



## **The EU fraudulent behaviour to extort the signing of the EPAs**

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This paper aims to show that the States of West Africa (WA) and of the Eastern Africa Community (EAC) have been pressured to sign the Economic Partnership Agreements (EPAs) and to ratify the interim EPAs (iEPAs) of Ivory Coast (IC) and Ghana on the basis of false indications and pressures, not to say lies, of the DG Trade of the European Commission. It is not because these EPAs have been ratified by IC and Ghana and the EU that it is impossible to denounce these fraudulent ratifications.

We recall that DG Trade refused to circulate the last 3 evaluations of the impact of the WA EPA that it had financed since their conclusions were negative for WA, but they are nonetheless available<sup>1</sup>. It lied by stating that the EPA aid program (PAPED) will bring €6.5 billion to WA from 2005 to 2020, while the DG DEVCO (Development and Cooperation) said in its brochure of July 2015 that there is not a single additional euro to the traditional cooperation funds: "*From 2014-2020, €6.5 billion will be delivered to support PAPED... The funds are drawn from the existing EU financial instruments: 11<sup>th</sup> European Development Fund National Indicative Programmes (NIP), Regional Indicative Programme (RIP), intra-ACP programme, and relevant EU thematic budget lines*"<sup>2</sup>. Worse, among the pressures on Nigeria to sign the EPA, the EU ambassador to Nigeria, Michel Arrion, said that the EU pledged to finance the PAPED to the tune of €6.5 billion every 5 years until 2035<sup>3</sup>. An empty promise since the Cotonou Agreement expires in 2020 and it is not clear whether it will be renewed and with what budget, and in any case not until 2035, since the EU's overall budget is only programmed up to 2020. Not to mention that the United Kingdom (UK), which will leave the EU, contributes 14.5% to the 11<sup>th</sup> EDF, which is not an EU budget but is financed by the EU Member States.

DG Trade as well as the governments of IC, Ghana and Kenya have largely underestimated, and even hardly talked about, the huge losses of import duties (IDs) on the EU exports which, for WA, would amount to 696 million euros (M€) in T5 (first year of liberalization) and €4.476 billion in T20, with a cumulative loss of €46.5 billion in T20<sup>4</sup> – of which cumulative losses of €3.638 billion for IC, €3.967 billion for Ghana, €15.267 billion for Nigeria and €23.591 billion for the 13 LDCs (assimilating Cape Verde to one) – and of €3.600 billion for the EAC in T25 (the length of liberalization is longer than in the WA EPA)<sup>5</sup>.

However the EPAs of WA and the EAC prohibit to increase export taxes without the EU's agreement, even though the population would increase by 61% from 2015 to 2035 in WA and by 71% in the EAC.

<sup>1</sup> <http://www.bilaterals.org/?four-impact-studies-of-the-west&lang=en>. In fact the fourth study, of Ibadan's University, was not financed by DG Trade but it refused to mention it.

<sup>2</sup> [https://ec.europa.eu/europeaid/sites/devco/files/epa-brochure\\_en.pdf](https://ec.europa.eu/europeaid/sites/devco/files/epa-brochure_en.pdf)

<sup>3</sup> <http://leadership.ng/news/496017/eu-appeals-fg-ratify-economic-partnership-agreement>;  
<http://www.bilaterals.org/?eu-threatens-to-stop-market-access>

<sup>4</sup> *West Africa's losses of customs revenues with the WA EPA or interim EPAs*, SOL, October 5, 2016, <http://www.sol-asso.fr/analyses-politiques-agricoles-jacques-b/>

<sup>5</sup> *EAC duties losses on imports from EU28-UK from 2015 to 2040 if the EPA is signed*, SOL, July 21, 2016, <http://www.sol-asso.fr/analyses-politiques-agricoles-jacques-b/>

Hence the EU impossible commitment of article 60 of the WA EPA where *"the European Union undertakes to provide funding to cover the fiscal impact agreed by the Parties for the period of tariff dismantling"*. The same for article 100 of the EAC EPA: *"The EU shall... provide financial resources to cover transitionally the agreed losses of government revenue arising from elimination and or substantial reduction in customs tariffs"*.

