byron (2005)
[120] Lecomte (1998)
[121] Byron (2005)
[122] Ibid., 12.

Outcome

The Cotonou Agreement was a watershed moment in EU-ACP trade relations. Although they obtained some concessions, ACP countries conceded to the EU's principal demand of negotiating 'Economic Partnership Agreements' and, although it assiduously avoided the phase, the final Cotonou text made it clear that the EPAs would be free trade agreements.[123] By conceding to negotiate EPAs, ACP countries agreed to leave behind two pillars of the Lomé regime that they had fought so hard for in the 1970s and resolutely defended during the 1980s and 1990: non-reciprocity and non-differentiation within the ACP group.

ACP countries obtained some concessions on the Commodity Protocols. A settlement on rum was a 'red-line' for the ACP countries and, despite strong opposition in Europe, they secured a joint declaration on rum, which ultimately resulted in the allocation of €71 million to support the industry to adapt to a liberalized trading regime. In sugar and bananas, the ACP secured the renewal of most of the benefits under the related protocols (if only for a limited period of time) an outcome that was considered 'remarkable' given the level of opposition from the EU.[124]

On the EPAs, ACP countries obtained some concessions over the negotiating process. They secured an eight-year period for EPA preparation and negotiation, rather than the five years that the EU had proposed. They also obtained a commitment, albeit a weak one, that the EU would examine all alternatives to a free trade agreement for any ACP country 'not in a position' to enter into an EPA.[125] Finally, the EU agreed to a 'formal and comprehensive review' of the EPA negotiations in 2006 'to ensure that no further time is needed for

[123] The proposed EPAs 'shall aim notably at establishing the timetable for the progressive removal of barriers to trade between the Parties, in accordance with the relevant WTO rules'. Article 37(7) ACP and EU Ministers (2000)
[124] Jessop (2002)
[125] Article 37(6) ACP and EU Ministers (2000)

preparations or negotiations', which implied that the EPA negotiating period would be extended if necessary.[126]

In terms of the scope of the proposed EPAs, the Cotonou Agreement contained a clear obligation to prioritise the interests of ACP countries[127] but it provided relatively little clarity on the precise contents of the EPAs. On trade in goods, it stipulated that the EPAs would be compatible with WTO rules and be 'as flexible as possible' in order to 'take account of the level of development and the socio-economic impact of trade measures on ACP countries, and their capacity to adapt and adjust their economies to the liberalisation process'.[128] In stipulating these twin objectives, the Cotonou Agreement had tied a 'Gordian knot' as it promised to provide a high level of flexibility to the ACP countries, within a set of WTO rules that were relatively inflexible.

Notably, the Cotonou Agreement contained no specific commitments on the liberalisation of trade in services; the text only committed the parties to the 'objective' of negotiating services liberalisation at a future date.[129] Similarly, in the areas of competition policy, intellectual property rights, product standards, and environmental and labour standards, it merely required parties to uphold existing international commitments and implement relevant national and regional policies.[130]

Analysis

How can we account for these outcomes? First, aid dependence appears to have played a central role. ACP countries remained highly dependent on the EU, particularly for aid (Figure 4) and ACP countries appear to have perceived the shift to free trade agreements as necessary for maintaining aid flows. According to the Working Group of ACP Experts, 'Europe is

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[126] Article 37(4) ibid.
[127] Article 34(1)ibid.
[128] Article 37(7)ibid.
[129] Article 41(4) ibid.
[130] Articles 41-50 ibid.

seeking a quite different economic partnership with the ACP countries in which access to the latter's markets will be the *quid pro quo for development assistance*' [emphasis added].[131]

During the negotiations, the EU reportedly used aid dependence to its tactical advantage. As one high level ACP adviser explained 'the EU made aid availability and its size conditional upon reaching agreement in all areas… The EU employed the tactics of cross conditionality by tying aid provisions, its size and conditions to ACP accepting reciprocity in trade.'[132]

Second, the primary focus of ACP countries was arguably on obtaining concessions Commodity Protocols, and evidence suggests this reflected high levels of lobbying from the well-organised rum, sugar and banana exporters.[133]

Third, the ACP faced a negotiating partner that had ambitious negotiating objectives and was determined to see them met. Debate in international circles focused on the 'resurgence of Africa' and there was some lobbying from European business for greater access to the continent's markets.[134] The US had started moves to create an 'Africa Growth and Opportunity Act' (signed into law in 2000) and this raised fears in Europe that, after decades of substantial European aid flows to the ACP, 'less-committed' industrialized countries would 'reap the harvest' by seizing new trade and investment opportunities in the most dynamic ACP economies.[135] Free trade agreements were an obvious route for securing access to ACP markets, and one that was in keeping with Europe's wider external trade agenda.[136]

Complementing this, there was a strong bureaucratic incentive on the part of the European

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[131] Working Group of ACP Experts "Post-Lomé IV Alternative Trade Arrangements: First Report of the Working Group of ACP Experts to the ACP Council of Ministers " (1999)
[132] Tekere (2003)
[133] Jessop (2002); Mayers (2006); International Development Committee (1998); Garside et al. (2005)
[134] See for instance statements by the British Africa Business Association at the UK parliamentary hearing: Examination of Witnesses, Questions 449-462 in International Development Committee (1998)
[135] Lecomte (2001)
[136] There was some opposition within the EU, notably from the UK and the Nordic countries but had little impact. Forwood (2001)

Commission to secure an agreement from ACP countries to move to free trade agreements. The Cotonou negotiations concluded in February 2000, shortly after the Seattle WTO Ministerial, which had been a disaster for the EU, and the Commission officials were keen to deliver an outcome that reflected the EU's interests.[137]

3.6. Conclusion

All of the nine negotiations between Europe and ACP countries scrutinised in this chapter were characterised by vast asymmetries yet the outcomes varied substantially.

The analysis provides two principle lessons. First, although ACP states were profoundly dependent on the former colonial powers long after they obtained independence, including for trade preferences and aid, variations in the underlying structural relationship provided them the opportunity to exert some influence over outcomes. The costs that ACP states faced if they exited from their preferential relationship with Europe appear to have been particularly important: ACP states that faced relatively low exit costs were better placed to influence outcomes than states that faced high exit costs. In addition, in cases where Europe considered its relationship with ACP states to be of strategic importance, this provided ACP states with a source of significant leverage.

In the 1960s, it is striking that Nigeria and the East Africans were able to obtain more favourable outcomes from negotiations with the EEC than the francophone 'Associates', as they were not directly dependent on the EEC, and thus faced low exit costs. During the 1970s, the relative structural position of ACP countries improved dramatically, creating a source of leverage. Although Britain's entry to the EEC meant that all former colonies faced significant costs if they exited the negotiations, this was more than compensated for by a dramatic increase in the strategic relevance of ACP countries to Europe, and ACP countries turned this to their advantage.

[137] Lecomte (2001)

Second, the analysis provides insights into the specific negotiating strategies and tactics that enabled ACP countries to capitalise on these structural shifts, and it shows that while technical expertise was extremely useful, the formation of a strong and united ACP coalition in the early 1970s stands out as being critical; if ACP countries had negotiated Lomé I in small groups as expected, it is highly unlikely that they would have exerted such a considerable degree of influence over the final outcome. By contrast, in the late 1990s, the EU had greater interest in the ACP but ACP countries did not leverage this new interest to their advantage. The history of the negotiations suggests that if the ACP coalition had been stronger, more united and strongly opposed the move to a free trade agreement during the late 1990s that the outcome might have been different.

Analytically, the historical analysis suggests that we should be careful not separate structure and agency. The evolving economic and political structural relationship decisively shaped the strategic and tactical decisions of states during the negotiations. In the 1980s and 1990s for instance, the weakness of ACP collective action was in large part due to the economic crisis that many countries faced, which resulted in low levels of political and financial investment in maintaining the ACP coalition.

The Next Chapter

The next chapter sets out the EPA outcomes in detail (the dependent variable that the remainder of this thesis seeks to explain). Chapters 5 to 7 use a variety of research methods to try and account for this pattern of outcomes. The chapters build from this historical chapter, looking first to examining the role that structural economic factors played in shaping the EPA outcomes, before moving to explore the strategies and tactics in depth, and then, finally, domestic lobbying.

Chapter 4. Variation in EPA Outcomes

4.1. Introduction

Building on the insights of the literature review and the analysis of previous trade negotiations between European and ACP countries, we now turn to analyse the EPA negotiations in detail. This chapter provides the reader with an understanding of the dependent variable that this thesis seeks to explain – EPA outcomes. In so doing it also presents arguably the most systematic analysis of the EPA outcomes carried out to date.[1]

Mapping EPA outcomes requires analysis at two levels. The first, and relatively easy to establish, is whether a given ACP country concluded an EPA, and, if so, whether it proceeded to sign, ratify and implement the agreement. The second, and more challenging, is to determine the extent to which the EU was able to realise its interests in the EPA negotiations, and the extent of variation in outcomes across the ACP countries. This chapter conducts a provision-by-provision comparison of the main elements of the EPA texts.

The analysis in this chapter yields two key findings. First, and counter to our expectations, the EU was unable to secure the majority of its offensive negotiating interests. EPA negotiations were extremely protracted and, after almost a decade of talks, the majority of ACP countries (forty of the seventy-six) had not concluded any agreement with the EU. Even where they reached agreement, the scope of the EPA text was, in most cases, far narrower than the EU had proposed. Second, close scrutiny of the EPA texts that were agreed shows considerable

[1] This chapter builds on and extends existing analysis, including in Bilal and Stevens (2009); Stevens, Kennan, and Meyn (2008). It also draws on a co-authored (unpublished) analysis of the Ghana EPA written by the author and Lorand Bartels, University Senior Lecturer in Law, University of Cambridge in early 2009. Notably the comparison between EPA and WTO commitments draws on Dr. Bartels' analysis. All errors and omissions are of course my own.

variation. While some ACP countries agreed to very restrictive provisions that largely reflected the EU's negotiating objectives, other regions secured significant flexibilities.

The chapter proceeds as follows. The first section sets out the negotiating objectives of the EU and ACP for the EPAs, and shows that they diverged significantly. The second sets out the EPA outcomes in broad terms, while the third, which forms the majority of the chapter, presents a fine-grained analysis of the legal provisions in the various EPA texts. The chapter concludes by presenting a typology of EPA outcomes. It is important to note that the chapter confines its analysis to outcomes; questions of causality and motivation are deferred to subsequent chapters.

4.2. The EU and ACP EPA Negotiating Objectives

The Cotonou Agreement provided for eighteen months of preparation time, before the start of formal EPA negotiations in September 2002. During this period, both parties developed guidelines for their negotiators.

The EU developed very detailed 'negotiating directives' for all the EPA negotiations, which set out in relatively precise terms what it sought from ACP countries, and the concessions it was prepared to make, and EU negotiators were duty-bound to follow them. Unusually for an international trade negotiation (mandates tend to be closely guarded secrets), it was relatively easy to obtain the EU's negotiating mandate on the Internet.[2]

On the ACP side, 'negotiating guidelines' were developed at the all-ACP level, but it is harder to rely on them as a clear indication of the negotiating objectives of the six ACP regions that negotiated EPAs. The guidelines are relatively vague, and this appears to be due

[2] Permanent Representatives Committee of the European Union "[Limited] Recommendation Authorising the Commission to Negotiate Economic Partnership Agreements with the ACP Countries and Regions: An Item Note from the Permanent Representatives Committee to Council (General Affairs)" (2002)

to substantial divergence among the ACP regions as to what they wanted from the EPA negotiations as well, in some instances, as a lack of clarity over what their negotiating objectives were.[3] Indeed, the ACP guidelines themselves note the need for ACP states to 'undertake independent analysis' including 'in-depth studies… to determine the impact of trade liberalisation on the economies of individual ACP States… and the measures they should take to benefit from EPAs'.[4] Moreover, although ACP Ministers endorsed the guidelines for all six ACP regions, they were non-binding and, in practice, regions developed their own mandates (which the author does not have access to).

The EU directives and ACP guidelines provide insights into the interests of the EU and ACP at the start of the negotiations, and provide a useful baseline for establishing the extent to which each party was able to fulfil their objectives during the negotiations. This said, two further notes of caution are needed. First, interests often evolve. During the EPA negotiations, the EU negotiators tabled and insisted on including some provisions that were not part of this original mandate. Moreover, particularly on the ACP side, countries appear to have refined their negotiating objectives during the negotiations, partly in response to the EU's proposals. Second, these formal documents may not reflect all the negotiating objectives of a party. If a party expects or fears that its negotiating mandate will be leaked and obtained by the other side, it may opt to exclude more sensitive elements.

Divergent Negotiating Objectives

Comparison of the EU's directives and the all-ACP guidelines reveals substantial divergence. In terms of the negotiating process, the EU was adamant that all substantive negotiation would take place with regional groupings of ACP countries, starting as soon as possible, and with the all-ACP phase merely providing an opportunity for clarification. In contrast, the

[3] While the Caribbean, Southern Africa, Eastern Africa, and Pacific regions appeared wary of EPAs (with the Pacific actively considering alternative options), West Africa and Central Africa were reported to 'embrace the EU's proposals': Bilal "Who will Negotiate with the EU? In Search of an ACP-EU Negotiating Framework" (2002)

[4] ACP Secretariat "ACP Guidelines for the Negotiations of Economic Partnership Agreements" (2002) P3

ACP guidelines emphasized the need for ACP unity as ‘the unity of the ACP group is its force and its solidarity constitutes its negotiating strength… It will also be easier for ACP states to exert political pressure on the EU during the negotiations if they act together rather than individually’.[5] To maintain unity, the ACP guidelines recommended that the majority of the EPA negations occur at the all-ACP level, with the second, regional phase addressing only those issues that were so particular to individual ACP states and regions that they could not be addressed in the first stage.[6]

While the EU couched its insistence on regional-level negotiations as being of benefit to the ACP (as it would enable agreements to be tailored to the specific context of each region), this approach had clear benefits for the EU. As Jamaica’s Ambassador and a leading Caribbean negotiator argued at the time ‘the EU proposal for REPAs is nothing more than a thinly disguised negotiating ploy intent on undermining ACP solidarity… The EU objective here is simply to ensure maximum market openings in ACP states and regions for its goods and services by virtue of the reduced capacity to negotiate of a fragmented ACP group’.[7]

Turning to the substance, it is noteworthy that the EU directives and the ACP guidelines stated that the development of ACP countries is the primary objective, reflecting the relevant provisions in the Cotonou Agreement. Beyond this general objective however, there was a distinct divergence. The EU directives focused on deep trade liberalisation in a wide range of areas, assuming an automatic link between ambitious trade liberalisation and the development of ACP countries. (This is most pronounced in explanatory memorandum accompanying the first draft of the EU directives.)[8] To this end, the EU directives contained many detailed

[5] Ibid.P5

[6] However, despite the strong rhetoric, the ACP guidelines proposed that regional level negotiations start only one year after the launch of all-ACP negotiations in September 2002, providing relatively little time for substantive negotiations at the all-ACP level

[7] Hylton "The Challenge of Integrating ACP States into the International Trading Regime: Venturing Outside the Lomé Framework" (2002)

[8] Permanent Representatives Committee of the European Union (2002)P5. This concern is noted by Bilal in his analysis of the draft directives. See: Bilal "Questions Raised by the Proposed EC Negotiating Mandate" (2002)

provisions on trade in goods that exceed the requirements of the WTO, and made it clear that the EU was seeking reciprocal liberalisation and binding rules in a wide range of areas including services, investment, trade facilitation, government procurement, competition, intellectual property, and environmental and labour standards.[9] The EU objectives were thus far more ambitious than the ACP states had agreed to in the Cotonou Agreement, and reflected many of the issue areas where the EU had made unsuccessful proposals at the WTO.

In stark contrast, the ACP guidelines aimed to minimise the extent of trade liberalisation the ACP states would have to undertake, focusing instead on the need for EPAs to address supply-side constraints such as infrastructure gaps in order to bring about the 'structural transformation of ACP states into knowledge-based competitive economies'.[10] The focus of ACP countries was driven by the assumption that unless the adjustment costs and their production capacity constraints were addressed 'the benefits of the EPA for the ACP would be unrealisable and the EU would be the beneficiary of ACP trade liberalisation'.[11] The ACP guidelines explicitly stated the objective of securing 'the underwriting by the EU of the costs of adjustment associated with the implementation of EPAs'.[12] Crucially, the EU directives were silent on the issue of additional funding.

Notably, the ACP guidelines called for a reform of WTO rules on free trade agreements, noting that the 'current WTO rules are inherently imbalanced against the development needs of ACP states'.[13] This is a clear area of divergence, as analysis by the ACP Secretariat makes clear; 'some EC officials have said that there is sufficient flexibility in existing WTO rules and that the rules do not have to be changed'.[14]

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[9] European Commission "[Limited] Recommendation for a Council Decision Authorising the Commission to Negotiate Economic Partnership Agreements with the ACP Countries and Regions" (2002)
[10] ACP Secretariat (2002) Para 34, P10
[11] Ibid. P16-17
[12] Ibid. Para 34, P10
[13] Ibid. P3 and P6
[14] ACP Secretariat "Comparative Table of the ACP Negotiating Guidelines and the EU Negotiating Directives for the Negotiation of Economic Partnership Agreements" (2002)P11

The final major divergence was on the sequencing of regional integration. While the EU directives propose that the EPAs should be the basis for further opening among ACP countries, the ACP guidelines state that regional integration is a *prerequisite* for negotiating EPAs: 'ACP states must be allowed to first consolidate their own regional integration processes. Moreover, they do not have the capacity to liberalise in parallel and concurrently with the EU'.[15]

4.3. The General Pattern of EPA Outcomes

The EU sought ambitious free trade agreements with all six ACP regions, and it aimed to have them completed by the end of 2007. However the pace of the negotiations, and the scope of the agreements concluded fell far short of the EU's objectives (Table 8).

The EPA negotiations were launched in 2002. For the first year ACP countries negotiated with the EU as a single coalition, and after this, they negotiated as six separate regional groupings. While regional-level negotiations began with ECOWAS and CEMAC regions in late 2003, it was a further year before all six regions were involved in regional negotiations. By September 2012, after a decade of talks, only one set of regional negotiations had ended. In the five other regions, negotiations had stalled or were progressing extremely slowly, and there was no clear prospect of conclusion.

While it is not unusual for trade negotiations to over-run or stall (the Doha Round negotiations are a case in point), given the magnitude of asymmetry involved, we might reasonably have expected the negotiations to be concluded relatively quickly, with the ACP countries giving in to many of the EU's demands. Studies suggest that asymmetric negotiations are often relatively fast: symmetry, or perceived equality among the parties at the table, usually results in negotiations that are contentious and inefficient, as symmetry

[15] ACP Secretariat "ACP Guidelines for the Negotiations of Economic Partnership Agreements" (2002) P8

produces and reinforces hostility, prolonging negotiations, which often end in deadlock.[16] Moreover, as the history chapter showed, past EU-ACP trade negotiations typically lasted a couple of years, with some concluded in a matter of months.

Table 8: EPA Outcomes: General Pace and Scope (September 2012)

	CEMAC	ECOWAS	ESA	SADC	CARIFORUM	PACIFIC
Pace of Negotiations						
Start of Regional Negotiations	Oct 2003	Oct 2003	Feb 2004	July 2004	April 2004	Sep 2004
Status of Regional Negotiations (Sep 2012)	Stalled	Stalled	Slow	Slow	Completed	Stalled
Agreements Concluded						
Scope of EPA	Interim / Partial	Interim / Partial	Interim / Partial	Interim / Partial	Full	Interim / Partial
Proportion of States Initialling EPA	1 of 8	2 of 16	11 of 16	5 of 7	15 of 15	2 of 14
Proportion of States Signing EPA	1 of 8	1 of 16	4 of 16	4 of 7	15 of 15	2 of 14
Months of Delay Between EPAs being Initialled and the First Signature	13 months	11 months	21 months	19 months	11 months	21 months
Proportion of States Implementing EPA (Sep 2012)	0 of 8	0 of 16	4 of 16	0 of 7	8 of 15	1 of 14
Overall Conformity with EU Objectives (1 = low; 2 = medium; 3 = high)	**1**	**1**	**2**	**2**	**3**	**1**

Turning to the scope of the agreements that were concluded, it is noteworthy that the Caribbean region was the only region where all fifteen countries initialled and signed an EPA. In contrast, in the five African and Pacific regions, regional-level negotiations broke down, and, at the end of 2007 individual countries and, in some cases small groups of countries, initialled EPAs. Moreover, there were severe delays in the signature, ratification and implementation of these agreements. In total, only twenty-one of the sixty African and Pacific countries initialled an EPA and of these, only twelve proceeded to sign them (nine withheld

[16] Zartman and Rubin (2002)P273-274

their signature).[17] Of the twelve that proceeded to sign, only five had started to implement them by 2012.[18] Even in the Caribbean, the ratification and implementation of the regional EPA progressed slowly.

It is striking that the even where agreements were concluded, the majority were not of the scope and depth that the EU sought. While the EU dubbed the agreement with the Caribbean region as ‘full’, as it included all the issue areas of interest to the EU, it dubbed the agreements reached with African and Pacific countries as ‘interim’, as they only included commitments to liberalise trade in goods. While the EU clearly hoped that ‘interim’ EPAs would lead to ‘full’ EPAs, this was a goal that continued to elude the EU. As at early 2013, it was clear that even if a regional agreement were to be concluded with an African or Pacific region, its scope would be far more limited than the EU had originally envisaged.

In the last row of Table 8 ranks the six ACP regions on a three-point scale according to the extent to which they met the EU’s objective of negotiating a ‘full’ regional EPA by the end of 2007. The Caribbean region is ranked highest (3) as all the Caribbean countries concluded a ‘full’ EPA by the end of 2007, and signed it within a year. The ESA and SADC regions are next, (2) as more than half of the countries in their regions concluded EPAs in 2007, although these were partial in scope, and signature and implementation was poor. The ECOWAS, CEMAC, and the PACIFIC regions rank lowest (1) as very few countries in these regions entered into EPAs, the agreements were partial in scope, and signature and implementation was also poor.

[17] 12 signed an interim EPA: Botswana, Cameroon, Cote d’Ivoire, Fiji, Lesotho, Madagascar, Mauritius, Mozambique, Papua New Guinea, Seychelles, Swaziland, Zimbabwe. 9 withheld signature: Ghana, Kenya, Burundi, Rwanda, Tanzania, Uganda, Zambia, Comoros, Namibia

[18] Mauritius, Madagascar, Zimbabwe, Seychelles, Papua New Guinea. See European Commission "EPA State of Play: Updated 03 January 2012" (2012) and reports from EU-ACP Joint Parliamentary Assembly, November 2012

4.4. Variation in EPA Texts

By September 2012, eight EPAs texts had been concluded, and this section looks in detail at the variation in the legal commitments across them.[19] More precisely, in each major issue-area, two questions are asked: To what extent did the ACP party manage to negotiate concessions from the EU, and to what extent did the level of concessions vary across the eight EPA texts? The analysis uses the EU and ACP negotiating objectives, and the concessions granted by either party in the WTO and other free trade agreements as benchmarks.

As the texts are very detailed (core provisions in each EPA text typically exceed one hundred pages while the whole agreement typically exceed one thousand pages) the analysis focuses on the core issue areas, and only the most salient provisions are highlighted. The issue-areas covered by the eight EPA texts vary substantially, and an overview of the contents is provided in Annex 3. The texts used for the analysis are the 'final' legal texts, downloaded from the European Commission website in May 2012.

[19] The analysis in this section benefitted immensely from discussions with Lorand Bartels, University of Cambridge in March 2009. While his input shaped the analysis, all errors and omissions are of course my own.
The eight texts are as follows:
(1) CARIFORUM States and the European Community "Economic Partnership Agreement Between the CARIFORUM States, of the One Part, and the European Community and its Member States, of the Other Part" (2008) Hereafter 'CARIFORUM'; (2) Ghana and the European Community "Stepping Stone Economic Partnership Agreement between Ghana, of the One Part, and the European Community and its Member States, of the Other Part" (2008) Hereafter 'Ghana'; (3) Côte d'Ivoire and the European Community "Stepping Stone Economic Partnership Agreement between Côte d'Ivoire, of the One Part, and the European Community and its Member States, of the Other Part" (2009) 'Hereafter 'CDI; (4) The European Community and the Central Africa Party "Interim Agreement with a View to an Economic Partnership Agreement Between the European Community and its Member States, of the One Part, and the Central Africa Party, of the Other Part" (2009) Hereafter 'CEMAC'; (5) Eastern and Southern Africa States and the European Community "Interim Agreement Establishing a Framework for an Economic Partnership Agreement Between the Eastern and Southern Africa States, on the One Part, and the European Community and its Member States, on the Other Part" (2009) Hereafter 'ESA'. (6) European Community and East African Community "Agreement Establishing a Framework For an Economic Partnership Agreement Between the European Community and its Member States, on the One Part, and the East African Community Partner States on the Other Part" (2010) Hereafter 'EAC'. (7) European Community and the SADC EPA States "Interim Agreement with a View to an Economic Partnership Agreement Between the European Community and its Member States, of the One Part, and the SADC EPA STATES, of the Other Part" (2009) Hereafter 'SADC'. (8) Pacific States and the European Community "Interim Partnership Agreement Between the European Community, of the One Part, and the Pacific States, of the Other Part" (2009) Hereafter 'PACIFIC'

The following issue areas are examined in turn: trade in goods (customs duties and trade protection); customs and trade facilitation; sanitary and phytosanitary standards and technical barriers to trade; services, investment and capital movements; and trade-related issues (competition, intellectual property, government procurement). A table summarising the analysis is provided at the end of each sub-section, and the level of concessions gained by ACP countries are classified on a three point scale ranging from 'least restrictive/ most advantageous to the ACP' to 'most restrictive / least advantageous to the ACP'. At the end of the section, these scores are used to rank ACP countries and regions according to the level of concessions they were able to secure from the EU. To minimise bias in the coding, the classification of concessions draws on the analysis of leading international policy-experts.

Trade In Goods

All eight EPA texts include core provisions on trade in goods, typically divided into chapters on customs duties and trade protection. This sub-section looks first at the levels of tariff liberalisation committed to by each Party, and then at the various provisions on customs duties and trade protection

Tariff Liberalisation

Tariff liberalisation under all the EPAs is reciprocal, with both the EU and the ACP Parties undertaking commitments to reduce their applied tariffs over a specified time-period. The focus of the negotiations was on the scope of liberalisation (the number of tariff lines and volume of trade covered), the timeframe over which the liberalisation would occur, and the rules of origin that would be used to determine whether a product was eligible for preferential treatment.

At the outset of the negotiations, the ACP guidelines suggest that ACP countries sought to increase their access to the EU market in three ways: the elimination of remaining tariffs and quotas on their exports; increases in their quota allocations under the commodity protocols;

and 'an improved and simplified system of rules of origin'.[20] The ACP guidelines did not provide concrete recommendations on ACP liberalisation, although they made it clear that ACP countries should seek as much flexibility as possible. Indeed they went as far as to note that ACP states 'cannot *a priori* accept to provide reciprocity in the EPAs' and called for a change to WTO rules, suggesting that they disagreed with the premise of reciprocal liberalisation which lay at the heart of the EPA.[21] Rather late in the day, in 2009, the African Union developed a position to guide African negotiators, advocating a maximum liberalisation of 70 percent of imports over a period of twenty years.[22]

For its part, the EU directives indicated a willingness from the outset to eliminate all tariffs and quotas on imports from ACP countries.[23] While this may appear generous it entailed little significant adjustment as prior to the EPA, the EU had provided duty-free quota-free access for more than 95 percent of ACP imports. In other areas, where market access would be more meaningful, the EU was far less willing to be flexible. Despite a commitment in the Cotonou Agreement to 'review' rules of rules of origin, the EU directives only made provision for the EU to 'assess any specific request for changes… presented by the ACP'. Similarly, while the Cotonou Agreement provided that the EU should 'safeguard the benefits' derived by the ACP countries from the Commodity Protocols, the EU directives merely noted that the Sugar Protocol would be 'reviewed'.[24]

The EU set ambitious goals for its own access to ACP markets. The EU's negotiating directives did not specify the details of the liberalisation they hoped to obtain, but the EU was widely understood to interpret the WTO rules as requiring the liberalisation of 90 percent of

[20] ACP Secretariat "ACP Guidelines for the Negotiations of Economic Partnership Agreements" (2002) P12
[21] Ibid. P6, P23-25
[22] See draft template: Mangeni and Karingi (2008)
[23] The first draft of the EU directives, written by DG Trade, proposed total liberalisation by the EU. Although later watered-down, a note added to the final EU directives suggests that Sweden, supported by the UK and Denmark, held out for total liberalisation.
[24] Permanent Representatives Committee of the European Union (2002) Section 3.2

total trade between the parties.[25] Given that the EU was prepared to eliminate tariffs on nearly all imports from the ACP, this entailed tariff elimination by ACP countries on approximately 80 percent of their imports from the EU. In terms of the timeframe for liberalisation, the first draft of the EU directives proposed a transition period that 'should exceed ten years only in exceptional, duly justified circumstances' although this wording was removed from later drafts.[26] The EU directives also proposed granting additional flexibility on the timeframe to ACP countries classified as least developed.[27]

Outcome – Access to the EU Market

In terms of accessing the EU market, the outcomes reflect the EU's objectives, although the ACP did secure some concessions (Table 9).

The EU agreed to eliminate all remaining tariffs and quotas on ACP imports, with immediate effect for most products and a phase-in period for sugar and rice.[28] In rules of origin, ACP countries did not succeed in achieving the systematic review and simplification they had sought, but they did obtain some minor changes to the general rules and some significant product-specific changes, notably in textiles and fish.[29] In addition, the Pacific states secured a significant derogation for global sourcing of fish used in processed fish products, several ESA states increased their quota size for the use of non-originating tuna, and the Caribbean obtained some product-specific changes.[30]

The ACP faired less well with the various commodity protocols. In 2007, the EU unilaterally denounced the Sugar Protocol with effect from 2009, which meant that the benefits that ACP

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[25] Huber (2000). The EU made frequent reference to 90% during early negotiating sessions. For instance ACP and EC Ministers "Joint Report on the All-ACP – EC Phase of EPA Negotiations" (2003)
[26] European Commission "[Limited] Communication of the Commission to the Council (Draft): Recommendation for a Decision of the Council Authorising the Commission to Negotiate Economic Partnership Agreements with ACP Countries and Regions" (2002) Section 3.2
[27] Ibid. Section 3.2
[28] See for instance Annex 1 of CARIFORUM
[29] See Naumann (2009)
[30] Ibid. P17-21; For the Caribbean see Inama (2011) P94-95

countries had received since the colonial era would be phased out entirely by 2015.[31] Meanwhile the Banana Protocol continued to be subject to challenges at the WTO, leading to major reform and erosion of preferences for ACP countries. The only significant gain for ACP states in this area were the temporary additional quotas received by sugar and rice exporting ACP states for the period 2008-2009.[32]

Table 9: Variation in EPA texts: Liberalisation by EU

Provision	Least Restrictive / Most Advantageous to ACP	Moderately Restrictive / Moderately Advantageous to ACP	Most Restrictive / Least Advantageous to ACP
Tariffs and Quotas	CARIFORUM (DFQF by 2009; additional sugar quota and rice quota for 2008/9; declaratory commitment from EU on preferences)	ESA, EAC, PACIFIC (DFQF by 2009; additional sugar quota for 2008/9)	Ghana, Cote d'Ivoire, CEMAC (DFQF by 2009, no additional concessions)
Rules of Origin	PACIFIC (additional global sourcing for processed fish)	CARIFORUM (selected product-concessions plus declaration on fishery products) ESA, EAC (addition minor concessions for fish including derogation for tuna)	Ghana, Cote d'Ivoire, CEMAC (no specific changes secured) SADC (no specific changes secured, declaration on fishery products)

The CARIFORUM countries attempted to insulate themselves from the adverse affect of EU trade reforms, successfully negotiating a provision that committed the EU to 'undertake prior consultations' before making commitments to third parties, and to try to avoid any measures that would adversely affect them.[33] However there were early signs that the EU would not honour this commitment. Only a week after the Caribbean EPA was signed, the EU started free trade negotiations with Central American countries, proposing concessions for bananas that the Caribbean countries argued would lead to collapse of their banana export sectors.[34]

[31] ACP Sugar Protocol Countries "Press Release: ACP Countries Express Deep Concern at EU Decision to Terminate ACP-EU Sugar Protocol" (2007)
[32] All ACP regions with significant sugar exports obtained additional quotas: Caribbean (30,000 tonnes for the Dominican Republic and 30,000 tonnes for other countries), Pacific (30,000 tonnes), Eastern and Southern Africa (75,000 tonnes), and SADC (25,000 tonnes for Swaziland, and 12,000 tonnes for Mozambique). See Bilal and Stevens (2009) Table A3.1 and A3.2
[33] CARIFORUM Art42.
[34] Percival "ACP says EU Must Not Give Way on Bananas" (2008)

Outcome – Liberalisation by the ACP

Comparison of the tariff liberalisation schedules across the thirty-six ACP states (each state agreed its own tariff liberalisation schedule) shows that while the EU largely saw its objective of negotiating 80 percent liberalisation within 10 to 15 years, there was also significant variation across ACP countries (Table 10).

In terms of the timeframe for liberalisation, it is striking that the EAC and CARIFORUM countries managed to negotiate periods of twenty-five years, while most ACP states agreed to liberalise within a fifteen-year time period. In addition, while the EAC and some ESA states negotiated delays of more than six years before the first substantive liberalisation would start, the majority of ACP states agreed to start removing tariffs within two years of the signature of the EPA. Although the EU directives indicated that greater flexibility would be provided to least developed countries, this does not appear to have happened. While the EAC, which mainly comprises least developed countries, has a flexible timeframe, so does the Caribbean, which has the fewest least developed countries of any ACP region. Meanwhile, least developed countries in ESA and SADC, including Madagascar and Mozambique, conceded to relatively stringent time periods.

Turning to the depth of liberalisation, the EU's demands were of 80 percent liberalisation were met in nearly all cases, although there is some modest variation. Ghana negotiated the greatest flexibility, excluding 25 percent of the value of EU imports from liberalisation. In the CARIFORUM and EAC regions, the degree of liberalisation varies across states, with some members obtaining exclusion lists greater than the EU target of 20 percent. The deepest liberalisation commitments are found in SADC, ESA, and the PACIFIC, where no state exceeds the EU target of 20 percent.

These headline figures can be misleading however, as the extent of real cuts depended on the level of tariffs applied on EU imports in the first place. For instance, one study shows that two-thirds of SADC states and one-fifth of Caribbean states already had low applied tariff levels on EU imports prior to the EPA, with marginal tariffs of only 5 percent, which meant that they could comply with the EU demands without making substantive cuts to applied tariffs. In contrast, in Central and West Africa, marginal tariff rates were 20 percent or higher, and accepting the EU's position implied substantive cuts to applied tariffs.[35]

Table 10: Variation in EPA texts: Tariff Liberalisation by ACP

Provision	Least Restrictive / Most Advantageous to ACP	Moderately Restrictive / Moderately Advantageous to ACP	Most Restrictive / Least Advantageous to ACP
Tariff Liberalisation - timeframe	CARIFORUM, EAC (25 years; delayed start)	ESA (Zambia, Zimbabwe 15-20 years; others less than 15 years)	Ghana, Cote d'Ivoire, CEMAC, SADC, PACIFIC (less than 15 years)
Tariff Liberalisation – size of exclusion list (% EU imports)	Ghana (25%)	CARIFORUM (range 4-29%) CEMAC (21%) Cote d'Ivoire (20%) EAC (range 16-23%)	SADC (range 6-18%) PACIFIC (range 12-16%) ESA (range 3-20%)

Provisions on Customs Duties

Aside from the tariff liberalisation schedules, the trade in goods chapters contain a variety of provisions on customs duties and trade protection measures.

The EU had very specific and ambitious objectives in many of these areas including: the immediate abolition of charges having equivalent effect to tariffs and quantitative restrictions, and the phase out of export duties within ten years.[36] The EU also sought a strong standstill clause, which would prevent the parties from introducing any new customs duties after the beginning of negotiations.[37] This said, the EU directives did acknowledge that some flexibility might be needed for ACP states, and provided for the 'temporary suspension' of commitments and rescheduling of liberalisation 'where serious difficulties arise as the result of trade liberalisation', although any changes would have to be agreed 'in consultation with

[35] Bilal and Stevens (2009) P66
[36] See Permanent Representatives Committee of the European Union (2002) Section 3.2
[37] European Commission "[Limited] Communication of the Commission to the Council (Draft): Recommendation for a Decision of the Council Authorising the Commission to Negotiate Economic Partnership Agreements with ACP Countries and Regions" (2002) Section 3.2

the Community'. The EU directives also make brief reference to well-known ACP concerns about the detrimental impact of EU agricultural export subsidies, and the final directives allow for these to be examined 'on a case by case basis'. There is also acknowledgement of the need to address food security, although the wording is weak and non-specific.[38]

On the ACP side, there are few details in the negotiating guidelines in any of these areas.

Outcome

Once again, the EU obtained many of its negotiating objectives, although there is significant variation across EPA texts in the details (Table 11). In line with the EU objective, a *standstill provision* is found in all the EPA texts, even though it is not required by WTO rules.[39] The strictest form of standstill provision is found in the EAC, ESA, CEMAC, Ghana and Cote d'Ivoire texts, which requires all tariffs be bound at their applied rates upon entry into force of the agreement, even on products that are excluded from liberalisation. Slightly more flexibility is provided in the PACIFIC and SADC texts, as the standstill clause only applies to products that are to be liberalised, enabling tariffs on products on their exclusions lists to be altered at will. In general, these clauses are stricter than those found in other EU FTAs: agreements with Mexico and South Africa contain no standstill clause, while the agreement with Israel provides greater flexibility by creating a baseline for tariff liberalisation that is greater than the initial level of applied tariffs.

Although the EU directives provide for a possible clause enabling the *suspension or modification of tariff liberalisation commitments*, not all ACP countries were successful in negotiating this concession, which is found only in the CARIFORUM, CEMAC, and PACIFIC texts. While the PACIFIC wording is similar to that proposed in the EU directives, requiring agreement with the EU, the CARIFORUM and CEMAC clauses are more flexible,

[38] Ibid. Section 3.2
[39] The CARIFORUM text does not include a specific standstill clause however the way in which the tariff liberalization schedules are detailed prohibits tariff increases. See Stevens, Kennan, and Meyn (2008) P3.

enabling the ACP states to unilaterally suspend tariff reductions for a maximum of one year, if agreement is not reached with the EU within 30 days.[40] However the PACIFIC region gains additional flexibility through its emergency safeguard, which provides for the unilateral imposition or increase of tariffs in situations of 'serious balance of payments and external financial difficulties' arising from low monetary reserves, decline in tariff revenue, or following natural disaster.[41]

All EPA texts contain a provision that restricts the ability of states to levy '*other fees and charges'* on imported products. Although this reflects existing WTO commitments Ghana was able to negotiate an exemption that allows destination inspection companies to continue levying a fee of 1 percent of import value for at least ten years. In addition, Ghana negotiated a provision to keep applying, until the end of 2017, a discretionary levy on imports of 0.5 percent of import value for its 'Export Development and Investment Fund'.[42]

The EU demand to *eliminate export duties* became very controversial among ACP countries, as this is a measure that is often used for raising revenue and supporting industrialisation.[43] In the initialled EPA texts, the EU largely saw its interests met. The most restrictive wording found in the CARIFORUM EPA, which stipulates that no new export duties can be imposed and all existing export duties have to be abolished within three years.[44] In the other EPA texts, existing export duties can be maintained, but not increased and new export duties cannot be

[40] Stevens et al. (2008); Bilal and Stevens (2009) Annex A3.1
[41] PACIFIC Article 45
[42] See Ghana Art11 and Annex 3, and Annex 2
[43] The EU has clearly stated that it seeks the abolition of export duties to secure access to raw materials. See: European Commission "Tackling the Challenges in Commodity Markets and on Raw Materials: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions" (2011) Although the WTO places restrictions on the use of licenses and quotas (GATT Article XI), there are no rules on the use of export taxes (other than non-discrimination)
[44] CARIFORUM Art14

introduced. All texts except the CARIFORUM and ESA also provide for some specific exceptions.[45]

All the EPA texts contain a *most-favoured nation* (MFN) clause, which has been the cause of significant controversy among ACP countries and some large developing countries, notably Brazil.[46] The basic principle behind the MFN clause is simple: following the EPA, should any ACP country or region conclude a free trade agreement with any developed country or any other country or group of countries that are a 'major trading economy', then any more favourable treatment provided to that developed country or major trading economy must also be passed onto the EU. As the definition of a 'major trading economy' is sufficiently wide to include the key emerging developing countries such as China, India, and Brazil, this has been widely interpreted as a bid by the EU to ensure that it maintains a competitive edge in ACP markets.[47]

While all the initialled EPA texts contain the MFN clause, there is some variation. In particular, the CARIFORUM and PACIFIC texts provide for the possibility of flexible application, subject to agreement with the EU.[48] There is also some variation in scope: while the MFN clause in the PACIFIC text only pertains to customs duties, the Ghana clause applies to customs duties and non-tariff measures, and in the EAC and SADC texts it applies to the entire trade regime in goods. The CARIFORUM text has two MFN clauses, one in the

[45] The exception is that 'after consultation of the EU party' export duties can be re-introduced or increased, including to maintain currency values, to ensure fiscal solvency, to support infant industries, or for environmental reasons (the specific exceptions vary across the EPA texts). In addition, Zambia has listed a series of export taxes, which are exempted from these requirements. Bilal and Stevens (2009)

[46] In response to the MFN article in the EPAs, Brazil requested discussion at WTO general council meeting See: Filho (2008)

[47] 'Major trading partner' in the EPAs are defined as a country accounting for more than 1% of world trade, or a group of countries collectively accounting for more than 1.5 % of world trade. See for instance Ghana Art17

[48] The Caribbean text for instance stipulates that if a Caribbean signatory state becomes party to an agreement with a major trading partner and provides the third party with more favourable treatment, then the 'Parties may decide whether the concerned Signatory CARIFORUM state may deny the more favourable treatment… to the EC Party' CARIFORUM Article 19

goods chapter that applies only to customs duties, and another which covers services and investment, although it excludes the temporary movement of natural persons (Mode 4).[49]

Table 11: Variation in EPA Texts: Provisions on Customs Duties

Provision	Least Restrictive / Most Advantageous to ACP	Moderately Restrictive / Moderately Advantageous to ACP	Most Restrictive / Least Advantageous to ACP
Standstill provision		PACIFIC, SADC (only goods subject to liberalisation)	EAC, ESA, CEMAC, Ghana, Cote d'Ivoire (for all trade) CARIFORUM (tariffs full specified so no flexibility)
Suspension or Modification of Tariff Commitments	CARIFORUM, CEMAC (provides for limited unilateral action by ACP party) PACIFIC (no allowance for unilateral action by ACP party, but wider scope)		EAC, ESA, Ghana, Cote d'Ivoire, SADC (no provision)
Restrictions on use of 'other fees and charges'	Ghana (exceptions for fees of destination inspection companies and development fund)	EAC, ESA, CEMAC, Cote d'Ivoire, CARIFORUM, PACIFIC, SADC (no exceptions but in line with WTO)	
Elimination of Export Duties	Ghana, Cote d'Ivoire, CEMAC, EAC, SADC, PACIFIC (no increases or new export duties, some exceptions)	ESA (no increases or new export duties, no exceptions except Zambia)	CARIFORUM (no new, and elimination of current within 3 years)
Most-Favoured Nation Clause	CARIFORUM, PACIFIC (possibility of flexible application, if agreed with EU; only covers customs duties)		Ghana, Cote d'Ivoire, CEMAC, ESA, EAC, SADC (no possibility of flexible application; wider scope)
Free Circulation of Goods in Region	CARIFORUM (free circulation is a non-binding aspiration) ESA, Ghana, Cote d'Ivoire (no provision)	SADC, PACIFIC, EAC (customs duties be levied only once)	CEMAC (customs duties be assessed only once)

Finally, five EPA texts (SADC, PACIFIC, EAC, CARIFORUM and CEMAC) contain clauses on the *free circulation of goods*, which stipulate that customs duties on imports from the other Party should be levied only one, upon entry into the region.[50] Although the clauses are reciprocal, the challenges of implementation and compliance fall entirely on the ACP regions were there are significant impediments to intra-regional trade. The CARIFORUM text

[49] CARIFORUM Art19, Art70, Art79
[50] SADC Art27, EAC Art14, PACIFIC Art15

is the most flexible, noting that freedom of circulation is merely a 'best endeavour'.[51] The CEMAC text is the most restrictive, as it requires that duties be *assessed* only once, upon entry, with the initial country collecting duties on behalf of the country where the product is finally consumed. Given that the CEMAC region is very poor and the least integrated of all the six ACP groups, this is an onerous undertaking.[52]

Provisions on Trade Protection and Non-Tariff Measures

Trade defence mechanisms are an essential part of a free trade agreement. In the absence of tariffs, effective safeguards are the main policy instrument that can be used to protect a country from unfair trade practices such as subsidies and dumping, as well as potentially harmful impacts of sudden import surges, including on food security and nascent industrial sectors. Neither the EU directives nor ACP guidelines provide detailed objectives in these areas.

Outcome

All eight EPA texts contain substantial provisions on trade defence mechanisms and non-tariff measures and, once again, there is significant variation (Table 12).

The EPA provisions on *multilateral remedies* are the same in all texts and are uncontroversial. The Parties retain the right to use the normal WTO antidumping, countervailing duties, and safeguards and, in addition, the EU agrees to exempt EPA signatories (except South Africa) from being subject to multilateral safeguards for a period of five years.[53]

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[51] CARIFORUM Art18
[52] CEMAC Art16. Although only Cameroon is a signatory at present, should other countries join, then complying with this provision would be costly.
[53] See for instance CARIFORUM Art24

The texts also contain a *general bilateral safeguard* and there is some variation.[54] In all cases, pre-emptive safeguards can be invoked in 'exceptional circumstances' for 200 days. After that, the remedial actions taken are to be agreed jointly. Safeguards can take three forms: suspension of tariff reduction, increase of customs duties to the applied MFN rate, or the use of a tariff quota. All the EPA texts contain some asymmetry, allowing ACP countries to use safeguards for up to eight years (if the EU agrees), and allowing the EU to use safeguards for up to four years (if the ACP party agrees). As a result, ACP countries have obtained greater flexibility than other developing countries: the EU-Mexico and EU-South Africa FTAs allow for the use of safeguards for a maximum of three years.[55] However, the standard for application of a safeguard is lower than any WTO safeguards clause or EU safeguard clauses in other FTAs. Although this is easier for ACP countries to use, as this provision is symmetrical, it also means that the EU can impose measures more readily against ACP imports.[56] It is noteworthy that SADC and the PACIFIC have obtained some concessions, which provide them with additional flexibility.[57]

Five EPA texts (Ghana, Cote d'Ivoire, CARIFORUM, CEMAC, PACIFIC) contain *specific safeguard provisions for food security*, but close scrutiny suggests that this provision has little substantive significance.[58] Indeed more substantive food security provisions are found in the EU-Mexico FTA.[59] The CARIFORUM and PACIFIC texts include an explicit provision on *agricultural export subsidies*.[60] Under this clause, the EU commits to phase out export

[54] Bilal and Stevens (2009) suggest that some texts limit the number of safeguard measures that can be taken, however close scrutiny of the text suggests that this argument is questionable
[55] Ibid.
[56] See for instance Ghana Art25
[57] Matthews (2010). SADC is allowed to raise tariffs to the *bound* MFN rate (SADC Article 34) while the PACIFIC text allows the safeguard to be triggered for 'disturbances in a sector *or industry,* whether of an *economic* or social nature' [emphasis added] PACIFIC Art21
[58] Ghana Art20, CARIFORUM Art40, CDI Art20, CEMAC Art25, PACIFIC Art46. The provision only allows the ACP party access to the bilateral safeguard mechanism in instances where implementation of the Agreement leads to problems with the availability or access to foodstuffs necessary to ensure food security. As bilateral safeguards are anyway permitted in all the EPA texts to address disruption of domestic agricultural markets, it is not clear that adding this specific food security provision makes any significant difference. See ibid.P19
[59] Bilal and Stevens (2009) P148 / Appendix 4
[60] CARIFORUM Art28; PACIFIC Art24

subsidies on agricultural products that the ACP states import (in the case of the Pacific) or are liberalising (in the case of the Caribbean). However, as no time frame is given and as the EU is already under pressure at the WTO to phase out its export subsidies, the value of this concession is questionable.[61]

All eight EPA texts contain *infant industry safeguards*, which allows ACP countries to use the standard bilateral safeguard in the event that imports cause or threaten to cause 'disturbances' to an infant industry. The PACIFIC text is the most flexible, providing non-least developed countries with the ability to invoke a safeguard clause for a maximum of seven years and least developed and small island states a maximum of thirteen years, and for recourse to this safeguard for a twenty year period.[62] In contrast, all other EPA texts provide for safeguards of a maximum duration of eight years, and the period during which they can use this policy is significantly shorter, ranging from ten to fifteen years.[63] In general, the EPA infant industry safeguard is more flexible than in other EU FTAs: there is no infant industry provision in the EU-Mexico FTA, while the agreement between the EU and South Africa provides for safeguards of a maximum duration of four years and there are restrictions on the nature of the measure to be taken.[64]

Turning to non-tariff measures, the EPA texts all include a requirement to eliminate '*quotas, import or export licenses or other Measures'* upon entry into force of the agreement and, with very limited exceptions, they prohibit their future use.[65] What is most striking is that while ACP countries are already obliged to restrict these measures under WTO rules, no EPA text

[61] Matthews (2010)P24
[62] However the text specifies limits to the use of the infant industry safeguard to 3 percent of tariff lines, or 15 percent of the value of imports from the EU. The PACIFIC text is also unique in specifying the purpose of the infant industry safeguard, namely 'to promote development of productive and sustainable industries with a view to raising the general standard of living'. See PACIFIC Art21
[63] Bilal and Stevens (2009) Appendix, Table 4
[64] Ibid.
[65] See for instance CARIFORUM Art26, Pacific Art22, Ghana Art18, EAC Art17

includes all the exceptions provided for under GATT, and only the SADC and EAC texts provide for some.[66]

Finally, the EPAs contain a provision on the *national treatment of goods*. While this is largely uncontroversial as it draws directly on GATT Article III, the SADC text is alone in not providing an exception for government procurement.[67] The ESA text is more flexible than the others as, subject to agreement with the EU, it provides for exceptions for the establishment of domestic production and promotion of infant industries, and it provides a specific ten-year exception for the continuation of price controls on imports in the Seychelles.[68]

Table 12: Variation in EPA Texts: Trade Remedies and Non-Tariff Measures

Provision	Least Restrictive / Most Advantageous to ACP	Moderately Restrictive / Moderately Advantageous to ACP	Most Restrictive / Least Advantageous to ACP
Multilateral Trade Remedies	ALL except SADC (Access to standard multilateral trade remedies and EU exempts ACP from multilateral safeguards for 5 years)	SADC (South Africa not exempted from multilateral safeguards, others are exempted)	
Bilateral Safeguard (general)	SADC (pre-emptive safeguard of 200 days; safeguard duration up to 8 years; can apply tariffs up to MFN *bound* rate) PACIFIC (as majority but wider scope)	CARIFORUM, Ghana, Cote d'Ivoire, CEMAC, ESA, EAC, (pre-emptive safeguard of 200 days; safeguard duration up to 8 years; can only apply tariffs up to MFN *applied* rate; safeguard triggered more easily than in other EU FTAs)	
Food Security Safeguard		CARIFORUM, Ghana, Cote d'Ivoire, CEMAC, PACIFIC (provision but not substantive)	ESA, EAC, SADC (no provision)
Removal of Agricultural Export Subsidies	PACIFIC (provision for EU to eliminate on *all imports*, but no timeframe)	CARIFORUM, CEMAC (provision for EU to eliminate on goods to be liberalised, but no timeframe)	Ghana, Cote d'Ivoire, ESA, EAC, SADC (no provision)
Infant Industry Safeguard	PACIFIC (maximum duration of 10 years for non-LDCs; 15 years for LDCs and small island states; safeguards can be used for 20 years)	CEMAC (maximum duration of 8 years; safeguards can be used for 15 years) SADC (maximum duration of 8 years; can be used for 12 years by non-LDCs and 15 years for LDCs)	ESA (maximum duration of 8 years; can be used for 10 years by non-LDCs and 15 years for LDCs)

[66] Exceptions under GATT see Article XI:1, Article XVIII, Article XX, and the Agreement on Agriculture. The exceptions in the EAC text permit the use of temporary export restrictions to address critical shortages of foodstuffs and to support commodity marketing. Those in the SADC text permit the full range of exceptions under GATT Article XI. Other EPA signatories no longer have the right to impose temporary export restrictions to help keep the price of domestic foodstuffs low or to use quantitative restrictions to address balance-of-payment crises. Matthews (2010) P19-20

[67] SADC Art36

[68] ESA Art18, and see Annex III for the list of exceptions

			CARIFORUM, Ghana, Cote d'Ivoire, EAC (maximum duration of 8 years; can be used for 10 years)
Prohibition on use of Quantitative Restrictions	EAC (narrower scope; more exceptions)	SADC (wide scope; some exceptions)	CARIFORUM (wide scope including safeguards; no exceptions) PACIFIC, ESA, Ghana, Core d'Ivoire, CEMAC (narrower scope; no exceptions)
National Treatment of Goods	ESA (additional exceptions)	CARIFORUM, Ghana, Cote d'Ivoire, CEMAC, EAC, PACIFIC (exception for government procurement)	SADC (no exception for government procurement)

Customs and Trade Facilitation

In the area of customs and trade facilitation, the EU has been a key demandeur at the WTO, calling for binding obligations and the adoption of standardised rules. Although improving trade facilitation can bring substantial gains, developing countries have argued strongly against binding WTO rules on the grounds that they entail high implementation costs and a require substantial institutional capacity.[69]

In the EPAs, the EU sought to obtain commitments to substantial reforms in ACP countries that would draw on 'the highest international standards'.[70] Although the ACP objectives show a similar desire to improve trade facilitation, emphasis is on cooperation with the EU and there is no mention of making binding commitments on standards.[71]

Outcome

Six of the eight EPA texts contain chapters on customs and trade facilitation (in the ESA and EAC texts these are demarcated as areas for future negotiation). In addition, all eight texts have a standard protocol on 'mutual administrative assistance in customs matters'. It is striking that the scope of these chapters is considerably greater than many other EU free trade

[69] See for instance Rege (2002)
[70] European Commission "[Limited] Recommendation for a Council Decision Authorising the Commission to Negotiate Economic Partnership Agreements with the ACP Countries and Regions" (2002)Para 3.5
[71] ACP Secretariat "ACP Guidelines for the Negotiations of Economic Partnership Agreements" (2002)P13

agreements with developing countries. As with other issue areas, there is substantial variation across the texts (Table 13).

The most substantive commitments are found in the provisions on customs and legislative procedures. The Ghana, CEMAC, and SADC texts are the most restrictive as they oblige the trade and customs legislation of the parties to be 'based on' on a range of international instruments and standards, including the revised Kyoto Convention, substantive elements of the World Customs Organisation Framework of Standards to Secure and Facilitate Global Trade, and the International Convention on the Harmonised system.[72] As the majority of ACP states are not signatories to the revised Kyoto Convention, and the WCO Framework is merely a set of 'best endeavour' standards, these entail significant obligations for these ACP states. In stark contrast, the PACIFIC, CARIFORUM, and Cote d'Ivoire texts merely agree that their customs procedures and legislation will 'draw upon' these standards.[73]

The EPA texts all contain a long list of additional provisions including on the use of modern customs techniques including risk analysis, simplified procedures, use of bonded warehouses, freedom of transit, non-discriminatory treatment of transit items, electronic exchange of data, and the use of pre-shipment inspection. For the main, the Ghana, Cote d'Ivoire, CEMAC and SADC texts confer substantive obligations on the parties, while in the CARIFORUM and PACIFIC texts many provisions are couched in more flexible language. The main exception to this trend is in the use of a single administrative document (a common demand of the EU in free trade agreements). While the CEMAC and PACIFIC texts confer a substantive obligation, the CARIFORUM text contains a best endeavour clause, and it is not mentioned in the Ghana and Cote d'Ivoire texts.[74] In addition, the CEMAC text avoids any prohibition on

[72] SADC Art39, Ghana Art29, CDI Art29, CEMAC Art35
[73] PACIFIC Art28, CARIFORUM Art31
[74] PACIFIC Art28, CAR Art31, SADC Art39-40, CEMAC Art35-36, CDI Art29, Ghana Art29

the use of mandatory pre-shipment inspections, deferring this to the negotiation of the full EPA.[75]

The PACIFIC and SADC texts include additional provisions that afford the ACP Parties some additional flexibility. The former includes a provision that 'the implementation [of some provisions]… by small island states shall be done as appropriate, taking into account the small size and capacity of their administrations'.[76] The latter includes an article on 'transitional measures', which provides SADC states that lack the requisite administrative capacities with a transitional period of five years (and possibly two further years) to adhere to many of their obligations in the chapter on customs.[77]

All the texts contain articles on relations with the business community including making public 'all customs legislation, procedures and fees' and 'committing to regular consultation with trade representatives'. While these are similar across the EPA texts, the wording in the CARIFORUM, PACIFIC, and SADC texts confers fewer obligations on the parties than that in the Ghana, Cote d'Ivoire and CEMAC texts. Finally, four of the six EPA texts establish a dedicated joint committee to address customs and trade facilitation (CARIFORUM, Ghana, Cote d'Ivoire and SADC).

All six texts also contain provisions on the regional harmonisation of customs standards. The CARIFORUM has the highest level of obligation where the Parties 'shall promote to the *highest level possible* regional integration…in line with the relevant international standards'.[78] These are followed by the CEMAC and PACIFIC text, where the Parties 'shall promote regional integration in the field of customs and shall *strive* to develop common

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[75] CEMAC Art25
[76] PACIFIC Art28
[77] SADC Art46
[78] CARIFORUM Art34

legislation…'[79] The SADC, Ghana, and Cote d'Ivoire texts contain the least onerous commitments, with the Parties merely agreeing to 'promote or harmonisation' or to 'facilitate progress of customs reforms'.[80]

Overall, the EPAs include far more detailed and substantive commitments than in the EU-Mexico and EU-South Africa texts, coming close to the level of obligation in the EU-Chile agreement (although notably they do not require the use of a single border agency). This is notable, as the trade facilitation provisions in the EU-Chile agreement, signed in 2002, were noted for being 'deep and wide-ranging' and reflecting many of the proposals the EU had made in the WTO.[81]

Table 13: Variation in EPA Texts: Customs and Trade Facilitation

Provision	Least Restrictive / Most Advantageous to ACP	Moderately Restrictive / Moderately Advantageous to ACP	Most Restrictive / Least Advantageous to ACP
Objectives and Cooperation	CARIFORUM, PACIFIC		CEMAC, Ghana, Cote d'Ivoire, SADC (freedom of movement obligations, harmonisation, adoption of international standards)
Adherence to Range of International Standards	CARIFORUM, PACIFIC, Cote d'Ivoire (mainly non-binding)	SADC (binding obligations, 5 year transition period)	CEMAC, Ghana (binding obligations, no transition period)
Use of Single Administrative Document	CARIFORUM (non-binding) Ghana, Core d'Ivoire (not mentioned)	SADC (binding obligations, 5 year transition period)	PACIFIC, CEMAC (binding obligations, no transition period)
Regional Harmonisation	SADC, Ghana, Cote d'Ivoire	CEMAC, PACIFIC	CARIFORUM
Other Commitments	CARIFORUM, PACIFIC (fewer / less onerous commitments)	CEMAC (more binding / onerous obligations, exemption for use of pre-shipment inspections) SADC (binding obligations, 5 year transition period)	Ghana, Cote d'Ivoire, (more binding / onerous obligations)
Common Institutions	CEMAC, PACIFIC (no joint committee)		CARIFORUM, Ghana, Cote d'Ivoire and SADC (joint committee)

[79] PACIFIC Art31, CEMAC Art39
[80] SADC Art44, Ghana Art32, CDI Art32
[81] Fasan (2004)

Technical Barriers to Trade and Sanitary and Phyto-Sanitary Measures

The area of standards is of significant interest to ACP states, as the inability of their exporters to meet the EU's ever-increasing high product standards are a major impediment to market access. The ACP negotiating guidelines set out a series of objectives in the area of standards, which focused on securing support from the EU to upgrade their standards-setting institutions and to develop their capacity to adhere to EU standards. They also included increasing coordination with the EU, particularly in the area of information exchange, and concluding, in due course, mutual recognition agreements.[82]

In contrast, the EU sought to preserve the status quo, with the EU directives merely repeating the objective of the Cotonou Agreement 'to negotiate, where appropriate, mutual recognition agreements in sectors of mutual interest'.[83]

Outcome

Six of the eight EPA texts contain provisions on technical barriers to trade (TBT) and sanitary and phytosanitary standards (SPS) (in the ESA and EAC texts these are demarcated as areas for future negotiation). While none of the ACP countries succeeded in obtaining binding commitments from the EU for support, they gained minor concessions in some areas and accepted new obligations in others. Once again there is some variation across EPA texts (Table 14).

