TRADE AGREEMENT BETWEEN EUROPE AND AFRICA: GHANA AND THE ECONOMIC PARTNERSHIP AGREEMENTS IN PERSPECTIVE

BY

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LEGON

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DECLARATION

I hereby declare that this dissertation is a result of an original research conducted by me under the supervision of Dr. Antwi-Danso and that no part of it has been submitted anywhere else for any other purpose.

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(SUPERVISOR)

DATE
DEDICATION

This work is dedicated to the Almighty God and my family.
ACKNOWLEDGMENTS

My sincere appreciation goes to the Almighty God for His assured guidance and wisdom throughout this project.

I wish to equally express my profound gratitude to my supervisor Dr. Antwi-Danso without whose invaluable guidance the research could not have been completed.

I wish also to thank my family for all the necessary support in this regard. Thanks also goes to Mohammed Iddrisu Sherif, Rhizlane Dhourhi and Lydia Akoto without whose encouragement and advices this work would not have come to a successful completion.

Thanks also to the Director, Senior Members, and non-teaching staff of LECIAD.
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<td>ACP</td>
<td>Africa, Caribbean and Pacific</td>
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<tr>
<td>AEC</td>
<td>African Economic Community</td>
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<td>AGI</td>
<td>Association of Ghana Industries</td>
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<td>AU</td>
<td>African Union</td>
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<td>CEMAC</td>
<td>Central African Economic and Monetary Community</td>
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<td>CET</td>
<td>Common External Tariff</td>
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<td>CPA</td>
<td>Cotonou Partnership Agreement</td>
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<td>CSOs</td>
<td>Civil Society Organizations</td>
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<tr>
<td>EBAs</td>
<td>Everything but Arms</td>
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<tr>
<td>ECOWAS</td>
<td>Economic Community of West African States</td>
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<td>EDF</td>
<td>European Development Fund</td>
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<td>EEC</td>
<td>European Economic Community</td>
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<td>EPADP</td>
<td>EPA Development Programme</td>
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<td>EPAs</td>
<td>Economic Partnership Agreements</td>
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<td>ESA</td>
<td>Eastern and Southern Africa</td>
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<td>EU</td>
<td>European Union</td>
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<td>FTA</td>
<td>Free Trade Areas</td>
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<td>GATT</td>
<td>General Agreement on Tariffs and Trade</td>
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<td>GAWU</td>
<td>Ghana Agricultural Workers Union</td>
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<td>GSP</td>
<td>Generalized System of Preferences</td>
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<td>IMF</td>
<td>International Monetary Fund</td>
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<tr>
<td>LDCs</td>
<td>Least Developed Countries</td>
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<td>MFN</td>
<td>Most-Favoured Nation</td>
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<tr>
<td>Acronym</td>
<td>Definition</td>
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<td>OCTs</td>
<td>Overseas Collectivities and Territories</td>
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<td>Public Private Partnerships</td>
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<td>REC</td>
<td>Regional Economic Communities</td>
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<td>RoO</td>
<td>Rules of Origin</td>
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<td>SADC</td>
<td>Southern African Development Community</td>
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<td>SAPs</td>
<td>Structural Adjustment Programmes</td>
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<tr>
<td>STABEX</td>
<td>Stabilization Exports System</td>
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<td>SYSMIN</td>
<td>System of Stabilization of Export Earnings of Mining Products</td>
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<td>TRIPs</td>
<td>Trade Related Intellectual Property Rights</td>
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<td>TUC</td>
<td>Trade Union Congress</td>
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<td>WTO</td>
<td>World Trade Organisation</td>
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ABSTRACT

Economic Partnership Agreements (EPAs) are free-trade agreements meant to replace the previous trade arrangements most especially the Lome IV Convention with the aim of making the Africa, Caribbean and Pacific-European Union (ACP-EU) relationships compatible with World Trade Organisation (WTO) rules. Their negotiations in Africa have dragged on for over a decade now, as a result of divergent views or arguments raised by the African region and Civil Society Organizations (CSOs), regarding the possible benefits or otherwise of the agreement. While the EU is of the view that the EPAs would foster development and regionalism, the African side tends to consider liberalizing trade and regional integration as insufficient in promoting development and alleviating poverty. This study retraces the genesis of the EPAs. To this end, delves into some of the contentious issues surrounding the EPAs, which impeded the negotiation process till now. The study also looked at the impact of the EPAs on the Ghanaian economy if finally signed. The study observes that delay in the conclusion of the EPA negotiations resulted in some 18 African countries (including Ghana and Cote d’Ivoire on the side of West Africa) to initial a stepping stone EPA (interim EPAs). The action was to ensure the continuation of preferential market access offer by the EU while the EPA negotiations struggle for conclusion. The study concluded that the negotiators of West Africa must continue to negotiate for a better deal on the contentious issues to inure to the benefit of the Economic Community of West African States (ECOWAS) region.
CHAPTER ONE
RESEARCH DESIGN

1.1 Background to the Study

The genesis of trade agreements between Europe and Africa, Caribbean, and Pacific (ACP) countries dates back to the Treaty of Rome in 1957. This treaty gave birth to the European Economic Community (EEC). The treaty of Rome provided a protocol on cooperation between the European Economic Community and 31 Overseas Collectivities and Territories (OCTs). It was signed by six member states including France, Italy, Germany, Belgium, Netherlands and Luxembourg.

The EEC, during the 1960s, established economic ties with most African countries which had gained independence and provided them with financial assistance to aid development. In the light of this, the Yaoundé agreements (Yaoundé I and II) were concluded between France and French–speaking African countries in 1963 and 1969 respectively. Under the first convention, the bulk of EEC assistance went to francophone Africa, with the view of improving upon their infrastructure in order to promote relation between them. The Yaoundé II convention was to further strengthen cooperation among the two parties to improve on their economic and social development.

The accession of the United Kingdom to the European Community in 1973 brought on board its former colonies in Africa, Caribbean, and Pacific and this paved the way for the extension of Europe–Africa cooperation to English speaking countries. During the period spanning 1975-
1995, four Lome Conventions have succeeded one another over twenty five years. The ACP was established as a political entity in 1976 by the Gorge Town Agreement signed in Guyana. It laid down the rules for cooperation between the countries of the three continents.

The Lome I convention was concluded between the EEC and 46 ACP states in 1975. This Convention brought some notable changes in the Yaoundé II. One major feature of this convention is the abolishing of reciprocity in trade preferences, which was applied in the Yaoundé II. Another fundamental alteration which characterized the Lome I convention (covering the period 1975-1980) was the provision of the Stabilization Exports System (STABEX) for stabilizing the export earnings of ACP states in case of price fluctuations. Lomé II introduced the System of Stabilization of Export Earnings of Mining Products (SYSMIN), which guaranteed prices for mining products when market prices dropped to such an extent that they threatened production capacity or export earnings from ACP mining products.³

Under the Lome III Convention (spanning 1985-1990), not much was done in terms of changes. However, attention was shifted from the promotion of industrial development to Emphasize on food self-sufficiency for ACP countries. The Lome IV Convention, which was signed in 1990, covered a period of ten years. It was regarded as a development agreement and included human rights as a fundamental part of the cooperation between the two parties. These conventions gave free access to ACP countries in the EU markets.

In view of the non-compatibility of the Lome (Lome IV) Conventions with WTO rules, the Cotonou agreement was concluded in 2000 to serve as a transitional period, during which a new
trade agreement, the Economic Partnership Agreement (EPA) between the EU and ACP states, shall be concluded. It was to have been signed by 31 December 2007.

The Cotonou Partnership Agreement (CPA) is a comprehensive agreement between the ACP countries and the European Union. It established another trade regime between the European Union and the ACP countries. It was signed in June 2000 and entered into force in 2003. It consisted on one hand 77 ACP countries and fifteen Member States of the European Union on the other. It has as its objectives the reduction and, in time, the eradication of poverty, the promotion of sustainable development, and the progressive integration of the ACP countries into the global economy. The agreement maintained the non-reciprocal preferential access of the ACP exports to the EU markets. The CPA defines the new framework for the relationship between the two parties over. It explicitly provides for the negotiation of Economic Partnership Agreement.

In “Economic Partnership Agreements: Conjectures and Refutations”, Antwi-Danso indicated that “the Cotonou Partnership Agreement sets out the basic parameters for EPA negotiations and that the key elements were timelines and procedures”. The EPAs are based on the principles of free trade areas and also influenced by the obligation placed on the two parties to trade under terms consistent with WTO rules and regulations, particularly with regards to non-discrimination. The legal framework of EPAs is thus defined by the World Trade Organization (WTO) rules, in particular Article XXIV of the General Agreement on Tariffs and Trade (GATT), pertaining to Regional Trade Agreements, and the Cotonou Agreement which governs the EU-ACP relationship.
The EPA has attracted a lot of controversies, leading to a delay in the negotiation process. This delay caused about 36 ACP countries, including Ghana, to initial an interim EPA. This was to avert certain tariffs that may be placed on products entering European markets from ACP countries. Despite the fact that the initialing of the agreement seems to suggest satisfaction with proposed provisions of the Agreement, the Government of Ghana has indicated that it is yet to declare its official position on the issue. Arguments regarding the EPAs vis-à-vis Ghana’s position have therefore continued, following the interim Economic Partnership Agreements (iEPAs).

1.2 Statement of the Problem

The arguments on EPAs have raged on since the negotiations began in 2003. These divergent opinions have caused many African governments to either change their initial position on the matter or exercise some restraint in supporting the agreement. In the midst of these controversies, Ghana, alongside Cote d’Ivoire, initialled the interim EPAs to the dissatisfaction of the ardent critics of the agreement and negotiation process.

Towards the end of 2007, Ghana was confronted with a major challenge. Ghana as part of ECOWAS had to negotiate the EPAs with the EU. But both ECOWAS and the EU showed no sign of reaching an agreement before the December 2007 expiry date of the Cotonou Partnership Agreement. In the absence of the agreement, Ghana’s exports to the EU would have faced increased tariffs. This would have affected the newly emerging export commodities such as horticultural products as well as processed cocoa. In order to avert this, Ghana initialled an
interim EPA based on a goods only agreement with the EU. This agreement was envisaged as an interim measure until a full EPA was concluded.

Alarmed by the perceived threats of the EPAs to the Ghanaian economy, a coalition of Civil Society Organizations (Socialist Forum of Ghana and Economic Justice Network of Ghana), and farmer based groups, religious organizations and the labour unions articulated the voices of the opposition and to caution government to resist pressure emanating from the EU to sign the EPAs.

The study recognizes the existence of a significant number of academic and non-academic view points on the subject of the EPAs, nevertheless, finds it necessary to throw more light on some aspects of the Partnership Agreement. This is as a result of the observation that most of the literature seems to gloss over the peculiarities of member countries of ECOWAS by discussing the possible implications of an EPA regime in the context of Africa and not in the context of the Ghanaian economy which in many respects, differs from that of other countries in the sub-region like Nigeria. For instance, while about 95% of Nigeria’s exports to the EU zone is petroleum related, most of Ghana’s exports are agricultural products like cocoa and pineapple. This illustrates the neglected difference that exists between and among the African economies and hence begs for a project like this which discusses the various principal components or elements bearing in mind the weaknesses and strength of the Ghanaian economy.

Although negotiations between the EU and ECOWAS have been concluded and endorsed at the Accra ECOWAS summit in July 2014, the door is not shut on more empirical observations on specific items of the Agreement with the aim of supporting efforts to put in place effective
administrative structures at the regional level and at the national level to implement EPAs in the best possible and mutually beneficial manner. To this end, attention to the following questions is required.

1.3 Research Questions

- The research seeks to find answers to the following questions:
- What are the implications of EPAs for the integration process in West Africa?
- What are the possible effects of the EPAs on key sectors of the Ghanaian economy?
- Is the government of Ghana not going to lose revenue arising from the reduction and elimination of tariffs on imports from the EU?

The dearth of literature on the very important issues of the EPAs concerning Ghanaian economy calls for studies like this to add to the existing opinions on the relevance or otherwise of the agreement.

