

EU TRADE POLICY AND DEVELOPING COUNTRIES: TOWARDS A MORE ETHICAL AGENDA?

Jan Orbie

*Director, Centre for EU Studies; Senior Lecturer,
Department of Political Science, Ghent University
Jan.Orbie@UGent.be*

Deborah Martens

*Researcher, Centre for EU Studies, Ghent University
deborah.martens@UGent.be*

This chapter aims to provide a concise overview of evolutions in European Union (EU) trade policy towards developing countries. In line with the general purpose of this volume, it also considers the importance of Commissioner Cecilia Malmström's *Trade for All* (2015) strategy in this regard. Ever since the early years of European integration, an ethical agenda towards the Global South has been proclaimed. The Schuman Declaration of May 9th 1950 declared "the development of the African continent" to be "one of its [Europe's] essential tasks" and part four of the Treaty of Rome of 1957 was dedicated to privileged trade and aid relations with "the Overseas Countries and Territories". Subsequent the Yaoundé (1963, 1969) and Lomé conventions (1975, 1980, 1985, 1990) and the Cotonou (2000) Agreement continued the special trade-and-aid relationship with member states' former colonies assembled in the African, Caribbean and Pacific (ACP) group, larded with an ethical development discourse. Since the 1960s and 1970s, Europe has also established preferential trade agreements with countries in eastern Europe and in the southern Mediterranean. In a practical application of wider calls by developing countries for a New International Economic Order (NIEO), the European Community was the first to create a Generalised System of Preferences (GSP) in 1971, thereby enhancing Asian and Latin American countries' access to its market. Throughout the 1990s and 2000s, the EU's growing market size and political profile further substantiated the conception of its role as a leading and "normative" power. This resulted in a number of highly symbolic trade-related initiatives towards the developing world: the "Everything but Arms" (EBA) initiatives providing duty-free and quota-free access for the least-developed countries (LDCs) (2001), the calls led by the EU for a Development Round of the World Trade Organization (WTO) in the lead-up to Doha Conference (2001), the elaboration of the GSP+ system with sustainable development and governance trade conditionality (2005), and the EU Aid for

Trade Strategy (2007) all seemed to underpin this image of an ethical actor towards the Global South. One decade later, however, it remains unclear how successful the EU has been. A number of internal and international evolutions have challenged both the EU's "normative" and "power" profiles.

While a thorough evaluation of the EU's trade relations with developing countries is beyond the scope of this chapter, we aim to take a bird's eye view by discerning three ostensibly incompatible evolutions that have taken place over the past decade. First, trade relations with developing countries have become a lesser priority for the EU. Second, the EU has forcefully continued its liberalisation agenda towards these countries. Third, it has also pursued ethical values through trade. We will outline each of these evolutions and consider how they might be interlinked. In conclusion, we will reflect on how this triangle may not be impossible after all.

A lesser priority

Poorer developing countries, including many ACP countries, have lost their central position in the EU's external orbit. While the former colonies long stood at the top of the EU's "pyramid of preferences", their position has been eroded. This has been a gradual evolution that came clearly to the surface when negotiating the follow-up to the Lomé system. In a Green Paper on the EU's relations with the ACP countries in the 21st century published in 1996, the European Commission clearly signalled that trade relations with these countries should be revamped. For a number of political, legal, normative and economic reasons, the EU was no longer willing to negotiate a "waiver" justifying the special trade system with these countries in the WTO. This "normalisation", or according to some, "banalisation", of the ACP group became clear in the Cotonou Agreement (2000), which set the stage for Economic Partnership Agreements (EPA) between the EU and ACP regions. The EPAs would replace the non-reciprocal trade liberalisation of the Lomé system by reciprocal (yet still asymmetrical) free trade. The EPAs would be negotiated between the EU and six sub-regions of the ACP group and go beyond merely tariffs to also include behind-the-border issues. Moreover, trade-and-aid schemes echoing the NIEO ideology of the 1960s and 1970s, such as Stabex, Sysmin, and commodity protocols providing fixed quota and prices for bananas, sugar and rum, were gradually abandoned. At the same time, the EBA initiative did enhance market access for the poorest countries in the world. Cynically, however, EBA contributed to undermining the position of the ACP group and dismantling the commodity protocols, while its impact in terms of growth and welfare remains doubtful.

