

Implications of Economic Partnership Agreements (EPA) on the EU-ACP Partnership and the Possibility of ACP Leverage

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Abstract: The recent EU-ACP negotiations aimed at establishing regional Economic Partnership Agreements (EPAs) have clearly brought to the foreground the dramatic changes that are ensuing between the two country-blocs. EPAs significantly challenge the entire dynamic of the long-standing EU-ACP relationship by dramatically altering non-reciprocal trade preferences and dividing the ACP into smaller regional groupings. This paper aims to suggest that power relations between the country blocs are not as straightforward as those of dominator and dominated and that it is misleading to conceptualise the ACP merely as a set of actors positioned at the receiving end of the partnership, with no capacity for input or articulation of preferences. Due to the highly contentious environment of the EPA negotiations, and the divergence in views between the negotiating parties, EPA trade negotiations constitute an extremely significant and valuable area for more closely investigating the possibility of one party exercising leverage over another in negotiating a preferred outcome. Firstly, a brief description of the extent to which EPAs have created such a significant shift in EU-ACP trade relations will be depicted, followed by an analysis of the EU's motives and rationale in radically shifting its trade framework. The third section examines the type of power relationship that exists between the parties in the context of trade negotiations, and argues that when trade is used as an instrument of EU foreign policy, its effectiveness also stands to face the constraints and limitations that the EU faces in general as a *sui generis* foreign policy actor. This is followed by a brief examination of the EU's position as a unitary actor in its negotiating efforts with the ACP, and the extent to which policy incoherence and limited coordination at the overall institutional level and the internal Commission level have posed as a limitation for the EU's leverage over other actors. It is argued that trade relations between the EU and the ACP have undergone a paradigmatic shift in recent years, by significantly altering the terms of these relations through liberalisation and regionalisation. This can be largely explained by the instrumentality that such a shift provides in obtaining the EU's economic and geopolitical interests as a trading power and a normative actor in the world. These interests and preferences however have not always been congruent with those of the ACP, leading to a divergence in views between the parties in the context of the EPA negotiations. In the face of increasingly active ACP contestation (and arguably public and civil society opposition), the EU has at times seemingly retracted from its original preferred outcome, possibly illustrating the limits of the EU's potential to employ its power vis-à-vis the ACP and the ability of the ACP to exploit these limitations.

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One of the longest-standing international endeavours of the EU is found in its partnership with the developing countries, under the premises of a series of cooperation agreements between the EU and the African, Caribbean, and Pacific (ACP) Group of States. Despite occupying a fundamental position on the policy agenda at the EU's early beginnings, funding, policies, and general interest towards the ACP have considerably diminished, while the countries the EU's development policy aimed to assist continue to face developmental challenges. Traditional analyses of relations between so-called weak and the strong countries contend that relations are centred around an unequal distribution of power, making for an asymmetric (or unequal) power relationship. This relationship is commonly characterised by, "a hierarchical distribution of resources and abilities simultaneously across many issue areas that almost always result in outcomes favorable to those at the top of the hierarchy."¹ Clearly, a situation of power asymmetry exists between the EU and the ACP, not solely because of the obvious economic disparities that exist between the parties, but particularly due to the context in which these relations take place. Or rather, asymmetry has been coupled with an increased marginalisation of the ACP group on the EU's foreign policy agenda, largely due to increasing EU interest elsewhere and more pressing domestic and foreign policy concerns. Marginalisation and power asymmetry have thus come to set the scene for relations between the EU and the ACP, making for a situation in which, on the whole, the ACP group has been largely unsuccessful in negotiating demands vis-à-vis the EU. Within a context where EU interests clearly dominate the agenda, some anomalies do exist however. In fact, on an individual level, some countries (and regions) have instead demonstrated not only a capacity to negotiate with the EU, but more importantly, they have on occasion been successful in having demands met, suggesting that power relations between the EU and the ACP are not as straightforward as those of donor and recipient. In light of these considerations, this paper contends that it is misleading to conceptualise the ACP merely as a set of actors positioned at the receiving end, with no capacity for input or articulation of preferences. Given that power asymmetry defines EU-ACP relations, how is it that some countries have been able to negotiate their demands? To what extent is success country-driven or EU-driven? *Why have some ACP countries been more successful than others in exercising leverage vis-à-vis a so-called 'stronger' EU?*

One area in which these changes have become manifest is found in the EU's trade relations with the ACP. The recent EU-ACP negotiations aimed at establishing regional Economic Partnership Agreements (EPAs) have clearly brought to the foreground the dramatic changes that are ensuing between the two country-blocs. While the EU maintains that the ACP will reap enormous benefits from EPAs once negotiated and implemented, research from civil society, the academic community and many of the ACP themselves has pointed towards potentially detrimental effects of EPAs on

¹ J.P Singh, "Weak Powers and Globalism: The Impact of Plurality on Weak-Strong Negotiations in the International Economy," *International Negotiation* 5, 3 (2000): 451.

development. EPAs significantly challenge the entire dynamic of the long-standing EU-ACP relationship by dramatically altering non-reciprocal trade preferences and dividing the ACP into smaller regional groupings. EPA negotiations have been difficult and consistently plagued with stalemates, as agreement was required in areas in which the EU and the ACP had divergent interpretations of envisioned outcomes. The ACP have contended that the EU's negotiation platform has been beset by inconsistency between its rhetoric, emphasising cooperation, flexibility, and a consideration of developmental concerns, and its actual negotiating approach, which has tended to focus almost exclusively on securing EU interests in expanding trade gains and its position in international trade fora. Conversely, ACP negotiating strength in a potentially unified 79-country group has been significantly undermined. However, as EPA negotiations came closer to their deadline for conclusion, the ACP became increasingly active in voicing their demands and disagreement vis-à-vis the EU, while the EU has, on occasion, reversed its original policy preferences to more closely meet the demands of the ACP. Due to the highly contentious environment of the EPA negotiations, and the divergence in views between the negotiating parties, EPA trade negotiations constitute an extremely significant and valuable area for more closely investigating the possibility of one party exercising leverage over another in negotiating a preferred outcome.

This paper aims to examine both EU and ACP positions and the negotiating tactics employed during the recent EPA negotiations. Firstly, a brief description of the extent to which EPAs have created such a significant shift in EU-ACP trade relations will be depicted, and the significance and consequences of the EU's regionalisation of the ACP will be discussed. This is followed by an analysis of the EU's motives and rationale in radically shifting its trade framework towards trade liberalisation and regionalisation. The third section examines the type of power relationship that exists between the parties in the context of trade negotiations, and argues that when trade is used as an instrument of EU foreign policy, its effectiveness also stands to face the constraints and limitations that the EU faces in general as a *sui generis* foreign policy actor. This is followed by a brief examination of the EU's position as a unitary actor in its negotiating efforts with the ACP, and the extent to which policy incoherence and limited coordination at the overall institutional level and the internal Commission level have posed as a limitation for the EU's leverage over other actors. It is argued that trade relations between the EU and the ACP have undergone a paradigmatic shift in recent years, by significantly altering the terms of these relations through liberalisation and regionalisation. This can be largely explained by the instrumentality that such a shift provides in obtaining the EU's economic and geopolitical interests as a trading power and a normative actor in the world. These interests and preferences however have not always been congruent with those of the ACP, leading to a divergence in views between the parties in the context of the EPA negotiations. In the face of increasingly active ACP contestation (and arguably public and civil society opposition), the EU has at

times seemingly retracted from its original preferred outcome, possibly illustrating the limits of the EU's potential to employ its power vis-à-vis the ACP and the ability of the ACP to exploit these limitations.