Another lie was encompassed in article 37 of the Cotonou agreement of 2000 which provided in paragraphs 5 and 6: *"5. Negotiations of the economic partnership agreements will be undertaken with ACP countries which consider themselves in a position to do so, at the level they consider appropriate and in accordance with the procedures agreed by the ACP Group, taking into account regional integration process within the ACP. 6. In 2004, the Community will assess the situation of the non-LDC which, after consultations with the Community decide that they are not in a position to enter into economic partnership agreements and will examine all alternative possibilities, in order to provide these countries with a new framework for trade which is equivalent to their existing situation and in conformity with WTO rules"*<sup>6</sup>. However, if this provision was confirmed in the Revision of 2005, only paragraph 5 of article 37 subsisted in the 2010 revision but paragraph 6 disappeared: *"Negotiations of the Economic Partnership Agreements will be pursued with ACP countries which consider themselves in a position to do so, at the level they consider appropriate and in accordance with the procedures agreed by the ACP Group, and with a view to supporting regional integration process within the ACP"*. Paragraph 7 of the new article 37 states only that *"Once ACP States have concluded an Economic Partnership Agreement, those ACP States which are not Parties to such Agreement can seek accession at any time"* without alternatives equivalent to the Cotonou regime.

However the EU could have proposed two alternatives to ACPs not willing to sign EPAs and WTO compatible: a WTO waiver or the GSP+ status.

The first alternative would be a WTO waiver for all sub-Saharan Africa countries, of which that of WA which will benefit to IC, Ghana and Nigeria, and that to EAC which would benefit Kenya as the United States got it for the AGOA (African Growth Opportunity Act) in 2000 (at the same time as the Cotonou Agreement), renewed for 10 years in 2015 with the unanimous consensus of the WTO, including of the EU. This should be easily obtained for the EU since the banana war was buried twice with the Andean and Central American exporting countries (in December 2009 at the WTO and in the Free Trade Agreements (FTAs) concluded in 2012 and 2015) which were at the origin of the EU condemnation at the WTO and of the replacement of the Lomé conventions by the Cotonou Agreement which decided the EPAs. If the EU had solved this war before the Doha Round in November 2001 it could have got a new waiver to continue the Lomé conventions. But it is not too late in view of the post-Cotonou renewal after 2020.

The second alternative would be to grant the GSP+ (Generalized System of Preferences +) status to IC, Ghana, Nigeria and Kenya, which depends only on the EU political will as they have signed or ratified the 27 international conventions required by the EU<sup>7</sup> and as they fulfil the

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<sup>6</sup> [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:22000A1215\(01\)](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:22000A1215(01))

<sup>7</sup> The list of the 27 conventions is given at the end of the EU Commission's assessment report of GSP+ countries of January 2016 and the signature or ratification can be checked on specific UN bodies: [https://eeas.europa.eu/delegations/costa\\_rica/documents/eu\\_costa\\_rica/european\\_commission.\\_\(2016\).\\_report\\_on\\_the\\_generalised\\_scheme\\_of\\_preferences\\_during\\_the\\_period\\_2014-2015..pdf](https://eeas.europa.eu/delegations/costa_rica/documents/eu_costa_rica/european_commission._(2016)._report_on_the_generalised_scheme_of_preferences_during_the_period_2014-2015..pdf);  
[https://treaties.un.org/Pages/TreatyParticipantSearch.aspx?clang=\\_fr](https://treaties.un.org/Pages/TreatyParticipantSearch.aspx?clang=_fr);  
[http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200\\_COUNTRY\\_ID:103023](http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103023);  
<https://cites.org/eng/disc/parties/chronolo.php>

criteria of economic vulnerability (as confirmed by an e-mail of 13 June 2016 received from DG Trade). Bern Lange, President of the INTA Committee of the European Parliament had suggested to Kenya to make a request for GSP+ as an alternative to the EAC EPA that Tanzania and Burundi refused to sign. A possible opponent could have been India which sued the EU in 2002 on the anti-narcotics preferential GSP (ancestor of the GSP+) but the Appellate Body ruled that different preferences may be given if the difference responds "to a widely-recognized development, financial or trade need".

