

# Nothing but negotiations.

Explaining the lack of agreement between the  
European Union and West Africa in the negotiations  
for an Economic Partnership Agreement

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# Abstract

The European Union and the West African states have since 2003 been in negotiations for an Economic Partnership Agreement. If finalised, this will constitute a trade and development agreement between two regions that have engaged in a trade relationship since the time of colonialism. However, after almost a decade of negotiations there is still little sign of an agreement being reached. This paper examines the negotiations, the actors and the external context and provides a set of explanations for why an agreement has not been reached. Taking an inductive approach and presenting assumptions about the likely causes of non-agreement as well as theoretical contributions on north-south relations and asymmetric negotiations, the main conclusion of the paper is that underlying disagreements relating to the merits of liberalisation and policy space can explain why no agreement has been made. These disagreements have been aggravated by a lack of flexibility in the approach of the EU to the negotiations. It is argued that this inflexibility results from a fear of being perceived as weak in negotiations with West Africa, and thus setting a negative precedence for future trade negotiations. Divergent interests between countries in West Africa have also complicated the negotiations, as some countries are more interested in an agreement than others. With emerging economies taking an increased interest in West Africa, agreement is seen as becoming more unlikely as the region is presented with alternative trading partners.



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I take full responsibility for any mistakes or omissions in this thesis.

Hanna Lyngstad Wernø

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# List of abbreviations

AASM	Associated African States and Madagascar
ACP	African, Caribbean and Pacific
AGOA	Africa Growth Opportunity Act
AU	African Union
CA	Cotonou Agreement
DG	Directorate General
DEVCO	Development and Cooperation - EuropeAid
EBA	Everything But Arms
EC	European Commission
ECOWAS	Economic Community of West African States
EDF	European Development Fund
EEAS	European External Action Service
EPA	Economic Partnership Agreement
EPADP	Economic Partnership Agreement Development Programme
EU	European Union
FTA	Free Trade Area
GATT	General Agreement on Tariffs and Trade
GSP	Generalised System of Preferences
IEPA	Interim Economic Partnership Agreement
IMF	International Monetary Fund
LDC	Least Developed Country
MFN	Most Favoured Nation
NANTS	National Association of Nigerian Traders
NGO	Non-Governmental Organisation
POSCAO	West African Civil Society Platform on the Cotonou Agreement
UEMOA	West African Economic and Monetary Union
WTO	World Trade Organisation



# Contents

<b>1</b>	<b>Introduction and design</b>	<b>1</b>
1.1	Introduction . . . . .	1
1.2	Research question and hypotheses . . . . .	2
1.3	Structure . . . . .	5
<b>2</b>	<b>Data and method</b>	<b>7</b>
2.1	Interviews . . . . .	8
2.2	Document analysis . . . . .	9
2.3	Validity and reliability . . . . .	10
<b>3</b>	<b>Theory</b>	<b>13</b>
3.1	Policy space . . . . .	14
3.2	The institutional legacy of Lomé . . . . .	14
3.3	Negotiation theory: asymmetric negotiations . . . . .	16
3.3.1	Negotiation style . . . . .	20
3.3.2	Negotiation failure . . . . .	21
3.3.3	Two-level analysis . . . . .	22
<b>4</b>	<b>Background</b>	<b>25</b>
<b>5</b>	<b>Political disagreement</b>	<b>29</b>
5.1	Market access . . . . .	30
5.1.1	Substantially all trade? . . . . .	30
5.1.2	Liberalisation and ‘policy space’ . . . . .	32
5.1.3	The impact of impact studies . . . . .	34
5.2	Development assistance . . . . .	36
5.3	The Non-Execution Clause . . . . .	38
5.4	Disagreement . . . . .	40

<b>6</b>	<b>West Africa and the European Union</b>	<b>43</b>
6.1	Divergent interests in West Africa . . . . .	43
6.1.1	Nigeria . . . . .	44
6.1.2	Ghana and Côte d'Ivoire - and Cape Verde . . . . .	46
6.1.3	Least Developed Countries . . . . .	47
6.1.4	Criticism from civil society organisations . . . . .	49
6.1.5	Regional integration . . . . .	51
6.1.6	Discussion . . . . .	53
6.2	Lack of flexibility in the EU . . . . .	54
6.2.1	Coherence and conflict in the EU . . . . .	55
6.2.2	Interim EPAs - forced agreements? . . . . .	60
6.2.3	Negotiating style . . . . .	61
6.2.4	EU's changing priorities . . . . .	63
6.2.5	The importance of WTO compatibility . . . . .	64
6.2.6	Discussion . . . . .	66
<b>7</b>	<b>Changes in the EU - West Africa relationship</b>	<b>69</b>
7.1	Factors external to the negotiations . . . . .	69
7.1.1	Other actors . . . . .	69
7.1.2	The economic crisis . . . . .	72
7.1.3	The EU - becoming a less attractive trading partner? . . . . .	73
7.2	Moving towards symmetry? . . . . .	74
7.3	Prospects for a regional EPA between the EU and West Africa . . . . .	76
<b>8</b>	<b>Concluding Remarks</b>	<b>81</b>

# Chapter 1

## Introduction and design

### 1.1 Introduction

The negotiations between the European Union and the West African states<sup>1</sup> for an Economic Partnership Agreement (EPA) are in their tenth year. The initial deadline for the negotiations was 31 December 2007, and although more than five years has gone by since then it still appears as though the the two regions are far from finalising an agreement. Why have the EU and West Africa not agreed on an outcome? Is it merely a question of technical disagreements in the negotiations, or are there political explanations as to why an agreement is still not in place?

If the EU and the West African countries do not succeed in negotiating an agreement, this will bring an end to the special trade relationship that has existed between the two regions since the period of colonialism. The trade relationship has been formalised through different agreements and conventions, and at no point in the past has it taken so long to reach agreement.

The trade relationship between West African countries and the EU was recognised as early as 1957 in the Treaty of Rome (Babarinde and Faber, 2005, p. 3). West African states have been in formal trade agreements with the EU for half a decade, starting with the Yaoundé convention between the European Economic Community (EEC) and the Associated African States and Madagascar (AASM), signed in 1963, and later through the Lomé conventions (*ibid.*, p. 3). When the United Kingdom joined the EEC in 1973, the former colonies of the EEC member states came together in the organisation of African,

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<sup>1</sup>The West African countries are Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, The Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo (members of the Economic Community of West African States (ECOWAS)) and Mauritania

Caribbean and Pacific states (ACP). The first Lomé convention between the EEC and ACP was signed in 1975. This was a non-reciprocal trade agreement, meaning the ACP enjoyed far more preferential market access to European markets than the other way around. The last of the Lomé conventions, the Lomé IV Convention, was signed in 1990 and expired in 2000. By then, 86 states were signatories to the agreement, with the ACP counting 71 member states (Babarinde and Faber, 2005, p. 5). The non-reciprocity principle of the Lomé conventions was not in accordance with the rules of the World Trade Organisation, and the EU and ACP in 2000 decided to negotiate reciprocal trade and development agreements on a regional basis.

The EPAs constitute the trade component of the Cotonou Partnership Agreement (CA) between the EU and the African, Caribbean and Pacific (ACP) group of states. The CA was signed in 2000, and the negotiations for trade agreements between the EU and the different regional groups within the ACP started in 2003. The stated aim of the EPAs is to foster economic growth and regional integration for the ACP, whilst at the same time achieve the status of WTO compatible free trade agreements (Official Journal of the European Communities, 2000).

In October 2003, the EU and the West African countries agreed to negotiate an EPA between the two regions (The Courier, 2003). The negotiations were launched in August 2004 when ECOWAS, on behalf of West Africa, and the European Commission (EC), on behalf of the EU, agreed on a roadmap for finalising negotiations by the end of 2007 (ECOWAS and the European Commission, 2004). After almost a decade of negotiating, it is unclear whether the tradition of trade agreements between the two regions will be continued. The EU continues to claim that the EPA will “enhance trade” and “boost regional markets” (European Commission, 2013b), and negotiations still take place between the EU and West Africa although commentators speak of negotiation “fatigue”, “impasse” and “failure” (Bilal and Ramdoo, 2010b, p. 2; Maes, 2012, p. 2).

## 1.2 Research question and hypotheses

The negotiations for a regional EPA between the EU and the West African countries have not led to an agreement. In this paper I examine the negotiations and the actors in order to establish possible causes for why an agreement has not been reached.

My research question is:

*What explains the lack of agreement in the EPA negotiations between the EU and the West African states?*

Because trade agreements, and negotiations between countries in general, are complex and many-layered, there might be several reasons why agreement has not been reached. I take an inductive approach to my study, examining the case of the negotiations between the EU and West Africa in order to present explanations as to why the actors have not finalised an agreement. Conducting an analytical case study that does not set out to test theories or hypotheses, I nevertheless have certain assumptions about what may have caused a lack of agreement. These assumptions are based on my previous knowledge of the EPA negotiations and are also in line with arguments made in non-academic publications, such as the ones by Maes (2012) and Bilal and Dalleau (2011). These assumptions, or hypotheses, are for matters of reliability presented below.

I put forward four hypotheses that to some extent constitute overlapping and inter-linked explanations. I believe that a combination of these reasons can explain the lack of an agreement in the EU-West Africa EPA negotiations. Political disagreement may for instance have been accentuated by a lack of flexibility in the EU approach.

*1) Agreement has not been reached because there exists political disagreement over a number of issues in the negotiations.*

The EPA will constitute a free-trade agreement between the EU and the West African region. If the model of trade liberalisation the EU is promoting is incompatible with the development model the West African countries wish to pursue, this may explain the lack of agreement. There might also be disagreement over other political issues. In the negotiations preceding the signing of the Cotonou agreement there was for instance much disagreement between the ACP and the EU over the inclusion of ‘good governance’ as a criterion (Arts, 2005, p. 164).

*2) The disparate interests of the West African states impede agreement between the region and the EU.*

West Africa is a region consisting of 16 countries, of which 12 are least developed countries

(LDCs) who already enjoy duty and quota free access to the EU<sup>2</sup>. The countries' economies vary in size as well as with regards to which goods are important export articles. It is therefore likely that their economic interests also vary to some degree and that they have different views on what an EPA with the EU should look like. Ghana and Côte d'Ivoire negotiated bilateral Interim EPAs with the EU in 2007 (Council of the European Union, 2007), and this may have had an impact on the negotiations between the EU and the West African countries for a regional EPA. The EPA has been presented as an agreement that will strengthen regional integration. If the countries in West Africa have diverging perceptions of how important the regional integration process is, and whether an EPA will strengthen or weaken regional cooperation, this may also explain why agreement has not been reached.

*3) The negotiations have not led to an agreement because there has been a lack of flexibility on behalf of the EU.*

The EU has been criticised for its rigid position in the EPA negotiations, for instance in the negotiations with the Pacific ACP region (Oxfam, 2006a). If the EU has been unwilling to concede to any demands raised by the West African countries this may have had an adverse effect on the negotiations.

*4) The power structure between the parties has been altered as a result of geopolitical changes, making it more difficult to reach agreement.*

The negotiations between the EU and West Africa started more than eight years ago, before the enlargement of the EU and the global financial crisis, at a time when the emerging economies had only just begun taking an interest in the African continent. I believe that the geopolitical context for negotiating trade agreements has changed in the last decade, especially with regards to the rise of emerging economies such as China and India, and that it is likely that this is impacting on the negotiations.

Within the academic field of International Relations, it is perhaps most common to examine processes and negotiations after they have come to an end. When the outcome is known, it is possible to look back at why this particular outcome occurred. I find it

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<sup>2</sup>All least developed countries (LDCs) have since 2001 had duty and quota free access to EU markets under the EU's 'Everything But Arms' scheme (Council of the European Union, 2001).

both interesting and challenging to undertake a case study of a negotiation process that is still ongoing. When the final outcome is uncertain, it becomes possible to examine the process leading up to the outcome without being biased by the knowledge of what came out of the process. No matter the outcome of the negotiations, my thesis will shed light on how the process was perceived by actors and commentators in the spring of 2013, and will thus be of value to those who in future wish to analyse this negotiation process or EPA negotiations between the EU and other ACP regions.

As most bilateral trade negotiations, the technical negotiations between the EU and West Africa for an EPA are confidential. Documents such as drafts of the agreement text or minutes from negotiation meetings are considered sensitive and have not been made public. I will therefore not carry out a detailed analysis of the negotiations, examining all the different negotiation meetings and what was discussed when and where. Instead of attempting to reconstruct the negotiations, meeting by meeting, I wish to present an overview of the negotiations in light of my hypotheses. In the case of West Africa, I will not examine the processes of regionalisation as such, but wish to establish whether the countries' perceptions of regional integration has had an impact on the negotiations.

## 1.3 Structure

This paper is a comprehensive study of the possible explanations for why the EPA negotiations between the EU and West Africa has not led to an agreement. My hypotheses are assessed in light of the research question and relevant theoretical contributions.

The data I have collected and analysed is presented in chapter 2 together with an account of the methodological underpinning of my research. Chapter 3 is a presentation of relevant theory, with sections on 'policy space' and EU-ACP relations in the Lomé conventions. In chapter 3 I also present theoretical contributions on asymmetric negotiations, negotiation style and failure, and two-level games. A brief background of the context and structure of the negotiations is given in chapter 4.

Chapters 5, 6 and 7 contain the analysis. I start by looking at the main points of disagreement between the European Union and West Africa in the EPA negotiations. In chapter 6, I first examine the interests and positions of the different West African countries to establish whether divergent interests in West Africa can explain the lack of agreement. I then turn to the EU and the hypothesis that agreement has not been reached due to a lack of flexibility in the EU's approach to the negotiations. In chapter 7, I examine

whether the relationship between the EU and West Africa has been altered as a result of new actors taking an interest in the West African countries, and briefly comment on the possibility of agreement being reached in the future. In chapter 8 I present concluding remarks.

# Chapter 2

## Data and method

This study is a qualitative case study, and I have conducted and analysed interviews and documents in order to discuss and shed light on my hypotheses and research question. I wish to contribute to explaining why the EPA negotiations have not led to an agreement.

When researching negotiations and negotiation processes, employing qualitative methods allows the researcher to focus the analysis on the process of negotiation rather than on the more easily observable correlations between certain factors and certain negotiation outcomes (Hopmann, 2002, p. 68). Qualitative methods can shed light on the connections between factors and outcomes which often impact on the outcomes in ways that is difficult to analyse quantitatively (ibid., p. 69). Many negotiations are marked by high levels of secrecy and classification regarding documents such as negotiation mandates, minutes from meetings and various drafts. Thus, documents that would be of great value to a researcher are impossible, or at least very difficult, to obtain (ibid., p. 72). This is also the case in the negotiations between the EU and West Africa. By employing a qualitative approach, conducting interviews in addition to analysing documents, I am able to partly overcome this problem of non-transparency.

One of the main features of case study as method is that it allows the researcher to conduct a comprehensive and detailed analysis of one case or a few cases (George and Bennett, 2005, p. 49). Case studies can help generate theory as they allow for in-depth analysis of a single case (Hopmann, 2002, p. 75). By “peer[ing] into the box of causality” it becomes possible to explain outcomes (Gerring, 2007, p. 45). I will conduct a case study of a single case. This allows me to focus on context and a wide set of explanatory factors.

The object of my research is to explain why the negotiations between the EU and West Africa has not led to an agreement. I want to identify the apparent and underlying causes of disagreement between the actors in order to discuss what has caused the lack of

agreement and why. I approach such a task with caution, aware of the difficulties involved when examining causal relationships. However, the nature of my research question and my case requires me to present some sorts of causal inferences. I take an inductive approach to my case, but I nevertheless present my assumptions about what constitutes the main explanations of the lack of agreement in the negotiations. I use interviews and document analysis, as well as existing literature, to investigate these hypotheses and examine the relationship between factors and outcome. I wish to explain why no agreement has been reached in this specific case by examining a number of factors. My aim is also to contribute to the theory on bilateral agreements in general, and the EPA negotiations in particular, by ascertaining which factor or factors best account for the lack of agreement.

This paper is an analytical case study of a single case. A single, analytical case study permits a thick and elaborate case penetration and puts an emphasis on context (Druckman, 2002, p. 23). Using a theoretical approach and employing a conceptual lens to evaluate hypotheses is valuable for “understanding cases in their contexts” (ibid., p. 19). I present different hypotheses that can explain the non-outcome of my case, and take these, as well as theoretical contributions, as starting points for my analysis.

## 2.1 Interviews

Through a triangulation of methods, using both semi-structured interviews and document analysis, I wish to examine the actors and the negotiations. I have interviewed respondents in Brussels, London and Oxford. I have conducted eight interviews with nine respondents, five of these with officials from West Africa and the European Union. The interviews were semi-structured with open-ended questions, and each interview lasted for approximately 50 minutes. My interview objects were chosen on the basis of their knowledge of, or involvement in, the negotiations.

Table 2.1: Interviews

Respondent	No	Location
EU officials	4	Brussels
West Africa officials	1	Brussels
Researchers	2	Brussels; London
NGO employees	2	Brussels; Oxford

The EU officials I interviewed work on West Africa and the EPA negotiations in the European Commission (EC) and in the European External Action Service (EEAS). The West African official I interviewed is a government official from Ghana. I have employed the snowball method in order to get in contact with relevant respondents. I have also been in contact with officials from West Africa, ECOWAS and members of the European Parliament who were not available for an interview. In addition to interviews with EU and West Africa officials, I have also interviewed researchers and NGO employees<sup>1</sup>. These have all followed the negotiations closely since the beginning and some of them have written extensively on the topic. They have also met with the negotiators from both sides at several occasions.

In the interviews, I used my hypotheses as a starting point for open-ended questions, as it was my aim both to increase my knowledge of the negotiations as well as to have my hypotheses confirmed or disputed.

## 2.2 Document analysis

In addition to conducting interviews, I have carried out a document analysis. Document analysis is suitable as the case I am looking at is distant in space, with negotiations taking place in West Africa as well as in Brussels, and also in time, with 2003 being the starting point of negotiations. The texts I examine are mostly official documents issued from the EU, ECOWAS or the ACP. I also analyse joint statements, such as documents from the EU-ECOWAS meetings, and speeches given by EU and ECOWAS top level officials<sup>2</sup>.

I have gotten hold of a copy of the negotiating mandate for the EC<sup>3</sup> and the negotiating guidelines issued by the ACP. I also use secondary sources such as books, journal articles and reports in my analysis, in line with the triangulation approach<sup>4</sup>.

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<sup>1</sup>The researchers I interviewed are Sanoussi Bilal from the European Centre for Development Policy Management (ECDPM) in Brussels and Christopher Stevens from the Overseas Development Institute (ODI) in London. I also interviewed Marc Maes from the Belgian NGO 11.11.11 and met with Yash Tandon, writer, researcher and former director of the NGO South Centre.

<sup>2</sup>The documents I analyse are as follows: The EC negotiating mandate; the ACP negotiating guidelines; speeches by the President of the ECOWAS Commission and the EC Trade Commissioner; debates and statements on the EPA from the European Parliament, the Council of Ministers and the EC; EU-ACP joint documents; EU-Nigeria joint documents; EU-ECOWAS joint documents; ECOWAS and EU press releases on the EPA negotiations; EPA updates published by ECDPM and ICTSD Trade; The Courier (magazine on EU-ACP relations); as well as relevant reports, journal articles, books and book chapters.

<sup>3</sup>This is not publicly available, I received a copy from one of my informants.

<sup>4</sup>In addition to resources available from the internet and the library at the University of Oslo, I have

Because the period in question is over a timespan of at least nine years, I am not able to examine everything that has been written or stated about the negotiations. Most of the documents and speeches I analyse are from 2007 onwards. This is also because of a lack of available data from before that time<sup>5</sup>.

## 2.3 Validity and reliability

I take a constructivist approach to research and believe that interpretation is key to understanding processes as “the material world does not come classified, and, therefore, the objects of our knowledge are not independent of our interpretations and our language” (Adler, 2002, p. 95). Such interpretation is subjective in the sense that I, as a researcher, cannot be completely unbiased or ‘unlearn’ what I already know. Other researchers may differently interpret some of the documents I have analysed in this thesis, and the interviews conducted may have turned out differently had others initiated them.

In a qualitative case study, open-ended questions in interviews are useful to get information about the case as well as to examine hypotheses. Semi-structured interviews with open-ended questions increase response validity as the respondent are given the opportunity “to organize their answers within their own framework” (Aberbach and Rockman, 2002, p. 674). Although structured interviews make comparisons easier and also serve to increase reliability, I concur with Aberbach and Rockman that “the advantages of conversational flow and depth of response outweigh the disadvantages of inconsistent ordering” (ibid., p. 674).

