# EPA negotiations do not promote the right investment policies in Africa

## SOMO Briefing paper

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**The EU strongly advocates that attracting more foreign investment is a solution to African development problems and that African countries therefore need to include strict investment liberalisation measures in EPAs. However, Africa has so far experienced too little benefits from foreign investment and investment incentives. African Ministers need to continue to resist EU pressure to include investment liberalisation in EPAs and rather focus on support and capacity building for domestic or regional investment, and making foreign investors responsible for their activities in Africa.**

## EU promotes foreign investment as a development strategy

During the negotiations on Economic Partnership Agreements (EPAs) between African, Caribbean and Pacific countries (ACP) and the European Union (EU), the EU has been emphasizing that Africa needs to attract more foreign investment and that investment liberalisation should therefore be be part of these EPAs.This reflects the shift by many donors from aid to foreign investment to bring new capital into developing economies. In the words of the chief EU negotiator in EPAs, development "*cannot happen without investment*" and investment will bring "*additional jobs*"[1] which leads to economic growth.[2] Also, foreign investors are assumed to bring the know-how, infrastructure, improved efficiency and diversification of production which Africa lacks for economic growth and increasing exports. For instance, foreign investment in mobile telephones makes economic activities run more smoothly and more efficient, and thus cheaper. However, this EU position is also self serving as the principal actors in foreign direct investment in Africa are European multinationals (MNCs).

## Africa has already been opening up investment

To attract investment, the EU wants African countries to go further than the many far reaching measures they have already taken to serve the sole interest of foreign companies.

Under structural adjustment programmes, many Sub-Saharan African countries have allowed foreign investment in many more sectors such as in horticulture, manufacturing industries, or banking. This included privatising national industries, mining and public services and selling them off to foreign investors.

To attract more investment, African governments have taken **incentive measures**, including setting up Export Processing Zones (EPZs), so that foreign investors for instance:

- have to pay no or less taxes;
- do not need to reinvest their profits;
- are exempt in rule or in practice from applying labour and environmental laws.

As members of the World Trade Organisation (WTO), many African countries are part of the **Agreement on Trade and Related Investment Measures**, which among others prohibits governments to require that foreign investors use locally produced inputs.

In order to give more guarantees of protection and market opening to investors, several African countries have negotiated **bilateral investment treaties** (BITs), which they have to implement or face the possibility to be sanctioned with fines. Provisions of BITs include that governments are obliged to apply equal regulations to national investors and all foreign investors. Other provisions compel governments to do not damage investors' interests, give a lot of freedom to move MNCs' capital in and out of countries, and restrict governments in how they expropriate foreign investors.

## Experiences in Africa challenge benefits of investment incentives

The many pro-investment measures have not prevented that Africa only receives 3% of the world's investment inflows (2004)[3], and that most foreign investment goes to extractive industries of natural resources such as oil and minerals in only a few African countries.
Investment has not always created jobs. For instance, mining companies in Ghana tend to employ foreign skilled labour rather than train local staff. Manufacturing investors in South Africa are making people redundant or dependent on flexible contracts in order to save labour costs.
Where jobs were created by foreign investors, for example in the garment industries and large vegetable farms, many workers are being ill-treated, underpaid and their labour rights are being breached. Meanwhile, small producers loose their livelihoods because they can't compete. In South Africa and Eastern Africa, investment in the dairy sector has marginalized many small milk farmers. Also, garment industry investors have a tendency to quickly move in and out of countries, leaving many without a job and without payment for their last months of work.

Investment in mining, oil and commodities has often resulted in damage to the environment and livelihoods.
In the services sector, foreign investors taking over privatized basic services tend to focus on rich clients and limit access for the poor, even if these services are part of people's human rights, such as access to health care and water. In the banking sector, foreign banks have often closed rural branches in Sub-Saharan Africa and limited access to credit for small farmers and the poor.
Such unsustainable investment breaches the International Covenant on Economic, Social and Cultural Rights.

The many incentives have favoured foreign investors over domestic investors and small & medium-sized enterprises even if the latter provide the majority of employment (e.g. 72% in Kenya). Moreover, still more capital is leaving in Africa than flowing in.
Overall, these experiences confirm UNCTAD's conclusion that attracting foreign investment is not the same thing as development and that the higher efficiency of foreign companies cannot compensate for the failures of the state.[4]

## How the EU wants to attract more investment through EPAs

According to the EU, "*market size matters*" and bigger-sized regional ACP markets will attract more foreign investors as they can sell to more consumers. The EU wants therefore to conclude 6 EPA free trade agreements, with the ACP countries and the EU removing most tariffs and other trade barriers.