In line with many other EU free trade agreements, the SPS and TBT provisions focus principally on the *adherence to international agreements* including relevant WTO provisions, the International Plant Protection Convention, CODEX Aliment Arius, and the World Organisation for Animal Health.[84] This requirement is uncontroversial for the majority of

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[82] ACP Secretariat "ACP Guidelines for the Negotiations of Economic Partnership Agreements" (2002) P15

[83] European Commission "[Limited] Recommendation for a Council Decision Authorising the Commission to Negotiate Economic Partnership Agreements with the ACP Countries and Regions" (2002) Para 6.2

[84] See Rudloff and Simons (2004)

ACP countries as they are already members of these bodies. However, the PACIFIC and CEMAC texts include a provision committing non-WTO members to adhere to the WTO TBT and SPS agreements (although in the PACIFIC text this requirement is qualified as by special and differentiation provisions and an obligation on non-WTO members to implement the agreements in line with their level of institutional capacity).[85]

In the area of *harmonisation of standards*, the obligations entailed in most EPA texts do not go beyond existing WTO obligations. The notable exception is the CEMAC text, which obliges Central African states to harmonize their TBT and SPS measures intra-regionally within four years of the entry into force of the EPA, and to harmonize their import conditions for products originating in the EC.[86]

In situations where standards differ between countries and harmonisation of standards is not practical, the WTO Agreements encourage states to facilitate trade by recognising the 'equivalence' of each other's standards, including through the negotiation of mutual recognition agreements. This was an issue of offensive interest for the ACP, who sought commitments on the negotiation of mutual recognition agreements with the EU, but to little avail. Only the SADC, CARIFORUM and PACIFIC texts make mention of equivalence, and the obligation entailed is very weak, conferring little practical advantage in ACP states.[87] This stands in contrast to the other EU FTAs, including EU-Chile Agreement, which contains substantive provisions.[88]

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[85] PACIFIC Art36, CEMAC Art41
[86] CEMAC Art46. While this provision does not have much effect while there is only a single EPA party (Cameroon), if other Central African States join the EPA, this is a significant obligation. Moreover, as it is limited to EC-originating products, the provision provides substantive potential market access gains to EU exporters but offers few benefits to the Central African signatories. See Prevost (2010) P15
[87] SADC Art53, PACIFIC Art37.
[88] Prevost (2010) P37

In the area of *transparency and information exchange*, ACP states sought commitments that would enable them to have advanced warning of the implementation of new EU standards, in the hope that this would give their exporters more time to adjust. The SADC, CARIFORUM and PACIFIC texts contain some provisions that confer obligations on the EU that go beyond WTO Agreements.[89] The SADC text is the strongest and most noteworthy as 'the Parties agree to establish an early warning system to ensure that SADC states are informed in advance of new EC SPS measures that may affect SADC EPA exports to the EU'.[90] The CARIFORUM, Ghana, Cote d'Ivoire and CEMAC texts also confer obligations on the parties to '*inform each other in writing of measures taken'*, an obligation which extends beyond the WTO Agreements but which is a relatively minor concession by these ACP states.[91]

Obtaining recognition from the EU that their exports are free of pest and disease has been a challenge for many ACP countries, particularly those exporting livestock, and the WTO SPS Agreement is weak in these areas. Unfortunately, the EPA texts fail to make substantive improvements. The SADC text has the strongest wording as it confers an obligation to apply '*zoning and compartmentalisation'*, but it only obliges the Parties to 'take account' of international standards, not adhere to them. Moreover, there are no details on how this will be operationalised.[92] The Cote d'Ivoire, Ghana and CEMAC texts only provide that SPS measures 'may' be applied to specific areas on a 'case-by-case' basis, while the CARIFORUM and PACIFIC texts make no reference to zoning and compartmentalisation' (although as the latter two regions export little in the way of livestock, this issue is of less interest to them).

Mechanisms for consultation and the establishment of *dedicated joint committees* are issues of potential importance to ACP countries as they provide a forum to raise concerns with the

[89] PACIFIC Art40, CARIFOUM Art48 and Art57
[90] SADC Art61
[91] CARIFORUM Art49, CDI Art41, Ghana Art41
[92] SADC Art60. Also Prevost (2010)

EU. The CARIFORUM and PACIFIC texts create an obligation to inform and consult each other as early as possible if a TBT or SPS problem arises that affects trade, while the SADC EPA merely recognises the importance of consultation. Only the SADC and PACIFIC texts provide for the creation of a dedicated joint committee. A major challenge for developing countries is that the interests of developed countries tend to dominate the *international standard-setting process*. Although the EPA texts acknowledge this challenge, and the EU undertakes to support the participation of ACP countries in standards-setting bodies, there are no details or indications of a budget, so it is not clear that this will provide ACP countries with a tangible gain.[93]

Table 14: Variation in EPA Texts: SPS and TBT provisions

Provision	Least Restrictive / Most Advantageous to ACP	Moderately Restrictive / Moderately Advantageous to ACP	Most Restrictive / Least Advantageous to ACP
Implementation of International Agreements	CARIFORUM, Ghana, Cote d'Ivoire, SADC (countries uphold existing international obligations)	PACIFIC (applies to non-WTO members, although qualified)	CEMAC (applies to non-WTO members, without qualification)
Harmonisation (international and regional)	CARIFORUM, Ghana, Cote d'Ivoire, SADC (no obligation, cooperation will support regional harmonisation) PACIFIC (not mentioned)		CEMAC (binding commitment to regional harmonisation within 4 years, for imports from EU)
Equivalence	PACIFIC (obliges EU to give due consideration to requests)	CARIFORUM, SADC (best endeavour)	CEMAC, Ghana, Cote d'Ivoire (no mention)
Early Warning of Measures	SADC (early warning system to be created)	CARIFORUM, PACIFIC (best endeavour)	CEMAC, Ghana, Cote d'Ivoire (no mention)
Directly Inform of Changes to Measures	PACIFIC, SADC (no obligation)	CARIFORUM, Ghana, Cote d'Ivoire (obligation in specific cases)	CEMAC (general obligation)
Zoning / Compartmentalisation	SADC (obliges parties to use this approach)	CEMAC, Ghana, Cote d'Ivoire (case by case)	PACIFIC, CARIFORUM (no mention)
Consultation	CARIFORUM, PACIFIC (obligation to consult)	SADC (best endeavour)	CEMAC, Ghana, Cote d'Ivoire (no mention)
Common Institutions	SADC, PACIFIC (joint committee)		CARIFORUM, CEMAC, Ghana, Cote d'Ivoire (no committee)

[93] CARIFORUM Art50, SADC Art53, CDI Art42, Ghana Art42; ibid. P17

Services, Investment and Capital Movements

Scrutiny of the EU negotiating directives reveals that the EU had very ambitious aims in services and investment, which far exceeded the objectives of the Cotonou Agreement. The EU sought commitments from ACP countries in all four modes of supply and in 'substantially all' sectors, with liberalisation taking place over a ten-year period. The EU directives did provide for the use of limited flexibilities in line with GATS rules, and noted that some ACP states may not be in a position to start negotiations on services immediately, so if needed negotiations could be postponed until 2006.[94] The EU directives also provided for a relatively high level of access to be granted to ACP countries, although not in Mode 4, the area of greatest interest to ACP countries.[95] The directives also proposed a strict standstill provision for both parties under which 'no new or more discriminatory measures will be introduced… after the beginning of the negotiations'.[96] In stark contrast, the ACP guidelines sought to strengthen the capacity and competitiveness of ACP services sectors and improve access to EU markets, particularly for Mode 4. Crucially, there was no proposal of ACP countries opening their services towards the EU.[97]

In investment, the EU directives call for the negotiation of rules to stimulate investment based on the principles of 'non-discrimination, openness, transparency, and stability, and general principles of protection'.[98] Again, in stark contrast, the ACP guidelines focus on building the

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94 Sections 4.1-4.3 European Commission "[Limited] Recommendation for a Council Decision Authorising the Commission to Negotiate Economic Partnership Agreements with the ACP Countries and Regions" (2002)

95 See Permanent Representatives Committee of the European Union (2002); European Commission "[Limited] Recommendation for a Council Decision Authorising the Commission to Negotiate Economic Partnership Agreements with the ACP Countries and Regions" (2002) P6 Notably, the first draft of the EU directives (drafted by the EC) advocated a high level of liberalisation by the EU, covering all four modes of supply and substantially all sectors, over a ten-year period. The final EU directives proposed a lower level of market opening by the EU, particularly in Mode 4, suggesting a substantial pushback from member states

96 Sections 4.1-4.2, European Commission "[Limited] Recommendation for a Council Decision Authorising the Commission to Negotiate Economic Partnership Agreements with the ACP Countries and Regions" (2002)

97 ACP Secretariat "ACP Guidelines for the Negotiations of Economic Partnership Agreements" (2002) P12

98 Section 6.2 European Commission "[Limited] Communication of the Commission to the Council (Draft): Recommendation for a Decision of the Council Authorising the Commission to Negotiate Economic Partnership Agreements with ACP Countries and Regions" (2002)

capacity of ACP states to attract investment, going into depth on the types of support required, but they make no mention of negotiating liberalisation or binding rules.[99]

On capital movements the EU directives are very ambitious, seeking to negotiate 'further opening of the capital market beyond direct investment' although this is qualified by the importance of taking into account 'the need to develop an appropriate regulatory framework'.[100] In this area, the ACP guidelines are silent, and in its analysis the ACP Secretariat notes that 'it is to early to consider internalising this sector in the EPA negotiations without having undertaken background work on the options that could be available'.[101]

Outcome

Unlike the previous issue areas where the EU largely saw its interests realised, a striking outcome of the negotiations in services, investment, and capital movements is that only the CARIFORUM text contains substantive commitments in all three areas, while the SADC text contains provisions on capital movements. Other texts contain a series of rendezvous clauses, of varying strength (Table 15).

CARIFORUM EPA

The CARIFORUM text is reported to be the broadest agreement in trade in services and investment that the EU has thus far concluded with any region of the world, and, when it was signed, it was seen as the 'avant-garde' of EU trade policy in this area.[102] The text covers all services and modes, and it incorporates investment by extending the scope of commitments in commercial presence (Mode 3) to include all sectors relevant to the production of goods

[99] ACP Secretariat "Comparative Table of the ACP Negotiating Guidelines and the EU Negotiating Directives for the Negotiation of Economic Partnership Agreements" (2002) P46-51
[100] Section 5 European Commission "[Limited] Communication of the Commission to the Council (Draft): Recommendation for a Decision of the Council Authorising the Commission to Negotiate Economic Partnership Agreements with ACP Countries and Regions" (2002)
[101] ACP Secretariat "Comparative Table of the ACP Negotiating Guidelines and the EU Negotiating Directives for the Negotiation of Economic Partnership Agreements" (2002) P45
[102] World Bank (2010)P128, Schloemann and Pitschas (2009)P102

(agriculture, mining, fishing, manufacturing etc.). [103] The inclusion of investment is particularly surprising as Caribbean and other developing countries fought against the inclusion of investment in the WTO, and the Caribbean region has no internal arrangements for investment, either within CARICOM or between CARICOM and the Dominican Republic.[104] Given the extensive provisions, it is worth examining the commitments in some depth.

Rules on Investment and Services: The text contains three chapters that set out the main rules governing investment and services in each mode of supply. The basic approach of these chapters is that signatory states list the sub-sectors of economic activity that they are opening up and, in these areas, they agree to provide non-discriminatory national treatment to service providers and investors from the other party. To this end, the texts prohibit the use of a wide range of discriminatory policy measures, which cannot be used unless states have explicitly reserved the right to use them in the liberalisation schedules annexed to the agreement.[105] The notable exception to this pattern is found in the chapter on Mode 4, where market access for contractual service suppliers and independent professionals is subject to a wide range of conditions which apply over and above any other specific measures that individual countries may have scheduled.[106]

In addition the chapters contain a number of other key provisions. The text contains a strong standstill clause that applies only to Caribbean states (not the EU) and covers all modes of supply in all services sectors (but not investment in the non-services sectors). It obliges the Caribbean states to 'maintain the conditions of market access and national treatment… to

[103] Title III of the CAR EPA.
[104] Sauvé and Ward (2009)P47-48
[105] Prohibited measures on Mode 3 include limitations on the number or value of investments including the use of economic needs tests, limitations on the participation of foreign capital, and measures that require specific types of commercial presence such as joint ventures (CARIFORUM Art67). Notably however, there are no disciplines on performance requirements and the chapter does not contain disciplines on the core investment protection issues of treatment, expropriation and compensation, and nor does it provide for an investor-state dispute settlement mechanism. In addition, subsidies are excluded from the remit of the chapter. Ibid.P16.
[106] CARIFORUM Art83, Art84

services, service suppliers, investors and commercial presences of the EC party at the time of signature of this Agreement'.[107] This is more onerous that GATS, which allows states to bind their commitments at levels below the regulatory status quo.[108]

As with the trade in goods chapter, there is an MFN clause for any agreements with a 'major trading economy', which covers all commitments, with the exception of those in Mode 4.[109] It is also noteworthy that the text contains a number of rules governing the behaviour of foreign investors, which were proposed by the Caribbean states. These include a commitment that the Parties will cooperate to ensure that investors do not bribe or attempt to corrupt public officials, and obligations on the parties to ensure investors adhere to labour and environmental standards and liaise with local communities.[110]

Turning to the regulatory framework, the provisions do not exceed GATS to any significant extent in general areas such as transparency and procedures, there are no disciplines on subsidies, and there is no provision for an emergency safeguard, a proposal that the EC has blocked at the WTO.[111] On the negotiation of mutual recognition agreements, which are crucial for realising market access, the chapter does exceed GATS in that it generates some legal pressure towards the conclusion of such agreements, which is a gain for the Caribbean.[112]

Depth of Liberalisation: The depth of liberalisation can only be established by analysing the annexed schedules, where signatory states stipulate the sectors they are opening, together with any restrictions that they retain the right to impose.

[107] CARIFORUM Annex IV F para.9
[108] Sauvé and Ward (2009)P13
[109] CARIFORUM Art70
[110] CARIFORUM Art72
[111] Sauvé and Ward (2009)P35
[112] Schloemann and Pitschas (2009)P106

The EU and Caribbean states open up a relatively high number of sectors, although there is significant asymmetry, with the EU committing to liberalise 94 percent of services sectors, and the Caribbean countries committing to liberalise between 65 and 75 percent of sectors. However when compared with existing international commitments (under GATS), the Caribbean states are making significantly higher commitments compared with the EU, which only exceeds its GATS commitments in a few areas.[113] Under GATS, the share of sectors liberalised by Caribbean countries varied from 15 percent (Belize) to 40 percent (Trinidad and Tobago). Under the EPA, this has increased to between 65 and 75 percent. The greatest difference is Guyana, where scheduled liberalisation increased from 19 percent under GATS to 82 percent under the EPA (the highest level of any Caribbean country).[114]

The most significant gains for Caribbean states are in Mode 4, where the CARIFORUM text has the broadest coverage of labour mobility of any agreement between the EU and a developing country.[115] However in practice, the gains are likely to be small, as the chapter only covers categories of highly skilled workers, and in these areas the EU stipulates a myriad of requirements and reservations.[116]

Sector-Specific Rules: The services provisions are also notable as aside from the general regulatory framework, there are a series of sector-specific provisions, several of which extend substantially beyond GATS and are seen as setting new precedents for EU free trade agreements.

There are a series of disciplines for *courier services*, which, some analysts argue is 'remarkable' given that there are no specific regulatory disciplines in this sub-sector in the

[113] Francis and Ullrich (2009)P68
[114] Ibid.P90. Note that in sectors that were already scheduled under GATS, Caribbean countries make relatively few new commitments World Bank (2010)P102
[115] World Bank (2010)P103
[116] A particular problem is posed by the frequently scheduling of economic needs tests by EU member states. These can be applied in a non-transparent and discretionary way, and can be a severe constraint to market access. Ibid.P106

WTO context. The text largely mirrors a Reference Paper proposed by the EU at the WTO in 2005 and, although the text is less comprehensive, it imposes significant obligations on the Parties' regulators.[117] In *telecoms*, the text builds on the WTO Telecoms Reference Paper, which most Caribbean countries have either already accepted or are implementing similar policies at the national level.[118] However in areas including licensing and universal service obligations, the text exceeds the WTO Reference Paper and imposes substantive regulatory obligations.[119]

Turning to *financial services*, the provisions are more significant. Many of these stem from the GATS 'Understanding on Commitments on Financial Services', which Caribbean states are not party to, so they confer a significant level of new obligations. This is particularly the case in the area of 'new' financial services (such as derivatives) and financial data processing.[120] In a few areas, the text exceeds the GATS Understanding and includes some measures that have been heavily criticised by developing countries at the WTO for fear that they will open the door for powerful foreign providers to unduly influence regulators during the drafting stage.[121]

In *tourism*, an area of offensive interest to the Caribbean, the Caribbean negotiators secured a concession that obliges the Parties (de facto the EC) to prevent anti-competitive practices by their tourism service suppliers aboard.[122] This is a significant gain for the Caribbean as powerful, often vertically integrated European providers exert significant anti-competitive pressures. Finally, in *e-commerce*, the EPA makes binding provisions in areas where there are on-going multilateral discussions. Although not as advanced as agreements signed by the US,

[117] Schloemann and Pitschas (2009) P111-117
[118] Ibid. P117-124
[119] P120 World Bank (2010)
[120] CARIFORUM Art106-107
[121] World Bank (2010) P122
[122] CARIFORUM Art111

the e-commerce provisions set important precedents for developing countries and for future multilateral negotiations.[123]

Free Transfer of Funds: In the area of current payments and capital movements, the Parties have to allow all payments for current transactions between their residents in freely convertible currency and to provide unrestricted capital movement to direct investment and all other forms of investment encompassed by the agreement (provisions similar to the Cotonou Agreement, and which exceed GATS obligations).[124] Crucially, the text includes a balance of payments safeguard that is much stricter than in the Cotonou Agreement, allowing governments to restrict payments and capital movements only 'in exceptional circumstances' and when this threatens or causes 'serious difficulties' in the operation of 'monetary policy or exchange rate policy', when the measure is 'strictly necessary', and measures can only be used for a maximum of six months.[125]

Other EPA Texts

Aside from the CARIFORUM text, the SADC text is the only one with substantive commitments in any of these areas, and these are limited to the international transfer of funds. Like CARIFORUM, SADC accepts a safeguard that is more restrictive than in the Cotonou Agreement, but its commitments are more flexible. In the area of current payments, SADC states retain the right to 'take the measures necessary' to ensure that the liberalisation of current payments 'are not used by its residents to make unauthorised capital outflows', a

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[123] Sauvé and Ward (2009)P43
[124] CARIFORUM Art122, Cotonou Annex II Art.12. In contrast, GATS Article XI only obliges this in sectors where sectoral commitments are made. Note that Barbados has scheduled a horizontal exception, which subjects all transfers and payments of currency to its Exchange Control Act. See Kelsey (2010) P32.
[125] CARIFORUM Art124. In contrast, the Cotonou Agreement imposes no time limits or 'strict' necessity test and allows for the use of the safeguard whenever a country faces 'serious balance of payments difficulties', no matter the cause. Notably however, the definition of investment in the text is limited to commercial presence, so it does not apply to other forms of investment such as portfolio investment and other assets such as intellectual property CARIFORUM Art65

measure intended to stem capital flight. Unlike CARIFORUM, SADC states make no commitment to further liberalise capital movements.[126]

In addition, SADC and the other six EPA texts all include rendezvous clauses, which commit the parties to negotiations at a later date. These vary greatly in content. The most restrictive are found in the CEMAC and SADC texts. The CEMAC text obligates the Parties to 'negotiating the necessary provisions for the gradual, asymmetrical, and reciprocal liberalisation of establishment [i.e. investment] and trade in services' by January 2009.[127] In the area of capital movements, the objective places primacy exclusively on liberalisation: 'any obstacle to these flows would be contrary to the objectives of liberalisation'. It also commits the parties to concluding negotiations that go further than the CARIFORUM text, including liberalising current and capital movements and a safeguard clause, as well as 'a development clause, providing for the liberalisation of *other types of capital movements not related to investment'* [emphasis added].[128]

The SADC text is slightly more flexible. It text obligates the EU and four of the seven SADC countries (Botswana, Lesotho, Mozambique and Swaziland) to 'complete negotiations on services liberalisation' and 'an investment chapter' by December 2008. However unlike the CEMAC text, this will only include 'a liberalisation schedule for *one* service sector for each participating SADC state', and a commitment to a 'standstill' clause, with negotiation over liberalisation in other sectors taking place over the subsequent three years.[129] As drafted, the reference to the standstill clause is more restrictive than it need be, as it refers only to the specific provision in GATS that stipulate the standstill, thereby excluding the provisions relating to special and differential treatment for developing countries.[130]

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[126] SADC Art 65-66
[127] CEMAC Art54
[128] CEMAC Art56
[129] SADC Art67
[130] The SADC text (Art 67) refers exclusively to Article V 1.b.ii of GATS, while the provision for special and differential treatment is found in Article V 3 of GATS.

The Ghana, Cote d'Ivoire, ESA, EAC and PACIFIC texts are far more flexible. The first four refer explicitly to the negotiation of services and investment, but only oblige the Parties to 'continue negotiations' or 'encourage the negotiation and earliest possible conclusion' of an agreement in these areas.[131] In addition, the ESA text stipulates that the wording of the rendezvous clause 'does not prejudge the position of the regional organisations on the above issues', thereby leaving greater room for manoeuvre in subsequent negotiations. Only the Cote d'Ivoire and ESA texts explicitly mention negotiations on capital movements. In the PACIFIC text, the rendezvous clause does not mention services, investment or capital movements explicitly, noting only that the Parties are 'committed to the continuation and successful conclusion' of negotiations by the end of 2008, 'including all components and all interested countries in the Pacific region'.[132]

Table 15: Variation in EPA Texts: Services, Investment and Capital Movements

Issue Area	Least Restrictive / Most Advantageous to ACP	Moderately Restrictive / Moderately Advantageous to ACP	Most Restrictive / Least Advantageous to ACP
Services	Ghana, Cote d'Ivoire, ESA, EAC, (weak rendezvous clause) PACIFIC (rendezvous, not specific)	SADC, CEMAC (strong rendezvous clause)	CARIFORUM (Very extensive obligations. Some significant small gains from EU)
Investment	Ghana, Cote d'Ivoire, ESA, EAC, (weak rendezvous clause) PACIFIC (rendezvous, not specific)	SADC, CEMAC (strong rendezvous clause)	CARIFORUM (Substantive and detailed new obligations)
Capital Movements	Ghana, Cote d'Ivoire, ESA, EAC (weak rendezvous clause) PACIFIC (rendezvous, not specific)	SADC (some substantive provisions, strict safeguard) CEMAC (strong rendezvous clause)	CARIFORUM (Substantive and detailed new obligations)

Trade-Related Issues

The last major issue-areas in which the EPA texts contain substantive commitments are the trade-related areas of competition, intellectual property rights, government procurement, and

[131] ESA Art53, CDI Art44, EAC Art37, ESA Art44
[132] PACIFIC Art69

data protection. In these areas, the EU was particularly ambitious in government procurement, but in the areas of competition policy and intellectual property rights, it only sought to 'reconfirm' the commitments undertaken in Cotonou.[133] During the negotiations, the EU sought substantive commitments in all three areas that went beyond WTO, suggesting that the EU's objectives evolved and became more ambitious.

Once again, the ACP guidelines suggest a radically different focus, emphasising building the capacity of ACP states. Again, they make no mention of negotiating liberalisation or specific rules, and the ACP guidelines suggest that these should be pursued at the multilateral rather than the bilateral level.[134] The one exception is in the area of intellectual property, where the ACP guidelines refer to the need to 'develop an intellectual property regime' suggesting that rules could be negotiated with the EU. Here the ACP guidelines make several offensive and defensive proposals, largely reflecting the position of developing countries at the WTO (proposals that the EU had opposed). These include the need 'to develop mechanisms that prevent bio-piracy' and that 'provide for the protection of traditional knowledge' as well as the need to 'seek the application of meaningful incentives by the EU… to transfer technology to ACP States'.[135]

Outcome

As with services and investment, only the CARIFORUM text contains substantive provisions in these areas. In other texts, these issues are referred to in rendezvous clauses, which vary in strength.

[133] European Commission "[Limited] Recommendation for a Council Decision Authorising the Commission to Negotiate Economic Partnership Agreements with the ACP Countries and Regions" (2002) In public procurement the first draft stated that 'EPAs will set the objective of achieving reciprocal and progressive liberalisation… and *effective access* to their procurement markets'. In the final draft this is modified to focus exclusively on transparency

[134] ACP Secretariat "Comparative Table of the ACP Negotiating Guidelines and the EU Negotiating Directives for the Negotiation of Economic Partnership Agreements" (2002) P46-51

[135] ACP Secretariat "ACP Guidelines for the Negotiations of Economic Partnership Agreements" (2002) P14

CARIFORUM EPA

Competition: Unlike some other areas, the CARIFORUM provisions on competition are less stringent than in other recent EU free trade agreements. They do oblige the signatory states to have competition laws 'in force' (which must address collusion and abuse of dominant position) and to establish national or regional competition authorities within five years of the agreement entering into force.[136] However, the text does not prescribe the contents of these laws or provide benchmarks for evaluating the appropriateness of policy, leaving Caribbean states with substantial flexibility.[137] At the time the EPA was signed, not all the Caribbean states had enacted national legislation, and only two countries (Jamaica and Barbados) had national institutions, so these commitments do require substantive changes at the national level.[138]

The most significant obligation is in the area of public enterprises and state monopolies, where obligations extend significantly beyond WTO requirements, and the Caribbean states have made a significant concession to the EU.[139] In addition, competition provisions are found in other parts of the EPA text, including in chapters on tourism, courier services, and telecoms, and these provisions are significantly more advanced that in other EU free trade agreements.[140] Finally, the EPA text details the types of cooperation that should take place between the EU and Caribbean states, although unlike other EU free trade agreements, it does not include mutual or coordinated enforcement.[141]

[136] CARIFORUM Art126 and 127
[137] Although the objective of the EPA focuses narrowly on promoting a maximum level of competition South Centre (2008)P9-12
[138] P327 Dawar and Evenett (2008)
[139] CARIFORUM Art129. WTO obligations require state enterprises to act in a non-discriminatory manner, but do not cover domestic sales and purchases. The EPA text goes further, requiring public enterprises to be subject to competition laws and Parties must ensure that any measures distorting trade in goods and services between the parties and which are 'contrary to the parties' interests' are eliminated. In addition, within five years, all state monopolies must be reformed to eliminate any measures that discriminate between Caribbean and EU nationals in the sale and purchase of goods or services. South Centre (2008)P14
[140] Sauvé and Ward (2009)P51
[141] CARIFORUM Art128; South Centre (2008)P12-13, Dawar and Evenett (2008)P334

Intellectual Property: The CARIFORUM text contains extensive provisions on innovation and intellectual property. Unlike other EU free trade agreements, at the Caribbean's insistence, the emphasis of the chapter is on fostering innovation, creativity and development rather than protecting and enforcing intellectual property rights.[142] Crucially however, the detailed and ambitious provisions on innovation are couched in best-endeavour terms and there is no binding obligation on the EU party to provide support.[143] In stark contrast, many provisions on intellectual property, particularly those reflecting the EU's core interests are binding, although here too, the Caribbean obtained some concessions.

The chapter contains specific obligations on the standards to be adhered to in a wide range of areas of intellectual property. In *copyright and related rights*, the text requires the Caribbean states to comply with the World Intellectual Property Organisation treaties on copyright, and performance and phonograms.[144] This is a substantial obligation as only three of the fifteen Caribbean states were members of these treaties when the EPA was signed, and an issue of concern as the treaties have been heavily criticised for containing highly restrictive standards on access to knowledge, including impeding access to digital information for education, research and culture.[145] There are detailed and new commitments requiring the parties (by default the Caribbean) to protect *geographic indications*, an issue of high interest to the EU.[146] Similarly, in the area of *industrial designs*, the text contains substantial provisions that exceed existing commitments under TRIPS.[147] In particular, countries are to endeavour to accede to the Geneva Act of the Hague Agreement for the International Registration of Industrial Designs, which, *inter alia*, requires protection of 25 years rather than the 10 years provided under TRIPS.[148]

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142 CARIFORUM Art131-132
143 CARIFORUM Art 133-138
144 CARIFORUM Art143
145 Musungu (2009) P255; Shabalala (2008) P9
146 CARIFORUM Art 145. The Caribbean countries agree to protect geographic indications in the broadest possible way see Musungu (2009) P257, Shabalala (2008) P10
147 CARIFORUM Art 146
148 Musungu (2009) P257

In contrast, the provisions on *trademarks* and *patents* do not confer substantive new obligations. The Caribbean states are required to accede to the Patent Cooperation Treaty and the Budapest Treaty, obligations that are TRIPS-plus but are not necessarily problematic.[149] Crucially, there are no provisions in the controversial areas of test data and restrictions on compulsory licensing and parallel imports, which is a significant gain to the Caribbean. The text provides for the use of *utility models,* which is seen as a beneficial step for the Caribbean, although there is no binding requirement on the EU to offer protection.[150] In the area of *plant variety protection*, the Caribbean succeeded in watering down the requirement to accede to the 1991 Act of the International Convention for the Protection of New Varieties, which has been widely criticised, and the text explicitly notes the right of Caribbean states to provide for exceptions that allow farmers to save, use, and exchange protected seed.[151] In the area of *genetic resources and traditional knowledge*, an area of offensive interest to the Caribbean, there are 'important positive words' but no major concessions.[152]

Finally, there are extensive provisions in the area of *enforcement*, reflecting a wider trend among OECD countries.[153] These are drawn directly from the EU's own enforcement regime, and represent a major 'ratcheting up' of intellectual property enforcement in the Caribbean, although the text does contain a provision for least developed countries to be given a longer time-period for compliance.[154] In the area of *transfer of technology*, a key area of offensive interest to the Caribbean, the text obliges the EU to exchange views and information and it provides for transfer to all developing Caribbean countries, rather than only the least

[149] CARIFORUM Art 147. To the extent that these treaties support easier acquisitions of patents, including by inventors in developing countries, this is not necessarily problematic. Ibid.
[150] CARIFORUM Art 148; ibid. P259
[151] CARIFORUM Art 149; ibid. P260, Shabalala (2008) P12
[152] CARIFORUM Art150; Musungu (2009) P261
[153] CARIFORUM Art 151-163; On the wider issue, see Guimarães de Lima e Silva (2012)
[154] Shabalala (2008) P11

developed. However the central commitment remains best endeavour so it is unlikely to provide tangible additional benefits.[155]

Government Procurement: The CARIFORUM text also has extensive provisions on government procurement. For the main, they are uncontroversial as the main focus is on improving the transparency of government procurement rather than liberalisation of market access, suggesting that the Caribbean successfully held out on this issue.

The chapter sets forth a comprehensive and largely binding framework of rules on, *inter alia*, transparency, methods of procurement, selective tendering, technical specifications, qualification of suppliers, negotiations, opening of tenders and awarding of contracts, information on bids, and bid challenges.[156] These are based on the WTO's plurilateral Government Procurement Agreement, but are less onerous in places.[157] As none of the Caribbean states is party to the Government Procurement Agreement, the obligations are new concessions, but no significant policy adjustment is likely to be required at the national level, as they are largely commensurate with existing policy. Moreover, the thresholds applicable to the Caribbean at reported to be the highest threshold in any bilateral trade agreement.[158]

In the controversial area of national treatment (i.e. liberalisation), Caribbean states made minimal concessions, and the only binding obligation is not to discriminate against foreign companies that have a commercial presence in a CARIFORUM state.[159] However there is a

[155] Musungu (2009) P253-254; Shabalala (2008) P8-9
[156] Art168-179 CARIFORUM
[157] On the EU side, these procedural obligations apply to all levels of procurement above specific value thresholds. On the Caribbean side, the commitments apply only to central government procurement, the thresholds are higher than those applicable to the EU, and Caribbean states have between two and five years to implement the provisions, providing some asymmetry. Woolcock (2008) P18-19
[158] Sauvé and Ward (2009)P48; Dawar and Evenett (2008) P302; Woolcock (2008) P18
[159] Art167 CARIFORUM: This is in stark contrast to the Government Procurement Agreement, which embodies guarantees of national treatment and non-discrimination for goods, services and suppliers of those governments that are party to the agreement, in areas that they have scheduled as being liberalised. Dawar and Evenett (2008) P302

built-in negotiating agenda, which provides for negotiation of liberalisation at a later date.[160] Although the inclusion of this provision does not in itself result in liberalisation, it raises expectations of national treatment commitments, which means that Caribbean governments open themselves up to negotiating pressure from the EU.[161]

Other EPA Texts

None of the other seven other EPA texts have substantive commitments in these areas, although with the exception of the PACIFIC text, they have rendezvous clauses that make explicit reference to intellectual property, competition, and/or government procurement (Table 16).

Once again, the most restrictive clauses are found in the CEMAC text, which contains detailed rendezvous clauses in all three areas. In the area of competition, the text provides for the negotiation of a competition chapter similar in scope to the CARIFORUM EPA.[162] In intellectual property, the text provides for the negotiation of 'a series of commitments' that aim to strengthen intellectual property rights and, in contrast to the CARIFORUM text, it makes no mention of development concerns, or innovation and creativity.[163] Finally, in the area of government procurement, the CEMAC text provides for the negotiation of an agreement that exceeds the scope of the CARIFORUM EPA, as it will include the 'gradual and mutual opening of their public procurement markets'.[164] Negotiations in all these areas are to be completed by January 2009, and the text provides for a two-step approach, where rules are agreed on a regional level, and then extended to the other party.

In the other six texts, the rendezvous clauses are much less onerous, providing only for the continuation of negotiations. While ESA and Cote d'Ivoire commit the Parties to negotiation

[160] Art167 CARIFORUM
[161] Woolcock (2008) P16
[162] Art57 CEMAC
[163] Art58 CEMAC
[164] Art59 CEMAC

in all three areas, the EAC text limits negotiations on public procurement to transparency, the SADC text provides only for cooperation in competition and government procurement and makes no mention of intellectual property, while the Ghana text makes no reference to government procurement.

Table 16: Variation in EPA Texts: Intellectual Property, Competition and Government Procurement

Issue Area	Least Restrictive / Most Advantageous to ACP	Moderately Restrictive / Moderately Advantageous to ACP	Most Restrictive / Least Advantageous to ACP
Competition	ESA, Cote d'Ivoire, EAC, Ghana (weak rendezvous clause) SADC (only cooperation) PACIFIC (rendezvous, not specific)	CEMAC (strong rendezvous clause)	CARIFORUM (Substantive and detailed new obligations)
Intellectual Property	ESA, Cote d'Ivoire, EAC, Ghana (weak rendezvous clause) PACIFIC, SADC (no provision)	CEMAC (strong rendezvous clause)	CARIFORUM (Substantive and detailed new obligations)
Government Procurement	PACIFIC, Ghana (no provision) SADC (only cooperation) EAC (weak rendezvous, only transparency) ESA, CDI (weak rendezvous)	CEMAC (strong rendezvous clause)	CARIFORUM (Substantive and detailed new obligations)

Summary

From the proceeding analysis, it is possible to compare the six ACP regions according to the extent of flexibility that they managed to secure in the details of the EPA texts.

Based on the summary tables above, values were assigned using a three-point scale, with a score of 2 assigned to each appearance in the 'least restrictive / most advantageous' column, a score of 1 assigned to each appearance in the 'moderately restrictive' column, and a score of 0 assigned to the 'most restrictive / least advantageous' column. These were then totalled for each issue-area and converted into a percentage of the total possible (for instance if a region scored 2 at all times, the score is 100 percent, if it scored 1 at all times, the score is 50 percent and so on). A summary of the results is presented in Table 17, and the full results are provided in Annex 3.

Analysis of the core areas of the text (trade in goods, customs and trade facilitation, standards), where most of the EPA texts contain substantive provisions and a comparison can be made, suggests three distinct groups of ACP countries/regions. The first group is comprised of the ACP countries that concluded the PACIFIC and CARIFORUM EPA texts, which were able to secure significant concessions from the EU (average scores of 72 percent and 65 percent respectively). The second group comprises those ACP countries that agreed to the SADC, EAC, ESA, Ghana and Cote d'Ivoire texts, which were able to obtain a moderate level of concessions from the EU (with average scores ranging from 35 percent for ESA to 54 percent for SADC). The final group comprises Cameroon, the only state that concluded the CEMAC text, which obtained minimal concessions from the EU (scoring only 20 percent).

Table 17: Variation Across ACP Countries/Regions: Ability to Obtain Specific Concessions

Issue Area	**Ability to Obtain Concessions (% of provisions that were ranked 'most advantageous')**							
	CARIFORUM	Ghana	CDI	CEMAC	ESA	EAC	SADC	PACIFIC
Trade in Goods	56	38	32	38	35	44	32	65
Customs and Trade Facilitation	83	33	50	17	NA	NA	42	75
Standards (SPS and TBT)	56	38	38	6	NA	NA	88	75
Average (Core Areas)	**65**	**36**	**40**	**20**	**35**	**44**	**54**	**72**
Rendezvous Clauses	*NA*	*100*	*100*	*50*	*100*	*100*	*75*	*100*

In the other areas of the text (services, investment, capital movements, competition, government procurement, intellectual property) only the CARIFORUM text contained substantive commitments, and, as the analysis has shown, while it entered into a high level of new commitments, it also secured some significant concessions. Comparing across the rendezvous clauses, the analysis reveals that the countries that concluded the PACIFIC, ESA, EAC, Ghana, and Cote d'Ivoire texts avoided making any substantive commitments in any of these areas (so score 100 percent), while the countries that are party to the SADC and CEMAC texts entered into significant commitments (scoring 75 and 50 percent respectively).

4.5. Conclusion

This chapter has examined the EPA outcomes along two dimensions: the broad pace and scope of the negotiations, and the depth of commitments in key areas.

The analysis yields three key findings. First, as we might expect given the vast asymmetries between the parties, the ACP countries were unable to fulfil the majority of their 'offensive' negotiating objectives. Second, and counter to our expectations, the EU was similarly unable to secure the majority of its 'offensive' negotiating interests. Third, ACP countries were able to secure significant concessions in the details of the texts. The most significant concessions were defensive, in that ACP countries were able to avoid obligations by watering down the language or convincing the EU to drop specific provisions.

Combining the analysis of the broad pace and scope and the fine-grained analysis of legal provisions, it is possible to develop a typology of EPA outcomes (Table 18). The EU's desired objective was to secure board and deep regional EPAs by the end of 2007, and to minimise the number of concessions made in the details of the texts. The EU's objectives are represented in the bottom right corner of the table 'what the EU wanted', and it is striking that none of the ACP regions fully complied.

In the first column are PACIFIC, ECOWAS, and CEMAC. In all three regions, very few countries entered an agreement with the EU, and where they did, the scope was limited, so they showed a 'low' compliance with the EU's overall negotiating objectives. However there was significant variation in the ability of these three regions to obtain concessions from the EU. While there are a relatively high number of concessions in the PACIFIC text, suggesting that the Pacific countries were relatively effective in negotiating detailed provisions, there are a moderate number in the ECOWAS texts (those of Ghana and Cote d'Ivoire), and very few concessions in the CEMAC text.

Table 18: Typology of EPA Outcomes

		Overall Pace and Scope (Extent to which EU objectives were obtained)		
		Low	**Medium**	**High**
Detailed commitments (Extent to which ACP were able to negotiate concessions)	**High**	PACIFIC		CARIFORUM
	Medium	ECOWAS	ESA/EAC, SADC	
	Low	CEMAC		***What the EU Wanted***

In the second column are the SADC and ESA/EAC regions. In these regions, the EU came closer to realising its objectives, as a higher proportion of countries concluded agreements, although they were not of the scope that the EU had sought. Scrutiny of the EPA texts suggests that these countries were able to obtain a moderate level of concessions from the EU. In the third column is CARIFORUM, which was the only region to conclude an agreement in line with the EU's overall objectives. Although the region broadly cooperated with the EU, close scrutiny of the text shows that it secured a relatively high level of concessions in the details.

Next Chapter

Having mapped out the EPA outcomes in depth, the next three chapters seek to account for them. The next chapter starts by exploring whether the decision of ACP countries to enter into an EPA was the result of trade and aid dependence, which made them vulnerable to coercive pressure from the EU.

Chapter 5. How Coercive Pressure Shaped EPA Outcomes

5.1. Introduction

This chapter provides a 'first-cut' at explaining the pattern of EPA outcomes set out in the previous chapter.[1] It does so by exploring the extent to which the EPA negotiations can be reduced to an account of coercive power. More precisely, the chapter asks 'is there evidence of coercion in the EPA negotiations?' If so, why does it appear to have had such a varying impact on outcomes?' Put another way, the chapter asks 'to what extent can we attribute the variation of EPA outcomes across ACP states to variations in their vulnerability to coercive pressure?'

There are three strong reasons starting with an analysis of coercion. First, even the most cursory analysis of the EPA negotiations suggests that EPA states were placed under coercive pressure. A declaration of ACP Trade Minister's issued in December 2007 provides telling evidence: 'Ministers *deplore the enormous pressure* that has been brought to bear on the ACP States by the European Commission to initial the interim trade arrangement.'[emphasis added][2] As the consensus of all seventy-six ACP countries would have been needed to issue such a statement, its forceful wording suggests that coercive pressure was widely felt among ACP states.

Second, the literature review in chapter two highlighted coercive power as one of three broad explanations in the scholarly literature for the outcomes of asymmetric trade negotiations, suggesting that it is particularly likely to affect outcomes in situations like the EPAs where small states are dependent on large states for trade and aid. Third, the historical analysis in chapter two showed that the acute dependence of many ACP states on the EU for trade

[1] With thanks to Professor Ray Duch, Nuffield College, University of Oxford, for support with the statistical analysis. Any errors or omissions are of course my own.
[2] ACP Council Of Ministers (2007)

preferences and aid was a critical determinant of the outcomes of past Europe-ACP trade negotiations. These chapters also drew attention to some of the different forms that coercive pressure can take in asymmetric trade negotiations, and highlighted the some of the conditions under which coercive pressure might have a limited impact on outcomes. This chapter builds from these insights to explore the ways in which coercive pressure shaped the outcome of the EPA negotiations, focusing on trade and aid relations.

The three principle questions of the chapter are, firstly, did the ACP negotiators perceive themselves to be under a high level of coercive pressure during the negotiations, and were they particularly concerned about the likely withdrawal of EU trade preferences and aid? The second question is did the structural position of ACP states change during the 2000s, and how did this impact the costs of exiting from trade negotiations with the EU? The third question is whether there is a statistically significant correlation between the vulnerability of ACP countries to coercive pressure from the EU, and their propensity to sign an EPA?

The chapter is split into three sections, structured as follows. The first section draws on survey and interview evidence to establish a broad overview of the extent to which small states usually face coercive pressure when they negotiate with larger parties. The second section examines ways in which coercive pressure was present during the EPA negotiations. The third explores the reasons why these forms of coercive pressure appear to have had a limited impact on outcomes, looking at the shifts in the underlying structural relationship between EU and ACP countries during the 2000s, as well as the variation in trade and aid dependence across ACP countries. The fourth section, tests the explanatory power of this argument through statistical analysis. The chapter ends by identifying of the aspects of EPA outcomes that remain unanswered, and explain the ways in which these will be addressed in subsequent chapters.

5.2. Trade and Aid Pressures: Survey and Interview Evidence

As explained in chapter two, there is relatively little scholarly analysis of highly asymmetric trade negotiations. Before exploring the role of trade and aid dependence in shaping the EPA outcomes, this chapter reports on the results of an online survey and interviews with negotiators to establish a general picture of the extent to which large countries use trade and aid to exert pressure.[3] The results are revealing.

Building on initial consultations with negotiators about the common sources of pressures present in a negotiation, the survey asked small state negotiators how often they were concerned about such things as: offending the country with whom they are negotiating; overstepping their mandate; appearing ill-informed; losing aid; or having trade preferences withdrawn.[4] Respondents clearly perceive themselves to be operating in a highly constrained external environment, with high levels of concern about threats to trade and aid from negotiating partners (Figure 5). Thirty-five of the 61 respondents said they were 'often' concerned about withdrawal of trade preferences and 25 were 'often' worried about losing aid. Notably, they were less concerned about offending the country they were negotiating with, suggesting that diplomatic factors are less constraining. Appearing ill-informed and overstepping the mandate given by superiors appeared to be significant concerns, factors which echo findings on human resource constraints and on the poor quality of the relationship between many negotiators and their ministries in capital.

The survey also sought to gain insights into the specific pressure tactics used by large states, and the frequency with which explicit trade and aid threats are made. A focus group discussion with negotiators assisted with the identification of common pressure tactics and in the survey, respondents were asked to state the frequency with these tactics were used by

[3] See chapter one for details of the survey and interviews.

[4] Note that these answers are confined to those respondents who said they were directly involved in negotiations

large states. The results reveal that the imposition of stringent negotiating deadlines a tactic that is frequently used against small states, with 43 of the 65 survey respondents saying it is ‘often’ used. The imposition of stringent deadlines poses a challenge for small countries with limited negotiating capacity, as the time needed to review and consider various negotiating texts is often greater than that required by larger, better-resourced states, and the latter tip the negotiations in their favour by insisting on unrealistic deadlines.

The three other tactics were identified by 26 or 27 of the 65 respondents as being used ‘frequently’ namely, ‘making threats related to trade’, ‘putting pressure on the executive’, and ‘cutting out negotiators by going directly to superiors’. The final tactic, ‘making threats in areas other than trade’, was identified by 18 respondents as being used ‘often’ and this echoes the finding, explored below, that aid threats are less likely than trade threats to be made explicitly.

Figure 5: Pressures Experienced by Small State Negotiators

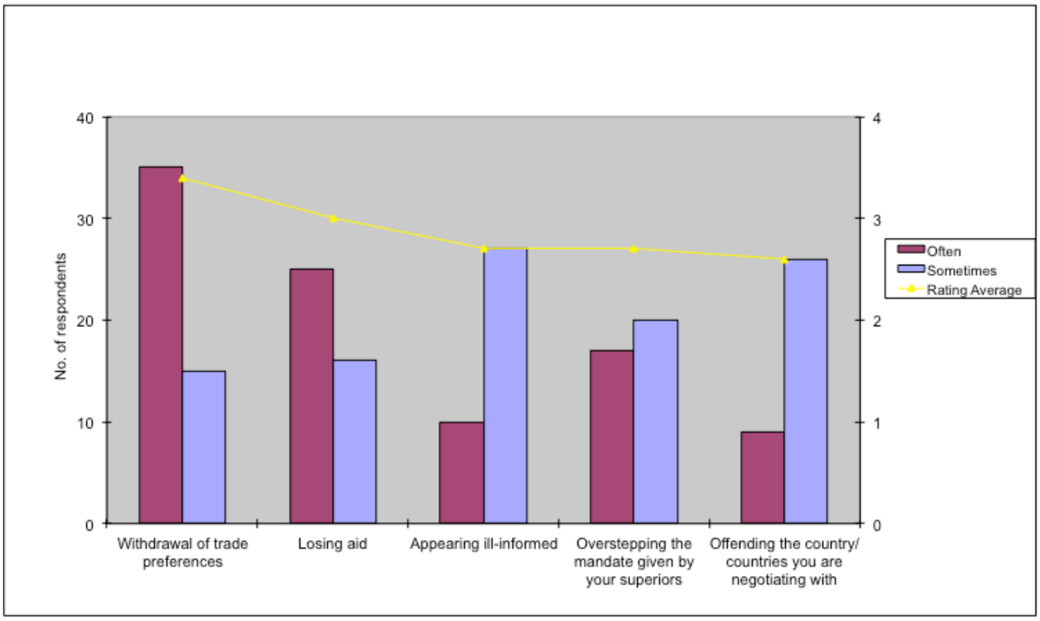
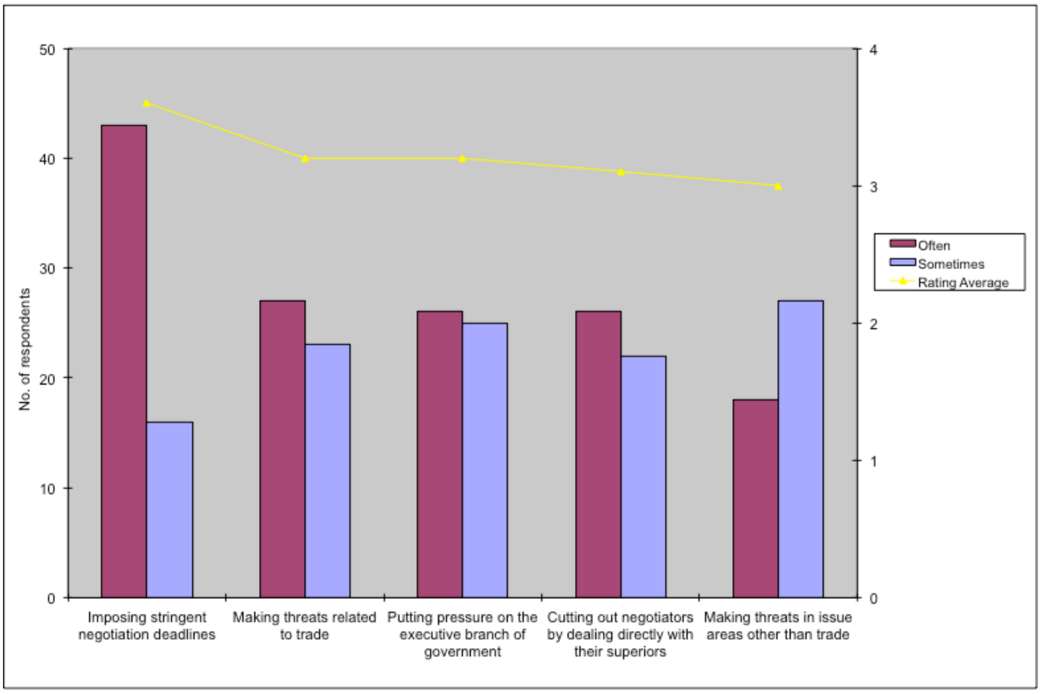


Figure 6: Tactics Used Most Frequently Against Small States



The interviews underscore the finding that small developing countries often negotiate under substantial levels of threat. Only two of the 35 negotiators and ambassadors said they were not vulnerable to threats by large countries, explaining that they did not depend on preferences or aid. Five negotiators noted that there are significant differences between large countries and that some are preferable as negotiating partners, explaining that they perceived Europe to be more flexible than the USA, Australia and New Zealand.

With regard to specific tactics, the interviews reinforced the survey finding that small states are often subject to a series of distributive tactics by large states. Tactics with which the negotiators interviewed had direct experience included (the number of interviewees experiencing each is indicated in parentheses):

- Use of negotiating deadlines and the threat of trade sanctions to impose agreements (11);
- 'Divide and rule' tactics, playing small states off against each other (7);
- Threats of reductions in aid (5); and

- Pressure exerted through the executive of the small state (3)

Other tactics cited by interviewees included: influencing the selection of small state negotiators; appointing biased consultants to 'advise' them; deliberately misrepresenting facts; and unilaterally reneging on agreements once they had been agreed, including by altering the text at the point of 'legal scrubbing'. Within the negotiating room, nine small state negotiators said that negotiators from large states bully and intimidate, citing behaviour such as walking out of the room, being dogmatic and persistent, and cutting off small state negotiators when they are talking. Eight of the thirty-five negotiators said that large countries set the agenda by using a template text, by sending negotiators who are too junior to agree to any compromises and by marginalising issues of interest to small states by either refusing to discuss them or by making such highly qualified concessions that they are meaningless.

Interviews suggest that threats are often implicit rather than explicit, particularly when they relate to aid. Moreover, many negotiators perceive a high risk that development aid or trade-related assistance from their negotiating partners may be cut, even if the threat is not made explicitly. One Brussels-based negotiator noted:

> 'There is an understanding that – if you are difficult on this – we will be difficult on that. We all know that apart from trade negotiations we have financial co-operation instruments and if it is a particularly difficult negotiation they can judge you as not having done well enough and not deserving of additional funding. It's not made explicit. These are things we understand among ourselves.'[5]

Another explained 'At the end of the day, they can hold us by the necks because they have development finance and can decide to give it to us, or not give it to us'.[6]

[5] Interview, government official
[6] Interview, government official

In sum, the survey and interviews show that small developing countries negotiate under high levels of pressure, many related to trade and aid relationships with large countries. We now turn to examine the extent to which these factors influenced the EPA negotiations.

5.3. Trade and Aid Pressures During the EPA Negotiations

This section uses publicly available sources to identify three key sources of coercive pressure experienced by ACP countries during the EPA negotiations: the withdrawal of Cotonou trade preferences, the paucity of attractive alternatives available to ACP states for accessing the EU market, and fears among ACP of reprisals in aid. In each case the analysis examines the extent to which these sources of pressure can be attributed to EU actions.

Withdrawal of Trade Preferences

The most obvious source of pressure on ACP countries was the expiry of Cotonou trade preferences at the end of 2007. After the Cotonou Agreement had been concluded in 2000, the EU and ACP countries jointly applied for a WTO waiver to permit them to continue to trade under the Lomé system of unilateral preferences until the end of 2007, when they expected the new EPAs to be in place. After some resistance from WTO members, a waiver was granted in September 2001.[7] During the EPA negotiations, the EU was adamant that it was compelled by WTO rules to withdraw preferences on this date. In the words the EC Trade Commissioner, 'The WTO waiver covering the Cotonou preferences expires at the end of the year and the EU can no longer continue these trade arrangements'.[8]

There is compelling evidence that the impeding withdrawal of Cotonou preferences placed ACP countries under immense pressure to enter into an EPA in order to safeguard their preferential access to the EU market, as signalled by the quote at the start of this chapter. Aside from numerous public statements by ACP representatives, it is striking that thirty-five of the thirty-six ACP states that initialled EPAs did so in the six weeks prior to the expiry of

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[7] This was finally granted in September 2001
[8] Staff Reporter "EPAs: There is no Plan B: An Interview with Peter Mandelson" (2007)

these preferences, which suggests that this deadline was a major factor that motivated their decision.

A series of studies estimated the magnitude of potential losses faced by ACP states if they lost Cotonou preferences and had to export under the EU's Generalised System of Preferences (GSP), a less generous preferential scheme that is available to all developing countries. For instance, one study showed that Namibia's meat exports, a leading export sector, expected to see tariff increase of between 63 and 120 percent.[9] Analysis by the World Bank showed that export losses could be substantial for African countries, with three expected to incur particularly high losses: Swaziland stood to lose tariff benefits on meat equivalent to 39 percent of its total merchandise exports to the EU; Mauritius stood to lose tariff benefits on sugar and knitted garments equivalent to 20 percent of its total merchandise exports to the EU; while the Seychelles stood to lose tariff benefits on fish equivalent to 16 percent of its total merchandise exports to the EU.[10] As discussed in detail later in this chapter, estimates of the losses to individual ACP countries varied between zero and 12 percent of GDP.

Compulsion or choice?

What is less clear is the extent to which the EU used the withdrawal of trade preferences as a lever in the EPA negotiations. Was the really EU *compelled* to withdraw preferences, as it argued, or did it *choose* to do so in a bid to compel ACP states into EPAs? Answering this question requires significant detailed analysis of the legal context, an analysis worth pursuing as the answer contributes both to our understanding of what happened during the EPA negotiations, and to our theoretical understanding of the degree to which large states are able to coerce small states in the context of asymmetric trade negotiations.

[9] Meyn (2007)
[10] Hinkle and Newfarmer (2006)

In the analysis that follows, I argue that the WTO legal system did place significant constraints on the EU, but there was some room for manoeuvre in the early and the later stages of the negotiations, which the EU chose not to use.

As chapter three explained, between 1998 and 2000, the EU and ACP states negotiated to decide the basic structure that their trade relations would take after the expiry of the Lomé IV Convention in 2000. One of the EU's key arguments was that the new trade arrangement needed to be compatible with WTO rules, and it argued that the best way to do this was through the creation of regional EPAs.[11] From the start of the EPA negotiations, it argued that WTO rules on free trade agreements embodied in Article XXIV of GATT required high levels of trade liberalisation, covering at least 90 percent of current trade and 90 percent of tariffs lines and the exclusion of no sector, and it argued that this liberalization should take place within ten years of agreements being concluded (twelve years for exceptional circumstances).[12]

The EU's insistence on WTO compatibility and a relatively strict interpretation of Article XXIV in the late 1990s is striking in the context of past Europe-ACP trade relations. Prior to this, Europe had paid little heed to questions of compatibility with multilateral trading rules in its trade arrangements with ACP states. GATT members had frequently raised questions of compatibility and in each case the majority of members of the GATT Working Groups rejected the EEC's legal arguments and found that the trade arrangements were not compliant with Article XXIV. However, as the EEC was a member of these Working Groups, it was able to block the adoption of these findings.[13]

[11] European Commission "Green Paper on the Relations Between the European Union and ACP Countries on the Eve of the 21st Century" (1996) P65a-d. Also Huber (2000) P430
[12] See for instance the personal opinion of Huber, a member of the legal service of the Council of the European Union: Huber (2000)
[13] For analysis of these GATT reviews and their outcomes see Hudec (1987) P49; Bartels (2007) P729.; Huber (2000) P429

In the mid-1990s, the legal environment changed considerably, reducing Europe's room for manoeuvre. Two further complaints were lodged and although Europe used its veto power once again to block adoption, Europe and ACP countries decided nonetheless to apply to GATT members for a waiver for the Lomé IV Convention, which as duly approved and lasted until the expiry of the Convention in 2000.[14]

The decision to apply for a waiver was arguably necessitated by the impeding creation of a compulsory and enforceable dispute settlement under the WTO in 1995, which removed the right of individual parties to block the establishment of panels or the adoption of a report.[15] Given that the GATT Panel report had strongly refuted the EU's legal defence of the Lomé Convention in the early 1990s, there was the obvious risk that if the Convention were challenged under the WTO system, the ruling would go against the EU.

It is clear that by the mid-1990s, the EU's room for manoeuvre was narrowed by the creation of the WTO, the relatively conservative interpretation of Article XXIV prevailing in the legal establishment, and the continuing challenges to the Lomé preferences by third parties. However, the negotiation of regional free trade agreements compliant with the prevailing legal interpretation of Article XXIV was not the only option available for EU-ACP trade. In other words, had the EU been willing, it could have worked with the ACP to accommodate their interests.[16]

[14] Huber (2000) P429-30; Bartels (2007) P735

[15] Bartels (2008)P8 (The new dispute system works on the basis of negative consensus, where the findings of WTO Panels and the Appellate Body are automatically adopted unless there is consensus not to do so.)

[16] As noted in chapter three, ACP countries opposed reciprocity. They also advocated reform of WTO rules to reflect the special and differential needs of developing countries. ACP Heads of State (1997); Huber (2000) P431

Four options were available that could have provided some flexibility, and three of these are acknowledged in the EU's Green Paper of 1996:[17] First, the EU and the ACP could continue Lomé style preferences and apply for long-term waivers at the WTO, although this was likely to require them to make concessions to third parties. Second, they could lobby together for reform of Article XXIV to introduce greater flexibility for developing countries. This was a reform that developing countries had long fought-for, and since the 1970s, in its legal defence of Lomé preferences, Europe had consistently argued that Article XXIV should be interpreted in light of Article XXXVI of GATT, which expressly allowed for developing countries to be exempt from reciprocity in light of their development needs.[18] Third, it was possible for EU and ACP countries to negotiate free trade agreements that did not comply with a strict interpretation of Article XXIV, and to apply for a derogation under Article XXIV:10.[19] Finally, it was possible for Europe to reform its Generalised System of Preference (GSP) schemes so that they provided better coverage for the exports of interest to ACP countries. Due to problems of preference erosion, such schemes would not be as beneficial as the Lomé preferences, but they could be reformed to provide a reasonable alternative.

The EU did not invest heavily in any of these options. As early as 1996 it indicated that it would not be willing to seek long-term waivers or derogations from WTO members, and it started to advocate a relatively strict interpretation of Article XXIV.[20] In a radical departure from its earlier defence of unilateral preferences on the grounds that ACP countries were not able to reciprocate due to their low levels of development, it started to argue that reciprocity

[17] European Commission "Green Paper on the Relations Between the European Union and ACP Countries on the Eve of the 21st Century" (1996)The only option the paper does not examine is the possibility of reforming WTO rules

[18] See GATT Panel "EEC-Import Regime for Bananas: Panel Report " (1994)P16. Also Bartels (2007)

[19] GATT Article XXIV(10) states 'The Contracting Parties may by a two-thirds majority approve proposals which do not fully comply with the requirements of paragraphs 5 to 9 inclusive, provided that such proposals lead to the formation of a customs union or a free-trade area in the sense of this Article.'