A Shift in EU-ACP Trade Relations

For nearly three decades, the Lomé Conventions granted the ACP non-reciprocal trade preferences, providing duty-free access for most ACP products. At the legal level, the Lomé trade system was sustained through a WTO waiver, allowing EU-ACP trade relations to avoid adherence to the Most-Favoured-Nation (MFN) rule, or rather, the principle of non-discrimination in trade preferences amongst WTO members. As the expiration of the waiver was set for the end of 2007, the EU introduced the concept of EPAs as an alternative trading scheme during the negotiations of the Cotonou Agreement.² EPAs were deemed to provide a trade framework in which EU-ACP trade relations would become fully compatible with WTO requirements, while simultaneously promoting the “sustainable development of the ACP States, [facilitating] their smooth and gradual integration in the world market, and [contributing to the] eradication of poverty.”³ EPAs would gradually remove significant trade barriers between the EU and the ACP, by liberalising “substantially all trade”⁴ in a ‘development-friendly’ manner. Those countries choosing to opt out of the EPA trade scheme could continue WTO-compatible trade relations with the EU either under the Generalised System of Preferences (GSP), providing *all* developing countries with non-reciprocal, non-discriminatory and autonomous trade preferences by allowing their exports to enter the EU at lower tariffs; or the Everything But Arms (EBA) initiative, granting non-reciprocal duty and quota free access to all products aside from arms⁵ to the Least Developed Countries (LDCs), 38 of which are in the ACP. In 2002, the EU and the ACP began a series of negotiations aiming to formulating mutually agreed-upon EPAs by 2008. Initial negotiations between the EU and the ACP commenced in September 2002 and lasted for little over a year. This first phase, in which the negotiating parties constituted the ACP group as a whole and the Commission, served to identify the main objectives and structure of the subsequent regional negotiations. The second phase of negotiations, lasting from 2003 to 2007, consisted in negotiations between the Commission and six regional configurations: Central Africa, East and Southern Africa, Southern Africa, West Africa, the Caribbean, and the Pacific Islands. At the time of writing, the negotiating parties are about to embark on a third (and initially unforeseen)

² Signed in June 2000 in Cotonou, Benin, the Agreement serves as the legal framework governing relations between the EU and the ACP until 2020.

³ ACP Secretariat, *Principles and Objectives of the Economic Partnership Agreements*, ACP/61/126/02 (Brussels: 18 November 2002): 1, 5.

⁴ As stipulated in Article XXIV, Clause 8, of the General Agreement on Tariffs and Trade (GATT), (Geneva: July 1986).

⁵ And until 2009 some agricultural products (i.e. sugar, rice, and bananas).

negotiating phase, as agreement failed in the most contentious of issue areas, namely trade in services, trade-related areas, and the development dimension, thus leaving the negotiations for the most part, largely unsettled.

Regionalisation of the ACP

The first phase of negotiations can be characterised by general failure of pan-ACP negotiating efforts. While in principle the ACP group clearly expressed its intent to maintain the, “overriding principle of unity and solidarity in their approach to the EPA negotiations,” acknowledging that, “on issues of common interest to all ACP States, it will be easier for the ACP to secure a better deal from the EU if they negotiate collectively than if they negotiate at an individual, regional or subregional level,”⁶ in effect, ambitions to maintain ACP unity were unsuccessful. After only seven months of negotiations, the parties reached a decisive stalemate over the framework and principles of EPAs: while the ACP had wanted a binding agreement on guidelines for the second phase of negotiations at the regional levels, the Commission maintained that the first phase served merely as a forum for clarification of issues making binding agreement unnecessary. As a result of a high-level political compromise between the Commission and the ACP, the first phase concluded in October 2003 with a Joint Declaration and Joint Report serving “as a point of reference, and to provide guidance, for the negotiations to be conducted at the regional level.”⁷ However, as Bilal and Grynberg note:

On the whole, the first phase of all-ACP negotiations can be seen as a failure for the ACP and somewhat of a victory for the EU. Indeed, the ACP Group claimed to keep its cohesion, and defend common interests throughout these negotiations. Yet, they reached no substantive agreement with the EU after one year of “negotiations”, that were in fact closer to discussions of clarification.⁸

While the EU in effect, successfully advanced its wider interests, the ACP group failed to secure its position as a unitary group. The divisionary mechanisms created by the EU’s new trade scheme have in fact had an effect on the ACPs negotiating position vis-à-vis the EU, as EU pressure to negotiate along regional lines has seemingly damaged the group’s ability to negotiate with single unitary strength.⁹ In fact, while the ACP had been opposed to commencing the second phase of negotiations at the regional level without first finding satisfactory agreement, the Commission, on the other hand, began placing pressure on ACP regional groups to commence negotiations even before the end of the first phase. The decisions by the Economic Community of West African States (ECOWAS) and the

⁶ ACP Secretariat, *ACP Guidelines for the Negotiating of Economic Partnership Agreements*, ACP/61/056/02 final, (Brussels, 05 July 2002): 5.

⁷ Sanoussi Bilal and Roman Grynberg, “EPA’s Make Sense Only if They Foster Development: A Broad Overview,” in *Navigating New Waters: A Reader on ACP-EU Trade Relations*, Vol. 1, S. Bilal and R. Grynberg, eds. (The Commonwealth Secretariat, 2007): 18.

⁸ *Ibid.*

⁹ Interviews with ACP diplomats (Berlin: 19 March 2008 and Brussels: 01 April 2007).

Communauté Economique et Monétaire d'Afrique Centrale (CEMAC) in April 2003 to launch the second phase of negotiations regardless of whether agreement in the first phase was reached, further served to undermine ACP unity, giving clout to the Commission's position on commencing regional-level negotiations.¹⁰ By effectively dividing the ACP into six smaller regional groupings, EPA negotiations have significantly altered the composition of the 79-country bloc,¹¹ and therefore signal "a clear change of paradigm in the ACP-EU partnership," and perhaps more dramatically, "mark(ing) the end of the specificity of the group of ACP countries in their relations with the EU."¹²

While the division of the ACP has weakened the group's status as a 'special' and 'privileged' partner, the regional integration efforts which EPAs are expected to build upon, reinforce, and consolidate, have posed their own set of problems and difficulties for the ACP. Firstly, conflicting and mixed loyalties and obligations within some of the regional groupings, particularly in Africa, where membership of previously existing regional integration projects has often overlapped, has forced some countries to choose one grouping over another. Although the actual compositions of the regional groups was decided by the ACP, and were largely based on already ongoing regional integration processes, pressure from the Commission was influential in shaping these configurations.¹³ The shifting configuration of the Southern African regional grouping illustrates the types of conflicting choices and pressure some ACP countries have faced in choosing an EPA group, as in the case of Tanzania.¹⁴ A second consequence of the regionalisation of EU-ACP trade relations is that of a potentially artificial and forced regionalisation process driven by preferences and interests of an external actor rather than by those of the region.¹⁵ Bilal and Grynberg contend that unless EPAs allow the ACP to retain significant room for determining the composition, pace, and format of regional integration, there exists a "danger that considerations about the relationship with the EU take

¹⁰ Third World Network – Africa, "ECOWAS ruptures unity of ACP countries," *Africa Trade Agenda*, 8 (April 2003).

¹¹ This preference for dividing the ACP group along regional lines was first set out in the Commission's 1996 *Green paper on relations between the European Union and the ACP countries on the eve of the 21st century*, and later reiterated in Cotonou.