Questions of validity are central to all research, and in conducting a qualitative case study on a negotiation I am aware that the data I analyse is not unbiased. Throughout the interviews, I have been mindful of the notion that “subjects have a purpose in the interview too: they have something they want to say”, and I also consider this in the analysis (Berry, 2002, p. 680). My interviews are confidential and the audio files and transcripts will be deleted after the thesis is submitted. However, all documents and other written sources referred to in the text are included in the bibliography.

My respondents have vast knowledge of the negotiations, but my analysis would perhaps have been strengthened had I conducted interviews with more respondents from the West African side. This proved difficult, however, both because several of the officials I contacted were unavailable for interviews, and because I could not interview any French

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visited the British Library for Development Studies and the library at the School of African and Oriental Studies in order to access relevant literature.

<sup>5</sup>On the ECOWAS’ web page, press releases from before 2008 are not available.

speaking officials as I do not speak French. Being a student at master's level I have been restrained by resources, and have for instance not been able to travel to West Africa. I have also found that some of the respondents I contacted would not take the time to meet with me, possibly because of my status as master's student, or from a lack of interest for my case. However, most of my interviewees have been in meetings with West African officials on the EPA process, and were able to comment on their positions.

Apart from the negotiating mandate for the EC, the documents I analyse are publicly available. However, many of the documents that would be relevant to analyse have not been made public. I am therefore aware that the documents I examine may only present a partial picture as they are selectively made public (Johnson and Reynolds, 2005, p. 233). I also analyse a number of reports and papers that have not been published in academic journals and am aware that these may not be peer-reviewed. However, by employing a method of triangulation it is possible to compare various sources and evaluate them against each other.

As I do not set out to use my study as a means to test a theory or a set of hypotheses, there is limited scope for generalisation. However, it is possible to deduce certain contingent generalisations, which “do not freeze understanding or bring it to closure; rather, they open up our understanding of the social world” (Adler, 2013, p. 121). My findings may be useful to assess why agreement has not been made in EPA negotiations with other regions, and some findings regarding the role of the EU in the negotiations may also be applicable to these negotiations.



# Chapter 3

## Theory

I take a constructivist approach to my research, with an understanding of international relations as being constructed and reconstructed by different actors in the international system. However, I concur with the pragmatic realist approach that there is a world “out there”, although the social reality is constructed through ever-changing perceptions and ideas. Most importantly, “social facts emerge from the attachment of collective meaning to a previously existing material reality” (Adler, 2013, p. 117). The “fundamental structures of international politics” are socially constructed, and these structures in turn inform the interests and identities of actors (Wendt, 1995, pp. 71-72). In the context of negotiations between the EU and the West African states it is important to assess both the actors themselves as well as the underlying structures. The explanations for why an agreement has not been reached can be found by looking at a historical narrative of the negotiations, including the different actors’ interests in, and perception of, the negotiations. A constructivist approach allows for the interpretation of interests as including both material and immaterial elements, such as norms and ideas (Adler, 2013, p. 123). With regards to how negotiations play out, a constructivist view includes the consideration of cognitive elements and the belief that “perceptions of reality, not objective reality itself, largely determine human behaviour” (Hopmann, 1996, p. 121).

The theoretical contributions presented below have been selected in order to shed light on the negotiations between the EU and West Africa. Assumptions made about the interests of developing countries, such as the concept of policy space, are outlined in the first section, and in the second section theories regarding previous EU-ACP relations are presented. The final section contains a presentation of various contributions to negotiation theory, explaining how power relationships are shaped and reshaped as well as what may cause negotiations to fail to lead to an agreement.

### 3.1 Policy space

Krasner (1985, p. 3) argues that developing countries prefer authoritative methods of allocation to market-oriented systems, and authoritative norms to neoliberal ones (*ibid.*, pp. 307-309). He disagrees with those who claim that developing countries are motivated primarily by economic factors and claims that developing countries consider political control and economic development as equally important. Since 1985, however, developing countries have had to relinquish much political control as a result of the influence of international institutions on their economies. According to Wade (2003, p. 622), developed countries have since the early 1990s promoted liberalisation and neoliberal economic policies through the international institutions, such as the International Monetary Fund (IMF) and the WTO, as well as through bilateral treaties. The international and bilateral free-trade agreements that have been negotiated over the past decades have resulted in developing countries “being ever more tightly constrained in their national development strategies” (*ibid.*, p. 621). Their policy space has been reduced (*ibid.*, p. 622).

Briefly explained, the term ‘policy space’ refers to governments’ ability to pursue the economic or political strategies of their choice. This relates to their potential for employing “policies for economic restructuring”, so-called “industrial policies” which “reinforce or counteract the allocative effects that the existing markets would otherwise produce” (Rodrik, 2004). Wade (2003, pp. 639, 630) argues that developed countries in the WTO are “driven by a mixture of ideological conviction and intense corporate lobbying” and that “the past decade has ushered in an era of new market access dynamics much more favourable to the developed countries”. Bilateral and international trade agreements tie “the hands of developing country governments” to the “market opening agenda” of developed countries (*ibid.*, p. 622). However, the trade negotiators of developing countries “[f]or the most part...accept the legitimacy of the idea” presented by developed countries “that ‘market access’ is key to development” (*ibid.*, p. 639). Chang (2006, p. 628) notes how the policy space of developing countries may also be “constrained by domestic interest groups in the developing countries themselves” who, for economic or ideological reasons, promote liberalisation and free trade.

### 3.2 The institutional legacy of Lomé

The Lomé Conventions were detailed agreements covering all aspects of trade between the EU and ACP over a total period of 25 years. With each new convention, the scope was broadened to include topics such as human rights, economic diversification, the rule of law

and economic, social and cultural rights (Babarinde and Faber, 2005, p. 4). In addition, several institutions, such as the EU-ACP Joint Parliamentary Assembly, were set up. Because the trade agreement was institutionalised and political elements were brought in, it has been argued that Lomé evolved into an international regime (Forwood, 2001, p. 426). International regimes are “sets of implicit or explicit principles, norms, rules and decision-making procedures around which actors’ expectations converge in a given area on international relations” (Krasner quoted in Forwood, 2001, p. 426).

Forwood (2001) carries out a two-level analysis of the negotiations leading up to the signing of the Cotonou Agreement in 2000 and finds that the legacy of Lomé played a great part in the final outcome of the negotiations: “This legacy is more than a legal commitment, but also a moral and political obligation of the EU Member States towards the ACP countries” (Forwood, 2001, p. 434). She argues that “[t]he strength of the Lomé *acquis* cannot be underestimated” and that the main changes from Lomé to Cotonou, such as the move from non-reciprocity to reciprocity and the explicit inclusion of a political dimension, “were imposed by external pressures such as trends in the global economy rather than by the preferences of actors within the negotiations” (*ibid.*, p. 439).

### **Collective clientelism**

A noted theoretical contribution to the field of north-south relations, and more specifically EU-ACP relations, is the book ‘Collective clientelism’ by John Ravenhill (1985). He argues that the relationship between the EU and the ACP states must be understood as a patron/client relationship, with the EU acting as patron for the ACP client states (Ravenhill, 1985). Through a comprehensive analysis of the negotiations and renegotiations of the first Lomé conventions, Ravenhill presents the argument that the ACP countries in the negotiations for a successor agreement to the Yaoundé convention employed a strategy of collective clientelism: they stood united in their negotiations with ‘the patron’, the EU. Most of the ACP countries were former colonies of European states, and used this historic link to negotiate an agreement that granted them better preferences than developing countries from other regions (*ibid.*). They exploited, and strengthened, their ‘special relationship’ with the EU. This strategy was successful to the extent that the text agreed on established a system of non-reciprocity under which the ACP countries were granted far better preferences than non-ACP developing countries. The strategy failed, however, with regards to the ACP countries’ goal of establishing a trade relationship that placed the partners on an equal footing: the EU remained firmly in control and even reserved the right to revoke the duty free market access “whenever circumstances warranted it”

(Ravenhill, 1985, p. 310).

Ravenhill notes how the ACP countries in the renegotiation of the first convention in several ways failed to operate as a coherent group. Their demand for equal treatment as well as non-reciprocal trade preferences ensured that the relationship remained one between patron and clients (Ravenhill, 1985, p. 316). A lack of resources made ACP institutions weak compared to the technical expertise of the European Commission (*ibid.*, p. 316). The clientelist nature of the relationship and the shortcomings of the ACP institutions lead to what Ravenhill describes as a “reilateralization of clientelist ties”, with ACP countries turning their attention to European countries with which they had historic links rather than to building a stronger collective platform (*ibid.*, p. 320). For this and other reasons, the Lomé conventions gradually became less important to both the EU and the ACP countries. However, the agreements secured relatively large amounts of aid from the EU member states to the ACP countries, as well as more or less free market access for the latter, which were benefits the ACP countries could not afford to lose once they were in place (*ibid.*, p. 329). They could therefore not afford to prolong negotiations or refuse to sign new conventions, the only bargaining tools available to them, and their bargaining position vis-a-vis the EU was thus weakened (*ibid.*, p. 329).

The current EPA negotiations take place between the EU and regional groups within the ACP and have led to a “de facto break-up of the ACP group” (Forwood, 2001, p. 439). The ACP countries’ ability to employ strategies of collective clientelism, such as establishing coherent positions based on common interests, is weakened by this split into regional groups (Ravenhill, 2004, pp. 135-136).

### 3.3 Negotiation theory: asymmetric negotiations

The relationship between the EU and West Africa can be viewed in terms of clientelism, with the EU operating as a patron to West African client states. Although clientelism implies some degree of mutual dependence, it also implies asymmetry since the patron is perceived as the powerful benefactor. Within negotiation theory, there are different views on how asymmetry affects negotiations and outcomes. These are outlined below. However, it is impossible to assess asymmetric negotiations without first looking at the concept of power and how different forms of power influence negotiations.

According to Habeeb (1988, p. 11), “the process of negotiation... is the process of altering and modifying values”. Negotiations are thus not static, but dynamic in nature. The ability to alter one’s negotiation partner’s values is connected to power, as power is

traditionally defined as “the ability of one party to move another in an intended direction” (Zartman and Rubin, 2000b, p. 7). Habeeb argues that the concept of power in a negotiation process can be broken down into three forms of power: aggregate structural power, issue-specific structural power and behavioural power (Habeeb, 1988, pp. 17-25).

The first form of power, aggregate structural power, is determined on the basis of the amount of resources and influence the actor has in comparison with the rest of the world (Habeeb, 1988, p. 17). Although this measurement of power is useful for placing the actor as a weak or strong state in the global system, “it is not sufficient for analyzing power in international negotiation” (ibid., p. 18). Whilst aggregate structural power is static, issue-specific structural power is, as the name implies, context-specific and refers to “an actor’s capabilities and position vis-à-vis another actor in terms of a specific mutual issue” (ibid., p. 19).

Issue-specific structural power is made up of the actors’ alternatives, control and commitment (Habeeb, 1988, p. 21). If an actor can achieve its goals through alternative agreements with other actors than the one it is currently in negotiation with, this may “increase an actor’s issue power by decreasing its dependence on the opponent” (ibid., p. 21). This is in line with what Muthoo (2000, p. 154) terms an actor’s “outside options”. In order to influence the outcome of negotiations, however, an outside option must be a viable and credible alternative to the current negotiations (ibid., p. 155). The second factor, control, increases issue-power and refers to the ability of the actor to achieve greater gains from the agreement than its opponent, “despite the costs involved in doing so” (Habeeb, 1988, p. 22). Issue-power is also determined by an actor’s commitment to the negotiation process, which Habeeb defines as “the extent and degree to which an actor desires and/or needs its preferred outcome” (ibid., p. 21). Issue-power is increased if the commitment stems from aspiration, a desire for a specific outcome, and decreased if the commitment stems from an actor’s need for a specific outcome, “a form of dependency” (ibid., p. 22). Commitment is an important factor because even high degrees of control and alternative options cannot compensate for a lack of a “real desire for a particular outcome” (ibid., p. 22). Aggregate power and issue-specific power constitute an actor’s structural power, and asymmetric negotiations are negotiations that take place between countries “with greatly divergent structural power resources” (ibid., p. 129).

It is not sufficient, however, to look only at the structural power balance, or imbalance, between states. In order to explain outcomes and analyse negotiations it is important to also look at behavioural power (Habeeb, 1988, p. 23). Behavioural power results from the ways in which actors utilise their structural power in the negotiation process, what

their tactics are and how well they manage to employ them to attain their goals (Habeeb, 1988, p. 23). Tactics, like outside options, are only effective if they are credible. Aggregate power can make tactical moves such as a proposal of side-payments more credible, whilst issue-power can allow actors to access a wider range of tactics than what appears possible when looking only at their aggregate power (*ibid.*, pp. 25-26). Habeeb takes the example of the “tactic of stalling” and argues that if an actor has less commitment to the process than its opponent, or a greater degree of alternatives, this becomes a viable tactic (*ibid.*, p. 26).

This is one example of how the different levels of power interact and influence each other. Aggregate power may increase an actor’s alternatives and control, but not commitment (Habeeb, 1988, pp. 131-132). Commitment is in many cases a strength of the, in terms of aggregate power, weaker actor. In an asymmetric negotiation, the weaker actor “generally has more at stake” and is thus more committed to “achieving its desired outcome” (*ibid.*, p. 132). This has been termed the “asymmetry of attention” (Nye quoted in Habeeb, 1988, p. 132). Attention increases commitment and also, through the support from its population and/or important lobby groups, “enhances the credibility of the weak actor’s tactics” (Habeeb, 1988, p. 132). Whilst the weaker actor has its attention on the negotiations, the attention of the stronger actor may be spread over several relationships. This can have a negative impact on the weaker actor’s ability to secure its desired outcome, as the stronger state “may fear that any concessions it makes to the weak state will have an adverse precedent effect in its other relationships” (*ibid.*, p.133).

The issue power balance between negotiating states may be altered by external events, such as technical innovation, the reshaping of international norms or geopolitical change (Habeeb, 1988, p. 135). Aggregate power also influences issue-power, and so a “[r]eal or perceived weakening of the strong state’s aggregate structural power can alter the issue power balance in the weak state’s favour” (*ibid.*, p. 134). This notion of ‘perceived weakening’ is in line with the constructivist view that power can be understood as “a perceived relation” between actors (Singer cited in Zartman and Rubin, 2000b, p. 13).

The classical framework for analysing negotiations holds that a powerful state will win in any negotiation with a relatively weaker state (Habeeb, 1988, p. 3). However, in many negotiations between strong and weak actors, the weak actors have succeeded in their demands by employing different bargaining tactics. One way weaker states can gain power in the negotiations is by taking advantage of the stronger state’s propensity to feel a sense of moral obligation for helping the weaker state (Zartman cited in Habeeb, 1988, p. 8). Weak states also have “the power to withhold agreement”, and thus one of

the bargaining tools available to them is to prolong the negotiations (Zartman cited in *ibid.*, p. 8). Various empirical evidence of weak states achieving gains in asymmetrical negotiations have led to a partial rejection of the traditional argument (*ibid.*, p. 3). A wider definition and understanding of power, such as the one presented above, makes it possible to explain in what ways weak actors can gain power in negotiations.

There has been much debate on how power relations influence negotiations and outcomes. Several contributions cited by Zartman and Rubin maintain that power symmetry is most conducive for “mutually satisfying negotiations and efficient attainment of optimal results” (Zartman and Rubin, 2000b, pp. 4-5). Asymmetry, on the other hand, makes agreement more difficult and may result in prolonged negotiations (*ibid.*, p. 5). Others have argued that negotiations lead to a reduction of asymmetry, a “leveling [of] the playing field”, as each party is dependent on the other not vetoing in order to get an agreement (*ibid.*, p. 4). Whatever the initial power structure between the actors, the negotiations place the actors on an equal footing and so asymmetry is irrelevant to the analysis.

Zartman and Rubin (2000a) argue that whether the initial power relationship is symmetric or not is indeed important, but they disagree with the notion that asymmetry makes agreement less likely. In a study of several negotiations, both symmetric and asymmetric, they find that “perceived asymmetry is the more productive condition for negotiation, whereas perceptions of equality actually interfere with efficient processes and satisfying results” (*ibid.*, p. 271). In North-South negotiations, the stronger actor, such as the US or the EU, will play a dominant role and typically adopt a “take-it-or-leave-it strategy” (*ibid.*, p. 275). The weaker actor will not be submissive, however, but will play an active part and develop “appropriate counter-strategies of their own” (*ibid.*, p. 277). Zartman and Rubin lists a number of tactics employed by the weaker states in the negotiations they examine. These include focussing on interests the opposing parties have in common; presenting solutions to shared problems; linking issues; and referring to the relationship between the parties<sup>1</sup> (Zartman and Rubin, 2000a, p. 278). Weaker states can also “borrow power” from the international context and international norms, or from building coalitions or influencing public opinion, and they can be strategic in terms of timing and the effective use of threats or stalling tactics (*ibid.*, pp. 278-282).

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<sup>1</sup>Such a focus on the relationship between the actors was especially prevalent in the Lomé negotiations, where the EU and ACP were depicted as equal parties to the negotiations (Ravenhill cited in Zartman and Rubin, 2000a, p. 278). Zartman and Rubin argue that this depiction serves as “a trap for future interactions” as the actors become so interested in maintaining the relationship that “momentary calculations of power and interests” take a backseat (Zartman and Rubin, 2000a, p. 278).

### 3.3.1 Negotiation style

According to Hopmann (1996, p. 32), an analysis of a negotiation process must first establish which actors take part in the negotiations, whether the actors have conflicting or converging interests, and what the negotiation structure looks like. In addition, the analysis must look at the context in which the negotiations are set and whether or not external events or third parties influence the process (*ibid.*, p. 33). Finally, the analysis of negotiations must acknowledge the influence the negotiators hold over the negotiations. Although states are the major actors in international negotiations, “states as such never act” (*ibid.*, p. 120). Because “actions are taken by individuals who are empowered to act on behalf of states in international relations”, the negotiation style of the negotiators may influence outcomes (*ibid.*, p. 120).

Hopmann presents four ideal type negotiation styles originally formulated by Casse and Deol: the factual style, the imaginative style, the analytical style and the normative style (Casse and Deol cited in Hopmann, 1996, pp. 136-137). The factual negotiation style can be useful for hammering out a negotiation plan, but is inflexible and not suited for problem-solving or “inventing creative formulas to solve intractable issues” (Hopmann, 1996, p. 136). The imaginative style involves less focus on details and greater consideration of the bigger picture, manifesting itself in creative problem solving and an optimistic outlook (*ibid.*, p. 136). This negotiation style may make agreement difficult, however, as it may prompt other actors to question the proposals made and label them “impractical and unrealistic” (*ibid.*, p. 137). An analytical negotiation style is firmly based on logical reasoning and involves breaking issues down into smaller components and searching for causality and the underlying arguments and interests. Analytical negotiators may find solutions to problems by dismantling issues and linking them in new ways that are more acceptable for all actors (*ibid.*, pp. 137-138).

A normative negotiation style is seen when negotiators refer to values and norms as premises for negotiation. They will thus try to “steer the outcome toward normatively correct solutions” which “will be articulated as fair solutions, but fairness must be defined by some external, normative criteria and not just as a splitting of the difference between initial positions or some such result that emerges inductively from the negotiation process” (Hopmann, 1996, p. 137). A normative negotiation style implies not accepting an agreement that is incompatible with such solutions just for the sake of reaching agreement (*ibid.*, p. 137). Negotiators who employ a normative style in negotiations “are likely to be perceived... as highly subjective, as lacking a logical or empirical basis for their proposed solutions, and as being overly critical of others” (*ibid.*, p. 137).

The style of negotiators can shed light on the outcome of negotiations, but whether or not negotiations lead to successful agreement is also dependent upon other elements of the negotiation process. Negotiation problems can be a result of several factors: there is a real or perceived “absence of bargaining space”; the negotiations include many interconnected issues which complicate the bargaining process; the actors involved in the negotiations have few overlapping interests and preferences; or there is “intense emotional involvement” by the actors, creating an atmosphere of hostility detrimental to reaching agreement (Hopmann, 1996, p. 95). If solutions are not found for such negotiation problems, an agreement may not be reached and the negotiations may end in stalemate.

### 3.3.2 Negotiation failure

Underdal (1983, p. 184) argues that success or failure in terms of negotiations should not be measured solely on whether or not the outcome is an agreement, but should be seen as “the distance between what is actually accomplished and *what could have been accomplished*”. Hence, a failed negotiation process can, in broad terms, be understood as a process producing an outcome that is less satisfactory than it could have been. Underdal presents four possible causes for negotiation failure: “uncertainty”; “inaccurate information”; “process-generated stakes”; and “politically inadequate solution design models” (ibid., pp. 186-192).