1.4 Objectives of the Study

In order to address the above-mentioned questions the research seeks to:

- Determine the possible consequences of an EPA regime on the integration process in the sub-region.
- Determine the effects of the EPAs on key sectors of the Ghanaian economy
- Ascertain whether the government of Ghana will be losing revenue on imports and to what extent?
1.5 Rationale of the Study

The study shall augment the literature that currently exists on trade relations between Europe and Africa as it will contribute immensely towards the debates surrounding the EPAs and the possible benefits or otherwise to Ghana.

1.6 Scope of the Study

The study will focus on Ghana and the EPAs and its intended implications should the government of Ghana permanently sign up the EPAs with the EU.

1.7 Theoretical Framework

International regimes theory is the theoretical framework on which this study is pivoted. Regime theory emerges out of the neoliberal theory of international relations and assumes that states and other actors are rational actors operating in an anarchical system.

A regime can be associated with an agreement or the emergence of an international organization. It involves the coordination of actions among actors on the International scene. Krasner, one of the proponents, portrays regime theory “a set of implicit and explicit, principles, rules or norms, decision making procedures around which actors expectations converge in a given area in the international arena.” A regime represents a particular issue area, whereby states anticipate that their behaviour will be constrained by accession to an implicit or explicit set of agreement. Brown and Ainley throwing more light on Krasner’s definition argue that the principles, upon which the trade regime is built, are that trade is good, free trade promotes peace and is more beneficial than controlled trade. These principles constitute the ‘embedded liberalism’ and they
exist in the background even when contrary practices are sanctioned. The norms of the regime give these principles some practical content. Stein, Keohane are some of the proponents of this theory.

Though the theory of international regime still remains as one of the substantial foci of international relations, critics such as Susan Strange\(^8\) believes that the main assumptions of regime theory lack precision. She argues further that the term regime is value-laden and that it implies certain things that ought not to be taken for granted.

Trade agreements between the EU and ACP countries have been based from one regime to the other. These regimes include the Yaoundé I and II conventions in 1963 and 1969 respectively. This was followed by other successive trade regimes namely the Lome I, II, III and IV conventions signed in 1975, 1980, 1985 and 1990 respectively. They were characterized by the practice of non-reciprocal trade relations between the EU and the ACP group of countries. These conventions were succeeded by another regime signed in Cotonou in 2000. The CPA is broader in scope than the previous arrangements. It continued the non-reciprocal treatment offered to ACP countries under the Lome regimes. Finally, the EPA as a new regime, was meant to find a compatible trade regime to replace the Cotonou regime, hence it is the outcome of the CPA. It is expected to create reciprocal arrangement between the two parties in conformity with the WTO rules of article XXIV of the General Agreement on Tariffs and Trade (GATT).\(^9\) From the above, one can say that Ghana’s signing of the interim EPA with the EU, constitutes a new trade regime between Ghana and the EU. This brings a major shift in their relations from non-reciprocal arrangement to reciprocal terms of trade.
1.8 Literature Review

The signing of the EPAs has been the subject of much debate among governments, business leaders, policy makers, scholars and non-governmental organizations. Supporters of the EPAs contend that the agreement will inure to the benefit of the continent’s economic development through the expansion of trade and capital flows. The EPAs portend to have wide-reaching implications for Africa’s development.

Delivering a paper at the Socialist Group of the European Parliament (PES) conference on Economic Partnership Agreements at the European parliament on 19th October, 2006, San Bilal indicated that Regional Integration is seen as a key principle to both the CPA and the Economic Partnership Agreement. Regional integration for the EC is a key requirement for the development of ACP countries. The EC is of the view that Regional Integration will stimulate economic growth in Africa and accelerate the integration of the latter in the world economy. This it argues can be achieved by creating larger markets for West African markets. By negotiating on a regional basis on the EPAs, which are expected to have a wider scope than just reciprocal trade liberalization, the ACP countries will have an opportunity to strengthen their regional markets, conducive to investment and development.

Despite the afore-stated benefits that accrue from regional integration, the process is still slow in the West African sub-region and, of course the rest of Africa largely due to reasons ranging from lack of political commitment to lack of institutional capacities. As a result of the weakness bedevilling regional integration in West Africa, Ghana for instance, still suffers from possessing
a relatively smaller market. The country is therefore not reaping benefits from regional integration as much as it could considering the opinions expressed by integration experts.

In his book “Africa and the Economic Partnership Agreements: Europe’s Brand of a Trojan Horse?”, S. K. B Asante citing M. Dhim on “More of same is not an option” posits that “the EU maintains that EPAs would foster development mainly through trade liberalization and the creation of the right policy framework for liberalization and to attract investment.” 11 He added that The EU is of the opinion that the African countries stand the chance of benefiting from the standard gains of trade, economic growth, and development by creating free trade areas among themselves and with the EU. Asante indicates further that such an increased market access to the EU and other African countries in their region for African exports, and economics of scale for African producers; reduced prices of imports for African consumers and associated competitive effects.

According to Antwi-Danso,12 the incompatibility of the Lome Conventions with WTO rules compelled the EU and the ACP countries to seek a waiver that would allow the Lome spirit to be continued in an acceptable form. Antwi-Danso indicates that the EU wanted a WTO compatible relationship that would enable it to continue giving trade preferences to ACP countries. He intimates that the route that was decided on for compatibility of trade preferences with WTO rules of non-discrimination in Article 1:1 is to make the future relationship conform to Article XXIV of GATT 1994, which is an exception to Article 1:1 of the General Agreement on non-discrimination.
He indicated moreover that Article XXIV allows for the formation of free trade areas, Customs Unions or interim arrangements that lead to the reduction and/or elimination of trade tariffs among members of the WTO. He also mentioned that the Economic Partnership Agreements (EPAs) which were proposed therefore, were based on the principles of Free Trade Areas (FTA) and are seen by the EU as the answer to resolving the waiver problem and also becoming WTO compatible in terms of the issue of non-discrimination.\textsuperscript{13} He contends also that the nature of the negotiations, not respecting existing FTAs and creating new ones would strangulate efforts at integration within the ACP.

Writing on “Africa and the Economic Partnership Agreements”: Europe’s Brand of a Trojan Horse? Asante\textsuperscript{14} indicated that the timelines for concluding comprehensive EPAs between the two negotiating parties was insufficient. In the light of this, the conclusion of an interim EPA by the end of 2007 between the EU and the ACP group of countries will prevent a loss of market access to the EU after 2007. He added that the interim agreements to be initialled before the end of 2007 had to include complete provisions of goods.

Asante argues further that the EC made it clear that the trade regime of unilateral preferences agreed temporarily in the CPA would come to an end on 31 December 2007 and that the interim agreements would in the meantime give duty-free access to the EU for almost all ACP exports, with transition arrangements for rice and sugar. It was on the basis of this some African countries (including Ghana) initialled interim EPAs to avoid the significant economic harm from a sharp increase in the EU tariffs on key exports.\textsuperscript{15}
The failure to sign the EPAs in March 2014 reminds the West African region that some of the difficulties, which stalled the agreement on a final EPA in the past, still remain. In a publication by the European Parliament in 2012 titled “Economic Partnership Agreements EU-ACP”: Facts and Issues, the EPAs have come under a lot of criticisms from both the EU and the ACP countries. The EPAs are considered as a tool of economic penetration of the EU in Africa and the sincerity of their development goal is quite uncertain. It argues that the Lome convention gave non-reciprocal and preferential market access to ACP countries at the peril of developing countries which have to bear more cost in exporting their products to the EU. It argued further that the preferential trade regime and the extensive funding given by the EU was de facto a failure in that it proved not capable of alleviating poverty or brings about sustainable development in the ACP region.

In his article on “ECOWAS on Slippery route with EPAs”, Bagooro indicated that “studies, by even the World Bank, which is pro-liberalization, have warned ECOWAS of the dire consequences of opening up its market by more than 60% in a free trade agreement. The economic future of the region lies in regional market and Africa at large. The 60% figure was even affirmed by West Africa’s one analyses and was the initial offer in the EPA negotiations.” He argued that 70% was an improvement, due to EU intransigence in the negotiations and now the 75% engineered by the ECOWAS Commission and adopted by the Heads of States is simply suicidal.

The African Agenda, in its first issues of 2014, also expressed very interesting concerns about the EPAs. The publication recalled that the West African Civil Society Platform on EPAs-
POSCAO, has observed at the end of a meeting in Senegal in February 2014, that the EPA negotiations have led to serious threats to the regional integration process following the conclusion of the iEPAs by Cote D’Ivoire and Ghana.\textsuperscript{18} In the light of the above, the CSOs therefore called on ECOWAS to stop the signing and ratification of the EPAs until the technicalities are ironed out.

In his contribution to the existing literature on EPAs, Nankani writing on “Ghana and the EU Agreement: A Myopic, Bold or Incomplete decision,” encouraged Ghana to start negotiating and concluding with other trade powers than the EU, namely the US, China and India. He advised that Ghana should obtain zero-tariff and zero-quota access for its products to the markets of the above mentioned giants as well as more liberal rules of origin as is now the case of entering the EU market. \textsuperscript{19}

Nancy Kachingwe,\textsuperscript{20} in a briefing paper on “Ghana National Trade Policy and Economic Partnership Agreement” argues that while trade liberalization, as a result of EPAs, may ensure cheaper imports for consumers, there were huge problems or challenges that could confront Ghana’s economy if the EPAs were signed. She expresses the opinion that local production, whether for export or for domestic consumption, has multiplier effects that create jobs, support the growth of new sectors and contribute to social welfare as well as public finances. In view of the afore-mentioned benefits the Ghanaian economy derives from local production, Kachingwe maintains that due to the negative impact of liberalization on the agricultural sector and other local sectors, the Government of Ghana must reconsider the decision to open markets to foreign goods as would be done when the EPAs are finally concluded and signed.
While Kachingwe’s perspective on the EPAs may be well thought out, it ignores the benefits the agriculture sector and other local areas stand to derive from the expansion of the Ghanaian market when the EPA finally comes into existence. The participation of Foreign companies in Ghana’s economy after the introduction of the EPAs may, for instance, also pave way for technology transfer which may in turn boost local production and improve the quality and hence competitiveness of local produce. Kachingwe’s skewed explanation of the impact of the EPAs seem to be typical of critics of the agreement – Not enough is usually done to identify how the trade agreement may also help the local industries.

1.9 Sources of Data

The research is based on information gathered from both primary and secondary sources. Primary sources include unstructured interviews with officials of Ministry of Trade and Industry, Ghana Agricultural Workers Union (GAWU) of the Trade Union Congress (TUC), Association of Ghana Industries (AGI) and Third World Network. Secondary sources included review of relevant books, journals, seminar papers, newspaper articles, relevant internet sources, and other unpublished works related to the research work from the libraries of LECIAD and Economics Department, of the University of Ghana, Legon.

1.10 Organization of Study

The study is organized into four chapters. Chapter one contains the Research Design. Chapter two entails a historical trajectory of the EPAs. Chapter three captures the position of Ghana with
regards to the EPAs and their intended benefits and negative impacts on the latter. Chapter four contains the summary of findings, conclusions and recommendations.
Endnotes

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CHAPTER TWO

TRADE RELATIONS BETWEEN ACP COUNTRIES AND THE EU:
FROM YAOUNDE CONVENTIONS TO THE EPAs

2.0 Introduction

The historical context of the ACP-EEC Lome Conventions and the subsequent Cotonou and EPAs is of immense importance, as these agreements cannot be understood, without attention to the historical events that preceded and followed them. The Treaty of Rome, which gave birth to the EEC in 1957, paved the way for cooperation between the EEC on one side and 31 Overseas Countries and Territories (OCTs) on the other.¹

In the 1960s the EEC established economic ties with most newly independent African countries by providing them with financial assistance to aid development. In the light of this, the Yaoundé I and II regime of association were devised in 1963 and 1969 respectively between 18 African states and their six European counterparts. These regimes set up the first, second and third European Development Fund (EDF) for the overseas countries and territories. The EDF was intended to be spent on special institutions, public investments, agricultural production and other economic investments². As a result of diversification of objectives and increase in partners of the Yaounde regime, four successive Lome Conventions came into existence.