[20] This was in line with its wider foreign policy objectives. As chapter three showed, by the early 1990s, the EU was seeking to dismantle its system of special preferences with ACP countries and the EU and US were vigorously engaged in the negotiation of free trade agreements

would promote development.[21] In 2001, the EU did improve its GSP scheme for least developed countries, which provided least developed ACP countries with an improved fall-back option if they exited EPA negotiations, however this was arguably a by-product of the EU's bid to secure the support of least developed countries in the Doha Round of WTO negotiations rather than an effort to insulate them from the harm they would face from the removal of Lomé preferences.

Later on, during the EPA negotiations, the EU also had room for manoeuvre that it opted not to use. In 2001, following the agreement by ACP countries to negotiate regional EPAs (in the Cotonou Agreement),[22] the EU and ACP jointly applied for a new temporary waiver from the WTO members, which was to cover the continuation of unilateral preferences until 31st December 2007. Although a WTO waiver was eventually secured[23], this was not without cost. To secure the waiver, ACP countries made its approval a condition for their acceptance of the Doha Ministerial Declaration, while the EU made significant market access concessions to Latin American banana-exporting countries and to Asian tuna-exporting countries.[24]

EPA negotiations made very slow progress, and by early 2007 it was evident that it was not possible for a negotiated agreement to be concluded with most ACP regions before the expiry of the waiver. At this juncture, the EU insisted that it had no option but to withdraw Cotonou preferences. The EU's position was laid out in a press release by the EC Trade Commissioner, in April 2007: '…the EU isn't steamrolling ACP regions into having these negotiations completed by the start of next year. That deadline is imposed by the expiry of the legal protection at the WTO for our existing trade agreements, which are based on

[21] For instance, in its defence before the GATT Working Party in 1976, the EEC argued 'In the light of their development needs and the principles of Part IV of the General Agreement, the EEC had not demanded reciprocity in its trade with the ACP'. See GATT Working Party "Working Party Report: 'ACP-EEC Convention of Lomé' " (1976) P48, paragraph 4.
[22] ACP and EU Ministers (2000)Article 37
[23] World Trade Organisation (2001)
[24] Bassilekin (2007)

preferential access and break WTO rules… So the importance of a new agreement by 2008 is not a threat – it's a reality'.[25]

Once again, WTO rules clearly posed a constraint, but they were arguably less constraining than the EU position suggested. The EU had two options for continuing Cotonou preferences on a temporary basis, and the pursuit of either would have greatly reduced the pressure on ACP states. First, the EU and ACP countries had the option of applying for an extension of the waiver at the WTO, albeit at the cost of some concessions for third parties, on the basis that they were still continuing but had been unable to complete EPA negotiations.[26] Indeed, in a meeting in November 2007, ACP Ministers argued that there was a 'compelling case for a request for a waiver' and they asked the EU for the 'submission of a request for a waiver to the WTO, in order to enable the trade regime currently in effect to continue during the period required to conclude the negotiations in the event that, despite the will and efforts of the negotiators, it might not be possible to conclude agreements that are compatible with WTO rules in due time'.[27] However the EU refused to countenance any move to request a new waiver or extend the previous waiver, arguing that it would be too politically costly.[28]

The second option would have been to disregard the WTO rules, at least on a temporary basis. For instance, the US created a preferential trading scheme for African countries in 2000 (the African Growth and Opportunity Act), which is incompatible with WTO rules, yet the US did not request a waiver until 2005.[29] The EU argued that this was not a viable option as there were WTO members who would have immediately initiated a case at the WTO dispute settlement body if the EU extended unilateral preferences.[30] While there is some credibility to

[25] Mandelson "Economic Partnership Agreements: Tackling the Myths " (2007)
[26] For a discussion of the possibilities and challenges in securing a new waiver see Bassilekin (2007)
[27] ACP Trade Ministers (2007)
[28] See for instance Mandelson (2007) The EU also brushed aside arguments that it had a legal obligation under the Cotonou Agreement to provide ACP countries with an alternative option that provided equivalent access to its markets. See Commonwealth Secretariat (2007) and Bilal (2007)
[29] Bassilekin (2007)
[30] Mandelson and Michel "Africa: Nobody is Pushing Free Trade, EU Chiefs Urge" (2007)

this argument, it is costly to mount a dispute case, and it takes at least a year for a panel to be constituted and a decision to be reached. Given this, there was a clear disincentive for any third party to launch a dispute in the event that the waiver expired but the EPA negotiations were on-going.[31]

Under pressure of the deadline, thirty-five ACP countries initialled an EPA with the EU by the middle of December 2007. In order to ensure that there was no trade disruption for these countries, the EU enacted internal legislation under which it unilaterally implemented the market access offer it had made during the EPA negotiations, with effect from 1st January 2008.[32] In other words, the EU continued to provide WTO-incompatible preferences for ACP countries that had initialled EPAs. The EU intended this state of affairs to be temporary, and the market access regulation was made conditional on ACP countries signing, ratifying and implementing the EPAs within a 'reasonable period of time'.[33] However signature was delayed and, even when agreements had been signed, many ACP countries did not proceed to implement the agreements. As a result, despite EU arguments in 2007 that the continuation of WTO-incompatible unilateral preferences was impossible, this is precisely what the EU did for the twenty-three ACP states that had not started implementing EPAs at the end of 2012 (see Table 8).

In sum, close scrutiny of the evidence suggests that the EU did have room for manoeuvre regarding the withdrawal of Cotonou Preferences, but it chose not to use it. As commentators noted at the time, the European Commission became the 'first in 50 years… to impose a wide-ranging increase of European Union tariffs on many of the poorest countries in the world… *by choice, not legal compulsion* [emphasis added].[34]

[31] See discussion in Bilal (2007)
[32] Council of the European Union "Council Regulation (EC) of 20 December 2007" (2007)
[33] Ibid.
[34] Bilal et al. "Doubt Over EU Development Credentials" (2007)

Weak Alternatives For Accessing the EU Market

The reason that the withdrawal of the Cotonou preferences resulted in such pressure on ACP states was that many had weak alternative options for accessing the EU market, and so felt compelled to negotiate an EPA. In the words of one ACP Ambassador, 'At no point was an EPA as a free trade agreement the first choice for the ACP. It was not. We had no alternative.'[35]

A striking feature of the EPA negotiations is the extent to which EU had a significant level of control over the alternative options that were available to ACP states for accessing its market. As the discussion below shows, there is evidence that the EU impeded the access of some ACP states to more attractive alternatives, thereby exacerbating (or at least not relieving) the pressure that ACP states were under. Thus, even if we leave aside the question of whether the EU chose to withdraw Cotonou Preferences, there is evidence of the EU using its control over alternative options to influence the degree of coercive pressure felt by ACP countries.

Crucially however, this only applied to some ACP countries. For reasons discussed below, just before the EPA negotiations were launched, the EU created a new preference scheme for 'least developed' countries (thereby including the thirty-nine ACP countries classified as 'least developed'), which was broadly equivalent to the Cotonou preferences. As a consequence, 'developing' ACP countries had very weak alternative options for accessing the EU market in the absence of Cotonou preferences, while 'least developed' ACP countries had a good alternative option.

To understand how the EU's manipulation of alternatives placed some ACP states under pressure, it is necessary to understand which of the EU's other trade preferences were available to ACP countries, and their attractiveness relative to the Cotonou preferences.

[35] Comments made at a High-Level Conference on EU-ACP Trade Relations convened by the South Centre in Brussels, on 12 October 2006, cited in Third World Network (2008)

Three Alternative Preference Schemes

In the absence of Cotonou preferences, the best alternative ACP countries (aside from an EPA) for accessing the EU market was to use the various preferential schemes under the EU's Generalized System of Preferences (GSP). The EU has three different GSP schemes, and they varied in their attractiveness as a fall-back option, and their eligibility criteria.

The first scheme is the 'standard' GSP, which was created in 1971, and is available to all developing countries. It was created to provide all developing countries a degree of preference into the European market over industrialised countries, while simultaneously allowing Europe to privilege the access of ACP countries. For this reason, it excluded the products of interest to ACP countries, in order to preserve the value of Lomé preferences. As a consequence, it was a very poor alternative option for ACP countries in the context of the expiry of the Cotonou preferences.

A study conducted in 2007 showed that if ACP countries exported using the standard GSP, only an estimated 62 percent of their exports would enter the EU market duty-free, compared with an estimated 97 percent under Cotonou. Although, tariff increases were relatively low for most products, an estimated 4 percent of exports faced tariff increases between 10 and 20 percent, and a further 1 percent faced tariff increases of over 20 percent. In addition, 120 products were subject to special duties, and in some cases these were high. Six ACP exports would be particularly adversely affected: bananas, sugar, tuna, beef, rum, and rice.[36]

The second scheme is called 'Everything But Arms' (EBA) and was created in 2001 to provide 'least developed' countries with duty-free-quota-free access in all products except arms.[37] For the thirty-nine ACP states classified as least developed, this scheme provided a

[36] Stevens (2007) P5
[37] Duty-free-quota-free access for sugar and rice was subject to gradual phase-in, ending in 2009.

good alternative option. Under the EBA duty-free access would be increased from 97 percent of exports under Cotonou to nearly 100 percent.

Despite its attractiveness, EBA was not fully equivalent to Cotonou as countries still faced some significant losses if they switched to EBA. First, the rules of origin were more stringent, which meant that for some products such as fish, market access was worse than Cotonou.[38] Second, and more importantly, exporting to the EU under EBA was likely to have negative repercussions for regional integration. All least developed ACP countries participate in regional integration initiatives, but not all of their neighbours are classified as least developed. Thus, if the least developed countries in a region decided to exit the EPA negotiations in favour of EBA, the others either had to also exit and face considerable losses under the standard GSP, or regional integration risked being harmed. Thus, while 'least developed' ACP countries had a more attractive fall-back option than many 'developing' ACP countries, due to its indirect costs for regional integration, this option was still worse than the Cotonou preferences.

The third scheme is the 'GSP Plus' or 'enhanced GSP'. The EU created the scheme in 2005 to provide access superior to the 'standard' GSP for developing countries that met specific criteria for economic vulnerability and had ratified and were implementing twenty-seven international conventions on good governance and the environment. For many ACP countries, GSP Plus was a significantly better fall-back option to the standard GSP. A 2007 study showed that an estimated 88 percent of the products that would face higher tariffs under the standard GSP would enter the EU market duty-free under GSP Plus and, importantly, this included all the products that faced tariff increases of 20 percent or more. However, 112 products still faced additional specific duties, which were very high in some cases. Significantly, the scheme did not provide preferences for bananas or sugar. [39]

[38] See Jones and Hormeku (2007)
[39] Stevens (2007)

Although the GSP Plus scheme had the potential of providing many ‘developing’ ACP countries with a better fall-back option than the standard GSP, access was predicated on meeting specific criteria set by the EU: economic vulnerability (which all ACP states met) and ratifying the requisite twenty-seven international conventions (a criteria that only the Seychelles had met).[40] In addition, the EU set arbitrary admissions deadlines that required countries to apply for entry before November 2005 or after 2009.[41]

In sum, the nature of the alternative options meant that ACP states could not exit from the EPA negotiations without facing some losses: either directly as a result of lower levels of preferential market access, or indirectly, through damage to regional integration.

Controlling Alternatives

Crucially, the EU had control over the design of these various preferences schemes, and hence the attractiveness of the alternatives available to ACP countries. In particular, the EU could have taken steps to adapt the GSP Plus scheme. It could have changed the period during which ACP countries could apply for access, or even provided ACP countries with temporary admission while they ratified and implemented the outstanding conventions. In addition, as the EU could amend the coverage at will, it had the option of including more products of interest to ACP countries. While this was not unproblematic, some improvements were viable.[42]

Indeed there were strong arguments that the EU was legally obliged to take such steps. First, the EU had an obligation under Article 37(6) of the Cotonou Agreement to provide Cotonou equivalent market access to ACP states if at all possible. Second, the fact that the EU operated

[40] Bartels (2007); Jones and Hormeku (2007)
[41] Bartels (2007)
[42] Expanding the coverage of GSP Plus posed the potential problem of preference erosion for ACP states. However, with the notable exception of bananas, the most competitive suppliers of these products did not qualify for GSP Plus, so this problem was limited. Stevens (2007)

the GSP Plus scheme on a closed-list basis by restricting access periods was a clear violation of its obligation under WTO rules. Third, there was a clear precedent for provisionally applying the scheme in advance of ratification and implementation: El Salvador had been granted a fourteen-month grace period by the EU when it had joined.[43]

Despite lobbying from some ACP countries, various think tanks and NGOs, and some MEPs, the EU remained adamant that it would not 'bend the rules' to enable ACP countries to have access to the GSP Plus scheme.[44] In September 2007, the Seychelles wrote to the EU, asking for access to the GSP Plus scheme, without prejudice to the on-going EPA negotiations. The EU replied, stating that this was not possible, as the window for applications had expired.[45] In 2008, Nigeria and Gabon made similar requests. Again the EU rejected their applications, as both countries had still to ratify one of the twenty-seven outstanding conventions.[46] Limiting the fall-back options available to ACP countries was clearly in the EU's interest. As one analyst noted, 'If it were to extend GSP-plus access unilaterally, it would lose its negotiating leverage with the non-LDC ACP states'.[47]

The EU could also have taken steps to improve the rules of origin under the EBA scheme, thereby improving the fall-back option available to 'least developed' ACP countries. Again, there is circumstantial evidence to suggest that the EU opted not to do so in order to make the EPA option more attractive. During the EPA negotiations, the EU highlighted the more attractive rules of origin for textiles and fish available as a key reason for 'least developed' ACP countries to enter EPAs.[48]

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[43] Bartels (2007)
[44] European Commission (2007)
[45] See Walker "Avoiding Trade Disruption: Focus on Seychelles" (2008)
[46] Cronin "Europe: 'Double Standards on Trade'" (2008)
[47] Draper (2007)P12
[48] Staff Reporter "An interview with Louis Michel: European Commissioner for Development and Humanitarian aid" (2008)

Finally, it is worth noting that the EU's decisions over the reform of the Sugar Protocol also placed a high level of pressure on sugar exporting ACP countries like Swaziland. In September 2007, a few months ahead of the EPA negotiating deadline, the EU unilaterally denounced the Sugar Protocol (which was technically a separate arrangement to the Cotonou preferences).[49] Although this was anticipated, the timing of the decision placed the sugar-exporting ACP countries not classified as 'least developed', including Swaziland and Fiji, in a difficult position. Under the EPA, the EU was not prepared to provide the same level of benefits as the Sugar Protocol, but it did offer duty-free quota-free access, which was not available under the GSP scheme. In effect, the EPA became critical for preserving preferential access to the EU market for sugar exports.[50]

Fears of Reprisals in Aid

A third source of pressure was the fear, among some ACP countries, that aid would be withdrawn if they did not comply with the EU's requests.

During the EPA negotiations, ACP countries received substantial amounts of aid from the EU. Data from seventy-one ACP counties shows that official development assistance from the EU, including bilateral aid from EU member states, was equivalent on average to 2.8 percent of GDP over the period 2005-7.[51] A better measure of aid dependence is the extent of reliance of ACP governments on EU aid for their expenditure and, although data is patchy and less reliable, data from sixty ACP countries during the same period shows that on average, EU aid was equivalent to 23 percent of annual government expenditure.[52]

Interviews with ACP negotiators suggest that some were concerned about losing aid. One senior regional negotiator noted that in his region 'You cannot do anything against the EU, they are too strong. They put high levels of pressure on our governments because there are the

[49] This decision was motivated by its decision to provide duty-free-quota-free access to sugar from all least developed countries under the EBA scheme by September 2009.
[50] Richardson (2012)
[51] Author's own calculations based on: ODA data from OECD (2011) GDP data from World Bank (2011)
[52] Ibid

main providers of ODA' and he noted that the francophone countries were placed under particularly high pressure.[53]

Media reports suggest that Swaziland was clearly under the impression that it had to enter an EPA in order to access aid. One Swazi trade official was quoted in the media as saying that Swaziland had 'no choice' but to enter an EPA if it wished to benefit from the European Development Funds. The same media report explains that, in December 2007, a couple of weeks after initialling the EPA, Swaziland signed an agreement with the EU for 63 million euro in the margins of the EU-Africa Summit.[54]

There were also allegations, reported in the media, that the EU had threatened to cut aid to Pacific states. According to these reports, in August 2007, the European Commission sent an email just ahead of a meeting of Pacific trade ministers which threatened to 're-allocate' aid if an EPA was not signed. It stated that 95 million euros (US$130 million) had been allocated for a regional finance programme under the European Development Fund for 2008-13, yet if a comprehensive EPA was not reached by the end of 2007, 48 percent of this money would have to be 're-programmed', and if agreement could only be reached on trade in goods, regional funding would be cut by 25 percent.[55] This prompted Pacific ministers to write a joint letter to the European Commission expressing 'grave concern and deep disappointment' at the EU's apparent attempts to tie aid allocations to the outcome of the EPA, and to seek clarification.[56]

The European Commission was quick to respond, and it strongly rejected the allegation that threats had been made. 'At no time has the European Union used development assistance as a bargaining chip in EPA negotiations. Financial assistance explicitly targeted for the

[53] Interview, government official
[54] Zwane "'We've Messed up' on EPAs - Trade Experts " (2008)
[55] Cronin "Small Island States Stand Up To EU" (2007)
[56] Bounds "Islands Threaten to Halt EU Trade Talks" (2007)

implementation of EPAs is obviously tied to a successful outcome in the negotiation'.[57] While the EU denied making threats, Pacific Ministers were cited as resenting the implication that they had misread the Commission's intentions, saying they were educated enough to spot a veiled threat when they were on the receiving end of one.[58]

5.4. Variations in Vulnerability to Coercive Pressure

The previous section has argued that ACP states came under high levels of coercive pressure during the EPA negotiations from three sources: the withdrawal of Cotonou preferences; the EU limiting the access of ACP states to attractive alternatives; and fears of reprisals in aid. We might distinguish these elements of coercive pressure as 'direct coercion' (the use of direct negative sanctions by the large state), 'indirect coercion' (the large state closing down or limiting access to alternatives), and 'anticipated coercion' (fear on the part of the small state that the large state may use negative sanctions).

Yet the pattern of EPA outcomes set out in the previous chapter suggests that this coercive pressure only had a limited impact, as only a minority of ACP countries (twenty-seven of the seventy-six) opted to sign an EPA. Why is it that trade and aid pressures appear to have had a limited impact on the EPA negotiations, especially when compared negotiations in the 1980s and 1990s? How can we account for variation across ACP countries?

This section analyses the context of trade and aid dependence at the aggregate level to ascertain whether there were any notable shifts during the period of the EPA negotiations (2002-2012). It then examines the extent to which trade and aid dependence varied across ACP states. The final section uses a statistical model to establish the degree of correlation between trade and aid dependence and the decision of ACP governments to sign an EPA.

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[57] Ibid.
[58] Pareti "Brussels Scramble to Pacific Threat as EPA Countdown Nears Zero" (2007)

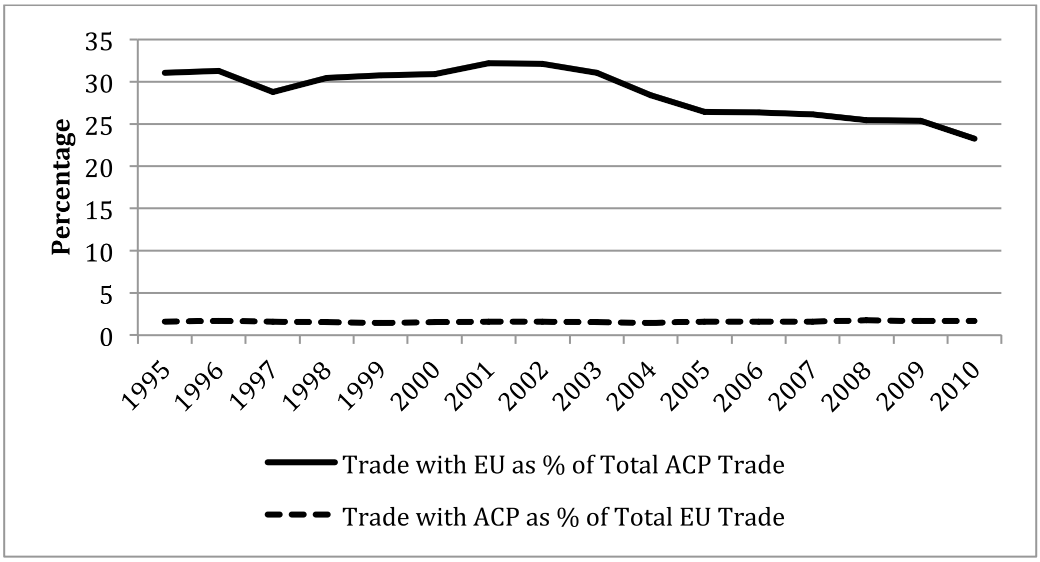
The Evolution of Trade and Aid Dependence (1995-2010)

The historical analysis in chapter two showed that in past Europe-ACP negotiations, ACP states had often been compelled to accept Europe's proposals due to high levels of dependence on Europe for trade and aid. More precisely, it showed that high levels of dependence, coupled with a paucity of alternative options, made it very costly for ACP states to exit from their relationship with Europe, which left them highly vulnerable to coercive pressure. What (if anything) changed?

As chapter two showed, vast levels of asymmetry have marked trade relations between Europe and ACP countries since the colonial era; Europe has been by far the most important trade partner for the majority of ACP states, yet ACP states have been of marginal trade interest to Europe. Figure 7 charts the degree of asymmetry in EU-ACP trade relations between 1995 and 2010. It shows that asymmetries remained stark, with trade with the EU accounting for more than 20 percent of the total trade of ACP states, yet trade with ACP states only accounting for about 2 percent of the EU's total trade throughout the period. However, the data also reveals a decline in the trade dependence of ACP states during the period, with the EU accounting for 31 percent of the total trade of ACP states in 1995, compared with 23 percent of total trade in 2010.

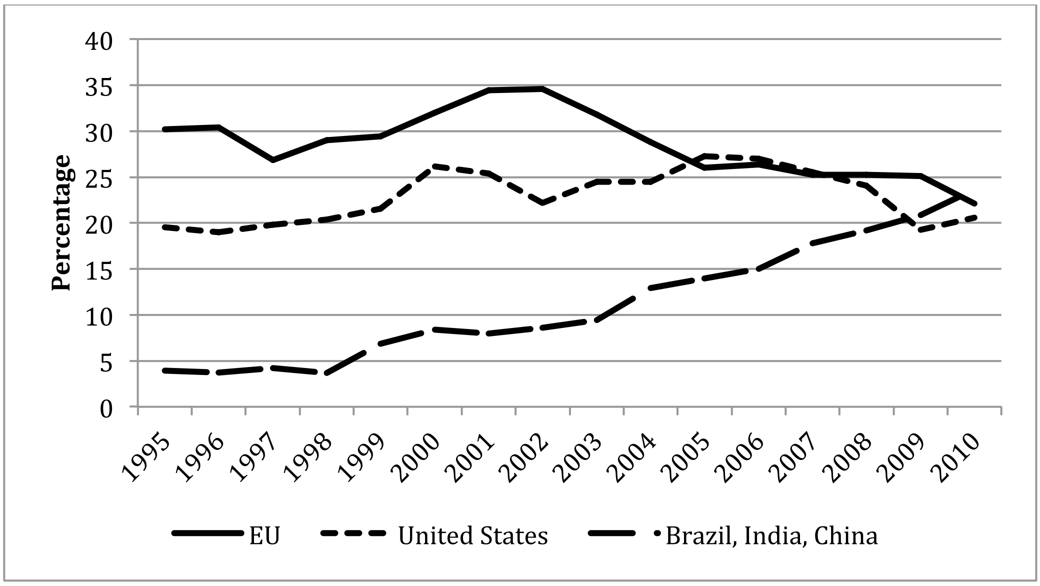
Focusing on export trade (as this was the main channel of trade pressure) and disaggregating the data by trade partner suggests that the decline in importance of the EU is due largely to a rapid increase in trade with the so-called BRICS countries, particularly China, India and Brazil. Figure 8 shows the main destinations of exports from ACP countries during the period 1995 to 2010. Although there were substantial fluctuations, exports to the EU declined from 30 percent of total ACP exports in 1995 to 22 percent in 2010, while exports to the United States were relatively static at about 20 percent of total ACP exports. In contrast, there was a very rapid rise in the relative importance of emerging markets. Exports to China, India and Brazil accounted only 4 percent of total ACP exports in 1995, but by 2010 this had risen to 24 percent. Of the three, China was by far the most important partner, accounting for 17 percent of total ACP exports in 2010.[59]

Figure 7: Asymmetry in Trade Relations Between EU and ACP (1995-2010)



Source: Calculated by the author, data extracted from UNCTADstat

Figure 8: Export Diversification of ACP Countries (1995-2010)



Source: data extracted from UNCTADstat

[59] Data extracted by the author from UNCTAD (2012)

In the historical context of Europe-ACP trade relations, this shift is striking. By 2010, for the first time since the colonial era, Europe was no longer the dominant export destination for ACP countries.

Analysis of aid dependence shows a similar downward trend. Total overseas development assistance (ODA) from the EU increased in real terms between 1995 and 2010, from US$9.6 billion to US$13.1 billion.[60] However during the same period, ACP states experienced their first sustained period of economic growth since the 1970s, with annual growth rates averaging 5.4 percent between 2000 and 2010. Although ACP countries remained incredibly poor by world standards, for the first time since the 1970s there was a significant increase in real per capita incomes, from an average of just over US$800 in 1995 to more than US$1100 in 2010.[61] This meant that aid from the EU became relatively less important for the economies of ACP states.

Figure 9 charts the trend in aid dependence over the period 1995-2009.[62] The graph shows that in 1995, ODA from the EU was equivalent to 4.4 percent of the total GDP of ACP countries. By 2009 aid dependence had almost halved, with ODA from the EU equivalent to 2.4 percent of GDP.

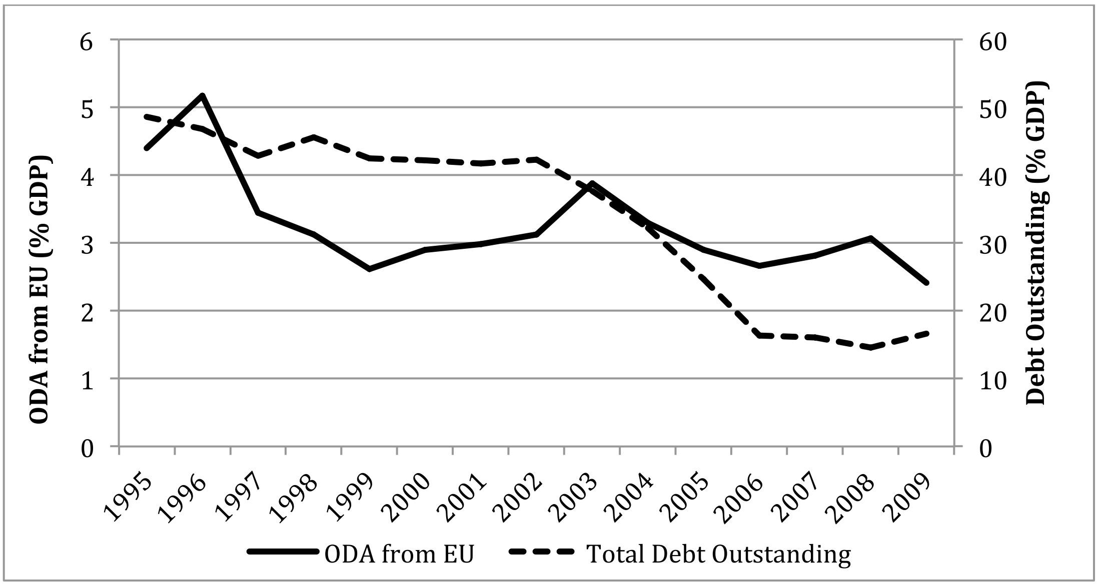
Levels of external debt also exhibited a downward trend. Chapter two suggested that the vulnerability of ACP countries to coercive pressure from Europe was compounded in the 1980s and 1990s by a rapid rise in external debt, much of which was owed to Europe. During the period 1995 to 2010 debt levels also fell markedly, for the first time since the onset of the debt crisis in the 1980s, partly because high levels of economic growth reduced external debt

[60] Data extracted by the author from OECD (2011)
[61] Data extracted by the author from UNCTAD (2012)
[62] Aid dependence is measured as the total amount of ODA disbursed from the EU in a given year, divided by the total GDP of ACP countries. Data ODA disbursements was extracted from the OECD database and data on GDP from the World Bank database. Data extracted by the author from OECD (2011); World Bank (2011)

to GDP ratios, and partly because the Heavily Indebted Poor Countries (HIPC) and Multilateral Debt Relief Initiative (MDRI) led to the cancellation of substantial levels of debt, including debt owed to EU member states.[63]

Trends in external debt are also captured in Figure 9.[64] It shows that the total outstanding external debt of ACP countries, measured as a percentage of GDP, declined from above 40 percent in the late 1990s to below 30 percent by the late 2000s.

Figure 9: Trends in ACP External Debt and Aid from EU (1995-2009)



Source: data on ODA extracted from OECD QWIDS database; data on debt extracted from UNCTADstat

In addition to the marked reduction in the dependence of ACP countries on the EU for trade and aid, there is some evidence that the EU's strategic interest in ACP countries, particularly in Africa, was increasing.

Industrialised countries have become increasingly concerned about securing their access to minerals and metals, particularly rare earth metals essential to various production processes

[63] See for instance IDA and IMF (2007)This report shows that at the end of 2007, Paris Club members, the majority of whom are EU member states, had granted 36 percent of the HIPC debt relief.

[64] The graph is based on data on debt and GDP extracted from UNCTADstat, with both series based on current US dollars UNCTAD (2012)

including the manufacture of high-tech weaponry. (China controls more than ninety percent of these metals, and is keen to preserve them for its own manufacturing.) In 2008 and 2011, the European Commission published two papers laying out its policies for securing access to minerals and metals.[65] While ACP countries only export limited amounts of these products they are known to have significant deposits: Africa is known to host 30 percent of the global reserves of metals and minerals, and at least twenty African ACP countries have deposits of the fourteen minerals and metals that the EU considers to be of critical importance. This had direct implications for EPA negotiations, as trade instruments were identified in the EU's publications as a key means of securing access to raw materials.[66] In the context of rising food prices and climate change, land and water resources are also becoming valuable bargaining chips.

There was also greater interest in Africa's consumer markets. As a McKinsey report noted in 2010 'Africa's economic pulse has quickened… Telecoms, banking, and retail are flourishing. Construction is booming. Foreign investment is surging'.[67] It proceeded to note that Africa's collective GDP had become equivalent to Brazil or Russia, consumer markets were expanding rapidly, and that the rate of return on foreign investment was higher than in any other developing region.

To summarise, there is strong evidence that, by the height of the EPA negotiations, the structural position of ACP states vis a vis the EU had improved dramatically. Although the EU remained a key source of trade and aid, for the first time since the 1970s, there was a major reduction in the depth of ACP dependency, suggesting that exiting their relationship with the EU was a much less costly option for ACP countries than it had been in the past.

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65 European Commission "The Raw Materials Initiative — Meeting our Critical Needs for Growth and Jobs in Europe. Communication from the Commission to the European Parliament and the Council " (2008); European Commission "Tackling the Challenges in Commodity Markets and on Raw Materials: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions" (2011)
66 Ramdoo (2011)
67 Roxburgh et al. (2010)

Moreover, ACP states arguably became more strategic from the perspective of the EU, a shift that had the potential to provide them with significant leverage during the negotiations. The extent to which this reduced the extent to which ACP countries were vulnerable to coercive pressure is probed further as we turn to examine variation in trade and aid dependence across individual ACP states.

Variations in Exit Costs Across ACP States

The preceding analysis highlights three factors that are likely to have influenced the costs to an individual ACP state if it decided to walk away from the EPA negotiations, and hence the extent to which it was vulnerable to coercive pressure: the magnitude of losses incurred by losing trade preferences; the (potential) cost of losing aid; and the availability of alternative trade (and aid) partners. Below, each factor is scrutinised in turn. While this section establishes the extent of variation, the next and final section of the chapter uses statistical methods to test their impact.

Variation in the Potential Cost of Losing Trade Preferences

As noted in the first section, the withdrawal of Cotonou Preferences meant that if ACP states exited from the EPA negotiations, they had to use GSP schemes to access the EU market. The direct (economic) costs entailed by such a move varied substantially across ACP states. The thirty-nine ACP states classified as 'least developed' could export to the EU under the EBA scheme, and faced no direct costs from the loss of Cotonou preferences. (They did face considerable indirect costs in the form of restrictive rules of origin and adverse affects to regional integration, but these are hard to quantify.) In contrast, the thirty-six remaining ACP states had to use the standard GSP to export to the EU and for countries with preference-dependent export sectors, the costs entailed with this switch could be sizeable.

Assessing the direct costs for an individual ACP state of exiting the EPA negotiations and using the GSP scheme to access the EU market is a complex task, as it requires analysis of the impact at the level of individual products. While several country-level studies analysed the costs for individual ACP states or regions, to the authors knowledge, only one study, commissioned by the European Commission, provides an assessment these costs for the majority of ACP states, and this is used as the basis for comparison.[68]

Estimates of the losses entailed in exiting the EPA negotiations and exporting under GSP were calculated for seventy-three of the seventy-six ACP countries. For the thirty-nine ACP countries classified as least developed, zero losses are recorded. For a further thirty-three ACP countries, losses are estimated on the basis of the aforementioned EPA impact assessment study.[69] The study estimates losses in millions of Euros, on the basis of trade flow data averaged for the period 2002 and 2004. These losses were converted into current US dollars on the basis of the average prevailing exchange rate for this two-year period, and then into a fraction of the GDP of that country, on the basis of GDP data extracted from the World Bank database, averaged for the same period, and also measured in current US dollars.[70] This provides us with a measure of estimated annual losses for each ACP country reported as a percentage of that country's GDP. In addition, it is assumed that South Africa faced no losses, as it already had a free trade agreement with the EU, which meant it faced not direct trade costs if it opted to exit from the negotiations.[71]

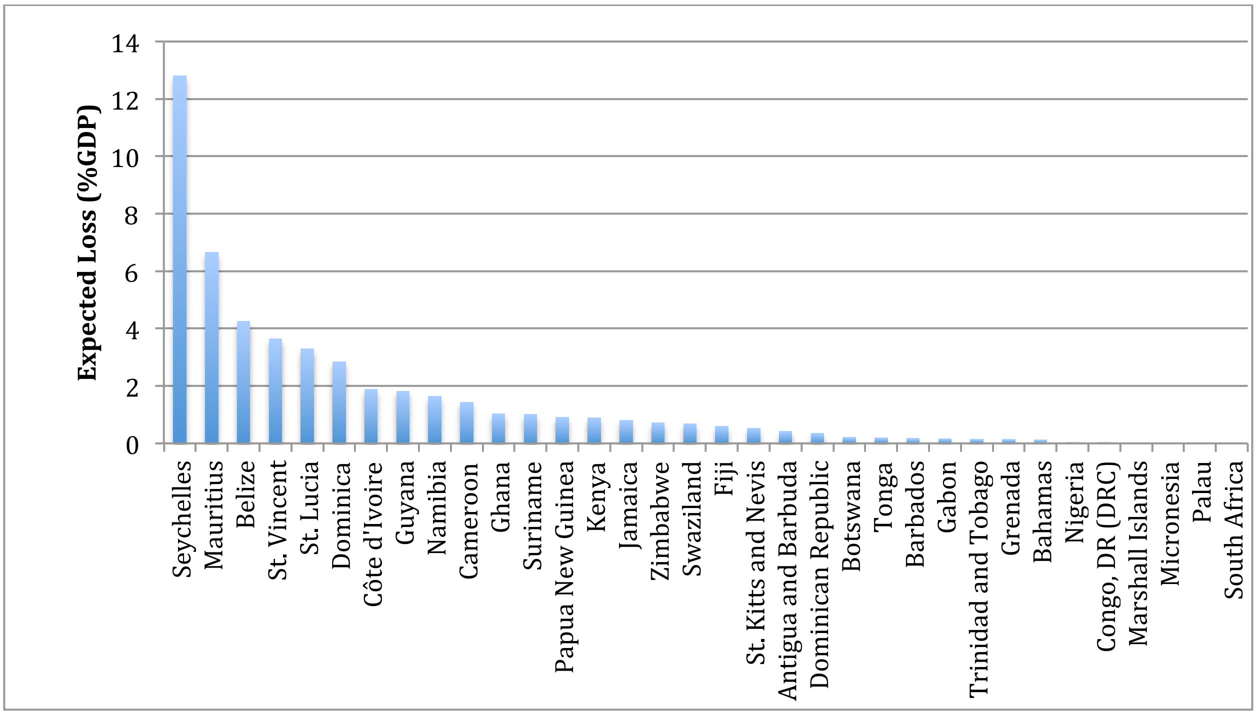
As the impact assessment estimates the value of losing trade preferences by weighting the value of tariff preferences according to the margin of preference they provide and the volume of trade, the data is arguably a better proxy for the cost of losing preferences to the measure used by Shadlen in his study of FTAs in the Americas.[72] Estimates of the losses for thirty-four

[68] Fontagne, Mitaritonna, and Laborde (2008)
[69] LDCs and South Africa assumed to face no direct losses (see discussion in previous section). Losses for non-LDCs are author's own calculations based on ibid.
[70] Data on GDP from the World Bank (2011)
[71] The Trade and Development Cooperation Agreement (TDCA) between the Republic of South Africa and the European Union, signed in 1999
[72] Shadlen (2008) He defines a country's sensitivity and vulnerability to the manipulation (attempted, threatened and actual) of its GSP benefits as 'political trade dependence' and he measures this as the share of a country's total global exports that enter the US under preferential import schemes.

of the forty ACP countries not classified as least developed are represented graphically in Figure 10.

The magnitude of expected losses varied widely across these thirty-four ACP states. On the extreme left of the graph is the Seychelles, which stood to lose the most from exiting the EPA negotiations, with losses estimated to be equivalent to be more than 12 percent of GDP. This was due to the prominence of its fishing sector, which relied heavily on protected access to the EU market, and for which tariffs were about 20 percent lower on the standard GSP.[73] A further five countries faced high losses, equivalent to between 2 and 7 percent of their GDP; six countries faced moderate losses, equivalent to between 1 and 2 percent of GDP; eighteen faced relatively low losses, equivalent to less than 1 percent of GDP; and four countries faced no losses at all.

Figure 10: Estimated Annual Losses to non-LDC ACP States of the Withdrawal of Cotonou Preferences (based on 2002-2004 data)



Source: Author's own calculations based on Fontagne, Mitarritona, and Laborde (2008)

[73] See Alexis and Chang-Sam "Fisheries Industry of the Seychelles: At a Crossroad" (2006); Campling (2008)

The impact assessment shows that losses were confined to the handful of export sectors that had benefited most from preferences including bananas, sugar, apparel, and horticulture.[74] Countries facing low losses either had few exports destined for the EU market and/or they exported products, that did not benefit from preferences. For instance, when Cotonou preferences were withdrawn, the EU was the destination for less than 5 percent of exports from Micronesia and Palau; while minerals and fuels dominated exports from Gabon and Nigeria by where the margin of preference under Cotonou was zero.[75]

In sum, while twelve ACP states faced moderate or high trade preference losses if they exited the EPA negotiations, the vast majority of ACP states faced low, negligible or no direct losses.

Variation in Potential Cost of Losing Aid

The second factor that might have affected the costs faced by ACP states if they decided to walk away from the EPA negotiations was their degree of dependence on the EU for aid. It is reasonable to assume that the greater the relative importance of aid from the EU in the budget of an ACP government, the more susceptible it was likely to be to coercive pressure and /or the more likely it was to fear reprisals in aid if it exited from the EPA negotiations.

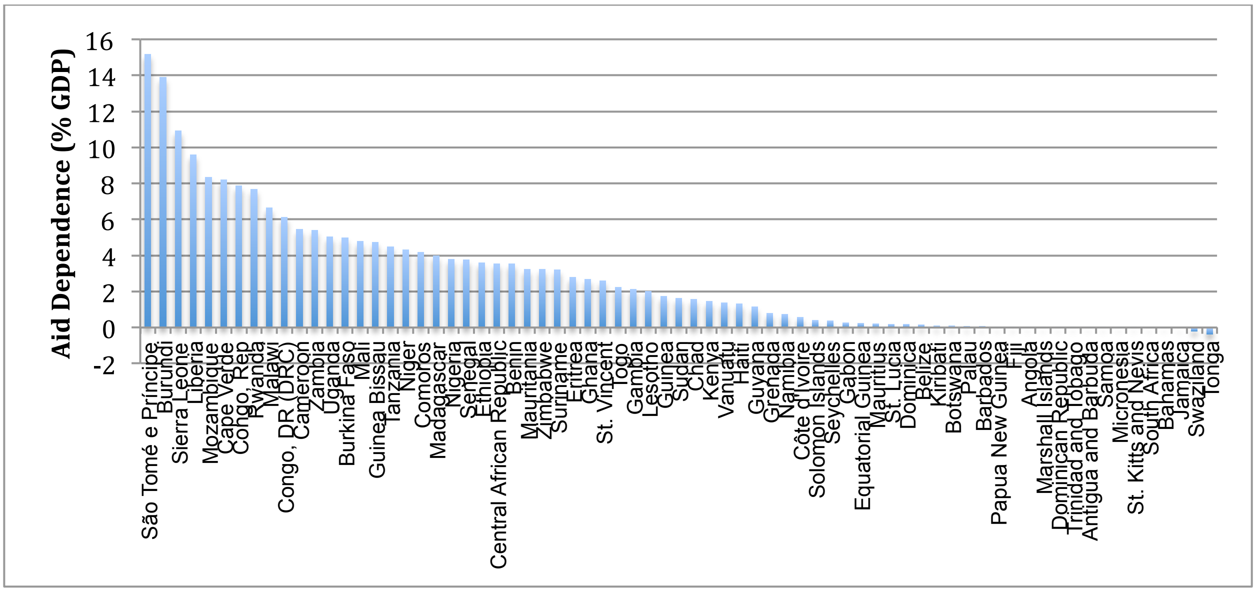
As we are concerned about capturing the interaction between external aid and the decisions of government officials in recipient countries, the most appropriate proxy for aid dependence is total aid measured as a share of government expenditure in the recipient country. However due to poor data quality and availability in low income countries, aid as a percentage of GDP/GNP is commonly used as a proxy for aid dependence, even though it is arguably an imperfect proxy.[76] Analysis of the World Bank database for ACP countries shows that data on

[74] See Appendix VII, Table 20 in Fontagne, Mitaritonna, and Laborde (2008)
[75] Author's own calculations (2005-7 average), data from UNCTAD (2012)
[76] See for discussions on Bräutigam and Knack (2004); Bräutigam (2000) P8-10

government expenditure is patchy and only available for sixty of the seventy-six ACP countries, and for this reason, this study measures dependence on aid from the EU as a percentage of GDP. Comparison of the two measures for the sixty ACP countries where data is available suggests that this is a reasonable method as there is a relatively high level of correlation between the two proxies (0.85).

Estimates of aid dependence were calculated for all seventy-six ACP states. Aid figures are based on the official development assistance (ODA) received from the EU members of the OECD Development Assistance Committee. This includes ODA provided by individual EU member states and the European Commission. Aid dependence is measured as ODA dispersed by the EU as a percentage of GDP for a given ACP state. Aid data include loans and grants, and are net rather than gross, so current loan repayments are subtracted. Since aid fluctuates from one year to the next, data is averaged for 2005-7, the three years preceding the first EPA being initialled.[77]

Figure 11: Aid Dependence of ACP States on EU (2005-7)



Source: Author's own calculations (2005-7 average), ODA data from OECD QWIDS database; GDP data from World Bank Development Indicators (accessed January 2011)

[77] Author's own calculations based on EU aid data from OECD (2011); GDP data from World Bank (2011)

The data is presented graphically in Figure 11. It shows a high level of variation across ACP countries. In three countries (Burundi, Sao Tome and Principe, Sierra Leone) aid dependence appears to have been very high, with aid from the EU equivalent to more than 10 percent of GDP. In a further ten countries it was equivalent to between 5 and 10 percent of GDP; in twenty-eight countries it was equivalent to between 1 and 5 percent, while for thirty countries, it was minimal, equivalent to less than 1 percent of GDP. In two of these cases, the figure is negative, suggesting that repayments of the principal of ODA loans (which count as negative flows) outweighed the inflow of new ODA disbursements.

Overall, just as in the case of trade preferences, the figures indicate a high degree of variation in the depth of aid dependence across ACP states.

Variation in Availability of Alternative Trading Partners

Aside from the direct losses that ACP countries faced from losing Cotonou preferences (and possibly aid), it is reasonable to expect that the availability of alternative trade (and aid) partners would have affected the degree of resilience of ACP countries to coercive pressures. If an ACP country has other trading partners to turn to, this may help it to quickly adjust the direction of its exports away from the EU market, reducing the costs associated with exiting. Indeed, as discussed in chapter one, the availability of alternative trading partner is a critical factor identified by Hirschman in his seminal analysis of power and trade.[78]

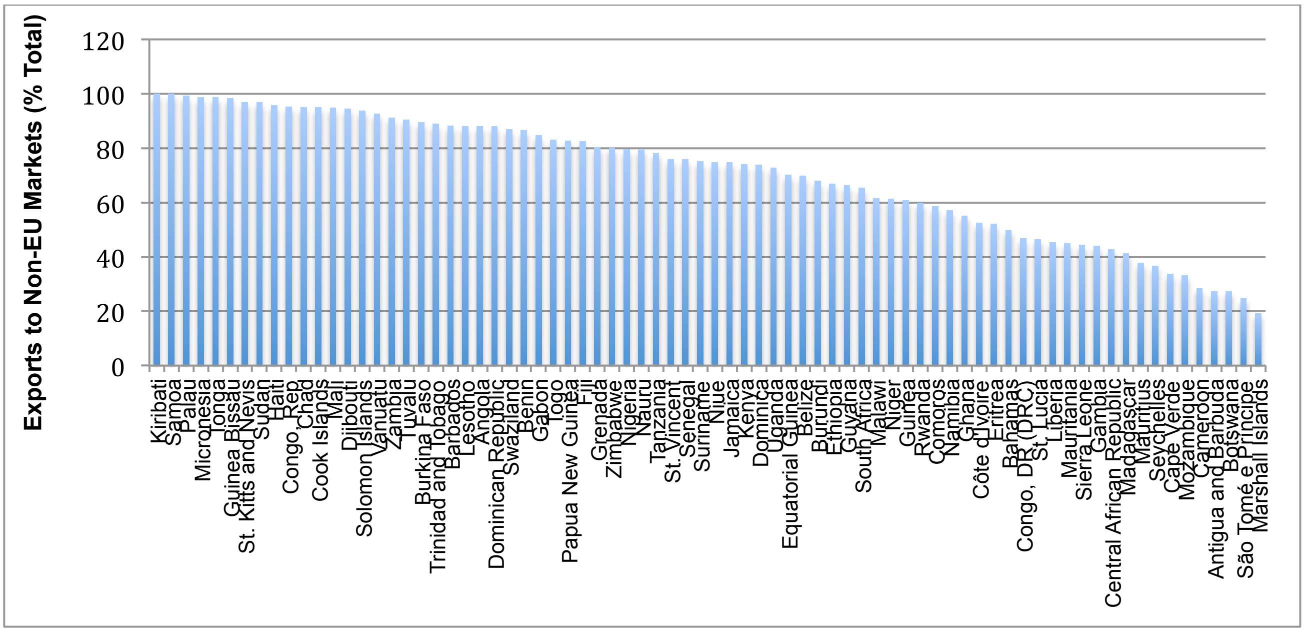
A simple measure of the availability of alternative trading partners is the proportion of a country's trade that is *not* destined for the market in question. The availability of alternative trading partners is therefore measured as the proportion of exports from a given ACP country that are destined for non-EU markets, as a percentage of total exports from that country. Data for all seventy-six ACP states was compiled based on trade flow data extracted from

[78] Hirschman (1945)

UNCTADstat. Values were averaged for 2005-2007 (the three years preceding the first EPA being initialled) in order to eliminate the effect of temporary fluctuations.[79]

The data on the levels of exports destined to trading partners other than the EU is represented graphically in Figure 12. It shows that for the vast majority of ACP states (fifty-eight), more than half of their total exports are destined for non-EU markets, suggesting that for these countries, alternative trading partners are readily available. A further thirteen countries export between a half and a third of their total exports to non-EU markets, and five countries (Cameroon, Antigua and Barbuda, Botswana, Sao Tome and Principe, Marshall Islands) export less than one third of total exports to non-EU markets. This suggests that alternative trading partners are less readily available, giving rise to the expectation that these countries would be more susceptible to coercive pressure.

Figure 12: Availability of Alternative Trading Partners for ACP Countries (2005-7)



Source: Author's own calculations (2005-7 average), data from UNCTADstat (accessed January 2011)

[79] Although trade flows can vary significantly from one year to another, we would expect a policymaker in state *i* to be concerned with the general dependence of the state on the EU rather that dependence at any given moment. Author's own calculations based on data from UNCTAD (2012)

In addition to the general availability of trading partners, the analysis above noted that there was a dramatic increase in the intensity of trade relations between ACP countries and emerging markets (particularly China, India, and Brazil) between 2000 and 2010. This may also be a salient factor in the degree to which individual ACP states were vulnerable to coercive pressure.

Prior to this recent shift, the external relations of ACP states were oriented to the EU and US (and Australia and New Zealand in the case of Pacific ACP states). As the historical analysis in chapter two showed, these states cooperated in international fora, including in the aid arena, with the result that ACP states faced a de facto monopoly. In other words, the fact that ACP states had trading partners other than the EU did not in itself assure them of greater bargaining power vis a vis the EU in trade negotiations.

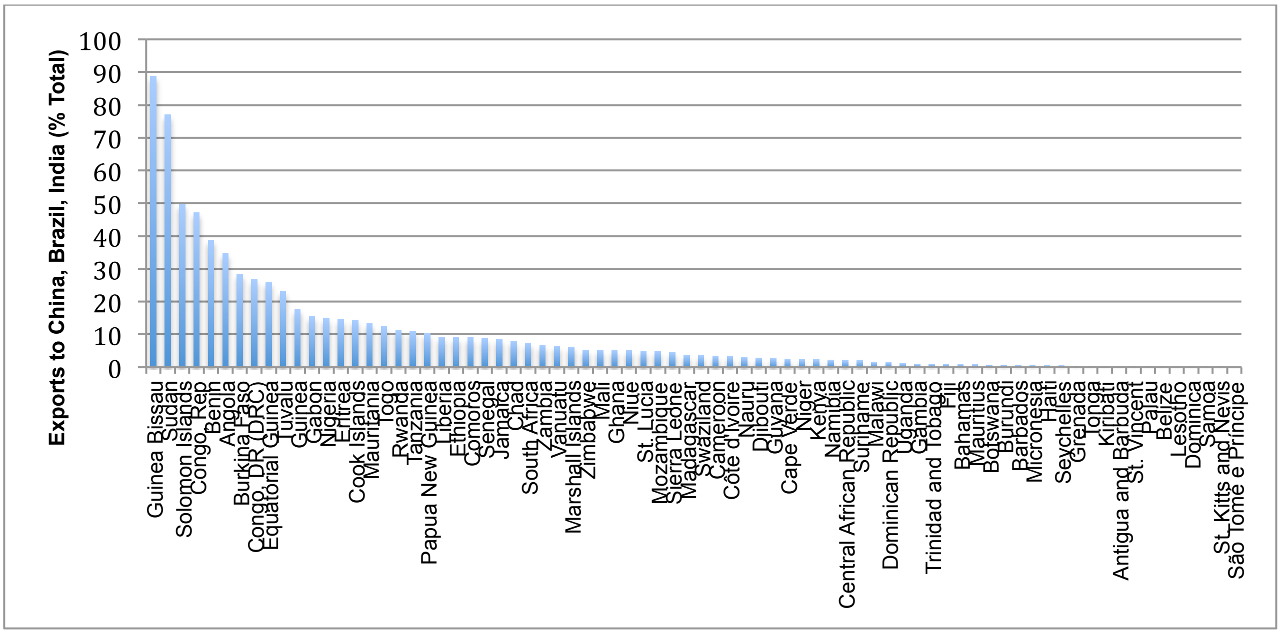
During the EPA negotiations, there is anecdotal evidence that the rapid growth of trade relations with emerging economies had broken this de facto monopoly, and provided some ACP states with a new source of leverage, arguably reducing their vulnerability to coercive pressure. During the Africa-Europe Summit in Lisbon in December 2007 for instance, Senegal's President argued that the EPAs risked causing a 'seismic rupture' between the two continents at a time when China was offering African countries loans, infrastructure projects and cheap goods. As he wrote in a widely publicised opinion piece 'China is doing a much better job than western capitalists of responding to market demands in Africa… Today I find myself at the heart of an economic struggle with the EU. If Europe does not want to provide funding for African infrastructure… the Chinese are ready to take up the task, more rapidly and at less cost.'[80] Similarly, during an interview, a senior government official from Eastern Africa noted: 'We also have our threats, because the world has changed… we can say we can go to China'[81]

[80] Wade "Time for the West to Practise What it Preaches" (2008)
[81] Interview, government official

If this is the case, variations across ACP states in the intensity of their economic relations with emerging economies (particularly China, Brazil, and India) may be a source of explanation for the variation in vulnerability to coercive pressure and hence in EPA outcomes. While it is hard to quantify the amount of aid and FDI from emerging markets that was destined to ACP states during this period, trade figures are readily available and are used as a proxy (albeit an imperfect one).

The intensity of trade relations with China, India and Brazil, is measured as the proportion of exports from a given ACP country that are destined for these markets, measured as a percentage of total exports. Data for all seventy-six ACP states was compiled based on trade flow data extracted from UNCTADstat. Values were averaged for 2005-2007 in order to eliminate the effect of temporary fluctuations.[82]

Figure 13: The Importance of China, India and Brazil as Alternative Trading Partners (2005-7)



Source: Author's own calculations (2005-7 average), data from UNCTADstat (accessed January 2011)

[82] Although trade flows can vary significantly from one year to another, we would expect a policymaker in state *i* to be concerned with the general dependence of the state on the EU rather that dependence at any given moment. Author's own calculations based on data from UNCTAD (2012)

The data is represented graphically in Figure 13 and, once again, it shows a high level of variation across ACP states. For nine ACP countries, China, India and Brazil, were the destination of more than 25 percent of exports during this period, and in the case of Guinea-Bissau and Sudan, this figure rises to more than 75 percent of exports.[83] For a further twenty-five ACP countries they are significant export destinations, accounting for between 5 and 25 percent of total exports, while for the remaining forty-two ACP countries, they are of negligible importance, accounting for less than 5 percent of exports.

In sum, the analysis shows that there is a high degree of variation across ACP states in terms of the availability of alternative trade partners, whether this is measured in terms of all non-EU trade partners, or whether the focus is on the emerging markets.

5.5. Empirical Tests of the Argument

So far, this chapter has shown that ACP states came under high levels of coercive pressure during the EPA negotiations, but that the general dependence of ACP countries on the EU declined markedly over the period 1995 to 2010, making ACP countries less vulnerable to coercive pressure. It has also shown that trade and aid dependence varied substantially across ACP states. This section examines the extent to which the vulnerability of a given ACP state to coercive pressure (i.e. the depth of its trade and aid dependence) is correlated with the decision to enter an EPA.

The preceding analysis suggests that, all things being equal, we would expect the likelihood of a given ACP country signing an EPA to depend on the degree of its vulnerability to coercive pressure. As shown above, three key components of vulnerability to coercive pressure can be readily measured: the trade losses it faced if it exited the EPA negotiations, the level of its dependence on the EU for aid, and the availability of alternative trading partners, particularly emerging economies.

[83] Author's own calculations (2005-7 average), data from ibid.

This can be expressed as three simple hypotheses. We expect the likelihood of a given ACP country signing an EPA to:

H1: Increase with the magnitude of trade losses it faced if it exited the EPA negotiations and had to use GSP schemes to access the EU market

H2: Increase with its dependence on the EU for aid

H3: Decrease with the intensity of its trade (and aid) relations with other countries

Operationalizing the Variables

I now explain how the dependent, key independent variables and control variables are defined and operationalised, before running a series of logistical regressions to test the argument.

Dependent Variable

The dependent variable $EPAOUTCOME_i$, is the outcome of the EPA negotiations for ACP country *i*. The outcomes of the EPA negotiations were explored in depth in chapter four. It showed that EPAs were initialled or signed within a twenty-five month period, from November 2007 to November 2009. The outcomes, analysed on a country-by-country basis, are summarised on in Table 19.

Table 19: Outcome of EPA Negotiations (Individual Countries)

Type of Agreement	Number of ACP Countries	ACP Countries
Full EPA (signed)	15	Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, Dominican Republic, Grenada, Guyana, Haiti, Jamaica, St. Kitts and Nevis, St. Lucia, St. Vincent, Suriname, Trinidad and Tobago
Interim EPA (signed)	12	Botswana, Cameroon, Cote d'Ivoire, Fiji, Lesotho, Madagascar, Mauritius, Mozambique, Papua New Guinea, Seychelles, Swaziland, Zimbabwe
Interim EPA (initialled, not signed)	9	Burundi, Comoros, Ghana, Kenya, Namibia, Rwanda, Tanzania, Uganda, Zambia
No EPA	40	Angola. Benin, Burkina Faso, Cape Verde, Central African Republic, Chad, Congo (DRC), Congo (Rep.), Cook Islands, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gabon, Gambia, Guinea, Guinea Bissau, Kiribati, Liberia, Malawi, Mali, Marshall Islands, Mauritania, Micronesia, Nauru, Niger, Nigeria, Niue, Palau, Samoa, Sao Tome e Principe, Senegal, Sierra Leone, Solomon Islands, South Africa, Sudan, Togo, Tonga, Tuvalu, Vanuatu.

Note: These were the outcomes in September 2012. They had not changed since November 2009.

Table 19 shows that EPA outcomes can be classified into a four-way typology. In the first category are the fifteen Caribbean states that signed a 'full' EPA, which was broadly of the depth and coverage that the EU sought (although the Caribbean negotiators did extract some concessions at the margins). In the second category are the twelve African and Pacific states that signed an 'interim' EPA, which only covered trade in goods, and hence only partially met the EU's interests. In the third category are nine African states which initialled an 'interim' EPA but did not then sign it, with the result that it has no weight in international law. In the fourth category are forty African and Pacific states, which did not sign or initial any form of agreement.

In line with the four-way typology above, the dependent variable is first coded on a full (0,1,2,3) scale, with 0 denoting no EPA, 1 denoting an 'interim' EPA which was initialled but not signed, 2 denoting an 'interim' EPA which was signed, and 3 denoting a 'full' EPA which was signed. It would have been ideal to run an ordered logistical regression based on a four-way coding of the dependent variable but the small size of some categories posed problems as it led to limited within-category variation of some of the key independent variables. For this reason, the dependent variable is reduced into two dummy variables, and logistic regressions used for the analysis.

First I create $EPAOUTCOME1_i$ in order to examine the probability that a given ACP country *i* signed *any* type of EPA ('full' or 'interim'): I code 1 if the full score equals 2 or 3, 0 otherwise. As the principle question we are seeking to answer is why some ACP countries signed EPAs while others did not, $EPAOUTCOME1_i$ is used for the majority of the regression analysis. I then create $EPAOUTCOME2_i$ to examine the probability that a given ACP country *i* signed a 'full' EPA*:* I code 1 if the full score equals 3, and 0 otherwise.[84]

[84] A similar method of breaking down an ordinal dependent variable into dummy variables is used in Pelc (2010)

Key Independent Variables

In line with the data presented above, three independent variables are the focus of the analysis. First, the direct trade losses incurred if a country exited the EPA negotiations and switched to GSP are examined. The variable $GSPLOSS_i$ measures, as a percentage of GDP, the expected loss that ACP state *i* would have incurred if it had decided not to enter an EPA and was obliged to export under a GSP scheme.[85] It ranges from a minimum of 0 percent of GDP, to a maximum of 12.8 percent of GDP.