Uncertainty can stem from a real or perceived lack of information about “the preferences, perceptions, and beliefs” of the other actors in the negotiations or decision-makers at home (Underdal, 1983, p. 186). It can also be the result of inadequate knowledge of the effects or impact of the potential negotiation outcomes (ibid., p. 186). Uncertainty can cause negotiation failure as the actors become cautious and less willing to commit, with the likely consequence that the negotiations are delayed. It becomes more difficult to find solutions that are acceptable to the negotiating parties and the parties may end up preferring the status quo over an uncertain outcome (ibid., p. 187). Negotiation failure can also result from inaccurate information about the preferences of the other parties to the negotiations. This may lead the negotiating parties to believe their preferences overlap more than what is actually the case (ibid., p. 189). In the negotiation process the parties may then “optimistically insist on a solution that actually falls outside [the other party’s] acceptance zone, thus contributing to a deadlock” (ibid., p. 189).

The negotiation process in itself can also cause negotiation failure as it can “create certain stakes. . . extraneous to those constituted by the explicit negotiation issues” (Underdal, 1983, p. 190). Such process-generated stakes may result in the negotiation process

being characterised by factors such as prestige and reputation, which may make the parties less willing to reach solutions for fear of appearing the weaker party. However, high stakes in the negotiation process may also increase the actors' commitment to presenting solutions and reaching agreement (Underdal, 1983, p. 191). Negotiation failure may also be the result if the solutions proposed by the parties are not politically feasible (*ibid.*). Solutions may be deemed good in terms of some economic or legal standard, but are outside the scope of what the negotiators can get political acceptance for (*ibid.*).

### 3.3.3 Two-level analysis

Many formal models in negotiation theory assume that negotiations take place between unitary actors in a symmetric power relationship. In actual negotiations, however, the actors involved can rarely be considered "internally unified", and the power relationship between them is often asymmetric (Hopmann, 1996, p. 99). Because the assumption of unitary actors is seldom reflected in negotiations, it is useful to analyse negotiations as two-level games with negotiations taking place both within and between the actors (Putnam, 1993). Putnam presents an analytical tool for studying negotiations and argues that agreement between parties to a negotiation is dependent on the outcomes that is acceptable within the parties (*ibid.*).

In negotiations between states, the two levels can be understood to be the international level (Level I) and the national level (Level II). The negotiations at Level I is influenced by the actors' "win-sets", i.e. the outcomes that is acceptable at Level II (Putnam, 1993, p. 439). In theory, the larger the win-sets, the easier it is to reach agreement at Level I (*ibid.*, p. 439). However, if only one party has a large win-set, this can weaken its bargaining position vis-à-vis the other party (*ibid.*, p. 441).

Win-sets are influenced by what is at Level II considered the cost of not reaching an agreement. If this cost is low, meaning that the status quo may be considered an equally good option, the win-set of the actor is reduced (Putnam, 1993, p. 443). The disagreement at Level II may well be between those who want a Level I agreement and those who prefer the status quo (*ibid.*, p. 444). This may be used strategically in Level I negotiations in order to secure the desired outcome (a 'take-it-or-leave-it' approach), but it can also impede agreement if the opposing party is not willing to agree to the proposed outcome (*ibid.*, p. 445). If disagreement occurs between groups who want different outcomes, but still prefer any agreement over no agreement, however, "domestic divisions may actually improve the prospects for international cooperation" as there are more acceptable outcomes in the win-set (*ibid.*, p. 445).

Level II institutions can influence negotiations; especially regarding to what extent the Level II decision-makers can act autonomously. Autonomy increases the win-set and consequently the chances of reaching Level I agreement (Putnam, 1993, p. 449). Level I negotiations are dependent on the win-sets of the actors, and the strategies pursued by the parties are consequently also linked to their win-sets. More specifically, each party would wish to increase the opposing party's win set, but not necessarily its own win-set as the party with the smallest win-set normally holds greater bargaining power (*ibid.*, p. 450). The parties may try to increase the opposing party's win-set through a number of tactics and activities, and a lot of "ambassadorial activity... has precisely this function" (*ibid.*, p. 454). This is part of what Putnam terms "suasive reverberation" (*ibid.*, p. 455). Such reverberation can increase the win-sets of actors, but it "can also be negative, in the sense that foreign pressure may create a domestic backlash" (*ibid.*, p. 456). Such foreign pressure can also cause the negotiations to become politicised at the national level. Putnam argues that "[p]oliticisation often activates groups who are less worried about the costs of no-agreement", which in turn may reduce the win-set and impede Level I agreement (*ibid.*, p. 446).

If the parties to a negotiation are regions, such as the EU, the negotiations may be perceived as multiple-level games (Putnam, 1993, p. 450). Decisions and processes at the regional as well as the national level thus influence the negotiations at the international level. In the case of negotiations to which the EU is a party, the supranational institutions at the regional level also influence the negotiations (Forwood, 2001, p. 433). The Level I negotiations thus take place within a complex and multifaceted context which may be difficult to adequately capture in a model (*ibid.*, pp. 432-433).



# Chapter 4

## Background

### **The Cotonou Agreement**

The Lomé IV Convention expired in 2000, and on the 23rd of June 2000 the member states of the EU and ACP signed a Partnership Agreement in Cotonou, Benin. This agreement lays out the relationship between the parties from 2000 until 2020, when the agreement expires. It has been called “a house built on three pillars”, as it includes chapters on political dialogue, development cooperation and trade agreements (ECDPM, 2003, p. 14). In the Cotonou Agreement, the EU and ACP agreed to negotiate WTO compatible trade agreements<sup>1</sup> by the end of 2007<sup>2</sup>.

The Lomé conventions were not WTO compatible as they extended non-reciprocal trade preferences “to only and all ACP countries, irrespective of their level of development” (Babarinde, 2005, p. 21). The EU therefore asked the WTO for a waiver that would allow it to extend non-reciprocal preferences to the ACP countries whilst the negotiations for new trade agreements were conducted. This waiver was “finally granted” in November 2001 and was described as “the last waiver under the Lomé Convention” (ICTSD, 2001).

### **EPA negotiations**

The EPA negotiations between the EU and the ACP were launched in September 2002 (The Courier, 2003, p. 21). These preliminary negotiations addressed “horizontal issues of

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<sup>1</sup>Article 36(1) “... the Parties agree to conclude new World Trade Organisation (WTO) compatible trading arrangements, removing progressively barriers to trade between them and enhancing cooperation in all areas relevant to trade.” (Official Journal of the European Communities, 2000).

<sup>2</sup>Article 37(1): “Economic partnership agreements shall be negotiated during the preparatory period which shall end by 31 December 2007 at the latest. Formal negotiations of the new trading arrangements shall start in September 2002 and the new trading arrangements shall enter into force by 1 January 2008, unless earlier dates are agreed between the Parties.” (ibid.).

general interest”, and in October 2003, a ministerial level meeting “marked the transition from the first phase of all-ACP-EC negotiations to the second phase of regional negotiations” (The Courier, 2003, p. 21). For West Africa, this second phase of negotiations was set in motion after a meeting in Cotonou in October 2003 (ECOWAS and the European Commission, 2004).

In August 2004, a roadmap for the negotiations was decided upon by the EU and West Africa. The schedule for negotiations involved meetings with the technical negotiators, “The Experts”, in “thematic technical groups” every second month and meetings at senior officials level “at least twice a year” (ibid.). In addition, the “Chief Negotiators”<sup>3</sup>, the ministerial level, “will meet to launch the negotiations, and at the end of each phase of the negotiations” (ibid.).

In West Africa, the countries in the region have given the ECOWAS Executive Secretariat, with the assistance of the UEMOA Commission, the mandate to negotiate the agreement (ECOWAS, 2006). Since Mauritania is part of the negotiations without being a member of ECOWAS, the EU refers to the EPA as being negotiated between the EU and West Africa, and not the EU and ECOWAS (European Commission, 2013d).

The negotiations are on the EU side conducted by the Directorate General (DG) for Trade in the European Commission (EC). Before the Lisbon Treaty entered into force in 2010, a finalised trade agreement would only have to be adopted by the Council of the European Union (hereafter the Council). With the Lisbon treaty, however, the European Parliament “is now co-legislator with the Council on trade matters” and “[a]ll trade agreements must be approved by Parliament to be ratified” (European Commission, 2011b). The relationship between the different actors in the EU system is further examined in section 6.2.1.

When the deadline for negotiations approached in 2007, at which time the WTO waiver also expired, it was clear that the negotiations for a regional EPA between the EU and West Africa would not be concluded in time (Council of the European Union, 2007). However, the negotiations for a regional agreement started up again in 2008, and are still continuing. Now there is no specific timetable for meetings, and the last formal meeting at the technical level took place in April 2012 (European Commission, 2013d).

In 2007, the EC decided to negotiate interim agreements with those countries who stood to lose their preferential access to EU markets at the end of 2007 (Council of the

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<sup>3</sup>Since the negotiations started, several people have held the post of EU Commissioner for Trade (Pascal Lamy (1999-2004), Peter Mandelson (2004-2008), Catherine Ashton (2008-2009), Benita Ferrero-Waldner (2009-2010), Karel De Gucht (2010-present)) and President of the ECOWAS Commission (Mohammed Ibn Chambas (2002-2010), James Victor Gbeho (2010-2012), Kadré Désiré Ouedraogo (2012-present)).

European Union, 2007). In West Africa, this was the case for Ghana, Côte d'Ivoire and Nigeria, the only non-LDCs in the region at the time<sup>4</sup>.

Ghana and Côte d'Ivoire are among a number of countries who have signed or initialled interim agreements (see table 4.1). Most of these countries have not ratified their agreements, however, and the EC has therefore proposed to amend the EU's market access regulation, with entry into force from 1 January 2014<sup>5</sup>. This will have the effect that those countries which have not ratified their bilateral IEPA, or a regional EPA, by 1 January 2014, will lose their current duty and quota free access to EU markets. The European Parliament has argued that the date should be set to 1 January 2016, thus giving the ACP countries a bit more time (European Parliament, 2012b). When I conducted my interviews, this disagreement between the Commission and the Parliament had still not been resolved. However, in April 2013, they reached agreement and set the date of entry into force of the new regulation to 14 October 2014 (Bilal, 2013a).

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<sup>4</sup>Cape Verde is no longer an LDC as of 2008. This is addressed in section 6.1.2.

<sup>5</sup>“Proposal for a Regulation of the European Parliament and 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” (European Commission, 2011c).

Table 4.1: Countries who have initialled, signed or ratified EPAs or interim EPAs

Region	IEPA (not ratified)	EPA or ratified IEPA
West Africa	Ghana (not signed), Côte d'Ivoire (signed 2008)	-
Central Africa	Cameroon (signed 2009)	-
Eastern and Southern Africa (ESA)	Zambia, Comoros (not signed), Mauritius, Madagascar, Seychelles, Zimbabwe (signed 2009)	-
Eastern Africa Community (EAC)	Burundi, Rwanda, Kenya, Tanzania, Uganda (not signed)	-
South African Development Community (SADC)	Namibia (not signed)	Botswana, Lesotho, Swaziland, Mozambique (IEPA ratified 2013)
Caribbean	-	CARIFORUM-EU EPA signed 2008, not fully implemented
Pacific	Fiji (signed 2009)	Papua New-Guinea (IEPA ratified 2011)

European Commission (2013d)

# Chapter 5

## Political disagreement

My first hypothesis is that disagreement over political issues explains the lack of agreement in the EPA negotiations. The reason given by the EU and West Africa as to why agreement has not been reached is that there are a number of outstanding ‘contentious issues’ (see ECOWAS, 2010b; European Parliament, 2012a; ECOWAS, 2013b). From my interviews I gather that the issues that have caused the most disagreement relate to the pace and scope of liberalisation in West Africa; the amount of development assistance that should be given to the West African countries, and whether this should be additional to regular aid; and whether or not the agreement should include political conditionalities in the form of a non-execution treaty.

The current negotiations are focussed on drawing up an agreement that will cover development cooperation and trade in goods (European Commission, 2013d)<sup>1</sup>. As in any trade negotiation, the technical discussions in the EPA negotiations have been broad in terms of issues covered. At the same time, the discussions have been very detailed so as to reach agreement on content as well as the actual treaty text. As of February 2013, agreement had not been reached on the issues of market access, rules of origin and development cooperation as well as on some of the articles in the text of the agreement<sup>2</sup>. Over the past eight years, the negotiators have managed to reach agreement on almost all articles and there are now only four articles that are still open for discussion<sup>3</sup>.

However, the discussions on market access and development cooperation have been

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<sup>1</sup>The inclusion of other issues, such as trade in services, intellectual property rights and government procurement, are not currently on the table. Regarding services, the EU states that the EPA should include a so-called rendezvous clause, meaning that an agreement on services will be negotiated at a future date (European Commission, 2009; European Commission, 2013d).

<sup>2</sup>EU official no. 3, 2013. (I cite all interviews in footnotes. I also differentiate between the respondents and refer to the four researchers and NGO activists as ‘informants’ rather than interviewees or sources.)

<sup>3</sup>ibid.

going on for as long as the negotiations (see ECDPM, 2006; European Commission, 2009; Bilal and Ramdoo, 2010b and European Commission, 2013d). After negotiating for more than eight years, it can be argued that the EU and West Africa would have been able to come up with mutually agreeable solutions if the disagreements were over purely technical matters. In addition to examining the three main areas of disagreement, I will present what I understand to be the underlying political reasons for why the negotiations have not led to an agreement

## 5.1 Market access

### 5.1.1 Substantially all trade?

In this section I outline the debate surrounding West Africa's market access offer, starting with the disagreement over how to interpret the WTO requirement of liberalisation of 'substantially all trade'.

As outlined in chapter 4, the Cotonou Agreement states that the EPAs have to be WTO compatible agreements. This means that, in order for the EU to continue granting preferences to the ACP states, new free-trade agreements must be set up in which the parties agree to liberalise 'substantially all trade' between them<sup>4</sup>. Looking at the negotiating mandate for the European Commission, it is clear that WTO compatibility is an important starting point for the EU. In the negotiating mandate for the EC, the objective of the EPAs is to establish "free trade areas between the parties, based on the development objectives of the Cotonou Agreement and in conformity with the provisions of the WTO" (Council of the European Union, 2002). The EC is also given the mandate to secure the "commitment of parties to respect their obligations assumed within the framework of the World Trade Organisation and to further the objectives of the WTO" (ibid.). During the course of negotiations for the Cotonou treaty, the ACP opposed the demand for reciprocity in trade relations, but this was not reflected in the treaty text (Faber and Orbie, 2007). The scepticism towards reciprocity is reflected in the ACP guidelines for the EPA negotiations, however, where it is stated that the ACP countries want to work within the WTO "with a view to clarifying and improving WTO rules covering regional trading agreements between developed and developing countries" (ACP Secretariat, 2002). ACP countries

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<sup>4</sup>GATT Article XXIV 8(b): "A free-trade area shall be understood to mean a group of two or more customs territories in which the duties and other restrictive regulations of commerce... are eliminated on substantially all the trade between the constituent territories in products originating in such territories." (World Trade Organisation, 2013)

also called on the EU to join in promoting an “ACP-EU initiative to revise WTO rules to accommodate the specificities of reciprocal preferential trade arrangements between non-contiguous developed, developing and least developed economies” (Commonwealth Secretariat, 2004, p. 189). The ACP countries also wanted to strengthen the development dimension of the WTO, “operationalizing and making legally binding in the WTO existing and new provision on special and differential treatment” (ACP Secretariat, 2002).

In the WTO negotiations, developing countries have been calling for special and differentiated treatment allowing them to protect their markets whilst achieving greater market access in developed countries for their agricultural exports (Lal Das, 2005; Matthews, 2001). It has also been argued that non-reciprocity has been “a key aim of the South in international trade negotiations” (Brown, 2002, p. 197). Arriving at a more development-friendly WTO regime, the ACP guidelines state, “will then enable ACP States to be in a position to agree to EPAs that are compatible with WTO rules then prevailing” (ACP Secretariat, 2002). However, the Doha development round of the WTO has not been concluded, and the WTO rules for free-trade areas have not been altered. There is a “lack of consensus in the WTO on how to discipline regional trade agreements” (Draper, 2007, p. 13). It is clear from the ACP guidelines that the ACP countries were sceptical of negotiating reciprocal trade agreements and wanted the EU to work with them to alter the WTO rules. Nevertheless, West Africa has agreed with the EU that the EPA should be a WTO compatible treaty (ECOWAS, 2004). This has led to debate over what constitutes ‘WTO compatibility’ and how to interpret the demand for liberalisation of ‘substantially all trade’.

The current position of the EU is that West Africa should liberalise 80 per cent of their trade with the EU, whilst the EU should liberalise 100 per cent. From my interview with a Ghana official I understand that there is much disagreement over how ‘substantially all trade’ should be interpreted: “The EC, by its own discretion, is saying 80 per cent, whereas that has not been defined anywhere, even at the WTO”<sup>5</sup>. Although the parties are supposed to work to conclude an agreement that is WTO compatible, the interpretation of what this actually entails is a cause of disagreement<sup>6</sup>. The level of liberalisation necessary to constitute ‘substantially all trade’ has not been defined in the WTO, and to remove tariff barriers on 80 per cent of imports from the EU is from a West African point of view expected to have a negative impact on development in the region<sup>7</sup>. In my interviews with EU officials, on the other hand, I find that the demand for 80 per cent liberalisation

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<sup>5</sup>Ghana official, 2013.

<sup>6</sup>ibid.

<sup>7</sup>ibid.

is considered the only offer that would be WTO compatible. WTO compatibility is considered central to the negotiations, as the EPA for the EU is about getting “every member of the WTO in conformity with the rules that they themselves have promised to respect and that we have promised to respect”<sup>8</sup>. A liberalisation of 80 per cent on the West African side and 100 per cent on the EU side would constitute a liberalisation of 90 per cent of all trade between the parties, “which would mean substantial”<sup>9</sup> and thus be in line with WTO rules. As it stands now, “the offers on market access that West Africa is offering is not sufficient for the expectations we have”<sup>10</sup>. At the start of the negotiations, West Africa offered to liberalise 60 per cent, but during the course of negotiations this offer has been raised to 70 per cent<sup>11</sup> (see also ECOWAS, 2009). According to one of my informants, the West African countries’ position is influenced both by the fact that the WTO rules are unclear with regards to how much liberalisation is required, as well as the findings of impact studies that show that 60 per cent liberalisation in 25 years is “the optimum for them”<sup>12</sup>. The EU, on the other hand “has a very rigid view on what is required”, namely 80 per cent in 15 years<sup>13</sup>.

### 5.1.2 Liberalisation and ‘policy space’

I believe that this disagreement over the level of liberalisation also can be seen as a difference of opinion on the merits of liberalisation. From speeches given by the different trade commissioners of the EU over the past decade, as well as my interviews, I find that the EU claims to have little offensive economic interest in getting more preferential market access in West Africa. The EPAs are meant to “promote and expedite the economic, cultural and social development of the ACP States” and “foster the smooth and gradual integration of ACP States into the world economy” (Council of the European Union, 2002). The then Trade Commissioner of the EU, Peter Mandelson, stated in a speech in 2005: “The EPAs are there to build markets in the ACP, primarily for the ACP’s own benefit, not aggressively to open them to us!” (Mandelson, 2005). Talking about West Africa in particular, one EU official stated that the EU does not have a trade agenda in the region, and that the trade interest for the EU is extremely marginal<sup>14</sup>. Another EU official remarked that economic pay-off for the EU is “not there, at least not in great

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<sup>8</sup>EU official no. 4, 2013.

<sup>9</sup>EU official no. 1, 2013.

<sup>10</sup>EU official no. 2, 2013.

<sup>11</sup>Ghana official, 2013.

<sup>12</sup>Maes, 2013.

<sup>13</sup>ibid.

<sup>14</sup>EU official no. 1, 2013.

terms”<sup>15</sup>. One of my informants also noted how there has been little involvement from the various lobbies in Brussels in pushing for greater market access in West Africa<sup>16</sup>.

Whether European companies have an interest in better access to West African markets or not, the EU still maintains that West Africa must liberalise 80 per cent of imports from the EU. As I see it, a reason for this is the EU’s strong belief in free trade as a means to achieve economic growth and development. This argument has also been presented by Faber and Orbie (2007) who state that the EU’s demand for liberalisation can be explained by an “ideological belief in free trade”. Elgström and Pilegaard (2008, p. 373) note how “most observers agree that the DG trade officials are convinced that their approach is normatively correct: they truly believe that free trade and entry into the world economy is the optimal path to development for developing states”. One of my EU informants pointed to how there in many West African countries have been a political transition towards democracy after the end of the cold war, but that “the economic transition was not made”<sup>17</sup>. These countries have to open their markets and remove trade barriers in order to develop, as “there are no countries on earth which are developed which have these kinds of trade barriers”<sup>18</sup>. The concept of the EU as a normative actor in the EPA negotiations has been examined in several articles. A number of these argue that the EU is promoting neoliberal economic and political values which serve both the ideological and material interests of the EU, and are ‘locking-in’ neoliberal policies in the ACP countries and reducing their policy space (see Hurt, 2003; Nunn and Price, 2004; Storey, 2006; Hurt, 2012 and Langan, 2012).