IC, Ghana and Kenya have been pressured to ratify the EPAs on the basis of a huge overestimation of import duties (IDs) to pay to the EU if they do not ratify the iEPAs or EAC EPA, a fortiori if they got GSP+ status (with MFN tariffs on some products). Table 1 compares these GSP and GSP+ IDs on EU28-UK imports for 2015 without the Cotonou regime or EPAs.

Table 1 – GSP or GSP+ duties to pay on IC, Ghana, Nigeria, Kenya exports to EU28-UK without EPA

	EU28-UK	GSP duties + MFN		GSP+ and MFN duties		GSP+/GSP
	imports	euros	rates	euros	Rates	duties
Ivory Coast	3880338614	114244201	3.70%	38303403	0.99%	33.53%
Ghana	2116620179	44552453	2.10%	5030053	0.24%	11.29%
Nigeria	16448588276	8839001	0.54%	2672265	0.02%	30.23%
The 3 WA DCs	22445547069	167635655	0.75%	46005721	0.20%	27.44%
Kenya	945171470	69955584	7.40%	209460	0.02%	0.30%

Source: <http://www.sol-asso.fr/analyses-politiques-agricoles-jacques-b/>

The GSP+ duties would have been of only 27.4% of the GSP duties for the average of IC, Ghana and Nigeria – 33.5% for IC, 11.3% for Ghana and 30.2% for Nigeria – and of only 0.2% for Kenya. For a total of GSP+ duties of €46 million for the 3 WA DCs – of which €38.3 million for IC, €5 million for Ghana and €2.7 million for Nigeria – and of only €0.2 million for Kenya.

But the EU most hypocritical behaviour has consisted to grant a better access to its market to the much richer DCs and developed countries which have signed FTAs than to ACPs which have not signed EPAs. Which denies its claimed "preferences" granted to ACPs in the so-called "Generalized System of Preferences" (GSP) and even in the GSP+ which should be relabelled instead "Generalized System of Penalizations" of the ACPs. This concerns particularly the FTAs implemented since 2013 with Colombia and Peru (and 6 Central American countries, and with Ecuador since 2016), but also the EU-Canada CETA – officially signed on 30 October 2016 and which should be ratified by the EU Parliament on 1<sup>st</sup> February 2017 – and the EU-US TTIP not yet finalized but for which DG Trade has only released a summary<sup>8</sup> of the detailed revised EU tariff offer of 20 November 2015, details which are available by tariff line on Inside US trade and on [bilaterals.org](http://bilaterals.org)<sup>9</sup> websites. Which shows clearly that the EU behaviour was guided first by its possibilities to increase its market access to richer countries to which it agrees to open its own market to their exports more than it does for the ACPs that refuse to sign EPAs. So that all the EU nice words in the preambles of the revised Cotonou Agreement of 2010 and of the WA EPA and EAC EPA about "the objective of reducing and eventually eradicating poverty consistent with the objectives of sustainable development... CONSIDERING the importance attached by the Parties to the principles of the United Nations Charter, particularly the observance of human rights " are all just for show.

Precisely the low tariffs or even duty-free on imports from the countries having signed FTAs imply that the EU does not care about the fact that these countries comply with the basic