The second variable examined is the fear among ACP negotiators that they would lose aid from the EU if they exited from the EPA negotiations. EUAID*i* measures the extent to which ACP state *i* is dependent on official development assistance (ODA) from the EU members of the OECD Development Assistance Committee. Since aid fluctuates from one year to the next, data is averaged for 2005-7, the three years preceding the first EPA being initialled (at the end of 2007). It ranges from a minimum of -3 percent of GDP, to a maximum of 18.1 percent of GDP (net ODA transfers can be negative as repayments of the principal of ODA loans count as negative flows).[86]

An alternative measure of potential aid losses is compiled using data on aid from EU institutions alone. This allows us to explore the argument that aid controlled directly by the European Commission is most likely to be used as a bargaining chip in trade negotiations.[87] EUINSTAID*i* is aid from the EU institutions as a percentage of GDP for state *i,* averaged for

[85] Losses for non-LDCs are author's own calculations based on Fontagne, Mitaritonna, and Laborde (2008) and data on GDP from the World Bank (2011). As above, LDCs and South Africa assumed to face no direct losses

[86] Author's own calculations based on EU aid data from OECD (2011); GDP data from World Bank (2011)

[87] Unlike trade relations, EU aid is not centralised and controlled by the European Commission. While the European Commission has control over the European Development Fund, individual member states have their own bilateral programmes. As member states had varying opinions on the EPA and the degree to which the European Commission negotiators should pressure ACP states into signing, it is less likely that bilateral aid was used as a bargaining chip than aid flows that the European Commission controlled directly (as was implied by the incident in the Pacific)

2005-7. It is compiled from the same sources as EUAID*i* and ranges from a minimum of 0 percent of GDP, to a maximum of 9.4 percent of GDP.[88]

The third variable examined is the availability of alternative export markets. The variable NONEUEXPORT*i* measures the proportion of exports from ACP country *i* destined for non-EU markets, as a percentage of total exports from that country. Values were averaged for 2005-2007 (the three years preceding the first EPA being initialled) in order to eliminate the effect of temporary fluctuations. It ranges from a minimum of 19 percent of total exports, to a maximum of 100 percent of total exports.[89]

A different measure of alternative export markets focuses exclusively on key emerging markets, and allows us to explore the argument that trade relations with these countries were particularly important as it provided leverage in the negotiations. EXPORTCIB*i* measures the exports from ACP country *i* that are destined for China, India, or Brazil, as a percentage of their total exports. Values were averaged for 2005-2007 in order to eliminate the effect of temporary fluctuations.[90] It ranges from a minimum of 0 percent of total exports, to a maximum of 88 percent of total exports.

Before moving on, it is important to note a critical assumption made in the way that the key variables are specified in the model, namely that the direct costs (and benefits) of signing an EPA are assumed to be equivalent for all ACP states. In practice however, there is likely to be significant variation as, *ceteris paribus*, ACP states with low levels of tariffs on EU imports and regulatory frameworks similar to the EU faced lower adjustment costs compared with those ACP states that had high tariffs and very different (or absent) regulatory structures.

[88] Author's own calculations based on EU aid data from OECD (2011); GDP data from World Bank (2011)

[89] Although trade flows can vary significantly from one year to another, we would expect a policymaker in state *i* to be concerned with the general dependence of the state on the EU rather that dependence at any given moment. Author's own calculations based on data from UNCTAD (2012)

[90] Author's own calculations based on data from ibid.

Unfortunately, given the complexity of the agreements and lack of data, reliable estimates of the impact of a full EPA require detailed country-level studies, which do not lend themselves to comparison.[91] For this reason it is not possible to compile an index of EPA adjustment costs.

Control Variables

Aside from the variables outlined above, a series of control variables are added, which previous studies have used in analysing the formation of Preferential Trading Agreements (PTAs). This helps ensure that any observed effects of the three key variables outlined above are not due to confounding factors. The basic selection of control variables follows recent work by Milner and Mansfield who examine the political factors driving the formation of preferential trade agreements,[92] although the selection is tailored to this specific dataset and empirical puzzle.

$TRADE_i$ is the logarithm of total value of trade between the EU and ACP country *i* averaged for the period 2005-7. This captures the expectation that increasing economic exchange creates incentives for domestic groups that benefit from trade to press governments to enter PTAs, since these arrangements help to avert the possibility that trade relations will break down in the future.[93] It ranges from a minimum of 14.2 (equivalent to a total trade flow of only US$1.2 million per annum), to a maximum of 24.5 (equivalent to a total trade flow of US$43 billion per annum).

Several studies suggest that economic conditions within countries are likely to influence the propensity of a state to enter into a PTA. The economic size of a country is thought to be particularly important, as ‘large states may have less incentive to seek the expanded access

[91] The study by Fontagne et al, which, to the author’s knowledge is the best comparative study available, but it only looks at the impact of the EPAs that pertain to trade in goods, and even then only covers 48 of the 76 ACP countries. Fontagne, Mitaritonna, and Laborde (2008)
[92] Mansfield and Milner "Votes, Vetoes, and Preferential Trading Agreements" (2010)
[93] Ibid.

afforded by PTA membership than their smaller counterparts'.[94] To incorporate this possibility, the variable GDP_i is created, which is the logarithm of ACP country *i*'s gross domestic product (in millions of current US$), averaged for the years 2005-7, based on World Bank data.[95] It ranges from a minimum of 18.6 (equivalent to an average GDP of only US$115 million per annum), to a maximum of 26.3 (equivalent to an average GDP of US$265 billion per annum). However as there is an extremely high correlation with $TRADE_i$ (0.91) the two variables are not used at the same time.

Fluctuations in economic growth are also thought to be significant, although the research has not reached consensus as to the direction of the association. Some studies suggest that downturns in growth rates lead countries to seek membership of PTAs[96] while others suggest that increased growth is likely to stimulate membership as states seek new markets for expanding exports.[97] The variable $GDPGROWTH_i$ is introduced to capture economic growth, and it is the average growth rate in ACP country *i* for the period 2005-7. It ranges from a minimum of -23.3 percent per annum (the growth rate for Zimbabwe, which has been in a state of economic collapse), to a maximum of 36.7 percent per annum (corresponding to Equatorial Guinea where rapid growth has been fuelled by high petroleum prices).

Geographic features, including distance, have also been found to be an important influence on PTA membership. States often use PTAs to obtain preferential access to the markets of their key trade partners. These partners tend to be located nearby, since closer proximity reduces transportation costs and other impediments to trade. $DISTANCE_i$ is the logarithm of the distance in miles between the capital of ACP state *i* and Brussels (which serves as the 'capital' of the EU).[98] It ranges from a minimum of 7.8 (equivalent to 2,584 miles), to a maximum of 9.2 (equivalent to 10,395 miles). Other studies include a variable that captures

94 Ibid. P15
95 World Bank (2011)
96 Mattli (1999)
97 Mansfield and Milner "Votes, Vetoes, and Preferential Trading Agreements" (2010)
98 Data on distance is taken from Bennett and Stam (2012) see Bennett and Stam (2000)

whether countries share a common border. However no ACP country shares a border with the EU so this is not included in the model.

Political relations between states may also have an impact. Other studies, use control variables capturing military hostility and alliances, on the basis that states are less likely to form PTAs with countries where there is hostility, and more likely to form a PTA with countries that are military allies. However scrutiny of a leading database shows that military hostilities and alliances between the EU and ACP states are extremely rare and hence likely to be of minimal relevance to the EPA outcomes: between 2000 and 2010, no ACP state was engaged in a military dispute with an EU state, and there were only three instances recorded of an alliance between an ACP state and an EU state.[99] Previous research has found that a former colonial relationship increases the likelihood that a country enters into a PTA, however this not relevant to the EPA case as all bar two of the ACP states (Liberia and Ethiopia) are former European colonies.

WTO membership is often used as a control variable, as previous studies have shown that members are more likely to form PTAs than non-members. However this variable is not included in the analysis due to problems of perfect prediction; none of the ten ACP states that were non-WTO members or in the process of negotiating accession signed an EPA.[100] Regional dummies are commonly included in order to control for regional fixed effects. Unfortunately in the EPA case these can't be included as all Caribbean ACP states entered

[99] The UCDP/PRIO Armed Conflict Database v4-2011 was scrutinized. Between 2000 and 2010, the three instances of alliances were between Sierra Leone and the UK in 2000, between Central Africa and France in 2006, and between Mauritania and France in 2010.

[100] For robustness, ACP states in the process of accession were re-coded as non-members. The resulting variable was not significant in any of the models and due to substantial correlation with $TRADE_i$ (0.5), it was dropped; Nine ACP states are not members of the WTO (Cook Islands, Eritrea, Kiribati, Marshall Islands, Micronesia, Nauru, Niue, Palau, Tuvalu). A further ten have observer status (Bahamas, Comoros, Equatorial Guinea, Ethiopia, Liberia, Samoa, São Tomé and Principe, Seychelles, Sudan, Vanuatu) but with the exception of Ethiopia, all were in the process of negotiating accession during the EPA negotiations. See summary details of accessions on WTO website: http://www.wto.org/english/thewto_e/acc_e/status_e.htm.

into an EPA, also giving rise to problems of perfect prediction (whereby one value of a independent variable is associated with only one value of the dependent variable).

It is reasonable to expect that the level of per capita incomes in a country might have an affect on its trade policy decisions, as poorer countries are likely to face greater institutional capacity constraints that undermine their negotiating capacity. $GDPPERCAP_i$ is the natural log of per capita GDP in each ACP country measured in constant US dollars, averaged for the period 2005-7. As with data on GDP, it is extracted from World Bank data.[101] As might be expected, there is a high correlation between measures of aid dependence and income per capita levels (0.66), so $GDPPERCAP_i$ is not used at the same time as EUAID*i* and EUINSTAID*i*.

Descriptive statistics for all variables are presented in Table 20. As is shown, there are a few data gaps. Full data is available for sixty-eight of the seventy-six ACP states and the regression analysis is restricted to this sample. The eight ACP countries that are dropped due to a lack of data are: Tuvalu, Nauru, Cook Islands, Niue, Kiribati, Bahamas, Zimbabwe, and Djibouti. As four of these countries are Pacific Islands, the Pacific ACP states are under-represented in the sample.

Table 20: Descriptive Statistics for Key Variables

VARIABLE	Obs.	Mean	Std. Dev.	Min.	Max.
Dependent Variables					
EPAOUTCOME1	76	0.355	0.482	0	1
EPAOUTCOME2	77	0.195	0.399	0	1
Key Independent Variables					
GSPLOSS	73	0.678	1.838	0	12.81
EUAID	76	3.075	4.329	-3.163	18.12
EUINSTAID	69	1.415	1.720	0.0299	9.413
NONEUEXPORT	76	70.490	22.573	19.15	100
EXPORTCIB	76	9.766	16.150	0	88.82
Control Variables					
GDP	71	21.81	1.664	18.56	26.30
GDPGROWTH	71	10.84	7.966	-23.30	36.74
GDPPERCAP	71	7.193	1.334	4.770	9.945
DISTANCE	74	8.408	0.387	7.834	9.249
TRADE	75	19.464	2.254	14.02	24.48

[101] World Bank (2011)

Results of the Empirical Analysis

The analysis starts by estimating three variants of the basic model to determine which of the alternative specifications of the key variables provides the best fit.

(Model 1) $EPAOUTCOME1_i = \beta_0 + \beta_1 GSPLOSS_i + \beta_2 EUAID_i + \beta_3 NONEUEXPORT_i + \beta_4 TRADE_i + \beta_5 GDPGROWTH_i + \beta_6 DISTANCE_i + \varepsilon_i$

In addition to the three control variables, model 1 includes $GSPLOSS_i$ as a measure of the direct trade losses from exiting EPA negotiations, $EUAID_i$ as a measure of potential aid losses, and $NONEUEXPORT_i$ as a measure of the availability of alternative trading partners. Model 2 is a variant of model 1. It substitutes EUINSTAID*i* for EUAID*i* on the grounds that this may be a better proxy for fear among ACP states that aid will be withdrawn. Model 3 builds on model 2, and substitutes $EXPORTCIB_i$ for $NONEUEXPORT_i$ on the grounds that this may be a better proxy for the availability of alternative trading partners.

Initial scrutiny of models 1,2 and 3 shows with the exception of $EUAID_i$ and $EUINSTAID_i$ (the proxies for aid dependence) all the key independent variables operate in the expected direction, and with the exception of $NONEUEXPORT_i$ the remaining variables are significant at the 0.1 level.

In response to the unexpected coefficient on proxies for aid dependence, I generate two further models. In model 4, I drop EUINSTAID*i* to see if this improves the goodness of fit. I then generate model 5, which includes $GDPPERCAP_i$ as a control variable for the first time (this was not included previously due to a high correlation with aid dependence). Model 5 helps us probe whether the unexpected and negative coefficient on measures of aid dependence was the result of omitting a proxy that controls for the level of development of ACP *i*. This is plausible, as aid tends to be allocated to countries that have low levels of income so it is possible that the negative coefficient was masking a positive correlation between the propensity of an ACP country signing an EPA and its average level of wealth.

Table 21: Logit Model of Decision by ACP State to Sign an EPA

VARIABLE	Model 1	Model 2	Model 3	Model 4	Model 5
GSPLOSS	2.247**	2.270**	1.842*	2.094**	1.604*
	(0.999)	(0.959)	(0.973)	(1.017)	(0.953)
EUAID	-0.109				
	(0.106)				
EUINSTAID		-0.348	-0.280		
		(0.337)	(0.301)		
NONEUEXPORT	0.00512	0.00699			
	(0.0177)	(0.0172)			
EXPORTCIB			-0.384**	-0.382**	-0.337**
			(0.163)	(0.161)	(0.162)
TRADE	0.470*	0.439*	0.728***	0.711***	0.732**
	(0.241)	(0.238)	(0.278)	(0.268)	(0.289)
GDPGROWTH	-0.175*	-0.186**	-0.194*	-0.173*	-0.180*
	(0.0920)	(0.0904)	(0.102)	(0.0974)	(0.102)
DISTANCE	1.863	1.975*	2.301*	2.646*	2.085
	(1.154)	(1.145)	(1.389)	(1.361)	(1.429)
GDPPERCAP					0.521
					(0.354)
Constant	-24.50*	-24.79*	-31.15**	-34.38**	-33.73**
	(12.81)	(12.79)	(14.92)	(14.60)	(15.29)
Goodness of fit statistics:					
BIC'	-13.161	-13.457	-24.843	-27.916	-26.103
expected percent correctly predicted	75.79 %	75.87%	81.59%	80.97%	82.29%
Observations	68	68	68	68	68

Notes: Standard errors in parentheses. *** p<0.01, ** p<0.05, * p<0.1. Goodness of fit statistics (expected percent correctly predicted and expected proportional reduction in error) are implemented by the epcp routine in Stata (Lawrence 2009).

Estimates for all five models are presented in Table 21. Comparison of the models shows that they all fit the data well, as the 'expected percent of correctly predicted' (epcp) cases is above 75 percent in all five models, and above 80 percent in models 3, 4 and 5. Comparing between the models on the basis of BIC' shows that model 4 has the best fit so this model is used for further analysis and testing, including generating predicted probabilities.[102]

[102] BIC' is better suited than the epcp for selecting one model among a series of alternative specifications as it is based on transformation of the log-likelihood criteria. See Esarey and Pierce (2012)

Probability of an ACP country signing an EPA

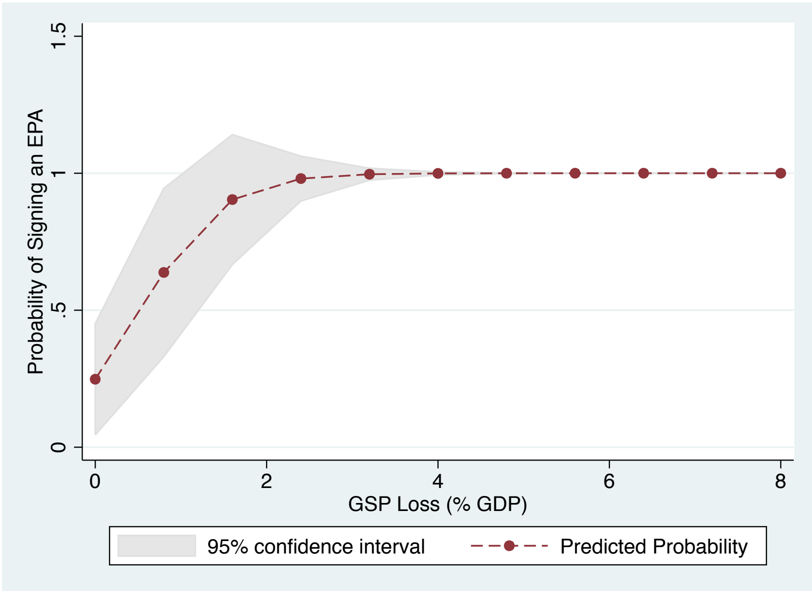
What do these results imply for the main argument in this chapter, namely that more vulnerable an ACP country was to coercive trade and aid pressures from the EU, the more likely it was to sign an EPA? A joint test of the significance of $GSPLOSS_i$ and $EXPORTCIB_i$ shows that the null hypothesis that vulnerability did not have an impact on EPA outcomes can be rejected at the 0.05 level.[103] This provides a strong support for the overall argument as, holding other factors constant, it shows a positive and strong correlation between the likelihood of ACP country *i* signing an EPA and the degree to which it is vulnerable to coercive pressure from the EU.

Turning to individual variables, the results support the first hypothesis, namely that the likelihood of an ACP country signing an EPA would increase with the magnitude of trade losses it faced if it exited the EPA negotiations and had to use GSP schemes to access the EU market. The coefficient on GSPLOSS is positive and statistically significant at the 0.05 level in models 1, 2 and 4, and significant at the 0.01 level in models 3 and 5.

Calculating predicted probabilities shows that the effect is quite dramatic, with the likelihood of an ACP state entering an EPA rising very steeply with the magnitude of losses potentially faced (Figure 14). As illustrated in Figure 14, holding everything else constant[104] the predicted probability of an ACP state signing an EPA when it faces no losses is 25 percent; when it faces losses equivalent to 1 percent of GDP this rises to 73 percent; and when it faces losses of equivalent to 2 percent of GDP, the predicted probability is over 95 percent.

[103] Testing the hypothesis that $GSPLOSS_i$ and $EXPORTCIB_i$ are simultaneously equal to zero yields $X^2 = 8.25$, df = 2, p = 0.0162.
[104] Continuous variables are held at their median values

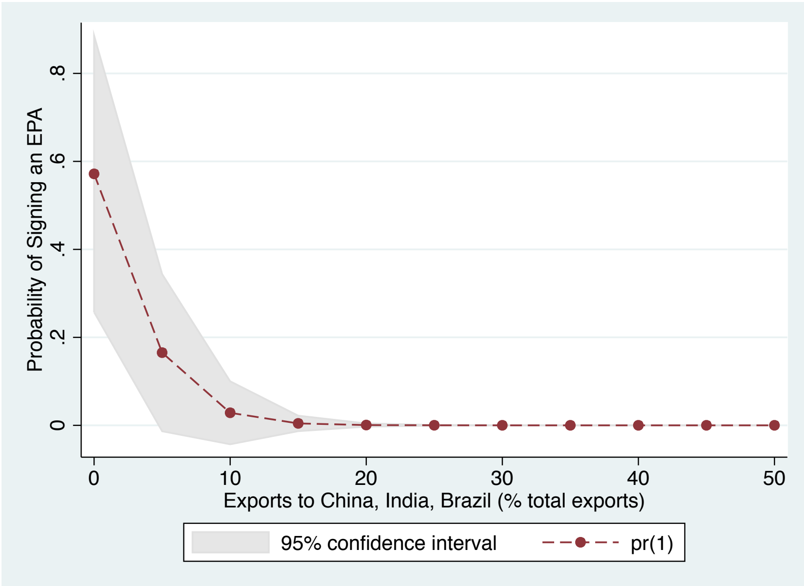
Figure 14: The Impact of Losing Trade Preferences on the Probability of Signing an EPA



The results also provide some support for the third hypothesis, namely that the likelihood of a given ACP country signing an EPA will decrease with the intensity of its trade (and aid) relations with other countries. The results of models 1 and 2 suggest that the general availability of trading partners (measured as the proportion of exports destined to non-EU markets) is not systematically correlated with EPA outcomes. However, the results of models 3, 4 and 5 suggest that the intensity of trade relations with China, India and Brazil are systematically correlated with EPA outcomes. The coefficient on $EXPORTCIB_i$ is negative, as expected, and significant at the 95% level in the three models, suggesting that the likelihood of an ACP country signing an EPA decreased as the intensity of trade relations with these countries increased.

The predicted probabilities are graphed in Figure 15. As shown in the graph, holding everything else constant, if an ACP state does not export to these markets, the predicted probability that it will sign an EPA is 57%. However as soon as 5% of its exports are destined for these markets, the predicted probability drops to 17%, and when exports reach 10%, the predicted probability is less than 5%.

Figure 15: The Impact of Exporting to Brazil, India, China on the Probability of Signing an EPA



However the results do not support the second hypothesis, namely that the likelihood of a given ACP country signing an EPA will increase with its dependence on the EU for aid. The results for models 1, 2 and 3 suggest that, there was no systematic relationship between aid dependence and the outcome of the EPA negotiations. The coefficients on $EUAID_i$ and $EUINSTAID_i$ are not significant, suggesting that, all things being equal, higher levels of aid dependence did not increase the likelihood of an ACP country entering into an EPA. This held true whether we consider aid from the EU at the aggregate level, or only the aid that is directly controlled by the European Commission. This is a rather surprising finding in light of the high levels of dependence of some ACP states on the EU for aid, and the evidence of aid threats presented in this chapter, which draws on several sources including press reports, the online survey and interviews with ACP negotiators. Possible reasons for these results are discussed in the conclusion.

Turning to the control variables, the coefficient on $TRADE_i$ is positive, as expected, and statistically significant in all of the models. This suggests that, in line with previous research, the likelihood of a given ACP state *i* signing an EPA increased with the intensity of trade between the EU and that state. Unfortunately it was not possible to control for the economic size of ACP countries using the variable GDP_i at the same time as $TRADE_i$ due to high levels of correlation between the two variables. Substituting GDP_i for $TRADE_i$ and re-running the models shows that the coefficient on GDP_i is positive and significant at the 0.1 level or higher, in models 3, 4 and 5. This suggests that, contrary to previous research, ACP states with larger economies were more likely to enter an EPA. Together, these findings suggest that, all things equal, ACP countries with large economies and high levels of trade with the EU were more likely to conclude an EPA than relatively small countries with small trade flows.[105]

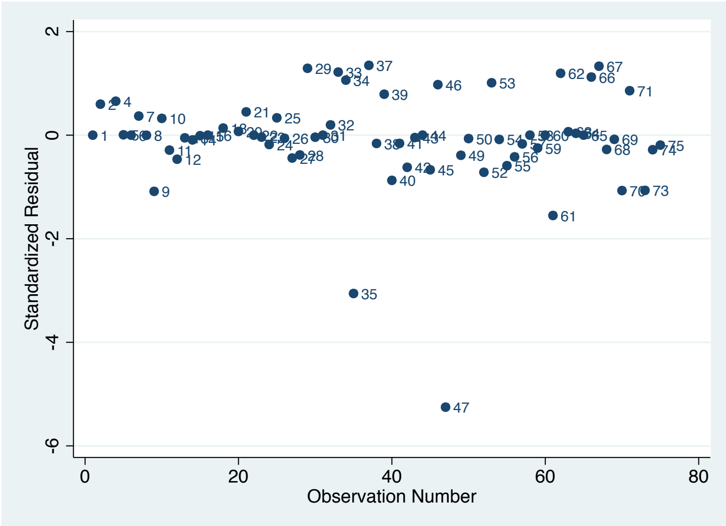
The coefficient on GDPGROWTH is negative and statistically significant in all models, suggesting that, controlling for other factors, ACP states experiencing low levels of growth were more likely to enter an EPA. The results for $DISTANCE_i$ are puzzling as although the coefficient is significant at the 0.1 level in three of the models, it is positive, suggesting that ACP countries that were further away from the EU were more likely to sign an EPA. Finally, $GDPPERCAP_i$ is included in model 5 but is not significant, suggesting that, controlling for other factors, there is no systematic correlation between the likelihood of an ACP country signing an EPA and its level of wealth.

Analysis of the residuals of the regression helps identify 'outliers', those cases that are not well predicted by the model. Figure 16 provides a plot of the standardised Pearson residuals. It shows that while nearly all residuals are within the bands of -2 and 2, two cases stand out for having large negative residuals, namely points 47 and 35 which correspond to Namibia and Kenya respectively. A glance at the data corresponding to these observations suggests that Kenya and Namibia, are outliers because did not enter an EPA even though the model

[105] Testing this by replacing $TRADE_i$ with an interaction variable $TRADExGDP_i$ in model 4 suggests this is indeed the case, as the variable has a positive coefficient and is significant at the 0.05 level

predicts a probability of 96 percent and 90 percent that they would sign. This prediction appears to be driven by the fact that they both faced relatively high GSP losses and have low levels of exports to China, India and Brazil. Both cases will be explored further in subsequent chapters.

Figure 16: Outlier Cases



Robustness Checks

Some additional tests were carried out to test the robustness of these results.

I tested the possibility of a ‘China effect’; the possibility that rather than exports to emerging markets (China, India and Brazil), it was exclusively trade relations with China that were important. Two new variables were created. $EXPORTCHINA_i$ measures the exports from ACP country *i* that are destined for China, as a percentage of its total exports. Data sources are the same as for $EXPORTCIB_i$ and exports are averaged for 2005-7.[106] $CHINAFDI_i$ measures the stock of foreign direct investment in 2007 in a given ACP country as a percentage of its GDP. Data is extracted from the Chinese Statistical Bulletin 2010.[107] Model 6 was generated by substituting $EXPORTCHINA_i$ and $CHINAFDI_i$ for $EXPORTCIB_i$.

[106] Author’s own calculations based on data from UNCTAD (2012)
[107] Ministry of Commerce "2010 Statistical Bulletin of China's Outward Foreign Direct Investment " (2011)

However while the coefficients on both variables are negative as expected, neither is found to be statistically significant, suggesting that while the extent of trade with emerging markets did have an effect on EPA outcomes, this effect was not due to China alone. This suggests that we cannot reduce the effect of emerging markets solely to China.

Probability of an ACP country signing a 'full' EPA

As a final step in the analysis, we turn to examine the extent to which the model developed above fits the decision by some ACP countries to sign a 'full' EPA. While we already know that the countries that signed full EPAs were all located in the Caribbean, suggesting that location-specific factors may be relevant, this analysis allows us to explore the extent to which the factors that appear to have driven the basic decision of whether or not to sign any form of EPA, were also the primary factors driving decisions over whether or not to sign a full EPA.

I generate two models. Model 7 builds from model 4 (the best fit so far) and substitutes the dependent variable $EPAOUTCOME2_i$ for $EPAOUTCOME1_i$. However the key variables are not statistically significant (see Table 22). I then reinsert other variables used above, and find that while proxies for aid dependence are not significant, including $GDPPERCAP_i$ (model 8) dramatically improves the fit of the model.

These findings suggest that a striking different logic was at work when countries decided to sign a 'full' EPA. Unlike in previous models, $GSPLOSS_i$ is not statistically significant, suggesting that the magnitude of export losses was not a major factor in the decision of ACP countries to sign a full EPA. Instead, the highly significant positive coefficient on $GDPPERCAP_i$ shows a high correlation between the propensity of an ACP country to sign an EPA and its level of per capita income, a proxy for its level of development. The coefficient on EXPORTCIB is negative, as expected, and statistically significant, suggesting that countries with low levels of exports to emerging markets were more likely to enter into a full

EPA. Unlike in previous models, the coefficient on DISTANCE$_i$ is negative and statistically significant, which corresponds to the findings in other studies. Interestingly, while the coefficient on trade remains positive, it is no longer statistically significant.

Table 22: Logit Model of Decision by ACP State to Sign a 'full' EPA

VARIABLE	Model 7	Model 8
GSPLOSS	0.00240	-0.279
	(0.147)	(0.187)
EXPORTCIB	-0.312**	-0.242*
	(0.148)	(0.145)
GDPPERCAP		1.747***
		(0.550)
TRADE	0.156	0.132
	(0.235)	(0.286)
DISTANCE	-0.507	-3.524*
	(1.182)	(1.880)
GDPGROWTH	-0.159	-0.229
	(0.108)	(0.140)
Constant	2.481	15.83
	(12.22)	(15.97)
Goodness of fit statistics:		
BIC'	3.523	-10.317
expected percent correctly predicted	74.89%	84.79%
Observations	68	68

Notes: Standard errors in parentheses. *** p<0.01, ** p<0.05, * p<0.1

Comparing these models with the earlier ones, suggests that while the coercion model appears to be a good predictor of whether a given ACP state signed an EPA, it is a relatively poor predictor of whether they signed a full EPA. Applying these insights to the fifteen Caribbean states that signed full EPAs, suggests that there was a degree of coercive pressure at work, as, with the exception of Haiti, all faced significant trade losses if they exited EPA negotiations and exported to the EU under GSP. However while coercive pressure can account for the fact that they signed an EPA, the fact that they opted to sign a 'full' EPA rather than an 'interim' EPA appears to be related to their higher levels of income rather than any evidence that they were more vulnerable to coercive pressure than other ACP states.

Why might income levels be a key factor driving the decision to enter into a full EPA? It is plausible that ACP countries with higher levels of income were more likely to have regulatory frameworks in place and to have stronger trade-related institutions. In such cases a full EPA would have posed far lower adjustment costs than for lower income countries. In addition, it is plausible that such countries have stronger trade-related institutions and the requisite technical knowledge in these areas to be able to confidently negotiate with the EU. The plausibility of such an explanation is explored in chapter seven.

5.6. Conclusion

This chapter has provided a compelling explanation for why some ACP countries and not others signed EPAs. It has shown that coercive pressure was applied by the EU, though the manipulation of trade preferences and, to a lesser extent, aid. There is evidence that the EU applied coercive pressure directly, by removing the status quo option (Cotonou preferences); and indirectly, by limiting the availability of alternative options. In addition, while there is limited evidence of aid threats, many ACP countries appear to have been negotiating out of fear that aid might be withdrawn.

However, unlike the 1980s and 1990s, coercive pressure had a limited impact during the EPA negotiations. There is strong evidence this is due to improvements in the underlying structural position of ACP countries, which reduced their vulnerability to coercive pressure. The results of a simple statistical model strongly support the argument that the decision of ACP countries depended on the depth of their dependence on the EU.

The analysis provides compelling evidence that unilateral trade preferences were a powerful source of coercion in the EPA negotiations, echoing the analysis Hirschman (1945), which was discussed in chapter two.[108] The EU's decision to withdraw Cotonou Preferences, coupled with its decision not to honour its commitment to provide alternative options, appears

[108] This finding resonates with some recent work that argues that preferences give large countries political leverage. See Manger and Shadlen (forthcoming)

to have been a major and statistically significant determinant of whether or not an ACP state signed an EPA. A striking feature of the regression results is that ACP governments appear to have been extremely sensitive to potential losses in their export sectors. A possible explanation is that firms in preference-dependent export sectors are large, well-organised, and effective lobbyists, so they exert a disproportionately strong influence over government decisions. This possibility is explored in chapter seven.

The analysis suggests that the emergence of new trading partners may have reduced the vulnerability of ACP countries to coercion. Although these countries do not provide an alternative market for preference-dependent exports, they may have helped limit coercion by providing a source of leverage in the negotiating room, a possibility that is explored in subsequent chapters.

The finding that aid dependence does not appear to have had a systemic impact on the negotiating decisions of ACP states is puzzling in light of the evidence presented in the first part of the chapter. Did aid dependence not have an impact over negotiations, or did it have an impact but manifest itself such a way that it was not identified in the statistical model? This question is also pursued in the chapter six.

Finally, there are some notable 'outliers' in the coercion model. Most notably, Kenya and Namibia resisted signing an EPA even though they faced high levels of export losses. The reasons for this are probed in the next chapters.

Next chapter

It is to these challenges that the next chapters turn. Chapter 6 analyses the negotiating process in depth, probing the negotiating moves made by the EU and ACP, and evaluating the impact these had on EPA outcomes. Chapter 7 then looks at the domestic political processes within ACP countries.

Chapter 6. How Negotiating Strategies and Tactics Shaped EPA Outcomes

6.1. Introduction

This chapter turns to look inside the negotiating room. The previous chapter showed that vulnerability to coercive pressure was a crucial factor in the decision of ACP states to sign an EPA. However it did not explain the variation in EPA texts, or explain the variation in signature, and implementation of the agreements that were initialled. With this unexplained variation in mind, this chapter asks, 'to what extent did the negotiating strategies and tactics used by the EU and ACP states shape EPA outcomes?' In addition to providing an answer to this question, this chapter is significant in its own right, as it is arguably the most systematic analysis of the EPA negotiating process carried out to date.

There are two reasons for turning from an analysis of macro-level structural factors to look in detail at the micro-level negotiating process. First, as discussed in chapter two, the literature suggests that smaller parties are not necessarily at the mercy of larger parties in a negotiation, and that, by deftly manoeuvring during negotiations, small parties can obtain concessions. In the EPA context, this opens up the possibility that variation in outcomes is partly the result of the strategic decisions of ACP states. Second, the examination of the history of Europe-ACP trade negotiations in chapter three showed that strategic decisions and tactical moves during the negotiations influenced outcomes.

The chapter explores whether the negotiating decisions of EU and ACP countries can account for a major part of the variation that remains unexplained? Equally importantly, it asks whether variation was due to the strategic and tactical decisions of ACP governments, or to variation on the EU side?

As the negotiations are 'path-dependent' with each stage impacting on the next, the chapter is arranged in chronological order and divided into three analytically distinct time periods. The first period (2002-2003) examines negotiations at the all-ACP level, and the reasons why the ACP coalition broke down; the second period (2004-2007) explores negotiations at the regional level and the tactics ACP regions used to influence the EPA texts; while the third period (2008-2012) examines the breakdown of the negotiations, and the strategies used by ACP governments to evade signature and implementation.

The analysis draws on a rich and diverse set of primary sources, including an online survey, interviews with negotiators, media reports, press releases, minutes of the negotiations, draft negotiating texts, and official declarations. Given the number of countries involved, and the breadth of issues on the negotiating table, working out exactly what happened at each stage of the negotiations required painstaking research. To facilitate systematic analysis, the primary material was carefully summarised into a compendium of more than 250 pages.

6.2. How Small Developing Countries Negotiate: Survey and Interview Evidence

As explained in chapter two, there is relatively little scholarly analysis of highly asymmetric trade negotiations. Before diving into the details of the EPA negotiations, it is helpful to draw on the online survey and interviews with negotiators to establish a general picture of how small developing countries negotiate with larger parties.[1]

The survey results suggest that the majority of small-state negotiators perceive a low level of compatibility between the interests of their countries and those of powerful states (Table 23).[2] Only eight of 93 respondents stated that their interests were 'nearly always' or 'often'

[1] See chapter one for details of the survey and interviews
[2] The survey asked 'How often are the outcomes your country is seeking in trade negotiations compatible with those of powerful states?'

compatible. Eighty reported that they were 'sometimes' or 'seldom' compatible. Five saw their interests as almost diametrically opposed.

Table 23: Perceived Compatibility of the Interests of Small and Large States

Answer Options	Response Count
Nearly always	2
Often	6
Sometimes	45
Seldom	35
Almost Never	5

The results also suggest that negotiators expect to have a low level of influence when negotiating with large trading partners: 52 of 93 respondents said their level of influence is 'low' and 16 said they have no influence at all (Table 24). This finding was echoed in interviews, where 15 of the 17 negotiators with whom this issue was discussed said that they did not expect to have a significant influence when negotiating with large states. Yet more revealingly, the interviews suggested that small states are often reluctant to use the power they do have to its fullest extent, as they fear reprisals. Indeed, some negotiators feel totally powerless:

> 'We are not trying to influence negotiations. It's unrealistic, so we don't go in with that mindset.'[3]

Table 24: Expectations of Influence When Negotiating With Large and Small States

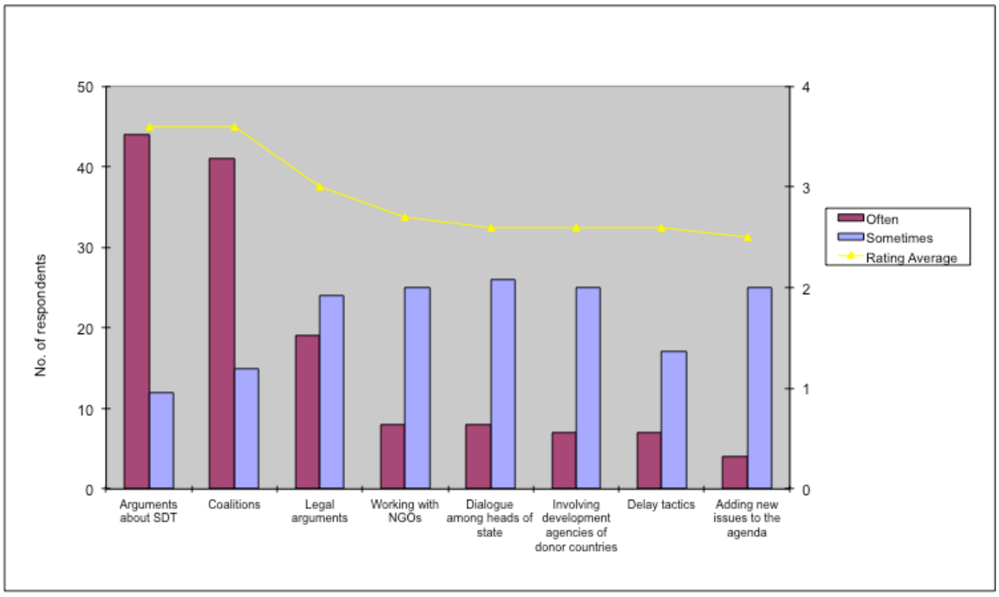
Answer Options	High influence	Moderate influence	Low influence	No influence
A large trading partner like the EU or US	3	22	52	16
A trade partner of similar economic size	27	38	18	1

The survey and interviews explored the specific tactics used by small developing countries (Figure 17). The results suggest that small developing countries tend to rely heavily on a few tactics. Of the tactics listed, ' arguments about special and differential treatment' and 'coalitions' were used most frequently, with 44 and 41 of the 64 respondents, respectively,

[3] Interview, government negotiator

saying they 'often' use them.[4] Notably, more creative and innovative tactics are used less frequently, including making legal arguments, working with NGOs, involving the development agencies of donor countries, directly dialoguing at the heads of state level, and adding issues to the agenda.

Figure 17: Tactics Used Most Frequently by Small States



The interviews probed further and suggest that small developing countries do not necessarily have a clear negotiating strategy to either pre-empt or react to the tactics of large states. In the interviews, 22 of the 35 negotiators clearly identified at least one tactic their country uses, but one-third (13 of the 35) of the responses were vague, with some just saying 'we try to persuade them'. (However, given the sensitive nature of this information it may also be the case that small states were unwilling to share details of their strategies).

When asked which tactical moves were most likely to work, interviewees emphasised the importance of using political moves 'outside of the negotiating room', a finding that resonates strongly with the findings in the rest of this chapter. They highlighted the need for senior politicians to be closely involved in the negotiating process: politicians engaging in high-level

[4] To improve reliability, the survey results analysed are confined to those from respondents who self-categorised themselves as 'directly involved in negotiations'

dialogue with their counterparts can help small states to understand the interests of the other parties, and, crucially, can help to expand the room for manoeuvre inside the negotiating room. In addition, ensuring close relationship between negotiators and senior politicians can help insulate small states from the divide and rule strategy often used against them. As a seasoned diplomat explained: 'If a politician declines to respond immediately to a threat and instead consults with officials to weigh up options, decisions are far more informed and policy reversals are less likely'.[5]

Other moves 'outside of the negotiating room' considered valuable included the formation of alliances with groups within powerful states, in an attempt to favourably exploit divergences in their domestic political economy. Interestingly, the use of the media was only mentioned once as a potential tactic, but the interviewee noted that their country decided not to use it for political reasons, apparently fearing reprisals.[6]

Turning to moves 'at the negotiating table', sixteen of the 35 interviewees said they frequently use arguments related to special and differential treatment, using these to request exemptions from the rules or to ask for additional financial assistance. Eight negotiators noted the need to set red lines and develop fall-back positions, and three negotiators mentioned the importance of postponing and playing for time rather than agreeing to commitments they do not fully understand.

Taking an offensive approach, three interviewees noted the possibility of setting the agenda by proposing alternative texts, and, for this to be successful, they emphasised the need for proposals to be technically sound, substantive, and formulated in a way that anticipates the positions of parties at the table.

[5] Interview, government negotiator
[6] Interview, government negotiator

Overall, the survey and interviews suggest that small developing countries typically perceive low compatibility between their interests and those of large states and have low expectations of exerting influence. Coupled with the evidence that they negotiate under substantial levels of coercive pressure, it is therefore unsurprising that they tend to rely on defensive tactics such as appealing for exemptions. With these general patterns in mind, we now turn to examine the negotiating strategies and tactics used by the EU and ACP countries during the EPA negotiations and establish the impact of these moves on outcomes.

6.3. The EU Undermines the ACP Coalition (2002-2003)

The EPA negotiations were formally launched in September 2002. During the first period (2002-2003), the ACP negotiated as a single coalition.

During this first negotiating period, ACP recognised that negotiating as a single coalition would give them more leverage than negotiating as smaller regional groups, so they sought an outcome that was as substantive as possible, aiming to secure binding agreement from the EU in as many aspects of the EPA texts as possible.[7] In stark contrast, the EU was adamant that the substantive negotiations would take place at the regional level, and it set out to block substantive discussions with the ACP coalition, and to initiate regional negotiations as quickly as possible.[8] Ultimately, the EU dominated the first period of negotiations and the ACP gained little.

Inside the negotiating room, the ACP made a series of moves to try and engage the EU in detailed discussions. They started by trying to influence the negotiating set-up in their favour.[9] The ACP coalition took the initiative and proposed, in the very first meeting, to convene six small, issue-specific groups that could start to negotiate on the details of the

[7] Cumberbatch "Urgent Preparation Needed to Negotiate Economic Partnership Agreements" (2002); Bilal and Julian "EPA Update 2-1" (2003)

[8] See European Commission "Orientations on the Qualification of ACP Regions for the Negotiation of Economic Partnership Agreements" (2001)

[9] See Lax and Sebenius (2006) on the importance of influencing the negotiating set-up

EPAs. The EU immediately objected, arguing that all issues should be discussed in a plenary setting and that issues be clustered into broad themes, with the logical implication that discussions would remain very general in nature.[10]

Although the EU's proposal prevailed, the ACP coalition persisted, engaging the EU in detailed discussions on specific issues, either in the plenary or by proposing ad-hoc technical sessions. ACP countries were particularly interested in obtaining agreement that the EPAs would exclude binding rules in trade-related issues (such as government procurement and competition). However the EU assiduously avoided detailed discussions and refused to contemplate entering into any binding agreement, arguing that ACP regions differed so markedly that decisions on trade-related issues could only be taken at the regional level.[11]

The ACP also sought commitments on additional financial assistance from the EU to tackle supply-side constraints, arguing that unless their competitiveness improved, they would not be able to utilise any additional market access opportunities gained under an EPA. For this reason they argued that competitiveness should be a specific agenda item for discussion. The EU opposed this, maintaining that the EPA negotiations were solely about trade, and that development and aid had *already* been negotiated under the Cotonou Agreement.[12] The EU also attempted to define the negotiating issues very narrowly, focusing on liberalisation commitments, in a bid to avoid discussions on competitiveness. ACP countries were quick to counter advocating, for instance, a discussion on services that would address initiatives for strengthening the sector alongside liberalisation commitments.[13]

Finally, ACP countries attempted to secure agreement from the EU to change the wider 'rules of the game'. They requested that the EU work with them to try and secure reform of WTO

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[10] ACP-EC Ambassadors (2002); ACP-EC Ambassadors (2002) European Commission "EPA Negotiations: EC Views on the Organisation of Issues for Discussion in the All-ACP Phase" (2002)
[11] ACP-EC Ambassadors (2003); ACP-EC Ambassadors (2003); ACP-EC Ambassadors (2003)
[12] ACP-EC Ambassadors (2002); ACP-EC Ambassadors (2003)
[13] ACP-EC Ambassadors (2003)

rules on free trade agreements (GATT Article XXIV), which would make it possible for the EU and ACP to agree a very flexible EPA without violating WTO rules. However the EU maintained that WTO rules were flexible enough to accommodate the needs of ACP countries, and refused to make any commitment to joint advocacy.[14]

Outside the negotiating room, the EU and ACP made a series of tactical moves, and the EU's bid to undermine the ACP coalition was particularly effective. The EU's first move was to propose that negotiations at the regional level be held in parallel to negotiations at the all-ACP level, but as this would obviously undermine the all-ACP negotiations, the ACP coalition strongly objected.[15]

The EU then sought to pressure the more vulnerable members of the ACP coalition into regional negotiations, targeting francophone African countries, as they had already signalled a willingness to negotiate.[16] The EU Trade Commissioner, for instance, met with ECOWAS Trade Ministers while all-ACP negotiations were on-going, and secured agreement that regional negotiations would be launched in September 2003, irrespective of the outcome of negotiations at the all-ACP level.[17] Having agreed to launch regional negotiations, ECOWAS and CEMAC countries then insisted, in discussions with the other ACP countries, that they did not want any 'conditionality' placed on them by the outcome of the all-ACP negotiations, and they joined the EU in calling for a non-binding outcome. They also pushed against the creation of an all-ACP coordination mechanism to guide regional negotiations.[18]

Aid dependence appears to have been at the heart of this defection. There are hints that the EU may have been holding back aid. One analyst noted at the time that 'There are many signs, however, that the decision by ECOWAS and CEMAC to start negotiations is motivated

[14] ACP-EC Ambassadors (2003) Also ACP and EC Ministers (2003)
[15] Bilal and Julian "EPA Update 2-1" (2003)
[16] In July 2000 UEMOA ministers instructed their negotiators to open regional EPA negotiations. Bilal "Who will Negotiate with the EU? In Search of an ACP-EU Negotiating Framework" (2002)
[17] Staff Reporter "West Africa: ECOWAS Chairman Wants Mutual Trade Relationship with EU" (2003); Julian "EPA Update 2-3" (2003)
[18] Julian "EPA Update 3-2" (2004)

by the wish to *remove remaining obstacles* to the initiation of technical assistance and capacity-building programmes' [emphasis added].[19] He also suggests that these countries expected compensation from the EU in reward for initiating regional negotiations: 'By accepting to negotiate an EPA, *they are therefore making allowances to the EU, for which they expect concessions in return*.' [emphasis added].[20]

The defection by francophone African countries echoes the events of the 1970s, when the same countries pushed against the move to unilateral Lomé preferences. However, it is striking that, unlike the 1970s, other members of the ACP coalition did not engage in a concerted diplomatic effort to bring the francophone countries back on board. Although ACP countries emphasised the need for unity in formal declarations and speeches, there are no signs of any sustained attempts to reach out diplomatically.[21]

It is plausible that the muted reaction from other ACP countries was in part due to a second major cleavage within the coalition. There were signs at this stage that Caribbean countries, which had historically provided much of the leadership within the ACP coalition, were in favour of negotiating a far-reaching EPA. As early as 2000, Jamaica's Ambassador to the US and lead negotiator for the FTAA, advocated that EPAs *include* new areas such as services and trade-related rules on the grounds that ACP states needed 'to participate in and facilitate the rapid and friction-less international mobility of goods, services, finance, capital and technology which is the essence of a seamless global economy'.[22] Shortly after expressing such sentiments, he was appointed to head the Caribbean Regional Negotiating Machinery to lead the EPA negotiations for the region, suggesting that the region's political leaders shared his vision. Thus while Caribbean countries, together with Mauritius, were the main voices

[19] Mballa "Are ECOWAS and CEMAC Ready to Negotiate their EPA?" (2003)
[20] Ibid.
[21] See for instance African Union "The Mauritius Declaration on Preparations for EPA Negotiations" (2003)
[22] Bernal "Competition, Competitiveness and Cooperation: Priority Issues for CARICOM in Future EU-ACP Trading Arrangements" (2003); See also Hilton "Beyond Lomé: Challenges and Prospects for ACP Countries" (2003)

calling in public for ACP countries to stay united, there does not appear to have been a sufficient degree of shared interest across the ACP coalition to merit investing in concerted diplomacy to bring the francophone countries back on board.

Although the ACP coalition was weakened by the parallel discussions between the EU and ECOWAS and CEMAC regions, ACP countries made some collective moves towards the end of the all-ACP negotiating period. As their negotiators' efforts to shape events inside the negotiating room were being blocked, ACP ministers sought to move discussions up to the political level, entering into discussions with the EU trade commissioner. However the EU trade commissioner held firm and merely reiterated the position of his negotiators: the EPA negotiations were solely about trade, they needed to be ambitious in their coverage if they were to deliver gains, and aid should be discussed elsewhere.

Divergences at the political level proved to be so deep that, contrary to usual practice, EU and ACP ministers were unable to agree on joint statements. In August 2003, a meeting of African heads of state noted that they 'regret the deadlock and lack of progress' in the EPA negotiations,[23] and EU and ACP ministers were unable to agree on a joint statement in the run-up to the WTO Ministerial in Cancun.

Unable to bridge their differences, both sides agreed to sign onto a relatively vague and non-binding joint report in October 2003, which merely outlined some general areas of convergence and divergence.[24] Although they also agreed that the all-ACP negotiations would continue until March 2004, no further progress was made, and negotiations moved to the regional level.

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[23] African Union "The Mauritius Declaration on Preparations for EPA Negotiations" (2003)
[24] ACP and EC Ministers (2003)

Impact on Outcomes

Ultimately, the first period of EPA negotiations ended just as the EU had hoped. Despite many attempts from the ACP to engage the EU in substantive discussions, the EU manoeuvred inside the negotiating room to block such discussions and avoid binding commitments. Meanwhile, outside of the negotiating room, the EU capitalised on weaknesses in the ACP coalition, to undermine the all-ACP discussions and shift the primary locus of the negotiations to the regional level. The only gain for the ACP was that, by insisting on an all-ACP phase, they had bought some time. The tactical moves made during this period are summarised in Table 25.

Table 25: Tactical Moves During All-ACP Phase (2002-2003).

	Move	Countermove	Outcome
Moves Inside the Negotiating Room			
Negotiating Configuration	ACP: Proposed dedicated and specific negotiating groups	EU: Insisted on plenary format	EU successfully blocked substantive discussions; avoided binding commitments;
Agenda	EU and ACP: Placed priority offensive issues on the agenda (trade liberalisation, aid for supply-side);	EU: Insisted some issues should be removed from the agenda (aid for supply-side)	
	EU: Narrowly defined issues to exclude defensive interests (aid for supply-side)	ACP: Redefined issues to include priority topics (aid for supply-side)	
Rules of the Game	ACP: Sought EU support to change WTO rules	EU: Refused, insisted WTO rules are flexible enough	
Substantive Discussions	ACP: Tabled detailed proposals	EU: Refused to engage with details	
Moves Outside the Negotiating Room			
High-Level Dialogue	ACP: Engaged senior EU politicians in direct dialogue	EU: Met with ACP but merely restated position of negotiators	EU undermined ACP coalition and moved negotiations to regional level.
Coalition Politics	EU: Initiated parallel discussions with ECOWAS and CEMAC in bid to weaken ACP coalition	ACP: Expressed official concern, but no concerted side-diplomacy to maintain unity	

6.4. The EU Meets Resistance: Three ACP Responses Emerge (2003-2007)

With the negotiations at the all-ACP level thwarted, the EU and ACP countries embarked on negotiations at the regional level. This second period of negotiations (2003-2007) is fascinating, as contrary to what one might reasonably expect with the ACP having split into smaller groups, the tide turned decisively against the EU.

This section examines the strategy and tactics of the EU, the ways in which ACP countries responded collectively through the ACP coalition (ACP countries still engaged in some collective action), and then looks at variation in negotiations at the regional level. As is shown below, the differing response strategies of ACP regions and the efficacy with which they deployed them, helps explain much of the variation in the EPA texts concluded at the end of 2007.

EU Strategy and Tactics

When regional EPA negotiations started in late 2003, concluding ambitious agreements had become a high political priority for the EU. This increased interest appears to have been driven largely by events at the WTO, where the EU had failed to launch negotiations on the 'Singapore Issues' (competition, investment, government procurement, and trade facilitation). In the wake of the Cancun WTO ministerial, the EU declared that 'the EPAs with ACP countries offer a wide scope for *propagating our approach to international economic co-operation*' [emphasis added].[25]

During this second period of negotiations, the EU's strategy was highly distributive, with the EU unwilling to make substantial concessions, either on the basic framework of the EPAs or on the negotiation of detailed legal provisions. The EU first focused on trying to persuade the ACP regions of the value of its EPA proposals before turning to more coercive tactics. Only in the very final weeks of 2007 did the EU offer a few concessions to bring wavering

[25] European Commission Directorate General for Trade (2003)

countries on board, including offering additional sugar quotas and some changes to rules of origin.

The EU adopted three broad persuasion tactics. First, EU officials tried hard to convince ACP governments to bring their negotiating objectives broadly in line with the EPA. A major challenge facing the EU was that most ACP governments, particularly in Africa and the Pacific, were highly sceptical of the EU's proposals not least because they were similar to proposals the EU had advanced at the WTO and which developing countries, including the ACP, had strongly opposed. [26] The EU set about trying to persuade ACP governments that the arguments advanced by large developing countries at the WTO were not applicable to them. They argued for instance that the Singapore Issues were 'essential subjects for development'. In the words of a senior EU official, 'When India argues that investment rules should not be negotiated internationally, from an Indian perspective that might make sense. From a Burkina Faso of Mali or Mauritian perspective it makes no sense'.[27]

Second, the EU set out to shape ACP perceptions about the availability and value of alternative options. In West Africa for instance, the EU issued statements that the region would lose up to 1 billion Euros in trade by not signing EPAs, a figure that West African negotiators argued was exaggerated.[28]

Third, the EU invested heavily in trying to shape the wider public debate. A strong civil society movement, which had emerged in EU and ACP countries during the WTO negotiations, was heavily critical of EPAs. To try and counter a growing popular perception EPAs were inimical for development, the EU took a series of steps. It placed adverts in key ACP newspapers setting out the EU's vision and development-based rationale for EPAs, ran a series of training programmes in Brussels for ACP journalists to explain the EU's approach,

[26] See Khor "Analysis of the Collapse of the Cancun Ministerial" (2003)
[27] Karl Friedrich Falkenberg "EPAs and DDA - Parallelism or Crossroads?" (2004)
[28] Olympio, Sacko, and Fifatin "The Challenges of the West Africa EPA" (2008)

published a series of leaflets on the benefits of EPAs, and hosted workshops to explain the benefits of EPAs to key ACP stakeholders.[29]

Tracing this second period of negotiations provides additional insights into the ways that the EU applied coercive pressure. There is some evidence that the European Commission carefully calibrating how much pressure to exert. One internal memo from the European Commission to its delegations in ECOWAS country stated ‘The EC delegations in the various countries should approach WA [West African] trade and finance ministers alone, without the EU member states’ representatives…joint demarching might put too much high, counterproductive pressure on the WA ministers’. While the initiative appears to have come from the EC, the memo noted that the German Presidency supported the demarche, suggesting that the European Commission was strategizing with EU member states.[30] As the negotiating deadline approached, the EU Trade Commissioner was reported to be telephoning and writing personally to heads of state, emphasising the high trade costs that their countries would face if they did not enter an EPA.[31]

In some regions, the EU sought to mobilise interest groups to lobby ACP governments for EPAs. In Southern African for instance, there is credible evidence that the EU created a business lobby group whose main objective was to pressure governments in the region to enter an EPA.[32] Although this particular initiative does not appear to have been very effective, not least because key government officials in the region were apparently unaware of its existence.[33]

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[29] For instance an open letter from the EU Trade Commissioner was published in papers across East Africa CTA Agritrade "Mandelson letter is published in the ESA region" (2007); For a leaflet see: European Commission "Questions and Answers: EPAs, the ACP and GSP+" (2007); In SADC for instance, the EC co-hosted a workshop on services which included presentations from the European Services Forum and British Telecom European Commission Directorate General for Trade and TRALAC (2008)
[30] European Commission (2007); see also European Commission (2007)
[31] Interview, government negotiator
[32] Corporate Europe Observatory "Pulling the Strings of African Business" (2009). Also Vickers (2011)
[33] Discussion with SADC government official, June 2012

Finally, during the negotiations, the EU was able to capitalise on communication gaps and divergent interests between and within ACP regions. In the very last weeks of 2007, for instance, the EU reportedly pressured some ACP countries to initial texts on the grounds that countries in other regions had already signed, when, unbeknown to these ACP negotiators, their counterparts were still holding out.[34] This lack of communication between ACP regions helps to explain why there was so much variation in the EPA texts initialled at the end of 2007.

The EU also sought to use existing intra-regional tensions to its advantage.[35] This was particularly the case in the SADC region. While South Africa, by far the largest economy in the region, insisted that services and trade related issues be excluded from the negotiations, Botswana, and to some extent Swaziland, Lesotho and Mozambique, were known to be favourably disposed to negotiating them.[36] As early as 2006, the President of Botswana is cited as saying that ‘The EPAs are not moving fast enough for my liking…. The EPAs form the basis of our future relations with the EU and we are determined that they are concluded in time’.[37] The EU openly allied itself with Botswana’s position, and the EU Trade Commissioner publicly criticised South Africa for its ‘negative’ role in the negotiations.[38]

At key junctures, notably when negotiations had stalled, the EU embarked on high-level diplomacy and intimated a more conciliatory approach. In early 2007 for instance, EU trade and development commissioners met with African and Pacific ministers and hinted that they would make concessions, and they were successful in bringing African and Pacific regions

[34] Two interviews with government negotiators
[35] Interview, government negotiator
[3636] See Khumalo "Trade in Services: A Threat to Intra-Regional Trade" (2007)
[37] Staff Reporter "Botswana: Mogae Unhappy with Progress on EPAs" (2006)
[38] Julian "EPA Update 6-6" (2007). Similarly, in the PACP region, the EU tried to capitalise on divisions between Papua New Guinea and others, holding a series of bilateral meetings: Interview, government negotiator

back to the negotiating table.[39] EU officials also hinted that additional financial support might be forthcoming. In Swaziland for instance, a senior EU official asserted that the high level of support it had provided to the sugar sector 'should be proof enough about our seriousness of assisting in a difficult transition period. We will do likewise once we have agreed on this EPA'.[40]

Notably, one set of tactics, namely the use of 'trade capacity building' to influence outcomes, does not appear to have been used as routinely as one might have expected, given widespread concern in the literature.[41] During interviews, one ACP official expressed disquiet that technical advisers hired through EU financing to advise ACP countries were usually EU nationals, raising obvious concerns of bias.[42] Another noted that EU was using workshops and training seminars to 'push their agenda… If people are not very aware, by the time they come to negotiations, they are already half sold.'[43] However, it is striking that many of the EU-financed impact assessments were highly critical of the EPAs and studies often remained confidential to the ACP governments.[44] Indeed, an internal European Commission memo noted with frustration that many ACP governments were not prepared to share the studies and suggested this be 'addressed in our high-level dialogue with the ACP'.[45] Part of the explanation appears to be the use of third parties to channel funds, including the 'ACP Project Management Unit' in Brussels, which was headed by a widely respected ACP national who insisted that studies were for the exclusive use of ACP governments.[46]

[39] Julian "EPA Update 6-2" (2007)
[40] Masuku "SD Urged to Lead EPA Negotiations" (2007)
[41] See for instance Tandon (2004); Page (2006); Deere (2005)
[42] Interview, government negotiator
[43] Interview, government negotiator
[44] For instance, one assessment noted that EPAs were likely to have a substantial impact on the ECOWAS economy which 'may be harmful if the countries are not prepared and there are not policies in place to accompany the EPAs'. Price Waterhouse Coopers and Institut de Prospective Africaine (2004) P136
[45] European Commission "Information Note to the College From Commissioners Lamy and Nielson On Progress in EPA Negotiations" (2004)
[46] Discussion with government negotiator, July 2011

Moves by the ACP Coalition

On the ACP side, although the negotiations were conducted at a regional level, ACP countries continued to act collectively in a bid to exert political pressure on the EU. As it rapidly became clear that the negotiating objectives of ACP regions differed, the coalition focused on trying to shift the EU's negotiating approach, including by exposing many of the pressure tactics it was using inside the negotiating room.[47]

The ACP coalition had a two-pronged strategy. It tried to exert pressure on the EU directly, principally through the used of high-level meetings, and indirectly by fermenting opposition to EPAs among stakeholders within the EU.