My source from Ghana emphasised that the countries that are now developed have not had to open up their markets in such a radical fashion: “it’s too much and too fast to open 80 per cent over a period of 15 years. Not even Europe itself did that, it took them years to liberalise”<sup>19</sup>. This is a statement that is in line with the arguments presented by Chang (2003, 2006). The countries that are now developed used protectionist policies in order to develop their economies, policies that are now “frowned upon” by the same countries as well as the WTO (Chang, 2003, p. 2). The developed countries have thus climbed the ladder of development, and are now ‘kicking it away’ so poor countries cannot follow. This way of speaking of development has also been employed by the EU: then Trade Commissioner Peter Mandelson stated in a speech in 2005 that

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<sup>15</sup>EU official no. 3, 2013.

<sup>16</sup>Bilal, 2013b.

<sup>17</sup>EU official no. 1, 2013.

<sup>18</sup>ibid.

<sup>19</sup>Ghana official, 2013.

the purpose of EPAs is “putting the ACP on a ladder of prosperity” (Mandelson, 2005). However, according to my interviewee from Ghana, the EU is pushing for the liberalisation of various sectors, such as the pharmaceutical sector, which the West African countries should be allowed to “nurture and protect” in order to develop their production capacity<sup>20</sup>. Medicaments already account for around four per cent of the imports from the EU to the region (European Commission, 2011a). I see these statements as being in line with the arguments put forward by Krasner and Wade on the importance of policy space for developing countries (see section 3.1). The awareness of how developed countries have employed their policy space in order to achieve economic growth and development might have had an influence on the West African countries, making the prospect of rapid and extensive liberalisation unappealing.

The ACP Heads of State and Government noted in December 2012 how the EPA negotiations include “contentious issues that severely limit policy space” and proposed that all issues that are not needed to reach WTO compatibility “should be removed from the negotiations” (ACP Secretariat, 2012). However, in my view the debate over what ‘substantially all trade’ implies, the issue most important for WTO compatibility, has in itself been a fundamental stumbling block in the EU-West Africa EPA negotiations. So even if other contentious issues are left out of the negotiations, the debate over what is required to achieve WTO compatibility will have to be resolved. This disagreement can be explained in terms of Putnam’s (1993) notion of win-sets (see section 3.3.3). It seems that the West African countries and the EU do not have overlapping win-sets, that the outcomes they seek are so disparate that no compromise can be found.

### 5.1.3 The impact of impact studies

The expected consequences of liberalisation on the West African economies has been examined in several impact studies over the last decade (see Karingi et al., 2005; Busse and Großmann, 2007; Zouhon-Bi and Nielsen, 2007). These all predict that liberalising European trade with West Africa will lead to increased imports from the EU as well as losses in government revenue for the West African countries. It is likely that the West African scepticism towards rapid and extensive liberalisation has been accentuated by the findings of these reports.

A much-cited study conducted by a team from the United Nations Economic Commission for Africa estimates the impact of an EPA on 12 ECOWAS states. The study finds that all countries will experience declines in government revenue, ranging from a loss of

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<sup>20</sup>Ghana official, 2013.

US\$2 million in Guinea-Bissau to a loss of US\$427 million for Nigeria, and the authors of the study also warn that “the revenue foregone is likely to have negative impacts on other government programmes” (Karingi et al., 2005, p. 72). Another study finds that, in a free trade scenario with zero tariffs, the government revenue loss would amount to a 7.1 per cent decline in Ghana and a 10.4 per cent decline in Senegal (Zouhon-Bi and Nielsen, 2007, p. 12). Imports from the EU are expected to increase, by 10.5 per cent in Senegal and by 11.5 per cent in Nigeria (*ibid.*, p. 16). Busse and Großmann (2007) find that EU imports to Nigeria could increase by as much as 20.8 per cent. This study highlights that import duties as a percentage of total government revenue is currently quite high in all of the West African countries, ranging from 4.7 in Nigeria to 33.7 in the Gambia, with the average for the region being 14.7 per cent (*ibid.*, p. 799). The authors argue that although there are possible gains from an EPA, their “empirical analysis shows that the West African countries’ concerns about the trade and fiscal effects of EPAs are quite plausible” (*ibid.*, p. 809). Stevens and Kennan (2005, p. 4) find that three quarters of all ACP countries could lose more than 40 per cent of their tariff revenue from the EU, with one third of the countries losing more than 60 per cent. Impact studies conducted by research centres and NGOs have also concluded that the costs of an EPA are likely to be greater than the gains, especially if the countries do not receive sufficient compensation and assistance (see Patel, 2007; Berisha-Krasniqi, Bouët and Mevel, 2008; South Centre, 2012). Looking at the impact studies commissioned by the EU, Reisen (1999) finds that it is likely that imports from the EU to the ACP countries will increase. Because of this, the EPAs “do not make much economic sense from the point of view of the ACP, most particularly from the LDCs” (*ibid.*, p. 159).

There is little indication that the impact studies that have been conducted have had much influence on the position of the EU. The negotiating mandate for the EC is the same today as it was in 2002<sup>21</sup>. The findings of these impact studies were also rebuffed by one of my EU informants who claimed that “the argument that the immediate loss is too high is just partly true” as “statistics are extremely weak in the region” and because customs and tax collection is far less effective and comprehensive than it could be<sup>22</sup>. In addition, some studies have been challenged on methodological grounds, for instance for assuming an effective and full collection of customs duties (Curran, Nilsson and Brew, 2008). The claim is that it is unlikely that customs collection in West Africa is very efficient, and that the studies thus overestimate the revenue losses that may result from liberalising under the EPA (*ibid.*, p. 537). There have also been studies which find that EPAs are likely to

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<sup>21</sup>EU official no. 3, 2013.

<sup>22</sup>EU official no. 1, 2013.

lead to welfare gains for most ACP countries, although “the overall effect relative to GDP tends to be very small, whether positive or negative” (Morrissey and Zgovu, 2011, p. 75).

Because the predictions made by most impact studies are inconsistent with the claims made by the EU on the positive effects of an EPA, some West African countries might be uncertain with regards to what will be the effects on an agreement. Uncertainty is one of the possible causes of negotiation failure according to Underdal (see section 3.3.2), as it may cause the actors to be less willing to commit in negotiations. I believe it is likely that the impact studies that warn of potential negative impacts from EPAs have influenced the positions of West African countries. The EU officials I have interviewed noted how, in the negotiations, West African countries have come across as believing that the EPA would have a negative impact on trade flows, with less revenue coming from cross-border trade<sup>23</sup>, and that they seem “scared” of undertaking the reforms necessary for liberalisation<sup>24</sup>. A research paper on the negotiations between the EU and West Africa also noted that the West African countries fear the prospect of losing revenue if tariffs on imports from the EU are removed (Rommel, 2012). However, my source from Ghana argued that the EPAs should promote regional integration and economic growth and not “come and kill our industries”<sup>25</sup>. There is clearly a concern that rapid liberalisation can be damaging to the economy of Ghana, and of the West African economies in general.

## 5.2 Development assistance

In the EPA negotiations a major point of disagreement has been whether the economic assistance accompanying the EPA should be in addition to development assistance through the European Development Fund (EDF)<sup>26</sup>. The ECOWAS Ministers have also highlighted the need for “a financing plan to be presented by the EU” before the agreement can be signed (ECOWAS, 2009), and argued that commitments from the EU’s side should be legally binding and specifically quantified. For the West African countries, this has been a main point throughout the negotiations, most likely because they are aware of the negative consequences that may result from liberalisation. The ACP guidelines call for additional resources and compensatory mechanisms to be made available for the implementation of

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<sup>23</sup>EU official no. 2, 2013.

<sup>24</sup>EU official no. 1, 2013.

<sup>25</sup>Ghana official, 2013.

<sup>26</sup>The EDF is “the main instrument for providing Community development aid in the African, Caribbean and Pacific (ACP) countries and the overseas countries and territories (OCTs)” (European Commission, 2012).

EPAs, as “trade liberalization entails for ACP countries certain economic costs such as the fiscal impact and adjustment costs” (ACP Secretariat, 2002). The ECOWAS Ministers have followed up on this demand and requested “[c]ompensation for losses of tax revenues” and “adequate and accessible” development assistance to be made available outside of the EDF (ECOWAS, 2008c, 2009). According to my source from Ghana, such additional compensation will be important in order to make sure that imports from the EU does not “destroy local industries”<sup>27</sup>. The improvement of infrastructure is especially vital in order to enhance the competitiveness of local producers as well as to increase the supply capacity, and thereby exports, through added value in the production<sup>28</sup>.

Within the EU, and also under the EPA negotiations, the responsibility for the EDF lies with the European External Action Service (EEAS) and DG DEVCO (Development and Cooperation Europe-Aid)<sup>29</sup>. All ACP countries and regions are assigned a certain sum which goes into projects identified by the EU in cooperation with local government. In West Africa, the so-called ‘regional envelope’ increased from 300 million euros in the 9th EDF to 600 million euros in the 10th EDF, which covers the period from 2008 to 2013<sup>30</sup>. 70 per cent of this money was allocated to “projects dedicated to the regional integration” and was meant to accompany the signing of an EPA<sup>31</sup>. From my interview with an EEAS official I gather that the amount of money reserved for regional integration projects in the 10th EDF is considered proof of the commitment the EU has to the EPA process. However, since the EPA negotiations have not led to an agreement, the money reserved for implementation projects has not been spent. Additionally, there has been a lack of absorption of the EDF money arguably due to political difficulties in West Africa<sup>32</sup>. The mid-term review of the EDF, which was delayed and only carried out in 2012, revealed that only five per cent of the money had been absorbed. This led to some of the money originally earmarked for regional integration being moved to areas such as energy related projects<sup>33</sup>. I think it is likely that this lack of absorption may make it even less probable that the EU would wish to put additional money on the table.

In the EPA negotiations, the West African countries have introduced the concept of an EPA Development Programme (EPADP) that they want to be “the major sustaining instrument in the development dimension of the EPA” (ECOWAS, 2010a). The EU

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<sup>27</sup>Ghana official, 2013.

<sup>28</sup>ibid.

<sup>29</sup>EU official no. 2, 2013.

<sup>30</sup>ibid.

<sup>31</sup>ibid.

<sup>32</sup>ibid.

<sup>33</sup>(ibid.).

has agreed to finance the EPADP, but only through allocating funds from the EDF to that purpose. According to the EU Commission, results from different impact studies have highlighted the need for including a specific programme for development assistance which addresses areas such as infrastructure and economic reforms (European Parliament, 2009c). Although both the EU and the West African countries agree on the importance of financial assistance for the implementation of the EPA, the West African states have repeatedly “underscored the need to mobilise additional resources” (ECOWAS, 2010c). This stance is likely to have been further prompted by the stories emerging from countries which have signed EPAs, such as in the Caribbean region, where implementation is proving difficult. My interviewee from Ghana suggested that because of implementation problems, these countries may in hindsight have wished that they had demanded more from the EU in the negotiations<sup>34</sup>. From my interviews I also understand that the countries that have ratified agreements are for the most part small island states who wish to develop their service sectors, and that to compare these countries to West Africa is not very useful for explaining the lack of agreement between West Africa and the EU<sup>35</sup>.

The EPA text does not include any “binding financial commitments” beyond the 10th EDF (Meyn, 2011, p. 51). My interviewee also expressed frustration over the lack of commitment from the EU regarding the EPADP, stating that “they agree in principle”, but that as to the level of funding, “they haven’t committed, there’s no indication of the level of commitment”<sup>36</sup>. The EU wants to use funds from the EDF, but those funds are “already allocated long before” and will not sufficiently cover the level of assistance needed<sup>37</sup>.

### 5.3 The Non-Execution Clause

The Cotonou agreement contains articles that bind the EU and ACP member states to respect human rights and democracy<sup>38</sup> as well as to adhere to the principle of good governance<sup>39</sup>. When there are instances of breach in a country, such as human rights

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<sup>34</sup>Ghana official, 2013.

<sup>35</sup>ibid.; EU official no. 3, 2013; Maes, 2013.

<sup>36</sup>Ghana official, 2013.

<sup>37</sup>ibid.

<sup>38</sup>Article 9.2: “Respect for human rights, democratic principles and the rule of law, which underpin the ACP-EU Partnership, shall underpin the domestic and international policies of the Parties and constitute the essential elements of this Agreement.” (Official Journal of the European Communities, 2000).

<sup>39</sup>Article 9.3: “Good governance, which underpins the ACP-EU Partnership, shall underpin the domestic and international policies of the Parties and constitute a fundamental element of this Agreement.

violations or severe corruption, the other party may temporarily suspend “the application of the Agreement in that country” (Commonwealth Secretariat, 2004, p. 198). Articles 96 and 97 state the provisions for dealing with breaches, included suspension as “a measure of last resort” (Official Journal of the European Communities, 2000).

The EU wants to include a similar provision in the EPA text, whilst the West African countries are very sceptical of what they perceive as a purely political issue that should not be included in a trade agreement<sup>40</sup>. Some NGOs have even called for an exception clause to be included in all EPA agreements, to underline that the relevant articles in the Cotonou agreement “should not apply to the EPAs” (South Centre, 2010, p. 15). From my interview with a Ghana official, I understand that one of the main reasons why West Africa opposes the inclusion of a non-execution clause is that there is a fear that political instability in one country will lead to sanctions for the whole region: “if you sanction one, since we are a regional group, it’s obvious it’s going to affect all”<sup>41</sup>. Looking at evidence from the last decade, it becomes clear that this concern may not be unfounded. From 2000 to 2009 the EU sanctioned seven West African countries for violations of human rights, the rule of law, democracy or good governance (Zimelis, 2011, p. 397)<sup>42</sup>. In some of these cases the sanctions included the suspension of aid (ibid., p. 402).

According to EU officials, the non-execution clause is a “red line” for the EU<sup>43</sup>. This is one reason why the EU has been accused of lacking flexibility in the negotiations, a point that is further examined in section 6.2. The EU has for the past decades included similar clauses in all its agreements with developing states (Holland cited in Zimelis, 2011, p. 395). One of my interviewees seemed somewhat bemused by the attention the non-execution clause has received in the negotiations as the clause only refers to what the West African countries have already agreed to in the Cotonou agreement, “and they all signed Cotonou and apparently didn’t have a problem with that”<sup>44</sup>. However, there was disagreement over several issues in the Cotonou negotiation as well, which was described by then ACP Secretary General Jean-Robert Goulongana as “long and difficult” (Goulongana, 2000, p. 4). My interviewee linked the debate on the non-execution clause to the wider debate of “this thing they call policy space” and argued that this focus is making the issue

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The Parties agree that only serious cases of corruption, including acts of bribery leading to such corruption, as defined in Article 97 constitute a violation of that element.” (ibid.).

<sup>40</sup>Ghana official, 2013.

<sup>41</sup>Ghana official, 2013.

<sup>42</sup>These were Côte d’Ivoire (2001), Liberia (2001), Guinea (2004 and 2009), Togo (2004), Guinea-Bissau (2004), Mauritania (2008) and Niger (2009) (Zimelis, 2011, p. 397).

<sup>43</sup>EU official no. 2, 2013.

<sup>44</sup>EU official no. 3, 2013.

“much bigger than what it actually is”<sup>45</sup>. If the issue of the non-execution clause has been politicised amongst the West African countries, with the option of no agreement appealing more to the different countries than agreeing to an EPA that includes such a clause, this may have reduced ECOWAS’ win-set in its negotiations with the EU.

## 5.4 Disagreement

There is strong disagreement between the EU and West Africa with regards to important aspects of the EPA. On many of these issues the parties had very different initial positions, as illustrated by the EC’s negotiating mandate and the ACP guidelines, as well as the press release on ECOWAS’ negotiating mandate (ECOWAS, 2004). There are different ideas as to what an EPA should look like, and which topics should be included. One of my informants argued that the long-lasting disagreement over certain issues can be seen as a result of the differences in mandates and motivation<sup>46</sup>. In addition to this, both the EU and the West African countries have stated that some of their positions cannot be moved. Then President of the ECOWAS Commission, James Victor Gbeho, stated in a speech in 2011 that “the region refuses to cede ground with respect to critical areas, such as the attempts by our main trading partner to water down the developmental aspects of the draft EPA agreement” (Gbeho, 2011). The EU also refuses to yield to demands by West Africa, as seen in the debate on the non-execution clause.

There are also other issues that have been labelled ‘contentious’, such as whether or not ECOWAS should be allowed to keep its community levy, what the rules of origin should look like and whether or not the agreement should include a Most Favoured Nation (MFN) clause. The EU wants to include a MFN clause which will secure that trade preferences given by West Africa to third parties in future trade agreements will also be extended to the EU. The West African countries, on the other hand, oppose the inclusion of such a commitment in the agreement. The Ghana official I have interviewed stated that an MFN clause “stifles our political space for manoeuvre, our ability to have other relations aside from the EU”<sup>47</sup>. This view is supported by academics such as Dicaprio and Trommer (2010, p. 1617) who claim that the MFN clause “at least indirectly binds ACP economies to EU markets in the long term”.

According to the then Secretary General of the ACP, Mohamed Ibn Chambas, many ACP countries have been sceptical of the promised merits of the EPAs (The Courier,

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<sup>45</sup>EU official no. 3, 2013.

<sup>46</sup>Maes, 2013.

<sup>47</sup>Ghana official, 2013.

2010b, p. 19). At a press conference in 2010, he urged the EU to “reassure African countries that these agreements are not disproportionately beneficial to EU countries” (ibid., p. 19). Looking at the negotiations between the EU and West Africa, however, my impression is that concern over potential lack of policy space and the negative consequences of liberalisation still very much informs the West African position. According to one of my informants, the West African countries are simply not convinced by the EU’s arguments concerning the positive effects of an EPA, “whatever the merits of the arguments, if the West Africans were buying it they would be embracing these negotiations much more forcefully than what they are doing”<sup>48</sup>. They do not see the liberalisation envisaged by the EU as having the potential to further their economic development<sup>49</sup>.

From my interviews as well as official documents and relevant articles I understand that the three issues examined above: the market access offer; development assistance through EPADP; and the non-execution clause, are main technical points of disagreement between the EU and the West African countries. I would argue, however, that the underlying disagreement is with regards to the merits of liberalisation and the importance of policy space. The West African countries appear to be cautious of signing an agreement that is perceived as limiting their sovereignty and scope for political control over economic development. The EU, on the other hand, comes across as a firm believer in free trade. Both parties claim that they want the same outcome, an agreement that will foster economic and social development in the West African countries, but they seem incapable of agreeing on the means to achieve this outcome.

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<sup>48</sup>Bilal, 2013b.

<sup>49</sup>ibid.



# Chapter 6

## West Africa and the European Union

### 6.1 Divergent interests in West Africa

#### Introduction

It has been argued that the West African countries have different views on the “necessity of negotiating EPAs” and that “[i]t is possible that ECOWAS is split between those that are willing to liberalize towards the EU and those that are unwilling” (Rommel, 2012, p. 23). Whilst Ghana and Côte d’Ivoire have chosen to initial interim bilateral EPAs with the EU, countries such as Senegal and Nigeria have been outspoken in their opposition to an EPA (ibid., p. 23; Stevens, 2008, p. 216). In my interviews with EU officials I was told that the main reason why agreement has not been reached is the position of the West African countries, that there is “a problem of political will” and “solidarity between those countries”<sup>1</sup>. In addition, one EU official noted how the 16 countries in the region “are quite disparate from an economic point of view” and that they have such different preferences and interests that it has been “difficult for them to find a single regional position”, especially with regards to the market access offer<sup>2</sup>.

As noted in section 5.1, agreement has been reached in ECOWAS with regards to the extent and pace of liberalisation, namely 70 per cent over a period of 25 years. The main debates within ECOWAS have concerned which products should be classified as ‘sensitive’ and thus not be liberalised. According to a study from 2005, the products the West African countries would wish to exclude from liberalisation vary greatly from country to country, for 92 per cent of exclusions there would be no overlap (Stevens and Kennan, 2005, p. 3). It has been noted that compiling “a consistent region-level exclusion list” is “[t]he most

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<sup>1</sup>EU official no. 1, 2013.

<sup>2</sup>EU official no. 3, 2013.

problematic issue” the West African countries face when negotiating an EPA (Meyn, 2011, p. 50). The ECOWAS Authority of Heads of States and Governments have noted on several occasions how the ECOWAS and UEMOA Commissions have made progress in compiling such a list of sensitive products (ECOWAS, 2008e; ECOWAS, 2013a).

