

EPA Negotiations on investment: What for?

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By negotiating new Economic Partnership Agreements (EPAs), the Cotonou Agreement decided to make trade relations between the EU and African, Caribbean and Pacific countries (ACP) compatible with WTO rules on free trade agreements.

In 2007, the EU has proposed draft EPA texts which would include far reaching and novel obligations for ACP countries to liberalise investment. The WTO, however, does not oblige EPAs to include investment issues. Although the Cotonou agreement intended to introduce "general principles on protection and promotion of investments" in EPAs (Art. 78.3), Trade Ministers of the African Union have stated in many declarations that they do not wish investment issues to be negotiated in EPAs since they refused to do so in the WTO. Investment issues in current EPA negotiations are another example how EPAs fail to serve ACP societies and their economic interests.

EU promotes foreign investment as a development strategy

Attracting more foreign investment is a key element of the EU proposals for EPAs. The EU emphasizes that by forming regional economic blocs, EPAs will attract more foreign investors willing to produce and sell in bigger regional markets. In addition, in order to attract and promote more foreign investment, an important proposal by the EU is to include EPA rules that protect foreign investors and give them free market access (liberalization).

The EU strongly advocates more foreign investment as a solution for developing countries' economic problems. This reflects the shift by many donors from aid to foreign investment to bring new capital into developing economies. According to the chief EU negotiator in EPAs, development "cannot happen without investment".

Foreign investors, who are mostly multinational companies, are assumed to bring additional jobs, know-how, infrastructure and to improve efficiency in the economy. This is assumed to stimulate production of a wider range of products (diversification) and so increased exports and economic growth. However, there have been many instances where foreign investment did not achieve the claimed benefits and rather had negative consequences such as in mining, plantations, garment factories and privatized public utilities.

The proposed EU rules on investment liberalisation in EPAs would be in addition to the many measures African countries have been taken to attract foreign investment. For instance, many ACP countries already have bilateral investment agreements with EU member states. So far, such investment protection measures have not resulted in attracting more investments in the sectors that African countries have identified as important for their economies, for instance infrastructure.

Also, the EU position is self serving as European multinationals (MNCs) are among the principal foreign investors in Africa, competing with South African and other investors. The rich natural reserves also make Africa attractive for European investors. One of the main aims of the EU is to introduce rules so that European investors cannot be disadvantaged in comparison with other important investors.

New EU proposals on "establishment"

The EU is using a new way to include investment liberalisation in EPAs, which is untested for its development impact. The texts tabled by the EU in 2007 incorporate investment liberalisation and protection in the chapter on "Establishment, trade in services and E-commerce". This chapter covers liberalisation on trade in services as well as liberalisation of investment in services and non-services sectors (agriculture, industry, minerals). Foreign investment is defined as "establishment", which in principle should exclude volatile and speculative investments, such as buying and selling shares of companies. Such establishments are less likely to lead to financial instability but that does not mean that such foreign investment are auto-matically development friendly as the EU pretends.

The EU approach to liberalise investment outside the services sector means in concrete that:

- ACP countries are requested to allow foreign companies to invest without primary conditions, but ACP countries can choose which sector they open up, or even choose to not liberalise any sector.
- Investments from the EU and other important investing and trading countries have to be treated equally.

- Once a sector is included in the EPA agreement, governments and parliaments are restricted in the way they can regulate national or foreign investors, for instance:
- Foreign investors have to be treated in the same way as national investors or companies, whatever their size (“national treatment”).
- Governments cannot make an assessment of the potential economic, social and environmental impact before authorizing a new investment.
- Governments and parliamentarians cannot impose limitations on the number of operations of (foreign) investors or on the value of their operations.
- Governments and parliaments have to allow 100% foreign ownership and thus also allow mergers and acquisitions taking over national companies.

The latter three conditions are new “market access” rules that so far have never been included in any investment agreement outside the services sector. Now, the EU wants to include them in all future free trade agreements. Only by making “reservations” or excluding these national treatment and or market access rules in the EPA annex can ACP governments and parliaments keep some of their authority to regulate sectors they wish to liberalise.

Flawed development orientation

According to the EPA investment rules proposed by the EU, small companies and domestic investors in ACP countries cannot be given more priority and support than (large) foreign investors. Foreign companies can fully take over domestic companies, and the experience is that especially the most profitable ones are being taken over. Without limitation on the number and size of foreign investors, the latter can easily outcompete local producers and make local small or informal companies go bankrupt. For instance, food processors can easily replace products processed by women who vend their products on the street.

The EU has shown no sign to ensure that investors are not only given protection and rights, but also have obligations and have to contribute to the economy of the host country. Proposals made by Pacific countries to balance the rights and obligations of investors have been brushed aside by the EU. The EPA text does not give means to protect workers, consumers and communities against negative social and environmental effects by foreign, and domestic or regional, investors.

The EU has only proposed that the EPA texts include, without legal obligations (in the preamble), a statement that investment shall not be attracted by lowering social and environmental standards and laws. This might not solve many problems of environmental damage and social exploitation (low wages & bad working conditions) in foreign owned companies, e.g. in the mining and garment sector

In an other EPA chapter on “current payments and capital movement”, the EU proposes that all profits and money related to investment to be allowed to leave or enter the country without restrictions. Such money transfers of the foreign investors might result in many profits being transferred abroad rather than reinvested in the local economy, and might cause economic instability, and even a financial crisis, which makes imports of consumer goods more expensive and exports cheaper, at the expense of poor consumers and small exporters.

How to put development first?

Given that ACP countries have only a few months to properly prepare and conduct complex negotiations on investment before the planned finalisation of the negotiations, and given the novel conditions being attached, EPAs should not include liberalization and protection of investment.

Rather, special and novel cooperation instruments, in addition to those in the Cotonou agreement, should be discussed, in order to:

- Attract investment in a sequenced and regulated way, in those sectors identified by ACP countries as contributing to the social and environmentally friendly development;
- stimulate cooperation in and among regions regarding investment and stimulate domestic and regional investors (e.g. better credit facilities);
- ensure the right to regulate by host governments and enforcement of labour, community and environmental protection at foreign and nationally owned companies by providing all means to do so, including eliminating debt and pressures by foreign investors to get the lowest prices.

What is required is specific and new development friendly agenda on investment and not a blunt approach of protection-and-liberalisation-of-foreign-investment-equals-development.

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