THE EU-WEST AFRICA ECONOMIC PARTNERSHIP AGREEMENT (EPA) NEGOTIATIONS

- THE POSITION OF NANTS -

August 2010
Introduction

For some time now, the National Association of Nigerian Traders (NANTS) have been at the receiving end of discordant tunes and near confrontations which signal serious misconception and misrepresentation of her stand and clear position on the Economic Partnership Agreement negotiations between West Africa and the European Union. Such misjudgements have resulted in and also have the tendency of manifesting in subtle persecutions, intimidations and sometimes, outright denial of right.

Nonetheless, there are others that have given a comprehensible understanding of NANTS position and have seen that as an outright demonstration of the watchdog mandate and the traditional role that the Association has as a purely Private Sector cum Civil Society organisation in accordance with the provisions of the Cotonou Agreement.

Therefore, this publication is for the purpose of providing a balanced and unambiguous understanding for better judgement of NANTS stand and position on the EPA negotiations.

Background of the of EU-WA EPA Negotiations

It would be recalled that, following an earlier all-ACP-EU negotiations, the West African Summit of Heads of States and Governments adopted a negotiating mandate for the negotiation of the Economic Partnership Agreement between West Africa and the European Commission. It would also be noted that, instructively, out of that earlier negotiations resulted a report jointly adopted by ACP Council of Ministers and the EC Commissioners for Trade and Development.\(^1\) This Joint Report was intended as a guide and reference point for subsequent negotiations at regional levels. The EU-West Africa negotiation was launched in Cotonou on 6 October 2003, culminating in the adoption of a ‘Road map’\(^2\) in Accra on 4 August 2004. The road map specifies the areas of negotiations as well as the agreed process and strategy for successful negotiations. Instructively, the Cotonou Agreement, the joint report of the ACP-EC joint Ministerial Meeting on the EPAs and the joint West Africa-EU

---

1. ACP/00/118/03 Rev. 1-ACP-EC/NG/NP/43 dated 2 October 2003.
Road map outlined three general objectives and guidelines upon which the West Africa-EU EPA negotiations should base on:

i. The EPA negotiations must be aimed at *eradicating poverty in a manner consistent with the sustainable development of the region*,

ii. The EPA negotiations should seek to establish in accordance with WTO rules, an FTA between the region and the EU,

iii. The EPA should *strengthen regional integration initiatives in West Africa, based on priorities determined by the region*.

**Tracing our Stand:**

Very unfortunately, the EPAs negotiations prior to 2008 did not reflect any of the afore stated principles nor contemplated indeed, a development dimension for the developing ACP countries. Up until then, then EPA negotiations were wholly mercantilists in approach. Although NANTS had been in the process of the negotiations prior to this time, the foregoing, coupled with the sudden and arbitrary rejection by the EC of the study report on the impact of the EPA on Nigeria (conducted by the EC but indicated several debilitating consequences on the Nigerian economy) however sparked and actuated NANTS to seeking ways to redirect the negotiations to the core objectives expressed in the Cotonou Agreement.

NANTS accordingly, in 2007 started off at the fore-front of the campaign against such EPAs. Leading several other civil society groups and the private sector in Nigeria, nay, West Africa, NANTS lobbied the Federal Government of Nigeria and ECOWAS to reject the EPAs as being instruments that would result in huge revenue losses for the Nigerian government and the West African region, stifle the already weak domestic manufacturing sector and jeopardise the regional integration initiatives of West Africa. Very largely due to the resultant pressure, the Nigerian Government refused to initial the interim EPAs at the end of 2007 but chose to continue negotiating a full regional and development-oriented EPA which will be consistent with the development priorities of the West African region. It must be placed on record that even when Ghana and Cote d Ivoire initialled Interim EPAs, and Nigeria felt betrayed, it took the intervention of NANTS that convened a meeting to persuade the Nigerian and ECOWAS officials to call for and hold the Accra meeting of January 2008 that united the region for a unity approach to continue the negotiations.
It is essential to note that post 2007 negotiations have been conducted with much fluidity and dynamism, with West Africa engaging the process even more proactively. To us, the EPA has brought some good outcomes in West Africa. In all honesty, we can attest to the fact that prior to the EPAs, the West African region had gone into seeming comatose in terms of integration, as nothing appeared to have been working within the region except wars and conflict resolution. The EPAs therefore resurrected the reality of regional economic integration. It indeed lies to the credit of the EPA negotiation that West Africa has witnessed an increasing convergence of member states’ macroeconomic policies, including advanced work on a Common External Tariff (CET), the drive for actualisation of the implementation of ECOWAS free movement protocol, the Common Agricultural Policy, Common Monetary policy drive, Regional Competition and Investment policies (Supplementary Act, etc) for common market operations, and others in its bid towards regional integration.