One of my hypotheses on why the negotiations between the EU and the West African countries have not led to a successful outcome is that the interests of the West African states are too disparate and that this impedes agreement. In this section I outline the incentives and roles of the different West African states. I divide the countries into two main groups, the LDCs and the non-LDCs, and start by looking at the special role of Nigeria, the “sub-regional hegemon” (Francis, 2006, p. 147).

### 6.1.1 Nigeria

Nigeria is by far the biggest country in the region in economic terms, as it has the largest market and accounts for half of the region’s GDP. It is a country troubled by political tension and corruption and it has been called a “successful failed state” (Oliveira quoted in Folorunso, Hall and Logan, 2012, p. 245). Nevertheless, it is an important actor in West Africa, “a force to be reckoned with”<sup>3</sup>, and it has taken the role of regional hegemon, for instance through its military dominance in ECOWAS’ peace-keeping operations (Francis, 2006, pp. 147-149). One of my interviewees referred to Nigeria as “the big brother in the region”<sup>4</sup> and one informant notes how it sees itself as the political leader of the region<sup>5</sup>.

It is a country that has experienced great economic growth over the past decade, GDP per capita doubled from 2003 to 2009, and it has paid off most of its foreign debts (The Courier, 2011, p. 43). As a major exporter of petroleum products it is in a relatively strong economic position, also in the EPA negotiations, as petroleum products face very low tariffs on entering EU markets. From 2008, Nigeria has traded with the EU under the Generalised System of Preferences (GSP) scheme as it did not negotiate a bilateral interim agreement. According to EU officials this was because Nigeria was not interested in such an agreement<sup>6</sup>, and its position in the negotiations for a regional EPA was a “very negative” one<sup>7</sup>. The European Commission noted in 2007 how Nigeria “has not taken an active role in EPA negotiations or shown interest in a sub regional deal” (Council of the European Union, 2007).

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<sup>3</sup>Ghana official, 2013.

<sup>4</sup>EU official no. 3, 2013.

<sup>5</sup>Stevens, 2013.

<sup>6</sup>EU official no. 3, 2013.

<sup>7</sup>EU official no. 1, 2013.

The main explanation given for Nigeria's apparent lack of interest in the EPA negotiations is that it is not dependent on better market access to the EU than what it gets through the GSP<sup>8</sup>. Less than two per cent of its exports to the EU is affected by not having an EPA, which is marginal compared to other countries in the region (Meyn, 2011, p. 16). So it seems Nigeria does not need an EPA<sup>9</sup> and is not very interested in what is on offer<sup>10</sup>. Nigeria has higher tariffs than many of the other countries in the region, and was by one of my interviewees described as "quite a protectionist economy", so an EPA would require "a lot more liberalisation effort" for Nigeria than for its neighbours<sup>11</sup>. For that reason, it is likely that the prospects of having to liberalise EU imports under an EPA is unappealing. There are groups in the country who want better access to EU markets through an EPA, notably the processed cocoa producers, but they have had little influence on the government's position<sup>12</sup>. From my interviews with EU officials I gather that Nigeria has been quite sceptical to the EPA process, and that the slow progression of the negotiations may be due to Nigeria's important position in ECOWAS, which it has not used to push the negotiations forwards<sup>13</sup>. According to one of my interviewees, Nigeria has also had "a negative impact" on the region, especially on Ghana's position, in the period before the 2007 deadline<sup>14</sup>.

Some of my interviewees argued that Nigeria stays in the negotiations mainly because of its position in the region and its commitment to regional integration through ECOWAS<sup>15</sup>. As the largest economy in the region, it would be "unthinkable" for Nigeria not to participate in regional negotiations with the EU<sup>16</sup>. As noted above, the EU officials I have spoken with stated that Nigeria has been sceptical to the EPA. However, one of my interviewees argue that the position of Nigeria now might be more "balanced" than it was prior to the 2007 deadline, and that it now sees that it one day "might want to join an EPA"<sup>17</sup>. One EU official noted how Nigeria seems interested in increasing its exports to the rest of West Africa, and that it is possible that Nigeria will see the EPA as an opportunity to dismantle intraregional barriers to trade<sup>18</sup>. However, one of the impact

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<sup>8</sup>EU official no. 3, 2013.

<sup>9</sup>Bilal, 2013b.

<sup>10</sup>EU official no. 2, 2013.

<sup>11</sup>EU official no. 3, 2013.

<sup>12</sup>ibid.

<sup>13</sup>EU official no. 2, 2013.

<sup>14</sup>EU official no. 1, 2013.

<sup>15</sup>EU official no. 2, 2013; Stevens, 2013.

<sup>16</sup>EU official no. 2, 2013.

<sup>17</sup>EU official no. 1, 2013.

<sup>18</sup>EU official no. 3, 2013.

studies referred to in section 5.1.1 predicts that Nigerian exports to the rest of the region will not increase under an EPA (Berisha-Krasniqi, Bouët and Mevel, 2008, p. 28). One of my informants argued that Nigeria will not be willing to sign an EPA, which makes the conclusion of a regional EPA unlikely<sup>19</sup>. Nigeria are so important in the region, my source from Ghana stated, that “they cannot be ignored”<sup>20</sup>.

### 6.1.2 Ghana and Côte d’Ivoire - and Cape Verde

Nigeria is not the only economic power in West Africa, however, both Ghana and Côte d’Ivoire are also non-LDCs, and together the three countries account for 80 per cent of the exports from the region to the EU (European Commission, 2013a). The export of cocoa beans, butter and paste constitute 16 per cent of the exports from West Africa to the EU (European Commission, 2011a). Cocoa is therefore the main export product after petroleum oils and gas, which account for more than 65 per cent of the exports from the region (ibid.). Ghana and Côte d’Ivoire are the largest cocoa exporters in the world (European Commission, 2013a) and would have experienced tariff increases on a lot of their exports to the EU if they were to trade with the EU under the GSP scheme (Meyn, 2011, p. 16).

When the WTO waiver expired in 2007, Ghana initialled and Côte d’Ivoire signed bilateral interim EPAs with the EU. A Commission Staff Working Paper from December 2007 notes how the EU is negotiating interim agreements with Ghana and Côte d’Ivoire in order “to secure market access while negotiations on the full regional EPA are concluded” (Council of the European Union, 2007). One EU official noted how the export profile of these countries “is such that the standard GSP doesn’t offer enough of a preference for them so they went for the interim EPAs”<sup>21</sup>. For these countries “it would be a disaster if they didn’t have a preferential agreement with the EU. Mainly because of their exports of cocoa into the EU”<sup>22</sup>. The two countries are each others main competitors on the EU markets, a study from 2004 has Côte d’Ivoire listed as a competitor for 50 per cent of export products from Ghana (TAC, 2004, p. 48).

These interim agreements are impacting on the current negotiations mainly because the new market access regulation proposed by the EU means that Ghana and Côte d’Ivoire will have to implement their agreements by October 2014 if a regional agreement has not been negotiated by that time. If these agreements are implemented, with the effect that

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<sup>19</sup>Bilal, 2013b.

<sup>20</sup>Ghana official, 2013.

<sup>21</sup>EU official no. 3, 2013.

<sup>22</sup>EU official no. 2, 2013.

Ghana and Côte d'Ivoire begin liberalising EU imports, this will make it difficult for ECOWAS to establish a common external tariff for the region with higher tariffs for EU imports than the levels set for Ghana and Côte d'Ivoire (Meyn, 2011, p. 50). My source from Ghana argued that the prospect of these two countries ratifying bilateral agreements with the EU is “a real threat to regional integration” which “may undermine the regional integration processes”<sup>23</sup>. One EU official noted how Côte d'Ivoire is now using its presidency in ECOWAS to push for a regional EPA<sup>24</sup>. The same official also puts forward the idea that both Ghana and Côte d'Ivoire may be reluctant to ratify their agreements for fear of being seen as “spoilers”<sup>25</sup>.

The final non-LDC in the region is Cape Verde, which ‘graduated’ from LDC status in 2008. It now trades with the EU under the GSP+ scheme<sup>26</sup>. According to one EU official, Cape Verde is “in theory a member of ECOWAS” although they have “always been sort of slightly on the outside”<sup>27</sup>. Cape Verde appears more interested in negotiating bilateral agreements with the EU in areas such as services than in a regional EPA<sup>28</sup>.

### 6.1.3 Least Developed Countries

Out of the 16 countries in West Africa, 12 are Least Developed Countries (LDCs). None of these have negotiated interim EPAs with the EU, but they enjoy duty and quota free market access to EU markets through the EU’s ‘Everything But Arms’ (EBA) scheme. Even before the negotiations began, it was noted how the LDCs would have “little to gain” from EPAs as they could “keep non-reciprocal preferences anyway” (McQueen, 1999, p. 2). From my interview with an EU official I understand that many of the LDCs still perceive the EPAs “as just a way of getting preferential access to the EU market”, an access which they already have under the EBA<sup>29</sup>. According to the same EU official, the LDCs are not interested in liberalising their own markets, and seeing as they have to do that if they sign a regional EPA, they are “not super interested”<sup>30</sup>. Senegal has even been outspoken in its opposition to the EPA process<sup>31</sup> (see also Afrol News, 2007).

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<sup>23</sup>Ghana official, 2013.

<sup>24</sup>EU official no. 2, 2013.

<sup>25</sup>ibid.

<sup>26</sup>EU official no. 3, 2013. The GSP+ scheme offers better preferences than the regular GSP, but “[t]here are strict eligibility criteria, in areas such as good governance”, which other West African countries do not meet (The Courier, 2009a, p. 30).

<sup>27</sup>EU official no. 3, 2013.

<sup>28</sup>ibid.

<sup>29</sup>EU official no. 3, 2013.

<sup>30</sup>ibid.

<sup>31</sup>Bilal, 2013b.

The EU argues that market access alone is not sufficient for securing the development of West African countries. The ACP countries have had non-reciprocal access to EU markets since 1975, “and it hasn’t really helped them diversify or even increase their exports”<sup>32</sup>. The argument is that the EPA involves cooperation on trade-related issues as well as trade rules addressing non-technical barriers to trade, thus creating “an enabling environment” for development<sup>33</sup>. The argument that the EPAs are more than mere agreements for goods have been repeated by the EU over the last ten years. Former Trade Commissioner Peter Mandelson have stated in speeches that “policy reform will drive trade, trade will deliver growth” and that the EPA is “a trade and development instrument which galvanises investment flows, internal demand, private sector activity and job creation” (Mandelson, 2006b; Mandelson, 2007). The then Deputy Director-General for Trade, Joao Aguiar Machado, noted in an interview in 2009 that “the EPA process is unique” as it will “produce the first trade deals with developing countries which take into account explicitly their development needs” (The Courier, 2009a, p. 29). For the LDCs, an EPA is a better option than continuing to trade under the EBA both because it will provide duty and quota free access to EU markets even after the country cease to qualify as LDC, and because the EPA offers more than the EBA, for instance “more generous rules on the origin of products” (ibid., p. 29). The current Trade Commissioner, Karel De Gucht, stated in a speech in 2010 that the EPAs will have “improved rules of origin in crucial sectors, such as clothing, agriculture and fisheries” (Gucht, 2010).

The argument that the EPA will provide the LDCs with a stable agreement, and not just preferences granted unilaterally by the EU, was also repeated by the EU officials I spoke to. One EU official also mentioned how the EPAs include better, i.e. less strict, rules of origin compared to the EBA<sup>34</sup>. However, one of my informants argued that the LDCs are not administratively prepared to exploit these improved rules of origin, and that the EPA rules of origin at any rate are similar to the EBA rules in most respects<sup>35</sup>. According to the Ghana official I interviewed, the LDCs have market access, but not necessarily “market entry” because of stringent rules of origin<sup>36</sup>. The most important mechanism for LDCs to increase their exports will be the establishment of a regional market with free movement of goods and services, and the LDCs remain in the negotiation process because they are interested in regional integration<sup>37</sup>. One EU official also stated that the LDCs

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<sup>32</sup>EU official no. 3, 2013.

<sup>33</sup>ibid.

<sup>34</sup>EU official no. 3, 2013.

<sup>35</sup>Stevens, 2013.

<sup>36</sup>Ghana official, 2013.

<sup>37</sup>ibid.

are in the negotiations because of “regional solidarity” with those countries who need an EPA, the “economic engines of the region” Ghana and Côte d’Ivoire, and because it is in the interest of all of the West African states “to have those two engines running”<sup>38</sup>. However, another EU official noted that the LDCs are not very interested in negotiating a regional EPA, and that “they are very happy to have outsourced that to ECOWAS”<sup>39</sup>. Many of them are not sufficiently informed of the process, and this is seen by the EU official as causing them to feel “disconnected” and “mistrustful”<sup>40</sup>. According to one EU official, the LDCs see the EPAs “as an extra check of development cooperation money. That’s all they see in it”<sup>41</sup>. One of my informants also argued that the LDCs are involved in the process to see if they can get additional aid, and stated that he has never seen any signs of serious commitment from the LDCs to enter into a free trade agreement with the EU<sup>42</sup>.

#### 6.1.4 Criticism from civil society organisations

From the outset, the EPA process has been subject to much criticism from various NGOs, both European and African. The main criticisms have related to how the EPAs are undermining, rather than promoting, regional integration, and how the EU’s push for liberalisation is an example of a “‘do as we say, not as we did’ approach” (Powell, 2007, p. 27).

In West Africa, the NGOs concerned with the EPA process have come together in POSCAO (the West African Civil Society Platform on the Cotonou Agreement), a coalition of 14 organisations from 12 countries<sup>43</sup>. This coalition is “represented at the negotiating table” in the EPA negotiations (POSCAO, 2011). Their scepticism to the proposed EPA is grounded in a belief that the agreement will serve the interest of the EU, in terms of consolidating its market shares in West Africa and gaining an advantage over “competition from emerging countries”, at the expense of West African development and regional integration (ibid.). POSCAO has criticised the the West African negotiators for not opposing the inclusion of a MFN clause and a non-execution clause, and for increasing their market access offer to 70 per cent liberalisation (ibid.). In a statement from 2011 they claim that the “[l]ack of negotiation strategy in West Africa is striking” (ibid.). However,

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<sup>38</sup>EU official no. 1, 2013.

<sup>39</sup>EU official no. 3, 2013.

<sup>40</sup>ibid.

<sup>41</sup>ibid.

<sup>42</sup>Stevens, 2013.

<sup>43</sup>From all West African countries except Cape Verde, Liberia, Mauritania and Sierra Leone.

POSCAO does not oppose a regional EPA, as long as it is an “agreement that promotes development”, as a regional agreement is preferable to Ghana and Côte d’Ivoire ratifying their agreements (POSCAO, 2013).

One of the NGOs in POSCAO is the Nigerian trade union NANTS (National Association of Nigerian Traders). They were initially very much against the EPA process, arguing that it did not have the “development dimension” needed, and that “the EPA negotiations were wholly mercantilists in approach” (NANTS, 2010, p. 3). Before the 2007 deadline, NANTS stood “at the fore-front of the campaign against” the EPA, lobbying the Nigerian government as well as ECOWAS to not agree to the demands put forward by the EU (ibid., p. 3). After Ghana and Côte d’Ivoire initialled interim agreements, NANTS have worked for a regional EPA. They remain committed to a development-friendly outcome, however, and they argue that the ECOWAS’ proposal of 70 per cent should be reduced to an offer of 62.5 per cent (ibid., p. 5).

In Ghana the two organisations Economic Justice Network Ghana and Third World Network-Africa have for the past couple of years lobbied the Ghana government to not ratify the interim agreement, but rather work to conclude a regional agreement (Economic Justice Network Ghana, 2011; Third World Network-Africa, 2011). They have also argued that ECOWAS should set up a “regional solidarity fund”, a compensation mechanism that will allow for Ghana and Côte d’Ivoire to not ratify their interim agreements (Economic Justice Network Ghana, 2011). The debate on whether or not to ratify the agreement has been ongoing in Ghana for some time, with the Minister of Trade and Industry stating that although Ghana is “actively engaged” in the negotiations for a regional EPA, “we have the interim EPA as a fall-back should we not reach a consensus within the stipulated time-frame” (Joy Online, 2012). According to one of my informants, the current government in Ghana appears to be more sceptical of the EPA process and of ratifying the interim agreement than previous governments<sup>44</sup>.

Scepticism of extensive liberalisation and loss of policy space is a recurring theme among civil society organisations critical of the EPA process.. Draper (2007, p. 14) notes how the ideas of Chang “retains considerable force in African civil society” (ibid., p. 14). As to whether or not these organisations have had an impact on the negotiations, it is clear that at least NANTS has had an influence on Nigeria’s position. This is also supported by one of my informants<sup>45</sup>. In her PhD thesis on the involvement of West African civil society in the EPA negotiations, Trommer (2012) finds that POSCAO has influenced the ECOWAS position on several issues, for instance with regards to the compilation of a list

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<sup>44</sup>Maes, 2013.

<sup>45</sup>Maes, 2013.

of sensitive products and the EPADP proposal (*ibid.*). However, the effect of civil society organisations on negotiation outcomes may be limited, for example, their opposition did not stop Ghana from negotiating an interim agreement. The involvement of organisations like Economic Justice Network Ghana may have an influence on public opinion, however, and thus make ratification of the interim agreement less appealing to the government<sup>46</sup>.

### 6.1.5 Regional integration

One of the stated objectives of the EPA is the promotion of regional integration, “a key instrument for the integration of ACP countries into the world economy” (Official Journal of the European Communities, 2000). In West Africa, the two main regional organisations are UEMOA (eight members) and ECOWAS (15 members). Regionalisation in West Africa has its roots in rivalry between the Francophone and Anglophone countries, and a “concern at Nigeria’s growing influence in the sub-region” (Bach, 1999, p. 5). This fear of Nigerian dominance made the Francophone states “overcome their past opposition” and establish the forerunner to UEMOA (*ibid.*, p. 5). ECOWAS was then established in 1975 as an organisation for the entire region. In 1994, the West African countries agreed on a Revised Treaty of ECOWAS, and this has been argued to mark the shift “from the so-called developmental regionalism of the past, to the new regionalism of the contemporary era” (Kufuor, 2006, p. xii).

Much has been written on ‘new regionalism’ and the processes of regionalisations, a debate that is outside the scope of this thesis (see for instance Söderbaum and Shaw, 2003). In West Africa, the regional integration process has for the last decades been marked by plans for greater economic integration and a more powerful role for ECOWAS. However, because of “member states’ reluctance to undertake transfers of sovereignty”, little progress has been made in these areas (Bach, 1999, p. 6). ECOWAS has instead carried out “more modest functional co-operation programmes”, for instance with regards to infrastructure and telecommunication (*ibid.*, p. 6). Another reason why member states have been unwilling to undertake regional economic reforms is their “reluctance...to liberalise trade because of IMF/World Bank-imposed structural adjustment programmes (SAPs) and their effect on industry” (Ojo, 1999, pp. 121-122). It has also been argued that the effects of regional integration may not have been as positive as expected, as the “deepening of integration among the UEMOA countries has not brought trade gains for the involved countries” (Bourdet and Gullstrand, 2007, p. 134).

Nevertheless, increased regional integration continue to be the stated goal of ECOWAS

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<sup>46</sup>Maes, 2013.

and its members (see ECOWAS, 2007; ECOWAS, 2011b). My interviewee from Ghana explains how West Africa has tried to achieve regional integration since 1975, with the establishment of ECOWAS as a customs union with plans for a common currency and common external tariffs, but that it “hasn’t been easy”<sup>47</sup>. The fear is that this process of regionalisation will be undermined by the current EPA process. If Ghana and Côte d’Ivoire ratify their bilateral EPAs, and thus “are forced to pull out of the regional integration process”, this “will have terrible repercussions for the whole region”<sup>48</sup>. When the date of the EU’s amendment of its market access regulation approaches, if no regional agreement is in place, Ghana and Côte d’Ivoire will have to choose whether or not to ratify these agreements. If they choose to ratify, this will have “serious implications” for the regional integration, for instance because their liberalisation vis-à-vis the EU will make it impossible for ECOWAS to establish a common external tariff that is higher than what these countries have agreed on with the EU<sup>49</sup>. If they decide not to ratify their agreements, they will be downgraded to trading with the EU under the GSP programme, which will have an adverse effect on their economies<sup>50</sup>. My interviewee from Ghana stated that although Ghana has now found oil, they are still dependent on continuing to export duty and quota free to EU markets<sup>51</sup>. Because of this, “we sincerely hope” that a regional EPA will be agreed on by the time the amendment of the market access regulation comes into force (see chapter 4) <sup>52</sup>.