The EU and ACP met regularly at the ministerial level, and ACP countries used these high-level political meetings to press for specific concessions. In most instances, their attempts were unsuccessful. The EU often rebutted ACP requests, arguing that they were not legally or politically feasible. At other times, EU representatives took pains to appear conciliatory, but then evaded concrete commitments. EU representatives were also careful to use high-level encounters to 'remind' the ACP of their structural dependence, intimating that the level of available aid would depend on the level of commitments undertaken in the EPA.[48]

In early 2007, African countries sought to use the mid-term review of the EPA negotiations, provided for in the Cotonou Agreement, to push for more time.[49] They published an 'Africa Continental Review' of the EPA negotiations, which heavily criticised the EU, documenting mounting and extensive frustration in all African regions, as well as severe technical capacity

[47] The notable exception was the 'non-execution clause', which the ACP coalition strongly opposed. This provision linked EPAs and the Cotonou Agreement so that the trade preferences received under the EPA could be suspended if an ACP state violated one of the 'essential' or 'fundamental' elements of the Cotonou Agreement (human rights, rule of law, democracy, good governance)

[48] Julian "EPA Update 6-2" (2007)

[49] Art 37(4) provided for 'a formal and comprehensive review' of the EPA negotiations to 'ensure that no further time is needed for preparations or negotiations'

constraints. It proposed an extension of two to three years for the negotiations, and asserted that this was feasible, even with the expiry of the WTO waiver.[50]

Despite being endorsed by African ministers, a joint EU-ACP review published shortly after concluded that, despite some challenges, negotiations were on track.[51] Although ACP ministers formally adopted the Joint Review report, there was substantial disquiet behind the scenes, and reports that pressure had been exerted at a regional level. Indeed, an internal memo suggests that the European Commission was determined to ensure that the EPA review process did not become 'an opportunity for ACPs to try and reopen the EPA mandate' and it called upon EU member states to assist with 'a careful political handling'.[52]

In late 2007, there was reportedly no appetite in the ACP coalition for a high level summit to call on the EU to extend the deadline.[53] However African countries once again made efforts to change the course of negotiations by taking their concerns to the EU-Africa Summit of heads of state.[54] While the EU was keen to keep the EPAs off the Summit agenda, EPAs still dominated proceedings, and several African leaders, usually regarded as European allies, vocally criticised the EPAs and the EU's approach.[55] The African Union Commissioner asked the EU to avoid 'patterns of thinking that belong to a different era' and criticised it for 'playing certain African regions off against each other'; the Senegalese president stated it was clear that 'Africa rejects the EPAs' while South Africa's president argued that EPAs 'do not assist in fighting poverty'.[56]

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[50] African Trade Policy Centre (2007)
[51] See Council of the European Union "Main Results of the ACP-EC Joint Council of Ministers: Trade and Financial Issues " (2007)
[52] European Commission "[Limited] Note for RELEX Commissioners: Economic Partnership Agreements (EPAs) with ACP Countries" (2007)
[53] Prime minister of Barbados: 'The brutal truth is that there was no political will demonstrated nor expressed for any such Summit.' Arthur (2008)
[54] The ECOWAS President formally requested that EPAs be on the agenda. Olympio, Sacko, and Fifatin (2008)
[55] Ramonet "Africa Says 'No'" (2008)
[56] African Union Commissioner: Staff Reporter "Africa, EU Battle Over Trade Rules at Landmark Summit" (2007); Senegal and South Africa: Smith "The World from Berlin: 'When Will the Postcolonial Hangover End?'" (2007)

EU leaders were taken aback, apparently not expecting this level of direct public opposition. The European President reportedly promised high-level talks in 2008, and the opportunity to review the provisions of EPAs. In tandem, the German President reassured African countries that EU leaders would 'look again if Europe can be more flexible' adding that the deadline was 'not fixed in stone'.[57] Despite African countries successfully extracting these verbal commitments, the EU did not follow through on them. A meeting of European foreign ministers held just two days after the EU-Africa Summit, took an explicit decision to follow through with the withdrawal of Cotonou trade preferences, and in 2008, the EU vehemently denied that the Commission President had made commitments to renegotiate contentious provisions.[58]

The ACP countries also worked together and used indirect tactics to pressure the EU, including by bolstering opposition to the EPAs among groups in Europe. A major challenge for ACP countries was to counter the impression given by DG Trade officials that the EU was being flexible and accommodating. ACP Ministers used official declarations to expose EU tactics and criticise the gap between the EU's public stance 'reality inside the negotiating room'.[59] One declaration intimated that the EU was directly pressuring their heads of state: ACP ministers insisted that ACP regions 'should not be coerced to negotiate' the Singapore Issues that the EU to 'respect the formal negotiating process and *desist from exerting pressure at the highest political level*' [emphasis added]. In a bid to help diffuse the EU's pressure tactics, Ministers used their formal declaration to advise ACP negotiators to keep their politicians well informed, so that the EU would be less able to exploit information gaps between the ACP negotiators and their political leaders.[60]

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[57] Staff Reporter "Africa Spurns New Trade Deals with EU" (2007)
[58] Council of the European Union (2007)
[59] ACP Council Of Ministers (2005)
[60] ACP Council Of Ministers (2006)

African countries, highly sceptical of the EU's argument that EPAs would support development, used ministerial declarations to publically attack the contents of EPAs. A forcefully worded declaration by African trade ministers, for instance, called on the EU to '*clearly demonstrate* the development content of the proposed agreements' as 'trade liberalisation together with the accompanying liberal policies, may not by itself deliver development'.[61] African ministers also sought to use joint statements to draw collective 'red lines' publically announcing the issues they would not negotiate: 'we therefore shall not make services commitments in the EPAs that go beyond our WTO commitments' and reaffirmed that the four Singapore Issues be 'kept outside' the ambit of the EPAs.[62] However, as discussed below, not all the African regions followed through on these collective decisions.

ACP countries invested in forming alliances with influential groups in Europe, including the European Parliament. Although the Parliament had no formal control over EU's negotiating position, it had the power to summons the European trade commissioner and senior EU officials, so it was a useful forum for publically challenging the EU's negotiators. ACP Ambassadors made frequent presentations at the European Parliament to raise awareness about their concerns and the European Parliament in turn issued a series of strong statements criticising the European Commission's approach.[63] A few ACP governments also forged links with a relatively strong civil society movement, which spanned the EU and ACP countries.[64]

ACP countries also undertook collective high-level lobbying of EU member states. In 2006 for instance, six ACP ministers, one from each region, embarked on a lobby round of key EU ministers.[65] This included the UK, where there was an active NGO movement, and where the parliament and government had expressed support for ACP countries, and Germany, which

[61] African Union (2006)
[62] Ibid.
[63] For instance: European Parliament "European Parliament Resolution on the Development Impact of Economic Partnership Agreements (EPAs)" (2006); Julian "EPA Update 4-5" (2005)
[64] Civil society mobilisation that reached its peak in late 2007 with demonstrations outside the European Parliament, in ACP capitals, and a series of articles appearing in the EU and ACP media
[65] ACP Council Of Ministers (2006)

was due to hold the European Presidency in early 2007. Notably, although the ACP coalition made frequent reference to the need to reform WTO rules in order to increase the margin for manoeuvre in the negotiating room, they only invested limited energy in pursuing this objective.[66]

The efforts of the ACP coalition helped ferment a vigorous public debate in the EU and placed considerable pressure on European politicians to reassure an increasingly sceptical European public that they were taking ACP concerns seriously. In 2005, responding to lobbying from NGOs and ACP officials, the UK government published a study that heavily criticised key aspects of the EPAs and it was instrumental in the creation of a group of 'like-minded' European member states, which would collaborate with the intention of making EPAs more 'development-friendly'.[67] From 2006, the official statements of EU ministers took an increasingly sympathetic tone, with, for instance, the European General Affairs and Economic Relations Council (GAERC) calling for greater coherence between EPAs and EU development policy, for greater support to be given to ACP countries to negotiate EPAs, and aid to be disbursed more rapidly.[68] On the public stage, the EU Trade and Development Commissioners and the European President, made frequent speeches stating that development would be prioritised.

The European Commission invested in trying to counter a growing public perception that EPAs were problematic, issuing frequent and detailed rejoinders to NGO press statements and studies, arguing that they were ill-informed.[69] They argued that the deadline was 'real' and legally binding and, while the EU was doing everything within its power to be as flexible as it

[66] For instance, when the EU submitted its own proposal for changing Article XXIV, it was reported that no ACP representatives were present. Staff Reporter "WTO Negotiations in the Lead-Up to Hong Kong: ACP Priorities and Challenges" (2005)
[67] See Julian "EPA Update 4-3" (2005)
[68] Council of the European Union (2007)
[69] See for instance Dihm "“More of the Same” Is Not an Option" (2005)

could in the negotiating room, there was 'no Plan B'.[70] Officials insisted that the majority of ACP countries were keen to enter into EPAs, and singled out specific ACP countries, including Nigeria and South Africa, for obstructing the negotiations.

In private, the European Commission used its regular closed-door meetings with EU member states to galvanise support for maintaining ambitious negotiating objectives and a hard-line strategy. The Commission insisted that alternatives were not an option and officials were reported to have dismissed ACP lobbying as a 'negotiating ploy'.[71]

So far, we have seen that the EU used a variety of persuasive and coercive tactics, and that ACP countries acted collectively through the ACP coalition. We now turn to look more closely at interactions at the regional level, exploring the three different ways in which ACP regions responded to the EU's tactics.

Response 1: Modifications at the Margin (CARIFORUM)

The CARIFORUM region accepted the EU's general approach to the EPAs, and focused on using its technical expertise to secure changes in the fine detail of the text. The region's basic decision to cooperate and negotiate an EPA in line with the EU's proposals had a decisive impact on the trajectory of the negotiations: discussion over the basic framework of the EPA was relatively straightforward, and the parties quickly moved into the discussion of draft texts.

In discussions over the EPA framework, the single major area of disagreement was on the provision of additional financing. Like other ACP regions, CARIFORUM sought additional finance to address competitiveness constraints and to help meet the costs of EPA implementation. However each time negotiators raised the issue, the EU negotiators blocked

[70] See for instance Mandelson: Staff Reporter "EPAs: There is no Plan B: An Interview with Peter Mandelson" (2007)
[71] European Commission "[Limited] Note for RELEX Commissioners: Economic Partnership Agreements (EPAs) with ACP Countries" (2007); Interview, government negotiator

discussions, insisting that the EPAs were exclusively a trade agreement, and arguing that the EU negotiating team did not have the mandate to negotiate financial assistance. CARIFORUM argued that it was inconsistent to seek binding commitments in 'non-trade' areas of interest to the EU, such as environmental and labour standards, while refusing to make binding commitments in 'non-trade' areas like aid, but the EU was uncompromising.[72]

Without reaching agreement on financing, negotiations proceeded to the discussion of legal texts. Negotiations over the draft legal provisions were intense and heated, but progressed relatively quickly in most areas. Interestingly, rather than the 'Singapore Issues', which proved to be so controversial in other ACP regions, it was the core market access negotiations that proved to be particularly difficult and, by holding strong, the Caribbean obtained concessions. At the outset, the EU insisted that all CARIFORUM countries enter into a single customs union, which would then form the basis for the EPA, a proposal that was supported by the Dominican Republic (which faced significant trade barriers within the Caribbean region). However other CARIFORUM countries, which together formed the 'Caribbean Community' (CARICOM) were adamant that the EPA must have a system of variable geometry to incorporate on-going regional integration initiatives.[73]

Eventually the EU softened its position, proposing that the region adopt a single trade regime for goods and services, but one that stopped short of a customs union. The region held out for variable geometry, arguing that a single starting line for dismantling tariffs was not viable given the fact that three integration processes were on-going in the region, and each had a different pace. Ultimately, the region prevailed. The EU finally compromised and accepted that CARIFORUM countries would table a common exclusion list but separate schedules for dismantling tariffs.

[72] Caribbean Regional Negotiation Machinery "RNM Update on CARIFORUM-EC EPA Negotiations" (2006)
[73] Humphrey (2005)

By the end of 2006, the EU and Caribbean had a draft negotiating text, including on trade in goods, services and investment, intellectual property, competition, government procurement, and social and environmental standards.[74] In early 2007, CARIFORUM Heads of State announced that they were keen to complete the EPA by the end of the year at the latest, providing that their outstanding concerns were adequately addressed, and the EU Trade Commissioner announced that a full EPA with the region was expected by July.[75]

As with other regions, 2007 proved to be a 'make or break' year. Differences persisted and negotiations were fraught, with market access and aid continuing to be sticking points. In market access, divergences started to emerge within the region, particularly over the implications of tariff reductions for government revenues. Trade ministers called for a suspension of negotiations and met with the region's finance ministers to agree on a way forward.[76] In mid-2007, negotiations were reported to be 'nearing a crisis' as some countries, including Barbados, Trinidad and Tobago, and the Dominican Republic were reportedly willing to 'accept all necessary compromises to conclude the negotiations on time', while smaller and poorer countries, who stood to lose significant levels of government revenue, were considering calling for permanent non-reciprocal preferences.[77]

By September, three months ahead of the deadline, differences between the EU and CARIFORUM had been narrowed to a few specific provisions. These included market access, where the region still had to make a complete offer and where the EU was holding firm on some key areas including the inclusion of a controversial MFN clause; and services and investment, where ten of the fifteen CARIFORUM countries had tabled offers, but five remained outstanding.[78] The EU started to use explicit threats, with, for instance, the EU trade commissioner stating that the region would be in 'serious difficulty' if an agreement were not

[74] CARIFORUM-EU Negotiators (2006)
[75] Julian "EPA Update 6-2" (2007)
[76] Julian "EPA Update 6-3" (2007)
[77] Julian "EPA Update 6-5" (2007)
[78] Ibid.

reached.[79] In tandem, the EU made promises that substantial financial support would be available to accompany the EPA process and said that such finance would be 'available rapidly'.[80]

After months of intra-regional debate, CARIFORUM tabled a complete market access offer in early December. However, in what was described as a particularly 'brutal' encounter, the EU insisted that the region would have to improve its market access offer or face GSP preferences.[81] A meeting of CARIFORUM heads of state was convened and, with 'no real appetite for a full confrontation with Europe' they agreed to amend the tariff schedules for both goods and services to meet the benchmarks set by the EU (more than 80 percent of trade liberalised within 10 to 15 years for goods, and the liberalisation of 65 percent of the region's services markets).[82] The region also backed down on aid. In early December, all fifteen countries initialled a 'full' EPA.

Response 2: Counter-Proposals (PACP, SADC, ESA)

The second response of ACP regions was to table counter-proposals that challenged the basic framework of the EPA. This was particularly the case for the PACP, SADC and ESA regions.

The PACP region tabled the most substantial counter-proposals. It was the last ACP region to embark on regional negotiations, the result of a deliberate decision to invest a year in preparing an 'alternative partnership agreement'.[83] It proposed a flexible arrangement, with a core 'umbrella agreement' that all PACP countries would sign up to, and a series of subsidiary agreements that countries could opt in or out of at their discretion. The proposal

[79] Julian "EPA Update 6-6" (2007)
[80] CARICOM Secretariat (2007), Caribbean Forum of ACP States Secretariat "(CONFIDENTIAL) 10th EDF Regional Strategy Paper and Regional Indicative Programme: CF 15/07/03" (2007)
[81] Jessop "All or Nothing: The Caribbean EPA" (2008)
[82] Ibid.
[83] Interview, government official

placed particular emphasis on the need for access for Mode 4 in services, and additional financial support from the EU.[84]

SADC also proposed an alternative EPA framework, albeit later in the negotiating process. Initially, SADC's moves were defensive, with the region refusing to negotiate in areas where there were no common policies in the SADC region, and where there were no agreed modalities at the WTO (most notably investment and government procurement). Media reports at the time document the European negotiators as responding with a strong and confrontational tone, publically accusing the region of being 'unresponsive' and 'lacking in commitment'.[85] In early 2006, SADC changed tack, and attempted to put negotiations on a more constructive footing, presenting the EU with a counter-proposal on the basic framework of the EPA. The region proposed variable geometry in market access, under which least developed countries would remain on the 'Everything But Arms' preferences, while the other SADC countries entered into a free trade agreement. It also proposed that trade-related issues be kept off the negotiating table, and that South Africa formally join the negotiations and be granted additional access to the EU market.[86]

ESA was the third region to make substantive counter-proposals on the basic framework of the EPA. ESA proposed that trade liberalisation be made conditional on ESA countries obtaining specific 'development benchmarks', which would indicate their economies had attained sufficient economic competitiveness to benefit from liberalisation. They also proposed that the EU provide additional financial support to the region to help address competiveness constraints.[87]

[84]Pacific Islands Forum Secretariat "The Pacific ACP-EU Partnership: The Way Forward" (2004). Interview, government official
[85] Julian "EPA Update 4-6" (2005)
[86] Julian "EPA Update 5-2" (2006)
[87] Julian "EPA Update 4-5" (2005)

The EU's responses differed across the three regions. In negotiations with the PACP and ESA regions, the EU rejected their proposals. In the Pacific region for instance, the EU Trade Commissioner publically reassured Pacific Ministers that the 'very special circumstances' of their region would be factored in, but inside the negotiating room, EU negotiators maintained that the region's proposed framework was not feasible, as it was not WTO compatible and would not deliver development benefits.[88] In contrast, in negotiations with SADC, the EU took more than a year to respond to the region's proposal. Although the EU argued that the delay was the result of having to return to EU member states to agree to a change of mandate internal documents show that it took eight months before the European Commission put SADC's proposals to EU member states, suggesting a deliberate delay tactic.[89]

With no agreement on the basic framework with any of these three regions, the EU sought to move the negotiations on to the discussion of detailed legal texts. The PACP and ESA regions agreed, but SADC maintained that agreement was needed on the basic framework before detailed negotiations could start. Instead of text-based discussions, SADC sought to engage the EU politically, to try and broker an agreement on the EPA framework, but the EU refused to meet.[90]

Technical negotiations started in the PACP and ESA regions but quickly became fraught. The PACP region agreed to negotiate in most issue-areas, and tabled very substantive proposals that departed substantially from those of the EU and which included many of the proposals made by developing countries at the WTO.[91] Rather than respond to the region's detailed

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[88] Gosselin "Pacific ACP States – EC Launch EPA Negotiations" (2004), Julian "EPA Update 5-2" (2006)

[89] For the response see European Commission "Communication from the Commission to the Council Communication to Modify the Directives for the Negotiations of Economic Partnership Agreements with ACP Countries and Regions" (2006); for analysis see Kruger "The European Union Official Response to the SADC EPA Framework Document" (2008)

[90] See Julian "EPA Update 5-4" (2006)

[91] See for instance European Commission "(Draft) Agreement Establishing an Economic Partnership Agreement Between the Pacific Members of the African, Caribbean and Pacific Group of Countries, of the One Part, and the European Community and its Member States, of the Other Part" (2006). For detailed analysis of the PACP text see Kelsey (2007)

proposals, the EU merely tabled its 'template' EPA text, based on other EU free trade agreements.[92] As one interviewee noted, 'on some embarrassing occasions, they still had [the name of another region] written on the text they brought us'.[93] Negotiations were also slowed down by the fact that EU negotiators argued that they did not have the mandate to respond to PACP proposals, and had to consult with their superiors.[94] Towards the end of 2006, an exchange of letters between senior EU and Pacific negotiators was leaked to the press (by the Pacific), which revealed that neither side was willing to make significant concessions, and suggested that the negotiations had stalled.[95]

ESA also tabled detailed counter-proposals in many issue areas, and analysis of the draft negotiating texts reveals that EU negotiators were similarly unwilling to concede to ESA's core proposals in a meaningful way.[96] For instance, while the EU accepted the ESA proposal for a dedicated chapter on development at the start of the agreement, it opposed any binding wording and it opposed ESA's proposals for development benchmarks, arguing that the agreement should focus deepening liberalisation.[97] ESA too stood its ground, with ESA ministers threatening that, if the EU did not make meaningful concessions, then negotiations in areas of interest to the EU would have to cease.[98]An internal EU document in January 2007 noted that ESA negotiations were stalled, not least because of divergences over development finance.[99]

In early 2007, the EU tried, successfully, to re-launch negotiations with the PACP and ESA regions, embarking on a round of high-level diplomacy and indicating a more conciliatory

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[92] See for instance the EU services proposal: European Commission "(Non-Paper) Liberalisation of Trade in Services and the Right of Establishment in the Economic Partnership Agreement Between the EC and Pacific ACP" (2006)
[93] Interview, government official
[94] Interview, government official
[95] Manservisi and Falkenberg "Letter from European Commission to Lead Spokesperson of the Pacific ACP Regional Negotiating Team" (2006)
[96] Draft negotiating texts on file with the author
[97] Julian "EPA Update 5-6" (2006)
[98] Julian in Julian "EPA Update (Extended Version) 6-1" (2007)
[99] European Commission "[Limited] Note for RELEX Commissioners: Economic Partnership Agreements (EPAs) with ACP Countries" (2007)

approach. In the Pacific for instance, the EU promised to work with the region on Mode 4 and in raising additional development finance.[100] Yet, once again, deep divergences rapidly emerged. The PACP put forward a formal request in services, which included a request for 10,000 Pacific citizens with moderate skills to enter the EU for up to three years, but the EU rejected this request outright, arguing that it was far too ambitious.[101] Similarly, in ESA, major differences remained over the extent of trade liberalisation to be undertaken by ESA countries. Negotiations were particularly challenged by low levels of trade integration in the region, which meant that it was extremely difficult for ESA to table a single regional market access offer to the EU that would come close to meeting the WTO requirement of liberalising 'substantially all trade'.[102]

In March 2007, the EU finally responded to SADC, tabling a draft agreement based on the TDCA and EU-CARIFORUM draft EPA.[103] While the EU agreed to make some concessions, including that South Africa would join the negotiations, deep divergences remained including over the level of market access that South Africa would be given into the EU, the concessions that least developed countries would have to make, whether the EU would provide additional aid, and the inclusion of trade-related issues.[104] In addition, there was concern that the EU negotiators would not engage with the proposals put forward by the region: 'They have always found a way to avoid that we talked about our text proposals, we always talked about their text proposals'.[105] Moreover, a divide was emerging within the SADC region on whether to negotiate services and investment.

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[100] Julian "EPA Update 6-2" (2007)
[101] Julian "EPA Update 6-4" (2007)
[102] Julian in ibid.
[103] European Commission "Economic Partnership Agreement Between the SADC Group States, of the One Part, and the European Community and its Member States, of the Other Part: Preliminary Draft - EC Proposal (27.03.07)" (2007)
[104] The EU made specific requests to least developed countries European Commission "EC-SADC EPA Negotiations on Market Access for Trade in Goods: EC Proposal for Treatment of South Africa/ List of Offensive Interests" (2007). See also Vickers (2011)
[105] Interview, government official

By mid 2007, it became clear that it would not be feasible to complete a 'full' EPA by the end of the year. In a highly significant move, the EU proposed a move to a two-stage EPA, negotiating an 'interim EPA' covering trade in goods and which would include a binding rendezvous clause for other issues to be negotiated in 2008.[106] This was a significant 'win' for African and Pacific countries as they had, at least temporarily, removed many of the most contentious issue areas from the negotiating table.

Attention turned to the negotiation of 'interim' EPAs, but this was not straightforward. There were still major disagreements on the level of liberalisation to be undertaken by the PACP, ESA and SADC countries and further problems arose when the EU tabled new provisions in the last weeks of the negotiations that were particularly contentious, including a most-favoured-nation clause.[107] The three regions continued to hold strong, prompting the EU to make a further, decisive move. In a radical departure from its long-standing position that EPAs would be regional, EU ministers mandated their negotiators to open negotiations with individual countries.[108]

Once this happened, it became extremely difficult for the PACP, SADC, and ESA regions to remain unified.[109] In October 2007, a few weeks before the deadline, the SADC region tabled a WTO-compatible text, including market access offers from all countries, but the EU still insisted on strong binding commitments to negotiate services and trade-related issues at a later date and on the inclusion of the highly contentious provisions.[110] (The insistence on

[106] The first signs that the EU was considering this option were in January 2007, where the European Commission noted that 'deep EPAs' would not be viable in all regions and a 'flexible, phased-in approach' would be needed European Commission "[Limited] Note for RELEX Commissioners: Economic Partnership Agreements (EPAs) with ACP Countries" (2007)
[107] See discussion in chapter 4
[108] European Commission "Communication from the Commission to the Council and the European Parliament: Economic Partnership Agreements" (2007); Rampa "EU Offers ACP 'Two-Step' EPAs: Where Does Development Stand?" (2007)
[109] This was particularly the case for ESA and SADC, which had no strong regional secretariat leading negotiations. Interview, government official; Vickers (2011)
[110] Davies "Bridging the Divide: The SADC EPA" (2008)

including a strong rendezvous clause on services and investment appears to have been the direct result of lobbying by European services companies.[111])

A 'make-or-break' negotiating session was held in November, where both South Africa and the EU held strong, and regional negotiations became deadlocked. During these talks, EU officials reportedly insisted that there would be no financial assistance unless there were binding commitments on the trade-related issues, and offered some significant concessions, including additional sugar quotas to Swaziland and Mozambique, and the relaxation of the rules of origin on textiles, which was of great interest to Lesotho.[112]

Eventually Botswana, Swaziland, Lesotho (facing high trade losses) and Mozambique (reportedly fearing aid losses), split from the SADC region and initialled an interim EPA that included the contentious clauses, a relatively high liberalisation commitment, and one of the most stringent rendezvous clauses of all regions.[113] Namibia, also facing high trade losses, held out, refusing to initial the EPA text unless changes were made. Namibia was very vocal in its resistance, publically confronting the EU and vocally denouncing its 'bullying' approach.[114] Namibia eventually initialled an EPA in mid-December, and was unique among ACP states in insisting on the inclusion of a side-letter that stipulated its reservations over key provisions in the text.[115]

In the PACP region, ten countries tabled market access offers in the last months of 2007, but agreement could not be reached on the depth of liberalisation, and there was disagreement on

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[111] See Forum "Letter from ESF Chairman to European Trade Commissioner: Subject: Negotiations of Services Commitments in the European Partnership Agreements" (2007)
[112] Kruger "SADC EPA Negotiations: The Circle of Trust" (2008); Mene "New Generation Issues in the EPAs: Development in Question?" (2008)
[113] Access to development finance appears to have been a decisive factor for Swaziland. In the words of one government official 'We had to initial in order to benefit from this fund'. Zwane (2008) Also Interview, government official
[114] Namibian Ministry of Trade and Industry "Outcome of the Final Round of the SADC-EC EPA Negotiations" (2007)
[115] Republic of Namibia "Media Release (13 December): Interim Economic Partnership Agreement with the European Union Initialed by Namibia" (2007)

the contentious new provisions tabled by the EU. As with the SADC region, at this juncture the EU offered some concessions, proposing to relax the rules of origin on fish and to increase sugar quotas, which were of particular interest to Papua New Guinea and Fiji. Just as in the SADC region, negotiations came to a head in a meeting between PACP Ministers and the EU trade commissioner in November. The EU trade commissioner reportedly demanded that the lead Pacific technical advisers be removed from the room, and threatened to walk out if the region did not make concessions on the contentious clauses. After the meeting, Pacific representatives reported that it was 'a humiliation' and Pacific ministers were said to have given in 'on virtually every issue'.[116] Following this meeting, Fiji and Papua New Guinea, facing high trade losses, entered into bilateral negotiations with the EU and initialled interim EPAs, while the others opted to exit from the negotiations.[117]

The pattern was similar in ESA. The region persevered with trying to table a single regional market access offer, but it proved impossible to table a single offer that came close to covering 'substantially all trade'. The five EAC countries (Kenya, Tanzania, Uganda, Rwanda, Burundi), which already had a customs union, split from the ESA negotiating group, and tabled an offer that was accepted by the EU.[118] Members of the Indian Ocean Commission (Seychelles, Mauritius, Madagascar and Comoros) also tabled a joint offer, proposing to liberalise 82 percent of EU imports over 15 years (25 years for least-developed countries), but the EU rejected it. Rather than hold out, the IOC group collapsed, with each member of the group tabling a separate market access schedule.[119] Again the EU offered additional sugar quotas and relaxed rules of origin on textiles during these last weeks, which were significant for Mauritius, Zambia, Comoros and Madagascar.[120]

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[116] Primack "EPA Fails to Draw the Pacific Closer to the International Trading System" (2008)
[117] Two interviews with government officials. The EU reportedly negotiated with Papua New Guinea first, and, when agreement was reached, the text was offered to Fiji on a take-it-or-leave-it basis.
[118] Watson "East Africa: A Splintered Picture" (2008)
[119] Walker (2008)
[120] Staff Reporter "An interview with Louis Michel: European Commissioner for Development and Humanitarian aid" (2008) See also Andriamamonjiarison (2012)

Response 3: Blocking (ECOWAS and CEMAC)

The third response of ACP regions was to focus on blocking core aspects of the EU's proposals. While ECOWAS and CEMAC made some counter-proposals, notably in the area of financial assistance, they focused on blocking negotiations in key areas of defensive interest. As ECOWAS and CEMAC had been keen to launch regional level negotiations, it is striking how quickly signs of resistance began to emerge.

In ECOWAS, the first signs of a pushback came in late 2004. A draft negotiating agenda had been agreed by technical negotiators from both sides, and approved by the European Commission. However, when it was presented to ECOWAS ministers, they refused to endorse it unless the EU made an explicit commitment on the provision of additional finance. After heated discussions, the EU conceded to a final negotiating agenda that contained a watered-down item on additional funds and detailed stipulations on the need for the EPA to help address ECOWAS' competiveness constraints.[121]

Negotiations started properly in late 2004, but made slow progress, largely because ECOWAS adopted an increasingly tough negotiating stance. The region was determined that the EPA would be centred on supporting the region to tackle competitiveness constraints, rather than furthering liberalisation. ECOWAS insisted that a dedicated technical negotiating group be established for competitiveness and although the EU initially opposed this move it eventually backed down, perhaps because ECOWAS Ministers evoked the possibility of pulling out of negotiations.[122] In the ensuring months, ECOWAS put forward a detailed proposal on how additional finance would be used to bolster the region's productive capacity, and the EU then focused on criticising these proposals. For instance, it argued that it was not possible to accurately calculate the financial costs of upgrading competitiveness until the EPA had been finalised, an argument that the region vigorously opposed.[123]

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121 Julian "EPA Update 3-5" (2004)
122 Julian "EPA Update 4-5" (2005)
123 Julian and Makhan "EPA Update 5-5" (2006)

In tandem, ECOWAS sought to remove investment, competition, government procurement, and environmental and labour standards from the negotiating agenda. It argued that it did not have regional policies in place, and hence lacked the technical expertise to negotiate, and that the issues were not being negotiated at the WTO. Although ECOWAS did agree in principle to discuss intellectual property and services (areas under negotiation in the WTO), it argued that more time was needed to conduct analysis before negotiations could commence.[124]

Even though there was no agreement on the basic coverage of the EPA, the EU called, as it had done in other regions, for text-based discussions to start. Yet ECOWAS ministers held strong, arguing, just as SADC had, that substantive negotiations would not begin until agreement had been reached on the basic structure of the EPA.[125] ECOWAS ministers then presented a counter-proposal on the framework of the EPA and they raised concerns that it would not be feasible to complete negotiations by the end of 2007 and called for a three-year extension of the deadline.[126]

At this juncture, the EU started to apply pressure, making the first hint of a threat that trade preferences would be withdrawn if negotiations were not completed, and making indirect threats on aid, with EU officials arguing that progress in the EPA negotiations was necessary in order to programme future tranches of aid. In parallel, the EU attempted to persuade ECOWAS, arguing that the region would miss out on the development benefits of negotiating services liberalisation and trade-related issues. The EU also attempted to create some positive incentives, convening a meeting of donors in late 2006 to pledge support for improving the region's competitiveness. Rather than back down, ECOWAS opted to ratchet up its response,

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[124]ECDPM "Update on regional EPA negotiations: West Africa - EU Economic Partnership Agreement" (2006)
[125] Julian "EPA Update 5-4" (2006)
[126] Julian "EPA Update (Extended Version) 6-1" (2007)

with the region's heads of state formally calling for an extension of the negotiating deadline, making it clear that negotiations had stalled.[127]

The CEMAC region showed less opposition during initial discussions over the scope of the EPA, although, it also held out for specific commitments on additional financing.[128] CEMAC agreed to negotiate in all of the areas proposed by the EU, and negotiations moved straight into the technical details. Detailed negotiations were slow, reflecting the region's severe technical capacity constraints, arguably the most acute of the six ACP regions. Both parties agreed to delay negotiations in some areas, including labour standards and consumer protection. They also agreed on the urgent need for legal assistance to help the region draft negotiating texts, which was duly provided by the EU (raising obvious concerns about conflict of interests).[129]

Although reports suggest that the EU dominated technical discussions, from 2006, CEMAC ministers started to push back. Ministers focused on two key issues: the EU's insistence that the EPA contain the sensitive 'non-execution clause' and the EU's refusal to accept binding commitments on aid. In a similar move to ECOWAS, the region put forward detailed proposals for bolstering the region's productive capacity.[130] By mid-2006 there were reports that CEMAC ministers were deliberately slowing down the negotiations in areas of interest to the EU, including market access, in a bid to secure EU agreement on their priority issues.[131] CEMAC also organised a meeting of its ministers of finance (who interfaced with the EU on aid) and its ministers of trade to agree on a coordinated approach. The region called for a high-level dialogue with the EU to bridge differences and CEMAC ministers met with senior

[127] Ibid.
[128] Julian "EPA Update 3-4" (2004)
[129] Julian "EPA Update 5-2" (2006)
[130] Julian "EPA Update 5-3" (2006)
[131] Julian "EPA Update 5-4" (2006); Julian "EPA Update 5-6" (2006)

EU officials from both DG Trade and DG Development. No consensus was reached and negotiations broke down.[132]

In early 2007, the EU made efforts to re-launch negotiations with ECOWAS and CEMAC, and, as with other regions, it started by adopting a more conciliatory tone. In CEMAC this manifest itself in concrete terms, with the EU backing down on its earlier demand that liberalisation take place within 15 years, proposing an initial moratorium of 2 years, followed by a transition period of up to 25 years (although it still insisted that liberalisation must ultimately exceed 80 percent of EU imports). The EU also tabled 'template' EPA texts, modelled on the draft EU-CARIFORUM text. Even in ECOWAS, which had insisted that it would not negotiate in most trade-related areas, the template text covered all areas of interest to the EU.[133]

ECOWAS and CEMAC agreed to resume negotiations, but discussions were extremely fraught. Major differences persisted over the extent of market access requested by the EU. ECOWAS and CEMAC held out for a very flexible tariff liberalisation regime, insisting on liberalising a maximum of 60 percent of imports from the EU over a long transition period. At one stage, CEMAC walked out of negotiations, frustrated that the EU would not clarify its position on financing.[134]

Technical capacity constraints also impeded progress. ECOWAS was reportedly keen for market access and services negotiations to progress, but the region lacked the capacity to respond to the EU's draft text or to draft its own legal text, and low levels of trade integration in the region made it challenging to table a single market access offer.[135] In mid-2007,

[132] Julian "EPA Update (Extended Version) 6-1" (2007)
[133] In ECOWAS, the EU tabled a text in April 2007 which clearly stated that it was 'modelled on the Caribbean draft text' European Commission Directorate General for Trade "Note for the Attention of the ACP Working Party: (Draft) EPA Text for West Africa" (2007)
[134] Julian "EPA Update (Extended Version) 6-4" (2007)
[135] Ibid. See also Staff Reporter "ECOWAS CET: The Imperatives of Nigeria's Fifth Band" (2008)

ECOWAS formally proposed that negotiations on services be postponed, but the EU refused, arguing that negotiations should continue.[136] Similarly in CEMAC, the region faced major difficulties in preparing a market access offer for goods and services. In addition, the lack of coordination and oversight at the political level meant that there was a high level of confusion in the region as to what was being negotiated, who exactly was interfacing with the EU, and the level of concessions that were being agreed.[137]

In negotiations with ECOWAS, the EU proposed narrowing negotiations to focus on an 'interim EPA'. However ECOWAS held out, postponing negotiating sessions and arguing that its technical constraints were so severe that an interim EPA was not feasible, and it called for negotiations to be extended.[138] In the last months of 2007, the region asked the EU to apply for another WTO waiver, but the EU refused, arguing that this would damage its international reputation.[139] With the region holding out, the EU negotiators sent draft EPA texts to Ghana and Cote d'Ivoire, the two countries that stood to lose most from the loss of trade preferences, and to UEMOA, the francophone bloc that had championed the EPA early on in the negotiating process.[140] In early December a high level delegation from the EU was reported to have flown to the capitals to discuss the text directly with heads of state. EPAs were initialled by Cote d'Ivoire and Ghana, reportedly without involvement of regional negotiators, and with minimal involvement of national trade officials.[141]

[136] Thompson "Letter from Director of Directorate D-Development and EPAs, European Commission, and Commissioners of CEDEAO and UEMOA" (2007)
[137] See CEMAC-EU Negotiators (2007)
[138] See reply to ECOWAS from the EC: Thompson "Letter from Director of Directorate D-Development and EPAs, European Commission, to Commissioners of ECOWAS and WAEMU Commissions" (2007)
[139] See ECOWAS Commission and UEMOA (2007), for EU reply see Mandelson and Michel "Letter from European Commissioners of Trade and Development to Presidents of the ECOWAS and WAEMU Commissions" (2007)
[140] Olympio, Sacko, and Fifatin (2008)
[141] Ghana was reportedly invited to observe the Cote d'Ivoire negotiations and then to initial a text based on the Cote d'Ivoire EPA. This helps account for the striking similarity in the texts. See: European Commission Directorate General for Trade "Note for the Attention of the 133 Committee and to the ACP Working Party: EPA- Art XXIV Compatible Arrangement with Ghana" (2007) Also interview, government official

In CEMAC, technical negotiations continued and in October 2007 the EU announced to the media that the CEMAC region was set to conclude ‘something close to a full EPA’. Yet, contrary to the EU’s expectations, CEMAC ministers held firm. In a make-or-break meeting, they held out for a maximum liberalisation of 60 percent of total EU imports, and were said to be considering alternative options if the EU did not agree. The EU is reported to have threatened to delay or even suspend regional aid if ministers did not concede, and to have tabled an ‘emergency rescue plan’ which included a proposal to limit the CEMAC negotiating team to a handful of ‘willing’ technocrats and accepting the draft EU EPA text as a basis for discussions. The region opposed, and negotiations collapsed.[142] The EU initialled bilateral negotiations with Cameroon and Gabon, but ultimately, only Cameroon, the one country in the region that faced significant trade losses, initialled an ‘interim’ EPA.[143]

Impact on Outcomes

The strategic and tactical decisions of the EU and ACP governments during the second period of negotiations (2003-2007) helps to account for the variation in EPA texts at the end of 2007.

The EU’s approach was highly distributive and there is no evidence it varied substantially across the six ACP regions. Responding to the EU’s hard-line approach, the ACP countries engaged in a series of collective moves through the ACP coalition, and succeeded in placing a high level of pressure on EU politicians, notably by galvanising popular opposition to EPAs. At the regional level, ACP countries responded to the EU’s distributive strategy in three broadly different ways and the variation in these responses is the primary explanation for the variations in EPA texts at the end of 2007.

First, the CARIFORUM region agreed to the EU’s general approach and focused on deploying technical expertise inside the negotiating room to secure concessions in the fine details of the text. Technical officials played the leading role, with politicians providing

[142] Julian "EPA Update 6-7" (2007) Ulmer "The Emperor's New Clothes" (2008)
[143] Bongkwaha and Ulmer "EPAs: Development or Desolation for Central Africa?" (2008)

support when technical negotiations became fraught. Although there were clear tensions within the region, with many of the poorer countries somewhat reluctant to enter EPA, CARIFORUM remained united, arguably a product of the region's highly centralised negotiating structure. As a result, by the end of 2007, there was a far-reaching EPA text that contained significant concessions at the margin, which all fifteen countries signed.

Second, the PACP, SADC and ESA regions used political and technical moves to try and obtain a very different EPA. Although none of the three regions was able to restructure the EPA text to reflect their offensive interests, it is striking that they were able to remove many of the most contentious issues from the negotiating table, reducing the scope of the 2007 negotiations to trade in goods. The political decisions of ministers, rather than the technical expertise of negotiators, were clearly decisive in exercising this 'holding power'. However technical expertise proved to be important for securing concessions in the fine-details of the text, with the PACP region securing the greatest flexibility.[144] Interviewees attributed this to the high level of technical and legal expertise of the Pacific Forum Secretariat, as well as a willingness on the part of the EU to be a little more flexible and 'not as dogmatic' as it was with other regions as the EU had fewer strategic interests in the region.[145]

Third, the ECOWAS and CEMAC regions adopted a largely defensive strategy, focused on blocking and delaying negotiations on in some issue areas, and holding to their 'red-lines' in others (although they did pursue an offensive agenda on financial assistance to address supply-side constraints). It is striking that these regions, which suffered from acute technical capacity constraints, were able to exercise a high level of 'holding power'. ECOWAS in particular, was able to keep many issues of interest to the EU off the negotiating agenda by refusing to enter technical negotiations. In the CEMAC region for instance, ministers stepped in to make decisive moves, stalling the negotiations and threatening to exit if the EU did not

[144] See chapter 4
[145] Two interviews with government officials

soften its stance. The CEMAC region's acute technical weakness helps to explain why the EPA text initialled by Cameroon was particularly restrictive. The key decisions made during this period are summarised in Table 26.

Table 26: Tactical Moves During the Second Period (2003-2007)

Actor and Strategy	Main Tactics	Impact
EU:		
Highly Distributive	**Moves:** Table template texts on 'take it or leave it basis'; High-level diplomacy to emphasise benefits of EPA and costs of exit; Shape public debate in ACP (newspaper adverts, training journalists); Mobilise pro-EPA interest groups in ACP countries; Explicit and veiled threats on trade preferences and aid; 'Divide and rule' tactics. **Countermoves:** Rebut / refuse ACP requests in negotiating room; push to move to text-based discussions where distinct technical advantage; Delay responses in order to increase deadline pressure; Shape public debate in EU countries (press releases, public speeches); Make small last-minute concessions to clinch deal with wavering countries (e.g. sugar quotas, rules of origin)	Prevented ACP countries from obtaining offensive interests
ACP Coalition Strategy:		
Exert Political Pressure on EU: Direct appeals to EU politicians; ferment opposition within EU	**Moves:** High-level joint meetings to collectively press for concessions; Form alliances with stakeholders in EU (e.g. European Parliament, NGOs); Collective lobbying of EU member states; **Countermoves:** Use ministerial declarations to expose EU strategy to wider public	Galvanised public opposition to EPAs within Europe, and placed EU politicians under pressure
Three ACP Regional Strategies:		
1. Modifications at the Margin (CARIFORUM): Seek modified EPA: Agree to EU approach, seek concessions in fine details of text	**Moves:** Table detailed technical proposals to modify text at margins; **Countermoves:** Make detailed counter-proposals on aspects of texts; move negotiations to political level when thwarted at technical level; make last-minute concessions to EU to clinch deal and preserve regional unity	Full EPA with concessions in fine details
2. Table Counterproposals (PACP, SADC, ESA) Primarily offensive: Seek very different EPA: table alternative EPA framework; table alternative texts.	**Moves:** Attempt to size negotiating agenda by proposing full alternative EPA framework and texts (PACP) **Countermoves:** Table alternative proposals on major aspects (SADC, ESA); Refuse to negotiate in some areas; Refuse text-based discussions until framework agreed (SADC); Move negotiations to political level when thwarted at technical level; Politicians hold out and threaten exit rather than capitulate	Reduced EPA to 'goods-only' by blocking negotiations in key areas of defensive interest / removing issues off the negotiating table. Unable to advance major offensive interests. Concessions in details depended on technical expertise.
3. Blocking (ECOWAS, CEMAC) Primarily defensive: Block issues that don't reflect interests, seek commitments in few areas of offensive interest (e.g. supply-side)	**Moves:** Table proposal for area of major offensive interest **Countermoves:** Politicians hold out on key issues, even if conceded at technical level; Refuse to negotiate issues (ECOWAS); Refuse to move to text-based discussions before framework agreed (ECOWAS); Delay technical negotiations and push for extension (ECOWAS); Politicians hold out and threaten exit rather than capitulate	Reduced EPA to 'goods-only' by blocking negotiations in key areas of defensive interest / removing issues off the negotiating table. Concessions in details depended on technical expertise.

6.5. The EPA Endgame: ACP Countries Evade Implementation (2008-2012)

Scrutiny of the negotiating process in the third and final period (2008-2012) is needed to help explain the final element of the EPA outcomes: why the EPA negotiations made so little progress after 2007 despite continuing for a further five years, and how it was that so many ACP countries evaded signature and implementation of the EPA texts that were initialled in 2007. As before, this section starts by exploring the EU's strategy and tactics and interactions with the ACP coalition, before examining variation at the regional level.

EU Repeats its Tactics

At the start of 2008, there was an intense debate within the European Commission on what had 'gone wrong' with the EPA negotiations.[146] What is fascinating is this that the EU's failure to meet its negotiating objectives during the second period did not prompt it to alter its strategy or its objectives. The EU continued to pursue a hard-line strategy, determined to obtain full regional EPAs without making substantive concessions. The EU's diagnosis of the problem was that they had failed to respond adequately to the public debate. In the words of the European Commission's Director of ACP Relations, the negotiations had been a public relations 'disaster' and a 'huge communications failure'.[147] As late as 2010, the European Trade Commissioner noted that the EU needed to 'convince policy makers and civil society, both in developing countries and Europe that poor countries stand to gain most from trade.'[148]

Given this diagnosis, persuasion tactics remained central to the EU's post-2007 strategy. For instance, the European Commission asked its delegations in ACP countries to collect EPA 'success stories' that could contribute to 'rebalancing the debate'.[149] The EU published a

[146] Personal observation based on discussions with senior EU officials in January 2008
[147] Cronin "Trade-EU: Deals with Africa a 'PR Disaster'" (2008) Also Staff Reporter "EPAs: The Latest (Unspoken) Facts" (2008)
[148] Commission "Communications and EPAs: Challenges, Perceptions, Responses" (2010)
[149] Thompson "Note from the Director of Directorate D-Development and EPAs, European Commission, for the Attention of Heads of Delegation: Subject: EPA Success Stories" (2008)

series of leaflets to publicise the benefits of the EPA, hired a public relations firm to try and improve the public image of EPAs, and ran more training programmes for ACP journalists.[150]

Yet the EU was not very adept in its attempts to persuade. EU officials refused to engage with the concerns raised and instead merely extolled the virtues of the EPA model, often in very simplistic language and in a very condescending tone. In mid-2008 for instance, the EU Development Commissioner told ACP parliamentarians 'If you want to remain poor, just be against the EPAs'.[151] When parliamentarians criticised aspects of the EPAs, he replied 'I do not accept these *excuses*… If [ACP countries] really want to profit from globalisation, *they have no choice*' [emphasis added].[152]

The second strand to the EU's strategy was, once again, to resort to pressure tactics. As explained in chapter five, in late 2007, the EU enacted internal legislation which provided temporary unilateral preferences for those ACP countries that had initialled EPAs, on condition that ACP countries signed, ratified and implemented the EPAs within a 'reasonable period of time'.[153] This provided the EU with a new threat, namely that the temporary preferences would be withdrawn from ACP countries if they did not move quickly to sign and implement the initialled EPAs (or, alternatively, replace them with a regional EPA).[154]

Yet, much to the frustration of EU negotiators, the credibility of such threats was rapidly undermined by the EU's own internal bureaucracy. It is standard EU practice to translate legal agreements into all twenty-three EU languages before signature, and translating the EPA texts was projected to take more than a year. EU negotiators were concerned that delaying the

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[150] See for instance European Commission Directorate General for Trade "Six Common Misconceptions About Economic Partnership Agreements (EPAs)" (2008); Michel "Economic Partnership Agreements: Drivers of Development" (2008); European Commission Directorate General for Trade (2011)
[151] Hanson and Bilal "Editorial" (2008)
[152] Frenken "Michel on EPAs: 'I do not Accept these Excuses'" (2008)
[153] Council of the European Union (2007)
[154] Hanson and Julian "EPA Update 7-2" (2008)

signature of the EPAs might 'increase the political risks that certain ACP countries change their mind and decide not to sign'. EU negotiators requested that EU member states waive the translation requirements, but member states refused undermining a major source of EU leverage.[155]

On the ACP side, there was a clear split in the reaction of ACP regions. The Caribbean region became consumed in an internal debate over the merits of the full EPA but finally agreed to sign it. In stark contrast, most African and Pacific countries were very frustrated that they had been pressured into a series of interim EPAs countries and they held out for renegotiation.[156] The trajectory of each of these responses is explored below.

Response 1: Caribbean Falters, but Moves Ahead with Full EPA

During 2008, the Caribbean region became embroiled in a vigorous public debate about the merits of the EPA. The charge against the EPA was led by a group of eminent Caribbean intellectuals, including a former head of the Caribbean Regional Negotiating Machinery, who called for renegotiation.[157] One critic argued that the EU had used a mix of 'bullying, bribery, cajolery, intellectual dishonest, and plain bluff' to 'work a monumental deception on the region'.[158] The Guyanese President joined the critics, asserting that the region had capitulated under pressure and that the EPAs were a well-thought out strategy to divide and rule ACP countries.[159] The governments of St Lucia and Barbados were also reported to have concerns about the final EPA text.[160]

In stark contrast, the Jamaican Prime Minister vocally supported the EPA, accusing critics of the EPA of 'failing to escape the psychological shackles of slavery', and arguing that

[155] European Commission "Signature and Translation of Interim EPAs: Information Note to Member States" (2008)
[156] Cameroon did not want to renegotiate ECDPM (2008). This may account for the particularly stringent nature of the Cameroon IEPA text.
[157] See Singh "CARICOM's Divide on EPA: Analysis" (2008)
[158] Ischyrion "CARIBBEAN: Fissures Appear Over EU Trade Deal" (2008)
[159] Staff Reporter "The Caribbean Lost in the Negotiations with Europe- Jagdeo" (2008)
[160] Hanson and Julian "EPA Update 7-1" (2008)

although the region did not get all it asked for it, was a good agreement.[161] The Dominican Republic Ambassador asserted that 'Europe has been a more generous partner than any other developed country thus far' and that the EPA was 'the first ever development-enhancing agreement in history'.[162] Leading figures on the Caribbean negotiating team joined to defend the 'modern' agreement.[163] In a bid to quell the growing public criticism, the regional negotiators embarked on a publicity campaign, setting out the benefits of the EPA in a series of publications and radio broadcasts.[164]

In response to the intense public debate, Caribbean trade ministers commissioned a confidential review of the EPA.[165] The report, issued in April 2008, recommended that the region sign the EPA, although it also criticised the agreement on the basis that its 'development thrust' appeared to be too low and its emphasis on trade liberalisation was 'flawed'.[166] In tandem, individual countries conducted national review processes.

By July 2008, the leaders of Jamaica, Trinidad and Tobago, and Barbados indicated that they were willing to sign, but others, including Guyana, Grenada, St Lucia, and Antigua and Barbuda wanted further time to evaluate the EPA text. In a bid to bring 'wavering' countries on board, the Caribbean negotiating team toured the region, and this appears to have reassured some governments. [167]

Guyana continued to voice concerns, and the president hosted a national EPA consultation where he publicly confronted the EU's lead negotiator, asserting that the EPA posed a major challenge to the region's development. The Guyanese government then rejected the 'full'

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[161] Myers "Golding Slams EPA Critics - Says they Suffer from Mendicancy" (2008)
[162] Camilo "MFN in the Cariforum EPA is No Threat to South-South Trade" (2008)
[163] See for instance Staff Reporter "Economic Partnership Agreement (EPA) is Best Trade Pact for Now - Bernal " (2008); Lodge "CARIFORUM EPA Negotiations: An Initial Reflection" (2008)
[164] Available at www.crnm.org
[165] Ministers of the region's Council Trade and Economic Development (COTED)
[166] Julian "EPA Update 7-5" (2008)
[167] See for instance Ischyrion "TRADE-CARIBBEAN: EU Pact Hit by Last-Minute Revolt" (2008) also interview, government official

EPA and requested a 'goods-only' EPA, similar to the agreements concluded by African and Pacific countries. [168] Guyana's request found little support within the region and the EU Trade Commissioner argued that he did not have the mandate to negotiate a goods-only agreement.[169]

An urgent special meeting of Caribbean heads of state was called to broker a way forward. At this meeting, thirteen of the fifteen heads of state agreed that they would go ahead and sign the EPA. Guyana insisted on a goods-only EPA, while Haiti stated that it would postpone signature (as the only least developed country in the region, Haiti had access to Everything But Arms preferences).[170] Guyana continued to pursue a goods-only EPA, making a speech at the UN General Assembly and writing to the EU President.[171] The EU responded by threatening to place Guyana on the Generalised System of Preferences if it did not sign the full EPA within a few weeks. To make the threat credible, the EU Commission drafted an internal regulation to delist Guyana from the temporary preferences and the regulation was approved by EU member states.[172]

Finally, in October 2008, the thirteen Caribbean states signed in a public ceremony.[173] Guyana signed in a private meeting a few days later citing the 'imminent threat of GSP sanctions' as its motivation and insisting on the inclusion of a side agreement that the EPA would be reviewed within five years.[174] Haiti signed the following year.

[168] The author witnessed this event
[169] See Information Unit of the CRNM "RNM Update 0806" (2008); Ramjeet "Guyana Resisting CARICOM Pressure to Sign EPA Agreement" (2008); Julian "EPA Update 7-8" (2008)
[170] Singh "Calling it Quits" (2008) Also Julian "EPA Update 7-8" (2008)
[171] Staff Reporter "Jagdeo Takes EPA Grouse to United Nations" (2008)
[172]Cronin "EU: Defiant Guyana to be Punished" (2008)
[173]Richards "CARIBBEAN: Trade Pact Signed Amid Uncertain Future" (2008)
[174]Julian "EPA Update 7-9" (2008) Commission "Communication to Delegations: Draft Community position with a view to a joint statement by the signatory CARIFORUM States, of the one part, and the European Community and its Member States, of the other part, on the signature of the Economic Partnership Agreement between the CARIFORUM States, of the one part, and the European Community and its Member States, of the other part" (2007)

Implementation, like the signature process, was not straightforward. Following the internal review, which had suggested that the Caribbean negotiators had received too little political oversight, the Caribbean Regional Negotiating Machinery was disbanded and a new 'Office of Trade Negotiations' was created, under the CARICOM Secretariat, a move that was strongly opposed by the Dominican Republic. At the national level, some Caribbean countries started to implement the EPA, but others, apparently concerned about losing tariff revenue, quietly missed the 2011 deadline for starting to dismantle tariffs. Ironically, Guyana, which had been so vocal in its opposition to EPAs, was the first country in the region to start implementation.[175]

Response 2: African and Pacific Regions Hold Out

African and Pacific used several tactics to try and pressure the EU into renegotiation. They sought to raise public awareness, and African Ministers issued a declaration expressing frustration with the 'economic and political pressures' exerted by the European Commission, while the African Union President stated that the process had been 'fraught with panic, confusion and disagreements'.[176] Some individual leaders took action: Senegal's President writing strong opinion pieces in the media and helped to organise street demonstrations against the EPA, including in Brussels, transporting members of the Senegalese diaspora from Paris.[177] The presidents of the ACP Council and African Union asked the EU President to reopen discussions at the highest level without delay.[178]

The EU strongly opposed any renegotiation, asserting that this would be a 'disaster' and that any fresh concessions would constitute 'a new threat of legal uncertainty and risk unravelling

[175] Julian, Dalleau, and Roquefeuil "EPA Update 10-2" (2011)
[176] African Union (2008) Staff Reporter "An interview with Sir John Kaputin: Secretary General of the ACP Group" (2008)
[177] Hanson and Julian "EPA Update 7-1" (2008)
[178] See African Union "Press Release (21 February): The African Group of Ambassadors in Brussels Expressed Satisfaction at the Declaration of the Assembly of the Heads of State and Government of the African Union on the EPA Negotiations" (2008). Also Ensor "Country Looks to Barroso to Break EU Trade Logjam" (2008), Staff Reporter "AU Writes to José Manuel Barroso to Ask for Immediate Resumption of Negotiations on EPA at Highest Level" (2008). The European Parliament legal service stated there was no legal impediment to renegotiation: Brunsden "Economic Development Deals 'May Be Revised'" (2008)

everything we have achieved'.[179] To counter growing pressure for renegotiation, the EU made a series of moves. First, it vigorously denied that EPAs had been agreed under duress. The EU trade commissioner asserted that the agreements were the result of the 'ACP and EU working together' and evidence that they can 'build partnerships as equals', and decried misinformation from NGOs for suggesting otherwise, and the development commissioner argued 'climate of trust' between the EU and African countries had 'at no time been eroded' and denied that the EU had brought any pressure to bear.[180]

The EU blocked high-level political meetings requested by the ACP, insisting that discussion take place at the technical level, where it expected to have the upper hand.[181] Finally, the EU agreed to revisit the contentious provisions, but only in the context of the regional EPA negotiations, clearly seeking to use dissatisfaction with provisions in the interim EPAs as a source of leverage for the regional negotiations.[182]

Public pressure prompted the EU to soften its public stance. An official declaration from EU ministers called for their negotiators to adopt a 'flexible and pragmatic approach', a few EU member states wrote to the EU Trade Commissioner urging greater flexibility, and a change of EU Trade Minister brought a more conciliatory tone.[183] Crucially however, EU politicians

[179] Hanson and Julian "EPA Update 7-4" (2008)
[180] Staff Reporter "An interview with Louis Michel: European Commissioner for Development and Humanitarian aid" (2008); European Commission (2008)
[181] The EU President initially agreed to a series of high-level political meetings but then backtracked. See for instance: Barroso "Letter from President of the European Commission to President of the ACP Council" (2008). ACP countries continued to call for high-level meetings throughout this period and the EU continued to refuse. See Mills "Proposal for an ACP-EU Heads of States/ Governments Level Consultations on the Economic Partnership Agreements (EPAs)" (2009) and Council of the European Union "Proposal for an ACP-EU Heads of States/Governments Level Consultations on the Economic Partnership Agreements (EPAs) - Draft Reply " (2009)
[182] There were also reports that the EU had unilaterally made substantive changes to the text during the purportedly neutral process of legal scrubbing. Interview, government official. In the ECOWAS region the EU agreed to some changes to the interim EPAs, but not to the most contentious clauses. Notably, Ghana submitted a completely revised tariff liberalisation schedule. ECDPM (2008); Hanson and Julian "EPA Update 7-4" (2008)
[183] See Council of the European Union "Council Conclusions on Economic Partnership Agreements (EPAs)" (2008) For analysis see Bilal and Hanson "Glass Half Empty or Half Full? The Move Towards a Comprehensive EPA" (2008). See also Julian "EPA Update 7-10" (2009) Staff Reporter "Replace Controversy with Debate, Says Ashton: A TNI Exclusive Interview with Baroness Catherine Ashton" (2009)

took no steps to alter the directives that their negotiators were operating under, so there was no substantive change inside the negotiating room.

Negotiations on 'full' EPAs Run Aground

Negotiations on 'full' regional EPAs resumed in all five African and Pacific regions, following a round of high-level diplomacy by the EU in early 2008, but they soon ran aground.

In the Pacific the EU indicated it would be flexible on Mode 4, yet, when the region tabled a revised request (reducing their demand for an annual quota of workers in health, construction and tourism from 10,000 to 1,500) the EU argued that it could only match the offer it gave the Caribbean. With the EU unwilling to make concessions in this area of vital interest, the PACP took the major step of insisting that negotiations on services be suspended.[184] Negotiations resumed in other areas but stalled when the EU refused to compromise on key contentious issues.

In SADC, deep regional divisions greatly affected the trajectory of negotiations. While Botswana, Swaziland, Lesotho and Mozambique were prepared to sign the interim EPA without revisions, Namibia, with the support of South Africa held out for renegotiation.[185] After a series of high-level meetings, the EU agreed to put the signature of the interim EPAs on hold, and eight of the ten most contentious issues were resolved at a 'make-or-break' negotiating session in early 2009.[186] However, the EU then insisted that the interim EPAs be signed *without* the renegotiated provisions being incorporated.[187] Botswana, Swaziland, Lesotho and Mozambique signed the interim EPA following a visit from the EU President,

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[184] Keil "Letter from Lead Spokesperson of Pacific ACP Trade Ministers to European Trade Commissioner" (2008)
[185] See Benza and Mosinyi "Botswana: Country Stands Up to South Africa on Sacu" (2008). Also: Mokgoabone "Botswana, UK Want Fruits Of EPAs" (2008); Staff Reporter "Botswana Hopeful About the EPAs" (2008); Owino "Trading Blocs to Continue with EPA Negotiations" (2009)
[186] See South Centre (2010) and European Commission "Note For the Members of the ACP Working Party: SADC EPA Texts for ACP Working Party" (2009). Also Vickers (2011)
[187] Walker "The EC-SADC EPA: The Moment of Truth for Regional Integration" (2009)

and the final agreement was accompanied by a side-letter stating that changes to the contentious issues would be honoured in the final EPA.[188] Namibia held out for renegotiation and the trade minister vehemently and publically retorted 'you cannot smoke cigars in boardrooms in Brussels and bulldoze us… we might be small but we are still a sovereign state'.[189]

The EU then increased the pressure on Namibia, threatening to withdraw preferences if it did not sign.[190] Meanwhile, South Africa started to place pressure on the other SACU members, calling on them not to implement the interim EPA or notify the WTO and reminding them of their economically dependence on South Africa.[191] Under immense pressure, they agreed to delay implementation of the interim EPA.[192] Regional negotiations resumed, with South Africa dominating the SADC position, but with such deep regional divisions, and both the EU and South Africa holding strong, little progress was made.