This trend manifested itself even more clearly in 2006 when the then Trade Commissioner Peter Mandelson launched the *Global Europe – Competing in the World* trade strategy for the EU. Henceforth, the growing and emerging economies clearly became the focal point of EU trade policy. The rationale underlying this strategy was explicitly framed in terms of economic interests. *Global Europe* states that while the EU's trade agreements serve development objectives well, "our main trade interests, including in Asia, are less well served",

adding that “for trade policy to help create jobs and drive growth, economic factors must play a primary role in the choice of future FTAs”. Concretely, *Global Europe* instigated trade negotiations with South Korea, India, ASEAN, Central America, and the Andean Community. While EPA negotiations continued to muddle on, and the Doha Development Round also found itself in an impasse, the EU started to play the game of “competitive liberalisation”, as a result of which the ACP countries as well as the LDCs witness even more preference erosion.

Interestingly, the drive for free trade agreements with emerging economies was further strengthened by the EU’s reaction to the economic and financial crisis, based on the belief that more trade and investment is an important dimension of Europe’s recovery strategy. Furthermore, the crisis served to legitimate new bilateral agreements with industrialised countries such as Canada, Japan and, most importantly, the United States. While industrialised countries had historically figured at the bottom of Europe’s “pyramid of preferences”, these countries were catapulted to become core trading partners, engaging in a hitherto unseen degree of liberalisation through tariff reductions and regulatory arrangements. The negotiations on a Transatlantic Trade and Investment Partnership (TTIP) with the US is particularly noteworthy in this regard. Against the backdrop of the economic recession, the then European Commission President José Manuel Barroso argued that the agreement would be “a boost to our economies that doesn’t cost a cent”.

These dynamics have led to the trade agreements signed with Korea (2010), with Central America (2012), and with Peru and Colombia (also 2012; with Ecuador joining in 2016). Trade negotiations with Canada were finished in 2014. In the same year, the EU signed trade agreements with Ukraine, Georgia and Moldova. While bi-regional negotiations with ASEAN turned out to be complicated, the EU concluded separate agreements with Singapore (2014) and Vietnam (2016). Negotiations with Malaysia, Indonesia, Thailand and the Philippines are ongoing, which is also the case for India and Japan. Negotiations with Mercosur have been relaunched, whereas the trade agreement with Mexico is being renegotiated. Trade negotiations with New Zealand and Australia have also been announced.

The principle of “differentiation” between developing countries had gradually established itself in EU trade and development discourse by the end of the first decade of the 2000s. It has justified a far-reaching reform of the GSP, which entailed the graduation of more than 80 high- and middle-income countries since 2014. This also pushed a number of middle-income countries, such as Ecuador, which would otherwise lose their preferential access to the European market, to negotiate a bilateral trade agreement. Although the EU has continued the EPA negotiations, it is clear that the member states’ former colonies, and the world’s poorest countries more broadly, no longer occupy an important place in this trade agenda. If they ever were the EU’s most preferential trading partners, this is certainly no longer the case today. Apart from tariff erosion and attentive diversion, the new agreements also entail risks of trade diversion for the ACP countries and LDCs.

Continuing liberalisation

Notwithstanding the declining relevance of developing countries in Europe's trade policy, the liberalisation agenda of Cotonou has been forcefully applied and even reinforced. EU-ACP relations over the past decade have been dominated by the discussions on EPAs. Many commentators have discussed and criticised the EPA negotiations, focusing on issues such as the impact of trade liberalisation on domestic economies in Africa, the EU's missionary zeal for reciprocal free trade, the uncertainties about what "WTO compatibility" means in this regard, the pros and cons of the bi-regional frameworks, the dynamics within ACP regions, the impact of European business interests, the near-absence of compensating development aid, the divide-and-rule negotiation tactics of European negotiators, the rhetorical negotiation strategies by their ACP counterparts, the role of political and economic elites in the ACP, the perceived image damage to the EU, the successful lobby campaigns by transnational non-governmental organisations, etc. The picture that emerges from more than a decade of intense EPA negotiations is one of a complex hotchpotch of trade arrangements. While only one – the Caribbean region – signed a full EPA by the original deadline, several others signed "light" EPAs and continued to negotiate, while still others decided to revert to the GSP or the EBA arrangement.