Regional integration concerns are arguably also the main reasons why the LDCs and Nigeria continue to take part in the EPA negotiations<sup>53</sup>. My source from Ghana argued that Nigeria is “pulling it along with Ghana and Côte d’Ivoire and Senegal, the economies pulling together to integrate, to develop. Because we realise that now, if there’s a problem in one country, of course, it affects other countries”<sup>54</sup>. According to one EU official, an important aspect of the EPA negotiations at this point, is whether or not the LDCs will be “willing to make a step towards the interests of Ghana and Côte d’Ivoire...They have to decide on what’s the meaning of regional solidarity for them”<sup>55</sup>.

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<sup>47</sup>Ghana official, 2013.

<sup>48</sup>ibid.

<sup>49</sup>ibid.; Maes, 2013.

<sup>50</sup>Ghana official, 2013.

<sup>51</sup>ibid.

<sup>52</sup>ibid.

<sup>53</sup>EU official no. 3, 2013; Ghana official, 2013.

<sup>54</sup>ibid.

<sup>55</sup>EU official no. 3, 2013.

### ECOWAS' capacity for EPA negotiations

One factor that may affect negotiations is if there is inequality in the capacity of the parties involved to conduct negotiations. From my interviews I find that there is a lack of agreement as to whether or not ECOWAS has had the capacity to conduct negotiations. One EU official claimed that it has been “one of the biggest problems”<sup>56</sup>, whilst another argued that ECOWAS, with the assistance of UEMOA, holds great technical expertise and does not have capacity constraints<sup>57</sup>. All my interviewees agreed, however, that in periods of conflicts in the region, such as the crises in Côte d’Ivoire, Guinea-Bissau and the Sahel region, the high-level meetings of ECOWAS have been “monopolised” by these events<sup>58</sup>. One of my informants also noted that the institutional mechanisms of ECOWAS are weak, and that the ECOWAS Commission is constricted by the fact that everything must be agreed to by the member states<sup>59</sup>. However, in the EPA negotiations, ECOWAS holds the mandate to negotiate on behalf of the member states, and the opinion of the ECOWAS Commission and Presidency may thus have an effect on the negotiations. Two of the EU officials I interviewed noted that the position of ECOWAS in the EPA negotiations is “more positive” now that Côte d’Ivoire has taken over the Presidency<sup>60</sup>.

#### 6.1.6 Discussion

In economic terms, West Africa is a diverse region with 12 LDCs and four non-LDCs, including the region’s economic giant, Nigeria. Their economic interests differ, and there are signs that it has been difficult for the region to compile a list of sensitive products to be exempted from liberalisation.

Because of Nigeria’s important role in the region, it is likely that the the fact that agreement was not reached by the 2007 deadline had a lot to do with Nigeria’s position. Nigeria was very opposed to a regional EPA as envisaged by the EU, at least partly because of the strong opposition voiced by the trade union NANTS. Senegal, an important country in the region, also publicly opposed the EPA process. One EU official I interviewed argued that, in addition to the impact of Nigeria’s position, the West African countries “were convinced until the very end of 2007 that the EU was going to go to the WTO and extend the waiver that was covering the Cotonou preferences” and thus did not see the need for

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<sup>56</sup>EU official no. 1, 2013.

<sup>57</sup>EU official no. 3, 2013.

<sup>58</sup>EU official no. 1, 2013; EU official no. 2, 2013; EU official no. 3, 2013.

<sup>59</sup>Stevens, 2013.

<sup>60</sup>EU official no. 1, 2013; EU official no. 2, 2013.

negotiating a regional EPA<sup>61</sup>.

However, by the time the waiver expired, Ghana and Côte d'Ivoire had negotiated bilateral interim agreements with the EU. Arguably, these IEPAs have had an impact on the position of the West African countries. In ECOWAS, the member states have expressed that they remain committed to the negotiations for a regional agreement, and even civil society organisations prefer a regional solution to Ghana and Côte d'Ivoire ratifying agreements on their own.

If the West African countries had more overlapping interests and priorities, it would perhaps have been easier to reach agreement. Most of the countries in the region “are not very interested in what’s on offer on the table”<sup>62</sup>. The LDC countries have duty and quota free access to EU markets under the EBA and appear to have little interest in an EPA. Nigeria also seem to prefer the *status quo* over an agreement<sup>63</sup>. The two countries that are most interested in negotiating a regional agreement with the EU are the two countries with the highest stakes involved: Ghana and Côte d'Ivoire. However, with regards to the debates outlined in section 5.1, the position of the West African countries have been unified. The rejection of the demand for 80 per cent liberalisation and the inclusion of a non-execution clause, as well as the call for development assistance, appears to be important even to a country like Ghana who needs an agreement more than other countries in the region.

## 6.2 Lack of flexibility in the EU

### Introduction

The lack of agreement in the EPA negotiations between West Africa and the EU may be due to the rigid and paternalistic approach to negotiations arguably taken by the latter party. In this section I look at the internal debates in the EU with regards to the EPA negotiations, as well as claims made by the ACP states and West Africa about the EU’s negotiation style and use of coercion to conclude agreements.

As noted in section 5.1, the ACP states have called for greater flexibility in the WTO rules for trade agreements between developing and developed countries (Bilal and Rampa, 2006, p. 26). The EU, on the other hand, has displayed a very resolute understanding of what constitutes WTO compatibility. The EU has been accused of taking a rigid stance

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<sup>61</sup>EU official no. 3, 2013.

<sup>62</sup>Bilal, 2013b.

<sup>63</sup>Tandon, 2013.

in the negotiations, with the focus on WTO compatibility encouraging “a coherent EU approach to the EPA negotiations, albeit at the price of development interests” (Elgström and Pilegaard, 2008).

In the following section I analyse how the EU’s position in negotiations with the ACP countries have been formed by opposing views among member states, as well as the influence of the Commission and the European Parliament, to see in which ways the win-set of the EU has been reduced by internal negotiation. I then examine the negotiation style of the EU, and finally suggest an explanation as to why WTO compatibility is perceived as important to the EU in EPA negotiations.

### 6.2.1 Coherence and conflict in the EU

#### Negotiating Cotonou

Within the EU, member states have had divergent interests and ideas about how to develop the relationship with the ACP states. During the late 1980s and the 1990s, four factors were important in changing the EU’s views on the Lomé regime: the argument that the preferences granted by the EU had not led to economic growth and development in the ACP states; the enlargement of the EU which “diluted the former strong regional emphasis on Africa” as well as the end of the Cold War which resulted in the EU taking on responsibility for its new neighbours; the introduction of new norms promoting human rights and democratisation; and WTO disputes that led to the realisation that “[t]he Lomé Convention had operated in a legal grey zone for several years” (ibid., p. 368). However, the member states had different opinions on what the Cotonou negotiations should focus on: France wanted to build on the Lomé regime to preserve the *status quo*; the UK wanted to enhance and spread the GSP scheme; Sweden, Denmark and the Netherlands called for better preferences for the LDCs; whilst Germany wanted to normalise the relationship with the ACP countries through regional trade agreements (Forwood, 2001, pp. 428-431).

The final negotiating mandate was very much influenced by the Commission, which promoted a focus on WTO compatibility and the idea of negotiating EPAs with regions instead of the ACP as a whole (ibid., pp. 433-434). The UK and the Netherlands expressed concern that regional EPAs would not be suitable for all ACP member states, and actually “broke away from the EU position” in 1999 before being “swiftly brought into check by the Commission and the other Member States” (ibid., p. 435). Elgström and Pilegaard (2008, p. 369) argue that the Cotonou Agreement can be seen as “a compromise text...between different political coalitions” in the EU. The Cotonou Agreement includes provisions for

the negotiation of regional WTO compatible agreements with the ACP countries. Some of the tension seen between member states prior to the Cotonou negotiations has also been notable in the EPA process.

### Negotiating EPAs

The negotiating mandate for EPAs was finalised in 2002 after rounds within the Commission as well as with member states. Elgström and Pilegaard (2008) have studied the processes within the EU towards formulating the mandate, and the relationship between the Commission and member states in the negotiation period prior to the 2007 deadline. They argue that the different policy objectives within the EU coupled with the linkages to the WTO and the framing of the EPAs as trade agreements have led to a process of “imposed coherence” where “the EU formally acts as one united body in the negotiations” although its negotiation position can be seen as vague and marked by “significant tensions and conflicts between policy objectives” (ibid., p. 364).

It has been argued that the process of finalising a negotiating mandate for the EPAs was dominated by an influential Commission, with little room for manoeuvre for the member states. DG Trade consulted with other DGs such as Development and Agriculture before presenting a proposal to the member states (Elgström and Larsén, 2010, p. 213). According to Elgström and Pilegaard (2008), countries such as Germany, as well as DG Trade itself, were proponents of free trade agreements whilst some other countries were in favour of more development-friendly agreements that would include “special treatment for the LDCs” (ibid., p. 371). The member states were thus divided in their views on the EPAs, and because “unanimity is required to make changes in the proposal”, very few alterations were made to the DG Trade text (ibid., p. 372). The demand by some member states<sup>64</sup> that the EU should offer duty and quota free access to all ACP states, is reflected in the EU’s market access offer of duty and quota free access on all products<sup>65</sup> (Elgström and Larsén, 2010, p. 215). Elgström and Pilegaard (2008) note how the Commission “started to use a more development-oriented rhetoric” from 2006 onwards, arguably because of pressure from member states such as the UK as well as increased influence from DG Development in the negotiations (ibid., pp. 375-376; Elgström and Larsén, 2010, p. 214). This is reflected in a speech held by then Trade Commissioner Peter Mandelson in October 2006 in which he stated that the EPAs “aren’t Free Trade Agreements - not in the way anyone understands that term. They are development tools” (Mandelson, 2006a).

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<sup>64</sup>Sweden, Denmark and the UK

<sup>65</sup>This excludes sugar and rice which are subject to phase-in periods

Under the Lomé regime, DG Development was in charge of trade relations with the ACP countries, but this responsibility was transferred to DG Trade in 1999 (Ravenhill, 2004, p. 130). Because the EPAs were treated as trade agreements, DG Trade was given the role of negotiator from the EU side (Elgström and Pilegaard, 2008, p. 370). This shift has been seen as “a clear signal of the Commission’s intentions that trade with the ACP would be subordinate to the overall principles of EU external trade relations” (Ravenhill, 2004, p. 131). As mentioned above, Elgström and Larsén (2010) attribute the Commission’s change “to a more developmental approach” around 2006 to the influence of member states, but also to the reappearance of DG Development in the EPA debate. One of my informants claimed, however, that the differences in approach between DG Development (now DG DEVCO) and DG Trade “belongs to the old folklore” and that the officials in the different departments all “sing from the same hymn sheet”<sup>66</sup>. From my interviews with different EU officials, my experience is that DG DEVCO is just as free trade oriented as DG Trade.

That DG Trade is given the role of negotiator means that the member states are not directly involved in the negotiations. They decided on the mandate in 2002, and are now regularly informed by the Commission on the negotiation process<sup>67</sup> (see Elgström and Pilegaard, 2008, pp. 370-371). Some member states have also taken an active role in advising and attempting to influence the Commission<sup>68</sup>. According to interviews conducted by Elgström and Larsén (2010, p. 218), some member states have threatened to push for changes in the mandate, but these threats are “not credible” as they are only supported by a few states. Because the mandate is rather vague, as well as generic for all the ACP regions, the negotiators have the power to interpret and use the mandate quite freely. In interviews with EU officials conducted in 2007, Elgström and Larsén find that the mandate is perceived as “not very concrete” and “containing ‘fuzzy language’” (ibid., p. 213). According to one of my informants, the ACP countries are frustrated with what they see as “a big gap between the rhetoric from the Commissioner and Brussels”, with reassurances of their development intention and flexibility, and “the absolute rigidity of the technical negotiators on the spot”<sup>69</sup>.

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<sup>66</sup>Maes, 2013.

<sup>67</sup>EU official no. 3, 2013.

<sup>68</sup>Denmark, Ireland, the Netherlands and the United Kingdom stated in a Council meeting in 2007 that they “urge[d] the Commission to show flexibility” in order to negotiate “agreements on goods market access” before the waiver expired (Council of the European Union, 2008).

<sup>69</sup>Maes, 2013.

### The role of the European Parliament

The European Parliament has traditionally played a limited role in EU trade policy as it has not had legislative powers. However, they have followed the EPA negotiations, asking questions to the Commission and debating the interim agreements. After the Lisbon Treaty entered into force, the Parliament has to give its consent to new trade agreements (European Union, no date).

In a debate in the Parliament in 2009, it was noted how “[t]here has been a real tension between trade and development objectives” in the EU and in the European Parliament (European Parliament, 2009a). One MEP, Kader Arif, criticised the Commission for not agreeing to the demands by the ACP countries for additional funding for the implementation of EPAs (*ibid.*). He also noted how the position of the Commission had changed from the days of Trade Commissioner Mandelson, for whom the EPAs were “primarily a matter of stimulating trade, as if simply removing customs barriers would somehow miraculously bring about development”, to having to accept a reality where “the governments of the ACP countries did not accept continuing negotiations under pressure or threats” (*ibid.*). He finally directed a question at then Commissioner Ashton, asking why the EC was not more flexible on the issue of the market access offer of 71 per cent made by the Central African states (*ibid.*). This question was not answered. Another MEP, Glenys Kinnock, stated that she could “confirm, as others have done, that what we have seen since Cathy Ashton became Commissioner has been a sea change not only in style and tone, but also in vocabulary and now increasingly in substance” (*ibid.*). Kinnock had previously been outspoken against the EPAs, and said in 2008 that “there is still the relentless repetition of the mantra of reciprocity – as if that were a word which automatically denoted fairness. It only denotes fairness when the reciprocity is between equals. In fact in other circumstances it can mean the opposite of justice – the contradiction of equity. I make no semantic point when I say that that is the case now.” (*The Courier*, 2008, p. 29). Scepticism has also been expressed by MEP Paul Murphy, who stated in a debate in 2013 that “EPAs are free trade agreements which completely disregard the economic and social development needs of African, Caribbean and Pacific countries”; and that the Commission has taken “a very rigid and inflexible” approach to issues such as market access (European Parliament, 2013c). By the end of 2009, the EPA negotiations with West Africa were addressed in a question by an MEP to the Commission, asking “what reassurances can the Commission provide that the development needs of West African states will be safeguarded?” (European Parliament, 2009d). There has also been regular discussion on

EPAs in the INTA (International Trade) Committee in the Parliament<sup>70</sup>.

These are some of the comments from those that are sceptical of the EPA process and the merits of the agreements. However, from a reading of the comments made by the MEPs in the various debates in Parliament and in the INTA Committee, my impression is that most MEPs who take an interest in the EPAs focus on the potential positive effects of the agreements for ACP states. The Parliament has also consented to the conclusion of all interim agreements that have been negotiated. This observation is supported by the statement by one of my informants that “there is a majority in the European Parliament that agrees with the EPA approach”<sup>71</sup>.

The Parliament has on some occasions expressed strong opinions about the EPAs, for instance in an EDF decision from 2011<sup>72</sup>. More recently, the Parliament objected to the proposal of the Commission for changing the market access regulation for countries who have not ratified EPAs or interim EPAs by 1 January 2014<sup>73</sup>. They proposed several amendments to the proposal, most importantly they argued that the regulation should only apply from 1 January 2016, thus extending the deadline for ACP countries by two years (European Parliament, 2012b). The Parliament and the Commission have discussed back and forth, and only recently agreed on the date 14 October 2014 (Bilal, 2013a).

The role of the Parliament in the EPA process is limited, and it is likely that the criticisms voiced in Parliament has had little effect on the negotiations. One of the EU officials I interview argued that “the difference between the two dates is symbolic”, as the countries concerned will have to start the process of signing and ratifying as soon as possible even in order to meet the 2016 deadline<sup>74</sup>. However, with regards to the debate over the non-execution clause, it may be that the position of Parliament has played a part in explaining the lack of agreement in the EPA negotiations. The Parliament is a strong proponent of human rights, and supports the inclusion of human rights clauses in agreements. When giving its consent to the interim agreement between the EU and Côte d’Ivoire, the Parliament adopted a text which includes a point on how it “[c]onsiders that a full EPA should include a section on political dialogue and the defence of human rights” (European Parliament, 2009b). According to one of my interviewees, the non-execution

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<sup>70</sup>Maes, 2013.

<sup>71</sup>ibid.

<sup>72</sup>“[The European Parliament] Insists that the Union should not pressure African states to sign up to Economic Partnership Agreements (EPAs) any faster or which cover a greater range of issues than they want to, and that the Union should avoid undermining existing regional groupings by agreeing EPAs with individual countries” (European Parliament, 2011).

<sup>73</sup>This is the regulation referred to as the amendment of market access regulation 1528 in chapter 4.

<sup>74</sup>EU official no. 1, 2013.

clause reflects the “guiding principles” of the EU, and that the inclusion such a clause also is supported by the Parliament, who has “strong views on this”<sup>75</sup>. Lately, the Parliament has called on the Commission “to more often use the political dialogue under Article 8 of the Cotonou Agreement when there are violations of human rights, and if necessary suspend aid” (European Parliament, 2013a), and “to continue to include a democracy and human rights clause in all trade agreements with developing countries” (European Parliament, 2013b).

### 6.2.2 Interim EPAs - forced agreements?

The EU has received criticism from a wide range of actors, including ECOWAS, ACP and the African Union (AU), regarding the interim agreements negotiated in the period before the 2007 deadline. It has been argued that the non-LDCs, who were facing the risk of being downgraded to trading with the EU under the GSP, “lacked the ultimate source of bargaining power of the weaker party, namely the ability to walk away from EPA negotiations” (Meyn, 2011, p. 15). Because of this, some ACP countries signed what was arguably “hastily drawn liberalisation schedules that neither consider sufficiently domestic sensitivities nor are harmonised on a regional level” (ibid., p. 15).

The interim EPAs have been criticised by NGOs as well as researchers for undermining regional integration processes (see Oxfam, 2007). By having agreements with only some countries in the region, the EC “runs the risk of destroying an economic community which is trying to build itself up in one of the poorest regions in the world” (ibid.). More importantly, however, the EU has been criticised for pressuring ACP states into initialling or signing such agreements. The ACP Ministers stated in 2007 that they “deplore the enormous pressure that has been brought to bear on the ACP States by the European Commission to initial the interim trade arrangements, contrary to the spirit of the ACP-EU partnership” (ACP Secretariat, 2007). This sentiment was repeated by an African Union meeting of Ministers of Trade in 2010 (African Union, 2010). One of my informants argues that Côte d’Ivoire signed the interim agreement because it was heavily influenced by French diplomats, but that Ghana chose to initial an agreement also as a result of internal pressure from the banana industry<sup>76</sup> (see also Government of Ghana, 2012).

The EU has denied these allegations, stating that they “have shown all possible flexibility by offering interim deals and sub-regional approaches” to the countries in West

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<sup>75</sup>EU official no. 2, 2013.

<sup>76</sup>Stevens, 2013.

Africa (Mandelson, 2007). According to one of my interviewees, “the EU was extremely patient, the EU did everything to gain time”, especially in the case of Ghana<sup>77</sup>. The ACP Ministers, however, stated that “the recent statements and pronouncements made by European Commission to the media and other fora, are at variance with the demands being made to the ACP negotiating regions and States” (ACP Secretariat, 2007).

Now, after the Commission presented the proposal for the amendment of the market access regulation, ECOWAS has noted how Côte d’Ivoire and Ghana “are under intense pressure to ratify the agreement” (ECOWAS, 2011c). This is also confirmed by my source from Ghana<sup>78</sup>. One EU official argued that these countries cannot continue to benefit from preferential market access to the EU if they do not ratify the agreements, as this is “not fair” to those countries who have ratified EPAs or interim EPAs<sup>79</sup>.

### 6.2.3 Negotiating style

In addition to the claims that the EU has pressured ACP countries into signing interim agreements, critics have accused the EU, and especially the EC and its negotiators, of acting in a paternalistic and patronising manner towards ACP countries in the EPA negotiations. As outlined in section 6.1.4, POSCAO, the coalition of civil society organisations in West Africa, has been critical of the EPA process. They stated in 2011 that the European Commission “has imposed its views in a language where paternalism is mixed with condescension, with everything wrapped up in the ideological and dogmatic logics on the benefits of trade liberalization” (POSCAO, 2011).

Draper (2007, p. 20) states that the EPA negotiations have been marked by “a seemingly self-serving discourse within which EC negotiators propound on what African countries need ... and how the EU is best placed to deliver such”. Writing in 2007, he argues that “this discourse, in combination with the perception of EPAs as an instrument of imposition, does not go down well in Africa where colonial memories bubble close to the surface” (ibid., p. 20). My source from Ghana underlined that the EU in negotiations is “so pushy” with regards to liberalisation<sup>80</sup>. One of my informants argued that the negotiating style of the EU is still “very paternalistic, they would deny it, but the reality is it is very paternalistic”<sup>81</sup>. According to him, an underlying attitude of the negotiators is that “we need to push them a bit and make them do something they don’t really want to do, but

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<sup>77</sup>EU official no. 1, 2013.