In “40 years of Europe-ACP relationship” Dominique intimates that these two Yaounde agreements “constituted a learning process, not only in terms of partnership (setting-up of joint institutions) but also in terms of contractual systems.”³
In essence, the framework of cooperation between the ACP and the EU has been described as

“the realization of the will to consolidate, improve and strengthen the ties of a cooperation contract founded on solidarity and mutual interest.” It is also considered as restatement of “those principles of ACP-EU cooperation of non-interference, respect for sovereignty of the partners, dialogue, and a reliable and predictable aid and trade advantages.”

2.1 Lome Conventions

The Lome Conventions are a scheme of cooperation between countries in sub-Saharan ACP states. They span the period 1975-2000. The first Lome Convention entered into force in 1975, and was succeeded by three others, namely, Lome II in 1980, Lome III in 1985, and Lome IV in 1990. The accession of Britain to the EC in January 1973 further changed trade relations between the EC and Africa as former British colonies within the Commonwealth became signatories. The Lome convention was concluded by 46 ACP countries and nine countries of the EEC in 1975.

The Lome I provided ACP states with aid to improve upon their trade relations with the EU. The major contribution of this agreement was the introduction of the STABEX. It was designed to compensate African ACP states for loss of export earnings as a result of fluctuations in certain eligible commodity prices on agricultural products such as cocoa, coffee, groundnuts, and tea. The agreement covered trade financial aid and non-reciprocal preferences. Protocols favouring ACP exports such as veal, sugar, banana, and beef were also created. According to Amos Tincani, “one of the main innovations of the first Lome Convention, concerns support from the community for ACP states’ efforts in the field of regional cooperation”. For the purpose of this, a 10% financial package of the Lome I Convention was allocated to the ACP States.
The Lome II convention of 1980 introduced the SYSMIN mechanism for countries that were heavily dependent on mineral resources and suffered export losses. The scheme of SYSMIN was to compensate for declining mineral export receipts, and provided support in the form of projects which were directed at restoring a particular mineral’s productive capacity or economic diversification.\(^7\) As already mentioned in chapter 1, Lome III convention of 1985 did not bring any significant changes in the EU-ACP relations until the introduction of the last Lome Convention (Lome IV) in 1990.

Lome IV, signed in 1990 covered a period of ten years. This convention was broader in scope than the previous agreements. It gave consideration to human rights, democracy and economic diversification, among others. Under the Lome IV convention, almost all the products originating from the ACP states could be granted access to the EEC without restrictions either on quantities or customs duties voids of reciprocal obligations. The regime extended cooperation to the environment, fishing, services, industry, agriculture, and the fight against desertification and complemented with technical and financial cooperation.\(^8\)

According to the Most-Favored Nation (MFN) principle of the WTO, preferences should be granted to all member states of the WTO. However, the EU discriminated against some of the member states of the WTO most especially the least developing countries in the ACP under this regime. According to Antwi-Danso “the incompatibility of the Lome Convention IV with WTO rules compelled the EU and the ACP countries to seek a waiver that would allow the Lome spirit to be continued in an acceptable form. This waiver was granted and culminated in the signing of the CPA, which was concluded on June 23, 2000.”\(^9\)
2.2 The Cotonou Agreement

On 13 June, 2000, 15 member states of the European union and 77 developing countries in Africa, the Caribbean and the pacific signed the CPA with the view of working together towards the achievement of the objectives of poverty eradication, sustainable development and the gradual integration of the ACP countries into the world economy. Under this agreement, the CP non-reciprocal tariff preference was maintained until 31st December, 2007 and from 2008, a reciprocal set of EPA or alternative trade arrangement was scheduled to replace them after successful negotiations that commenced in September, 2002. The agreement underlined the importance of regional cooperation. Regional cooperation, according to Kennes is “put forward as a development cooperation strategy.”

Regional integration is also regarded as a very important aspect of the trade and economic cooperation. It is considered to be the underlining goal for the new ACP-EU trade regime as this is captured in Article 35 of the convention which states that “economic and trade cooperation shall build on regional integration initiatives of ACP states, bearing in mind that regional integration is a key instrument for integration of ACP countries into the world economy.”

The fundamental principles of the CPA are based on equality of the partners and ownership of their own development strategies. It also ensures a partnership that is open to different kinds of actors such as the CSOs and the private sector into the main stream of political, economic and social life. The Cotonou agreement sets the grounds for the economic partnership agreement negotiation and has three important dimensions to the EPAs namely, development, political and economic.

With regards to the developmental dimension, the CPA provides in article 19 that “the central objective of ACP-EU cooperation is poverty reduction and ultimately its eradication;
sustainable development; and progressive integration of the ACP countries into the world economy. In this context, cooperation framework and orientations shall be tailored to the individual circumstances of each ACP country and shall promote local ownership of economic and social reforms and integration of the private sector and civil society actors into the developmental process” and that “Governments and non-states actors in each ACP country shall initiate consultations on country development strategies and community support therefore.”

The ACP-EU cooperation strategies aim at: achieving rapid and sustainable job-creating economic growth; developing the private sector, increasing employment; improving access to productive economic activities and resources” just to mention a few. Adequate financial resources and appropriate technical assistance will be provided to support and promote the efforts of ACP states to achieve the objectives of the agreement based on mutual interest and in a spirit of interdependence.

Concerning political dimension of the EPAs under the CPA, the parties are expected to engage in regular political dialogue leading to commitments on both sides. The ultimate aim of this political dialogue is to exchange information, foster mutual understanding, and to facilitate the establishment of agreed priorities and shared agendas. The parties are also supposed to contribute to peace and security as well as promote a stable and democratic political environment through dialogue. With respect to Article 8, the “dialogue shall focus, inter alia, on specific political issues of mutual concern or of general significance for the attainment of the objectives of this Agreement, such as the arms trade, excessive military expenditure, drugs, organized crime or child labour, or discrimination of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The dialogue shall also encompass a regular assessment of the
developments concerning the respect for human rights, democratic principles, the rule of law and good governance.”

On the economic sphere, Article 22 of the Cotonou Agreement stipulates that the cooperation shall support ACP efforts to implement macroeconomic growth and stabilization through fiscal discipline and sound monetary policies that result in the reduction of inflation and improve external and fiscal balances. Also, there will be liberalization of trade and foreign exchange regimes as well as current account convertibility with regard to particular circumstances of each country. According to Article 34, “Economic and trade cooperation shall aim at: fostering the smooth and gradual integration of the ACP states into the world economy with due regard for their political choices and development priorities, thereby promoting their sustainable development and contributing to poverty eradication in the ACP countries.” Moreover, the ultimate objective of economic and trade cooperation is to enable the ACP states to play a full part in international trade especially multilateral trade negotiations. Given the current development of the ACP countries, economic and trade cooperation are expected to enable the latter to manage the challenges of globalization and to adapt progressively to new conditions of international trade and to facilitate their transition to liberalized global economy.

The ACP-EU relations were characterized by preferential and discriminatory trade terms in favour of the ACP states under the successive Lome Conventions and the Cotonou Agreements. These agreements violated the rules relating to reciprocity as mentioned in Article XXIV of GATT, the Enabling clause and the MFN clause. In the light of this, there was the need for the Cotonou Agreement to be replaced by a more WTO compliant
agreement. Therefore the EU suggested the EPAs as the next thing that came close to the provisions of the Cotonou Agreement without contradicting WTO rules.

### 2.3 The Economic Partnership Agreements (EPAs)

The EPAs are trade and cooperation agreements which are intended to guarantee preferential market access previously been granted to ACP countries under the Lome. They are free trade agreements aimed at eliminating all trade barriers between the EU and the ACP states to promote effective trade relations between them.

The EPA negotiations unlike the Lome conventions involve reciprocal relationship between the two parties. The ACP countries in this regard would have to open their markets to EU imports and liberalize trade in areas such as investment and services. The non-reciprocal trade preferences were considered by other non-ACP developing countries as discriminatory and against the MFN principle. Therefore the EPAs needed to be WTO compatible through the progressive removal of obstacles to trade between the EU and the ACP group of countries. According to Antwi-Danso:

> “Within the framework of the WTO, there is a high cost in obtaining a waiver. However, the EU wanted a WTO compatible relationship that would enable it to continue giving trade preferences to ACP countries. The route that was decided on for compatibility of trade preferences with WTO rules of non-discrimination in Article 1:1 is to make the future relationship conform to Article XXIV of GATT 1994. Article XXIV of GATT 1994 is an exception to Article 1:1 of the General Agreement on non-discrimination.”

The EPAs are considered by the EU as a trade regime compatible with WTO rules. Article 36 of the CPA postulates that the parties agree to conclude a new WTO-compatible trading arrangements, removing progressively barriers to trade between them and enhancing cooperation in all areas relevant to trade. The new trading arrangements were to be introduced gradually. It recognized the need, therefore, for a preparatory period. The parties
reaffirmed the commodity protocols and agreed to review them in the new trading arrangements which would be compatible with WTO rule of the MFN clause, Reciprocity and National Treatment.\textsuperscript{17}

The MFN clause mandates WTO members to grant the most favourable tariff and regulatory treatment to the product of any member at the time of import or export of similar products of all other members. The Reciprocity rule oblige member countries to reduce the level of protection in return for a reciprocal reduction from their trading partners whilst the principle of National Treatment requires members of the WTO to treat both foreign and local products equally at least when the foreign products have entered the market.

Article 37 of the Cotonou Agreement notes that the EPAs would be negotiated during the preparatory period which shall end by 31 December 2007. In view of this, formal negotiations of the new trading arrangements was planned to commence in September 2002, and the EPAs to be fully operational by 1\textsuperscript{st} January, 2008. The public and private sectors of the ACP countries were also to be strengthened during this period (2002-2007).\textsuperscript{18}

The EPAs cover a wide range of issues such as economic development, trade in goods and in services and agricultural products. They also aim at addressing issues such as non-tariff and technical barriers to trade and cover the controversial ‘Singapore issues’ such as trade and investment, government procurement, competition, facilitation of trade and transparency, special and differential treatment, protection of intellectual property rights and standardization and certification and a host of others.

These issues are commented on and analysed as follows:
2.3.1 Economic Development

The EU-ACP EPAs are to be considered as special trade agreements which have the ultimate aim of ensuring the development of ACP states and their gradual integration into the global economy. The EPAs negotiations are viewed in the context of the overall development objectives of CPA and of African countries. They must be socially acceptable, politically sustainable and economically meaningful. They are not just common agreements on trade, but also development-oriented trade arrangements that ensure economic growth, sustainable development, and the eradication of poverty in African countries.\textsuperscript{19} As required in the CPA, EPAs are supposed to be tools of development that will ensure complete market access in order to promote trade and also provide technical assistance and resources to assist in building competitiveness and addressing supply-side constraints. According to Asante, the development aspect of the EPAs goes to include action that would be required on various domains; financial assistance, trade, technology transfer and training, rules flexibility to allow the development needs of African countries, and the avoidance of rules where public policy objectives would be compromised.\textsuperscript{20}

On trade-related issues, the Cotonou Agreement states that the two parties would introduce and implement an effective and sound competition policies and rules to improve and secure an investment friendly climate, a sustainable industrialization process and transparency in the access to markets. The parties sought to eliminate distortions to sound competition taking into accounts the different levels of development and economic needs of each ACP country. Most importantly, the parties undertook to implement national and/or international rules and policies.\textsuperscript{21}
2.3.2 Trade Related Intellectual Property Rights (TRIPs)

One aspect of the EPAs is the protection of TRIPS. Here, the parties undertake to ensure an adequate and effective level of protection of intellectual, commercial and industrial property rights, and other rights covered by TRIPS including protection of geographical indications, in line with international standards in order to reduce distortions and impediments to bilateral trade. Artistic designs, copyright on computer programmes and neighbouring rights, industrial property which includes utility models; patents, industrial designs, trademarks for goods and services, topographies of integrated circuits as well as the legal protection on databases and the protection against unfair competition are examples of intellectual property rights.  