¹² Bilal and Grynberg (2007: 5).

¹³ Interview with Southern African diplomats (Berlin: 19 March 2008 and Brussels: 04 April 2008).

¹⁴ Tanzania is part of the East African Community (EAC) with Burundi, Kenya, Rwanda, and Uganda. All EAC members aside from Tanzania negotiated with the ESA group, while Tanzania initially joined the Southern African group. This implied that Tanzania, on the one hand, and the other EAC members, on the other hand, would have could have concluded two separate EPAs with the EU, potentially interfering with the integration process of the EAC. Tanzania came under pressure from Uganda and Kenya and the Commission to negotiate under ESA regional group, with the Commission indicating country that its EAC membership would eventually have to be withdrawn should it continue to negotiate with Southern Africa. In April 2007, just eight months ahead of the EPA deadline, Tanzania joined the other EAC members in negotiating an entirely separate EPA under a new East African configuration. The case of Tanzania's overlapping memberships clearly demonstrates how the EU's preference for regional formations has required ACP countries to choose between different regions, obligations, and objectives in order to be able to negotiate EPAs and therefore maintain preferential trade access.

¹⁵ Bilal and Grynberg (2007: 15). See also, Sanoussi Bilal, "Can the EU Be a Model and a Driving Force for Regional Integration in Developing Countries?", Paper presented at the *Second Annual Conference of the Euro-Latin Study Network on Integration and Trade*, Session III – Institutional Dimensions of Integration and Trade, (Florence: October 29-30, 2004).

precedence over regional concerns.”¹⁶ Indeed, the conclusions of the second round of negotiations at the regional level have clearly brought to the forefront some of the difficulties facing regional integration efforts with the EU acting as the external guarantor. At the end of 2007, no region except for the Caribbean, signed a full-EPA. In fact, most non-LDCs (except for Nigeria, Congo, Gabon and South Africa)¹⁷ signed interim goods-only agreements by the 2007 deadline, thus guaranteeing the continuation of market access beyond 2008, while at the same time continuing negotiations throughout 2008 on unsettled issues.¹⁸ As the deadline for regional phase of negotiations neared, in an effort to secure trade deals with those countries facing the largest disruptions in trade should the negotiations fail, i.e. non-LDCs, the Commission shifted the level of negotiations from the regional to the bilateral. As a result of this bilateral approach, in West Africa only Ghana and Ivory Coast signed an interim-EPA, in Central Africa only Cameroon signed, while in Southern Africa, all countries except for South Africa signed. Ultimately therefore, the decision to sign the interim-EPAs was exclusively based on calculations of a country’s national interest (and more specifically the risk of market access losses),¹⁹ rather than larger regional integration concerns. Although attempts at regional integration are by no means new to the ACP, these processes have been difficult to consolidate in the past, with the interim conclusions of the EPA negotiations clearly bringing to the forefront the extent to which some of these integration processes have been more artificial rather than truly substantive.²⁰ Weak integration projects have limited the ACPs capacity to effectively negotiate with the EU not merely because of apparent institutional capacity constraints but also due to diverging goals, objectives and interests between countries.

The changes in the EU’s trading scheme vis-à-vis the ACP point decisively at a triumph for more globalist orientations in the EU’s trade policy, and more generally, in its relations with the developing world.²¹ By fragmenting the ACP group, the ending of non-reciprocal trade preferences challenges the entire dynamic of the EU-ACP relationship, generating a need for understanding what options remain for the ACP to successfully coordinate their negotiating efforts and how the regional groupings have managed these new challenges in negotiating their preferences and demands. As the ACPs privileged status on the EU’s trade agenda is now significantly altered and as any possible unitary negotiating position of the group is now weakened, trade relations between the EU and the

¹⁶ *Ibid.*: 15.

¹⁷ As of January 1, 2008, these countries are trading under the GSP.

¹⁸ For a full-EPA, agreement is still needed on trade in services and other trade-related areas (i.e. competition policy, investment, intellectual property rights, sanitary and phytosanitary measures (SPS), standardisation and certification, public procurement, labour standards, data protection, and environment.)

¹⁹ Interview with ACP diplomats (Berlin: 19 March 2008 and Brussels: 01-04 April 2008).

²⁰ See also Bilal (2004: 6-7); John Ravenhill, “Back to the Nest? Europe’s Relations with the African, Caribbean, and Pacific Group of Countries,” in *EU Trade Strategies: Between Regionalism and Globalism*, Aggarwal and Fogarty, eds. (Palgrave, 2004): 134.

²¹ Jan Orbie, “The development of EBA,” in *European Union Trade Politics and Development: ‘Everything but Arms’ unravelled*, Gerrit Faber and Jan Orbie, eds. (Routledge, 2007a): 32-34.

ACP have decidedly embarked upon a new, if perhaps very uncertain, chapter in their long history. The new negotiating dynamics have received considerable attention from scholars, civil society, and politicians alike, and it has become increasingly crucial to more closely investigate these dynamics in order to understand the implications of this changing relationship on the EU and the ACP, as well as the ways in which each group has interpreted their positions vis-à-vis one another.

Table 1: EPA regional groupings²² (as of April 2008)

| <i>Caribbean+</i> | <i>Central Africa</i> | <i>Eastern Africa*</i> | <i>Eastern & Southern Africa</i> | <i>Pacific Islands</i> | <i>Southern Africa</i> | <i>West Africa</i> |
|--------------------------|-----------------------|------------------------|--------------------------------------|--------------------------------|-------------------------|--------------------|
| Antigua & Barbuda | Cameroon* | Burundi | Comoros* | Cook Islands | Angola | Benin |
| The Bahamas | Central African Rep. | Kenya | DR Congo | Fiji Islands* | Botswana* | Burkina Faso |
| Belize | Chad | Rwanda | Djibouti | Kiribati | Lesotho* | Cape Verde |
| Dominica | Congo | Uganda | Eritrea | Marshall Islands | Mozambique* | Côte d'Ivoire* |
| Dominican Republic | Equatorial Guinea | Tanzania | Ethiopia | Federated States of Micronesia | Namibia* | Gambia |
| Grenada | Gabon | | Malawi | Nauru | S. Africa ²³ | Ghana* |
| Guyana | São Tome & Príncipe | | Mauritius* | Niue | Swaziland* | Guinea |
| Haiti | | | Madagascar* | Palau | | Guinea Bissau |
| Jamaica | | | Seychelles* | P. N. Guinea* | | Liberia |
| Montserrat | | | Sudan | Samoa | | Mali |
| Saint Lucia | | | Zambia | Solomon Islands | | Niger |
| St. Kitts & Nevis | | | Zimbabwe* | Timor-Leste | | Nigeria |
| St. Vincent & Grenadines | | | | Tonga | | Senegal |
| Suriname | | | | Tuvalu | | Sierra Leone |
| Trinidad & Tobago | | | | Vanuatu | | Togo |

+ Indicates region/country which has signed a comprehensive EPA
* Indicates region/country which has signed an interim EPA

Why the paradigm shift? Underlying motives

The dramatic overhaul of EU-ACP trade relations has been largely justified through the need for bringing these relations in line with the wider global trade framework. The non-reciprocal duty-free access of ACP products, as was the status quo under the EU-ACP Lomé Conventions, violated the WTO's cornerstone principle of non-discrimination in trade preferences amongst its members (i.e. the Most Favoured Nation rule). While this violation had been rationalised under the premises of a WTO-granted waiver, the expiration of this waiver at the end of 2007, led the EU to propose an alternative trade scheme, in the shape of a Free Trade Agreement (FTA) between the EU and the

²² Cuba, Somalia, and Timor-Leste did not negotiate EPAs.