<sup>78</sup>Ghana official, 2013.

<sup>79</sup>EU official no. 1, 2013.

<sup>80</sup>Ghana official, 2013.

<sup>81</sup>Bilal, 2013b.

this is good for them and we know better”<sup>82</sup>.

Certain elements of my interviews with EU officials also reflects this underlying notion of knowing what is best for the West African countries. One EU official referred to the demands of the West African countries with regards to development assistance as “unrealistic”<sup>83</sup> and another calls the idea of liberalising 70 per cent “absurd”<sup>84</sup>. Talking about the reliance of West African states on revenues from import tariffs, the same official argued that “it’s a matter of choice” and that “these countries need to move on” to “a normal fiscal system”<sup>85</sup>. Another EU official noted how some countries in the region may perceive barriers to trade as “a good thing”, a view “inherited from previous times”, and presented this as an example of how “there are also psychological obstacles to overcome”<sup>86</sup>. When asked about the role of civil society groups in Ghana that have been sceptical of the agreement, one official answered “yeah, that we know. Lots of Oxfam behind that”<sup>87</sup>. Although Oxfam has indeed been very critical of the EPA process (see for instance Oxfam, 2006b and Oxfam, 2008), this statement reflects a certain dismissal of the criticism that has been voiced. Stating that some LDCs are of the opinion that “well, I’ll just stay an LDC forever and keep getting things”<sup>88</sup> also sounds somewhat condescending.

Two of my informants said the EU believes that if it only applies enough pressure on the West African countries to sign an agreement, the regional EPA could be a reality<sup>89</sup>. This view is reflected in my interviews with EU officials, one of which stated that one of the reasons why agreement has not been reached “is that the EU did not put enough pressure on these regions to sign”<sup>90</sup>. Both my informants argued, however, that this is not a conducive way of reaching agreement. To think that the LDCs will agree to become parties to a regional agreement once Ghana and Côte d’Ivoire is pressured into signing is “absurd and naïve”<sup>91</sup>.

Of the different negotiation styles presented by Hopmann (1996) (see section 3.3.1), there are several indications that the style of the EU, and the EC negotiators, can be labelled ‘normative’. In terms of language, both the officials I have interviewed and other high-level EC officials make frequent use of the words ‘fair’ and ‘fairness’ when arguing

<sup>82</sup>Bilal, 2013b.

<sup>83</sup>EU official no. 2, 2013.

<sup>84</sup>EU official no. 1, 2013.

<sup>85</sup>ibid.

<sup>86</sup>EU official no. 4, 2013.

<sup>87</sup>EU official no. 1, 2013.

<sup>88</sup>EU official no. 3, 2013.

<sup>89</sup>Bilal, 2013b; Maes, 2013.

<sup>90</sup>EU official no. 1, 2013.

<sup>91</sup>Maes, 2013.

for why the ACP countries must sign and ratify interim agreements, or agree to regional EPAs<sup>92</sup> (see The Courier, 2009a). One EU official explained how “we believe that the EPAs are a good and fair deal”<sup>93</sup>. At the same time, the non-execution clause is presented as a “red line” for the EU in EPA negotiations, “it’s something that is not negotiable”<sup>94</sup>. The respect for human rights, democracy, the rule of law and good governance are such important guiding principles that “it’s something that we’re bound to have in our agreements”<sup>95</sup>. Because the EU is unwilling to modify their demands with regards to important issues such as the scope of liberalisation and the inclusion of a non-execution clause, they are now understood as following a “take-it-or-leave-it approach”<sup>96</sup>. A normative negotiating style is likely to be perceived as subjective and inflexible, as has been the case in the EPA negotiations between the EU and West Africa, and can be a reason why the negotiations have not led to an agreement.

#### 6.2.4 EU’s changing priorities

During the Lomé era, the ACP countries had a very privileged position with regards to EU preferences, placed as they were “at the apex of the pyramid of EU trade preferences to developing economies” (Kennes cited in Bach, 2011, p. 33). Maintaining a ‘special relationship’ with the ACP countries was also very much on the agenda of the EU. Over the past decades, however, there are signs that the relationship with ACP countries has become less important to the EU. One reason for this may be the various enlargements of the EU since the early 1990s, bringing in new countries that have few or no historical links to the ACP countries. Even during the course of the negotiations between the EU and West Africa, the EU has expanded its membership from 15 to 27 member states. One of my informants noted that the Cotonou Agreement and the negotiating mandate is “*acquis communautaire*”, meaning that the new member states have had to adopt what has already been decided by the Council<sup>97</sup>.

Although the negotiating mandate has not been altered by new member states entering the EU, the degree of attention given to the EPA negotiations may have been influenced. One EU official noted how the political attention given to EPAs in Europe is “marginal” as the EPA with West Africa are “anything but of strategic interest for the EU”<sup>98</sup>. This

<sup>92</sup>EU official no. 1, 2013; EU official no. 2, 2013.

<sup>93</sup>EU official no. 2, 2013.

<sup>94</sup>ibid.

<sup>95</sup>ibid.

<sup>96</sup>Ghana official, 2013.

<sup>97</sup>Maes, 2013.

<sup>98</sup>EU official no. 1, 2013.

lack of attention is also noted by some of my informants<sup>99</sup>. One informant explained how in his meetings with the ACP working group of the Council, few member states, and almost none of the new members, have engaged in the discussions<sup>100</sup>. Whether or not the EU negotiates a trade agreement with West Africa does not seem to get the attention of political leaders in Europe<sup>101</sup>.

Bach (2011) argues that the promises of “a ‘new era’ for Europe-Africa relations”, which were made when Europe had its eyes on Africa, have proven to be empty words rather than marking a change in the relationship. From 2005 onwards, Africa was the focus of the EU: first at the G8 Gleneagles Summit, and then through the adoption of Joint Africa-EU Strategy at the Second Africa-Europe Summit in 2007 (*ibid.*, p. 40). However, this focus has waned, and the strategic partnership has brought with it little actual change to the relationship between the EU and sub-Saharan Africa. The EU, “while claiming to prioritise the continent, keep treating sub-Saharan Africa as an increasingly ‘distant abroad’”, and its foreign policy focus is largely focussed on its “external frontiers and ‘near abroad’” (*ibid.*, pp. 33, 37).

Whilst the foreign policy focus of the EU is on security issues in its neighbourhood, there are signs that the EU’s trade policy has become increasingly focused on Asia and Latin America as new trade partners, and that its trade attention has shifted to these regions (Bilal and Ramdoo, 2010a). Since the EPA negotiations between the EU and West Africa commenced, the EU has signed free trade agreements (FTAs) with South Korea, Singapore and Peru, and started negotiations with Malaysia, Vietnam and India, as well as with Mercosur<sup>102</sup> (European Commission, 2013c). In addition to the ongoing negotiations already mentioned, the EU launched negotiations with Thailand in the spring of 2013 and is also negotiating agreements with the U.S., Canada and Japan (*ibid.*). The impact of this focus on negotiating FTAs with other partners on the EPA negotiations is examined in the next section.

### 6.2.5 The importance of WTO compatibility

That WTO compatibility is important to the EU was established in section 5.1.1. Ever since the negotiation of the Cotonou agreement, the EU has stated that new trade agreements with the ACP countries will have to be reciprocal and in accordance with WTO rules.

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<sup>99</sup>Bilal, 2013b; Maes, 2013.

<sup>100</sup>*ibid.*

<sup>101</sup>Bilal, 2013b.

<sup>102</sup>Argentina, Brazil, Paraguay, Uruguay, Venezuela

As mentioned in section 5.4, it has been argued that some West African countries believed that the EU would ask the WTO for an extension of the waiver before it expired at the end of 2007. However, the European Commission stated in 2007 that “seeking to extend Cotonou preferences would not comply with ACP and EC obligations at the WTO or previous stated commitments to the WTO membership” (Council of the European Union, 2007). To extend Cotonou preferences before the end 2007, for instance through a WTO waiver, was considered not to be “technically feasible” (ibid.). Writing in 2007, Faber and Orbie (2007) argue that “the renegotiation of a WTO waiver is not impossible”, but that the concessions the EU would have to make to other developing countries in order to get approval from the WTO “would be disproportionate with the minor economic importance of the ACP for the European market”. It would also have been possible for the EU to extend preferences even without a waiver, but this could “compromise the Commission’s standing in the WTO, with uncertain consequences for an institution in need of momentum and legitimacy” (Draper, 2007, p. 11). In the period before the waiver expired, alternatives to the reciprocal EPAs favoured by the EC were put forward (see Bilal and Rampa, 2006), but these were “barely...considered” by the EU (Faber and Orbie, 2007). The EC argues that reciprocal EPAs are the only option to secure market access for ACP countries to the EU, and that there exists “[n]o legally viable alternative” (European Commission, 2010).

Although the EU’s motivation for negotiating an EPA with West Africa may not be directly linked to offensive economic interests in that region, Faber and Orbie (2007) argue that economic interests play an important part in explaining why the EU has been adamant in its demand for reciprocity and WTO compatibility. The EU has “faced considerable resistance against the introduction of reciprocal trade liberalisation with ACP countries” (ibid.). However, the changing priorities in EU trade policy has meant that free trade agreements with new actors, such as Latin American and Asian countries, have become more important than maintaining a non-reciprocal relationship with ACP states (ibid.). To maintain such a relationship “would carry significant economic costs for the EU” (ibid.) and it “could have implications for the EU’s bilateral free trade agenda, in the sense that it would set a precedent” (Draper, 2007, p. 11). The EU also has “a tremendous stake in the multilateral trade negotiations” (Pilegaard, 2007), and is therefore likely to be interested in maintaining a strict definition of WTO rules, such as what constitutes “substantially all trade”. It has been argued that developed countries more generally has an interest in strict rules in the WTO (see Weiss, 2005).

One of my informants argued that the EC has a “very strategic view on EPAs” in

that they “cannot differ too much from the standard free trade approach of the European Union”<sup>103</sup>. He also commented that, in the negotiations, “the Commission goes in with their standard texts”, as seen for instance in the chapter on services included in the EPA with the Caribbean region<sup>104</sup>. Another informant argued that the main reason why the EU is so rigid and refuses to compromise is for fear of setting the wrong precedence<sup>105</sup>.

### 6.2.6 Discussion

It appears that the EU’s position in the negotiations with West Africa results from a compromise between different views among member states, as well as a strong influence from the Commission. The Parliament has played a limited role, but their strong opinion on human rights may have accentuated the EU’s stance on the inclusion of a non-execution clause. The EC still negotiates using the mandate that was agreed on in 2002, and the member states have had a limited influence on the negotiations.

However, the EC knows that an agreement must be ratified by the member states, and consented to by the Parliament. Although there might be a “consensus principle prevailing in the EU” (Elgström and Pilegaard, 2008, p. 373), it is nevertheless likely that the recognition that an agreement will have to be acceptable to the member states and the Parliament influences the EC. According to Putnam’s theory of two-level games, the acceptable outcomes to an actor in international negotiations is constrained by what is acceptable at the national level. From an interview with an EU official, I learned that the “member states are a little bit fed up”, both because the negotiations have taken so long, and because the EPA is a trade and development agreement which “means that there’s concessions given that you would never ever give in a normal trade situation”<sup>106</sup>. With regards to the EC’s refusal to commit to funding for the implementation of an EPA in West Africa, one of my informants argued that it is difficult to get the member states to contribute more to the EDF, not to mention additional funding<sup>107</sup>. This is especially true of the twelve new member states who do not have any historical ties to the region.

One of my informants noted how the EC has agreed to postpone negotiations on areas such as services and government procurement and focus solely on negotiating a goods agreement with West Africa<sup>108</sup>. Because of this, the EC insists on the inclusion of a MFN

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<sup>103</sup>Maes, 2013.

<sup>104</sup>ibid.

<sup>105</sup>Stevens, 2013.

<sup>106</sup>EU official no. 3, 2013.

<sup>107</sup>Maes, 2013.

<sup>108</sup>Stevens, 2013.

clause in the agreement as it needs to “convince Germany and other hard line countries” that it has gotten the best deal it can<sup>109</sup>. In my view, the lack of flexibility in the EC’s approach to the negotiations could also be explained by the correspondence of interest between the EC and countries such as Germany in promoting free trade and negotiating reciprocal agreements. The emerging picture is that the EU does not want to appear weak in trade negotiations. This concern with reputation may be understood in terms of Underdal’s (1983) concept of ‘process-generated stakes’ (see section 3.3.2), which makes agreement difficult as the EU cannot make compromises in the negotiations with West Africa for fear of sending the wrong signal to potential trade partners.

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<sup>109</sup>ibid.



# Chapter 7

## Changes in the EU - West Africa relationship

EPA negotiations between the EU and the West African countries have now been ongoing for more than eight years. In the meantime new actors have taken an interest in trading with West Africa and the EU has negotiated trade agreements with a number of other actors. In this chapter I first look at some events of the last eight years that are external to the negotiation process. I then assess whether these events have altered the power structures between West Africa and the EU in the negotiations. I finally outline the prospects for the EU and West Africa to come to agreement and finalise a regional EPA.

### 7.1 Factors external to the negotiations

In this section I examine the relationship between West Africa and countries that have recently taken an increased interest in the region. I then assess whether the economic crisis starting in 2008 has had an impact on the negotiations, before turning to the EU and the possibility that the West African countries consider the EU a less attractive trading partner now than at the beginning of the negotiations.

#### 7.1.1 Other actors

Much has been written on the so-called ‘new scramble for Africa’, with new actors taking an interest in Africa, and especially in the natural resources found there, but it is not within the scope of this paper to enter into that debate (see for instance Southall and Melber, 2009; Cheru and Obi, 2010; Carmody, 2011). Trade statistics show however, that trade and investment flows between Africa and countries such as China, India and

Brazil have increased over the last decade. Trade between India and Africa, for example, increased by over 200 per cent in the period from 2002 and 2007 (Shrivastava, 2009, p. 128). Over the same period, investments from China to Africa increased from around 70 US\$ millions to more than 1.5 US\$ billion (Bo, 2011, p. 32).

## India and Brazil

Indian investment in Africa is spread across sectors as well as countries, but most of its trade and investments is focussed on countries in eastern and southern parts of Africa (Shrivastava, 2009). India has contributed to the development of infrastructure on the continent, such as the construction of railways in Nigeria (Taylor, 2012, pp. 790, 792), and most of its trade with West Africa consists of oil imports from Nigeria (Shrivastava, 2009). Because it can provide African countries with “adaptable and affordable technologies” as well as “collaborative solutions”, India is becoming increasingly popular as a partner for development and trade (*ibid.*, p. 130).

Another country that has emerged as a new partner for African countries is Brazil. Brazil’s focus on Africa over the past ten years has been demonstrated by journeys undertaken by government officials, seminars and forums organised and the opening of 20 new embassies (Stolte, 2012, p. 2). Brazil now has embassies in 12 West African states, and bilateral relations with all countries in the region (Brazil Ministry of Foreign Affairs, no date). Brazil has promoted South-South cooperation, and has initiated projects in ten West African countries<sup>1</sup>. At the ECOWAS-Brazil Special Summit in 2010, the countries agreed to “encourage and promote a two-way trade, investment, business and industrial development” (Brazil Ministry of Foreign Affairs, 2010). The joint declaration also highlighted how the “forging [of] stronger ties between Brazil and ECOWAS” could strengthen institutions in West Africa and “improve...capabilities to cope with...development challenges” (*ibid.*).

The experience of India and Brazil as developing countries that have managed to achieve economic growth and social development can provide African countries with valuable input on “how to navigate a post-colonial environment” (Taylor, 2012, p. 797). These lessons learned are “arguably of more relevance to African states than any policy advice emanating from western capitals” (*ibid.*, p. 797).

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<sup>1</sup>Agriculture projects in Benin, Burkina Faso, Mali, Senegal; health projects in Benin, Burkina Faso, Cape Verde, Ghana, Guinea-Bissau, Liberia, Senegal, Sierra Leone; energy projects in Benin, Burkina Faso, Ghana, Nigeria, Senegal (Stolte, 2012, pp. 12-17).

### **The United States**

The United States has had an increased focus on Africa after 9/11, both with regards to its security policy and “war on terror” and as part of its goal of securing access to energy resources (see for instance Carmody, 2005). As a consequence of the U.S. reliance on oil imports from African countries, it has developed an “enduring close relationship” with Nigeria (Ruane, 2008, p. 444). This relationship has involved oil exports from Nigeria to the U.S., and military assistance from the U.S. to Nigeria (*ibid.*, p. 444). Military assistance has included a new military training centre in Abuja, Nigeria (Abramovici and Stoker, 2004, p. 688), and has also “been demonstrated by the use of a U.S. aircraft carrier to patrol the West African coast” (Ruane, 2008, p. 444). The U.S. has also supported military counter-terrorism projects in the Sahel region, including in the West African countries Niger and Mali, and the Sahel continues to be a region of strategic concern to the U.S. (Abramovici and Stoker, 2004, pp. 685-686).

Trade between the U.S. and African countries “remains highly concentrated”, most trade is with oil producing countries such as Angola and Nigeria, and oil and other petroleum products constitute almost all imports to the U.S. (between 70 and 80 per cent in 2003) (Bangura, 2008, p. 297). Ruane (2008, p. 447) argues that the U.S. has no clear “incentive to change the current situation” in trade between the U.S. and West Africa. The West African market is still of little interest to U.S. exporters, and the only important aspect of trade with the region is to secure continued imports of oil (*ibid.*, p. 447). The U.S. has worked to secure this energy access through military assistance to Nigeria, as well as through ‘soft power’ mechanisms such as increased aid budgets and funds for health projects (*ibid.*, pp. 449-450). Starting in 2000, the U.S. has gradually opened its market for imports from Africa under the Africa Growth and Opportunity Act (AGOA) (*ibid.*, p. 450). None of my interviewees mentioned the U.S. as a potential trade partner for West Africa. However, in a press release following a meeting in Washington in March 2013, U.S. officials “proposed that the U.S. and ECOWAS explore the possibility of negotiating a Trade and Investment Framework Agreement (TIFA)” (Bloomberg, 2013). The U.S. is apparently showing signs of an increased interest in trading with West Africa.

### **China**

Only one West African country is represented on the list of China’s top ten trading partners in 2008 (Bo, 2011, p. 31). Nigeria figures at number four, but “is not a major supplier of oil to China” (*ibid.*, p. 31). When it comes to the top ten recipients of Chinese investment in Africa, however, Nigeria is the second largest recipient, and Niger is also

present in the 'top ten' list (Bo, 2011, p. 33).

Although trade between China and the West African countries is still relatively low, the relationship between China and ECOWAS has developed a great deal over the last five years. Starting with the ECOWAS-China Forum in 2008, the countries have engaged in several meetings and signed different agreements. In 2008, China made a donation to the ECOWAS Peace Fund, 2008, "in recognition of ECOWAS' efforts in regional integration" (ECOWAS, 2008a). This was received by the President of the ECOWAS Commission as a "demonstration of the solidarity we have always enjoyed from the Government and people of China" (ibid.). The same year, the ECOWAS Bank for Investment and Development (EBID) "signed a Memorandum of Understanding (MOU)" with China "to establish Markets in China and the ECOWAS Region that will enable their citizens to exploit trade and investment opportunities in their two areas" (ECOWAS, 2008b). This was followed by the signing of "a comprehensive agreement with the China Council for the Promotion of International Trade (CCPIT)" to attract Chinese private sector investment to West Africa, and the signing of "an agreement with the Nanjing Municipal Peoples Government for the establishment of an ECOWAS official market to facilitate trade in goods produced by Member States in China" (ECOWAS, 2008d). In 2009, Chinese officials were the first foreign officials to be invited to an ECOWAS Trade Fair (ECOWAS, 2011a).

The ECOWAS-China Forum has been hosted twice, once in China in 2008, and then in Ghana in 2012 (ECOWAS, 2012b), and in October 2012, China and ECOWAS signed a framework agreement "to bolster trade, economic, investment and technical cooperation between them" (ECOWAS, 2012a). Thus, from 2008 onwards, the West African countries have clearly been getting attention from China.

### **7.1.2 The economic crisis**

The economic crisis that unfolded from 2008 onwards left the West African countries mostly unaffected (The Courier, 2010a, p. 13). It did, however, accentuate the importance of government revenue and the ability of states to regulate their economies. According to a IMF study from 2010, the West African performance can be partly explained by these countries' relatively low level of integration in the world economy. (ibid., p. 13). However, the study finds that "[t]he determining factors in its performance are to be found in the strong macroeconomic foundations built up since the middle of the past decade, and in the intelligent reactions of African governments, which, at the very first signs of economic slowdown, took steps to reduce the importance of external factors by increasing public spending, in spite of stagnation or reductions in revenue" (ibid., p. 13).