<sup>8</sup> <https://www.thepressproject.gr/ttipen/index.php?aid=93959>

<sup>9</sup> <http://www.bilaterals.org/?eu-us-fta-ttip-draft-eu-revised>

international conventions on human rights, social rights, environment and good governance as it requires from ACPs to obtain the GSP+ status. According to the Human Rights Watch report of 2016, "*Rampant crime and impunity for human rights abuses remain the norm in Honduras. Despite a downward trend in recent years, the murder rate is among the highest in the world*"<sup>10</sup>; "*Violence and extortion by powerful criminal organizations remain serious problems in Guatemala. Corruption within the justice system, combined with intimidation against judges and prosecutors, contributes to high levels of impunity. Gang-related violence is also one of the principal factors prompting people, including unaccompanied youth, to leave the country*". Even if a peace agreement has been concluded recently between the Colombia's government and the FARC, at the time the EU FTA was signed in 2012 the country was not a good example on human rights as the 2016 report still states that "*Human rights defenders, trade unionists, journalists, indigenous and Afro-Colombian leaders, and other community activists face death threats and violence, but perpetrators are rarely held accountable*". According to the Amnesty International 2015-16 report, in El Salvador "*Levels of gang-related violence and organized crime surged and homicide rates soared. According to official records, 4,253 homicides were registered in the first eight months of the year, compared with 3,912 for the whole of 2014. Criminal violence forced many Salvadorians to leave the country, and also led to the internal displacement of thousands of families, according to the Civil Society Roundtable against Forced Displacement Provoked by Violence and Organized Crime*"<sup>11</sup>.

In a previous paper<sup>12</sup> we thought, wrongly, that it was possible to extend the MFN (Most Favoured Nation) clause of article 16 of the WA EPA (and article 15 of the EAC EPA) to DCs which would not sign the EPAs. This article provides: "*2. The European Union Party shall grant the West Africa Party any more favourable tariff treatment that it grants to a third Party if the European Union Party becomes party to a preferential agreement with the third Party in question after the signing of this Agreement*". Similarly, article 17 of the IC iEPA states: "*1. With respect to matters covered by this Chapter, the EC Party shall accord to the Ivorian Party any more favorable treatment applicable as a result of the EC Party to become a free trade agreement with third parties after the signature of this Agreement*". Article 17 of Ghana's iEPA is the same. However some friends confirmed that the MFN clause plays only for ACP countries having signed an EPA. But in that case the MFN clause against the EU is meaningless because in the EPAs the ACP countries get already duty free access to the EU!

Let us compare in Table 2 the IDs that IC, Ghana, Nigeria and Kenya would have had to pay on their exports to the EU28-UK in 2015 if they did not avail of the Cotonou regime but could be taxed according to GSP, GSP+, the Colombia regime (representing the 3 Andean countries and 6 Central American countries having implemented FTAs), CETA and TTIP.

But first let us begin with Table 1 on fresh bananas for which the FTAs with the 3 Andean countries and the 6 Central American countries have lowered the IDs on exports to the EU from 111 €/t in 2015 to €104 in 2016, €97 in 2017, €90 in 2018, €83 in 2019 and €75 from 2020. But IC, Ghana (and Cameroon) would have been taxed at the MFN duty of 127 €/t if they did not ratify the EPAs, even if they had received the GSP+ status.

If this reduction in IDs on bananas would have been extended to these 3 DCs' exports to the EU28-UK they would have fallen for IC from €27.1 million (M) in 2015 to €16 M from 2020

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<sup>10</sup> [https://www.hrw.org/sites/default/files/world\\_report\\_download/wr2016\\_web.pdf](https://www.hrw.org/sites/default/files/world_report_download/wr2016_web.pdf)

<sup>11</sup> <https://www.amnesty.org/download/Documents/POL1025522016ENGLISH.PDF>

<sup>12</sup> *The signing of the EPAs and interim EPAs was extorted by the European Commission's fraudulent behaviour*, December 3, 2016, <http://www.sol-asso.fr/analyses-politiques-agricoles-jacques-b/>

on, which would have decreased its total GSP+ IDs from €38.3 billion to €27.2 billion. For Ghana, its IDs on bananas would have decreased from €2.851 M in 2015 to €1.684 M in 2020 and its total GSP+ IDs from €5.030 M to €3.863 M<sup>13</sup>. This would be the best argument for the two countries to give up their iEPAs and apply for GSP+. The GSP+ of the 3 WA DCs (with Nigeria) would fall from €45.1 M to €32.7 M.