The EPA is about liberalizing everything apart from Intellectual Property rights. Critics think that it is the case of threatening the monopoly of those who already have it. The acquisition of technology and the transfer of technology virtually become impossible. According to the Third World Network, the EPAs are not liberalizing intellectual property rights because of the EU’s desire to safeguard the monopoly of technology and allowing intellectual property owners to continue to get dividends from their patents.  

It is interesting to note that studies by the WTO (2011) indicates that TRIPs in the pharmaceutical industries generates up to 19 billion US dollars, representing the amount of license fees generated by Western patent holders from the developing world by way of licensing. The EPA is therefore criticized for being a tool to be used by European countries protect their pharmaceutical companies so that they could continue to generate the billions of dollars from license fees. But the fact remains that the EPA will benefit only Western patent holders if Ghana’s or Africa’s pharmaceutical industries do not take advantage of the
agreement to come up with intellectual initiatives, resulting from ground-breaking scientific research projects.

### 2.3.3 Trade and Investment

Under Article 75 of the CPA, the EU and the ACP states commit themselves to take measures to encourage private investment, to encourage the EU private sector to invest and to provide special assistance to its negotiating ACP counterparts by means of partnerships and joint ventures, and to help the ACP states to attract financing most essentially on private financing, for infrastructure investments and infrastructure that could generate revenue for the private sector. They commit themselves also to create and maintain a predictable and secure investment climate and also enter into negotiation on agreement which will better such climate. The joint ventures would, for instance, help develop local firms implying, therefore, that contrary to the widely-held view that the EPAs would deplete local industries, it may rather help diversify and expand local industries by way of partnerships involving EU companies.

### 2.3.4 Standardization and Certification

On the part of standardization and certification relating to the EPAs, the parties commit to cooperate more closely in the field and to do away with unnecessary technical barriers as well as reduce differences between them in order to facilitate trade. With respect to sanitary and phytosanitary measures, each party is expected to enforce measures aiming at protecting human, animal or plant life or health. Moreover, the EPAs take into consideration consumer policy and consumer health protection with due consideration to domestic legislation to avoid barriers to trade.
The consideration of sanitary and phytosanitary measures under the EPAs are very important in light of the debilitating consequences that may accompany certain practices by certain European producers (relating to the use of certain harmful pesticides) and even companies. Such measures are usually useful with regards to agricultural produce. The EPA negotiators on the West Africa side are, in effect, using the agreement as a means to curtailing the adverse effects of some practices on the continent’s ecosystem and agriculture.

2.3.5 Government Procurement

Government procurement may be considered as the most intrusive among the ‘Singapore issues’. Members are required to be transparent on a number of disciplines including means of announcing tender and tendering itself. Discrimination in procurement in most instances is undertaken by countries as a result of industrial policy goals, non-economic objectives and national security considerations. Developing countries have come under constant pressure to avoid discrimination with regards to multilateral disciplines when allocating state contracts. At Singapore in 19996, it was agreed to constitute a Working Group tasked with studying transparency in government procurement practices and also come up with “elements for inclusion in an appropriate agreement.”

The liberalization of procurement policy would definitely come with its own problems. Considering the relatively weak capacity of local firms, the coming into force of the EPA may make it almost impossible for them to compete effectively with their European counterparts for Government procurement contracts.
2.3.6 Special and Differential Treatment

Among the several conceptual arguments underpinning the provision of Special and Differential treatment as stipulated in the WTO agreement is the level of development in developing countries. The latter are at a disadvantage in their participation in international trade; hence any multilateral agreement between developed and developing countries must consider the weaknesses of the latter by stating clearly their rights and responsibilities. Developing countries are of the view that there is the need for flexibilities in numerous SDT provisions most especially non-reciprocity and enabling clause as the two economies are not be placed under the same trade rules. In this regard, it is expected that the EPAs which in a holistic view, consider same level playing field for both parties, would make provisions for flexibility of rules taking into accounts the disparities that exist between the EU and the West African region in the negotiation process.

2.4 EPAs and Regional Economic Communities (RECs)

The EPAs are being negotiated by the European Commission on behalf of the European Union, with six groups of ACP countries. Four of the six groups consist of African states. These RECs include ECOWAS, Eastern and Southern Africa (ESA), Southern African Development Community (SADC) and Central African Economic and Monetary Community (CEMAC). The remaining two groups consist of countries in the Caribbean and Pacific regions. As it became clear that a multilateral deal was impossible to arrive at by the end of 2007, negotiations of the EPAs with the various RECs was seen as the best alternative in order to ensure a new, legally secure trade regime in place by 1st January 2008. The Caribbean region has concluded a comprehensive EPA with the EU and a series of WTO-compatible interim arrangements are also being initialled by other ACP regions. Negotiation of the EPAs between the various regional bodies and the EU has been characterized by
technicalities and complexities. Hence they face a number of setbacks in their negotiation process.

2.5 ECOWAS Region and EU EPAs

The West African region is made up of Mauritania and fifteen (15) members of ECOWAS. The West Africa region which is part of the ACP Group has since 6 October, 2003, engaged in negotiations with the EU to finalize an EPA. The Authority of Heads of States and Government negotiate the EPAs on behalf of ECOWAS member states based on Decision A/DEC.11/12/01. Twelve out of the fifteen members of ECOWAS are Least Developed Countries (LDCs) and are beneficiaries of the ‘Everything but Arms’ (EBAs) initiative of the EU. The EBAs are duty free and quota free access given to all LDCs for their exports to the EU excluding arms and armaments. The LDCs will continue to enjoy the same preferential access to the EU markets even after a comprehensive EPA has been signed. The remaining three (3) members of ECOWAS are described as developing countries; they include Ghana, Cote d’Ivoire and Nigeria. These 3 countries are faced with the threat of losing improved access to the EU in the event where they fail to conclude an iEPA.30

On 5th October, 2007, in Abidjan, an extraordinary meeting of the Ministerial Monitoring Committee was held by all member states of ECOWAS to review the negotiation process. The Committee observed that the targets drawn could not be met as planned for the EPAs to be concluded by 31st December, 2007, and hence its implementation from 1st January 2008.31 A number of objectives were set out for the negotiations of the EPAs, these objectives include cooperation on trade related issues, the gradual creation of a free trade area compatible with WTO rules between EU and ECOWAS covering a 12 year period commencing 1st January 2008, the need to give priority to development issues and poverty
reduction, deepening the integration process in West Africa, capacity building and upgrading, improving market access for West African exports as well as improving competitiveness. In accordance with Article 37(4) of the Cotonou Agreement, a mid-term review of negotiations was undertaken and resulted in the extension of the EPAs negotiations beyond 31st December 2007. Article 37 (4) stipulates that “the parties will regularly review the progress of the preparations and negotiations, and will in 2006 carry out a formal and comprehensive review of the arrangements planned for all countries so that no further time is needed for preparations or negotiations.”

In 2008, four meetings were held between West Africa and the EC regarding the EPA process. These meetings include the Contact Group Meeting in Ouagadougou in March 2008, the West Africa-EU Technical Negotiation Meeting in April 2008, the technical negotiation meeting and senior officials meeting in Abuja in June 2008 and the technical negotiation meeting in Brussels in July 2008. The meetings stressed on such issues as trade partnership for sustainable development, trade policy and trade related issues covering customs duty, trade promotion instruments, other non-trade barriers, trade facilitation and administrative cooperation as well as agricultural and fishing.

Although a lot of progress has been made concerning the negotiation of the text of the agreement as at 2009, there exists an array of divergent issues that need to be ironed out. These divergences include the EC subsidies, the treatment to be accorded to community levies, the MFN clause, the non-execution clause, the firm commitment of the EU to paying the inherent costs of implementation of EPA Development Programme (EPADP) and maintaining support to the EPA after the expiration of the Cotonou Agreement. Much emphasis was placed on the EPADP by the West Africa region in order to bring the needed
development in the region. The EPADP include among other things, the diversification and expansion of the production capacity and the establishment of an EPA monitoring evaluation mechanism.\textsuperscript{34}

The original time limit of June 2009 set by members of ECOWAS to conclude an EPA with the EU was extended to October 2009 in order to address a number of contentious issues. The 2009 deadline could not also be materialized. One of the areas of disagreement between the two parties is trade liberalization pertaining to market access. The EU offered 100\% tariff liberation on substantially all trade on its market. It expects the ACP regions including ECOWAS, to liberalize their trade at least 80\% over 15 years. For the ECOWAS group, it is prepared to concede 70\% liberalization of its market to the EU within a transitional period of 25 years. The EC judged this as insufficient. Other conflicting issues have to do with the MFN clause, the Non-Execution clause, the Rules of Origin (RoO), issues of subsidies, the Enabling clause etc. Under the terms of the MFN clause, West Africa is expected to extend more beneficial trade preferences to the EU, which the region would offer major trading partners in future trade agreements. The request by the EU mainly refers to emerging economics like China, Brazil, and Republic of Korea, Singapore and Argentina with the exception of African countries and other members of the ACP group. The EU also stressed on how to deal with issues such as services, investment and intellectual property. ECOWAS objected this clause citing among other things that the concept of ‘major trading partners’ is not a concept that has been adopted by the WTO.\textsuperscript{35}

The Non-Execution clause was proposed by the EU by virtue of Articles 96 and 97 of the Cotonou Agreement, which established the mechanism for political dialogue. The EU negotiators had argued that the inclusion of such a clause in the Agreement was one of the
requirements of the Union. By means of this mechanism, the EU could resort to the suspension of cooperation on grounds of non-compliance with human rights, the rule of law, and bad governance. Such a sanction which the EU could apply against any country would inevitably have repercussions on the entire region as the EPA places much emphasis on integration of the region as a single customs area. West Africa objected to such a clause being included in the EPA as the region always believed that the political aspect of the ACP-EU partnership have been settled in the relevant provisions of the Cotonou Agreement.\textsuperscript{36}

One area that impedes the validation of the EPAs has to do with the EPADP. West Africa has embraced this programme with a view of making EPA a veritable development instrument. Heads of States of West Africa and the European commission as well as states and non-state actors in the region participated in this developmental initiative in January 2008. The priority activities identified required funding in the amount of 9.5 billion euros over a five year period. The Heads of States of ECOWAS has made the EPADP a prerequisite for the conclusion of the EPA. The EU by committing itself to provide West Africa with 6.5 billion Euros over 5 years has made no effort to this effect.\textsuperscript{37}

Negotiators of both blocs have made a head way in the negotiation process. This is no little achievement considering the disparity of situation among West African countries. Countries like Ghana and Cote d'Ivoire needed the EPAs in order to keep their preferential market access to the EU whilst others like Nigeria and Senegal were not dependent on it. Conciliation has been arrived at by both parties on a number of conflicting issues that had obstructed earlier rounds of negotiations. In order to be compatible with WTO rules, the EC has agreed on a deal of 75% trade liberalization offered by ECOWAS over 20 years and has also agreed to halt all subsidies relating to export to the West African region. On the part of
West Africa, the region has accepted the controversial MFN clause. The non-execution clause however has not been included. With respect to the EPADP financing, the 6.5 billion Euros initially agreed upon remains the same for the period 2015-19.\(^{38}\)

On 30\(^{th}\) March 2014, leaders of ECOWAS met in Yamoussoukro in Cote d’Ivoire to endorse the conclusion of the EPA negotiations with the EU. They have in principle endorsed the negotiation process but still maintained that there were thorny issues which needed to be addressed. Nigeria for instance had cited very important issues in the EPA negotiations. Among them are the problem of the Common External tariff status of ECOWAS, the issue about the 12 LDCs within ECOWAS and details about tariff reduction. In the light of this, a Committee made up of Cote d’Ivoire, Ghana, Nigeria and Senegal was constituted to re-look and address the outstanding issues and draft a proposal to be submitted to the leaders for consideration.\(^{39}\)