During the course of the crisis, many countries “kept their public investment at the same level as before, with half of them even registering an increase” (ibid., p. 13). This was possible as “budgetary balances had improved in the years before the crisis” (ibid., p. 13). A researcher from Benin argued in an interview in 2009 that the crisis is “an opportunity for African governments to take back the economic leadership of their countries and no longer obey the dictates of financial orthodoxy imposed by those who don’t practice what they preach” (The Courier, 2009b, p. 20).

I have found little support in my interviews that the economic crisis has had an impact on the EPA negotiations between West Africa and the EU. However, some of my informants highlighted how the world has changed since the negotiations started, and that the lack of agreement has to be understood in this context<sup>2</sup>.

### 7.1.3 The EU - becoming a less attractive trading partner?

#### Preference erosion

The West African countries have a history of very preferential access to the EU market, with the Lomé conventions granting non-reciprocal access for West African goods. Since the Cotonou waiver expired in 2007, West African countries now trade with the EU under different programmes<sup>3</sup>. Most of the countries continue to have duty and quota free access to EU markets, but there is a perception that this market access is decreasing in value as the EU is extending trade preferences to an increasing number of states. Meyn (2011, p. 21) notes how EU preferences for the ACP countries “have been quite quickly extended by the EU to other suppliers”, and argues that the “competitive advantage” of duty and quota free access “is likely to be eroded in the same way”.

From my interview with a Ghana official, I understand that the West African countries recognise that the EU is negotiating with a number of actors, and that the relationship between the EU and West Africa “is not going to stop them from negotiating with other countries for fear that we might lose our preference”<sup>4</sup>. The West African countries “used to have a higher preference margin in the EU market over the Latin American countries, but now, with the free trade agreement that they have with them, that preference margin is gone”<sup>5</sup>. Preference erosion is “an inevitability”, and because of this the only way forward for the West African countries is to increase their competitiveness, “we must compete or

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<sup>2</sup>Tandon, 2013; Bilal, 2013b.

<sup>3</sup>GSP (Nigeria), GSP+ (Cape Verde), EBA (the LDCs), IEPAs (Ghana and Côte d’Ivoire).

<sup>4</sup>Ghana official, 2013.

<sup>5</sup>ibid.

die”<sup>6</sup>. However, the focus is not just on improving the competitiveness of West African states in the European market, but in all markets. One of my informants argued that the ACP countries now mainly use policy space in order to attract investments, and that this has become the new focus of developing countries<sup>7</sup>.

One of my informants argued that “much of the sense of urgency” that the ACP countries have had with regards to concluding EPAs has now been lost<sup>8</sup>. This is because the non-LDCs who depend on market access to the EU have signed interim agreements, but also “because in the meantime there’s been a lot of preference erosion”<sup>9</sup>. Preference erosion has occurred as a result of the EU negotiating new trade agreements, but also as a result of changes within the EU such as agricultural reform<sup>10</sup>.

## 7.2 Moving towards symmetry?

The previous sections outline how new actors have taken an increased interest in developing their trade relationship with West Africa over the past few years. This is perhaps especially true of China, but also Brazil and the U.S. have shown an interest in the region. It is worth noting that they have established, or hope to establish, relationships with ECOWAS, and not just bilateral arrangements with the major economies such as Nigeria and Ghana.

It has been argued that countries such as India, Brazil and China are perceived by the West African countries to be “attractive alternative new partners” (Bilal and Ramdoos, 2010a). My source from Ghana explained how the EU is redefining their relationships with different actors “based on the realities on the ground” and the “emerging geopolitics, so why shouldn’t we also do the same?”<sup>11</sup>. One of my informants also noted how these new actors “are talking to them in a very different language” than the paternalistic style of the EU<sup>12</sup>. The Ghana official I interviewed expressed concern over the pressure exerted by the EU to get Ghana to ratify their interim agreement, and stated that the EPA should be “an agreement, not an imposition”<sup>13</sup>. On the topic of engaging in trade relationships and entering into agreements with new actors, my source from Ghana explained that “in my

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<sup>6</sup>Ghana official, 2013.

<sup>7</sup>Tandon, 2013.

<sup>8</sup>Maes, 2013.

<sup>9</sup>ibid.

<sup>10</sup>ibid.

<sup>11</sup>Ghana official, 2013.

<sup>12</sup>Bilal, 2013b.

<sup>13</sup>Ghana official, 2013.

country we have a proverb” which is “make new friends, but keep the old, because one is silver and the other is gold”<sup>14</sup>. West Africa is “not trivialising” its relationship with the EU, but at the same time “it’s certain that we also need to look at other parties”<sup>15</sup>.

When the Cotonou agreement was signed in 2000, China was not the major player it is now. It was not a member of the WTO, and it had not yet started to invest in, and trade with, African countries on a scale like today. During the course of the EPA negotiations, China’s involvement in Africa has escalated, and it is now a major power in the global economy. One EU official noted how the role of China has influenced the debate on whether the EPA should include a non-execution clause, as it “now comes in and doesn’t care about this at all”<sup>16</sup>. China may be seen as a more appealing trading partner as it does not link political conditionalities to its trade agreements. One of my informants argued that the relative decline of Europe compared to the emerging economies, and China especially, has had an impact on how West Africa perceives its position in the world<sup>17</sup>. Another informant explained how the rise of the emerging economies has “also helped diversify the markets of the ACP countries”<sup>18</sup>.

In addition to a wider range of possible trading partners, the last decade has also witnessed new actors taking the role of donors to West Africa<sup>19</sup>. OECD statistics on Overseas Development Aid (ODA) from OECD Development Assistance Committee (DAC) countries to West African countries show that the EU, as institution, in 2010/2011 was top donor for only three countries in region (OECD, 2013). However, four other countries have an EU member as their top donor, either France, Portugal or the United Kingdom. Other important donors to the region include the U.S., Japan and Germany (ibid.). One EU official argued how “the EU is still the first donor, and the biggest donor” and that there are “still a lot of direct links” between Europe and West Africa<sup>20</sup>. These are not necessarily with the EU, “it may be particular member states”, especially the former French colonies who continue to have strong links to France<sup>21</sup>. Another example of bilateral relations between West African countries and EU member states is the relationship between Nigeria and the UK. In a speech given in Nigeria in 2010, Prime Minister David Cameron stated that “we see Africa in a new way, a different way. Yes, a place to invest our aid. But

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<sup>14</sup>ibid.

<sup>15</sup>ibid.

<sup>16</sup>EU official no. 3, 2013.

<sup>17</sup>Tandon, 2013.

<sup>18</sup>Maes, 2013.

<sup>19</sup>ibid.

<sup>20</sup>EU official no. 3, 2013.

<sup>21</sup>ibid.

above all a place to trade” (Cameron, 2011). He made no reference to the EPA process or the EU-West Africa links, however. His visit to Nigeria led to a joint communique being issued, which has since “become the platform for continued co-operation between the two countries in further strengthening of a strategic partnership” (Nigeria Ministry of Foreign Affairs, 2012).

Although the ties to Europe are still many, and still important, the perceived need for a trade agreement with the EU has likely decreased as West Africa’s trade relationships with new actors have expanded. There are differences within the region, with Ghana and Côte d’Ivoire arguably having more at stake in the negotiations than the LDCs who will continue to export duty and quota free to the EU no matter what the outcome of negotiations is. Looking at the relationship between EU and West Africa in light of the theoretical contributions of Habeeb (1988) and Zartman and Rubin (2000), as presented in section 3.2.1, the EU quite obviously had the greatest amount of aggregate power at the outset of the negotiations. It was, and still is, an economic giant, especially compared to West Africa, a region where a dozen countries are categorised as least developed. Regarding the power relationship between the actors in the negotiations, their issue-power, the EU had the greatest amount of alternatives and control at the start of the negotiations. It arguably was not very committed to the negotiations, in the sense that it did not *need* an agreement, but it had a strong desire for a specific outcome as a result of its conviction of the merits of free trade. West Africa had few alternatives and little commitment, except Ghana and Côte d’Ivoire who depended on an outcome that would preserve their access to EU markets. The EU thus was the most powerful actor in terms of structural power resources. The negotiations clearly started out as asymmetrical, but the situation today is not so clear-cut. At the aggregate level, the EU is still the most powerful, but with regards to issue-power the increasing attention given to West Africa by other actors might be perceived as presenting the region with alternatives to entering into an agreement with the EU.

### 7.3 Prospects for a regional EPA between the EU and West Africa

From my interviews my impression is that both the EU and West Africa at this point have become weary of the negotiations. According to one EU official, “there is a lot of inertia in the whole process”<sup>22</sup>, whilst another pointed out how “we seem to be turning around the

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<sup>22</sup>EU official no. 3, 2013.

same issues again and again whenever we meet, and not moving anywhere”<sup>23</sup>. My source from Ghana claimed that “it has taken too long”<sup>24</sup>. At the last joint ministerial committee meeting between the ACP group of states and the EC, the Trade Commissioner stated that it is high time that the EPA negotiations are concluded, and that the EC wants “to prioritise negotiations with those who are prepared...Ok. So that means, it’s like a take it or leave it”<sup>25</sup>. The Ghana official further noted that “we hope a solution will be found”, but that “if there’s no agreement in especially the basic areas, some areas, I think that we can’t go for it”<sup>26</sup>. The Most Favoured Nation clause, for instance, is perceived as damaging the opportunities of West Africa to “develop South-South cooperation” and agreements with the emerging economies<sup>27</sup>.

In the declaration from the meeting of ACP Heads of State and Government in December 2012, the state leaders “call upon the European Council to take a position that will allow the negotiations to continue without the pressure of time so that the outcome will be an agreement that satisfies all sides, and whose implementation will stand the test of time” (ACP Secretariat, 2012). By setting the deadline for ratification of the interim agreements to October 2014, it is unlikely that the ACP will feel like their request has been heard. One EU official noted that the pressure on Ghana and Côte d’Ivoire is “not coming from us, it’s world rules...The whole story is about the EU being fair to all the countries, equally fair”<sup>28</sup>. Another EU official argued that the deadline “will help [with] finally deciding whether we are going to move forward, whether we consider the process, well, dead, basically”<sup>29</sup>. By now, “the EU doesn’t have any motivation to continue. The EU just wants to close the deal. Which is compatible with the WTO rules”<sup>30</sup>.

At the same time, there seems to be an understanding in the EU that the EPA negotiations have “been a PR disaster”<sup>31</sup>. One EU official noted how the EU has “not been able to communicate well enough about what is the deal, what is in it for the partner countries” and argued that “perhaps this is one of the weakest points of everything we have done in the past”<sup>32</sup>. Because of this, and also because the EU has devoted a lot of time and energy on the negotiations, the EU has repeatedly confirmed its commitment

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<sup>23</sup>EU official no. 2, 2013.

<sup>24</sup>Ghana official, 2013.

<sup>25</sup>ibid.

<sup>26</sup>ibid.

<sup>27</sup>ibid.

<sup>28</sup>EU official no. 1, 2013.

<sup>29</sup>EU official no. 2, 2013.

<sup>30</sup>EU official no. 1, 2013.

<sup>31</sup>Bilal, 2013b.

<sup>32</sup>EU official no. 4, 2013.

to concluding agreements with the ACP countries. In a speech given in 2009, then Trade Commissioner Catherine Ashton stated that the EPAs “are the latest manifestation of the longstanding trade relationship between the EU and the ACP. They are the right agreements at the right time... In short, they are the future” (Ashton, 2009). The current Trade Commissioner, Karel De Gucht, stated in a speech in 2010 that “over the last few years, the EPA negotiations have been so much fraught with difficulties that a certain cynicism and fatigue has gotten hold of many of those involved”, and that solutions must be found to “the political thorny issues” as “failure is not an option” (Gucht, 2010). One of my informants argued that the EU wants to deliver, because “they have spent a lot of time and energy” on the negotiations, “it’s nothing that you can turn your back on easily”<sup>33</sup>. However, the EU is also keen on negotiating trade agreements with countries where it has stronger offensive interests, “so they also don’t want to continue to devote hundreds of staff on this which is not moving forward, so they want this to end”<sup>34</sup>.

As outlined in section 6.1.5, my source from Ghana expressed concern that the regional integration process will suffer if Ghana and Côte d’Ivoire ratify their interim agreements. One of my informants also raised this point, and argued that France is the only country in the EU that comprehends the “political disaster” it will be if only some countries start to liberalise imports from the EU<sup>35</sup>. In addition to damaging the customs union of UEMOA and the integration projects of ECOWAS, the EU “will have all the Africans against them saying ‘what are you doing?’”<sup>36</sup>. According to one EU official I interviewed, West Africa is important to the EU because of the “historical ties between the two regions”<sup>37</sup>. However, another official noted how the EPA process is only of interest “to a handful of member states for obvious historical links” and that “the justification really for the special relationship on the basis of history is getting diluted”<sup>38</sup>. One of my informants argued that the only reason the EU has continued its negotiations with ECOWAS is that the region is very important to France<sup>39</sup>.

The Ghana official I interviewed seemed quite optimistic of the possibilities of the negotiators reaching agreement and finalising a regional EPA, except with regards to the debate on the non-execution clause, which “will have to be decided politically”<sup>40</sup>. Talking

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<sup>33</sup>Maes, 2013.

<sup>34</sup>ibid.

<sup>35</sup>Bilal, 2013b.

<sup>36</sup>ibid.

<sup>37</sup>EU official no. 1, 2013.

<sup>38</sup>EU official no. 3, 2013.

<sup>39</sup>Stevens, 2013.

<sup>40</sup>Ghana official, 2013.

### 7.3. PROSPECTS FOR A REGIONAL EPA BETWEEN THE EU AND WEST AFRICA<sup>79</sup>

about the prospects for a regional EPA, one EU official stated that “I still sort of hold out some hope for the all-regional arrangement. I think it’s possible that simply the two interims will go ahead, I think it’s possible that there will be something like a core group of countries around the interims that will happen. At this stage, honestly, it’s all in the stars”<sup>41</sup>.

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<sup>41</sup>EU official no. 3, 2013.



# Chapter 8

## Concluding Remarks

The EU and West Africa have come together in negotiations for an Economic Partnership Agreement for almost a decade now. Still, no agreement has been finalised, and it seems increasingly unlikely that a regional EPA will be the outcome of the negotiations. The aim of this study has been to explain why the negotiations have not led to an agreement.

The lack of agreement can in part be explained by the difference in motivation between the EU and West Africa. The EU wanted to negotiate reciprocal free trade agreements, whilst most West African countries preferred the status quo over having to liberalise imports from the EU. From my analysis I gather that the West African position on the market access offer and the development assistance can be seen as an indication of a deeper mistrust of the merits of liberalisation, which has only been aggravated by the predictions made by impact studies. Although the West African countries have stated that they are willing to liberalise up to 70 per cent under an EPA, this has been linked with demands for a commitment of sufficient economic assistance from the EU. The West African opposition to the MFN clause and the non-execution clause can be seen as an expression of the importance they place on sovereignty and policy space. The EU, on the other hand, considers free trade as crucial for fostering economic growth and development. Their negotiating position reflects underlying neoliberal norms and values, both in the demand for liberalisation and in the focus they have on the importance of good governance and democracy. It appears their win-sets were not overlapping at the outset of negotiations, and underlying political disagreement may thus be an explanation of why the negotiations have not led to an agreement.

It could perhaps be expected that the EU and West Africa would have managed to come up with solutions that both parties could accept after almost a decade of negotiating. However, my analysis indicate that the regional positions have been constricted by

divergent views between the member states in each region. In West Africa, it appears that most of the countries, the LDCs as well as Nigeria and Cape Verde, have not wanted to enter into an EPA with the EU. Two countries in the region, Ghana and Côte d'Ivoire, have bilateral interim agreements with the EU that they will have to decide whether to ratify or not if a regional agreement is not finalised by October 2014. The fact that two important countries in the region are faced with this dilemma, and that the choices they make will have an impact on the integration processes of the region, has had an impact on the negotiations in the sense that countries who do not necessarily have a national interest in the EPA are still involved in the negotiations through ECOWAS. EU officials claim that the lack of agreement in large part is due to West Africa's difficulties in conceiving a coherent regional position. It seems, however, that most of the countries in West Africa share the opinion that an EPA could be a development opportunity, but that it most likely will cause more harm than good.

My analysis reveals that it is likely that an agreement with the EU is not considered more important to the West African states than the protection of their own markets and state sovereignty. Although the divergent interests in West Africa may have constricted the position of ECOWAS in the negotiations, this is not in itself a reason why agreement has not been made. The assumption that the lack of an agreement can be explained by the divergent views of West Africa is therefore not confirmed. Rather, the divergent interests of West African countries may explain why the majority of them have even stayed in the negotiations. The interim agreements negotiated by Ghana and Côte d'Ivoire may have served to keep the region interested in negotiating a regional EPA, as this option is preferable to Ghana and Côte d'Ivoire signing bilateral agreements.

In the EU, my analysis shows that the different views amongst member states, as well as the strong position of the Commission, has resulted in the EC taking a rather rigid stance on the contentious issues that are still being discussed. Its win-set has been reduced as a result of the clashing interests of member states such as Germany, who advocates a free trade approach, and France, who wish to maintain the special relationship with West Africa. It is possible to argue that the EU has in fact been quite flexible in agreeing to leave certain issues, such as services, out of the negotiations to be negotiated at a later stage. However, this seems only to have served to harden the EC's position in the current negotiations. This may be because the EC has to weigh the interests of member states in order to be sure that agreements will be ratified. The inflexible approach of the EU can also be explained by its wider trade policy and interest in negotiating trade agreements with countries other than the ACP. It appears that this is a much more important driving

force for the EC than the EPA negotiations, and that the offensive interests of the EU in countries in Asia or Latin America is deemed incompatible with a flexible and favourable agreement with West Africa. In my view, this is an important reason for why agreement has not been reached.

The relationship between the EU and West Africa today can be seen as a clientelist relationship, both bilaterally, between the former colonial powers and their former colonies, as well as at the regional level played out in the EPA negotiations. The strategies available to client states in a clientelist relationship, such as playing up the moral obligations of the patron, have also been available to the West African countries. However, the legacy of Lomé and the special relationship between the EU and West Africa is not sufficiently important for the EU to be willing to compromise in the negotiations. The links with West Africa are important to France, but their view seem not to have prevailed in the EU.

One of the EU officials I interviewed noted how “the EPA landscape” is different today than it was ten years ago <sup>1</sup>. In my view, the prospect of reaching agreement has only diminished over time. With new actors taking an interest in West Africa and negotiating agreements with ECOWAS, the region is likely to perceive itself in a stronger position vis-à-vis the EU. West Africa may thus be difficult to coerce into signing a regional agreement, even with the new market regulation deadline in place. However, it is unlikely that the EU will risk facing a new round of accusations of foul play in order to conclude an agreement in which the EU has little economic interest. At this point, the lack of agreement in the negotiations may be due to process-generated stakes, as both the EU and West Africa have stood by their positions for such a long time that it has become increasingly difficult to yield to the other’s demands.

If the EPA negotiations do not lead to a regional agreement, this will imply a break with the tradition of trade agreements between the regions that goes back fifty years. It may be that the special trade relationship between the two regions will be replaced by bilateral initiatives and agreements with certain EU member states such as France and the UK. Further research could be done on the position of the West African countries if and when they enter into trade negotiations with countries such as China or the U.S. In this regard it would be especially interesting to analyse to what extent the members of ECOWAS in those cases will be willing to liberalise their economies. On the topic of EU-West Africa relations, an issue for further research is the relationship between the trade and development policy of the EU in EPA negotiations, and its security and foreign

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<sup>1</sup>EU official no. 3, 2013.

policy interests in the West African region.

If a regional agreement is to be finalised, it is likely that the EU will either have to yield to West Africa's demands or apply a great deal of pressure on the countries in the region. However, even if the EU does alter its position on issues such as market access and development assistance, it may be that Nigeria and the LDCs still do not have sufficient interest in agreeing to an EPA. It is also questionable whether the EU would wish to, or even be able to, pressure a country like Nigeria to sign. Nevertheless, it is in my view very unlikely that the EU will concede to the demands made by West Africa. If West Africa changes its regional position and an EPA is concluded, further research should be conducted to establish whether their motivation is indeed regional integration and solidarity.

Returning to my hypotheses, my analysis supports the claim that political disagreement as well as a lack of flexibility in the EU approach can explain why an agreement has not been finalised. The lack of agreement in the EPA negotiations between the EU and West Africa can be explained by seeing the disagreements on contentious issues as expressions of underlying political disputes that are aggravated by the motivations of the strongest member states in each region. In West Africa, Nigeria does not want to liberalise in order to get an agreement, in the EU, Germany, as well as the Commission, are not interested in negotiating an agreement that may set a negative precedence for future negotiations. Over time, agreement has become less likely both because of higher process-generated stakes and as a result of new actors taking an interest in West Africa.

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