The pattern was very similar in ESA where regional negotiations quickly stalled over the contentious issues, aid, and the inclusion of investment.[193] The EU trade commissioner intervened and, as with SADC, offered to be flexible on the negotiation of contentious issues during the negotiation of the 'full' EPA and to attach a side-letter to the interim EPAs.[194] This was sufficient for Mauritius, Zimbabwe, Seychelles and Madagascar to sign, but Zambia and Comoros, together with the EAC insisted that the interim EPA texts be changed.[195] The EU threatened the EAC with the loss of trade preferences, held 'information seminars' for exporters in Kenya to underscore the costs of switching to GSP preferences, and lobbied for

188 Ibid.; Julian "EPA Update 8-6" (2009)
189 Bosch "Namibia: 'You Can't Smoke Cigars in Brussels and Bulldoze Us'" (2009) See also Geingob (2009)
190 For instance Heita "Namibia's EPA Stance Worries EU" (2009)
191 Julian "EPA Update 8-6" (2009)
192 Julian "EPA Update 9-2" (2010). Also Vickers (2011)
193 Julian "EPA Update 8-2" (2009) also South Centre (2010)
194 Julian "EPA Update 8-4" (2009)
195 Walker "EPA Update 8-7" (2009) Also Phillips "Zambia, Comoros Refuse to Sign EU Trade Accord at Last Minute" (2009); Vis-Dunbar and Bilal (2010)

pro-EPA private sector groups to be included in the EPA negotiations, but the region held firm.[196]

The ECOWAS region tried to set the agenda for negotiations on the 'full'' EPA by tabling a draft text covering trade in goods and a proposal for a regional EPA development programme.[197] While the EU welcomed the region's constructive engagement it anticipated that negotiations over market access would be difficult, and it asked member states to be ready to intervene using 'high political contacts'.[198] Despite pressure from the EU, the region held firm, insisting that it would not liberalise more than 70 percent of EU imports, that the EU make firm financing commitments, and that trade-related issues be excluded from the negotiations.[199]

Market access was also the major point of divergence in CEMAC.[200] CEMAC ministers held firm, postponing negotiations, commissioning a new EPA impact study and overhauling the regional negotiating team.[201] After more than a year's break in negotiations, CEMAC came back to the negotiating table insisting *inter alia* that the maximum they would liberalise was 60 percent of EU imports, an offer the EU refused.[202]

By 2010, it was clear that negotiations with African and Pacific regions were in trouble. The EU Trade and Development Commissioners wrote to EU ministers for guidance, noting that

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[196] P194 Julian "EPA Update 9-1" (2010); European Commission "European Union Experts and EAC Private Sector Representatives Discuss EU-EAC Economic Partnership Agreement: Press Release" (2009); Tanzania holding strong: Ng'wanakilala "EU Wants Timetable for East Africa Trade Deal" (2010) Denge "East Africa, EU set Nov deadline for trade deal" (2010); Julian and Dalleau "EPA Update 10-6" (2011)
[197] Hanson and Julian "EPA Update 7-4" (2008)
[198] European Commission Directorate General for Trade "Note for the Attention of the ACP Working Party: (Draft) EPA Text for West Africa" (2007)
[199]Julian "EPA Update 8-3" (2009); Walker "EPA Update 8-7" (2009); ECDPM "EPA Update 8-10" (2009); Julian "EPA Update 7-10" (2009); ECDPM "EPA Update 9-4" (2010); Julian "EPA Update 9-5" (2010); ECOWAS Commission "ECOWAS Ministers Address Outstanding Issues in Negotiation of EPA with the European Union" (2009)
[200] Julian, Mombrial, and Braun-Munzinger "EPA Update 7-6" (2008)
[201] Julian "EPA Update 8-4" (2009)
[202] Julian "EPA Update 9-2" (2010)

regional negotiations were grinding to a halt.[203] In response, EU ministers asked the European Commission to develop a 'reflections paper', setting out options for the way forward. Although a paper was written, it provided little clarity, suggesting that the EU had no clear strategy for addressing the opposition it continued to meet from African and Pacific regions.[204]

Several high-level meetings between the EU and African and Pacific ministers failed to agree on a way forward and, for the first time, EU officials started to talk openly about the challenges in the negotiating room. Media coverage began to talk of 'stalemate' and an African Union report asserted that the divergences between the EU and Africa were intractable.[205] The EU's only strategy was to propose setting a new deadline, but African and Pacific leaders argued this would not help: the EU needed to show greater flexibility if an agreement were to be reached.[206]

Rather than show flexibility, the EU opted to return to coercive pressure. Having given up on obtaining full regional EPAs, it sought to use the threat of removing trade preferences to pressure countries into signing and implementing the interim EPAs they had initialled.[207] In tandem, the EU revised its Generalised System of Preferences making them a less attractive alternative for middle-income African and Pacific countries.[208] Despite this increasing pressure African and Pacific countries continued to hold out.

National Resistance Strategies

A fascinating aspect of this final period of negotiations is the strategies of resistance that countries used at the national level, and this deserves elaboration.

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203 Julian "EPA Update 9-8" (2010)
204 Bilal "Riding Out the Storm: Will the EPAs Sink?" (2010)
205 For instance Gucht (2010); African Union (2010)P17
206 See for instance Staff Reporter "Resolution on EPAs by ACP Ministers" (2010) African Union (2010)
207 European Commission "Proposal for a Regulation of the European Parliament and of the Council: Amending Annex I to Council Regulation (EC) No. 1528/2007 as Regards the Exclusion of a Number of Countries from the List of Regions or States which have Concluded Negotiations" (2011)
208 See articles in Bilal and Hanson (2011)

At the national level, ACP governments opted to either comply, signing and implementing the EPA without protest, or they opted to resist. Resistance took four different forms. First, a few ACP governments employed a strategy we might call 'open confrontation', holding out through public verbal attacks on the EU.[209] This strategy relied on politicians whipping up support from their domestic population, by tapping into deeply held popular sentiments about past colonial relations. In Namibia, Guyana, Senegal and Malawi for instance, strong rhetorical statements from leading politicians against the EU created a situation where it was hard for any domestic group to lobby *for* an EPA without being seen as betraying their nation. Malawi's President for instance accused the EU of 'imperialism' and argued 'if the agreement is so good, why do they [the EU] have to force people to sign?'[210] The Namibian government went a step further, working closely with industrial groups and trade unions, to ensure that they expressed support for the government's negotiating position at key junctures. Appealing to nationalist sentiments reduced the costs of walking away from the EPA negotiations, as it increased the population's willingness to bear costs associated with exit.[211] In effect, this strategy helped to 'neutralise' the EU's coercive pressure tactics.

The second resistance strategy was subtler, as it avoided open confrontation and relied on a series of delay tactics, a strategy we might call 'playing for time'. This approach was pursued most clearly by the East African Community and Ghana, six countries that initialled EPAs in 2007 but still had not signed by the end of 2012. In all cases, they avoided strong public criticism of the EU. They justified delays by appealing to their weakness, arguing that their capacity constraints were such that they needed more time to evaluate texts and develop counter-proposals, or by emphasising the need to prioritise regional integration.[212] In many ways, this strategy relied on appealing to international norms of procedural fairness, namely

[209] Interview, government official
[210] Semu-Banda "Trade-Malawi: "If EPAs Are So Good, Why Force Us to Sign?"" (2008)
[211] A similar point is made in Hirschman (1978)
[212] See for instance Amankwah "Mills Criticises Economic Partnership Agreement" (2009)

that the EPAs should be fairly negotiated rather than imposed, and the EU's own insistence that the EPAs should support regional integration.

Table 27: Cooperation and Resistance at the National Level (2008-2012)

	Strategy	Logic	Examples of Countries
Cooperate	Full Compliance	ACP government signs, ratifies and implements the agreement	Dominican Republic, Jamaica, Papua New Guinea
Resist	Open Confrontation	ACP government dissatisfied with the outcome of the negotiations, but exit is costly. Politicians make very strong public statements against the EU and EPA, and whip up popular nationalist sentiment, which makes the public more willing to bear the costs of exit.	Namibia, Guyana, Senegal, Malawi
	Playing for Time	ACP government dissatisfied with the outcome of the negotiations, but exit is costly. Rather than openly confront the EU, they postponed signature. Arguments included appealing to norms of fairness and EU's own arguments about the importance of regional integration.	EAC, Ghana
	False Compliance	ACP government dissatisfied with the outcome of the negotiations, but exit is costly. They sign without protest and quietly evade implementation. Relies on weak monitoring and enforcement.	Fiji, Cote d'Ivoire
	Exit	ACP government dissatisfied with the outcome of the negotiations, and exit is a viable option. Country walks away from the negotiating table.	Comoros, Ethiopia

The third resistance strategy was the most covert and relied on feigning compliance by signing an EPA but quietly evading implementation. Many countries that were under high levels of pressure to comply used this strategy of 'false compliance', including Fiji, Cote d'Ivoire and several of the poorer Caribbean countries. This strategy was premised on the EU's monitoring and enforcement being relatively weak. Indeed, in the case of the Caribbean, the EU appears to have been very reluctant to 'name and shame' countries that were not implementing the EPA, presumably because this would have undermined the argument that the region was unanimous in its support for the agreement.

The fourth resistance strategy was to simply 'exit' from the negotiations. Countries that were not vulnerable to coercive pressure from the EU pursued this option. Most countries in this position opted not to initial an EPA at all, while others, including Comoros, initialled in 2007, but then exited before signature. Nigeria and Gabon, sought to improve their exit options by applying to the EU's GSP Plus scheme.[213] These strategies are summarised in Table 27.

6.6. Conclusion

The analysis in this chapter has shown that the negotiating decisions of EU and ACP countries had a major impact on EPA outcomes. Contrary to prevailing wisdom, which suggests that smaller parties are unable to exert much influence, the analysis clearly shows that the collapse of the negotiations and variation in EPA outcomes are mainly due to the strategic and tactical decisions of ACP governments. Indeed, securing six full regional EPAs appears to have remained a high priority for the European Commission's Directorate General for Trade and it invested a high level of resources in the negotiations. In 2010 for instance, the new EU Trade Commissioner announced that concluding EPAs was a 'top priority'.[214]

Three lessons stand out. First, although ACP countries were not able to obtain many of their offensive interests, they were able to prevent the EU from realising its interests, suggesting that small developing countries can exert a level of 'holding power' that is arguably underappreciated in the scholarly literature on negotiations. During the negotiations ACP countries were able to block negotiations in key areas and remove issues from the negotiating table, and, after agreements were concluded, many evaded implementation.

Second, and related, the analysis reveals new insights into the tactical moves that lie at the heart of this resistance. Notably, it shows that while technical expertise and moves 'inside the negotiating room' determined the extent to which ACP countries were able to secure concessions in the margins of the texts, it was the decisions of political leaders and moves 'outside of the negotiating room' that had the greatest impact on outcomes. In addition, it

[213] European Commission "Commission Decision: of 9.12.2008: Pursuant to Article 10(2) of Council Regulation (EC) No 732/2008 Applying a Scheme of
Generalised Tariff Preferences for the Period from 1 January 2009 to 31 December 2011 in Respect of Nigeria" (2008)
[214] Julian "EPA Update 9-2" (2010)

showed that even when EPA texts had been initialled, many ACP governments proved to be adept at delaying signature, ratification and implementation. The analysis revealed four different forms of resistance: While some opted to exit, others, for whom exit was a relatively costly option, adopted a range of strategies to evade implementation, ranging from overt strategies based on open confrontation, to more covert strategies based on 'false compliance'.

Third, the analysis deepens our understanding of the strategies and tactics that large countries use in their negotiations with smaller countries, an issue about which there has been surprisingly little research.[215] It is particularly striking that the EU appears to have 'overplayed its hand', underestimating the level of resistance that would be exercised by ACP countries.[216] Interestingly, rather than adjust its strategy during the final period of negotiations, the EU assumed that applying more pressure would eventually lead to wholesale capitulation. Rather ironically, it was only in 2010-2011 that the EU negotiators started to make meaningful compromises, but by then politicians on both sides appear to have lost interest in concluding an EPA.[217] Had the EU made a higher number of integrative moves earlier in the negotiations, it is plausible that it would have obtained more agreements.

Next Chapter

The next chapter examines the process of interest-formation in ACP countries, seeking to account for the very different approaches taken by African and Pacific regions on one hand, and the Caribbean region on the other.

One question that still remains unanswered is why the EU adopted such a hard-line, uncompromising approach? Why did it not give a little more in the negotiating room, and secure regional EPAs?[218] While the current research lays emphasis on the role of ideology and

[215] Dür and Zimmermann (2007)P783
[216] This finding echoes the arguments in Hirschman (1978) and the findings of Zartman and Rubin (2002)
[217] Bilal and Ramdoo "Losing old friends: The risk of an EPA backlash" (2010)
[218] South Centre (2010)

precedent-setting,[219] the analysis conducted for this thesis suggests that the EU was also motivated by material interests. For instance, the EU's insistence on the inclusion of the most-favoured nation clause appears to have been a clear reaction to the growing relationship between ACP countries and China.[220] Unfortunately space does not permit this issue to be explored and it merits further analysis.

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[219] Faber and Orbie (2009)
[220] IPS Correspondent "Q&A: "We Are Generous but Not Naive": Interview with Louis Michel, EU Development Commissioner" (2008). See also World Trade Organisation "ACP-EC Economic Partnership Agreements: Communication from Brazil" (2008) Filho (2008) Dieye and Hanson (2008)

Chapter 7. How Domestic and Regional Politics Shaped EPA Outcomes

7.1. Introduction

This final empirical chapter turns to look at the domestic political economy in ACP countries. It seeks to account for the broad strategy choices of ACP governments: Why did ACP regions adopt very different political responses to the EU's EPA proposals? In particular, why did African and Pacific regions decide to resist major aspects of the EPAs, and why, in stark contrast did the Caribbean region decide to embrace the EPA approach and focus on obtaining relatively small modifications at the margins?

Examination of the scholarly literature in chapter two showed that lobbying-based explanations of trade negotiations are ubiquitous in the literature, and that the prevailing explanation for countries deciding not to enter free trade agreements is that governments are 'captured' by protectionist economic interest groups.

The first half this chapter tests the power of this explanation by exploring the nature of domestic lobbying across the six ACP regions. It starts by drawing on survey and interview evidence to establish general conclusions about the nature of lobbying in small developing countries. It then probes deeper, systematically examining lobbying patterns at the regional level, focusing on eighteen ACP countries that played leading roles in the EPA negotiations. In each case it asks 'to what extent does the nature of lobbying provide a plausible account of key government decisions during the EPA negotiations?' The results suggest that lobbying only provides a partial explanation, and the second half of the chapter seeks to answer the question 'what other factors appear to have influenced government decisions?' The analysis draws on a wealth of primary evidence gleaned from a review of national media coverage of the EPA negotiations, interview and survey evidence.

Substantiating the impact of lobbying on government decisions posed some methodological challenges. Policy-makers are, understandably, often reluctant to discuss lobbying in depth. In many ACP countries, the EPA negotiations became the subject of intense public debate, and media reports provide an alternative source of information about the main groups lobbying for or against an EPA. However, media coverage is not always a good indicator of lobbying. In some ACP countries the media is heavily state controlled and little coverage is given to groups that disagree with government policies. In addition, it is reasonable to expect that politically powerful groups, whether a well-connected industry lobby or a large donor organisation, are likely to have high-level and direct access to politicians, and so they unlikely to lobby through the media. While efforts were made to triangulate the information presented, including through interviews, it is important to note that the conclusions that can be drawn about lobbying are very much 'plausible inferences'.

7.2. Lobbying in Small Developing Countries: Survey and Interview Evidence

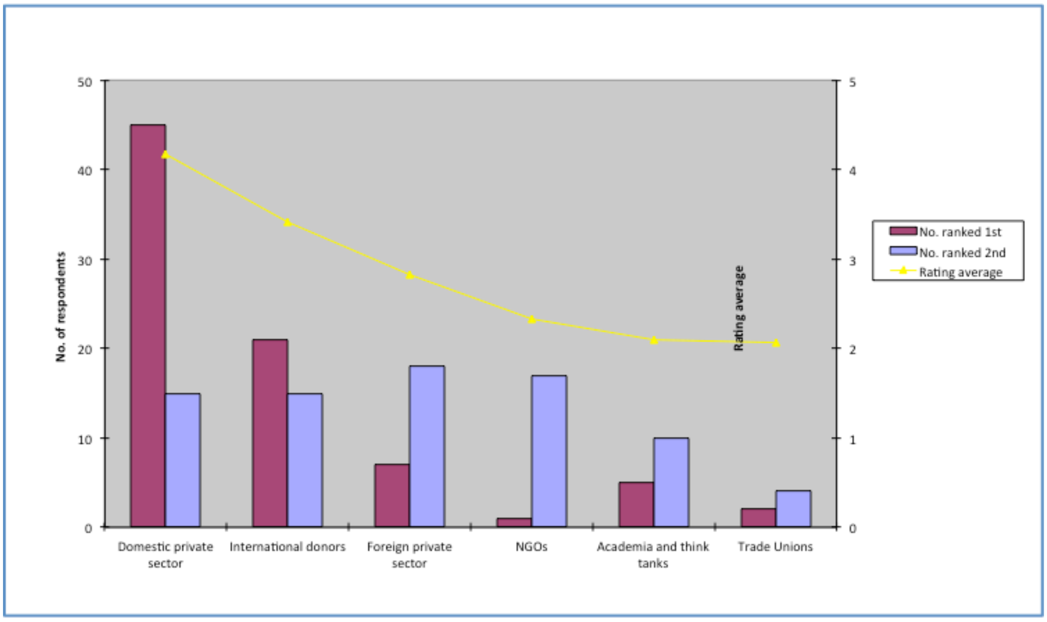
As explained in chapter two, there is relatively little scholarly analysis on the nature of lobbying around trade negotiations in small developing countries. Before looking closely at the lobbying during EPA negotiations, it is helpful to draw on the online survey and interviews to establish an overview of lobbying patterns.[1]

The survey asked respondents, 'Which actors most influence your government's trade policy processes?' As might be expected, in most countries, the domestic private sector appears to have the greatest influence, with 45 of the 85 respondents ranking it 'first' (Figure 18). Interestingly, international donors were an important second, and a quarter of respondents (21 of 85) said that donors are the most influential actor in their country. The foreign private

[1] See chapter one for details of the survey and interviews

sector also plays a significant role, in third place overall. Opinions were split on the influence of the foreign private sector, with 18 ranking it second and 14 ranking it fifth, suggesting that their level of influence varies substantially between countries, perhaps reflecting variations in foreign private sector presence. The responses also suggest that NGOs, academia and think tanks, and trade unions exert relatively little influence over trade policy.

Figure 18: Most Influential Actors in the Trade Policy Process



Interviews with government representatives provide further insights. Corroborating the survey results, interviewees identified the private sector as the most important interest group, with 17 of the 25 interviewees with whom the topic was discussed saying that private sector interest groups are actively involved in trade policy formulation in their country. However remaining respondents (8 of 25) said that the private sector was not at all involved in trade policy making.

Negotiators gave a fairly consistent set of explanations for low levels of private sector lobbying. Several attributed it to the complexity of trade issues, which are often poorly understood by the private sector. As one negotiator explained, ‘We try to make our businessmen aware of the issues but the issues are too complex to warrant their attention'.[2] Challenges appear to be particularly acute in countries with very low levels of development and economic diversification, as there is limited dynamism in the domestic private sector and there are few apex bodies representing producers. For instance, one negotiator from a least developed country in the PACP region noted that no economic interest group lobbied their government during the EPA negotiations.[3]

Turning to civil society, 16 of the 25 interviewees with whom this was discussed, said that civil society organisations were engaged. However, interviewees had very divided opinions on the usefulness of their involvement, suggesting that civil society groups were less likely to be listened to by government officials than private sector groups. They explained that civil society organisations did not understand the issues, were too radical in their demands, or followed the agenda of western NGOs rather than local agendas.[4] Where they were considered helpful, negotiators welcomed the information civil society organisations provided and their ability to raise awareness.

The interviews corroborate the finding that academia and think tanks tend to be absent from lobbying on trade policy. Interviewees suggested that this reflected a paucity of analysis on trade policy issues by local organisations, as well as weak linkages between academia and policy. None of the 25 negotiators or ambassadors mentioned trade unions as an active interest group.

With these broad trends in mind, we now turn to examine lobbying during the EPA negotiations.

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[2] Interview, government official
[3] Interview, government official
[4] Two interviews with government officials

7.3. Lobbying During The EPA Negotiations

This section systematically analyses lobbying across the six ACP regions in turn, focusing on eighteen countries that were particularly prominent during the EPA negotiations.

ECOWAS: Lobbying is a Good Explanation

ECOWAS strongly resisted many aspects of the EU's proposals. The previous chapter showed that during the first 'all-ACP' period of negotiations, ECOWAS was eager to start negotiating a regional EPA and looked as if it might readily capitulate to the EU's demands. However during the period 2003-2007, ECOWAS arguably showed the highest level of resistance of any ACP region, insisting that many issues be removed from the negotiating table, and holding out for an extension of the negotiation deadline. During the final period of negotiations, the region continued to hold out on key issues, including on the level of market access it was prepared to offer, and on its demand that the EPA address supply-side constraints. Cote d'Ivoire and Ghana were the only countries to initial EPAs, and while Cote d'Ivoire signed, neither proceeded to implement.

To what extent can we attribute these decisions to the nature of lobbying? As the discussion below shows, lobbying provides a plausible explanation. Indeed of all six ACP regions, it is in ECOWAS that a lobbying-based explanation has the greatest explanatory power.

During the EPA negotiations, there was a substantial level of direct lobbying at the regional level, and it was almost exclusively opposed to the EPA. Arguably the most vocal and prominent opponents were organisations representing smallholder farmers who produced for the domestic and regional market and were concerned that agricultural imports from the EU would displace their production. A strong farmers' network spanned the region, was relatively well-organised and worked closely with farmers' groups in other ACP regions.[5] The network

[5] Farmers were presented primarily by the 'Réseau des Organisations Paysannes et des Producteurs Agricoles de l'Afrique de l'Ouest' (ROPPA), based in Burkina Faso, and representing an estimated

and its member organisations undertook a series of studies on the likely impact of the EPA on local agriculture and food security and directly lobbied national governments. [6]

The smallholder farmers appear to have had substantial influence over the region's approach to the negotiations. The farmers did not oppose the EPA per se. They argued for an agreement that respected food sovereignty, advocating a far lower level of liberalisation than proposed by the EU, and the exclusion of many agricultural products. They also called for financial support to transform the region's productive sectors. Both demands were reflected in the region's negotiating positions.

Crucially, the farmers' network was invited by ECOWAS governments to be a formal part of the regional negotiating team, participating in the technical negotiating group on productive capacities.[7] In an interview, one senior negotiator noted that the farmers were the most active lobby group and were 'very vocal and very strong'. Their lobbying provided a political counterweight to the EU and provided the negotiators with valuable technical contributions.[8]

Civil society groups also appear to have had a direct impact on the region's approach. The civil society movement in ECOWAS was arguably the strongest of any ACP region, was relatively broad, and involved a variety of NGOs, religious groups, and trade unions.[9] The two most prominent NGOs were vocal critics of EPAs, and played a leading role in a pan-African civil society mobilization against EPAs, and had strong links with European NGOs.[10] Civil society groups organized street demonstrations and workshops, issued press releases, and directly lobbied national governments. As with the farmers' network, one representative

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forty-five million smallholder farmers across West Africa. Réseaux d'Organisations Paysannes de l'Afrique de l'Ouest et al. (2006) P33 of ECOWAS section

[6] Ibid.

[7] Ibid.

[8] Interview, government official

[9] For instance, in Ghana the 'Economic Justice Network' brought together leading NGOs, farmers' organizations and trade unions

[10] ENDA Tiers Monde, based in Senegal, and Third World Network Africa, based in Ghana,

from the civil society movement was invited to join the negotiating team and participated in all the EU-ECOWAS negotiating sessions.[11] One expert from the region suggests that the presence of civil society in the negotiating team helped to ensure the region held out on some of the more contentious issues.[12] There was relatively little lobbying from the manufacturing sector at the regional level.[13]

National Dynamics

Four countries played key roles in the region: Nigeria, Senegal, Ghana, and Cote d'Ivoire. Nigeria has the largest manufacturing sector in the region and manufacturing groups were highly critical of the EPA, concerned that liberalisation would wipe out local firms. The main industry body, the Manufacturing Association of Nigeria, made a series of press statements, including in late 2007 when it called for slowing down the EPA negotiations as ‘a badly negotiated or concluded EPA can only spell doom’ and that ‘no sacrifice is too great to exercise patience and caution in reviewing all proposals from the European Union’.[14] As the most powerful group of industrialists, the Association is represented on numerous government boards and has a close link to the Ministry of Commerce and Industry. Notably, at the peak of the EPA negotiations, the Minister of Commerce was a former president of the Association. It is plausible that the group’s vocal lobbying and close political ties, helps explain Nigeria’s resistance to an EPA, and as Nigeria is the largest economy in the region, this in turn affected the trajectory of the EPA negotiations. Indeed, the EU singled out Nigeria for obstructing the EPA negotiations.[15]

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[11] ICTSD "Without EPA, Nigerian Cocoa Processors Lose Millions as EU Imposes Tariffs" (2007)
[12] Ibid.
[13] The main initiative was to circulate a petition in 2007 expressing concerns with EPAs: Association Industrielle Africaine "Mobilisation des Industriels Africains Contre les Accords de Partenariat Economique: L’AIA Recueille Près d’une Centaine de Signatures d’Industriels Contre la Conclusion des APE" (2007) and Maury "Les Patrons Africains Disent 'non' a Bruxelles" (2007)
[14] Borodo (2007) See similar statements in Today "EPA: Africa on the Ropes Again" (2012); Okere "MAN Cautions Government Over Economic Pact With EU, ACP" (2012) The National Association of Nigerian Traders, a relatively loose network of traders also lobbied against the EPA, and was directly represented on Nigeria’s EPA negotiating team, but do not appear to have had as much political influence.
[15] Mandelson (2007); Staff Reporter "African 'Elephant' Wants to Block Trade Talks" (2007)

There was only a little pro-EPA lobbying, from cocoa exporters. Following Nigeria's decision not to initial an EPA in 2007, the Cocoa Processors Association of Nigeria (COPAN) was highly critical of the government as it faced higher tariffs into the EU market.[16] However lobbying was limited and there is no evidence it had a discernable impact on the country's negotiating position.

Senegal's outspoken opposition to the EPA is less readily accounted for by lobbying. There was a high level of mobilisation by farmers and civil society. However it is striking that far from being 'captured' by these groups, the government appears to have actively encouraged and financially supported their mobilisation.[17] Thus while lobbying by societal groups may have shaped the government's position, domestic electoral politics also appears to have been important.[18]

In Ghana, which initialled an EPA but then postponed signature, the government does not appear to have had a strong policy position, sometimes criticizing aspects of the EU's proposals, and at other times arguing that an EPA would be beneficial.[19] Its wavering position appears to have been the result of strong pressure from opposing lobby groups. There was a high level of pressure from horticultural exporters to enter an EPA. As the primary exporters' association argued, 'We really want the government to sign the EPA so that our commodities would be tax exempted when exporting to the European market'.[20] This lobbying appears to have been central in the government's decision to initial an EPA in 2007 and, after the EPA

[16] ICTSD (2007)
[17] Cronin "Development: Spare This EU Paternalism" (2008) Agence Europe "EU/ACP:Senegal Continues Its Revolt Against EPA in Hope that Negotiations will be Re-Oriented" (2008)
[18] Note that the popularity of President Wade was declining and standing up to the EU may have had particular domestic pay-offs
[19] See for instance Amankwah (2009); Kunateh "Ghana: CSOs Ambush Hannah Tetteh Over EPA Loose Talk" (2012)
[20] Federation of Association of Ghanaians Exporters (FAGE), Bessey and Addo "Ghana: Non-Traditional Export Sector Urges Gov't to Opt for EPA" (2007)

was initialled, the horticultural exporters were one of the few groups to argue that this was in the country's interests.[21]

Despite pressure from horticultural exporters, the government of Ghana continued to delay signature, a move that appears to have been due largely to the presence of a strong civil society movement.[22] Trade unions, for instance, vocally opposed the EPA, arguing it was a tool for 're-colonising us'.[23] Although some government officials dismissed these arguments, they had strong public appeal, making government wary of signing the EPA least it be perceived as having capitulated under EU pressure.[24] Unlike in Nigeria, manufacturing associations did not express a strong position on the EPAs, arguably reflecting the much weaker industrial sector.[25]

Finally, Cote d'Ivoire's decision to initial and sign an EPA does appear to be attributable to lobbying. There was a high level of lobbying for an EPA from horticultural exporters, and very little lobbying against the EPA from any group. Horticultural exporters argued that 'If the government doesn't sign the EPA, it will kill us'.[26] Following the country's signature, the horticultural association praised the government asserting that the EPA had 'saved' the sector, and Compagnie Fruitière, a major foreign investor, announced a sizeable new investment.[27]

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[21] Ablordeppey "Interim EPA Not A Threat" (2008)
[22] When Ghana delayed signature, a new horticultural lobby group, with close links to Compagnie Fruitière, was created to lobby. See: Ghana News Association "Interim EPA Credited for Survival of Ghana Exports to Europe" (2012)
[23] Kokutse "Trade-Ghana: EU will be the Main Beneficary of EPAs" (2007)
[24] Interview, government official. In 2007 for instance, Ghanaian Members of Parliament, sitting on the trade select committee, spoke out against the EPA after a series of lobby meetings with civil society organizations Adabre "Ghanaian MPs Adopt GSP-Plus as Alternative to EPAs" (2007).
[25] See for instance Ghana News Agency "Interim EPA Deal Helped End Uncertainty - AGI" (2008); ibid.
[26] L'Association Nationale des Organisations des Producteurs d'Ananas et de Bananes de Côte d'Ivoire (ANOPACI), the primary body representing horticultural exporters, was one of the most ardent supporters of an EPA. See Coulibaly "Ivorian Banana Growers Push for New EU Trade Deal" (2007) Gueye "Bananes - Les Producteurs Ivoiriens Inquiets : Anxieuse Attente des APE" (2007)
[27] African Business "Cote d'Ivoire: Programme d'Extension de 1100 ha Pour la SCB (Compagnie Fruitière)" (2009)

Overall, ECOWAS arguably saw the most extensive lobbying of any ACP region during the EPA negotiations, and the pattern of lobbying does appear to be a plausible explanation the approach taken at the regional level and by key countries. In particular, mobilisation by farmers, civil society, and manufacturing groups both at the regional and national levels helps to account for the region's overall resistance to the EPA. Uniquely among the ACP regions, farmer and civil society representatives were invited to participate formally in the negotiations, suggesting that governments were particularly open to their lobbying positions. Meanwhile, the lobbying of horticultural groups helps explain why Ghana and Cote d'Ivoire were less vocally opposed to the EPA, and why both countries initialled an EPA.

Table 28: Lobbying as an Explanatory Factor: ECOWAS

	Pressure Against an EPA	Pressure For an EPA	Negotiating Approach Taken	Plausibility of Lobbying Explanation
Regional Level	High: Farmers, Civil Society	Negligible	High Resistance	Good
Nigeria	High: Manufacturers	Low: Cocoa Exporters	High Resistance	Good
Senegal	High: Farmers, Civil Society	Negligible	High Resistance	Moderate
Ghana	High: Farmers, Civil Society, Trade Unions	High: Horticultural Exporters	Moderate Resistance	Good
Cote d'Ivoire	Low	High: Horticultural Exporters	Low Resistance	Good

CEMAC: Lobbying offers a Partial Explanation

The CEMAC region also showed a high degree of resistance during the EPA negotiations, but it is hard to attribute this primarily to lobbying. During the all-ACP period of negotiations CEMAC was keen to start regional negotiations and the region agreed to negotiate in many issue-areas. Yet the region ultimately showed a high level of resistance and holding power, including on the depth of liberalisation to be undertaken by CEMAC states and the need for additional development finance to address supply-side constraints. Only Cameroon initialled an EPA, and, while it proceeded to sign, it delayed implementation.

What is striking about the CEMAC experience is that, with the exception of Cameroon, there was very little lobbying, a factor that is probably attributable to the region's low levels of economic diversification and overwhelming reliance on the export of minerals and fuel, a sector where the EPA negotiations had no immediate or obvious ramifications.

Cameroonian groups led lobbying at the regional level, where major business organisations opposed the EPA. Le Groupement Interpatronal du Cameroun (GICAM), representing the majority of large firms, argued that the private sector was not against an EPA per se, but the region would not benefit from an EPA unless the competitiveness of firms was increased. If this did not happen, the EPA would result in the closure of local companies.[28] Although GICAM appears to have had very little influence over the negotiating position of the Cameroonian government, it does appear to have had some influence over the regional position. GICAM was represented on the region's EPA negotiating team, and it is striking that the opinions expressed by the organization are similar to the concerns expressed by the region during the negotiations.[29] The Syndicat des Industries du Cameroun (SYNDUSTRICAM), the main representative of the industrial sector in Cameroon, also argued that the EPA would lead to the 'death' of many local industries.[30] However unlike GICAM, the group does not appear to have had a substantial influence at the regional level.

The CEMAC region also saw some lobbying by civil society organisations, albeit more muted than in other regions.[31] Civil society organizations, led by a Cameroonian NGO, spoke out in the media, and lobbied national governments.[32] In 2007 for instance, an estimated 2000 people from across the region took part in a demonstration calling for the signature of the EPAs to be postponed.[33] However unlike in ECOWAS, civil society organizations appear to have little influence at a national level and, although they participated in regional consultation

[28] Le Quotidien Mutations "Martin Abéga : L'Etat Doit Exiger une Bonne Compensation Financière" (2009)
[29] Fankam "Cameroun et l'Afrique Centrale: Vont-ils Signer un Accord qui ne Tienne pas Compte de la Compétitivité de Leur Économie pour l'Avenir?" (2007) European Commission and Central African Community (2008)
[30] Mbodiam "Enjeux: Le Cameroun Va-t-il Signer les APE?" (2007) Mbeze "Cameroun: APE, le Syndustricam Préoccupé" (2006)
[31] Njonga "“Il y a Chez le Partenaire Européen un Décalage Entre les Discours et la Réalité”" (2007)
[32] l'Association Citoyenne de Défense des Intérêts Collectifs (ACDIC)
[33] Panapress "Cameroun: Manifestation Contre les APE" (2007)

meetings, civil society was not directly represented in the negotiating room. The region's farmers' organisations were poorly networked and had very limited capacity to develop positions on the more technical elements of the negotiations. Thus, while some organisations attended national consultation meetings, they had few substantive inputs to make and had no discernable impact over the negotiating process.[34]

The banana industry, a major preference-dependent export sector was the main source of lobbying for an EPA, and they targeted the Cameroonian government.[35] The banana industry appears to have strongly influenced the government's negotiating position. The trade minister had very close connections with the industry and in 2007 he declared that the EPA would be signed as, if it were not, the banana sector would lose heavily.[36] Media reports also suggest that the government signed to protect the interest of banana producers, mainly owned by EU and US companies.[37] Others in the government, notably the Minister of Economy, Planning and Regional Development, were more sceptical of the EPA, but the views of the trade minister and banana lobby held sway.[38] (There is some indication that the EU governments may have capitalized on this political dynamic and used aid to the banana sector as an incentive for the signature of the EPA: following Cameroon's signature, the EU announced a substantial aid package that would support the expansion of banana production.[39])

Overall, while there was some lobbying against the EPA from Cameroonian industrialists, it is hard to argue that this group was sufficiently powerful to be the primary explanation for the region's resistance. Indeed the industrial groups do not appear to have had much influence in

[34] Réseaux d'Organisations Paysannes de l'Afrique de l'Ouest et al. (2006) P17 of CEMAC section
[35] Association Bananière du Cameroun (ASSOBACAM). See Kolyang "Cameroun: Les Ape Feraient Mûrir la Banane" (2007) ASSOBACAM also lobbied the European Commission directly, see Pefok "Cameroon: EU, Cemac Disagree Over Trade Accord" (2007) As in Cote d'Ivoire and Ghana, the industry is owned largely by multinational companies (Compagnie Fruitière and Dole)
[36] d'Alayer "Luc Mbarga Atangana: Sauvegardons Notre Banane" (2003) For more than twenty years before becoming a minister, he headed the Office Camerounais de la Banane, an export promotion agency for the banana industry
[37] Pefok "Cameroon: ACP-EU Free Trade Accord - Experts Say Gov't is on Wrong Track" (2008)
[38] See for instance Les Chanters de la Societe Civile Camerounaise "Cameroun - Union Européenne : Les APE Divisent le Gouvernement" (2007)
[39] Musa "EU Grants Cameroon Banana Sector 48 mln Euros-Radio" (2012)

Cameroon, where they were based. At the national level however, lobbying by the banana industry does provide a compelling explanation for Cameroon's approach to the negotiations.

Table 29: Lobbying as an Explanatory Factor: CEMAC

	Pressure Against	Pressure For	Negotiating Approach	Plausibility of Lobbying Explanation
Regional Level	Moderate: employers union, civil society	Negligible	Moderate Resistance	Poor
Cameroon	High: employers union, industry, civil society	High: banana industry, with very close links to government	Low Resistance	Good

ESA: Lobbying offers a Partial Explanation

During the EPA negotiations, the ESA region opposed many aspects of the EU's proposals, and tabled counter-proposals, including that liberalisation be tied to 'development benchmarks'. While Mauritius, Madagascar, Seychelles and Zimbabwe initialled and signed interim EPAs, the five EAC countries (which initialled as a group) held out for renegotiation, and the remaining countries, all least developed, opted to exit (with Malawi being particularly vocal in its opposition to the EPA).

This section explores lobbying in the EAC, focusing on Kenya and Tanzania, and three other ESA countries, two countries that resisted (Malawi and Zambia) and one that cooperated (Seychelles).

EAC

In the EAC, there was a relatively high level of lobbying both for and against the EPA. Horticultural exporters, heavily dependent on EU preferences, were the leading advocates for an EPA. Lobbying was most pronounced in Kenya, which was the one country in the EAC that did not have access to Everything But Arms preferences. Horticultural groups argued that without an EPA the sector would collapse.[40] In the words of one group 'the industry will

[40] Horticulture is the fastest growing agricultural sector, a major source of foreign exchange, and, according to the industry representatives, directly employs 4.5 million people. See www.fpeak.org/khc.html

perish… We risk losing two million jobs'.[41] The Kenyan government worked closely with horticultural groups, and the interests of the sector appear to have influenced the government's negotiating decisions. In 2007 for instance, the government and horticultural groups issued a joint press release defending the decision to initial an EPA.[42] In the words of a senior official 'We safeguarded over US$1 billion investments which are already in the horticulture and fisheries sector.'[43] Some officials voiced concerns that horticultural groups had undue levels of influence. In the words of one official, speaking to the media on condition of anonymity, 'The politicians say we need to reassure some of the key players, particularly in horticulture… *Just because of horticulture, we are opening up our markets*' [emphasis added].[44]

Civil society organisations were the strongest opponents of an EPA, making statements in the media, actively lobbying national governments, and organising street demonstrations. Among the most prominent was a regional NGO, whose Kenyan and Ugandan offices interfaced closely with negotiators, engaging in analysis of the legal provisions of draft negotiating texts.[45] NGOs were also active in Tanzania although judging from the media coverage, lobbying was less intense and sustained.[46] There was also some mobilization by churches against the EPA.[47]

Unlike in ECOWAS, civil society was not formally involved in the negotiating process and does not appear to have had a particularly high influence over government positions.[48] Some

[41] Mbogo "Kenyan Flower Exports to EU Face New Tax Threat" (2011); Riungu "Kenya Flower Growers Could Move to Ethiopia After Lomé Convention Ends" (2005) Omungo "Trade-Kenya: Flower Industry May Wilt If EPA Deadline Is Missed" (2007)
[42] Kenya Ministry of Trade and Industry in Conjuction with KAM and FPEAK "Press Release on Status of Economic Partnership Agreement with the European Union " (2007)
[43] Oluoch "Kenya: How country's economy survived the EPA threat" (2008)
[44] Kwa "Trade-East Africa: Officials Confused About Pros and Cons of EPA" (2007)
[45] SEATINI, a regional NGO based in Zimbabwe.
[46] Kamndaya "Bloc Warned Against Signing EPA Blindly" (2009) organised under the Tanzania Civil Society Trade Coalition
[47] Catholic Information Service for Africa "Press Release: Churches Reject Economic Partnership Agreements" (2007)
[48] African Trade Policy Centre (2007)

Kenyan government officials were openly critical of civil society organisations, noting, for instance, that 'Many of the complaints [from civil society] are not supported by facts and are driven by emotion'.[49] Interestingly, in Tanzania, where the government took a strong stand against aspects of the EPA, civil society groups often appear to have been bolstering the government's position, rather than the primary driver of it.[50]

Farmers were also active, and sought to reorient the EPA so it would respond to the needs of smallholder farmers producing for the domestic and regional markets.[51] However unlike ECOWAS, the network does not appear to have engaged in a sustained way or had a discernable impact on the governments' positions. Indeed, the network argued that governments had not properly consulted farmers.[52] At the national level, farmers' organizations were active in Kenya where they lodged a legal case against the government to try and prevent it from signing an EPA until parliament and other stakeholders had been fully consulted.[53] However, unlike the horticultural sector, they do not appear to have had a close relationship with the government.

Interestingly, manufacturing groups were closely engaged in the EPA negotiations but were neither strong supporters nor strong opponents. The Kenyan Association of Manufacturers (KAM), for instance, was concerned about the impact of liberalization on domestic manufacturing companies and it expressed concern that the EPA 'may kill the manufacturing sector'.[54] Rather than oppose the EPA, the association worked with the government to ensure that all sensitive manufactured items would be excluded from liberalization and once this had

[49] Makabila and Anami "Farmers Protest at Trade Pact as PS Defends Deal" (2010)
[50] Rugonzibwa "Activists Submit Recommendations On EPA" (2012) Some Tanzanian academics also spoke out. See Kiishweko "Academicians, Diplomats Caution Continent on EPAs" (2012)
[51] Led by the East African Farmers' Federation (EAFF), an umbrella organization representing farmers across East Africa. See Kiriro (2006)
[52] See Muchiri "Situation of EPA Negotiations in East Africa" (2008) and Réseaux d'Organisations Paysannes de l'Afrique de l'Ouest et al. (2006) P33 of ESA report
[53] Kenya Small-Scale Farmers Forum, supported by the Kenya Human Rights Commission. See Adan "Kenya: Manufacturers Join Trade Case" (2007)
[54] Staff Reporter "Kenyan Association of Manufacturers is Concerned Over Supply-Side Constraints" (2005) Mwaniki (2011)

been obtained, it argued that an EPA should be signed to both preserve access to the EU market and to take advantage of the relaxation of rules of origin in textiles.[55]

Finally, from 2009, EAC parliamentarians became actively engaged. The East African Legislative Assembly issued a series of declarations criticizing the EPAs and asking governments to be cautious, arguing that the EPAs would impact negatively on the region's industrialization policy.[56] At one point, the Assembly caused a delay in the negotiations, as it ruled against the use of European donor funds to finance the region's participation, arguing that this was inevitably compromising.[57] It is plausible that the active engagement of the parliamentarians in the last stages helps to account for the region's decision to keep holding out for renegotiation.

Other ESA

In many other ESA countries, including Malawi, Zambia, and the Seychelles, lobbying appears to have been less intense. In Malawi, the private sector representatives on the 'National Working Group on Trade Policy', a body chaired by the commercial manager of Illovo Sugar Ltd, were the most vocal. They argued that the EPA would increase investment and boost exports, and that it would be particularly important for the sugar sector, as it would 'guarantee long-term market access to the EU' and 'create a basis for further investments in the sugar industry.'[58] There was also some opposition to an EPA from civil society.[59]

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[55] On the exclusion list, see Bilal and Stevens (2009) P135. On the position of manufacturers, see: Njehu "Report for the Workshop on EAC/EC Economic Partnership Agreements: Kenya's Perspectives " (2011)
[56] Ayieko "MPs Want Region to Turn Away From EU" (2008); Odhiambo "EAC Legislators Set Terms for New Trade Deal With Europe" (2010) See also Ubwani "Be Careful on EPA Talks, Eala Cautions Bloc" (2012) Uganda: Kazooba "Uganda MPs Oppose New Trade Deal with the EU" (2009) East African Legislative Assembly "Resolution of the Assembly Urging the EAC Member States to Halt the Signing of the EU-EAC EPA Until Revisions are Made to the Framework Agreement" (2010)
[57] Odhiambo "East Africa: EAC Heads Agree to Use Aid for Trade Talks" (2011)
[58] Cited in Commission "Communications and EPAs: Challenges, Perceptions, Responses" (2010) See also Online "Malawi: EU Trade Agreement Delay Hurting Illovo" (2009) and National Working Group on Trade Policy (2009)
[59] Semu-Banda "EPA May "Destroy" Malawi's Manufacturing Potential" (2007) Sinyangwe "CTPD urges govt to halt EPAs talks" (2010) Sabola "Bingu's Vision Under Threat" (2007)

Although lobbying was not particularly strong in either direction, the Malawian government, particularly the President, was a strident critic of EPAs. He was adamant that Malawi would not initial or sign the EPAs until the country improved its manufacturing base and could compete on an equal footing with EU firms, stating in one instance that 'the agreements will be signed over my dead body'.[60]

In Zambia, the interests of the sugar sector appear to have been central to the government's decision to initial an EPA. As the Zambian trade minister noted in a testimony before parliament, initialling the EPA provided increased quotas for sugar and relaxation of rules of origin for textiles.[61] However after initialling, the government withheld its signature and it is hard to attribute this to anti-EPA lobbying. While there was some lobbying from civil society,[62] the government appears to have actively encouraged its mobilization. Zambia's lead negotiator for instance, argued that '*civil society could play a more powerful role* in making people as well as politicians on the African continent aware of the negative impact EPAs have on our livelihoods, among other things' [emphasis added].[63]

Finally, in the Seychelles, where the government signed and implemented an interim EPA, lobbying provides a more compelling argument. Fishing is a major industry and relies heavily on preferential access into the EU market. During the negotiations, the government worked closely with the fish industry and European ship owners, and successfully lobbied other ESA governments and the EU to agree to change the rules of origin for fish.[64] There was no discernable lobbying against the EPA from any group.[65]

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[60]Sabola "Malawi Maintains 'No' Stand on EPAs" (2010) Sinyangwe "'Silver Lining' Around EPAs" (2010)

[61] The Zambian Parliament (2008)

[62] In Zambia, religious groups were particularly active, with the Jesuit Centre for Theological Reflection, a particularly vocal opponent of EPAs Mulemba Jr. "Zambia: Economic Partnership Agreements - for the Rich or Poor?" (2009)

[63] Mannak "Global call for action against EPAs" (2008)

[64] Interview, government official

[65] Interview, government official

Overall, lobbying provides a partial explanation. In the EAC, the Kenyan government, and with it the other EAC members, initialled the EPA to protect the horticultural sector, and the manufacturing sector played a role in shaping the region's market access offer. It is also plausible that opposition from civil society, farmers, and parliamentarians contributed to the EAC's decision to hold out during the negotiations.

However on the whole, countries appear to have resisted the EPA to a greater extent than might be expected given the nature of lobbying. Notably, the governments of Tanzania, Malawi and Zambia showed higher level of opposition to the EPA that appears warranted from the pattern of domestic lobbying. The one exception to this trend is the Seychelles, where the government worked closely with the fish industry, whose interests appear to have been foremost in the government's decisions.[66]

Table 30: Lobbying as an Explanatory Factor: ESA

	Pressure Against	Pressure For	Negotiating Approach	Plausibility of Lobbying Explanation
Kenya	Moderate: civil society organisations; small-scale farmers; East African Legislative Assembly	High: horticultural exporters; manufacturers association	Moderate Resistance	Good
Tanzania	Moderate: civil society organisations; East African Legislative Assembly	Negligible	High Resistance	Poor
Malawi	Moderate: civil society organisations	Moderate: sugar, some private sector organisations	High Resistance	Poor
Zambia	Moderate: civil society organisations	Moderate: sugar	Moderate Resistance	Poor
Seychelles	Negligible	High: Fish industry	Moderate cooperation	Good

SADC: Lobbying is a Poor Explanation

In the SADC region, countries were divided in their response to the EU's proposals. Namibia, supported by South Africa, strongly resisted major aspects of the EPAs, while Botswana, supported by Swaziland, Lesotho and Mozambique, was keen to sign an EPA that included

[66] Fish exports to the EU are the mainstay of the economy. See Alexis and Chang-Sam (2006)

commitments on services and investment. (Angola, a least developed country opted to exit from the negotiations).

As there was no official SADC channel for soliciting the input of interest groups during the EPA negotiations, lobbying focused at the national level.[67] The analysis below looks at lobbying in two countries that opposed the EPA (Namibia and South Africa) and two that supported the EPA (Botswana and Swaziland).

In Namibia, the greatest pressure for an EPA came from the beef and horticulture exporters, which were highly dependent on EU preferences.[68] The horticultural sector argued that it was 'of utmost importance' that the country signed an EPA.[69] Although the Namibian government initialled the EPA to protect these exporters it is striking that the government was not beholden to them. Instead, it pushed them to start looking for alternative markets, presumably so that it could eventually exit from the EPA negotiations.[70] As one government official noted in an interview, 'the agricultural sector is very active and producers try to lobby the government. Their engagement can help but you have to draw the line somewhere'.[71]

Strikingly, given the government's strong and vocal opposition to EPAs, there was relatively little lobbying against the EPA. Moreover, media reports describe anti-EPA lobbying as 'rallying behind government' rather than being the primary driver of the government's position.[72]

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[67] Bertelsmann-Scott "Challenges of the SADC EPA Negotiations: A Conference Report" (2007)
[68] Roux "Namibia: The Interim EPA - Why Country Should Not Sign" (2009)
[69] Weidlich "Cautious Optimism About EU Trade Offer" (2007)
[70] Ndjebela "Meat Industry Holds Breath" (2010) For instance the minister told business leaders 'I won't sell you out… Don't worry, relax. We are seasoned negotiators and we are seasoned politicians'; Duddy "Hage Boasts of Alternatives to EU Meat Deal" (2009)
[71] Interview, government official
[72]Merwe "Calls for Namibia Not to Sign Interim-EPA Hold Merit, Says Analyst" (2009); Duddy "Namibia: Civil Society Supports EPA Stand" (2009)

In South Africa, which strongly opposed major aspects of the EPA, particularly the negotiation of services and investment, there was relatively little lobbying. There was some lobbying for an EPA from the sugar industry, which resulted in the South African minister making a personal representation to the European Commission for greater access to the EU market.[73] There was also some lobbying by the horticultural industry but no evidence that this had a decisive impact on government policies.[74]

South African trade unions, NGOs, think tanks, and church groups criticized the EPA, but as in Namibia, they appear to have rallied behind their government's position rather than being a primary driver of it. For instance, one trade union statement 'congratulates the governments of South Africa and Angola for refusing to sign' and 'urges Namibia, which is wavering, to follow their lead'.[75] As in Zambia, the South African government called for a greater engagement by civil society organizations, in order to raise awareness of the problematic aspects of EPAs.[76]

Turning to Botswana and Swaziland, which supported the EPA, there is little evidence of lobbying, although the interests of major exporters do appear to have been central to government decisions. In Botswana, the trade minister asserted, 'I am committed to the EPAs. There will be more jobs and opportunities for Botswana businesses and its beef'.[77] In Swaziland, the prime minister explained that, given the dependence of Swazi sugar on the EU market, it would have been 'economic suicide not to sign the EPA'.[78] Following the EPA signature, the Swazi Sugar Industry applauded the government's decision 'for taking the

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73 Blom "About-Turn from SA on Sugar Access to Europe" (2010); Zigomo "S.Africa Sugar Producers Hopeful of EU Trade Deal" (2009)
74 Marais "Farmers Lobby for Improved Access to EU" (2011)
75 Staff Reporter "Cosatu Slams Trade Agreement Breakaways" (2009) See also Magagula and Sibongil "COSATU Calls for Rejection of EU-SADC Partnership Agreement" (2009)
76 Mannak (2008)
77 Mokgoabone (2008)
78 Zwane "EPA Impasse Placing SD in Difficult Position" (2009). Sugar lies at the heart of the Swazi economy accounting for 59 percent of agricultural output, and 35 percent of agricultural wage employment Zigomo (2009)

responsible action of signing the interim EPA to safeguard market access for Swazi sugar'.[79] With the exception of statements by a few researchers, there appears to have been relatively little lobbying against the EPA in Botswana or Swaziland.[80]

Overall, lobbying appears to have played some role in the decisions of SADC governments, but, once again, it is far from a complete explanation. In particular, it is extremely hard to attribute the high degree opposition shown by the Namibian and South African governments to lobbying. Moreover, while the interests of the beef industry played a role in Botswana, it is hard to attribute Botswana's support for including services and investment in the EPA to lobbying.

Table 31: Lobbying as an Explanatory Factor: SADC

	Pressure Against an EPA	Pressure For an EPA	Negotiating Approach Taken	Plausibility of Lobbying Explanation
Namibia	Low: civil society and private sector	High: exporters (beef and horticulture)	High resistance	Poor
South Africa	Low: trade unions	Low: sugar and vegetable exporters	High resistance	Poor
Swaziland	Low: researchers	High: sugar	Moderate cooperation	Good
Botswana	Low: researchers	High: beef	High cooperation	Moderate

PACP: Lobbying offers a Partial Explanation

In the Pacific region, PACP countries showed a relatively high level of resistance to the EU's proposals. The region tabled substantive counter-proposals for an 'alternative' partnership agreement and when the EU did not make substantive concessions, the region held out. Fiji and Papua New Guinea broke from the region to initial and then sign interim EPAs, and while Papua New Guinea was one of the few ACP countries to implement the EPA, Fiji delayed implementation.

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[79] Hlatshwayo "Interim EPA Saves Local Sugar Industry" (2009)
[80] Zwane "'EPAS a Threat to Services, Investment'" (2008), Mokgoabone "Country is in a Quandary Over EPAs" (2007), Nkambule "SD, Lesotho Signed EPA Under Duress - Guduza" (2011)

At the regional level, a coalition of diverse civil society organisations, including NGOs, trade unions, women's groups, and churches were the most prominent lobbyists, and opposed many of the EU's proposals.[81] One NGO, based in Fiji, was the focal point for the coalition, and was perceived by the European Commission to be a central reason for the region's resistance to its proposals.[82] It is hard to find evidence that civil society directly influenced the region's negotiating position, although there is some evidence that civil society organisations worked with regional negotiators to expose the EU's negotiating tactics. For instance, a series of letters between the EU's trade commissioner and a leading PACP minister, which revealed the pressure that the EU was placing on the region, were leaked to the media through civil society.[83]

At the national level, some negotiators observed that there was very little lobbying from economic interest groups, particularly in least developed countries.[84] There was a strong lobby for an EPA in Papua New Guinea and Fiji. In Papua New Guinea, there is strong evidence that the interests of the fish industry drove the national negotiating position. As one government official explained 'in the EPA, there was no doubt that we were aiming for a continuation of preferences, primarily in the fisheries sector'.[85] Representatives from the fish industry played a leading role in the negotiations: the lead EPA negotiator was the chair of the national manufacturing council (where the membership is largely drawn from the fish industry), and the managing director of one of the largest tuna canning industries was also on

[81] See for instance Release "Press Release: Civil Society Statement on EPA Between Pacific ACP States and EU" (2004), Oxfam New Zealand "Press Release: EU Promises are Hollow: Pacific Society Groups" (2006); Prasad "EUs EPA Offer Unfair: PANG" (2007); Morgan "When Colonies Come of Age" (2007); Samoa Umbrella for Non Governmental Organisations Staff Reporter "Pacific Must Better Demand on EPA: Forum" (2007); Coates "Looming Trade Agreement Bodes Poorly For Pacific" (2007) Also interview, government official
[82] Pacific Network on Globalization (PANG). See: Morgan (2007) PANG singled out by EU as leading critic: Staff Reporter "Time to Listen to the Region" (2008)
[83] Oxfam New Zealand "Press Release: Leaked Letters Reveal Goliath Intentions, EPAs Between the EU and the Pacific Need to be Re-Negotiated" (2008)
[84] Interview, government official
[85] Interview, government official

the negotiating team.[86] The interests of the industry and close links to government provide a plausible explanation for Papua New Guinea's eagerness to enter into an EPA once it had obtained substantial concessions in rules of origin for fish. Indeed the government signed the EPA just as signs emerged of opposition from the EU tuna industry to the concessions given to Papua New Guinea in the EPA, suggesting that it signed in order to protect them.[87]

In Fiji, the interests of the sugar sector appear to have been a key factor in the country's decision to sign an EPA. The industry lobbied hard and was directly represented on the negotiating team.[88] The signature of the EPA was welcomed by the industry and enabled the Fiji Sugar Corporation Ltd. To renew a long-term contract with Tate and Lyle, the UK processing company.[89]

Table 32: Lobbying as an Explanatory Factor: PACP

	Pressure Against an EPA	Pressure For an EPA	Negotiating Approach Taken	Plausibility of Lobbying Explanation
Regional Level	Moderate: Civil society	Low	High Resistance	Poor
Fiji	Moderate: Civil society	High: sugar	Medium Cooperation	Good
Papua New Guinea	Low: civil society	High: fish	High Cooperation	Good

CARIFORUM: Lobbying offers a Partial Explanation

Finally, in the Caribbean region, lobbying also provides a partial explanation. In stark contrast to the African and Pacific regions, the Caribbean region embraced the EPA model, although it held out for significant changes in the fine-details of the text. While some countries, including Barbados, the Dominican Republic, Jamaica, and Trinidad and Tobago, championed the EPA, many of the smaller and poorer countries in the region had reservations, most notably Guyana.

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[86] See Golding (2008), Online Editor "PNG netting huge fisheries investment" (2012) See also http://www.pitia.org
[87] Murias "INTERATUN Rejects EU-Papua New Guinea Accord" (2009)
[88] Interview, government official
[89] Tate and Lyle "Press Release: Tate & Lyle Enters into Long-Term Agreement on the Supply of Raw Sugar with Fiji Sugar Corporation Ltd" (2008)

At in other ACP regions, the main source of lobbying for an EPA came from exporters. The rum sector was particularly well organised and influential, with the head of the rum association directly advising government negotiators in Barbados.[90] Following the signature of the EPA, the rum industry praised the regional negotiators for a 'most successful' outcome suggesting that it secured the concessions it was seeking.[91] Lobbying by banana producers, largely small-scale farmers resulted in a 'Joint Declaration on Bananas' in the EPA, which recognized the need for the EU to maintain significant preferences and committed the EU to provide funding to assist the industry.[92] (However, to the farmers' frustration, the EU's commitments to support the industry were non-binding.[93]) The sugar industry obtained additional tariff quotas,[94] and biscuit manufacturers obtained a change in the rules of origin on flour.[95] In the services sector, the large retail, financial and tourism industries actively lobbied and tourism, represented by the Caribbean Hotel Association, helped draft key provisions in the final text.[96]

There was some lobbying against the EPA. Civil society groups were the most vocal opponents, and were relatively well coordinated, although they appear to have had little impact on governments' negotiating positions.[97] Many government officials had an ambivalent response to their inputs.[98]As one civil society representative asserted 'They invite you just so they can say you were present, but you concerns are not addressed… a Barbadian

[90] Interview with private sector representative and government official
[91] WIRSPA note on EPA, from CRNM website; Caribbean "Executive outlines EPA benefits" (2008) However, the EU decided to cease support to the industry in 2012, suggesting that the EPA text did not offer as much protection as the industry had anticipated. See: Sanders "A Betrayal of the Caribbean Rum Industry" (2010)
[92] Joint Declaration on Bananas in CARIFORUM States and the European Community (2008) They lobbied through the 'Windward Islands Farmers Association' (WINFA). Interview, former government official.
[93] Kingstown St Vincent (CMC) "St Vincent-Bananas-WINFA Official Disappointed with New Latin American Tariff" (2009)and P47 Preville (2008)
[94] Staff Reporter "Govt Lauds Caricom Negotiators on EPA Deal" (2007)
[95] Interview, private sector representative
[96] Prensa Latina "Caribbean Praises Accord with Europe " (2008) Jessop "Understanding the EPA: Tourism Pact Demands Fair Competition " (2008) Interview, government official. See also Ramdoo and Walker (2010) P7
[97] Caribbean Policy Development Centre (CPDC) See for instance: Alfred "Planned Protest in St Lucia Against EU Negotiators" (2005)
[98] Interview civil society representative and private sector representative

government official even complained about the presence of an NGO at a technical working group'.[99] In contrast to some other ACP regions where civil society opposition was encouraged by negotiators in order to expand their negotiating leverage with the EU, in the Caribbean region, such mobilisation tended to have been perceived as a hindrance.[100]

There was also some lobbying against the EPA from agricultural producers who wanted to ensure that key products would be excluded from liberalisation, and they appear to have been largely successful.[101] The poultry sector was particularly active, and provided detailed submissions to regional negotiators.[102]

Interestingly, there was very little lobbying against the EPA from local manufacturers, arguably reflecting the weakness of the sector.[103] Trade unions were not very vocal, possibly because foreign investors dominate many of the sectors in which union members are employed. One interviewee explained that trade unions 'are cautious and don't want to upset FDI'.[104] It is particularly noteworthy that there is little evidence of lobbying against the EPA in Guyana, which suggests that lobbying by interest groups did not drive the government's opposition to the EPA.