There is however a clear and successful (according to EU standards) liberalisation logic behind these evolutions. First, the number of ACP countries signing an EPA has increased in recent years. In 2014 the southern African (SADC), west African (ECOWAS) and east African (EAC) groups decided to sign an EPA with the EU. Although negotiations have been lengthy and tough, and the EPAs are not yet ratified (let alone implemented), it seems that with some delay the EU will eventually have managed to finalise its EPA agenda. The prospect of falling back to the less generous GSP system, which has been used as a threat by the EU, has most likely affected the eventual effectiveness of its approach. In addition, the EU did make concessions on asymmetrical liberalisation, development aid funding, and the scope of the agreement. Nevertheless, it is important to notice that the EU has largely realised its liberalisation agenda as it was already suggested – long before the *Global Europe* strategy – in the 1996 Green Paper.

Second, the non-signatories of EPAs also eventually comply with the EU's wider agenda to pursue WTO-compatible trade arrangements. Since the countries that do not take part in EPA schemes fall back to EBA or GSP, they are fully consistent with the WTO philosophy. Indeed, over the past decade they have shifted from "waived" non-reciprocal market access towards "WTO-compatible" non-reciprocal market access as allowed under the "Enabling Clause" of the General Agreement on Tariffs and Trade (GATT, the predecessor of the WTO). In other words, the African countries' trade relations with the EU have been radically restructured in order to streamline them in line with WTO requirements. "WTO compatibility" – the EU's leitmotif in the Cotonou negotiations – has been achieved. Even if questions on the legality of the EPAs may remain, this is unlikely to be challenged. Also, countries that are not members of the WTO signed bilateral trade agreements. This successful

political outcome of the so-called “failed” EPAs – at least by European standards – has often been overlooked. While the picture of African trade arrangements with the EU looks complex, the end result of a long decade of negotiations displays a distinct liberalisation logic.

Third, an increasing number of non-ACP developing countries that previously benefited from the GSP has been negotiating bilateral free trade agreements with the EU. This means that these countries have also given up non-reciprocal market access in exchange for (more far-reaching) mutual trade liberalisation. As emphasised above, the EU used “hard power” tactics in this regard, not least through the GSP graduation of higher and middle-income countries (see above). The number of GSP+ beneficiaries may also decrease as more countries engage in bilateral trade negotiations. For instance, Colombia and Peru, the Central American countries, and Georgia have shifted from GSP+ to free trade agreements. The Philippines became a new GSP+ beneficiary in 2015, but later that year free trade negotiations were also started.

In conclusion, the EU’s trade agenda towards developing countries has been characterised by a drive for liberalisation and WTO compatibility which, despite the less aesthetic overall results, has largely been achieved. Without delving into the discussion on the drivers behind this agenda, it is clear that interest-related, ideological and institutional factors have played a role. A deeply rooted belief among European policymakers, especially in the European Commission, of the benefits of deep regional integration according to the “EU model”, has certainly been a key factor. At the same time, the EU has put increased emphasis on ethical values in its trade arrangements with developing countries, as will be discussed in the next section.

A more ethical agenda

Over the past decade, EU trade policy discourse has put more and more emphasis on values such as democracy, governance, human and labour rights, and environmental sustainability, all of which are closely linked to broad conceptualisation of “development”. Although the ideological centre of gravity has shifted towards the centre-right and an economic crisis has affected most European countries, which has contributed to a radicalisation of the liberalisation agenda as discussed in the previous section, ethical values seem to stand out more than ever. The provisional culmination of this discursive evolution is the *Trade for All* document of 2015. Commissioner Malmström’s trade strategy calls for “more responsible trade” as early as the subtitle and dedicates an entire chapter to “A trade and investment policy based on values”. Interestingly, the ethical trade agenda not only reveals itself in the “traditional” unilateral GSP and bilateral trade agreements, but also in more innovative arrangements that only indirectly relate to traditional trade instruments.