Accordingly, NANTS has over the years refined its position in terms of current realities and well researched scientific and legal based arguments as far as the negotiations are concerned. Its increased recognition in 2007 by the Nigerian government as the Secretariat of the Government’s Technical Committee on the EPA negotiations was the firmest appreciation of the faith and technical inputs NANTS had brought into the EPA negotiation process.

Along with other members of the Technical Committee, NANTS has been involved in designing research-based negotiating positions for both Nigeria and the ECOWAS negotiating Teams. Very clearly, NANTS currently goes on with the EU-West Africa EPA negotiations on the basis of clearly enunciated principles as follows:

i. NANTS believes that trade could be a veritable instrument of development and that any country (whether developed or developing) could indeed benefit from trade agreements, be it in absolute advantage terms or comparative advantage terms.

ii. NANTS believes that a development-oriented EPA, that is, one that reflects WTO guaranteed flexibilities in favour of West Africa economies, and reflects asymmetries in the undertaking of parties, supports the regional integration initiatives of West Africa and contemplates adjustment shocks could be beneficial to West Africa, and only such should be signed by the West African governments.

iii. NANTS commits to these positions and to pursue them tenaciously in the course of negotiations as being in the best interest of the West African region.
In more specific terms, NANTS considers that the West Africa-EU EPA negotiations are progressing well notwithstanding the fact that there are some critical contentious issues on which any agreement is yet to be reached. Without prejudicing the negotiations, it should be stated that these are mostly issues on which more flexibility from the EU is required. In the making of a development-oriented EPA, NANTS believes that all the contentious issues must be resolved in a manner that accords with the development priorities of West Africa. For record purposes and the avoidance of doubt, we will go on to set out in seriatim the contentious issues in the EU-West African EPA negotiations and set out our position on each accordingly:

i. **West African Market Access Offer:**

Formulating a pro-development West African market access offer has remained arguably the most contentious issue in the negotiation. While the EU effectively offered a 100% liberalisation, West Africa continues to engage in circular analysis and simulations to determine an appropriate offer. NANTS considers that an appropriate West Africa offer must be dictated by thorough analysis ‘centred on the potential constraints that could result from the opening of its markets’. Following this, ECOWAS Thematic Working Group on market access, on the basis of select indicators, did an MECG simulation on exclusion threshold scenarios of 40%, 37.5%, 35%, 33%, 30% over 25 years. On the basis of this simulations and analysis, NANTS had taken the position that a market access offer of 62.5% liberalisation is preferred as indicative of the much modification that could be done on the original EU requested 80% liberalisation without a fatal impact to West Africa. We reject the subsisting offer of 70% made by ECOWAS Team of negotiators as being overreaching and is not development-oriented. This is still our position.

ii. **Financing for West Africa’s EPADP:**

NANTS considers that the EPA will result in specific adjustment shocks across West African countries. It is instructive that the EU admits this. Its recent commitment to help secure financing for the EPADP through the earmarking of €6.5 billion is commendable. However, NANTS considers that not only is the fund grossly inadequate as against the modest €9.5 billion requirement of the EPADP but the sourcing of the earmarked funds is only a recycling
of identified funds (e.g the EDF) that already lie to the benefit of West Africa, with or without an EPA. This falls short of the legitimate expectations of the region. We consider that specific and independent funds should be set aside to assuage the specific EPA-related adjustment costs that West Africa would face. We consider that this process cannot be merged under the general Aid-for-Trade strategy. We do not believe that the EC may rely on earmarked development funds from third party donors to address potential EPA-related shocks. Other donors have nothing to do with the EPA, which basically would be an agreement between the EU and West Africa. Accordingly the EU has sole responsibility for addressing any EPA-related shocks and cannot take advantage of development financing by other donors.

iii. **Most Favoured Nation Clause:**

The MFN Clauses in EU-ACP trade relations is not new as the clauses were carried over from the successive Lome Agreements to the more recently expired Cotonou Agreement. The MFN clause in the Cotonou Agreement applied in respect of developed countries who did not grant the ACP states greater preferences than those granted by the European Community. NANTS considers that the unwieldy EPA MFN clause as proposed by the EC would stifle South-South cooperation as guaranteed under the 1979 GATT Decision on Special and Differential treatment for developing countries (otherwise known as the Enabling Clause). On the basis of available legal and economic analysis, our position is that the EPA MFN clause should not apply to any developing country but in respect of developed countries alone.