²³ The EU and South Africa's current trade relations are conducted under the terms of the bilateral Trade and Development Cooperation Agreement (TDCA), however in February 2007 the EU allowed South Africa to be included in the Southern African EPA configuration subject to certain conditions.

ACP. The Lomé trade framework clearly discriminated against other developing countries facing higher barriers to trade than the ACP. These discriminatory practices came to be significantly challenged, forcing the EU to give heavy concessions in order to obtain and maintain WTO-waivers.²⁴ By way of these concessions, the Lomé framework significantly jeopardised the EU's negotiating position vis-à-vis emerging powerhouses of the developing world, such as China, India, and Brazil and compromised EU interests in securing a competitive position in these growing and upcoming markets.²⁵ Many have argued therefore, that while the issue of WTO compatibility does indeed form the discursive element surrounding the need for EPAs,²⁶ in reality, the EU has chosen to alter its trade relations with the ACP due to wider economic and geopolitical concerns. As such, the ending of the Lomé trade framework, and the introduction of EPAs can be attributed to an instrumental EU choice to secure its own interests. As Young and Peterson insist, the rising influence of developing countries has significantly altered the balance of power of the multilateral trading system, in which the EU, in order to continue defending its interests, has had to alter its position in the face of growing pressure from influential developing countries.²⁷ Furthermore, although the EU did indeed come under pressure from the WTO to either reform its policy or submit to further concessions, preferential treatment towards the ACP has generally fallen out of line with the EU's priorities. Ravenhill contends that, "The EU's lack of interest in expending further political capital to secure a continuing WTO waiver for its trade relations with the ACP was symptomatic of the low priority that the relationship held for Brussels."²⁸ Dickson echoes this criticism when she pointedly notes that "as the world's largest trading bloc, it seems unlikely that the EU did not have the capacity to alter or adjust the interpretation of WTO rules to benefit more developing countries. It seems that political will was lacking."²⁹

Instrumentalist motives can also account for the EU's preference for regionalising the ACP under the new trade framework. Elsig argues, for example, that economic objectives alone (e.g. trade

²⁴ The EU's request of a temporary waiver in 2000 faced enormous contestation from both Latin American banana-exporting countries, Asian tuna-exporting countries (Thailand in particular), and the U.S., backed by companies such as Chiquita Brands International. [Anna Dickson, "The Unimportance of Trade Preferences," in *EU Development Cooperation: from model to symbol*, K. Arts and A. Dickson, eds., (New York: Manchester University Press: 2004): 51-56.]

²⁵ See, Commission of the European Community (CEC), *Communication from the Commission: Free Trade Areas: An Appraisal*, SEC(95)322 final, (Brussels: 8 March 1995): 6.; See also Olufemi Babarinde and Gerrit Faber, "From Lomé to Cotonou: Business as Usual?", in Bilal and Grynberg (2007): 28-29.

²⁶ Strongly confirmed in all interviews conducted with Commission officials (Brussels: 02-09 April, 2008).

²⁷ Alasdair Young and John Peterson, "The EU and the new trade politics," *Journal of European Public Policy* 13, 6 (September 2006): 803. See also, Vinod Aggarwal and Edward Fogarty, "Between Regionalism and Globalization: European Union Interregional Trade Strategies," in Aggarwal and Fogarty (2004): 14.

²⁸ Ravenhill (2004: 129).

²⁹ Dickson (2004: 51- 57). She further contends that the EU's internal political interests are behind the EU's shifting preferences and attributes this to the mounting WTO pressure to reform the EU's Common Agricultural Policy (CAP). Accordingly, the EU has preferred to concentrate its efforts within the WTO on protecting its own strategic interests, such as defending the CAP, rather than preserving trade preferences with the marginal markets of the ACP. See also, Sophie Meunier and Kalypso Nicolaidis, "The European Union as a conflicted trade power," *Journal of European Public Policy* 13, 6 (Sept. 2006): 920; Young and Peterson (2006: 807).

gains, influence in key upcoming markets, competitive advantage, etc.) cannot sufficiently explain why the EU has chosen to promote a regional framework in relations with third parties. He insists that promoting a regionalist framework not only helps the EU in attaining both an influential economic stronghold in key regions, but it also allows the EU to construct significant spheres of political influence. Therefore, “the mission to export the European model is clearly embedded in the EU’s strategy of working towards a multipolar world.”³⁰ In promoting regional integration, the EU actively reinforces and reproduces its own success story,³¹ and forwards its “belief in the utility of regions as a unit of organizing the global economy.”³² In conducting negotiations and promoting trade agreements on a regional basis, the EU endorses its own model of regional integration.³³ Whether intentional or not, “through such exchanges the EU defines, reinvents and legitimizes itself,”³⁴ therefore serving as, “a means of enhancing the EU’s normative power as well as a reflection of this power, since it is in this context that EU exceptionalism, its unique character as an integrative polity among nations, truly matters.”³⁵

Furthermore, trade has become an important instrument through which the EU attempts to achieve its foreign policy objectives.³⁶ Indeed, various Community policies such as trade (and development, enlargement, humanitarian aid, etc.) have acquired a “growing foreign policy relevance,”³⁷ and are often used as instruments in the pursuit of the EU’s foreign policy objectives abroad. Trade (and trade negotiations) therefore serve a twofold purpose: they function as instruments for reaching economic objectives (through economic means), while simultaneously offering a tool with which to promote political objectives. In relation to this, it is useful to draw upon Meunier and Nicolaidis’ distinction between the EU as a ‘power *in* trade’ and a ‘power *through* trade’, with the former referring to the EU’s sheer economic size and strength, and the latter, referring to the EU’s increasing use of “access to its huge market as a bargaining chip to obtain changes in the domestic policies of its trading partners.”³⁸ While, “the first goal of EU trade power is self-evident: the EU is using its power to secure concessions from others about market access,” as a foreign policy instrument, the EU can also use trade “to achieve non-trade objectives, from the export-specific rules flanking market integration (social, environment, safety standards) to more political or strategic

³⁰ Manfred Elsig, “Delegation and Agency in EU Trade Policy-Making: Bringing Brussels Back in,” Paper presented at the *EUSA 10th Biennial International Conference* (Montreal: 17-19 May 2007): 25.

³¹ Interview with DG Trade official (Brussels: 04 April 2008); Young and Peterson (2006: 805),

³² Aggarwal and Fogarty (2004: 14).

³³ *Ibid.*

³⁴ Elsig (2007: 26).

³⁵ Meunier and Nicolaidis (2006: 914).

³⁶ EU foreign policy here refers to a set of actions and objectives which seek pursue and promote the interests, values, and goals of the EU in its relations with other international actors. For other definitions, see especially: Karen E. Smith, *European Foreign Policy in a Changing World*, (Polity Press, 2003): 2; Stephan Keukeleire and Jennifer MacNaughtan, *The Foreign Policy of the European Union*, (Palgrave Macmillan, 2008): 19; Hazel Smith, *European Union Foreign Policy: What is it and What it does*, (Pluto Press, 2002): 7.

³⁷ Keukeleire and MacNaughtan, (2008: 12).