The ECOWAS Heads of State and Government, at their Forty-fifth Ordinary Session, held in Accra on 10 July, 2014, welcomed the work done by the Ad hoc Committee and the recommendations provided thereto. Based on consensus reached by the chief negotiators on various conflicting issues raised, the leaders of ECOWAS decisively approved the EPA negotiated taking into consideration the technical concerns highlighted previously. In view of this, ECOWAS chief negotiators were asked to speed up the process of signing and implementing the Agreement.\(^{40}\)

2.6 **Interim Economic Partnership Agreements (IEPAs)**

In the run-up to the December 2007 deadline for the WTO waiver on preferential treatment system of trade between the ACP group and the EU, the latter gave admittance that there was
limited time left to reach a comprehensive EPAs. In the light of this, the EU suggested the initialling of iEPAs with all six ACP regions especially West Africa in order to permit the region have continuous market access to the EU after 2007. With the exception of the Caribbean countries which were able to conclude a full EPA covering trade in goods and services and other related rules and development cooperation, negotiations in the African regions and the Pacific only lead to interim agreements. Only 18 African states (comprising some LDCs and most non-LDCs) and 2 Pacific states had initialled interim EPAs as at December 2007. The interim agreements are meant to provide duty - free quota and free market access for almost all exports originating from the ACP to the EU. In Africa, the EPAs differ from region to region with regards to the text of the agreement. In West Africa only 2 countries namely Cote d'Ivoire and Ghana have initialled the interim EPAs with different texts and with distinct liberalization commitments.41 The iEPAs are characterized by peculiar features and provisions on goods, trade liberalization, dispute settlement mechanisms just to mention a few. The provisions on trade for instance consist of duty free quota free access to EU markets for all imports from Cote d'Ivoire and Ghana. It also provides for an asymmetric and gradual liberalization of the latter’s markets to the EU goods with due consideration to differences in the level of development between and the EU and ACP states.42

Although some ACP countries have, without many questions, initialled the stepping stone agreement, several other ACP countries have argued for a re-look at some of the contentious issues43 in the agreement. From the ACP point of view, the various contentious issues have immense economic and political effects on their development. At a meeting in Addis Ababa in April 2008, the Ministers of Trade and Finance of the African Union unravelled a number issues considered to be critical to the development of the continent. Prominent among these issues are the definition of ‘substantially all trade’, transitional period for tariff liberalization,
export taxes, infant industries and a host of other issues. The EU has constantly promised to address the concerns raised by the ACP group of states as this is evidenced by early expressions undertaken by EC President Jose Barroso at a joint EU-Africa meeting held in Lisbon in December 2007.⁴⁴
Endnotes

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13 Articles 20 and 55 of Cotonou Agreement concluded between EC and ACP States, 23 June 2000.
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15 Article 34 of Cotonou Agreement concluded between EC and ACP States, 23June, 2000
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20 Ibid, p.39
21 Article 45 of Cotonou Agreement concluded between EC and ACP States, 23 June 2000.
22 Article 46 of Cotonou Agreement concluded between EC and ACP States, 23 June 2000.
23 Interview granted by the Third World Network to the Researcher on 7th August, 2014
24 Ibid.
33 Ibid., pp. 94-95.
37 Asante, S.K.B., op. cit., p. 95.
39 44th Ordinary Summit of the Authority of Heads of State and Government of ECOWAS, 30th March 2014, Yamoussoukro.
43 The issues of Stand Still, MFN, RoO, CET and a host of others have triggered a lot of discussions as to its wording in the text or its implementation challenges. It is expected that the EU party and the ECOWAS region will reach a consensus as to how best to recapture these issues towards an easy implementation of the agreement.
CHAPTER THREE
GHANA AND THE EPAs

3.1 Background

The EU is a major trading partner of Ghana. This has been the case for several years now and sufficiently explains why Ghana is so keen on helping consolidate structures that would propel the trading relations with traditional EU partners - the United Kingdom, Germany, France and Spain - forward. In the case of the latter, Ghana is now the sixth largest destination of Spanish exports to Africa and also Spain is home to many Ghanaian exports, ranging from frozen fish and crude palm kernel to cocoa beans. Trade with the UK is even more encouraging as it reached almost GH¢2 billion in 2012. In 2006, Ghanaian imports from and exports to the EU zone amounted to nearly US$2.3 billion and US$1.3 billion respectively. The growing relations between Ghana and the EU was largely due to the fact that the country was taking advantage of the duty free quota and free access to the EU market due to the Cotonou Agreement to export more agricultural produce to countries within the EU zone. Of course, the proclivity of Ghanaian firms to import from Europe rather than produce and export also account for the increasing trade relations, illustrated by the figures above.

Between 2001 and 2008 John Kufour-led administration saw the need for the right steps to be taken towards consolidating Ghana’s preferential access to the EU market and thus entered into negotiations with the EU side. This culminated in the initialling of an interim EPA in December 2007. Ghana’s decision to initial the iEPA came at a time when the negotiations towards a regional EPA was 5 years old without any real progress or prospects of conclusion. In one
breadth the decision represented Ghana’s frustration at the sluggish pace of regional Economic EPA negotiations. In another breadth it expressed the fear that non-LDCs may soon be discontinued from enjoying the opportunities offered by the EU’s GSP system. The decision to initial the iEPA soon became an overture for lots of discussions in Ghana on the whole idea of partnership between Africa and the EU without much regard to the fact that the several years of WTO-incompatible trade relations between Africa and the EU was seriously challenged and had to be revised.

It is very worthy of note that the discussions that have gone on, especially in the aftermath of the initiallning of the EPA and in the wake of the imminent conclusion of the ECOWAS-EU EPA have been very general – the Agreement has been lampooned by some CSOs and praised by some others based on data that is not very peculiar to Ghana’s economy but to Africa at large. This chapter therefore recounts the various arguments and counter arguments relating to the EPA and, while advocating for an EPA regime, looks at the specific case of Ghana with the aid of responses gathered from various stakeholders of the Agreement. The study admits the possible negative consequences of the EPAs but nevertheless favours the move towards concluding the Partnership Agreements.

3.2 The EPA and Its Contentious Issues

The EPA generally seeks to promote the existing trade relations among the member countries of ECOWAS and the EU. As clearly spelt out in article 1(1) of the EPA draft text\textsuperscript{1}, the Agreement between West Africa and the EU seeks to achieve the following objectives:
a) to establish an economic and trade partnership designed to bring about swift, sustained, job-creating economic growth, to reduce and eventually eradicate poverty, to raise living standards, to bring about full employment, to diversify economies and to increase real income and production in a way which is compatible with the West Africa region's needs and which takes into account the Parties' differing levels of economic development;
b) to foster regional integration, economic cooperation and good economic governance in the West Africa region;
c) to increase intra-regional trade and to foster the establishment of a unified and efficient regional market in West Africa;
d) to promote the gradual and harmonious integration of the West Africa region into the global economy, in accordance with its political choices, priorities and development strategies;
e) to strengthen the economic and trade relations between the Parties on a basis of solidarity and mutual interests, in accordance with WTO requirements and taking into account the major competitiveness differential between the two regions.

Although the EU has accepted to help achieve these objectives, incorporating the ‘principles of progressiveness, flexibility and asymmetry’ into the trade liberalization process, to the advantage of the West African region” 2 certain components or clauses of the yet-to-be-signed Agreement have cast doubts over the good intentions behind the interest of the EU in the sub-region. These issues have mainly resulted in the rather delayed conclusion of the Agreement and have been responsible for criticisms of the stepping stone EPAs initialled by 18 African countries. At a meeting in Addis Ababa in April 2008, the Ministers of Trade and Finance of the
African Union identified a list of 9 issues\textsuperscript{3} considered critical to development-oriented EPAs in the interim agreements. Some of these contentious issues include:

- the definition of ‘substantially all trade’, setting out the level of tariff liberalisation
- required by ACP countries (covered in section 2.1 below)
- transitional periods for tariff liberalisation
- infant industries
- the MFN clause
- the ‘non-execution’ clause (which provides for the possibility of trade sanctions in the event of violations of democratic or human rights principles).

In addition to the AU list, negotiators in Africa and elsewhere have also separately highlighted two more issues of importance in the texts: rules of origin reform and the ‘standstill’ clause in goods, which prohibits any increase in tariffs once agreements enter into force. Beyond issues related solely to trade in goods, there have also been some long-standing concerns about making new commitments in the EPAs in services and investment, and in trade-related areas such as intellectual property.\textsuperscript{4} These contentious issues have been analysed in the ensuing paragraphs

3.2.1 ‘Substantially all trade’ Definition and Transition Periods for Tariff Liberalization

Free trade agreements are often expected to eliminate tariffs on all products in various phases determined by the parties. Practically, however, various countries are still inclined to some reasonable amount of protectionism, especially of very sensitive and important industries. The term ‘substantially all trade’ is a notable element of WTO rules and thus influenced negotiations between the EU and ECOWAS as the two parties tried to figure out the maximum percentage of
imports that could enjoy duty-free quota-free access. The difficulty in determining the rate of access and transition period of the access was of course compounded by the fact that ‘substantially has never been defined by the WTO’.5

The understanding on the Interpretation of Article XXIV of GATT 1994 provides that a ‘reasonable length of time’ should exceed 10 years only in ‘exceptional cases’, but the term ‘exceptional cases’ is undefined. Negotiations in the EPAs on the issue therefore centred on differing interpretations of what was required to comply with Article XXIV. The CPA contains a number of provisions giving guidance on the WTO compatibility of EPAs. Article 37.7 states that EPA negotiations would be ‘as flexible as possible in establishing the duration of a sufficient transitional period, the final product coverage, taking into account sensitive sectors, and the degree of asymmetry in the timetable for dismantling tariffs’. Furthermore, in article 37.8 both sides committed to working together in the WTO to defend the arrangements reached, in particular with regard to the degree of flexibility available, whilst later agreeing in article 39.3 on the importance of flexibility in WTO rules to take into account the ACP’s level of development.6

3.2.2 Rules of Origin (RoR)

The principle of RoO happens to be one of the major principles of the EPA. The Agreement indicates that the market access offer would only apply where goods coming from one party are actually originating in that party. In that regard, the parties reserve the right, under the Partnership Agreement, to impose tariffs on goods which they know are largely made of materials that are not from the country from where the goods are being imported. In the iEPAs Ghana, for instance, agreed with the EU to place the RoO at 85%, implying that products which
had 85% of its materials originating from the two sides qualified for preferential treatment. With regards to the EPAs however, the issue of RoO has become so contentious that the two parties are yet to arrive at a particular decision as to the desired rate.

The difficulty with regards to RoO also includes the problem of implementation since West African countries may not have the appropriate technology to determine the content of imported goods. The Europe side is far advanced in this respect.

In addition to the fact that Ghana would be losing some revenue in an EPA regime the country may even lose more by being unable to properly access imports from the EU. Hence imports which could have attracted tariffs maybe left untaxed simply because the RoO of the imports has not been well determined.

In an interview with an official of the Association of Ghanaian Industries, Ghana lacks the required technology to be able to detect, if a product is indeed coming from the EU, since, for example China’s products can pass through Europe and to Africa. To bridge this gap, part of the EDF (£ 6, 5 billion) would be used to cater for this inequality. In the same vein RoR according to an official of the GAWU of the TUC, is not within our control, they are flexible enough to allow plenty of leverage.

3.2.3 MFN

The MFN clause is another very important and possibly controversial principle of the EPA. By the clause (as it stands now) the EU and ECOWAS have agreed to extend to each other gestures they may, in the future, extend to other parties which may be deemed to be better than those
provided in the Agreement. It is stated in the draft text that the “EU party shall grant the West Africa party any most favorable tariff treatment that it shall offer to a third party if the EU Party becomes part of a preferential Agreement with this third party after the initialing of this Agreement”. Due to this clause, the West Africa side may not be so worried that the EU may later give preferential treatment to another group to the detriment of goods emerging from ECOWAS members to the EU in the aftermath of the signing and ratification of the Agreement. The reason is that in such a case the West African countries would simply request to benefit from that preferential treatment which they believe is superior to what they enjoy under the EPA.