Overall, given the Caribbean's embrace of the EPA approach, it is striking that there was not *more* lobbying in support of an EPA. Patterns of lobbying were similar to other ACP regions, with preference-dependent exporters lobbying for an EPA, and civil society groups lobbying against an EPA. Notably it is hard to find a plausible lobbying-based explanation for why the region was so keen to negotiate in areas such as intellectual property and investment.

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99 Interview, private sector representative
100 Interview, civil society representative
101 Interview, private sector representative. Also Preville (2008)
102 Bernal (2008). See also Best (2004)
103 Interview, private sector representative
104 Interview, civil society representative

In services, creating new market access opportunities for a wide range of services exports was at the heart of the region's justification for an EPA, at it is hard to attribute this to lobbying alone. As the head of one major services association noted, with the exception of the large retail, financial and tourism industries, the services sector was 'hardly engaged' in negotiations and it 'was hard to get services contractors into the same room for consultation'.[105] Government officials report that when they actively solicited inputs it was a 'challenge' to get services companies to engage in the details of the EPA texts, a factor attributed to the 'fledgling' nature of many firms.[106] Another explained that due to a lack of engagement of the private sector, 'on services the government had to take the lead on the schedules'.[107] As a senior government official noted 'We may knock ourselves out at the negotiating table and get a tolerable result eventually, but the question is implementation capacity. The private sector is weak. There are few self-starters. They need hand-holding and opportunities explained.'[108] Such statements suggest that governments played an active role in defining negotiating objectives: they were not simply reacting to lobbying by interest groups.

Table 33: Lobbying as an Explanatory Factor: CARIFORUM

	Pressure Against an EPA	Pressure For an EPA	Negotiating Approach Taken	Plausibility of Lobbying Explanation
Regional Level	Moderate: civil society, banana producers	Moderate: export sectors (rum, bananas, sugar, tourism)	High cooperation	Moderate
Barbados	Moderate: civil society	Moderate: export sectors (rum, tourism)	High cooperation	Moderate
Guyana	Low	Moderate: export sectors (sugar, rice)	Moderate resistance (from 2008)	Poor

Summary

A lobbying-based explanation only provides us with part of the explanation for the key decisions of ACP governments during the EPA negotiations. While governments were often

[105] Interview, private sector representative
[106] Interview, private sector representative
[107] Interview, government official
[108] Interview, government official

constrained by the demands of lobby groups, very few ACP governments appear to have been entirely beholden to them. To the contrary, many governments appear to have had a substantial degree of latitude or autonomy to set negotiating objectives. If interest group lobbying was not the primary driver negotiating positions, what other factors led ACP governments to resist or embrace the EU's EPA proposals? It is to this question that the rest of the chapter turns.

7.4. Information and Institutions: Survey and Interview Evidence

Once again, the survey and interviews provide a useful starting point. An obvious possibility is that policy direction was influenced by information, including assessments of the likely impact of an EPA on ACP countries. The survey and interviews provide us with useful insights about the types of information that officials in small developing countries draw upon during trade negotiations, as well as the broader institutional setting in which officials and politicians make trade policy decisions.

The survey results suggest that although governments in small developing countries produce substantial amounts of information, the quality is highly variable (Table 34). While trade flow data was more often perceived to be 'good' than the other kinds of data, economic impact studies were most likely to be considered 'poor' or 'very poor'. This suggests that governments are often unable to produce more specialized analysis in-house. The interview results reinforce this finding, as half of those interviewed said that the information generated by their own governments tended to be unreliable and that they depended on information from elsewhere.

Table 34: Quality of information provided by ACP governments

	Good	Average	Poor or Very Poor	Government does not produce

Trade flow data:	24	38	51	8
Economic impact studies:	17	26	47	10
Legal advice:	18	27	45	12
Diplomatic intelligence:	22	22	36	12

The survey results suggest that severe human resource constraints are a major underlying reason for the poor quality of available information. Almost half of the survey respondents (36 of 78) said they had three or fewer officials working full-time on negotiations in their lead trade ministry and four countries did not even have one full- time official. There is also evidence of a high turnover of staff, which further exacerbates the shortage of analytical expertise at the disposal of small state governments.

These findings were corroborated during interviews. Eleven of the 34 negotiators with whom the issue was discussed said that they had too few people to analyze the available information and relate it to their country's particular circumstances. In the words of one negotiator 'I do not think that there is a shortage of studies, but someone has to filter the information'.[109]

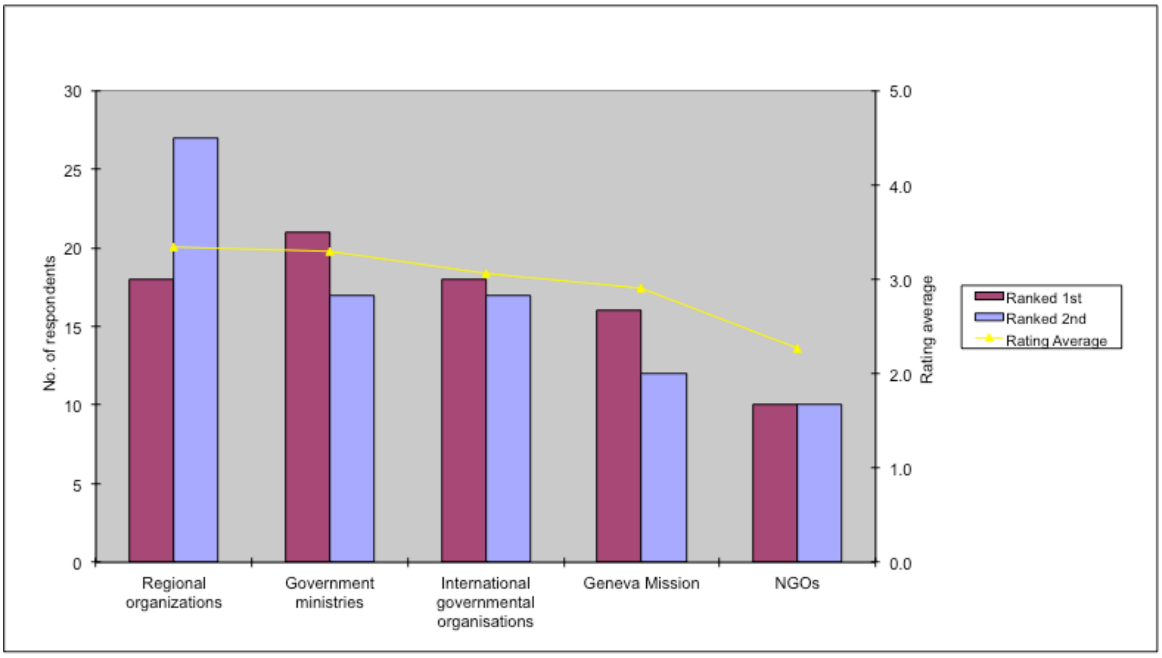
The survey provides some insights into the sources of information that negotiators turn to and suggests that, outside of their own government, negotiators look to regional organisations and then to international governmental organisations (Figure 19).[110]

The interviews confirmed the importance of intergovernmental organizations as an information source, and 24 of the 34 interviewees said that they turn to organisations such as the Commonwealth Secretariat, South Centre, UNCTAD, and the WTO Secretariat. International research institutions also play a role, with 13 interviewees saying that they use information from independent research organisations, such as the Overseas Development Institute in London, the European Centre for Development Policy Management in Brussels, and, in some cases, local universities. Rather strikingly, 13 interviewees reported that they

[109] Interview, government official
[110] The survey asked 'What sources do you rely on most for information and analysis needed for international trade negotiations?'

relied primarily on their negotiating opponent and on donor organisations for information. Indeed, nine of the 18 Brussels representatives interviewed said they relied on the EU as a primary information source in the EPA negotiations, despite the obvious risks concerning the neutrality of information provided.

Figure 19: Most Important Sources of Information



Coupled with the analysis earlier in this chapter, these findings suggest that ACP governments often lack a solid information base on which to determine their negotiating objectives. On one hand there is relatively little lobbying from external actors, which makes it hard for government officials to know exactly how economic groups are likely to be affected. Even where lobbying does occur, it tends reflects the interests of the small number of large firms rather than the vast majority of small producers, who are often poorly organised. On the other hand, there is often a paucity of good quality data and information produced by governments, not least because they face severe human resource constraints. This resonates with the EPA negotiations. As the discussion of the ACP negotiating guidelines in chapter four suggested, a lack of information and studies meant that ACP countries lacked sufficient information in some areas to determine clear negotiating objectives.

With these findings in mind, we now turn back to the question of which factors (aside from lobbying) shaped the negotiating objectives of ACP governments?

7.5. African and Pacific Resistance: The role of Information and Ideas

Why did the vast majority of African and Pacific governments resist major aspects of the EU's EPA proposals? This section identifies three factors: impact assessments that identified substantial fiscal losses; the wider international policy debate, which was invariably critical of EPAs; and geopolitical interests. The subsequent section looks at the Caribbean, seeking to establish whether the same factors had an influence over government positions, albeit playing out in different ways.

Impact Assessments: Substantial Fiscal Losses

There is some credible evidence that impact assessments influenced the negotiating positions of African and Pacific governments.

There were a wide range of EPA impact assessments commissioned by ACP governments (often with the support of donor funding, including from the EU), the European Commission and international organisations such as the UNECA and the World Bank.[111] While the studies commissioned by ACP governments tended to focus on the detailed impacts at the national level, others sought to estimate the broad impacts on all ACP countries.

The quality and reliability of assessments varied substantially and there were major gaps in coverage. Most studies focused on the impact of liberalising trade in goods, as this was most readily quantified, but the quality of trade data in many ACP countries was often too poor to

[111] The EC commissioned a series of sustainability impact assessments. See also Fontagne, Mitaritonna, and Laborde (2008); UNECA studies included Karingi et al. (2005); World Bank studies included Hinkle and Newfarmer (2006).

estimate impacts with any accuracy (as indicated in Table 34). There is particularly little reliable data on intra-African trade, which makes it hard to assess the impact of an EPA on regional trade flows, while accurate data on tariff revenues is often unavailable, making it hard to accurately assess fiscal implications.[112] As one review of early EPA studies noted 'although all [impact assessments] agree that there are *thought to be* large potential gains, the fiscal adjustments are also *probably large* and, although there may be significant dynamic effects, these *cannot be quantified'* [emphasis added].[113]

Despite these shortcomings, impact assessments did provide a general idea of the likely costs and benefits of trade liberalisation. Studies typically found that the overall welfare gains for ACP countries were expected to be small, or possibly negative. In most instances, trade creation was likely to outweigh trade diversion, although, in a context of highly concentrated import markets in ACP countries, it was conceivable that gains from trade creation would accrue primarily to EU exporters rather than ACP consumers.[114] Notably, studies showed that ACP governments could lose substantial amounts of revenue as the result of tariff liberalisation. For instance, a World Bank study of ECOWAS countries suggested that revenue losses could be as high as 16 percent of total government revenue for Cape Verde, 10 percent for Senegal, and 7 percent for Ghana.[115] The findings of some key studies are summarised in Table 35.

Table 35: Main Findings of EPA Impact Assessments

ACP region	Trade creation (TC) / Trade diversion (TD)	Fiscal effects (loss of tariff revenues)	Welfare effects

[112] See Bilal and Roza (2007) on the reliability of fiscal impact studies.
[113] COMESA Secretariat (2002)
[114] Bilal (2002); McQueen (1999); See also Karingi et al. (2005)
[115] Zouhon-Bi and Nielsen (2007)

sub-Saharan Africa (as a whole)			Negative (EPA with no regional integration); Positive (removal of intra-SSA barriers or EU–SSA Free Trade Area)
West Africa	TC larger than TD	Negative	Positive
Central Africa	TC larger than TD	Negative	Positive
EAC	TC smaller than TD for Tanzania and equal to TD for Uganda	Large negative	Small negative for Tanzania; Negligible for Uganda
COMESA	TC larger than TD	Negative	Positive
SADC	TC larger than TD	Large negative	Large positive (EPA with regional integration); Small positive EPA with no regional integration)
Caribbean	TC smaller than TD (for simultaneous MFN tariff cuts < 50%); TC larger than TD (for simultaneous MFN tariff cuts > 50%)	Small negative	Small negative (for simultaneous MFN tariff cuts < 20%); Small positive (for simultaneous MFN tariff cuts > 20%)
Pacific	TC larger than TD	Small negative	Small positive

Source: Extracted from . The table summarizes the results of the main quantitative studies conducted prior to 2006

In other EPA issue-areas, impact assessments provided ACP governments with even less guidance. In the services sector there were very few impact studies, presumably because reliable data on services is even more difficult to obtain. In trade-related issues such as investment, competition and intellectual property, there were some evaluations of the likely policy implications but they were published relatively late in the negotiating process (nearly all after 2007). As many raised concerns about the EU's proposals it is plausible that such studies reinforced the resistance of African and Pacific countries, but they arrived too late to account for the fact that most countries did not wish to negotiate in many trade-related issue-areas.[116]

Where impact assessments were available they do appear to have influenced negotiating positions. In particular, there is credible evidence that African and Pacific countries were concerned about possible fiscal losses. During the EPA negotiations, African and Pacific officials often expressed concerns in public about possible revenue losses, citing the findings

[116] See for instance Shabalala (2008); Musungu (2009); Woolcock (2008); Schloemann and Pitschas (2009)

of impact assessments.[117] In Zambia for instance, the trade minister argued that 'It would be most irresponsible of me on behalf of Zambia to engage in any reciprocal trade negotiations with the EU' as models predicted substantial trade gains for the EU and significant revenue losses for Zambia.[118]

The prospect of revenue losses appears to have been particularly politically sensitive, in the context of the severe budget constraints faced by many African and Pacific governments. As a COMESA report on the EPA noted 'as public finances are already in a precarious situation, any fall in revenue could have an adverse impact on budgetary balances. It will be difficult to justify continued trade reform if this entails further reductions in the electorate's welfare.'[119] As might be expected, revenue collection agencies were particularly concerned. As one Pacific negotiator explained, 'Statistical analyses always show that we are less revenue dependent [on trade] than other countries in the region but revenue and customs [authorities] don't see it that way… we had a political directive to reach agreement [with the EU] but on a technical level it almost became a negotiation for us with out own revenue and customs people… they focus on revenue targets.'[120]

The fact that revenue losses were expected to be particularly high for African regions provides a plausible explanation for why African regions held out during the negotiations on the levels of trade liberalisation they were prepared to undertake (see chapter six). Lending credibility to this argument, it is noteworthy that countries in Africa and the Pacific that were more favourably disposed towards EPAs typically had highly liberalised economies and did

[117] Nigeria: See Cronin "Trade: Cote d'Ivoire Succumbs to EU" (2008); Cameroon: See Cronin "Central Africa: EPA 'Roadmap' Agreed " (2008); Kenya: See Kathuri "Kenya to Lose Sh9.5bn in EU Trade Agreement" (2005); Interview, government official
[118] Noyoo "Zambia to Lose $15m If It Maintains Pact With EU" (2005)
[119] COMESA Secretariat (2002)
[120] Interview, government official

not anticipate any significant revenue losses, including Mauritius, Seychelles, and Papua New Guinea.[121]

Finally, the positions taken in the negotiating room suggest that African and Pacific countries resisted in many issue-areas where they simply didn't have the information and requisite experience. African and Pacific negotiators argued that their countries needed to reinforce their human resource, regulatory and administrative capacities before negotiating with the EU. In the words of a Nigerian minister 'We do not find ourselves ready to undertake negotiations in EPAs in some trade-related areas… There is a lack of expertise [in the region]… the region lacks a harmonised policy framework on investment and competition issues'[122] Similar arguments were advanced by SADC, COMESA and PACP officials as justification for delaying negotiations in trade-related areas and services.[123]

Policy Debates: EPA as an inappropriate development model

Economic ideas, particularly about the trade policies that would spur development, were the second factor that appears to have prompted African and Pacific governments to resist major aspects of the EU's EPA proposals. As Woods (1995) notes, economic ideas shape how a state perceives it national interests: 'a state perceives its international economic interests on the basis of a set of ideas or beliefs about how the world economy works and what opportunities exist within it'.[124]

A striking feature of the EPA negotiations between the EU and the five African and Pacific regions is that they stalled on the very basic question of the framework and issues to be addressed in the EPA. At the heart of the push-back from many African and Pacific countries

[121] Interviews with two government officials
[122] Comments made at a High-Level Conference on EU-ACP Trade Relations convened by the South Centre in Brussels, on 12 October 2006, cited in Third World Network (2008)
[123] Namibian Industry of Trade and Industry "Update on the Status of the Negotiations Process in General and the Namibian Positions on Various Aspects of the Negotiations " (2007); Interview, government official; Pacific Islands Forum Secretariat (2009)
[124] Woods (1995)P161. Although the role of ideas in shaping interests has gained currency in the international political economy literature, it continues to be neglected in studies of trade negotiations, which assume preference formation is bottom-up and driven by interest groups. See Milner (2013)

was a conviction that the trade policies embodied in the EU's EPA would be detrimental to their development. Negotiators and analysts clearly perceived ideational differences between the EU and ACP to be a major source of divergence. A report on a meeting between EU and SADC officials in 2008, for instance, observed that 'even after years of discussing…the parties are nowhere closer to understanding one another on the *interpretation and vision of development and trade in the region* [emphasis added].'[125] As a government official from the ESA region noted during an interview 'how we define development and how they define development – we are not yet in agreement'.[126]

To identify the ideas that influenced the negotiating positions of ACP governments, it is helpful to examine the broad arguments made by the EU, and the responses made by African and Pacific negotiators.

The EU advanced two main arguments for how its EPA proposals would support the development of ACP countries. First, the EU argued that EPAs would lock-in and deepen trade liberalisation processes. The leading proponents of EPAs in the mid-1990s argued that trade liberalisation under structural adjustment programmes had not stimulated growth because policy reforms lacked credibility: policies had been undertaken to secure aid from donors and were widely resented, so once aid ran out, there was the risk that ACP governments were likely to reverse them. Free trade agreements with the EU would provide African governments with mechanism to 'lock-in' liberalised trade policies and stimulate further liberalisation.[127] Second, EPA would be a means for ACP countries to 'import' economic institutions from the EU rather than devising all institutions 'from scratch', thereby facilitating development.[128]

[125] Bertelsmann-Scott (2007)
[126] Interviews with two government officials Also in the Pacific see Penjueli "Time to Listen to the Region" (2008)
[127] Collier, Gunning, and Centre for Economic Policy Research (UK) (1994)"394-400
[128] Ibid."394-400; Collier et al. (1997)

During the EPA negotiations, many African and Pacific governments made forceful counter-arguments, often drawing on their own experiences of trade liberalization under structural adjustment. As the Mauritian Ambassador asserted in 2002 for instance, 'the Commission seems to argue that the ACP should liberalise, privatise and deregulate, and FDI will inevitably flow… ACP countries on the other hand have already been swallowing these bitter pills for the past two decades'.[129] ACP officials argued that structural adjustment policies failed not because they had not been implemented properly (as the proponents of EPAs claimed) but because they had fundamentally misdiagnosed the economic constraints facing their countries. As a Senegalese minister noted, 'If your country hasn't a sufficient supply of production capacity you will make very little progress [from trade liberalisation] because you will have put the cart before the horse' [sic].[130]

While the experience of structural adjustment shaped the initial reactions of African and Pacific governments to the EU's proposals, once EPA negotiations were underway, African and Pacific governments drew on wider international policy debates where 'Washington Consensus' policies (reflected in the EU's EPA proposals) were increasingly being criticised.

The EPA negotiations drew a high level of international policy attention, nearly all of it critical. At the start of the negotiations, criticism came largely from civil society organisations and international organisations traditionally viewed as 'friends' of developing countries, including UNCTAD, the South Centre, and the United Nations Economic Commission for Africa.[131] The South Centre was particularly engaged, identifying specific aspects of the EPAs that were likely to be detrimental to development and supporting some ACP regions to

[129] Cited in Fraser and Kachingwe (2003)
[130] Comments made at a High-Level Conference on EU-ACP Trade Relations convened by the South Centre in Brussels, on 12 October 2006, cited in Third World Network (2008). See also Kokutse "Trade-Ghana: "EU Will Be the Main Beneficiary of the EPAs"" (2007) and Interview with government official
[131] NGOs included Third World Network Africa (Ghana), ENDA Tiers Monde (based in Dakar), SEATINI (based in Zimbabwe), CPDC (based in Barbados), and Oxfam, Christian Aid and (based in the EU). In 2007, UNCTAD's flagship Trade and Development Report was highly critical of North-South agreements arguing that they undermined development. UNCTAD (2007)

prepare for negotiations.[132] As the EPA negotiations progressed, a wider range of organisations and individuals criticised EPAs. In 2008 for instance, Stiglitz, the Nobel Prize laureate, urging the government of Ghana to 'take a cold hard look' at the agreements as aspects were inimical to development.[133] In 2012, the World Bank's chief economist for Africa argued that the EU 'instead of signing EPAs' should 'sign migration agreements'.[134] A striking feature of the international debate is that even those who advocated deep trade liberalisation were invariably critical of EPAs, largely on the grounds that they would create significant trade distortions.[135]

There is strong evidence that these international policy debates informed the arguments that African and Pacific governments advanced in the negotiating room, and it seems reasonable to assume that these debates also informed the way that African and Pacific governments conceived of their countries' interests.

The negotiating records show that ACP governments drew on the experience of East Asian countries, arguing that a number of preconditions had to be fulfilled including the formulation of appropriate national policies and the establishment of a sound institutional and regulatory framework in order for liberalisation to support development. In response, the EU argued that liberalisation had been at the centre of East Asian success: without the liberalisation measures taken by China in the context of its WTO accession, the development of the Chinese banking and telecom sectors would have been delayed by decades. The EPA negotiations therefore represented a 'not-to-be-missed opportunity for the ACP countries'.[136]

[132] See for instance Tandon "Africa: EPA Trade Deals Might Harm Continent" (2007) Reports analysing the EPA are available at www.southcentre.org
[133] Staff Reporter "Nobel Economist Stiglitz Criticises EPA" (2008)
[134] African Development Bank Group (2012)
[135] See for instance Messerlin and Delpeuch (2007)
[136] ACP-EC Ambassadors (2003)

Leading figures from African and Pacific countries were closely engaged in these wider international policy debates and spoke out against EPAs. In West Africa for instance, Burkina Faso's former foreign minister and former Deputy General of the WTO was appointed as special adviser on EPAs to the ECOWAS President, and he argued that EPAs would deprive countries of policy instruments essential to its development, undermine regional integration, deepen poverty, and prevent countries from diversifying away from primary commodities.[137] In Nigeria, a former central bank governor argued in a hard-hitting opinion piece that 'on a net basis, EPAs will be harmful. They will wipe out industries and agriculture, and increase unemployment and poverty. Africa will become a dumping ground for Europe.'[138] While in Ghana, a former World Bank vice-president asserted that it was not in the country's interests to sign: 'By hitching our wagon to that of the EU and putting trade with other countries such as China and the US on a weaker footing, the agreement is betting on one of the weakest links in the global economy'.[139]

In East Africa, critical voices included the widely respected former president of Tanzania, who argued that EPAs were another 'scramble for Africa' and would weaken the East African Community economically.[140] He wrote to heads of state expressing his concerns.[141] Similarly, Zambia's former trade minister, who had led the LDC Group at the WTO, was highly critical of EPAs.[142] In addition, WTO ambassadors from the EAC wrote to governments advising against the signature of the EPA, as it would undermine their positions at the WTO.[143] It is plausible that outspoken criticisms by such eminent figures prompted the Tanzanian and

[137] Ouedraogo (2009); Ouédraogo "5 Raisons de Suspendre les Négociations sur les APE" (2010)
[138] Soludo "Africa Needs Honesty Over EU Trade Deals" (2012)
[139] Nankani "Ghana And The EU Agreement: A Myopic, Bold Or Incomplete Decision? - Dr Nankani" (2008)
[140] Staff Reporter "EU Faults Mkapa on EPA" (2010);Mutarubukwa "EALA Heeds Mkapa's Call on EPA Agreement" (2010); see also Omondi "Kenya: Region Rallies Behind Nation Over EPAs" (2012). The former president has a particularly strong grasp of trade issues, sitting on various high-level international commissions and chairing the board of the South Centre.
[141] Staff Reporter "South Centre Chairman Writes to African Leaders Expressing Serious Concerns on EPAs" (2010)
[142] Patel "ACP/EU Economic Partnership Agreements: Boom or Doom for Zambia?" (2007)
[143] Julian "EPA Update 9-6" (2010)

Zambia governments to hold out, and there is clear evidence that the former president's statements influenced the position of the East African Legislative Assembly.[144]

Geopolitical Interests: EPAs have high geopolitical costs

There is credible evidence that geopolitical interests were a third factor that influenced the negotiating positions of African and Pacific governments.

For many African and Pacific countries, the impact that the EPA would have on their relations with neighbouring countries was an important consideration. In Southern Africa, South Africa appears to have viewed the EPAs as a strategic bid by the EU to gain economic control in its 'backyard', giving it a clear reason to oppose the EPA, particularly commitments in services and investment.[145] In contrast, many of the smaller countries, including Botswana, had longstanding concerns that South Africa's economic and political interests dominated their economies, leading them to perceive of a 'full' EPA as a way to break South Africa's dominant position.[146]

In the Eastern African Community relatively high levels of regional integration, together with a strong commitment among the political elite to further integration prompted the group to stay united during the negotiations and hold out for renegotiation.[147] Had regional integration not been so highly valued, it is conceivable that Kenya would have signed the EPA and Tanzania would have simply walked away. Similarly, in West Africa, a commitment to regional integration appears to have been a factor in Ghana's decision to postpone signature.[148] As one official explained in an interview 'We aren't ready to sign the agreement

[144] Mutarubukwa (2010).
[145] Steuart and Cassim (2005)South Africa is by far the largest economy in the region and it, like the EU, had particular interest in the region's growing services sector. Scrutiny of the services requests and offers made by South Africa and the EU in the context of WTO negotiations reveals that both parties are keen to obtain greater access within the region: South Africa tabled far-reaching requests to its neighbours (Botswana, Namibia, Zambia, and Zimbabwe), while the EU tabled requests to South Africa to open up a range of services sectors, including in finance, telecoms, and energy
[146] Draper (2007)
[147] Anami "Kenya's Dilemma at EU Trade Talks" (2012)
[148] Staff Reporter "West Africa: Don't Sign EPA Without ECOWAS - Chambas" (2012)

until we are sure we can find accommodation within the region…Ghana is a leading member of the integration process'.[149]

Several African countries cited potential damage to relations with emerging economies as a reason for not entering an EPA, and this became very apparent during the discussions over the inclusion of a 'most-favoured nation' clause. As South Africa's foreign minister explained his country could not allow a partnership agreement with the EU to restrict its relations to the rest of the world.[150] Similarly the president of Senegal, a strong opponent of the EPA, argued on several occasions that China was becoming Africa's preferred partner, and cited this as a central reason for rejecting the EPA.[151] The fact that the 'most-favoured nation' clause became one of the most contentious aspects of the negotiations suggests that the prospect of undermining relations with emerging economies was a major factor in the decision of many African and Pacific countries to resist.[152]

In the Pacific, the prospect of forthcoming negotiations with Australia and New Zealand, the region's most important trading partners, had a decisive impact on EPA negotiating objectives. Under the 'Pacific Agreement on Closer Economic Relations', PACP governments were obliged to commence discussions toward a free trade agreement with Australia and New Zealand as soon as they concluded negotiations with the EU, which made PACP countries very conscious of the precedent-setting effects of an EPA. They were particularly keen to set a positive precedent on Mode 4 (although few islanders sought access to the EU market, given its distance, securing a high level of access under the EU would have set a favourable precedent for negotiations with Australia and New Zealand). This helps

[149] Interview, government official
[150] Ensor and Roux "Southern Africa: Minister in Scramble to Ease EU Trade Row" (2008); See also Mannak "Trade: EPAs Born Out of EU's Concern with China in Africa " (2008)
[151] See for instance Staff Reporter "Wade : la Chine, le Japon et l'Inde Font Mieux que l'UE pour l'Afrique" (2007)
[152] One negotiator from East Africa described the MFN clause as a 'poisoned chalice', which conveys the high level of opposition to this clause. Interview, government official

explain why, even in the absence of a strong lobby on Mode 4, the issue was a deal-breaker for the PACP countries.[153]

The final aspect of geopolitical concerns was the fear that the EPA would give the EU greater political and policy control over ACP countries. As a report by ACP experts in the 1990s illustrates this concern: Under an EPA 'Europe will have the authority to exercise wider-ranging *political and policy control* over ACP countries than at any time since the end of the colonial era' [emphasis added].[154] There is some evidence that such concerns shaped negotiating positions in African and Pacific countries. The EU's proposed 'non-execution clause' was one of the few clauses nearly all countries held out on. For instance it was the last issue to be resolved in the bilateral negotiations involving Papua New Guinea and Fiji at the end of 2007. As one regional negotiator explained at the time 'The ministers gave in on virtually every issue to whatever the EU wanted…The only issue that remains square bracketed is the non-execution clause'.[155]

7.6. Caribbean Cooperation: The role of Information and Ideas

Why then did the Caribbean adopt such a strikingly different negotiating position? While some argue that the Caribbean region entered a 'full' EPA because it was unique among ACP countries in having interests in services and investment, this is not a particularly convincing argument as many other ACP countries also have service-based economies.[156] A review of the evidence suggests that the same three factors influenced the negotiating objectives of Caribbean governments but they played out in different ways.

[153] Pacific Institute of Public Policy "Putting Substance into PACER Plus" (2009); Kelsey (2007) also Pacific Institute of Public Policy "Pacific Lessons from the Economic Partnership Agreement" (2009)
[154] Working Group of ACP Experts (1999). As Soludo and Ogbu note in an excellent volume 'Given Africa's peculiar colonial legacies, the sometimes extra sensitivity to notions of sovereignty is understandable. The principle of 'self-reliance' underpinned much of the post-independence development thinking'. Soludo and Ogbu (2004)
[155] Pareti "Trade: Fiji, PNG "Turncoat" Spells Doom For Region" (2007). Also interview, government official.
[156] This point is made in Heron (2010)

Impact Assessments: Some Fiscal Losses

As with the African and Pacific regions, there is some evidence that impact assessments, particularly the prospect of fiscal revenue losses were a concern, particularly for the poorer countries.[157] This was evident in the negotiating room, as market access commitments proved to be a major sticking point right until the last moment of the EPA negotiations, as Caribbean governments sought to exclude high revenue items from liberalisation (see chapter six). Concerns about tariff revenue losses were raised again in 2008, when governments reflected on whether to push for renegotiation and they appear to be part of the explanation for delayed implementation.[158] However, in contrast to many African countries, the expected fiscal losses for the Caribbean as a whole were relatively small (Table 35), and were estimated at less than one percent of total government revenue for most countries, so meeting the EU's demand of liberalising at least 80 percent of EU imports was less challenging.[159]

Policy Debates: The EPA model will support Caribbean development

In the Caribbean ideas about economic policy, particularly the type of trade policies that would stimulate development, also appear to have shaped negotiating objectives. What is fascinating is that the policy debate in the Caribbean was radically different to that in the African and Pacific regions.

A striking feature of the policy debate in the Caribbean is that leading politicians and eminent public figures strongly supported the EPA approach, arguing, in stark contrast to their African and Pacific counterparts, that it was in line with the region's development plans. Thus while the international policy debate deepened the reservations of an already-sceptical leadership in Africa and the Pacific, in the Caribbean, its was brushed aside. As explored below, it was only in 2008, after the EPA had been concluded, that a few leading Caribbean figures criticised the EPA and this opposition arguably came too late in the day to have a decisive impact on negotiations.

[157] Interview, government official
[158] Staff Reporter "Implementation of Caribbean tariff cuts in the spotlight" (2012); See also Heron (2010)
[159] Silva (2008)

During the EPA negotiations, there were early signs that key politicians, particularly from Jamaica and Barbados, strongly supported the EPA. In 2000, for instance, Jamaica's ambassador to the US and lead negotiator for the Free Trade Agreement of the Americas argued that ACP states needed to 'to participate in and facilitate the rapid and friction-less international mobility of goods, services, finance, capital and technology which is the essence of a seamless global economy'.[160] To this end, he advocated that EPAs *include* new areas such as services and trade-related rules rather than wait for them to be resolved at the WTO.[161] Shortly after espousing such views, he was appointed to head the Caribbean Regional Negotiating Machinery (RNM), where he led the EPA negotiations, which suggests that his views were widely shared among the political leadership in the region.

During interviews, political leaders and senior civil servants explained that the region needed to adopt the type of policies embodied in the EPA in order to stay competitive in the changing global context.[162] As the lead regional negotiator asserted, the 'CARIFORUM region *does not have the luxury of complacency* about the pace of change and the character of adjustment … Governments must create *modern globally synchronised* national and regional business environments' [emphasis added].[163] In the words of Barbados' prime minister 'Everyone involved in the exercise understood that an EPA with the European Union would mark a fundamental break with the past… the EPA is not a perfect instrument, but it is good enough to assist our aims in building a post-colonial economy'.[164]

Barbados was particularly supportive of the EPA approach, and probing during interviews helps to explain the reasons for this. Since the 1980s, Barbados has had an economic

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[160] Bernal "Competition, Competitiveness and Cooperation: Priority Issues for CARICOM in Future EU-ACP Trading Arrangements" (2003)
[161] ibid
[162] One leading academic noted in an interview that there was a sense among the political leadership that 'there is no alternative'. Interview, academic
[163] Bernal (2008)
[164] Arthur (2008)

development model that relies heavily on foreign investment, and maintaining its reputation in the eyes of foreign investors as 'stable' is central to its economic policy.[165] As one senior government official explained, Barbados has a long-standing tradition of 'centralist policies' it is 'never radical one way or another' its economic policies are based on 'pragmatism and continuity'.[166] This suggests that the government perceived the EPA as a way of sending a signal to foreign investors that it was adopting favourable economic policies. In addition, the development of services lies at the heart of Barbados' development strategy and the EPA was perceived as a mechanism for creating new opportunities for the services sector. As a former minister noted 'For Barbados, services are the way forward... Services have been the focus since the 1980s… It was a conscious and deliberate political decision to focus on services.[167]

Institutional Set-Up

The heated debate over the EPA in 2008 suggested that not all Caribbean governments shared the view that EPAs were an appropriate way to further the region's development. However, unlike in other regions (notably SADC) a divergence of interests did not lead the region to split and take different positions in the negotiation. This is attributable to the particular nature of the institutional set-up.

The CARIFORUM region was unique among the ACP regions in the level of delegated authority it provided to regional negotiators. The region had a strong and relatively autonomous Regional Negotiating Machinery, headed by a director general whose position had a similar level of political standing as a head of state (largely the result of historical circumstance). When it was established in the late 1990s, the organisation was granted a very high level of autonomy and was encouraged to develop 'a culture and personality of its own'.[168] As the negotiators reported directly to heads of state, trade ministers were

[165] Interview, private sector representative
[166] Interview, former government official
[167] Interview, former government official
[168] Grant (2000), P37

marginalised from the negotiating process and government officials, unless selected for their expertise to be part of the college of negotiators, did not play an active role in negotiations.[169]

During the EPA negotiations, the RNM reported directly to a core group of heads of state, chaired by the Barbadian prime minister. During 2008, when there was a heated internal debate about the EPA, many concerns were expressed that the RNM, particularly its director-general, had very strong opinions, and undue influence over the region's negotiating positions. As one expert explained 'The RNM is pro-liberalisation and very technically minded'.[170] Another official noted that 'It [the RNM] only has the macro view and seeks harmonisation of positions… it doesn't appreciate the economic reality on the ground'.[171] The fact that the regional negotiators played a central role in 'selling the EPA deal' after the EPA had been initialled only served to compound these concerns.[172] In the words of a senior diplomat 'When the negotiator becomes ideological, you are in trouble. They have a notion that they know what is right'.[173] Some national officials felt that they came under pressure from the regional negotiators to liberalise sectors. One national official said 'we were told we were only opening nuisance sectors. We were bullied by the RNM to open more… at times we felt that the RNM was backing the EU. I even found sectors we hadn't agreed to open in the text as 'opened''.[174]

In 2008, public criticism targeted the regional negotiators for their lack of accountability, but interviews suggest that RNM came to play a leading role because there was insufficient political engagement and oversight from many countries, particularly the poorest. As one expert noted 'they [heads of state] didn't provide enough oversight of the RNM'.[175] Another noted that, with some exceptions, heads of state lacked expertise in trade. 'The RNM reported

[169] Ibid.
[170] Interview, private sector representative
[171] Interview, government official
[172] Interview, former government official
[173] Interview, government official
[174] Interview, government official
[175] Interview, private sector representative

directly to heads of government who are not trade specialists. The problems [in the final agreement] such as the MFN clause and regional preferences were agreed at heads of government level'.[176]

Interviews reveal that the quality of technical input from member states varied dramatically and while some countries, including Barbados, were well prepared, in other instances, the regional negotiators struggled to secure substantive inputs.[177] As one expert noted 'Often countries don't even have data to and positions to give the RNM. The OECS secretariat tries to support but doesn't have intimate knowledge of the countries'.[178] As a senior official explained, this meant that the regional negotiators had to do 'first-level work' including 'developing national positions'.[179]

In 2008, a group of eminent intellectuals from the region challenged the view that the EPAs would support development.[180] However their arguments appear to have had little traction with the majority of the region's leaders. The critics were accused of being 'stuck in ideological debates', and relying on an 'old language and an old model of the economy' and failing to engage with the technical details of the EPA texts.[181] As a former minister noted, the critics 'couch their ideas in the language of the 1960s and are not heard… Leaders don't trust their opinions'[182]

Guyana was the notable exception. Many of the leading critics had close links to Guyana, and this provides a plausible explanation for Guyana's decision to oppose aspects of the EPA in

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[176] Interview, private sector representative
[177] Interviews with one private sector representative and two government officials
[178] Interview, private sector representative
[179] Interview, government official
[180] Thomas "Suckered by the Economic Partnership Agreement (EPA) as Massive Manipulation" (2008); Girvan (2008); Brewster "The Anti-Development Dimension of the European Community's Economic Partnership Agreement for the Caribbean" (2008)
[181] Interview, academic
[182] Interview, former government official

2008.[183] Indeed, as noted above, there were few domestic lobby groups that opposed the EPA, and during the negotiations over the EPA text, Guyana made relatively high liberalisation offers in services and investment (see chapter four), and the trade minister appears to have been a strong supporter of the EPA.[184]

The manner in which leading commentators described the tensions in the region gives credence to the argument that economic policy ideas played an important role in shaped the way that governments conceived of their interests in the negotiations. As one analyst noted 'fundamental *philosophical* divide has emerged in the context of the EPA over the direction in which the region and its integration process is headed' [emphasis added].[185] He identified two competing visions: 'Open regionalism' championed by Jamaica and Barbados, which sought to use models and development tools that relied on opening and integration with the wider world; and 'defensive regionalism' championed by Guyana and OECS countries, which sought to use solidarity and political leverage of the 'developing' world as a prelude to a more gradual insertion of the region into the global economy.[186]

Geopolitical Interests: EPAs as Furthering Interests

Finally, there is credible evidence that perceptions of geopolitical interests shaped the Caribbean's negotiating positions, just as they had in Africa and the Pacific, but they did so in very different ways.

First, there was a clear perception among leading Caribbean politicians that major geopolitical shifts had reduced the region's negotiating leverage vis a vis the EU (unlike in Africa where there were perceptions that stronger ties with emerging economies had strengthened leverage). As Barbados' prime minister explained, 'the war on terrorism, a

[183] Clive Thomas, a leading economist in the region is from Guyana; Havelock Brewster was Executive Director for the Caribbean at the Inter-American Development Bank and previously Guyana's Ambassador to the European Union;
[184] Personal observation
[185] Arthur (2008)
[186] Jessop "Two Caribbeans and the EPA" (2008)

Europe of twenty-five, a new development focus on Africa, and the changing global economic balance of power consequence upon the end of the Cold War *have marginalized* the Caribbean in European circles' [emphasis added].[187] What is fascinating is that, unlike in the 1970, the Caribbean leadership did not perceive of the ACP coalition as a mechanism for leveraging Africa's favourable structural position to its own advantage. Again, quoting the Barbadian prime minister on the ACP coalition, 'Values such as kith and kin, and solidarity are sadly coming to mean less and less in an intensely competitive global arena'.[188] Thus, irrespective of the merits of the EU's EPA proposals, there appears to have been a perception among leaders that they were not in a position to strongly oppose major aspects of the EU's proposals.

Second, many expected the EU to be a softer negotiating partner, so negotiating first with the EU would enable the region to acquire valuable negotiating experience and set a positive precedent for future negotiations with the United States and Canada. [189] As a senior government official explained 'The EU has a culture of development which makes it easier… the US has only one template and won't alter it… The EPA will set the benchmark for other bilaterals.'[190] A former senior official asserted that 'They [political leaders] thought they stood a chance of a good deal with Europe and could set a low benchmark for other bilaterals'.[191]

In practice, the EU proved to be a tougher negotiator than the region had anticipated. As a senior diplomat noted 'In Lomé negotiations, Europe was less hard-line, less mercantilist.

187 Arthur (2008)
188 Ibid.
189 The Caribbean region will soon be under immense pressure from the USA to enter bilateral negotiations. Interview, government official
190 Interview, government official
191 Interview, former government official. There are signs that this line of thinking was present from the outset of the EPA negotiations. As early as 2002 the former head of the regional negotiating machinery is cited as saying 'Caribbean countries would stand to benefit more from such an arrangement with the EU, which could strengthen their bargaining power in both the WTO, and the FTAA' cited in Lewis "Negotiating with Unequal Partners: Small States in the New Global Economy" (2002)

Europe still had a sense of obligation and operated in the context of development... Previously it had belief and passion for development and saw trade in development terms'.[192]

Yet the EU's hard-line approach and its unwillingness to make significant major compromises did not deter the region from concluding a 'full' EPA (unlike the Pacific region which opted out of services negotiations when it became clear the EU would not make a substantial offer in Mode 4). This is arguably attributable to the fact that, despite the EU's intransigence, the EPA text was still considered to be substantially more flexible than the offer that the US was likely to make. Indeed, while commentators note that the EU-CARIFORUM EPA set a new precedent for EU free trade agreements it remained more flexible than US free trade agreements, including DR-CAFTA, in key areas.[193]

Finally, there is evidence that the Caribbean expected to be rewarded by the EU for being the first ACP region to conclude a 'full' EPA. As the region's lead negotiator argued 'The EU has not recorded any success in a trade negotiation at either the multilateral or bilateral level and this was one of its strong motivations for investing so much political capital in the EPA process. The Caribbean, rather than being in a position of weakness, as some have opined, was in a position to capitalise on the anxiety of the EU to attain certain gains and concessions'.[194]

7.7. Conclusion

This chapter has put forward an explanation for the final piece of the EPA puzzle, namely the reasons why African and Pacific regions opted to oppose many aspects of the EU's EPA proposals while the Caribbean generally embraced the EPA approach.

[192] Interview, government official
[193] For instance, the EPA did not include provisions for investor-state arbitration
[194] Bernal (2008)

It explored the role of lobbying, and showed that, contrary to the prevailing literature, lobbying only provides a partial explanation. Four lessons stand out: First, in many ACP countries, lobbying was not very intense. Second, inefficient preference-dependent exporting firms, rather than inefficient import-competing firms were often the strongest lobby groups and had the greatest propensity to 'capture' government negotiating positions.[195] Third, civil society organisations were a major source of lobbying, yet they receive relatively little attention in the literature. Fourth, the direction of lobbying was not always as expected, rather than interest groups always lobbying government, in several instances, ACP governments actively mobilised societal interest groups.

Scrutiny of the available evidence suggests that three factors, aside from lobbying, shaped ACP negotiating decisions. Impact assessments provided some indication of the likely costs and benefits of an EPA, which influenced government positions. Information about likely fiscal losses had a particularly salient impact. However, in many respects, ACP governments found themselves negotiating in an information vacuum. Credible and detailed information on how exactly the EU's proposals in services and trade-related areas would impact their countries was particularly scarce.[196] It proceeded to highlight two types of ideas had a particularly strong influence over negotiating objectives: economic ideas about the links between trade policy and development and perceptions of geopolitical interests.

While all three factors appear to have had an impact in all regions, they played out in different ways, and this helps to account for the divergent approaches of the African and Pacific regions on one hand, and the Caribbean on the other (Table 36). The contrasting ways in which economic ideas shaped negotiating objectives in African and Pacific regions on one hand and the Caribbean on the other, shows that, as Goldstein (1988) asserted 'there are

[195] This finding echoes those of Sánchez-Ancochea (2008); Shadlen (2008)
[196] This point was also made during interviews with government officials

competing interpretations of optimal economic policy… and the ascendance of one policy idea, rather than another, has important policy ramifications'.[197]

Table 36: The Impact of Information and Ideas on ACP Negotiating Positions

	ECOWAS	CEMAC	ESA/EAC	SADC	PACP	CAR
Impact Assessments: Concern about fiscal losses?	Yes (high)	Yes (high)	Yes (for some)	Yes (low)	Yes (low)	Yes (low)
Economic Ideas: EPA approach perceived to support development?	No	No	No	No	No	Yes
Geopolitical Interests: EPA perceived as furthering geopolitical interests?	No	No	No	No	No	Yes

Next Chapter

The next and final chapter concludes the thesis by summarising the main argument and drawing out the theoretical contributions that arise from the analysis.

[197] Goldstein (1988)

Chapter 8. Conclusion: Towards a Theory of Asymmetric Trade Negotiations

The previous chapters looked in detail at the politics of recent EPA negotiations between the EU and ACP countries. The pattern of outcomes from the EPA negotiations was puzzling because, despite its vastly greater economic size the EU was, for the main, unable to realise its objective of concluding six broad and deep free trade agreements with seventy-six of the world's smallest developing countries in Africa, the Caribbean and Pacific (ACP). I explained these outcomes using a range of methods including historical institutional analysis, statistical modelling, and by scrutinising a wealth of primary documents and transcripts of interviews with negotiators.

The EPA case study dramatically illustrates that small states can influence the outcomes of international negotiations to a greater extent than scholars of international relations usually assume. In particular, the smaller country can exercise a degree of resistance and blocking power that is often underestimated.

In this concluding chapter I distil the core theoretical findings that emerge from the preceding chapters and provide a series of contingent generalisations that are broadly applicable to asymmetric trade negotiations. My contribution is, firstly, to show that scholars often assume, implicitly, the wrong parameters when they model asymmetric trade negotiations, placing too much emphasis on the ways in which domestic politics influence outcomes, and too little on the way in which international power relations influence outcomes. Second, I show that even where scholars do consider international power relations, they tend to overlook key power resources that smaller countries possess, and therefore assume that negotiations are more asymmetric than they actually are.

My core argument then, is that scholars need to pay much greater attention to international power relations and the process of strategic interaction between, and they need to do this is a more nuanced and precise manner. In this conclusion, I build from the empirical analysis of the EPA negotiations in the preceding chapters to theorise about the ways in which asymmetric relations between countries in trade negotiations affect outcomes. I provide a set of contingent generalisations about the ways in which large and small states interact during trade negotiations and the conditions under which particular outcomes can be expected to occur.

The EPA negotiations are an ideal basis for distilling theoretical insights about asymmetric negotiations. Given the vast discrepancies between the EU and ACP countries in the size of their markets, level of development, and availability of negotiating expertise, the EPA negotiations are an example of *profoundly* asymmetric negotiations. Since the EPA negotiations are an extreme case, they sharply illuminate how asymmetry affects negotiating processes and outcomes.

The chapter is structured as follows. Section 8.1 summarises the principal empirical findings from the EPA negotiations, which are the basis for the theoretical argument. Section 8.2 generalizes these findings, articulating ways in which we can expect asymmetry to affect other trade negotiations. Section 8.3 sets out the motivations and strategic choices from the perspective of the large state, and Section 8.4 examines them from the perspective of the small state. Section 8.5 presents the range of likely outcomes from asymmetric trade negotiations and the conditions under which we expect each to occur. Section 8.6 discusses the generalizability of this framework for asymmetric negotiations beyond trade.

8.1. Main Empirical Findings from The EPA Negotiations

What are the main empirical findings of the previous chapters? The first is that despite the vast asymmetry that characterised negotiations between the EU and all six ACP regions, there was a substantial variation in EPA outcomes. The detailed analysis of EPA outcomes enabled us to establish in precise terms the nature of variation in outcomes across the ACP regions (chapter four). It showed that the EU was unable to secure the majority of its negotiating objectives. Only one region (CARIFORUM) concluded an agreement that was broadly in line with the EU's objectives. In three regions (PACIFIC, ECOWAS, CEMAC) very few countries concluded EPAs, and, where they did, the scope was limited. In two regions (SADC, ESA) the EU came closer to realising its objectives as a higher proportion of countries concluded EPAs, but the scope was also limited. Moreover, close legal analysis revealed considerable variation in the fine-details. While some ACP regions agreed to very restrictive provisions that largely reflected the EU's negotiating objectives, others secured significant flexibilities. After agreements had been concluded, ACP countries proved adept at evading signature, ratification and implementation.

The second finding is that vulnerability to coercive pressure explains most, but not all, of the variation in EPA outcomes (chapter five). ACP countries that were vulnerable to coercive pressure from the EU were far more likely to enter an EPA than countries that were not vulnerable, a finding that is statistically significant and robust. The EU's threat to withdraw trade preferences was the most important source of coercive pressure. This finding is noteworthy because coercive pressure is absent from most scholarly explanations of PTA formation, which focus on national political processes such as lobbying by domestic interest groups. Traditional explanations for PTA outcomes attribute causal primacy to political processes at the domestic level, but overwhelming evidence from the EPA negotiations leads me to attribute causal primacy to political processes at the international level.

The third finding is that the process and tactics used in negotiations can matter more than is commonly assumed: it is only possible to account for variation in the content of the EPA texts and the extent of implementation if we examine negotiating process and the strategic and tactical choices of the EU and ACP countries and regions (chapter six). The analysis showed that the EU adopted a hard-line negotiating strategy in a bid to fulfil its negotiating objectives without making compromises or concessions. It used a range of persuasive tactics, seeking to change the ways that ACP government perceived their national interests in order to bring them in line with its own, and it used a range of pressure tactics including opening with high demands, refusing concessions, manipulating information, worsening the alternatives available, and making threats.

ACP regions responded in three broadly different ways and this led to corresponding differences in the content of the EPA texts: one region sought to make changes in the margins of the texts; three regions tabled substantive counter-proposals, and the remaining two focused on blocking issues of defensive interest. After texts had been agreed, a few ACP countries proceeded to implement, while others adopted different strategies for evading signature, ratification and implementation.

The fourth and final finding is that by analysing domestic political processes we can account for the different strategic choices of ACP countries and explain why most countries opposed major aspects of the EU's proposals but a minority embraced them (chapter seven). Scrutiny of the domestic politics of the EPA negotiations in key ACP countries shows that lobbying by economic interest groups was not the main determinant of state preferences. Thus, ACP governments were more than, in the words of Goldstein (1988) 'just a conduit translating group pressure or international demands into state policy'.[1]

[1] Ibid.

The recent literature on trade negotiations acknowledges that state preferences are not always determined by lobbying and suggests that the preferences of policy-makers may have a bearing on government actions, yet there is very little systematic analysis of why policy-makers take some decisions and not others.[2] This thesis helps to fill this gap by identifying three factors (other than lobbying) that shaped the negotiating positions of ACP governments: information and analysis of the likely impact of the EU's proposals on ACP countries, particularly estimates of government revenue losses; economic ideas about the impact of the EU's EPA proposals on development; and perceptions of geostrategic interests.

These four findings stand in stark contrast to the dominant arguments in the literature, which attribute causal primacy to domestic political economy factors. In the EPA negotiations, political processes at the international level were the primary drivers of outcomes. More precisely, variations in the vulnerability of ACP countries to coercive pressure from the EU determined the main contour of outcomes, namely whether or not a given ACP country entered an EPA, while variations in the negotiating strategies and tactics of ACP countries accounted for variation in the content of the EPA texts and degree of implementation.

Domestic political economy factors did play a role – they help to account for the differing preferences of ACP countries – but on their own, they fall far short of providing us with a convincing explanation for EPA outcomes. Prevailing theory cannot explain EPA outcomes, which suggests a need for better, more sophisticated theoretical explanations of how negotiations work under conditions of profound asymmetry. The first building block of such an explanation is a better understanding of asymmetry and why it matters.

8.2. Why Asymmetry Matters

Asymmetry affects PTA negotiations in two ways. The first is in the division of gains embodied in the final agreement. Countries come to the negotiating table with different levels

[2] Milner (2013)

of resources and, as a result, it is reasonable to expect that, *ceteris paribus*, the gains will be divided asymmetrically, with the larger country obtaining a greater share.

In a trade negotiation, the relative size of the domestic market is usually the primary source of leverage, and a country with a small market has less to offer, so we can expect it to come away from the negotiation having made fewer gains than if it had a large domestic market. Differences in levels of development and population size can also confer advantages on the better-endowed country, and we can expect that this will further skew the outcomes. Empirical evidence from ACP countries shows that the smallest and poorest developing countries are at a particular disadvantage in trade negotiations as, in addition to very small markets, they have lower levels of technical expertise at their disposal (they have few negotiators and so each negotiator has to cover more issue areas and is typically less specialised than their large-country counterpart) and often lack the requisite finances to deploy a full team of negotiators overseas.[3]

The second, and more pernicious way is that asymmetry provides the large country with recourse to coercive pressure tactics, with the implication that negotiations are likely to be more adversarial than symmetric negotiations. PTA negotiations are usually assumed to follow a logic of cooperation: two countries with different preferences negotiate to see if they can reach an agreement that leaves them both better off than the status quo *ex ante*. If they are able to devise such an agreement, they conclude and apply it. If their preferences prove to be incompatible, they simply exit and return to the status quo. In many studies, the process of negotiating is conceived as a straightforward technocratic exercise and little attention is paid to processes of strategic interaction between the two countries.[4] In stark contrast, in an asymmetric negotiation, the large country has the opportunity to use coercive pressure and it

[3] Jones, Deere-Birkbeck, and Woods (2010)

[4] As Odell (2000) rightly points out, negotiations are rarely this straightforward in practice because countries negotiate under conditions of information asymmetric and bounded rationality, and, as a result, the negotiating *process* invariably shapes outcomes.

is possible that the small country can be compelled into a trade agreement that leaves it *worse off* than it was *ex ante*.

For these reasons, the causal logic and outcomes of asymmetric trade negotiations can be expected to differ from those of symmetric negotiations. The next sections draw from the EPA case to examine the motives and strategy choices of large and small states in the context of asymmetric negotiations. I generate contingent generalisations about how large and small states can be expected to behave, and the outcomes we are likely to see.

8.3. Large State Motives and Strategy Choices

Large states, whether the EU, US or China, are often the demandeurs of PTAs and so we start by looking at the motivations of large states and then turn to look at their strategy choices, seeking to understand why and how asymmetry affects motivations and strategy choices.

Why would a large state seek a PTA with a small state? Evidence from the EPA negotiations and wider literature highlights three motivations. The first motivation is *precedent setting*, where large states use PTAs as a stepping-stone towards establishing a harmonised set of global trade rules, and this was a major objective of the EU during the EPA negotiations. Although the precedent-setting argument is not prominent in the literature, there is credible evidence that this is a major objective of large states. Since the late 1990s, the EU and US have seen their proposals in many areas blocked in WTO negotiations and in response they sought to negotiate PTAs with the explicit aim of setting a precedent for future multilateral rules.[5] Indeed, the EU and US seek a high level of coherence across the PTAs they negotiate, developing 'template' or 'model' texts as the basis for the negotiations. In the EPA negotiations the EU tabled such a text and the EU's reluctance to grant ACP countries greater

[5] For instance, after the failed WTO Ministerial in 2003 the US Trade Representative announced that the USA would push ahead with free trade and investment agreements with 'can-do' countries. See statement of Robert B. Zoellick, US Trade Representative, before the Committee on Finance of the US Senate, 5 March 2003.

flexibility in market access negotiations appears to have been driven, in part, by concerns this would set a negative precedent.

The second motivation is *market access*, where the large state seeks to form a PTA to secure greater access to the markets of its trading partners. The large state may have market access interests in asymmetric PTA negotiations if a small state has resources that the large state considers particularly strategic, or if the large state anticipates that the markets of the small state will be attractive in the longer term. For instance, many small African states have deposits of rare metals and minerals that are in high global demand, and several analysts argued that securing access to mineral resources was a major factor behind the EU's insistence on the abolition of export taxes during the EPA negotiations (chapter five). In addition, the African region has a rapidly growing consumer market and, despite its relatively small size, is an increasingly attractive destination for investors.[6] In other instances, as with Hong Kong and Qatar, small states may have a geographic location that makes them an attractive base for investors.

The third motivation is *normative*, where large states used PTAs to 'export' economic policies and ideas. Several scholars have argued that the EU in particular seeks to further normative objectives through PTA negotiations, persuading others to emulate its own model of economic integration and to adopt particular standards of labour, environmental protection and 'good' governance.[7] Indeed, as previous chapters have shown, the EU justified its EPA proposals on normative grounds, arguing that they would foster development in ACP countries.

How can we expect large states to approach negotiations with small states? What are the negotiating tactics available to them and which broad strategy choices can they be expected to

[6] See for instance Roxburgh et al. (2010)
[7] For an analysis of the EU's promotion of human rights through trade agreements, see Bartels (2008)

make? Let us make the reasonable assumption that government representatives negotiate under conditions of asymmetric information whereby they have more information about their own interests and negotiating objectives as well as the alternatives available to them, than they have about the interests, negotiating objectives and alternatives available to the other party. For this reason, they are unable to predict how the other party will respond to specific tactical moves. In addition let us assume that government representatives are boundedly rational, so that even where information is available, it is not complete, and they have limited time and resources to analyse it. Thus government officials 'satisfice' rather than 'optimise', seeking a satisfactory solution rather than an optimal one, and their decisions are often guided by rules of thumb and past experience.[8]

The analysis of the EPA negotiations suggests that, when negotiating with a smaller state, large state will choose a strategy that is dominated by distributive tactics.[9] The analysis revealed that the EU adopted a hard-line distributive strategy, making very few integrative moves. In a pattern reminiscent of other asymmetric negotiations, the EU tabled a template text on a 'take-it-or-leave-it' basis and, when ACP state resisted, upgraded its strategy to one of 'take-it-or-suffer'.[10] The EU's key tactical moves included refusing to make substantive concessions or compromises; using 'divide and rule' tactics to undermine the ACP coalition; using delay tactics to amplify the coercive pressure ACP states were under; making threats related to aid; and using a series of persuasion tactics aimed at convincing ACP governments of the merits of its proposals.

[8] Simon (1983)

[9] Negotiation tactics can be divided into two broad types. Tactics that create value and leave both parties better off are called 'integrative'. They rely on the parties cooperating, sharing information and brainstorming in order to find ways to design an agreement that will be of mutual benefit. In contrast, 'distributive' tactics are used to claim value from the other party without making any concession in return. These may be coercive, whereby the large state seeks to pressure the small state into an agreement that the latter does not want. Alternatively the may rely on persuasion, as the large state seeks to change the preferences of the small state and bring them in line with its own, thereby claiming value without making any concession in return

[10] Zartman and Rubin (2002)

There is a clear rationale for this approach: because of the asymmetric relationship, the large state knows that it can use tactics based on coercive pressure without fear of retaliation. Although the large state cannot know for sure how effective coercive pressure tactics will be (the small state may simply walk away rather than capitulate) the large state we can expect the large state to first try to use distributive tactics on the basis that the small state cannot retaliate, so it may be able to obtain its objectives without making significant concessions. If the small state refuses to capitulate and threatens to walk away, then large state has to consider whether to offer concessions or risk negotiations breaking down. In effect, when negotiating with a small state, we can expect the large state to start with a distributive strategy and to consider a more integrative approach only if its distributive tactics fail.