³⁸ Meunier and Nicolaidis (2006: 910).

linkages.”³⁹ The Commission’s insistence on including agreements on services and other trade related-areas in regional EPAs (despite failed agreement on these issue areas at the WTO-level), offers a clear indication of the EU’s keenness in shaping both global economic policies and international trade innovations.⁴⁰ The regionalisation of the ACP further demonstrates the EU’s intent on shaping regional economic *and* political processes, not only because it deems this beneficial for the ACP economic and developmental progress while giving the EU an economic stronghold in diverse regions, but arguably also because this is seen as further legitimising the EU’s own integrationist achievements and objectives on a global scale.⁴¹ Therefore, the exercise of power towards third parties *through* an instrument such as trade is not merely a tool for securing economic interests, but it is also used as a tool in promoting and securing wider geopolitical interests abroad.

Limits and Constraints to the EU’s Power in Foreign Policy

At the same time, however, it is important to evidence the extent to which the EU may be limited or constrained as a foreign policy actor. While the EU’s structural power is significant enough to establish it as a sheer economic powerhouse on a global scale, thus allowing it to exercise significant weight in global trade policies, its structural capabilities do not necessarily always translate into similar strengths in its actual capacity to effectively exercise leverage. In his analysis of EU’s power in international trade negotiations, Elgström argues that outsiders’ perceptions of the EU’s leadership are not necessarily congruent with the actual economic or ‘structural’ power that the EU possesses. The EU’s potential to be an influential leader and policy-shaping actor in the world can be potentially undermined by the way in which policy actions are operationalised. Therefore, “incoherence across issue areas, [. . .] lack of perceived legitimacy and, to a lesser extent, an excessive focus on internal co-ordination,”⁴² leads to a foreign policy which is at times less muscular and influential than the EU’s power in trade, or structural power, would have it seem it is capable of. Because “political and institutional factors determine how such structural foundations materialize into actual power,”⁴³ the EU faces limits on how effectively its structural power has been translated into actual influence and leverage. Meunier and Nicolaidis argue that these limitations make for a ‘conflicted’ power *through* trade, both internally, as different Member States hold different preferences as to how to best exert this power, and between the EU’s guiding principles, values and interests, which are often inconsistent with one another, leading to incompatible and diverging policy

³⁹ Meunier and Nicolaidis (2006: 910).

⁴⁰ Confirmed in interviews with DG Trade officials (Brussels: 09 April 2008).

⁴¹ Keukeleire and McNaughtan (2008: 13).

⁴² Ole Elgström, “Outsiders’ Perceptions of the European Union in International Trade Negotiations,” *Journal of Common Market Studies*, 45, 4 (2007): 949.

⁴³ Meunier and Nicolaidis (2006: 907).

initiatives and practices. The institutional and political constraints faced by the EU as a foreign policy actor therefore create a disjunction between the EU's structural power and its actual bargaining power or rather, its ability to influence and negotiate a preferred optimal outcome.

In analysing foreign policy practises (and effectiveness) of a political actor such as the EU, it is problematic, and indeed misleading to assume that the EU is able to act as a unitary actor at all instances. Indeed, while the EU's economic and political weight were certainly used as a means to consolidate its position vis-à-vis the ACP in EPA negotiations, the EU nonetheless faced constraints in exercising the full potential of its power. These limits and constraints can be found on two levels: Firstly, the tensions between the intergovernmental and the supranational levels of decision-making can lead to occasional disjuncture between the different institutions and actors involved in EU trade negotiations, namely the Member States and the Council on the one hand and the Commission on the other. Secondly, a divergence in views can also exist at the internal level of the Commission between the different DGs which hold competences in the EU's foreign policy. In the case of the EPAs, this concerns namely DG Trade, as the chief negotiator of trade agreements, DG Development, as the competence holder of development cooperation and EC aid policies towards the ACP, and to a lesser extent, other DGs which hold competence in specific areas of concern (namely DG Agriculture and DG Enterprises and Industry), and which are expected to work closely with the latter two in order to ensure coherence in the EU's policies and external relations. The extent to which divergences in views at these two levels have limited and constrained the EU to fully exercise its power *through* trade is explored further below.

Level I: EU institutional divergence

The Commission is the competence-holding institution in the EU's external trade relations, while the Council provides it with the mandate to negotiate trade agreements on behalf of the Member States, as provided for in Article 133 of the Treaty on the European Union. Throughout the negotiations the Commission is expected to regularly report progress and to the Article 133 Committee made up of Member State trade officials, whose main task is to ascertain that the Commission indeed remains within the Council's negotiating mandate and consulting Commission proposals, which are then eventually forwarded for approval to the General Affairs and External Relations Council (GAERC), the Council's foreign affairs arm. The extent to which the Commission can negotiate its own preferences therefore, is largely determined by the extent to which the Council restricts or allows the Commission to interpret and utilise its mandate. "In principle, as long as they remain within the limits set by the mandate, Commission negotiators are free to conduct bargaining with third countries as they wish. In practice, the negotiators' latitude and flexibility vary case by

case, depending on the member states' willingness to give up control over the issue being negotiated."⁴⁴ Often this system of delegation however can create a situation of conflict between the preferences of the Council and those of the Commission. In order to maintain a unitary however, the Commission and the Council need to consolidate their divergence in views. To the extent that there may be significant contestation between the two, and arguably within the individual Member States, the EU risks weakening its position of strength as a single unitary actor.

Because EPAs were being negotiated with some of the poorest countries in the world, and because they were meant to be far-reaching trade agreements which would not just liberalise trade in goods, but also provide for binding agreement on trade in services and other trade-related areas, while at the same time furthering the development efforts of the ACP, negotiations were extremely contentious and fraught with tensions not just between the Commission and the ACP, but also between the Commission and some Member States. The Commission maintained that through trade liberalisation and a solid policy framework for investment, increased competitiveness and market access, EPAs provide a trade tool for development. The ACP, on the other hand, argued that in order for EPAs to be development-friendly, mechanisms needed to be established in order to meet both the adjustment costs, such as losses in import revenues, and to address the supply-side constraints facing the ACP in implementing an EPA.⁴⁵ While the Commission was unable to link further development assistance to the EPAs unless this provision was formally integrated into its negotiating mandate, its line of argument maintained that such assistance was already provided for by the European Development Fund (EDF), which finances EC-ACP development cooperation. The Commission's negotiating stance on the issue came to be seen as incompatible with the softer rhetoric advocating development-friendly EPAs, with the Commission being accused of, "wrapping its arguments [for EPAs] in the politically correct language of poverty alleviation and development,"⁴⁶ with many EPA-observers noting:

An increasing dichotomy between the political rhetoric at the EU level, where the pro-development component of EPAs is repeatedly emphasised and the pragmatic approach adopted by EC trade negotiators, who focus on a narrower definition of development based mainly on trade-related gains, thus avoiding, according to some ACP negotiators, substantive discussion on the broader development dimension of EPAs.⁴⁷

As the negotiations progressed, some EU Member States became increasingly vocal in criticising the Commission's reluctance to discuss a more comprehensive development dimension of the EPAs, with the United Kingdom being the most active in publicly voicing disagreement. In March 2005, the UK Departments of Trade and Industry (DfTI) and International Development (DfID)

⁴⁴ Sophie Meunier and Kalypso Nicolaidis, "The European Union as a Trade Power," in *International Relations and the European Union*, Christopher Hill and Michael Smith, eds. (Oxford University Press, 2005): 257.

⁴⁵ Bilal and Grynberg (2007: 20).

⁴⁶ *Ibid.*: 3.