A central argument used by the EU is that foreign investors want "*stable, predictable and clear*" regulations.[2] EPAs have

to attract more investors by establishing a stable and clear regulatory regime based on the principles of substantial market opening, non-discrimination and protection of investors, as far reaching as already agreed in other investment agreements (see BITs above). The EU[5] wants even to go further than BITS regarding liberalisation of capital flows. This regime will not only apply to ACP investors from the region but also give preferential access to European investors, which will be very profitable to European MNCs.

## African countries rejecting investment provisions in EPAs

While unilateral incentives can be withdrawn, agreements on investment need to remain in place for a long time and limit the room to manoeuvre for government policy. Experience has shown that BIT provisions prevent policies to stimulate local industries and stop laws that investors see as damaging to their profit making, even if such laws have been put in place to prevent financial crises and/or to protect people and the environment. The EU proposals will continue the very imbalanced measures in favour of protecting investors while not imposing responsibilities and obligations on investors to the benefit of the host country, its people and its environment.

African countries have long been aware that investment liberalisation is a complex and potentially dangerous matter, for which they have little capacity to negotiate. They therefore refuse to negotiate investment issues in EPAs after they have rejected to negotiate them in the Doha round of WTO negotiations. In April 2006, the African Union Conference of Ministers of Trade clearly stated: "*On the issues of investment policy, [...]. We reaffirm that these issues be kept outside the ambit of Economic Partnership Agreements.*"

Notwitstanding African opposition, the strong EU push for including investment in the EPAs has lead to the setting up of negotiation groups to discuss the issue of investment. However, the ACP can continue to resist including investment liberalisation in EPAs.

## What needs to be done under EPAs for Africa

Studies from the World Bank, UNCTAD, OECD and the Commission for Africa have concluded that more market access, incentives and restricted regulation will not lead to the increase in foreign investment that Africa would like to see, and therefore they advocate other measures.
The EPA negotiations must reject investment liberalisation clauses and incorporate new approaches to the relation between investment and development that benefit the people and the environment in Africa:

- African countries need aid and technical support from donors to enhance education and training for more skilled labour, to build infrastructure and reliable utilities, to increase financial resources and cancel foreign debts, and to enhance redistribution of income and access to basic services for the poor. Such **capacity-building** is a necessary precondition for attracting more investment, national and foreign.

- **Domestic investment** should receive more support to enhance Africa's capacity to successfully industrialise and develop its services industry, especially because foreign direct investment flows to Africa's manufacturing industries are declining. Better credit facilities, guarantees and government policies should attract the type of national or regional investment Sub-Saharan Africa needs.

- Attracting foreign investment should not be done through measures that open up markets to any investor, but should allow to discriminate positively in favour of the kind of investors that support a country's development. Governments and parliaments should retain the **right to regulate** and control some forms of investment, and investment agreements should not withdraw the flexibility to reverse investment liberalisation in light of bad experiences.

- Most of all, agreeing on investment issues should rebalance the rights which foreign investors have so far received, with obligations and duties towards the home country. African countries and the EU need to **stop the "race-to-the-bottom"** and agree to prohibit incentives that undermine environmental and human rights laws and standards, and by fighting corruption. African countries should be guaranteed the right and duty to regulate investors to fulfil their human rights obligations.

- European countries should commit themselves in EPAs and BITs to **make their multinationals respect international labour and environmental standards** as well as domestic laws in the host countries, to fight corruption in their companies, and to strengthen international environmental, labour and human right mechanisms that apply to companies.

It should be left to the ACP countries whether they want to introduce this approach within the current EPA negotiations on investment or in the context of cooperation and assistance agreements, such as the Cotonou Partnership Agreement.
In order to have the ACP view respected, African parliamentarians, affected stakeholders and civil society need to be better informed and involved in the negotiations.
The lack of transparency has allowed the EU negotiators to adopt a simple and bullish approach to development and investment which will mostly benefit European companies.
Africa needs to take into account that European MNCs will invest more in emerging market countries than in Africa, and that China is increasingly investing in Africa, but only to tap into Africa's natural resources, with no interest in providing incentives to respect and regulate with regard to human rights or the environment.

Endnotes

1 Statements made by Karl Falkenberg, Deputy director General fo Trade at the Commission (who negotiates in name of the EU), in Accra, Ghana, on 21 June 2006, reported by E.K. Bensah, on 29 June 2006 as web journalist of Third World Network Africa.
2 Statements made by Karl Falkenberg, Deputy director General fo Trade at the Commission, at the European Parliament, Brussels, on 11 July 2006.
3 UNCTAD, World Investment Report 2005, p. 40.
4 UNCTAD, Economic development in Africa – Rethinking the role of foreign direct investment, 2005, p. 82.
5 EU mandate to negotiate EPAs, based on the Council Decision of June 2002.

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