iv. **ECOWAS Community Levy:**

The Community levy was put in place to ensure functioning and provide funding for ECOWAS programmes. This levy is the means ECOWAS has used to overcome the difficulties in collecting member states’ contributions. NANTS considers that the levy is non-negotiable as independent source of funding ECOWAS and her regional programmes. Particularly, in the face of the EU’s refusal to provide new funds for financing the PAPED, West Africa cannot give up the Community levy.

v. **Non-execution Clause:**
The clause will provide an extended legal basis for either party to refuse to perform its obligation under the EPA for reasons that are purely political. Having due consideration to the political volatility of many West African states, including human rights issues, NANTS believes that the clause, as currently contemplated will merely provide the EC ready basis to renege whatever EPA commitment or responsibility it might undertake. This is purely a legal issue. The actual application or non-application of the clause in any instance does not affect the issue of legality. NANTS considers that if a non-execution clause would be in the EPA, its application should only be triggered by purely trade and trade policy issues.

\textit{vi. Rules of Origin:}

NANTS considers that any temporary protocol on EPA rules of origin that results from ongoing discussions can only be temporary and should be subject to further negotiations in other to realise a truly development-friendly rules of origin. On the basis of detailed analysis, NANTS takes the position that a complete move away from the current product specific rules of origin to a single-across-the-board criterion, based on the combination of a simple change of tariff sub-heading (CTSH) and a change of tariff heading (CTH) as may be appropriate, would be the best approach for reform.

\textit{vii. Review Clause:}

While West Africa proposes a specific clause for review of the agreement every five years, the EC rejects such, arguing that a review will be determined by need. NANTS considers that the EPA if and when signed, would definitely require a periodic evaluation of the benefits of the agreement to West Africa against prior identified benchmarks. We believe that a specific review period should be inserted in the agreement rather than leave such to the determination of events uncertain. We believe that a five year review clause is reasonable.

\textit{viii. ECOWAS Negotiating Structure:}

Although not one of the contentious issues in the negotiations, we feel a sense of duty to point out to the West African region that its dual negotiating team structure that sees the ECOWAS Commission and the UEMOA Commission negotiating on behalf of the region,
holds dire consequences for regional integration within the bloc. Clearly, the several discordance that has arisen between the two Commissions on some of the afore stated contentious issues in the negotiations, threatens the conclusion of a development-oriented EPA for the region. NANTS considers that the mere fact of two independent Commissions negotiating the EPA on behalf of the region in itself, undermines its regional integration initiatives. NANTS is of the view that the West African negotiating structure is an internal matter for the region. We take the position that the all-embracing ECOWAS as the AU-recognised regional economic community and in the region should be solely negotiating the EPA on behalf of the region and the signatory when eventually an EPA is agreed.

ix. ECOWAS Parliamentarians

One other essential component in the negotiations where NANTS has regularly expressed her position is on the role of the Parliament. The West African member state Parliaments as well as the ECOWAS Parliament as institutions in their respective rights and individual capacity have not been able to assert themselves fully on the EPA negotiations. The oversight function of the Parliament with regards to investigating the negotiations with a view to understanding the dynamics and probing the authenticity of development perspectives through constant meetings with the negotiators is too silent. This is poor compared to the commendable contribution and approach adopted by the European Parliament which on regular basis convenes hearings and analytical probes that produce reports on the EPA, with the aim of ensuring that the negotiations align with pro-development considerations.

Conclusion

Although we are neither deterred nor prepared to submit to negative pressure or any subtle and unconstructive instrument that may be applied, however, for the records, we wish to state clearly that NANTS sees the EPA negotiations as essential and necessary. We wish to reiterate our belief that trade, if done right can be a veritable tool for a country’s development. NANTS takes a principled position in demanding that West African governments commits to and sign only a development-friendly EPA, that is, one that accords with the principles of the Cotonou Agreement and is in tandem with West Africa’s
development priorities, including poverty reduction, promoting sustainable development and regional integration.

For as long as it would take to secure this and for as long as Nigeria believes in the sincerity of the EU in the context of the negotiations, NANTS would continue to support the negotiations.

Finally, we affirm that trade negotiations are characteristically long and arduous and the EPA negotiation is no different. The EPA negotiations have witnessed tremendous progress and we believe the outstanding issues although most critical, are not impossible ones.

Ken UKAOHA, Esq.
President

The entirety of this document and the views expressed herein are solely a reflection of the position of the National Association of Nigerian Traders (NANTS) as a Non State Actor organization on the WA-EU EPA negotiations. It DOES NOT represent the views or position of Nigeria or the Nigerian government, neither the views nor position of the ECOWAS Commission or West Africa on the negotiations.