A large state is likely to be particularly strongly disposed towards the use of distributive tactics if there is a very marked degree of asymmetry between the parties, or if these tactics have worked in the past. In the EPA negotiations, the EU underestimated the resolve and capacity of ACP countries to resist, and it assumed that a highly distributive strategy would work because it had worked in two decades of previous negotiations with ACP countries: during the 1980s and 1990s, the EU had applied pressure and seen ACP countries concede. The EU negotiators failed to recognise the structural shift that had taken place with the rise of the emerging markets, strengthening the negotiating position of ACP countries, and it failed to adapt accordingly.

Psychology studies show that this is a common problem for negotiators from stronger parties. They tend to overplay their hand because they overestimate their power advantage, assuming that they are stronger and the other party is weaker than they are in reality. Negotiators often display ‘cognitive closure’, transposing a strategy that worked in another negotiation to the present negotiation, without diagnosing the new negotiation to see if the strategy is likely to work.[11]

A fascinating aspect of the EU's negotiating strategy during the EPA negotiations was that it invested heavily in persuasion tactics, using these alongside pressure tactics. The EU sought to persuade ACP countries to change their preferences: distributing information about the possible gains from an EPA, including creating a 'good news' website and running training workshops for ACP interest groups and journalists.

Why might large states use persuasion tactics, rather than relying solely on pressure tactics? A plausible explanation is that even if coercive pressure tactics work, and the large state succeeds in pressuring the small state into a PTA it does not want, then the small state has every incentive to renege during implementation. In contrast, if the large state is successful in persuading the small state to alter its interests so that they are aligned with its own, then the small state will perceive itself as having entered an agreement that leaves it better off than it was *ex ante*, removing the incentive to renege. Thus, from the perspective of the large state, over the lifetime of the agreement persuasion tactics are a less costly option than pressure tactics.

So far, I argued that large states have three motivating factors that prompt them to engage in asymmetric PTA negotiations (precedent-setting, market access, and normative objectives) and that large states will pursue a distributive strategy when negotiating with a small state. Whether a large state adopts a *highly* distributive strategy or a *moderately* distributive strategy is likely to be influenced by the relative importance they attach to obtaining each of the three strategic objectives.

[11] Thompson (2012)

When the large state has strong precedent-setting and/or normative objectives but weak market access objectives, the large state will be inclined to adopt a highly distributive strategy throughout the negotiations, seeking 'all or nothing' and preferring to offer side payments (such as increased aid) or let negotiations break down, than make compromises on the content of its template text. In contrast, when the large state has strong market access objectives, it is more likely to pursue a more moderate strategy, and will be prepared to make some concessions in order to secure its market accession objectives. The analysis of the EPA negotiations suggests that the precedent-setting motive was very strong. In some regions, the EU proved to be more willing to remove entire issue areas from the negotiating agenda, rather than concede to substantial changes to its template text.[12]

The preceding analysis provides us with a series of contingent generalisations about how large states will negotiate with small states. *Ceteris paribus*, we can expect large states to:

(1) Seek to fulfil three main objectives: precedent-setting, market access and normative goals;

(2) Start by using highly distributive tactics and only if, after concerted effort, these do not work, consider using integrative tactics

(3) Move to a more integrative strategy only if market access objectives outweigh harmonisation and/or normative objectives. If the latter dominate, the large state will prefer to make side-payments or let the negotiations break down than make concessions to its template text.

8.4. Small State Motives and Strategic Choices

This section turns to examine asymmetric negotiations from the perspective of the small state. The EPA negotiations powerfully show that small states have considerable room for manoeuvre. Even under conditions of profound asymmetry they suggest that small states do

[12] For instance, when the Pacific ACP region tabled a counter-text on intellectual property the EU preferred to remove intellectual property from the negotiating agenda rather than engage in substantive discussions on the region's proposal.

not simply capitulate under coercive pressure - they have a range of motives and variety of strategic options and can have a substantial influence over the outcome of negotiations.

8.4.1 Small State Motives

Evidence from the EPA negotiations and wider literature highlights four motivations. First, the *market access* motivation is relevant. Because they have small domestic markets, small states face economies of scale constraints and they seek to enter PTAs with large states in order to expand production. Expanding market access was not a major motivation in the EPA negotiations as ACP states had very high levels of market access under the Lomé and Cotonou arrangements.[13] Yet ACP countries did have a defensive interest in preserving existing levels of market access – their access under Lomé and Cotonou preferences was vulnerable as it could be withdrawn at the EU's discretion. Empirical evidence suggests that locking-in preferential market access was also a major motivation for small Latin American states entering PTAs with the United States. Notably, ACP states also aimed to secure additional finance from the EU to address competitiveness constraints so that they could make use of market access opportunities. A variant of this defensive move to secure market access occurs when small states enter PTAs out of concern that they will be, or have been, 'left out in the cold' when trading partners enter into PTAs with third parties causing harmful trade diversion.[14]

The second motivation is to preserve policy space. Small states often have a strong interest in *opposing* the trade rules proposed by large states on the basis that they will have negative distributive ramifications. This is particularly likely to be the case when there is a large difference in the levels of development between the two states. In the WTO, developing countries have blocked negotiation on investment, government procurement and competition on the grounds that the rules proposed by advanced industrialised countries in these areas run

[13] There were some exceptions as, Pacific countries sought relaxed rules of origin in fish and, together with the Caribbean, greater access for temporary workers.
[14] See for instance Gruber (2001); Baldwin and Jaimovich (2012)

counter to their development interests. In the EPA negotiations, many African and Pacific countries opposed major aspects of the EU's proposals on the same grounds.

A third motivation is *precedent-setting*. As the analysis of the EPA negotiations clearly shows, Pacific countries sought to use the EPA negotiations to set a favourable precedent for subsequent negotiations with Australia and New Zealand, while the Caribbean aimed to set a positive precedent for negotiations with the US.

The fourth motivation is to *improve credibility*. The literature notes that states enter PTAs to lock-in economic policies. Entering a PTA with a large state is a particularly strong form of commitment as the small state will have fewer opportunities to renege. Analysis of the EPA negotiations suggests that the Caribbean did embrace major aspects of the EU's proposals because, at least in part, the governments believed that this would facilitate trade and economic development, including by sending a positive signal to investors (chapter seven). Improving credibility is also cited as an objective pursued by Mexico in the context of NAFTA negotiations.[15]

In the EPA negotiations, ACP states clearly prioritised the defensive aspects of the market access objective, namely locking-in existing access and mitigating the adverse affects of the EPAs. There is evidence of a similar prioritisation in PTA negotiations between Latin America and the US, where small states sought first and foremost to lock-in existing levels of preferential access.[16] There is a clear rationale for prioritising the defence of existing market access, as there are often immediate and high costs associated with losing trade preferences, which are not associated with a failure to fulfil the other objectives. For instance, if a small state accepts the rules proposed by large states in intellectual property, investment, and competition, this is likely to have high costs, but only in the medium to long term. In contrast,

[15] Shadlen (2005)
[16] Shadlen (2008)

deciding to walk away from a PTA negotiation may result in the immediate loss of preferential market access.[17]

8.4.2 Small State Strategy Choices

Let us assume that the small state expects the large state to adopt a distributive negotiating strategy from the outset, tabling a template text on a take-it-or-leave-it basis. Given this expectation, how can we expect the small state respond?

The analysis of the EPA negotiations shows that the small state has three broad options: (1) It can *cooperate,* broadly accepting the large state's proposals, seeking minor changes in the margins, and requesting relatively minor market access concessions. Such a strategy would be characterised by a relatively high number of integrative tactics, as the small state seeks to work with the large state to create an agreement that leaves both parties better off. (2) It can *exit*, leaving the negotiating table in favour of the status quo option or an outside alternative. (3) It can *resist*, rejecting large parts of the large state's proposals and seeking a very different agreement. Such a strategy would be characterised by a relatively high number of distributive tactics, as the small state seeks to defend itself against value-claiming tactics by the large state.

There are two other theoretical possibilities, which are not considered in detail as they are extreme cases that we very rarely observe. If the interests of the small state are exactly the same as those of the large state, the small state may opt to *embrace* the large state's proposal, accepting and implementing it without seeking changes or market access concessions in return. Alternatively, even if the small state has different interests from the large state it may decide to simply *capitulate* under pressure from the large state, rather than exit or resist, accepting and implementing the large state's proposal without seeking changes or market access concessions in return.

[17] For an analysis of the costs see Shadlen (2005)

Under what conditions can we expect a small state to cooperate, exit, or resist? Once again, let us assume that the government of the small state is operating under conditions of asymmetric information and bounded rationality. Let us also assume that, despite these informational constraints, the small state has identified a clear set of negotiating objectives and knows the preferred outcome it would like to see.[18]

We can expect the strategy choice of the small state to be affected by the relative weight attributed to each of four objectives stated above (market access, protecting policy space, making a credible commitment, and setting a positive precedent) and the small state's evaluation of the proposals tabled by the large state.

If the small state conceives the large state's proposals as being an improvement on the status quo *ex ante*, we can expect it to adopt a strategy that is broadly based on cooperation. For instance, if the small state wants to lock-in existing market access, places high priority on making a credible commitment towards liberal reforms, and perceives that the large state's proposals will set a positive precedent for future PTA negotiations (as the Caribbean perceived in the context of the EPA negotiations).

If on the other hand, the small state perceives the large state's proposals as worse than the status quo *ex ante,* it is likely to opt for a strategy based on resistance or exit. For instance if the small state attaches a high value to policy space and perceives the large state's proposals to be deeply compromising (as many African countries argued in the EPA negotiations), or if it perceives that the proposals will set a negative precedent for future PTA negotiations (a concern of the Pacific in the EPA negotiations).

The analysis of the EPA negotiations shows that two background conditions can be expected to shape the strategy choice of the small state. First, and most important, is the degree to

[18] This is not always the case. See Jones, Deere-Birkbeck, and Woods (2010)

which the small state is *vulnerable to coercive pressure* applied by the large state. In chapter five I showed that there are two conditions that, if met, render a small state vulnerable to coercive pressure: (1) The large state provides the small state with material benefits that are of substantial value to the small state (so their withdrawal has the potential to inflict high costs on the small state) and over which the large state has discretionary control (so the large state can credibly threaten to withdraw them). (2) The alternative options available to the small state are substantially inferior to the status quo *ex ante,* so that, in the event that the large state withdraws material benefits, the small state would incur high costs if it chooses to exit the negotiations and switch to its next best alternative.

Conversely, if the small state does not receive benefits from the large state over which the latter has discretionary control, or if it can switch to an alternative option that provides equivalent benefits, then the small state is not vulnerable to coercive pressure. In the EPA negotiations, there were a few ACP states, including Gabon, for whom unilateral trade preferences had very little value, so they could exit the negotiations at little cost. While preferences were of value to many least developed countries, they had an excellent alternative option in the form of Everything But Arms, which similarly enabled them to exit from the negotiations with little cost.

The analysis clearly shows the implication of vulnerability for the strategy choice of the small state: *Ceteris paribus*, when a small state is vulnerable to coercive pressure, exit becomes a less attractive option and the small state is more likely to opt for a strategy based on resistance.

The second background condition that affects strategy choice is the *availability of negotiating resources*. There are two principal types of resource: possession of strategic assets and presence of negotiating expertise. If the small state is endowed with assets that are of value to the large state, then, if it can find ways to bring these assets to play in the negotiations, it can use these as leverage and push the large state towards a more integrative approach (as explained above, the presence of strategic assets raises the costs of no agreement from the perspective of the large state, making it more likely to offer concessions). A powerful example of this is found in the 1970s. Although ACP countries were profoundly dependent on the EEC, so the costs of exiting from the negotiation were high, they were able to leverage Europe's desire for access to raw materials to exert a major influence over outcomes (chapter three).

Even if it has few strategic assets, if the small state has substantial negotiating expertise, then it can use a range of negotiating tactics to secure concessions. As the analysis of the EPA negotiations shows, the small state may use technical and legal expertise to secure modifications to the legal language of the text. Alternatively, it may develop alliances with stakeholder groups in the large state or cultivate support in the media, in order to exert pressure on the large state to grant concessions.[19]

It is reasonable to assume that, when a small state knows has assets that the other party values and/or has a high level of negotiating expertise, it can expect to have greater influence over the outcome of the negotiations than it would have in the absence of these assets. Thus, *ceteris paribus*, the small state is more likely to adopt a strategy of resistance and to push for major alterations to the text proposed by the large state, than to simply exit from the negotiation or avoid negotiating in a specific issue area. In the EPA negotiations, ACP regions that opposed the EU's proposals and had relatively high levels of negotiating resources (including the Pacific) invested in developing alternative texts. In contrast, regions with lower levels of capacity (including ECOWAS) focused on removing issues from the negotiating table.

[19] See Jones (2013) for the full range of tactics small states can use

The preceding analysis enabled us to set out a series of contingent generalisations about the conditions under which a small state will opt to cooperate, resist or exit in an asymmetric negotiation (these are summarised in Box 1). *Ceteris paribus*, we can expect small states to:

(1) *Cooperate* if they perceive the text tabled by the large state to be an improvement on the status quo;

(2) *Exit* if they perceive the text tabled by the large state to be worse than the status quo, they are not vulnerable to coercive pressure (either because the large state provides no material benefit that can be withdrawn at its discretion, or the small state has good outside options), have few strategic assets, and low levels of negotiating expertise

(3) *Resist* if they perceive the text tabled by the large state to be worse than the status quo and they are vulnerable to coercive pressure OR if they are not vulnerable to coercive pressure but have strategic assets and/or high levels of negotiating expertise.

Box 1: Small State Strategy Choices

The Small State will:

Cooperate if: SS ideal > LS initial offer > status quo > outside alternatives

Exit if: SS ideal > [~~status quo~~] ≈ outside alternatives > LS initial offer + low negotiating resources

Resist then exit if: SS ideal > [~~status quo~~] ≈ outside alternatives > LS template + substantial negotiating resources

Resist if: SS ideal > [~~status quo~~] > LS initial offer > outside alternatives

Note: SS denotes 'small state'; LS denotes 'large state'

8.5. Negotiating Dynamics

In this section we turn to look at negotiating dynamics. What happens when large and small states deploy the strategies identified above? How can we expect negotiations to unfold and what is the outcome likely to be? I have argued that the large state will approach an asymmetric negotiation with a distributive strategy, tabling a template text on a take-it-or-leave-it basis. I now examine the dynamics and likely outcomes in three scenarios: when the small state cooperates, when it seeks to exit, and when it opts to resist.

8.5.1 The Logic of Cooperation

I argued above that the small state will adopt a broadly cooperative strategy if it perceives the initial offer by the large state to be an improvement on the status quo. In this case, the aim of the small state will be to obtain an agreement that is as close as possible to its ideal outcome, including by securing changes to the large state's text, obtaining additional market access, and excluding sensitive sectors from liberalisation.

In this scenario it is highly likely that an agreement will be reached as the small states prefers to accept the large state's initial offer rather than exit. The extent to which the final outcome reflects the small state's ideal outcome rather than the large state's initial proposal will depend on its negotiating resources. If the small state has a high level of strategic assets and a high level of negotiating expertise (so it leverages its strategic assets to maximum effect in the negotiating room) then the large state is more likely to make substantial concessions, trading some of its precedent-setting objectives in order to further its market access objectives. The outcome will be a moderately asymmetric agreement, where the small state is better off than the status quo *ex ante*.

If the small state has few strategic assets, it will be harder for the small state to secure major concessions from the large state, but it may be able to secure some concessions through the skilful use of negotiating tactics. Even if the small state neither strategic assets nor negotiating expertise, the large state may make some minor concessions, even if these are more cosmetic than substantial, out of recognition that the small state will need to 'sell' the final agreement to its citizens at home. In the absence of substantial negotiating resources, the outcome will be a highly asymmetric agreement, although the small state will still be better off than the status quo *ex ante*.

Notably, in this cooperative negotiation, the degree to which the small state is vulnerable to coercive pressure is not a primary driver of the outcome. Given that the small state considers the template text to be an improvement on the status quo and, by logical inference, the available alternative options, then irrespective of whether the large state exerts coercive pressure, thereby removing the status quo option, the small state will still opt to sign the agreement rather than exit. However the use of pressure tactics may still be observed: the large state does not know the small state's perception of its template text or the strength of its alternative options (and the small state has no incentive to reveal this information as it would reduce its negotiating leverage). The dynamics and expected outcomes when a small state opts to cooperate are summarised in Box 2.

Box 2: The Logic of Cooperation: Negotiation Dynamics and Expected Outcomes

LS adopts a distributive strategy; SS response is to cooperate when:

- SS ideal > LS initial offer > status quo > outside alternative

(Outcome 1) Highly Asymmetric Agreement, SS marginally better off than status quo ex ante:

- SS ideal > LS final offer > status quo > outside alternatives

(Outcome 2) Moderately Asymmetric Agreement, SS much better off than status quo ex ante:

- SS ideal ≈ LS final offer >> status quo > outside alternatives

Description:

Agreement is highly likely. The degree of asymmetry will depend on the strategic assets held by the small state and its negotiating expertise.

Note: SS denotes 'small state'; LS denotes 'large state'

This 'cooperate' dynamic is an idealised form of the EPA negotiations between the EU and the Caribbean. The Caribbean region broadly welcomed the EU's proposals and sought a 'full' EPA, because it wanted to set a positive precedent for future PTA negotiations and to send a credible signal to foreign investors. Although the Caribbean region had relatively few strategic assets and was not particularly valuable to the EU in market access terms, the region had substantial negotiating expertise and was able to secure some significant concessions in the fine details of the agreement.

8.5.2 The Logic of Exit

I argued above that a small state will opt to exit if it perceives the text tabled by the large state to be worse than the status quo, it is not vulnerable to coercive pressure, and has few negotiating resources. In this case exit is the most attractive option, as the small state has little prospect of using strategic assets and negotiating skills to obtain a negotiated outcome that is an improvement on the other options available.

The small state will either exit in favour of the status quo or in favour of an alternative option. Under conditions of asymmetric information, where the large state does not know the options available to the small state, we can expect the large state to exert coercive pressure in a bid to pressure the small state into a PTA. So long as the large state provides the small state with some material benefits that it can withdraw at its discretion, then the status quo option will be excluded from the choice set of the latter. However, as the small state has a strong alternative option, we can expect it to respond by threatening to exit in favour of an outside alternative. Thus, in this scenario, the presence of a strong outside alternative option is the major driver of the negotiations.

When the small state threatens exit, the large state has to choose whether to offer sufficient concessions to entice the small state into agreement or to let the negotiation break down. If the small state has few strategic assets, the large state may be prepared to make some minor concessions, but, if these do not win over the small state, it may well prefer negotiations to break down rather than make further concessions.

This ‘exit’ dynamic is an idealised form of the EPA negotiations between the EU and many least developed ACP countries. These countries perceived the EU’s EPA proposals as being worse than the status quo *ex ante*, they had a strong alternative option (in the form of the Everything But Arms preferences), and few negotiating resources. Thus many least developed countries in West Africa, Central Africa, and the Horn of Africa, were relatively disengaged from the negotiations, merely waiting to see if the EU would make an offer that would be an improvement on Everything But Arms. The EU did make some relatively minor offers to least developed countries in the form of additional sugar quotas and modest changes to rules of origin. This was sufficient to entice some least developed countries, including Lesotho, to sign an EPA, but others, including Ethiopia opted to stay out of the EPA, and the EU did not offer further concessions.

The EPA negotiations show that a variant of the exit scenario is likely to occur when the small state does have substantial negotiating resources. Although exit is preferable to accepting the large state’s initial offer, we can expect the small state to stay in the negotiations and deploy its negotiating resources in a bid to secure substantial concessions from the large state. If it succeeds, and the large state revises its offer such that it leaves the small state better off relative to the status quo *ex ante,* then the small state will enter the PTA.

If not, it will exit in favour of the outside alternative. The strategy in this situation is best described as *‘resist then exit’*. In the EPA negotiations, a few least developed countries with higher levels of negotiating resources pursued this strategy. Senegal for instance, invested substantial resources and was an active participant in the EPA negotiations. When the ECOWAS region was unable to secure sufficient concessions from the EU to leave Senegal better off than under Everything But Arms, it opted to exit.

When exit is a viable option and provides equivalent welfare to the status quo *ex ante*, whether or not the negotiations result in an agreement will depend on the magnitude of concessions that the large state concedes to. *Ceteris paribus*, agreement is more likely when the small state has substantial negotiating resources. The dynamics and expected outcomes when a small state favours exit are summarised in Box 3.

Box 3: The Logic of Exit: Negotiation Dynamics and Expected Outcomes

LS adopts a distributive strategy; SS response is exit when:

- SS ideal > status quo ≈ outside alternative > LS initial offer

(Outcome 1) Negotiations break down, SS welfare equivalent to status quo ex ante:

- SS ideal > [~~status quo~~] > status quo ≈ outside alternative > LS final offer

(Outcome 2) Moderately Asymmetric Agreement, SS better off than status quo ex ante:

- SS ideal > LS final offer > [~~status quo~~] ≈ outside alternative

Description:

Breakdown is a likely outcome (outcome 1), particularly if the small state perceives the large state's offer to be very harmful. Agreement is possible if the large state offers sufficient concessions to leave the small state better off than the status quo *ex ante* (outcome 2). The magnitude of concessions granted by the large state will depend on the strategic assets held by the small state, and its level of negotiating expertise.

Note: SS denotes 'small state'; LS denotes 'large state'

8.5.3 The Logic of Resistance

The third, and arguably the most interesting, negotiating dynamic occurs when small states opt to resist, choosing to stay in the negotiation and fight for major changes to the text.

I argued above that a small state will opt to resist when it perceives the text tabled by the large state to be worse than the status quo, and it is vulnerable to coercive pressure. In this scenario, it is the absence of strong outside options that drives the negotiation and prompts the small state to resist. The small state could decide simply to capitulate and agree to the template text on the basis that although it would incur some costs and would be worse off than before, this would still be preferable to exiting in favour of an outside alternative. However evidence from the EPA negotiations suggests that small states will usually resist, leveraging the available strategic assets and negotiating expertise to try and minimise the harm incurred by entering into a PTA.

Unlike the small states engaged in a cooperative negotiation, the priority of the small state will be defensive, focusing on reducing the costs entailed in entering the PTA. The small state will have every incentive to continue to resist until the large state's offer is at least equivalent to the status quo *ex ante*. If the small state has substantial negotiating expertise, we can expect it to table alternative proposals, as the Pacific and SADC regions did during the EPA negotiations. If negotiating expertise is limited, it will seek to block negotiations in issue areas where it considers the large state's proposals to be most harmful, as the ECOWAS and CEMAC regions did.

As the small state has weak outside options and is vulnerable to coercive pressure, an agreement is likely to be reached. However, as the small state has a defensive negotiating agenda and every incentive to fight hard to change or block major aspects of the large state's offer, negotiations are likely to be protracted and fraught. The extent to which the small state succeeds in removing the aspects of the large state's initial offer that it considers harmful, will depend on its negotiating resources; if it these are strong, the final text may differ substantially from the large state's initial proposals.

This 'resist' dynamic is an idealised form of the EPA negotiations between the EU and the majority of African and Pacific countries for whom preferences were important and, a they were not classified as least developed, did not have a strong alternative option. A fascinating insight from the EPA negotiations is that, despite their relatively weak power position, these countries were very effective at leveraging their limited negotiating resources and shaping the

EPA text. In particular, they succeeded in removing many issue areas from the negotiating table (chapter six).

A fascinating insight from the EPA negotiations is that, resistance is unlikely to cease when formal negotiations end. If a small state signs a PTA that is equivalent or better than the status quo *ex ante*, it is likely to fully cooperate, signing, ratifying and implementing the agreement. However if the small state is coerced into an agreement that, despite all its efforts during negotiations, is worse than the status quo *ex ante*, it has every reason to keep resisting after formal negotiations have ended in a bid to evade implementation. Thus, unlike the 'cooperate' and 'exit' scenarios, it is likely that strategic manoeuvring by the small state will continue during the implementation phase. The dynamics and expected outcomes when a small state favours exit are summarised in Box 4.

The EPA negotiations reveal three resistance strategies that ACP states used after negotiations have formally ended (chapter 6). The first is *open confrontation* where politicians in the small state use the media to publically and vocally criticise the large state and seek to whip up popular nationalist sentiment to buttress their position. This strategy is most likely to be used by populist governments in countries with a strong nationalist sentiment who are not traditional political allies with the large state. The second is *playing for time*, where a small state delays signature, ratification and implementation but avoids open confrontation and criticism of the large state. This strategy is more likely to be used by technocratic governments and governments who are traditional allies of the large state.

The third is *flying under the radar* where governments sign and ratify the agreement without objection but quietly avoid implementation. This strategy is likely to be used by the most vulnerable small states, which fear further reprisals from non-compliance so they make very few objections. Their approach relies on weak monitoring and enforcement by the large state. Another strategy, which was not used in the EPA case, is *false compliance* where states find legal and technical ways to 'game the rules', adhering to their letter but not their spirit. This is the most sophisticated strategy and relies on the small state having substantial legal and technical expertise. In the EPA negotiations, the use of such resistance strategies after the formal EPA negotiations had ended enabled ACP states to obtain, de facto, the continuation of unilateral preferences into the EU market for several years after the expiry of the WTO waiver.

Box 4: The Logic of Resistance: Negotiation Dynamics and Expected Outcomes

LS adopts a distributive strategy; SS response is resist when:

- SS ideal > status quo >> LS initial offer >> outside alternative

(Outcome 1): Highly asymmetric agreement, small state worse off than status quo ex ante, resistance continues:

- SS ideal > [~~status quo~~] > LS final offer >> outside alternative

(Outcome 2): Highly asymmetric agreement, small state welfare equivalent to status quo ex ante, resistance ceases:

- SS ideal > [~~status quo~~] ≈ LS final offer >> outside alternative

(Outcome 3): Moderately asymmetric agreement, small state welfare equivalent to status quo ex ante, resistance ceases:

- SS ideal > LS final offer > [~~status quo~~] >> outside alternative

Description:

Agreement is very likely and is expected to be highly asymmetric. If the small state has few negotiating resources, then, as it has weak alternative options it is likely to enter an agreement that leaves it worse off than the status quo *ex ante*, and it will continue to resist (outcome 1). If it has a high level of negotiating resources then, despite weak alternative options, it may be able to secure sufficient concessions to secure an agreement that provides equivalent, or even better welfare, than the status quo *ex ante* (outcome 2 and 3).

8.6. Moving Beyond Trade

Although this thesis has confined itself to the anlaysis of trade, the theoretical insights about the impact of asymmetry on negotiating dynamics and outcomes are readily applicable to other areas of international political economy. The analysis set out above can be extended to a range of asymmetric bilateral economic negotiations, whether between states or between states and private sector actors. It could, for instance, be applied to negotiations over bilateral investment treaties, to negotiations between the EU and an accession country in Eastern Europe, or to negotiations between a small developing country and a large international company.

To use the analysis in this chapter to generate expectations about the likely outcome of an asymmetric economic negotiation, sufficient information is needed on the following: the motivations and negotiating objectives of the parties, the degree of vulnerability of the small state to coercive pressure from the larger party, and the negotiating resources (strategic assets and negotiating expertise) available to the small state. With this information, it is possible to generate expectations about the dynamics and expected outcomes of the negotiation.

8.7. Final Reflections

Perhaps the most notable contribution of this thesis is that it challenges an assumption that we often make about the governments of small developing countries, namely that their scope for agency and impact in international negotiations is minimal because they face a myriad of external and domestic constraints.

The analysis underscores the extremely challenging circumstances under which small developing countries often negotiate and the difficulty that they face in securing their 'offensive' interests in an asymmetric negotiation. However, it equally shows that small developing countries can exercise a surprising degree of resistance even in situations where exit is not a viable option, removing issues from the negotiating table, securing defensive concessions in the details of the text, and evading implementation. The ability of small countries to resist and block the interests of the powerful is greatly underappreciated in the scholarly literature.

In terms of the tactics that small developing countries can use, the thesis showed that while technical expertise played a role in helping countries secure concessions in the detailed provisions, the political moves made outside the negotiating room were often the ‘game changer’. The regions that secured the most flexible EPA texts were those where political leaders decided to oppose the EU and there was a relatively high level of technical expertise. Interestingly, even ECOWAS and CEMAC, which suffered from acute technical capacity constraints, were able to use political moves to influence outcomes. These findings suggest that greater attention needs to be paid to the ‘political leadership’ capacity of governments, in addition to their technocratic or bureaucratic capacity.[20]

The thesis also suggests that we should pay closer attention to the ways in which ideas shape government decisions during trade negotiations. The analysis of the EPA negotiations serves as a reminder that the private sector is weak and unorganised in many small developing countries, so although there are instances where governments are ‘captured’ by particular lobby groups, governments do appear to have substantial autonomy to make policy decisions. In a context where credible information is scarce, ideas appear to play a particularly important role, particularly economic ideas and perceptions of geostrategic interests.

In all, this thesis makes two contributions. The first is empirical: the thesis provides a compelling answer to an empirical puzzle, namely why there is such variation in EPA outcomes. It analysed the EPA texts and identifies a range of outcomes; used a mix of qualitative and quantitative methods to test major international relations explanations of outcomes; conducted a detailed tracing of the negotiating process, illuminating the tactics and

[20] This echoes the findings of recent work by Adrian Leftwich. See for instance Leftwich (2010)

strategies used and drawing on a range of primary sources; and undertook an original analysis of the lobbying and domestic political processes behind negotiating strategies.

The second contribution is theoretical: the thesis poses a challenge to prevailing scholarship on trade negotiations, arguing that, in order to offer a credible and compelling explanation for the outcomes of asymmetric trade negotiations, far greater attention needs to be paid to the international power relations in our analysis of negotiations. Building from the analysis of the EPA negotiations, I developed a set of contingent generalisations about the ways in which large and small states interact during trade negotiations and the conditions under which particular outcomes can be expected to occur. These theoretical insights can be extended to other asymmetric negotiations, in trade and other areas of international political economy.

Annexes

Annex 1: Results of the Online Survey

The survey was designed and carried out by the author and research assistants as part of a collaborative project between the Global Economic Governance Programme at the University of Oxford and the Commonwealth Secretariat. The author led the research project and all research was carried out under her supervision. The results of the project were published as: Jones, Emily, Carolyn Deere-Birkbeck, and Ngaire Woods. *Manoeuvring at the Margins: Constraints Faced by Small States in International Trade Negotiations*. London, UK: Commonwealth Secretariat, 2010.

- Individuals invited to participate: 374
- Average item response rate: 22.4% (min = 9.6%, max = 38.5%) (some questions were completed by more individuals, who nonetheless did not complete the whole survey)
- Survey available in French and English (Q1 allows the choice)

Q1. Please choose a language to take the survey (144 answered question)

English: 107
French: 37

Q2. What country or region do you represent? (87 answered question)

Negotiators from Small Countries (30 countries):

Barbados - 1
Benin - 6
Burkina Faso – 1
Burundi – 1
Comoros Union - 5
Cook Islands - 5
Ethiopia - 2
Federated States of Micronesia – 1
Gabon – 1
Guyana - 2
Jamaica - 3
Kiribati - 2
Madagascar – 1
Malawi - 2
Mali - 2
Mauritania - 1
Mauritius - 7
Papua New Guinea - 1
Samoa - 2
Senegal – 1
Seychelles - 2
St Kitts and Nevis - 1
St Lucia – 2
St. Vincent & The Grenadines - 1
The Bahamas - 2
Tonga - 1
Tuvalu - 1
Uganda – 1
Zambia - 3
Zimbabwe – 1

Negotiators from Regional organisations:

Africa – 1
ACP - 1
Central Africa- 2
West Africa - 7
CARICOM – 1
CARIFORUM – 2
COMESA – 1
ESA - 4
OECS - 6
SADC - 2
Pacific – 4

Q3. Where do you work? (108 answered question)

Government in capital: 52 (48%)
Regional organisation: 21 (19%)
Government mission: 5 (5%)
Other: 30 (28%)

Q4. Are you (or have you been) directly involved in trade negotiations? (110 answered question)

Yes: 81 (74%)
No: 29 (26%)

Q5. How successful do you consider your country to be in achieving its objectives in trade negotiations, compared with other small countries? (88 answered question)

Answer Options	Response %	Response Count
Very successful	4.5%	4
Successful	22.7%	20
Average	53.4%	47
Unsuccessful	13.6%	12
Very unsuccessful	5.7%	5
	N	88

Q6. How often are the outcomes that your country is seeking in trade negotiations compatible with those of powerful states? (93 answered question)

Answer Options	Response %	Response Count
Nearly always	2.2%	2
Often	6.5%	6
Sometimes	48.4%	45
Seldom	37.6%	35
Almost Never	5.4%	5
	N	93

Q7. To what extent do you feel your country can influence the outcome when negotiating with the following partners? (93 answered question, not all respondents answered both parts)

	High influence	Moderate influence	Low influence	No influence	Response Count
A large trading partner like the EU or US	3	22	52	16	93
A trade partner of similar economic size	27	38	18	1	84

Further Analysis of Responses (restricted to respondents who identified whether they represent a country or region)

A large trading partner like the EU or US				
	High influence	Moderate influence	Low influence	No influence
Regional representative	0	10	12	1
Country Representative	0	9	31	13

Q8. In your experience, what factors most increase the ability of small states to have an impact in trade negotiations? Please rank, with '1st' being the most important. (91 answered question)

	1st	2nd	3rd	4th	5th	Rating Average
Quantity and quality of human resources	20	11	13	11	9	3.2
Political leadership	17	9	11	5	13	3.2
Effective negotiating strategy	9	27	15	15	4	3.1
Effective government institutions	13	11	17	9	11	3.0
Quality of available information	8	12	8	4	12	3.0
Coalitions with other countries	14	9	10	17	12	2.7
Engagement of civil society and private sector	8	10	12	20	15	2.4

NB: 'Rating average' is a weighted average of the results, with 1st assigned weight of 5, 2nd a weight of 4 and so on.

Q9. Which coalition or regional group is most important for your country in trade negotiations? (91 answered question). Note – respondents were asked to name the coalition / regional group, and were not given options to select between

Group / Region	Number of Respondents
ACP Group	1
Africa Group	6
Asia Pacific	2
C4	2
CARICOM	14
CARIFORUM	6
COMESA	11
ECOWAS	8
ESA	13
G20	1
G77	1
G90	1
Indian Ocean Commission	1
LDC Group	4
None	1
Oceania, NZ and Australia	2
OECS	1
Pacific	9
SACU	1
SADC	1
SVE	2
The Horn States	1
UEMOA	1
Don't know	1
TOTAL	91

Q10. What are the main advantages that your country derives from negotiating in this group? Please rank in order of importance, with '1st' being the most important. (90 answered question)

	1st	2nd	3rd	4th	5th	Rating Average
Reinforcing regional integration	24	24	20	10	5	3.5
Pooling technical expertise	22	23	22	10	3	3.5
Negotiating as a larger market	21	19	20	16	4	3.3
Increasing political weight	19	14	15	31	4	2.8
Reducing the likelihood of retaliation by powerful states	3	8	4	12	54	1.6

Q11. How much influence does your country have within this group, in comparison with other countries? (89 answered question)

Answer Options	Response %	Response Count
Very high	9.0%	8
High	30.3%	27
Moderate	44.9%	40
Low	12.4%	11
Very low	3.4%	3
	N	89

Q12. How many professional staff work full-time on trade negotiations for your country? (79 answered question, not all respondents answered both parts)

No. of People	0	1	2	3	4	5	6	7	8	9	10	More than 10	N
Your country's mission in Geneva:	17	8	18	5	3	5	2	1	0	0	1	2	62
Your country's lead ministry on trade:	4	7	11	14	5	5	3	7	4	2	2	14	78

Q13. For how many years are officials typically assigned to work on trade negotiations? Please leave blank if not applicable. (36 answered question, not all respondents answered both parts)

Length of time	0-6 months	6-12 months	1–2 years	3-5 years	6-10 years	Over 10 years	Response Count
Your country's mission in Geneva:	2	0	4	13	1	0	20
Your country's lead ministry on trade:	3	2	5	8	9	5	32

Q14. In your experience, what do trade officials usually move on to after being posted to Geneva? (70 answered question)

Stay in government	31
Mix of government and IO	13
Mix of government and PS	3
Mix of all 3	1
Leave government	15
Not sure / other	7

Q15. What portion of staff working on international trade negotiations have an academic degree in any of the following? (85 answered question)

Answer Options	Most	Some	Few	None	N
Economics or Law	52	18	13	1	84
Subject related to international politics	6	37	21	7	71
Other academic degree	18	17	31	2	68
No academic degree	1	3	9	34	47

Q16. What personal qualities do you consider most important for enabling your country's negotiators to be effective? Please rank, with '1st' being the most important. (90 answered question)

Answer Options	1st	2nd	3rd	4th	5th	Rating Average
Experience in trade negotiations	39	24	11	6	3	4.0
Technical knowledge	26	32	20	3	3	3.9
Strategic thinking	15	17	29	7	7	3.3
Work ethic	4	7	4	15	19	2.0
Charisma / personality	3	4	8	20	20	1.8
Language skills	1	3	10	19	11	1.8
Personal conviction	1	3	4	15	16	1.6

Q17. What sources do you rely on most for information and analysis needed for international trade negotiations? Please rank, with '1st' being the most important. (86 answered question)

Answer Options	1st	2nd	3rd	4th	5th	Rating Average
Government ministries	21	17	21	10	9	3.3
Regional organizations	18	27	16	16	3	3.3
International governmental organisations	18	17	21	20	5	3.1
Your country's mission in Geneva	16	12	9	9	17	2.9
Non-governmental organisations	10	10	11	19	24	2.3

Q18. How good do you think the quality of information and analysis is that your government produces in preparing for trade negotiations? (86 answered question)

Answer Options	Government doesn't produce	Good	Average	Poor	Very poor	Response Count
Trade flow data:	8	24	38	13	2	85
Diplomatic intelligence:	12	22	22	14	8	78
Economic impact studies:	10	17	26	21	9	83
Legal advice:	12	18	27	18	8	83

Q19. In your experience, how helpful are private consultants and advisers in preparing for trade negotiations? (84 answered question, not all respondents answered both parts)

Answer Options	Country doesn't use	Very helpful	Helpful	No impact	Unhelpful	Response Count
Consultants hired by your government	16	22	36	5	1	80
Consultants provided by donors	2	22	54	1	1	80

Q20. Why do you think small countries maintain a mission in Geneva? Please rank, with '1st' being the most important. (80 answered question)

Answer Options	1st	2nd	3rd	4th	5th	Rating Average
To keep the government informed on international affairs	26	22	13	10	7	3.5
To influence trade negotiations	27	17	7	10	14	3.3
To improve international perception of their country	16	11	18	11	20	2.8
To maintain relationships with powerful states	6	13	21	23	10	2.5
To secure aid packages	4	15	17	20	20	2.3

Q21. When staff in your country's missions abroad send reports on trade negotiations back to capital, how often do they receive feedback on those reports? (74 answered question)

Answer Options	Response %	Response Count
Almost always	17.6%	13
Often	20.3%	15
Sometimes	40.5%	30
Rarely	17.6%	13
Almost never	4.1%	3
	N	74

Q22. How effective are formal mechanisms for trade policy coordination in your country? (83 answered question, not all answered both parts)

Answer Options	Doesn't	Excellent	Good	Average	Poor	Response

	Exist					Count
Among government ministries	3	2	31	28	17	81
With the private sector and civil society	2	3	22	28	24	79

Q23. How effective is parliament in holding your government to account on trade negotiation outcomes? (81 answered question)

Answer Options	Response %	Response Count
Not involved	9.9%	8
Very effective	3.7%	3
Moderately effective	50.6%	41
Ineffective	35.8%	29
	N	81

Q24. Which actors most influence your government's trade policy process? Please rank, with '1st' being the most important. (85 answered question)

Answer Options	1st	2nd	3rd	4th	5th	Rating Average
Domestic private sector	45	15	15	5	1	4.2
International donors	21	15	13	8	8	3.4
Foreign private sector	7	18	9	8	14	2.8
NGOs	1	17	16	23	10	2.3
Academia and think tanks	5	10	7	14	24	2.1
Trade Unions	2	4	15	15	13	2.1

Q25. How often do you employ the following kinds of tactics in trade negotiations? (Responses restricted to those currently or previously directly involved in trade negotiations – 64)

	Often	Sometimes	Seldom	Never	Rating Average
Arguments about special and differential treatment	44	12	4	1	3.6
Coalition building	41	15	6	0	3.6
Legal arguments	19	24	13	3	3.0
Working with NGOs	8	25	20	2	2.7
Direct dialogue among heads of state	8	26	15	8	2.6
Involving the development agencies of donor countries	7	25	18	5	2.6
Delay tactics	7	17	25	3	2.6
Adding new issues to the agenda	4	25	24	6	2.5

Q26. How often do powerful states use the following kinds of tactics when negotiating with your country? (Responses restricted to those currently or previously directly involved in trade negotiations – 65)

Answer Options	Often	Sometimes	Seldom	Never	Rating Average
Imposing stringent negotiation deadlines	43	16	5	0	3.6
Putting pressure on the executive branch of government	26	25	9	2	3.2
Making threats related to trade	27	23	9	2	3.2
Cutting out negotiators by dealing directly with their superiors	26	22	5	8	3.1
Making threats in issue areas other than trade	18	27	8	6	3.0

Q27. In trade negotiations, how often are you concerned about each of the following factors? (Responses restricted to those currently or previously directly involved in trade negotiations - 61

Answer Options	Often	Sometimes	Seldom	Never	Rating Average
Withdrawal of trade preferences	35	15	8	2	3.4
Losing aid	25	16	16	4	3.0
Appearing ill-informed	10	27	15	7	2.7
Overstepping the mandate given by your superiors	17	20	9	13	2.7
Offending the country/countries you are negotiating with	9	26	13	12	2.6

Q28. What changes would enable your country to tackle the constraints it faces in trade negotiations? Please rank, with '1st' being the most important' (80 answered question)

Answer Options	1st	2nd	3rd	4th	5th	Rating Average
Greater priority given to trade by government	27	20	11	10	0	3.8
Stronger links between development plans and trade	23	9	18	7	8	3.4
Private sector priorities driving negotiating objectives	15	19	14	13	8	3.1
Better government understanding of the needs of small economic actors (SMEs, farmers etc.)	3	17	12	18	11	2.5
Civil service reform (improved salaries, systems etc.)	8	7	6	12	21	2.2
Increased donor assistance on trade	4	7	14	14	23	2.1

Annex 2: Semi-Structured Interviews

Interviews were carried out as part of a collaborative project between the Global Economic Governance Programme at the University of Oxford and the Commonwealth Secretariat. The author led the research project and all research was carried out under her supervision. The results of the project were published as: Jones, Emily, Carolyn Deere-Birkbeck, and Ngaire Woods. *Manoeuvring at the Margins: Constraints Faced by Small States in International Trade Negotiations*. London, UK: Commonwealth Secretariat, 2010.

Interview Questions
The following interview guideline was developed by the author and used for the interviews listed below.

Q1. Name, Job Title and Organisation
Q2. What is your role in trade policy formulation?
Q3. What are your government's core objectives in international trade negotiations?
Q4. How do you think your country's smallness and levels of development affects your ability to achieve these objectives in trade negotiations?
Q5. When you enter negotiations, what kinds of information and analysis are most critical for you to have?
Q6. In pursuing your country's trade objectives, what tactics and strategies do you use to try and influence negotiating outcomes?
Q7. What tactics have your opponents used?
Q8. Is there any difference in the way that you approach negotiations with states like the EU or US and how you approach negotiations with economies closer to your own in size?
Q9. In your opinion, to what extent does a small state's influence in trade negotiations depend on whether its ambassador and trade negotiators possess certain personal qualities that make them more effective?
Q10. How much trade negotiation experience do people in your mission have?
Q11. In your view, how close is the relationship between capital and mission?
Q12. How and by whom are the reports you send back to capital / mission sends to you scrutinised?
Q13. How is trade policy coordinated among different ministries and actors in capital?
Q14. How active are lobby groups and private interest groups in your country on trade negotiation issues?
Q15. What regional or coalition groupings are most important at the present time for your country's interests in trade negotiations?
Q16. What are the main benefits and costs which you perceive from negotiating in the context of a regional or coalition grouping?
Q17. How does your country influence the group's negotiation positions?
Q18. What are your country's options if the regional group takes a position adverse to your country's interests?
Q19. What are the three factors that you think are most critical for a small country to succeed in international trade negotiations?
Q20. Interviewer's thoughts and comments on the interview in general and cross-cutting themes.

List of People Interviewed

Transcripts of the following interviews were used in writing this thesis. Some interviews were conducted by the author, others by research assistants working under the author's supervision. Where the interview was conducted by someone other than the author, this is noted.

All interviews were conducted on the basis of confidentiality, on the understanding that the transcripts would be quoted but the interviewee would not be named, and information would be cited in a manner that ensured interviewees could not be readily identified.

Note: To help ensure citations cannot be attributed, this list will be removed from the thesis before it is submitted to the Bodleian Library

Brussels-based officials

1. M. Bertrand Khanyizira, First Secretary, Malawi Embassy to EU. Jul-08, interviewed by Clara Weinhardt
2. M. Bonny Haufiku, Agriculture Counsellor and M. André H. Apollus Commercial Counsellor, Namibia Embassy to EU. Jul-08, interviewed by Clara Weinhardt
3. M. Alan E. George, First Secretary, Sierra Leone Embassy to EU. Jul-08, interviewed by Clara Weinhardt
4. M. Sutiawan Gunessee, Ambassador, Mauritius Embassy to EU, Jul-08, interviewed by Clara Weinhardt
5. Ms. Audrey Dime, Commercial Counsellor, Seychelles Embassy to EU, Jul-08 , interviewed by Clara Weinhardt
6. M. Stephen Katenta-Apuli, Ambassador, Ugandan Embassy to EU, Jul-08 interviewed by Clara Weinhardt
7. Prosper J. Mbena, Minister Plenipotentiary, Tanzanian Embassy to EU, Jul-08, interviewed by Clara Weinhardt and Oisin Suttle
8. M. Roy Mickey Joy, Ambassador, Vanuatu Embassy to EU, Jul-08, interviewed by Clara Weinhardt and Oisin Suttle
9. M. Bruce Lai, First Secretary, Trinidad and Tobago Embassy to EU, Jul-08, interviewed by Clara Weinhardt and Oisin Suttle
10. Marx Kahende Ambassador, Kenyan Embassy of to EU, Jul-08, interviewed by Oisin Suttle
11. Tupou Raturaga, Counsellor and Namita Khatri, Trade Officer, Fiji Embassy to EU and WTO, Jul-08, interviewed by Oisin Suttle
12. M. Morgan Karinge Githinji, Expert Multilateral Trade, ACP Secretariat, Jul-08, interviewed by Oisin Suttle
13. Arnold Thomas, Charge d'Affaires, Organisation of Eastern Caribbean States/Dominica Embassy to EU, Jul-08, interviewed by Oisin Suttle
14. M. Emanuel Derek Awuri, Trade Officer, Ghana's Embassy to EU, Jul-08
15. Marcia Gilbert-Roberts, Ambassador and Mr. Esmond Reid, Minister Counsellor, Jamaican Embassy to EU, Jul-08, interviewed by Oisin Suttle
16. Tuala Falani Chan Tung, Ambassador, Samoan Embassy to EU, Jul-08, interviewed by Oisin Suttle
17. Errol Humphrey Ambassador, Barbados Embassy to EU, Jul-08, interviewed by Oisin Suttle
18. Mme. Mamoruti Tiheli, Ambassador, Lesotho Embassy to EU, Sep-08 interviewed by Clara Weinhardt
19. Yaya Sow, ECOWAS Representative, Jul-08, interviewed by Clara Weinhardt
20. Arega Hailu Teffera, Ethiopian Embassy to EU, Sep-08 (by email)

Capital-based officials

(Interviewed over the phone)

1. Mr Harrison J.K. Mandindi, EPA chief negotiator, Malawi, Aug-08, interviewed by Clara Weinhardt
2. Mr Edison Borbor, Policy Division, Sierra Leone Ministry of Trade Sep-08, interviewed by Clara Weinhardt
3. Dr Richard Konteh, Deputy Minister of Finance and Development, Sierra Leone Sep-08, interviewed by Clara Weinhardt

4. Aurelie Walker, former Hub and Spokes Programme, Seychelles, Aug-08, interviewed by Emily Jones
5. Abdulla Thawfiq, former trade negotiator, Maldives, Aug-08, interviewed by Emily Jones and Tasneem Clarke
6. Douveri Henao, legal expert in negotiations, PNG, Aug-08, interviewed by Tasneem Clarke
7. Peter Elimu, Senior Foreign Trade Officer, Uganda (by email)
8. Emmanuel Mutahunga, MTTI Acting Principle Officer (in charge of EPAs), Uganda, interviewed by Clara Weinhardt
9. Silva Ojakol, Commissioner for external trade, Uganda, interviewed by Clara Weinhardt
10. Trevor Simumba, Trade Policy Expert, Sierra Leone / Zambia, interviewed by Clara Weinhardt
11. Wallie Roux, Trade Policy Expert, Namibia, interviewed by Clara Weinhardt
12. Malan Lindique, Permanent Secretary, Ministry of Trade and Industry, Namibia, interviewed by Clara Weinhardt

Geneva-based officials

1. Joy Kategekwa, Former legal officer for WTO issues, Ugandan mission in Geneva, Jul-08, interviewed by Adrian Johnston
2. Jennifer Neves, Trade Attaché, Swaziland Geneva mission, Jul-08, interviewed by Adrian Johnston
3. Isabel Mazzei, Former negotiator (now with Oxfam), Guatemala Geneva mission Jul-08, interviewed by Adrian Johnston
4. Saviour F. Borg**,** Permanent Representative to the United Nations, its specialized agencies and other international organizations in Geneva, Jul-08, interviewed by Joanna Langille
5. Manleen Dugal, Technical Advisor for Pacific members of WTO, PIFS regional representative, Geneva mission, Jul-08, interviewed by Joanna Langille
6. Jose Egidio Paulo, Trade Counsellor, Mozambique Geneva mission, Jul-08, interviewed by Adrian Johnston and Joanna Langille

Experts

1. Paul Goodison, European Research Office, Aug-08, interviewed by Emily Jones
2. San Bilal, ECDPM, Aug-08, interviewed by Emily Jones
3. Hunter Nottage, Advisory centre for WTO law, Aug-08, interviewed by Emily Jones and Tasneem Clarke
4. Darlan Fonseca Marti, South Centre, Jul-08, interviewed by Joanna Langille
5. Sir Shridath Ramphal, Former Commonwealth Secretary General, Sep-08, interviewed by Emily Jones
6. Edwin Laurent, Head of International Trade, Commonwealth Secretariat, Aug-08, interviewed by Emily Jones
7. Carl Greenidge, Deputy Senior Director, CRNM and Former Director, CTA, Sep-08, interviewed by Emily Jones

Caribbean (Barbados and St Lucia). All conducted by Emily Jones.

1. Matthew Wilson, First Secretary, Barbados Mission in Geneva, Aug-08
2. Don Marshall, Lecturer, University of West Indies, Barbados, Sep-08
3. Dr. Keith Nurse, Director, Shridath Ramphal Centre, University of West Indies, Barbados, Sep-08
4. Malcolm Spence, Senior Coordinator (Intellectual Property /SPS) Caribbean Regional Trade Negotiating Machinery, Barbados Sep-08
5. Ramesh Chaitoo, Services Trade Specialist, Caribbean Regional Trade Negotiating Machinery, Barbados Sep-08
6. Dame Billie Miller, Former Minister Foreign Affairs and Foreign Trade, Barbados Sep-08
7. Joel Richards, Research Officer, Private Sector Trade Team, Barbados, Sep-08
8. Michelle Hustler-Small, Senior Project Officer, Barbados Coalition of Service Industries, Sep-08
9. Cleve Scott, Programme Officer, Oxfam, Barbados, Sep-08
10. James Paul, Chief Executive Officer, Barbados Agricultural Society, Sep-08
11. Carlos Warton, Trade Consultant, Barbados Manufacturing Association, Sep-08
12. Kay Sealy, Chief Economist, Ministry of Foreign Affairs and Foreign Trade, Barbados, Sep-08
13. Teresa Marshall, Permanent Secretary, Ministry of Foreign Affairs and Foreign Trade, Barbados, Sep-08
14. Sandra Phillips, Deputy Permanent Secretary, Ministry of Foreign Affairs and Foreign Trade, Barbados, Sep-08

15. Euclid Goodman, Senior Foreign Service Officer, Ministry of Foreign Affairs and Foreign Trade, Barbados, Sep-08
16. Shantal Munro-Knight, Senior Programme Officer, Caribbean Policy Development Centre, Barbados, Sep-08
17. Peter Josie, former Minister of Agriculture and board member of WINDECO, St Lucia, Sep-08
18. Guy Myers, Minister for Home Affairs and Security, former Trade Minister, St Lucia, Sep-08
19. McDonald Dixon, Trade Adviser, Ministry of Commerce, St Lucia, Sep-08
20. Randolph Cato, Director Economic Affairs Division, Organisation of Eastern Caribbean States, St Lucia, Sep-08
21. Alicia Stephens, Programme Officer, Organisation of Eastern Caribbean States, St Lucia, Sep-08
22. Calixte Leon, former Trade Adviser and EPA negotiator, Ministry of Commerce, St Lucia, Sep-08
23. Flavia Cherry, Chairwoman, Non-State Actors Panel, St Lucia, Sep-08

Participants in Geneva Focus Group Discussion
H.E. Mr. Arsene Balihuta, Ambassador of Uganda
H.E. Mr. S.B.C. Servansing, Ambassador of Mauritius
Matthew Wilson, First Secretary on behalf of Ambassador Clarke of Barbados,
Ms. Dugal, Pacific Island Forum Secretariat
H.E. Mr. Kwabena Baah-Duodu, Ambassador of Ghana
Mr. Kofi Amenyah, Minister Counsellor (Trade), Ghana
Rashid Kaukab, CUTS, Former South Centre and Pakistan Mission
Professor Yash Tandon, Exeuctive Director, South Centre
Aileen Kwa, Coordinator, Trade and Development Programme, South Centre
John Odell, University of Southern California
Seline Leo-Lohia, Papua New Guinea / Pacific Islands Forum Secretariat WTO Office
Vinod Rege, former Trade Adviser, Commonwealth Secretariat

Annex 3: Analysis of EPA Legal Texts

Table A3.1 Coverage of EPA Texts

KEY
Yes = text contains substantive legal commitments
No = text does not contain substantive legal commitments
Rend. = subject of a rendezvous clause

	CAR	GHA	CDI	CEM	ESA	EAC	SAD	PAC
Trade in Goods								
Customs Duties and Non-Tariff Measures	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Trade Defence Measures	Yes	Yes	Yes	Yes	Yes/ Rend.	Yes	Yes	Yes
Customs and Trade Facilitation	Yes	Yes	Yes	Yes	Rend.	Rend.	Yes	Yes
TBT and SPS	Yes	Yes	Yes	Yes	Rend.	Rend.	Yes	Yes
Agriculture	Yes	No	No	No	Rend.	Rend.	No	(Rend.)
Fisheries	Yes	No	No	No	Yes	Yes	No	(Rend.)
Forestry	No	No	No	Yes	No	No	No	(Rend.)
Economic and Development Cooperation	No	No	No	No	Yes	(Yes) Rend.	Yes	(Rend.)
Trade in Services and E-Commerce	Yes	Rend.	Rend.	Rend.	Rend.	Rend.	Rend.	(Rend.)
Current Payments and Capital Movements	Yes	No	Rend.	Rend.	Rend.	No	Yes	(Rend.)
Core Trade-Related Issues								
Investment	Yes	Rend.	Rend.	Rend.	Rend.	Rend.	Rend.	(Rend.)
Competition	Yes	Rend.	Rend.	Rend.	Rend.	Rend.	Rend.	(Rend.)
Intellectual Property	Yes	Rend.	Rend.	Rend.	Rend.	Rend.	No	(Rend.)
Public Procurement	Yes	No	Rend.	Rend.	Rend.	Rend.	Rend.	(Rend.)
Other Trade-Related Issues								
Environment	Yes	No	Rend.	Rend.	Rend.	Rend.	No	(Rend.)
Social Aspects	Yes	No	Rend.	Rend.	Rend.	Rend.	No	(Rend.)
Protection of Personal Data	Yes	No	Rend.	Rend.	No	No	No	(Rend.)
Tax and Judicial	No	No	No	No	Rend.	Rend.	No	(Rend.)
Dispute Avoidance and Settlement	Yes	Yes	Yes	Yes	(Yes) Rend.	(Yes) Rend.	Yes	Yes
General Exceptions	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Institutional Provisions	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
General and Final Provisions	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

Table A3.2 Comparison of Concessions Across EPA Texts

KEY
0 = most restrictive/ least advantageous to ACP
1 = mid-level of restrictiveness / advantage
2 = least restrictive/ most advantageous to ACP

TRADE IN GOODS								
	CA	GA	CDI	CEM	ESA	EAC	SAD	PAC
Access to EU: Tariffs and Quotas	2	0	0	0	1	1	1	1
Access to EU: Rules of Origin	1	0	0	0	1	1	0	2
Liberalisation by ACP: Timeframe	2	0	0	0	1	2	0	0

Liberalisation by ACP: Exclusion List	1	2	1	1	0	1	0	0
Standstill	0	0	0	0	0	0	1	1
Tariff Modification	2	0	0	2	0	0	0	2
Fees and Charges	1	2	1	1	1	1	1	1
Export Duties	0	2	2	2	1	2	2	2
MFN	2	0	0	0	0	0	0	2
Free Circulation	2	2	2	0	2	1	1	1
Multilateral Remedies	2	2	2	2	2	2	1	2
Bilateral Safeguards	1	1	1	1	1	1	2	2
Food Security Safeguard	1	1	1	1	0	0	0	1
Removal of Agric. Export Subsidies	1	0	0	1	0	0	0	2
Infant Industry Safeguard	0	0	0	1	0	0	1	2
Prohibition on QRs	0	0	0	0	0	2	1	0
National Treatment	1	1	1	1	2	1	0	1
TOTAL	19	13	11	13	12	15	11	22

CUSTOMS AND TRADE FACILITATION

	CA	GA	CDI	CEM	ESA	EAC	SAD	PAC
Objectives and Cooperation	2	0	0	0	NA	NA	0	2
Adherence to International Standards	2	0	2	0	NA	NA	1	2
Single Administrative Document	2	2	2	0	NA	NA	1	0
Regional Harmonisation	0	2	2	1	NA	NA	2	1
Other Commitments	2	0	0	1	NA	NA	1	2
Common Institutions	2	0	0	0	NA	NA	0	2
TOTAL	10	4	6	2	NA	NA	5	9

STANDARDS (SPS and TBT)

	CA	GA	CDI	CEM	ESA	EAC	SAD	PAC
Implementation of Int'l Agreements	2	2	2	0	NA	NA	2	1
Harmonisation	2	2	2	0	NA	NA	2	2
Equivalence	1	0	0	0	NA	NA	1	2
Early Warning	1	0	0	0	NA	NA	2	1
Directly Inform	1	1	1	0	NA	NA	2	2
Zoning	0	1	1	1	NA	NA	2	0
Consultation	2	0	0	0	NA	NA	1	2
Common Institutions	0	0	0	0	NA	NA	2	2
TOTAL	9	6	6	1	NA	NA	14	12

OTHER AREAS (Rend.)

	CA	GA	CDI	CEM	ESA	EAC	SAD	PAC
Services	NA	2	2	1	2	2	1	2
Investment	NA	2	2	1	2	2	1	2
Capital Movements	NA	2	2	1	2	2	1	2

Competition	NA	2	2	1	2	2	2	2
Intellectual Property	NA	2	2	1	2	2	2	2
Government Procurement	NA	2	2	1	2	2	2	2
TOTAL	NA	12	12	6	12	12	9	12

OVERALL ABILITY TO OBTAIN CONCESSIONS (% TOTAL POSSIBLE)

	CA	GA	CDI	CEM	ESA	EAC	SAD	PAC
Trade in Goods	56	38	32	38	35	44	32	65
Customs and Trade Facilitation	83	33	50	17	NA	NA	42	75
Standards (SPS and TBT)	56	38	38	6	NA	NA	88	75
Average (Core issues)	65	36	40	20	35	44	54	72
Other Areas (Rend.)	NA	100	100	50	100	100	75	100

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