In order not to strain intra-African trade and possibly South-South trade, the EU has agreed that preferential treatment may be granted by the ECOWAS region to some countries in Africa and members of the South-South cooperation provided they are not very industrialized. Hence, the coming into force of this Agreement may curtail the trading relations between this part of Africa and China, India or Brazil which happen to be the fastest growing economies in the South. These countries (China, India and Brazil) represent real trade forces in the South, and thus constitute the building blocks of South-South cooperation). The clause may therefore reduce the already low trade relations between the three countries and their counterparts in West Africa.

In a nutshell, the insertion of an MFN clause into the EPAs is believed to a significant attempt by the EU to overturn the past ‘preferences’ accorded to the ACP in favour of a preferential positioning for the EU in relation to all the countries and regions of the South. In demanding that any terms agreed between countries/regions of the South be extended also to the EU, Brussels is actively intervening to prevent the emergence of alternative inter-regional
developmental arrangements between these countries. But South-South cooperation ought to be an alternative for Ghana. Considering the growing prominence of China and Brazil in world trade, south-south cooperation, which Ghana’s first president, Dr. Kwame Nkrumah vehemently supported and promoted in the 1950s, is even more relevant for the development of Ghana in contemporary times. As it stands now, the EPAs may deny Ghana such an opportunity to reap benefits from South-South cooperation.

3.2.4 Standstill

Article 9 of the draft Agreement is dedicated to the issue of ‘standstill’, which happens to be one of those issues which have triggered a lot of buzz on the side of CSOs in Africa. By the standstill clause, ‘no new customs duties on imports shall be introduced on the products covered by liberalization between the Parties, nor shall those currently applied be increased from the date of entry into force of this Agreement’. Paragraph 2 of the same article, however, allows for, in connection with the finalization of the implementation of the ECOWAS common external tariff, a review of the West African region’s basic custom duties on goods originating in the EU until 31st December, 2014.

Although the West African side may wish that the standstill clause is expunged from the Agreement, it must be mentioned that the EU has always favoured the addition of such clauses to all its agreements like those trade arrangements with CARIFORUM, SADC and the Pacific area. The EU has time and again argued that the whole purpose of EPAs was to liberalize trade, and any flexibility that allowed tariffs to rise after the agreements were signed would be going against that vision. The negotiators representing the region even deserve commendation on
account of their success in finally getting the EU side to agree to the proposition that the standstill clause would only affect goods that would be subject to liberalization. In trade agreements between the EU and some other regions, standstill clauses still apply even if a product is excluded from liberalization.

The implication of the clause for Ghana maybe negative in view of the fact that the country would not be able to, upon consideration of changing trends, upwardly adjust tariffs on goods emerging from the EU zone. The country would, however, still have the right to review taxes on services from the European partners. In effect, Ghana would only be at standstill with regards to trade in goods and not in services in an EPA regime. This should not be viewed only in the negative sense because the clause also prevents the EU side from unnecessary adjustments of tariffs on goods originating from Ghana and other West African countries when the agreement is in effect.

3.3 Cost-Benefit Analysis of an EPA Regime for Ghana

At the 45th Ordinary session of the Authority of ECOWAS Heads of State and Government summit held on the 10th July, 2014 in Accra, the Heads of State and Government endorsed the EPA negotiation after taking due account of the technical concerns raised earlier by Nigeria and results reached by the Chief Negotiators on all issues, particularly on the market access offer, the EPADP and the text of the Agreement. This action, nevertheless, does not mean a conclusion of discussions on the justification of the Agreement as well as the cost and the benefits expected to accrue from the EPAs. The discourse is necessary to determine whether Ghana and the
ECOWAS countries have a reason to sign and ratify or not. It may also trigger questions which, if answered, could lead to initiatives that would help implement the EPAs better.

### 3.4 Justification of EPAs

The West Africa market access offer of 75% with a five year moratorium and transitional period of 20 years is better than the Ghana iEPA offer of 80% with a transitional period of 15 years. In addition, other clauses in the current West Africa EPA, including Rules of Origin (RoO), MFN, non-execution and agricultural subsidies favour Ghana more than what is in the Ghana iEPA.

The trade defence measures in Articles 20 (Anti-dumping and countervailing measures), Article 21 (Multilateral safeguards measures) and Article 22 (Bilateral safeguard measures) in the EPA give West African countries enough flexibility to provide temporary protection and cover the adjustment costs without compromising the EPA as a whole.

Furthermore, Article 109 has provisions for denunciation of the EPA six months after the notification to the EU should the need arise whilst Article 111 provides the possibility of review every 5 years. No agreement is perfect and the EPA has carefully been negotiated to derive maximum benefits from it and minimize any negative impact.

The non-traditional export sector is an emerging sector in the Ghanaian economy with great potential for growth and expansion. The threat to the sector is not to sign a successor EPA that guarantees the tariff-free access to the EU market under the interim EPA. The expiration and non-replacement of the Ghana interim EPA by 1st October, 2014 with the EPA would move
Ghana from current iEPA regime to the Generalized System of Preferences (GSP) regime, which is applied to all developing countries. The terms of the GSP are less favourable than Cotonou, with additional tariffs on horticultural products and processed cocoa among other things. These very products form a substantial proportion of non-traditional exports from Ghana. Ghana’s exports to the EU are about 50% of annual total exports. Therefore, the treat was not limited to operators in the sector but also to the very strategy of export-led worth that Ghana aspires to utilize in the quest for economic prosperity.

Although 12 LDCs out of the 16 countries in the West African region have “Everything but Arms (EBA) to export Duty Free Quota Free to the EU, they have agreed to sign the West Africa EPA in order to move the ECOWAS regional integration forward. Cote d’Ivoire had already signed an interim EPA with the EU and as a result will not experience any export disruption to the EU market even if the WA-EU EPA is not signed before 1st October, 2014. About 97% of exports from Nigeria to the EU are made up of crude oil. Therefore, Nigeria would not be affected much if it does not sign the West Africa EPA. Cape Verde has expressed its willingness to sign the West Africa EPA. Ghana will undermine the process of regional integration in the West African sub-region if it fails to sign the West Africa EPA.

Ghana will be the only country in West Africa whose exporters will be greatly hit if it does not sign the West Africa EPA. The adoption o the EPA is therefore crucial to ensure that Ghana’s exports to the EU are not disrupted from 1st January 2015.
3.5 Options Considered

i. Reject the West Africa EPA and go for the GSP available to all developing countries and set up a solidarity fund with no reliable sustainable source of funding to address current and emerging financing challenges of export companies who will be negatively affected as a result of Ghana not signing the EPA.

ii. Implement a lot of international Agreements to qualify and apply for GSP+ which is likely to be rejected by the same EU as happened to Nigeria in 2008.

iii. Sign the WA-EU EPA which is better than the iEPA.

An analysis of the three options revealed that option 3 (sign WA-EU EPA), will effectively guarantee the tariff access to the EU market and development assistance. Some products that are going to the EU are tax free (zero). For example, no tax is imposed on tuna when it is entering the EU market, but if the region opts for GSP, the tuna from Ghana is going to be taxed 20.5%, cocoa and others will increase to 19 +%. In this regard, with GSP rather than EPA, Ghana’s products will be facing stiff competition at the EU markets. Again, if EPAs are not signed, some EU companies like Blue Skies and Cargill may relocate. GSP+ should therefore not be the preferred option.10

3.6 Impact Analysis

The Trade Ministry of Ghana has time and again stated the fact that 40% of the goods from the EU including equipment and machineries earmarked for liberalization enter Ghana duty free so in reality only 35% of imports are to be liberalized during the 20 year transitional period.
i. Government Revenue

The EPAs is mainly aimed at reducing bottlenecks, especially tariffs from the trade between EU and ECOWAS members. This caused lots of discussions in the last decade of the EPA negotiations - many stakeholders have argued that an EPA regime would deplete the revenue the Ghana government realizes from tariffs placed on imports and export duties. Interviews conducted during the research revealed that many of the key Ghanaian stakeholders of the EPAs are concerned about the possible impact of the Agreement on the revenue that normally accrued from import tariffs.

The AGI has in recent times expressed support for the EPAs but has also acknowledged the potential of Ghana’s revenue from tariffs to reduce in an EPA regime. According to the Ministry of Trade and Industry, once Ghana is allowing / opening its market to the EU, some of the EU products that used to be taxed would no longer be taxed again, implying that the government is going to lose revenue.

The concern normally raised when the question of revenue is raised is the precise amount of revenue that is expected to be lost as a result of the signing of an EPA. The government is not always precise about its own figures as to how much it loses. The Third World Network suggests that without EPA Ghana will lose up to $51million a year and when we sign, we will be losing up to $357million a year on trade taxes. How these figures are generated is yet to be made clear by the Third World Network which has consistently argued against the EPAs, even after a number of adjustments to the original texts in the course of the ten-year long negotiations.
The World Bank’s Partial Equilibrium Model (TRIST) impact studies conducted show that there would be a moderate increase in total imports, a reorientation of trade towards the EU, mainly at the expense of the rest of the world. The increase in imports from EU countries would normally increase government revenue through import tariffs on the goods and services flowing from into the country. However, due to the terms of the EPAs, the increase in imports, as predicted by the World Bank, would not necessarily lead to an increase in government revenue. In fact, the EPAs would indeed reduce the revenue that normally accrues from tariffs on certain imported EU goods. It is, in that regard, predicted that by 2035, government revenue losses would slightly increase. However, the government has argued that the increase in revenue from the ECOWAS Common External Tariff (CET) would compensate for the losses from the EPA.

ii. Agriculture sector

To protect the agricultural sector against devastation and not impoverish farmers, all agricultural produce and agro-processed products would be excluded under the 25% exemption of goods from any tariff liberalization. Moreover, the EU has agreed to refrain from using export subsidies for farm goods exported to West African markets. More sensitive and special products from other sectors would also be protected under the 25% exemption of goods from any tariff liberalization. This is supposed to allay the fears that the EPAs would destroy the agriculture sector. Stakeholders like the GAWU have, without regard for the explanation of the government, indicated that the EPAs would undermine agricultural sector because of the influx of cheap/subsidized agricultural produce as well as agro-processed food items. Liberalization of trade in goods, according to GAWU, disadvantages Ghana and threatens to undermine our production base especially industry and Agriculture.
iii. Consumers

With regard to the effect of the EPA on consumers, it will benefit Ghanaian consumers due to lower consumer prices, although the impact is not very strong. Consumers would also get the benefit of having access to many products which local producers may be unable to provide.

iv. Local firms

On the EPA effects on firms, the first phase of EPA application should be positive for the vast majority of companies, and very little loss will be recorded. During the second phase about a third of manufacturing firms may experience a decline in their profits.\textsuperscript{16} Most companies will continue to benefit from the EPA, and those who will suffer from competition will nevertheless continue to be profitable.

On possible failure and demise of local enterprises unable to compete against cheaper imports from the EU, EPA accompanying measures would have to be put in place to address this concern from the five-year grace period provided before dismantling of tariffs. Local enterprises ought to be (and the government has recognized this) supported to use this opportunity to enhance their capacity in order to improve their competitiveness or ability to diversify. This would go a long way to minimize loss of jobs associated with local enterprises.