First, the EU’s GSP has created a separate “Special Incentive Arrangement for Sustainable Development and Good Governance” (GSP+) system since 2005. While the previous GSP already included a number of labour and environmental principles, this GSP+ has extended

and elaborated the system. In order to benefit from more generous market access, developing countries had to ratify and effectively implement core international conventions on human and labour rights, environmental protection, and good governance. The most recent GSP reform, which came into force in 2014, further strengthens the conditionality scheme, in the sense that applications for GSP+ become more stringent and violations are more closely monitored. The European Commission conducts an annual analysis (“scorecard”) of the extent to which the conventions have been applied, based on the reports of relevant monitoring bodies (e.g. the expert committees of the International Labour Organization (ILO)). This evaluation is then sent to the third-country governments, who are required to respond within three months. Wherever it is deemed appropriate, the issues raised in the report are subsequently discussed with the partner government. The follow-up process can also involve a monitoring visit.

Second, the new free trade agreements have consistently included a dedicated chapter on “sustainable development”. While EU bilateral agreements have included an “essential elements” clause on human rights since the 1990s, and some ad hoc provisions on labour-related cooperation since the 1970s, the sustainable development chapter is a novelty. Compared to previous agreements, the new generation of EU trade agreements extends the content, governance, and enforceability of provisions on sustainable development. In terms of content, the parties typically commit to comply with a number of international social (the ILO’s Core Conventions and Decent Work Agenda) and environmental commitments (such as the Convention on Biological Diversity or Convention on International Trade in Endangered Species of Wild Fauna and Flora). In terms of governance, the chapters establish civil society meetings, both within and between the parties, which are tasked with monitoring and discussing the implementation of the sustainable development principles. There is also an intergovernmental meeting to address these issues, which can engage in a dialogue with the civil society mechanism. In the case of a conflict, government consultations can be established, followed, if necessary, by a Panel of Experts. However, in the case of non-compliance no sanctions are provided. The EU’s approach is indeed based on persuasion, dialogue and cooperation.

Third, the EU has undertaken various initiatives in the realm of corporate social responsibility (CSR) and fair trade. CSR and fair trade are briefly mentioned in the sustainable development chapter of some trade agreements. More interestingly, beyond the scope of trade instruments the EU has engaged in some activities linking trade and ethical values. Three examples are worth mentioning. The first example concerns the possibility for national and local authorities in the EU to include fair trade criteria in their public tenders. Even though the Commission issued *Buying Social*, a guide to taking into account social considerations in public procurement in 2010, it is only since the reform of the EU public procurement rules in 2014 that these authorities are legally enabled to include such criteria in their tenders (such as fair trade origin, or the requirement to pay a minimum price). This new dynamic in procurement rules stems from a number of EU member states that proved to be more ambitious in including fair trade criteria in public tenders, resulting in a number of cases before the European Court of

Justice since the mid-2000s. Most famously, in 2012 the court supported the decision of the province of North Holland to include fair trade criteria in its public tendering for coffee machines. The more restrictive interpretation of the European Commission was challenged by the court, which has been hailed by the fair trade organisations as an important victory. Nevertheless, it remains to be seen to what extent these new regulations could entail an Europeanisation of fair trade provisions in public procurement practices. In this context the use of organic certification criteria in the EU green public procurement toolkit could be seen as an inspiring example.

A second example concerns regulations that focus on trade in specific products. Measures are being taken to fight wildlife trafficking and trade in tools for torture and executions. The most elaborated initiatives however are the regulations on (illegal) timber and conflict minerals. These are based on a mix of policies (trade, development, internal market, and environment) and approaches (trade conditionality, reporting obligations, multi-stakeholder dialogue) and aim at improving social, environmental and human rights causes. The FLEGT (Forest Law Enforcement, Governance and Trade) Action Plan adopted in 2003 comprises development cooperation, trade agreements between the EU and timber-producing countries, public procurement, private sector and civil society involvement and more, in order to combat illegal logging and strengthen forest governance. Concrete progress has been slow, as most interested timber-producing countries are still in the negotiation phase. So far only Indonesia, Cameroon, Central Africa, Ghana, Liberia and the Republic of Congo are implementing the trade agreements enabling the FLEGT Action Plan. The Conflict Minerals regulation aims (when approved) at breaking the vicious cycle between trade in minerals (more specifically tin, tantalum, tungsten and gold) and the financing of conflicts. At the time of writing dialogue consultations have been concluded in order to find a balance between the positions of the European Commission and European Council (voluntary guidelines) and the Parliament (binding rules). The draft regulation contains a mixed approach with binding requirements for upstream companies (mines, processors, traders, smelters and refiners) and recommendations for downstream companies (EU manufacturers).