⁴⁷ *Ibid.*

released a highly critical position paper in which the government communicated its position on the content and context of the EPA negotiations. It solicited that the ultimate content of the EPA should reflect ACP countries' developmental needs, concerns, and current capacities, and where a lack of agreement existed, the Commission should provide the ACP with alternative agreements which continue to provide the same market access the ACP had always enjoyed with the EU. Critical of the Commission's bargaining tactics, and its willingness to use a carrot and stick approach in order to pressure ACPs to sign the agreements, the position paper noted, "We will not force trade liberalisation on developing countries either through trade negotiations or aid conditionality."⁴⁸ According to a leaked letter by a Commission official, the position paper was considered to be "a major and unwelcome shift' in the UK's approach,"⁴⁹ challenging the Council's negotiating mandate. The discontent with the Commission's role in the negotiations took a more active turn under the UK's EU Council Presidency in the second half of 2005.⁵⁰ During the presidency, the UK established an EPA Expert Group, chaired by the Commission and made up of representatives from the Member States, DG Trade, DG Development, promoting informal dialogue and consultations between the Member States in order to coordinate positions on the EPAs. The UK also began chairing informal meetings of Member States' development ministers, a practise which was continued during the German presidency in 2007.⁵¹

The issue of integrating trade in services and other trade-related areas into the EPAs has also been met with opposition from some Member States. While the Commission saw binding commitments in these areas as fundamental to the development efforts of the ACP, the ACP have been reluctant to place these items into an actual binding agreement, as the issues are seen as too controversial, having been forced out of recent WTO negotiations due to strong opposition from developing countries.⁵² The Commission has used WTO compatibility as the justification for EPAs, and it is precisely for this reason that the its insistence on including an extensive set of trade-related issues which go above and beyond WTO compatibility requirements, and which developing countries have fought hard to exclude from the WTO, that the issue has met with some resistance. In 2005, Poland expressed its concern on the Commission's insistence on integrating non-essential elements into the EPAs. The

⁴⁸ UK Department of Trade and Industry (DTI) and Department for International Development (DFID), *Making EPAs deliver for development*, (London: March 2005).

⁴⁹ Larry Elliot, "EU move to block trade aid for poor," *The Guardian* (19 May 2005), <http://www.guardian.co.uk/guardianpolitics/story/0,,1487141,00.html> (last accessed 08 February 2008).

⁵⁰ Ian Pearson, UK Minister for Trade and Investment, *Written Ministerial Statement on Economic Partnership Agreements between the European Union and African, Caribbean and Pacific countries*, (London: 06 February 2006); Louise van Schaik et al., *Policy Coherence for Development in the EU Council: Strategies for the Way Forward*, Centre for European Policy Studies, (Brussels: 2006): 18.

⁵¹ Further to official criticism from the government, the UK parliament also expressed its concerns with the Commission's failure to adequately address the development dimension into the EPAs, as noted in a UK House of Commons report: *Fair Trade? The EU's trade agreements with ACP countries*, Sixth Report of Session 2004-5, (April 2005).

⁵² WTO provisions do not currently foresee such elements as forming an essential part of an FTA, while the Cotonou Agreement merely stipulates that agreement on investment protection and cooperation in competition policy are obligatory areas to be negotiated.

Polish position paper noted, “that the ACP countries should not be burdened with additional requirements related to the investment, competition or government procurement.”⁵³ Denmark, Ireland, the Netherlands, have also expressed concern regarding the Commission’s inflexibility in reaching agreement with the ACP on contentious issues. In December 2007, as the WTO-waiver was set to expire, the countries, alongside the UK issued a statement at the GAERC in support of the ACP, in order to “urge the Commission to show flexibility in reaching agreements on goods market access by the end of 2007, and to avoid ACP countries being made worse off from the 1st January.”⁵⁴

The extent to which the public divergence in views between the Member States and the Commission on how best to negotiate EPAs, and more specifically, to what extent EPAs should be development-friendly and go beyond WTO requirements, eventually led to a change in the Commission’s position vis-à-vis the ACP is however quite contested. DG Trade and DG Development officials maintain that while the UK, for example, was indeed very vocal publicly, at the Council level, the government never significantly challenged the Commission’s negotiating mandate and for the most part its position was largely in line with that of the Commission.⁵⁵ At the same time however, during the UK presidency, the Commission released a *Communication on Trade and Development Aspects of the EPA Negotiations*, which for the first time detailed the state-of-play of the negotiations and the extent to which efforts were being made to integrate a development dimension. It was also during the UK’s chairing of the December 2005 Council summit that Member States pledged to increase trade-related assistance in order to support and assist in the trade capacity building efforts of the ACP.⁵⁶ Further to this, ACP officials have also commented that communications and dialogue with some Member States was significant in eventually putting enough pressure on the Commission to propose an extension of the deadline for negotiations. As such, the totality of EU-ACP encounters has been relevant in shaping the ACP’s image of the EU as an international actor, and as such, divergent positions between the different institutions making up the EU,⁵⁷ has a significant impact on the way in which the EU projects its power towards the ACP, and consequentially, the way in which the ACP choose to interpret the EU’s position. The Commission’s proposal for interim agreements is particularly relevant for understanding the leverage that each of the sides can exert vis-à-vis one another. The mere fact that the Commission placed the offer on the negotiating table is an important

⁵³ Alan Hudson, “Case Study on EU External Trade Policy: Economic Partnership Agreements,” in van Schaik *et al.*, (2006): 65.

⁵⁴ Gareth Thomas, “GAERC EPAs,” *Written Ministerial Statement*, (London: UK Parliament, 12 December 2007): <http://www.publications.parliament.uk/pa/cm200708/cmhansrd/cm071212/wmstext/71212m0002.htm#07121274000126> (last accessed 09 February 2008).

⁵⁵ Interviews with DG Trade officials (Brussels: 02-09 April 2008).

⁵⁶ The increased Aid for Trade commitments will be equally co-financed by the EC and Member States’ bilateral assistance through a joint Commission-Member State strategy. This commitment towards the ACP was further reiterated in the October 2007 draft *EU Strategy on Aid for Trade*, which specified that of the €2 billion increase, 50% is destined towards the ACP.

⁵⁷ Interviews with ACP diplomats (London: 03 September 2007; Berlin: 19 March 2008; Brussels: 01-04 April 2008).

indication of its limits as the so-called more powerful actor. While the Commission claimed that its offer should be interpreted in light of its concern for ACP which risk losing trade preferences altogether, this offer can also be seen as the Commission's final efforts to save its reputation as an effective international trade negotiator, in the face of increasing criticisms and concerns over its conduct during the difficult negotiations. Thus, "while the Commission sees its interim offer as 'significant progress', others have interpreted the move as a face-saving exercise, creating empty shell agreements that allow the EU to avoid re-imposing tariffs on those countries willing to conclude an agreement but unable to sign a comprehensive EPA by year-end."⁵⁸

Level II: Commission internal divergence

Just as it is misleading to assume that the EU operates as unitary actor in its external relations, and more specifically in its foreign policy, so too is it misleading to treat the Commission as a unitary actor with fixed preferences. As different DGs are delegated different tasks with regards to trade negotiations with third parties, the preferences and the extent of each DGs role will determine the degree to which the Commission can operate as a unitary negotiator, and consequentially the level of effectiveness in projecting its power *through* trade. If preferences and interests of the different DGs essentially depend on the policy area in which they operate,⁵⁹ internal Commission divergence is likely in situations in which different policy areas are assigned competences in negotiating agreements with third parties. As regards the EPAs, the level of coordination between the DG Trade and DG Development is particularly relevant for analysing the extent to which the Commission conducted negotiations as a unitary actor. While DG Trade was given the task of conducting the actual negotiations, positions and progress were to be tightly coordinated with DG Development, (and to some extent DG Agriculture and DG Enterprises and Industry). Prior to the EPA negotiations, DG Dev had held the exclusive competence of dealing with all matters ACP-related. The EPA negotiations however, saw DG Trade taking a leadership position in the negotiations and as well as vis-à-vis the other DGs.⁶⁰ While this can be expected, given that DG Trade was delegated the task of lead negotiator, because these agreements aimed at creating a binding commitment on far-reaching issues such as trade in services, trade-related areas, and were meant to be tools for development, DGs with relevant competencies in these areas had their own set of preferences and interests in the process and content of the EPAs.