On the possible impact of the EPAs on local industries, AGI alludes that it’s about whether local industries will be able to compete effectively taking into accounts the higher standards of European products and packaging of their products. The fear of AGI is that, when Ghana opens up its market, it will be flooded with European products.\textsuperscript{17}
Considering the facilities (e.g. technology), and government support European companies get, it is indeed worrying for local Ghanaian firms in the aftermath of the coming into force of the Partnership Agreement. The GAWU and other associations with small scale entrepreneurs are, therefore, on point when they say that the EPAs may deplete local industries. Nevertheless, it must be mentioned that the EPAs also have opportunities that could be taken advantage of by Ghanaian local industries. The firms, including the pharmaceuticals which have been normally cited as the areas to be affected, can benefit from the relatively advanced technology of their European counterparts. The EPAs may also lessen the bottlenecks that often prevent Ghanaian firms from successfully entering into joint venture agreements with the foreign companies.

v. Government Procurement

The EPA has also being criticized as having the potential to negatively affect government procurement. According to GAWU when procurement policy is liberalised, Ghana will do itself a lot of harm as Government procurement may be used to leverage the economy and sectors/sub-sectors of the economy. The Third World Network also maintains that since any purchase or economic transaction that involves public funding is a source of public procurement contract, the EPA regime would make it possible for EU companies to compete for government procurement contracts.

vi. Regional Integration Process

The eventual formation of an African Economic Community (AEC), as vividly captured in the 1991 AEC Treaty depends very much on RECs. In a statement by AU Ministers of Trade in April 2006, the RECs were asked to act as “building blocs for the AEC, to ensure that economic
partnership agreements with the EU do not constitute any obstacles to the coordination and harmonization of their programmes and activities, including for the progressive formation amongst themselves of free trade areas and customs unions on a priority basis and ahead of any similar agreements with the EC.”

In that regard, African governments have long been formally committed to regional and continental cooperation as part of processes towards deeper economic and eventual political integration within the continental African Union. They have long argued the strategic rationale and imperatives for developmental regional integration in Africa.

The EPA that the EU is determined to achieve with 79 ACP countries have been viewed to pose threats to the regional integration process. According to the Transnational Institute, “the very logic, the planning and potential of developmental regional integration is directly threatened by the contradictory pressures that will be exerted by EPA trade liberalization and ‘trade-related’ investment and services, government procurement, competition policy and other ‘new generation’ terms.”

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**Box 1: Interview with Policy Analyst of the Third World Network**

Trade liberalization is the dominant form of regional integration in West Africa. It focuses on the removal of trade barriers. If we want development, we should be aiming at integration of different factor market and different sectors, this creates a self-sustaining value chain which enhances every body’s productivity.

Whichever way we look at the EPAs, it will have impact on regional integration.
1. It will strengthen the trade led market integration which is already under way.

2. It will strengthen the integration through the European mechanism; which means that the Europeans are going to be the only dominant people who will have a coherent and integrated entry and treatment in the region but not us.

3. Because it is integrating markets as opposed to production, it will not help us. It will be easier for the EU in the sense that the Europeans can make more money because their products can enter into the market and go everywhere free. They can relocate anytime they want from one sector to the other (cost free).

Definitely, the EPAs will have impact on regional integration in that it will integrate the market for European companies; it will also weaken the production linkages between different West African countries. On the contrary the different WA countries will act as trade entrepots for the European goods.

It will have effects on the autonomy and coherence of the regional integration agenda. However poor or underdeveloped or contradictory the regional integration agenda may seems to be, it is still our own and we can change it tomorrow. The EPA will no longer allow us that freedom because a lot of what we are going to do is based on joint approval, joint implementation, joint financing, joint decision making etc. for example, CET is locked into the EPA and we can only change our stands on it in consultation with the EU.

The viability of the regional integration institutions will be compromised as a result of the EPAs. For example, there will be freeze on all tariffs, stand stills etc. the few tariffs that are left cannot be increased by us. It is out of those tariffs and the incremental …. ECOWAS is funded. If we freeze tariffs, we are reducing the portion of ECOWAS LEFT,
if we stand still and eliminate it, we make it impossible for ECOWAS to grow. The institutions cannot be self-financing anymore hence we are going to be more dependent on external donors.

In the case of the EPA, there is going to be an EPA development Fund which is co-managed, co-determined etc with the external donors. Adjustment has its own cost for us. With this fund, WA is going to contribute towards it and part of the contribution will include domestic reforms, for example, indirect taxes, VAT etc.

The EPA has impact on Regional Integration in the sense that it is an anti-production transformation in the economic sense of view. It is trade-led that consolidates the regional market for the benefit of the European Union as opposed to us. Our policy space (CET) is compromised, thus we will no longer have the autonomy as a region.

Economies that are not fully diversified possess sectors that are not integrated.

A lot more studies have been conducted to assess the possible impact of the EPAs, when signed and ratified, on the regional integration of ECOWAS. One of such studies by the Transnational Institute also supports arguments that the regional integration process in the sub-region and in the continent would be threatened by the introduction of the EPA regime. In a write-up to support the opinion that EPAs would negatively affect the integration process in Africa and ECOWAS the Transnational Institute argues quite elaborately that the entry into force of the EPA would affect the integration process in numerous ways, including the compromise of special and differential treatment, increase of administrative costs and burdens, penetration and eroding of internal markets, Common External Tariff challenges, manipulation of Potential EU financial
and technical aid, diversion and retention of most European aid and countering of regional
services cooperation.\textsuperscript{23} It is also argued that EPAs will undermine regional investment aims, pre-
empt regional industrial and agricultural cooperation, prevent inter-regional South-South
relations, and contract and redirect Africa’s integration process as complex as it is.\textsuperscript{24}

\textbf{a) Penetration and Erosion of Internal Markets}

Regional integration is mainly trade-driven. That is why the AEC treaty places so much pressure
on promoting intra-African trade. ECOWAS, one of the eight AU-recognized RECs, has also
expressed its desire to see improved-trade relations between and among ECOWAS countries.
The efforts to promote trade among ECOWAS countries seem to be more rhetoric than anything
as intra-ECOWAS trade continues to be below expectation. The EPAs may admittedly even
threaten the already low intra-ECOWAS trade the more.

Opening up African economies to highly competitive European producers and exporters will
place enormous pressures on African producers and traders within their own national markets.
This has long been evident under the current levels of external trade liberalisation through
International Monetary Fund (IMF) and World Bank Structural Adjustment Programmes (SAPs),
as well as under WTO tariff reduction rules. But such external pressures on national traders and
producers will also apply to their possibilities within the markets of other countries in the same
African region - if these open up under EPAs. For example, in the case of West African traders,
this would erode their preferential access to the nearby larger and richer South African market. In
this way, EPA trade liberalization will undermine one of the main aims of regional integration
which is to create combined and enlarged markets to encourage local, national and regional producers, and the expansion of intra-regional trade.

b) Common External Tariff challenges

The EPA market access offer is based on a CET which is expected to be implemented by January of next year if the Agreement is signed and ratified by October of this year. Although this would be good for regional integration in the sub-region, it is going to be extremely challenging for CET to be established by the preferred date. The administrative structures of customs authorities in the fifteen ECOWAS countries and Mauritania would have to be capacitated to handle this enormous task. Considering the fact that the establishment of a CET in ECOWAS has been elusive for far too long, it indeed becomes so ambitious and challenging for it to be done within a short time frame.

c) Regional investment

The liberalization of investment terms and capital flows that the EC is pursuing would similarly undermine potential regional plans to develop joint investment strategies. These could be designed to promote, regulate, and even direct international, and internal, investors within agreed frameworks with appropriate criteria serving development needs and aims. The reinforcement of the rights and role of foreign (European) investors, a condition the EU is seeking within the EPAs ‘new generation’ clauses, would detract from the official needs of African regional groupings to develop greater investment self-sufficiency within their own intra-regional and inter-regional financial arrangements. Above all, reliance on EU investors, as with EU service
providers, will perpetuate and increase the long-established net outflow of financial resources from such countries and regions.

d) **Regional Industrial and Agricultural Cooperation**

The main aims for the development of internal investment resources – and even the attraction of foreign investment – relate to the vital importance of regional groupings of African countries developing joint programs for infrastructural development, and in manufacturing, mining and agriculture (and most especially regional food security). Such programs are essential to combine or at least coordinate the respective resources and strengths of the participating economies in order to maximize their potentials, diversify and spread their productive capacities and, above all, reduce their external dependencies and exposure to external economic pressures and price shocks. All the above effects of EPAs and the reinforced presence of highly competitive EU companies in all these spheres will effectively pre-empt the growth and the very emergence of such home-grown and regional alternatives.

The observations captured above are certainly not far from the facts of the matter but ignore the commitment the two parties have demonstrated to promote regional integration. Article 4(1) of the draft text indicates that the “parties acknowledge that regional integration is an integral aspect of their partnership and a powerful tool for achieving the objectives set out in this Agreement. They agree to support it vigorously”. In specifying how the sub-region’s integration process would be supported, the same article informs that the EU and its member states shall contribute technical and financial assistance, to the region's integration efforts. The assistance is set to include the establishment of a customs union and a common market, the introduction of
It is worth noting that since the effective implementation of the EPAs is based on the successful design of the Common External Tariff (CET) system, an EPA regime would be fast-tracking efforts to make ECOWAS a ‘real’ customs union – member countries would be forced to have similar tariffs, at least in trade with the EU. This eluded the regional body since it announced in 2007 that it was becoming a full-fledged custom union.

Ghana will undermine the process of regional integration if it fails to sign the regional EPA. The EPA and its accompanying measure should be well managed for inclusive economic growth and development.

3.7 Future of Ghana-EU Trade Relations in an EPA Regime

The future of trade relations between Ghana and the EU would be shaped by either of the following two important decisions yet to be made:

i. The Signing and ratification of the regional EPAs, or

ii. The response by the Economic Commission of the EU to Ghana’s request for an extension of the due date for the signing of the iEPAs, pending the outcome of the post-negotiation talks relating to the EPAs.

Regarding the first, if the ECOWAS region finally signs the EPA and succeeds in obtaining 2/3 ratification of same Agreement, Ghana and other ECOWAS countries would be automatically
thrust into the first phase of the Economic Partnership Agreement. The coming into force of the 
EPA would surely be a landmark twist of the relations between Ghana and the EU – More EU 
products and hopefully investments may flood the market in an EPA regime. The consequences 
of such openness have been thoroughly discussed in previous paragraphs of this chapter. It 
would, for instance, increase the already tall list of imports from the EU and by extension the 
routine unfavourable balance of trade deficits recorded with European countries.

Despite these negative consequences, however, the study takes the position that the conclusion of 
the EPA would in the long run benefit the economy depending on the measures Government and 
even the private sector take to harness the opportunities that may accrue from the EPA. With the 
EPA, the trade relations between Ghana and the EU countries may be strengthened as Ghanaian 
products from the Agriculture sector to pharmaceuticals would continue to enjoy duty-free 
quota-free access to the EU markets. In the future, when EPA is finally in force, the 
Government’s quest for Public Private Partnerships (PPPs) would even become more meaningful 
since the public sector may be able to take advantage of the possible influx of EU companies to 
partner with foreign companies to undertake projects that may end up benefitting local 
companies. This is contrary to the viewpoint that the influx of foreign companies would 
deplete local companies. The joint ventures that may result from the EPA may even build the 
capacity of local companies due to improved access to capital, technology and human resource.