Table 1 – EU IDs on bananas that IC and Ghana could pay if aligned on Colombia's IDs

Product	HS code	Country	ID	Colombia		GSP	GSP+	MFN
				2015	2020			
Fresh bananas	08039010		€/tonne	111	75	127	127	127
		IC	€	27092250	15399360	33613500	33613500	33613500
		Ghana	"	2492150	1683885	2851379	2851379	2851379

Source: Eurostat and TARIC

Table 2 shows the main products for which IC, Ghana, Nigeria and Kenya would have paid IDs in 2015 for their exports to the EU28-UK in the absence of EPA, comparing the GSP and GSP+ tariffs with those granted in the EU FTAs with Andean and Central American countries (represented by Colombia) and in CETA and TTIP. One can download the specific calculations made for their GSP and GSP+ IDs in 2015<sup>14</sup>. We see that for the Andean and Central American countries the only product for which access to the EU would not be duty free would be unwrought aluminium with IDs at a third of the MFN duties applicable to GSP and GSP+ ACPs.

When the IDs are presented for a whole chapter (06, 41, 76), the MFN tariffs are not indicated because they are different according to the tariff lines of the chapter. Most IDs are ad valorem (AV) but some are specific (euros/t) or complex like those on chocolate. Only the powdered chocolate of code 18062010 exported by IC was indicated by simplifying the estimate of the average ID on the basis of the AV ID plus the maximum ID of 18.7% AV for the agricultural components but without taking into account the ID on incorporated sugar because the precise total ID depends on information held only by the exporters.

The EU tariff schedule for CETA is very simple as it is a negative list, the tariff lines not included in the EU schedule being dismantled as soon as the EPA is implemented<sup>15</sup>. Most of the other tariff lines are dismantled over 3,5 or 7 years, and a short list of tariff lines in category E would not be liberalized, among which most are sensitive agricultural products, but all fishes are liberalized. The EU CETA schedule will liberalize immediately almost all tariff lines for which IC, Ghana, Nigeria and Kenya should pay MFN, GSP or GSP+ IDs. If bananas are not included in the EU's negative tariff schedule, implying that the EU could import them duty free, clearly Canada does not export bananas. The EU schedule allows to import duty-free from Canada all processed cocoa (including chocolate except 2 tariff lines that IC does not export), all canned tuna exported by IC and Ghana (some tariff lines are only liberalized in year 8 but not those imported by the EU from IC and Ghana), Chapter 06 (of which cut flowers), all vegetables exported by Kenya (of which fresh beans), cereal soups and bran, hides and skins (Chapter 41) and aluminium (Chapter 76) which are two products on which the EU applies MFN duties, including under GSP+. In fact the EU schedule in CETA liberalizes at once all industrial products except of chapter 87 (automobiles) where the liberalization will extend over 3, 5 or 7 years.

<sup>13</sup> The United Kingdom (UK) has accounted for 55.8% of the EU28 imports of bananas from Ghana so that the Ghana's exports to the EU28-UK are much lower than those of the EU28-UK after the Brexit.

<sup>14</sup> *The absurd ratification of Ivory Coast's interim EPA*, December 10, 2016; *GSP and GSP+ duties that Kenya could have paid on exports to the EU28-UK in 2015*, November 10, 2016; *GSP+ duties Nigeria could have paid to EU28-UK in 2015 without EPA*, December 3, 2016; *GSP+ is by far a much better option for Ghana than implementing its interim EPA*, October 11, 2016; <http://www.sol-asso.fr/analyses-politiques-agricoles-jacques-b/>

<sup>15</sup> <https://www.thepressproject.gr/ttipen/index.php?aid=93959>

Table 2 – Different IDs that IC, Ghana, Nigeria and Kenya could have paid in 2015 without EPA