⁵⁸ Patricia Kabuleeta and Victoria Hanson, "Good from far but far from good," *Trade Negotiations Insights*, 6, 8, (ECDPM/ICTSD: Dec. 2007 & Jan. 2008): 1.

⁵⁹ Magdalena Frennhoff Larsén, "Principal-Agent Analysis with One Agent and Two Principals: European Union Trade Negotiations with South Africa," *Politics & Policy*, 35, 3 (2007): 440-463.

⁶⁰ Hudson (2006: 63-64).

On the surface, it seems that Commission positions on the state of EPA negotiations were largely coordinated between DG Dev and DG Trade. Indeed, all DG Trade and DG Dev officials interviewed have keenly described the working relationship during the negotiations as constructive and positive. All relevant DGs were consulted regularly with regards to progress in the negotiations, and where opinions diverged; these were usually dealt with in a productive manner.⁶¹ Some ACP diplomats however have observed that as the negotiations proceeded increasing discrepancies between the positions of DG Trade and DG Dev came to be noted,⁶² while an informal EU Member States meeting in 2006 confirmed these divergences within the Commission.⁶³ It seems therefore, that for the most part coordination between the different DGs was at times weak. While DG Trade took a leadership position in the negotiations, DG Dev was restricted namely to policy input. Indeed DG Dev's annual reports of activity expressed concerns in possible undermining of coordination and coherence efforts between the different DGs with competences in the Community's external relations policies. As regards coordination between the DGs in the framework of the EPA negotiations, the 2005 report noted:

The division of labour within the family of the RELEX [external relations] DGs is by itself a source of risks. The division of labour is defined in the Interservice agreement. However, the compliance with this agreement is not always fully respected [. . .] Ensuring the coherence of Community policies with an impact on developing countries is another major source of risk. This risk is most relevant with respect to trade, notably in EPA negotiations, which is a critical dimension for the development policy, but the capacity in this area is concentrated in DG Trade.⁶⁴

While the 2006 report noted some progress in coherence and coordination efforts, it nonetheless reiterated that despite the increased competences in trade assigned to DG Dev, risk of coordination failure with DG Trade persisted.⁶⁵ Interestingly, similar reports by DG Trade, while recognising the need for integration of a development dimension in EPAs, made no mention of increased coordination efforts with DG Dev. Certainly it is important not to discount altogether that, "the European Union is fact capable of some degree of strategic action." Although there are, "different institutional interests are at play [. . .] the overall negotiation stance is co-ordinated and kept under the tight scrutiny of Committee 133 (with trade representatives of the member states). When push comes to shove, the EU is more often than not capable of prioritising its interests and hammering out a relatively coherent policy line."⁶⁶ Nonetheless, in the realm of foreign policy making, divergence in views between the different DGs does have the potential effect of distorting the image of a unitary actor. This is

⁶¹ Interviews with DG Trade and DG Dev officials (Brussels: 02 April – 09 April 2008).

⁶² Interviews with ACP diplomats (Berlin: 17 March 2008 and Brussels: 04 April 2008).

⁶³ "The EU and Africa: Meeting Expectations?" *Report of an informal EU Member States meeting* (Maastricht: 26 June 2006).

⁶⁴ CEC – DG Development, *Annual Activity Report*, (Brussels: 2005): 19.

⁶⁵ CEC – DG Development, *Annual Activity Report*, (Brussels: 2006): 5, 18.

⁶⁶ Jess Pilegaard, "Relations between trade, development policy and the CFSP: Analysing incoherence in EU external policies," Working paper for the FORNET Seminar (London: 03 November 2003): 11.

particularly relevant with regards to the Commission's position in the EPA negotiations, and the consequences of divisions between DG Trade and DG Dev have had on the ACP's position on the EPAs, as outlined in a recent case study on the negotiations: "The ACP countries have found negotiating with the Commission rather confusing; they have assumed that their DG Trade counterparts are speaking on behalf of the whole Commission (on behalf of the EU), and have been puzzled to discover that DG Trade is unable to deal with issues such as development assistance."⁶⁷

The divergence in this regard between DG Trade and DG Dev is particularly relevant to understanding the ACP's negotiating position, because indeed one of the most contentious issues of the negotiations concerned increased development assistance commitments. While it is certainly the case that many of the "ACP countries' decisions about whether to enter into EPAs will necessarily hinge on whether or not sufficient assistance is provided to support their preparations for, and adjustment to trade liberalisation,"⁶⁸ it is also the case that by discussing development concerns more closely with DG Dev, as opposed to DG Trade, some regional configurations were able to secure binding commitments in the development chapters to be included in the EPAs. This is particularly the case for the Southern African region, which according to DG Dev officials, was able to expand and solicit concessions in the area of development in a much more binding manner than was considered necessary by the Commission.⁶⁹ At the first formal meeting between the group and EC negotiators in March 2007, the configuration called for the inclusion of a development chapter in the EPAs which would provide assistance for EPA-related implementation measures and adjustment costs.⁷⁰ The interim agreement initialled by most of the countries in the configuration now includes a Development Cooperation Chapter which includes cooperation on trade in goods, supply-side competitiveness, business enhancing infrastructure, trade in services, trade-related issues, institutional capacity building and fiscal adjustments.

A second area of divergence within the Commission has also arisen more specifically between head negotiator Trade Commissioner Peter Mandelson, and the Commission president, Jose Manuel Barroso. Just ahead of the looming deadline for initialling the EPAs, Barroso announced at the high-level EU-Africa summit in Lisbon that he would take a more active role in the ongoing negotiations from 2008 onwards, ensuring that the negotiations would be pursued at the highest political level. He further claimed that issues of contention within the interim agreements could potentially be revised during the ongoing negotiations process.⁷¹ Barroso's assurances came after a series of accusatory and heated remarks made by African heads of states regarding the Commission's use of hard bargaining

⁶⁷ Hudson (2006: 64).

⁶⁸ *Ibid.*

⁶⁹ Interview (Brussels: 07 April 2008). This claim will need to be corroborated with the Southern African position.

⁷⁰ 6th SADC-EC Senior Officials Meeting, "Summary of Conclusions and Action Points," (Gaborone: 07 March 2007).