A third example of EU fair trade policies that go beyond traditional trade instruments concerns the Sustainability Compact. This initiative brings together the EU, Bangladesh, the US and Canada, as well as the ILO. Its distinct, multi-stakeholder approach might become exemplary in a context where more and more attention is given to the need for sustainable supply chains. The Rana Plaza collapse in Bangladesh in 2013 triggered a wave of awareness and demands for transparency and just working conditions in the garment industry in developing countries from consumers and activists. The European Commission responded to this drama by launching the Sustainability Compact to improve respect for labour rights, factory safety and responsible business conduct in the ready-made garment industry in Bangladesh. Since its creation in 2013, there have been several follow-up meetings and a technical report taking stock of what has been done to implement these objectives. So far, tangible results are little and critical voices have highlighted the failure of Bangladesh to comply with the compact and the absence of changes on the ground.

Conclusion: solving the trilemma

The *Trade for All* strategy is remarkably explicit on promoting values through trade. While offering some space for action and advocacy, the ethical trade agenda should be put into perspective. First, the discourse is not entirely new. It goes back to the EU's emphasis on moral responsibility towards the former colonies of the member states. The Schuman Declaration, the Rome Treaty, the first Lomé Convention, and the Cotonou Agreement have all been presented as development-friendly initiatives witnessing a spirit of partnership between the EU and developing countries. More recently, Pascal Lamy's tenure as a trade commissioner (1999-2004) displayed a strong emphasis on value promotion through trade.

Second, enforceability of ethical principles in bilateral trade agreements and the unilateral GSP remains limited. While market-related issues such as tariffs, sanitary standards, investment provisions and intellectual property rights can be enforced, the EU's approach to sustainable development through trade remains largely cooperative and seems subordinate to what are considered "real" trade issues. Trade agreements have an "essential elements" clause on democracy and human rights, but sanctions have never involved trade flows. The new procurement rules offer possibilities, but again these are enabling for public authorities rather than forcing them to use fair trade criteria. New initiatives such as the timber and conflict minerals regulations and the Sustainability Compact may be promising, but have been criticised for lacking effectiveness in practice.

Third, these initiatives do not challenge the underlying neoliberal paradigm that has characterised EU trade policy since the mid-1990s. A number of interventionist measures "NIEO style" have been abolished, most prominently the Lomé system of unilateral preferences, export stabilisation schemes and commodity arrangements. More important than the practical deficiencies of the "old-fashioned" Lomé system are its ideological underpinnings, which have been fundamentally challenged. Within the neoliberal trade paradigm, different policy ideas are possible, putting more or less emphasis on values or interests. This depends on several factors, including the party political constellation in the Council of Ministers and the political profile of the trade commissioner. For instance, trade commissioners Peter Mandelson (2004-2008) and Karel De Gucht (2010-2014) stressed the economic interests behind free trade, whereas commissioners Pascal Lamy (1999-2004), Catherine Ashton (2008-2009) and now Cecilia Malmström (2014-) put more emphasis on values in trade policy.

In this regard, the distinction between underlying "paradigms" and concrete "policy ideas" is essential. It also helps to understand the interplay between the three trends that were identified in this chapter, thereby solving the impossible triangle. The increasing emphasis on ethical trade emphasis should be situated against the background of the paradigm shift towards neoliberal free trade, which has so far not been challenged by European policymakers. Limited enforceability and practical problems limit the effectiveness of these initiatives. This chapter has shown that while developing countries have not been at the centre of EU trade policies over the past decades, the liberalisation

agenda that was staged in the 1990s has been implemented. New ethical initiatives have not been able to compensate for this – perhaps they have even further legitimised the growing number of free trade agreements concluded by the EU. The limits of ethical trade initiatives within the neoliberal paradigm are likely to come to the surface in the coming years, as public protests against the TTIP and EU-Canada trade agreements already indicate.

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