Again, contrary to the views that the future of local producers would be blighted by flooding of 
EU products in the country, paragraph 3 of the article on export duties and taxes and the infant
industry clause (article 23) of the draft text of the Agreement allows Ghana and any other ECOWAS country protect its local producers by undertaking reasonable measures such as tariffs. In case the EPAs are not signed by October 2014 as projected by many stakeholders, Ghana’s future trade relations with the EU may be guided by the so called stepping stone EPAs, if only Ghana’s request for extension is favourably responded to by the EU. If the regional EPAs are not signed and the EU Commission drags their feet with regards to the request for extension, Ghana’s privileges at the EU market would automatically be curtailed. The duty-free quota-free market access offer would be no more and local exporters may crumble as a result of a sudden increase in the cost of entering the EU market. The critics may have to relook at the figures of Ghana’s export to the EU to realize that jeopardizing Ghana-EU trade relations would have dire consequences for the very infant industries they seek to protect.
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1 Draft EPA text version, February 2014, p. 4.
2 Ibid, p.5
4 Dan Lui and Sanoussi Bilal, “Contentious issues in the interim EPAs”, European Centre for Development Policy Management discussion paper 89, march 2009 retrieved from www.ecdpm.org/dp89 on 17th August, 014
5 Interview granted by the General Secretary of the Ghana Agricultural Workers Union (GAWU) on 5/8/14
6 Dan Lui and Sanoussi Bilal (2009) op. cit.
7 Article 16(3) states “after the signing of this Agreement, the WA party shall grant the EU party any most favorable tariff treatment that it shall offer to a trading partner other than countries of Africa and ACP Member States, with a share of global trade in excess of 1.5 percent and an industrialisation rate measured by manufacturing value-added as a share of GDP in excess of 10% in the year prior to the entry into effect of the preferential Agreement referred to in this paragraph. If the preferential agreement is signed with a group of countries acting individually, collectively or by means of a free trade, the threshold relating to the share of global trade considered shall be 2%”.
8 Transnational institute (2010), Implications of EPAs/FTAs Against Developmental Regional Integration, retrieved from www.tni.org/articles on 17/8/14
9 Dan Lui and Sanoussi Bilal (2009) op. cit.
10 Interview granted by a seniour officer of the Multilateral desk of the Ministry of Trade and Industry of on 8/8/14
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14 Ibid.
15 Interview granted by the General Secretary of the Ghana Agricultural Workers Union (GAWU) op. cit.
16 Interview, Ministry of Trade and Industry op. cit.
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19 Ibid.
20 Interview granted by Policy Analyst of the Third World Network
21 Dan Lui and Sanoussi Bilal (2009) op. cit.
22 Transnational institute (2010).
23 Ibid.
24 Ibid.
25 At the Accra ECOWAS Summit in July this year the Heads of State and Government referred to the endorsement of the final report of the negotiators and reaffirmed their interest in signing the Agreement in due course.
26 Projects like the Lonhro Free Port Project, an example of a PPP is expected to benefit Small and Medium enterprises in the Oil and Gas sector. The EPA may increase the interest of foreign companies in Ghana’s economy and hence, may result in more Foreign Direct Investments into the country to the benefit of consumers and to some extent local producers.
CHAPTER FOUR

SUMMARY OF FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

4.0 Introduction

This chapter summarises the findings of the study and provides an appropriate conclusions. Recommendations are then made for the consideration of stakeholders of the EU-ECOWAS EPS.

4.1 Summary of Findings

The study has traced the historical trajectory of the regional EPAs beginning from the Yaounde conventions through to the Lome conventions and the CPAs. Regarding this Agreement, the study indicates quite clearly that although the Agreement is a continuation of the non-reciprocal trade relations between the EU and Africa that characterized preceding conventions, it expresses the common interest of the two parties to make the preferential trade offer reciprocal, and hence WTO compatible.

The Cotonou Agreement (June 2000) succeeded the various Lome conventions with the view of achieving the objectives of poverty reduction, sustainable development and the gradual integration of the ACP countries into the world economy. The agreement underlined the importance of regional cooperation and its fundamental principles are based on equality of the partners and ownership of their own development strategies. The CPA served as a transitional framework towards the EPAs. The CPA, therefore, require the two sides to initiate steps towards concluding reciprocal preferential trade offer.
The study also notes that based on the Cotonou Agreement, ECOWAS and the EU began negotiations to establish the EPAs more than a decade ago. A CET system was to be the basis of the EPA, implying that the ECOWAS would, shortly after the conclusion of the Agreement, harmonize the tariff regimes of its member countries.

The research finds as an integral part of the EPA text the commitment of the two sides to achieve its set objectives incorporating the “principles of progressiveness, flexibility and asymmetry” into the trade liberalization process, to the advantage of the West African region”. The reason behind this expression of commitment by the EU is founded on the general understanding that the development of the West Africa region is far beneath that of the EU side.

In order to aid the capacity of the West Africa region to trade effectively, the EU has offered to establish a Euros 6.5 billion worth of EPA-Development Programme (EPA-DP). This fund would, among others, support the administrative structures of the EPA and national customs authorities for the effective implementation of the provisions of the EPA.

Despite these efforts to promote the long-existing trade relations between the EU and ECOWAS countries, the negotiations towards the EPA have dragged on for more than a decade until its recent conclusion in June 2014 in Ouagadougou. The delay in the conclusion of the negotiations has been for various and several reasons. The study notes that various stakeholders and in fact negotiators on the West Africa side have consistently expressed concern over the negative implications of certain provisions of the EPA. Those contentious issues cast doubts over the good intentions behind the interest of the EU in the sub-region.
The study finds that the following contentious issues have come up for discussion at different times in the course of the negotiations:

- the definition of ‘substantially all trade’, setting out the level of tariff liberalization required by ACP countries (covered in section 2.1 below)
- transitional periods for tariff liberalization
- export taxes
- national treatment
- free circulation of goods
- bilateral safeguards
- infant industries
- the Most Favoured Nation (MFN) clause
- the ‘non-execution’ clause (which provides for the possibility of trade sanctions in the event of violations of democratic or human rights principles)

The researcher further finds that in addition to the AU list, negotiators in Africa and elsewhere have also separately highlighted two more issues of importance in the texts: rules of origin reform and the ‘standstill’ clause in goods, which prohibits any increase in tariffs once agreements enter into force. Beyond issues related solely to trade in goods, there have also been some long-standing concerns about making new commitments in the EPAs in services and investment, and in trade-related areas such as intellectual property.¹
The study observes that delay in the conclusion of the EPA negotiations resulted in some 18 African countries (including Ghana and Cote d’Ivoire on the side of West Africa) to initial a stepping stone EPA (interim EPAs). The action was to ensure the continuation of preferential market access offer by the EU while the EPA negotiations struggle for conclusion.

This iEPA are not also without the afore-stated contentious issues. For that reason CSOs have attacked the EPA negotiations and the action to initial the iEPAs. The research notes that the critics have argued that the parts of the text that constitute the contentious issues would propel the development of the EU at the expense of key sectors of Ghana’s economy, including the agriculture sector.

Despite the possibility of negative consequences resulting from the Agreement, the study justifies the initialling of the iEPA and Government’s readiness to sign the EPAs. In this light, the research highlights the fact that the West Africa market access offer of 75% with a five year moratorium and transitional period of 20 years (under EPAs) is better than the Ghana iEPA offer of 80% with a transitional period of 15 years. In addition, other clauses in the current West Africa EPA, including RoO, MFN, non-execution and agricultural subsidies favour Ghana more than what is in the Ghana iEPA.

The trade defence measures in Articles 20 (Anti-dumping and countervailing measures), Article 21 (Multilateral safeguards measures) and Article 22 (Bilateral safeguard measures) in the EPA give West African countries enough flexibility to provide temporary protection and cover the adjustment costs without compromising the EPA as a whole.

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The argument is also made that the non-traditional export sector is an emerging sector in Ghanaian economy with great potential for growth and expansion. The threat to the sector is not to sign a successor EPA that guarantees the tariff-free access to the EU market under the interim EPA. The research highlights the fact that the expiration and non-replacement of the Ghana interim EPA by 1st October, 2014 with the EPA would move Ghana from current iEPA regime to the GSP regime, which is applied to all developing countries. The terms of the GSP are less favourable than Cotonou, with additional tariffs on horticultural products and processed cocoa among other things. These very products form a substantial proportion of non-traditional exports from Ghana. Ghana’s exports to the EU are about 50% of annual total exports.

In support of the regional EPA, the study points out that 97% of exports from Nigeria to the EU are made up of crude oil. Therefore, Nigeria, unlike Ghana, would not be affected much if it does not sign the West Africa EPA. The adoption of the EPA is therefore crucial to ensure that Ghana’s exports to the EU are not disrupted from 1st January 2015.

The study observed that the EPAs would greatly impact the integration process in the sub-region. With the coming into force of the Agreement, the ECOWAS markets and the EU market would become more open. This would threaten intra-ECOWAS trade as the EU would prefer to take advantage of the preferential market access offer of the EPAs to penetrate the West African markets. Conversely, West African countries may also trade more with the EU side to the neglect of intra-ECOWAS. The negative consequences aside, the EPA would also positively affect regional integration with the establishment of a Common External Tariff (CET), which has eluded the sub-region for far too long.
In terms of revenue, the study finds that in the short run Ghana would experience a dip in the amount of revenue generated from tariffs on EU exports. However, it should be mentioned that cost of entering the EU market would be higher if the EPAs are not signed.

Finally, the study observes that Ghana’s agriculture sector may receive a greater share of the pressure that could accompany the signing of the EPAs. The influx of agriculture produce from Europe may compete out local produce. But the study mentions that the agriculture sector also stands to benefit a lot in an EPA regime. More agriculture produce would get duty-free quota free access to the EU market.

### 4.2 Conclusion

As captured in chapter 1, the study sought to find answers to the questions surrounding the EPAs, particularly regarding its possible implications for regional integration, effects on the Ghanaian economy and also the likely impact of the Agreement on government revenue. These questions represent the general concerns being expressed by stakeholders including CSOs and private enterprises on the West Africa side.

Concerning the issues of EPAs and regional integration, the study concludes that the coming into force of the Agreement would widely open up the ECOWAS markets and the EU market. This threatens intra-ECOWAS trade as the EU would prefer to take advantage of the preferential market access offer of the EPAs to penetrate the West African markets. Conversely, West African countries begin to trade more with the EU side to the neglect of intra-ECOWAS.
Nevertheless the study argues that the ECOWAS countries could take advantage of the CET system of the EPA, which has eluded the sub-region for far too long, to promote the regional integration process.

Regarding the issue of revenue, the study concludes that although the EPAs may result in a decrease in Government revenue in the short run, the cost of entering the EU market would be lessened to the advantage of the country’s exporters. In any case, the growth of Ghana’s economy does not need to depend on just revenue accruing from EU exports. The economy would benefit if the agriculture sector as well as other sectors championed by the private sector take full advantage of the EPAs to export more to the EU.

In view of the arguments made for EPAs and with upon consideration of the criticism of the EPAs, the study concludes that the ECOWAS leaders have made the right decision in concluding the EPA negotiations and in expressing their willingness to sign the Agreement. The negative effects are many but there are more negative consequences in case the EPAs are not signed. Nevertheless, the negotiators of West Africa must continue to negotiate for a better deal on the contentious issues to inure to the benefit of the ECOWAS region.

4.3 Recommendations

The following recommendations are made based on the findings for consideration by the appropriate authorities:
• West Africa should encourage more empirical studies on not just the revenue to be lost but also on the impact of the EPAs on key and specific areas in the agriculture, energy and services.

• The ECOWAS must continue to raise critical issues about the EPA for the attention of the EU side between the time of the conclusion of the negotiations (June 30, 2014) and the signing /ratification of the Agreement.

• CSOs must realize that the Agreements are for the mutual benefit of the parties involved and, hence, not everything in the text will inure to the benefit of only West Africa. Against this background, CSOs should begin to reason with the ECOWAS body and its member countries about the possible steps that could be taken to maximize benefits in an EPA regime.

• Part of the £ 6.5 billion to be earmarked as EPA-Development Funds must be used to develop the customs authorities of the various West African countries as early as possible. The prevailing weakness of the customs would make the establishment of the Common External Tariff (CET) very difficult.

• The customs should also receive training on how to implement the RoR clause of the EPA text.

• The two sides should agree on pushing the harmonization of the external tariffs a little further from the date of signing to allow for enough preparations. This is contrary to suggestions that the CET ought to be implemented in January of 2015 if the EPAs come into force by October of this year.

• While relishing the idea of trading more with the EU, the ECOWAS countries must understand that the world economy is still at a stage where South-South cooperation is
still relevant. Brazil and china especially are making a lot of inroads economically. The MFN clause would force the African side to extend preferential treatments given to Brazil and China to the EU. This may have, in the long run, regressive impact on the economic ties with the two countries. In that regard, before finally signing the ECOWAS countries must argue for the 1.5% of world trade threshold to be increased to exclude China and Brazil.

- Even before the two sides sign, they must come up with concrete measures as to how to make administrative structures of the EPAs very effective. Due to issues like the antidumping clause, MFN, Standstill, infant industry clause, et cetera, the Dispute Resolution Centre may in the future be very instrumental.

- In the event that the EPAs come into force, the Government should work on improving production in the agriculture sector in order to increase agricultural exports to the EU to create employment, income and revenue for the Government.
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