⁷¹ David Cronin, "Barroso's EPA Intervention to Be 'More Than Symbolic,'" *Inter Press Service News* (Brussels: 31 January 2008).

tactics and the intensive pressure under which many African countries felt they had been placed in reaching agreement by the 2007 deadline.⁷² The extent to which Barroso's position affected the Southern African EPA configuration is significant, in that it led Namibia to change its stance vis-a-vis the initialling of an interim-EPA. Namibia and South Africa had initially refused to sign the agreement unlike the other countries of the South African configuration,⁷³ based upon concerns that some of the more contentious provisions in the agreement would seriously undermine the countries' developmental prospects.⁷⁴ Following Barroso's assurances however, Namibia initialled the interim agreement on 11 December 2008, after "confirmation was obtained from the European Commission that the Interim Economic Partnership Agreement would be revisited during the next stage of negotiations."⁷⁵ Furthermore, Namibia managed to annex a statement onto the agreement declaring this intent to revisit contentious areas of concern. DG Trade officials were surprised by the Namibian position on interim-EPAs, claiming that the Namibian insistence on including a clause on contentious issues was largely unanticipated.⁷⁶ Furthermore, following the Namibian position, the issue of taking into consideration regional realities in the upcoming round of negotiations has become a particularly crucial concern for the Southern African configuration.⁷⁷ DG Trade officials have further indicated a stronger commitment to taking into consideration such regional concerns,⁷⁸ indicating that Namibian position has indeed not gone unnoticed. Where a divergence in positions exists however, is between the assurances expressed by Barroso and some DG Trade officials, and statements made by Commissioner Mandelson concerning the possibility of revisiting issues of concern during the 2008 negotiations. Although Mandelson visited Southern Africa in a conciliatory effort to move forward the next phase of negotiations, and although it was recognised that both South Africa and Namibia harboured significant concerns on the interim EPAs,⁷⁹ the Commissioner has also stated in the European Parliament that he is not prepared to renegotiate interim-EPAs in 2008.⁸⁰ While the extent to which the divergence in the positions between Barroso and Mandelson will have an effect on the ongoing negotiations at present remains unclear, it is nonetheless indicates that negotiating positions within the Commission with regards to the EPAs are at times inconsistent. Certainly, as the Namibian

⁷² ACP Council of Ministers, *Declaration of the 86th Session: Expressing Serious Concern on the status of Negotiations of the Economic Partnership Agreements*, (Brussels: 13 December 2007).

⁷³ Botswana, Lesotho, Swaziland, and Mozambique signed an interim EPA on 23 November 2008, while Angola has expressed interest in signing the agreement once a comprehensive regional EPA has been negotiated.

⁷⁴ Republic of Namibia Ministry of Trade and Industry, "Outcome of the final round of the SADC-EC EPA negotiations," *Press Statement*, (Windhoek: 05 December 2007).

⁷⁵ Republic of Namibia Ministry of Trade and Industry, "Interim Economic Partnership Agreement with the European Union initialled by Namibia," *Media Release*, (Windhoek: 13 December 2007).

⁷⁶ Interview (Brussels: 03 April 2008).

⁷⁷ See especially, Hanno Rumpf, "Accommodating regional realities: practical issues and challenges for the EPA negotiations," *Trade Negotiation Insights*, 7,3 (April 2008).

⁷⁸ Interview (Brussels: 03 April 2008).

⁷⁹ *EC-SADC Ministerial Joint Declaration*, (Gaborone: 04 March 2008).

⁸⁰ David Cronin, "Africans Stuck With EU Deals" *Inter Press Service News* (Johannesburg: 29 January 2008).

case illustrates, these inconsistencies have an effect on the negotiating position of some of the ACP. Indeed, after expressing concern with regards to the interim agreement, while at the same time constrained to secure market access for sensitive sectors, and facing enormous pressure from lobby groups within the country, upon Barroso's declaration, Namibia was able to acquire a significant concession vis-a-vis the EC by negotiating an assurance that concerns with the agreement would indeed be taken up in the future.

As the third stage of negotiations is set to commence in the latter part of 2008, it is most certainly premature to illuminate how an interim agreement may change the power dynamics between the two parties. Nevertheless, this last-ditch effort on the part of the Commission to save EPA negotiations from total failure provides a concrete indication of the limits of the Commission's presumed over-arching power in always accomplishing its preferred outcome vis-à-vis a much weaker and marginalised actors. Nonetheless, the extent to which ACP negotiators can therefore exert any sort of leverage vis-à-vis their Commission counterparts lies in the acknowledgement that "there are significant political constraints in the EU,"⁸¹ which limit its ability to exert its full capacities as the stronger negotiator. As Draper has rightly noted: "whilst it is true that the EU is clearly the dominant partner, it, too, needs a successful outcome to these negotiations and will have to be willing to compromise in order to get it."⁸² It is plausible, therefore that to some extent the ACP have managed to successfully negotiate some of their demands, because they have been able to exploit the institutional and political constraints and weaknesses faced by the EU. Negotiations resulting in an entirely failed agreement would not only have been disastrous for many of the ACP in terms of trade and development prospects, but could also have significantly damaged the international image the EU is trying to promote and construct both abroad and at home.⁸³ While the all-out failure of negotiations could have potentially injured the common conception of the EU's power *in* trade, it certainly evidenced the limitations of the EU as a power *through* trade, in that regardless of the EU's experience in negotiating international trade deals, the EU's failure to conclude the far-reaching EPAs it had initially envisioned, and the ACP's refusal to sign without the further negotiation of sensitive issues, evidences the institutional and political limitations that the EU continues in utilising instruments such as trade in its *sui generis* foreign policy efforts.

This paper has considered the changing relationship between the EU and the ACP in the area of trade, and in doing so, has focused particularly on the recent negotiations between the two parties

⁸¹ Peter Draper, "EU-Africa Trade Relations: The Political Economy of Economic Partnership Agreements," *European Centre for Political Economy*, Jan Tumlrir Policy Essay No. 02 (Brussels: June 2007): 21.

⁸² *Ibid.*

⁸³ Patricia Kabuleeta and Victoria Hanson, "Good from far but far from good," *Trade Negotiations Insights*, 6, 8, (Dec. 2007 & Jan. 2008): 2.

aimed at establishing Economic Partnership Agreements. As has been demonstrated, both the negotiations and the scope of the actual agreements have been one of the most contentious issues to arise between the EU and the ACP, and as such, they can be considered to have created a paradigmatic shift in relations between the historical ‘partners’. Furthermore, EPA’s have divided the ACP into regional groupings, significantly altering the negotiating position of the ACP as a group, as well as having created problematic loyalties and negotiating positions within the regional configurations. On the basis of past scholarly contributions, it was argued that this dramatic shift in EU-ACP relations can largely be explained by instrumental calculations on the part of the EU to secure a influential trading position both in the multilateral and regional trade arena; a decreasing interest and lack of political will in the EU in general in defending ACP interests at the multilateral level in the face of emerging interests in other policy areas and geographical regions; a general will of the EU to promote and consolidate regional integration processes as part of an effort (whether intentional or not) of exporting the EU’s own regional model abroad and a general conviction that this is a “logical mode of organizing the world economy and promoting economic development within regions”⁸⁴; and lastly, the intentional or unintentional use of this policy as an identity-shaping exercise which confirms and legitimises that EU’s own regional model, as well as its position as a relevant power *in* and *through* trade. It was further argued that due to a divergence in preferences and views at both the EU-level and the Commission-level, the EU faces limitations and weaknesses, regardless of its apparent structural strength as an experienced trade negotiator and an economic and normative power in the world. While further analysis is necessary on the extent to which the ACP have operationalised on these limitations, this paper has aimed to briefly address the hypothesis that the institutional and political constraints and weaknesses faced by the EU as a foreign policy actor create a disjunction between the EU’s structural power and its actual bargaining power or ability to influence and negotiate a preferred optimal outcome.

⁸⁴ Aggarwal and Fogarty (2004:14).