Product	HS code	Country	ID	Colombia	CETA	TTIP	GSP	GSP+	MFN		
Pineapple	08043000		AV	0	0	0	2,30%	0	5,80%		
		IC	€	0	0	0	409150	0			
		Ghana	"	0	0	0	396895	0			
Plants&flowers	06	Nigeria	"	0	0	0	6323	0			
		Ghana	"	0	0	0	61012	0			
		IC	"	0	0	0	115886	0			
Fresh beans	07081000	Kenya	"	0	0	0	19024009	0			
		Kenya	€	0	0	0	4,50%	0	13,60%		
		Kenya	€	0	0	0	915743	0			
	07089000	Kenya	AV	0	0	0	7,70%	0	11,20%		
		Kenya	€	0	0	0	6495986	0			
		Kenya	AV	0	0	0	8,90%	0	12,80%		
	07099990	Kenya	€	0	0	0	1337177	0			
		IC	"	0	0	0	57694	0	8,90%		
		Ghana	"	0	0	0	28678	0			
Cocoa paste	1803	Kenya	AV	0	0	0	6,10%	0	9,60%		
		IC	€	0	0	0	29597442	0			
		Ghana	"	0	0	0	12208816	0			
	1804	Nigeria	"	0	0	0	422469	0			
		Kenya	AV	0	0	0	4,20%	0	7,70%		
		IC	€	0	0	0	12258509	0			
	1805	Ghana	"	0	0	0	3267388	0			
		Nigeria	"	0	0	0	2049825	0			
		Kenya	AV	0	0	0	2,80%	0	8%		
	18062010	IC	€	0	0	0	1035157	0			
		Ghana	"	0	0	0	878702	0			
		Kenya	AV	0	0	0	4,8%+EA18,7%	0%+18,7%	8,3%+EA18,7%		
Chocolate	18062010	IC	€	0	0	0	23340079	18572744			
		Kenya	AV	0	0	0	20,50%	0	24%		
		IC	"	0	0	0	19806577	0			
Canned tuna	160414	Ghana	"	0	0	0	18425663	0			
		Kenya	AV	0	0	0	44 €/t	44 €/t	44 €/t		
		IC	"	0	0	0	1160518	1160518			
Cereals bran	23023010	Kenya	AV	0	0	0	89 €/t	89 €/t	89 €/t		
		IC	€	0	0	0	125588	125588			
		Kenya	AV	0	0	0	8%	0	11,50%		
Cereals soup	21041000	IC	"	0	0	0	183877	0			
		Nigeria	"	0	0	0	3414891	2581053			
		IC	"	0	0	0	81802	81763			
Hides and skins	41	Kenya	"	0	0	0	280063	237427			
		Nigeria	"	14798	0	0	55028	44395			
		Ghana	"	460658	0	0	1382173	1381973			
Aluminium	76	IC	"	0	0	0	2080	0			
		GSP or GSP+ duties that IC, Ghana, Nigeria, Kenya would have had to pay on their total exports to the EU28-UK in 2015									
		IC all products						114244201	38303403		
Ghana "						44552453	5030053				
Nigeria						8839001	2672265				
3 WA DCs						167635655	46005721				
Kenya						69955584	209460				

Source: Eurostat et TARIC

As for TTIP, the EU schedule liberalizes also almost all tariff lines for which IC, Ghana, Nigeria and Kenya would have to pay IDs to the EU without EPAs, including bananas in year 3 after the implementation of the TTIP. But the US exports of bananas were limited to 17,743 tonnes in 2015 and they are not competitive, being exported at a FOB price of 898 €/t in 2015 against an average EU CIF import price of 639 €/t. EU28 imported 587 t of fresh beans (code 07081000) from the US at a CIF price of 407 €/t in 2015 but at 462 €/t once paid the 13.6% ID, against 3,477 t from Kenya at 450.5 €/t so that EU imports from the US would outcompete those from Kenya once the ID eliminated in TTIP, even if 94% of EU28 imports were made by the UK. On the other hand the EU28 imports of fresh beans of code 07089000 were almost inexistent from the US (2 t) but 105 t were imported from Canada at a CIF price of 718 €/t (to which were added an ID of 11.2%) but are not competitive with imports from Kenya at 409 €/t (even if the GSP

would add 8.90%) but these imports from Kenya were of only 39 t. However Canada and US are not real competitors for processed cocoa other than chocolate and for processed tunas. The EU28 has imported 1,420 t of cereals soups from the US at a CIF price of 2,475 €/t (2,760 € after the MFN ID of 11.20% which will be eliminated in TTIP), so that it seems more competitive than IC from which the EU28-UK imported 625 t at a CIF price of 3,677 €/t (but the quality might be different). If the US is not really competitive in the EU for unwrought aluminium of code 7601100 aluminium, this is not the case for Canada where EU28-UK imported 119,656 t at 177.4 €/t (and at 182.8 €/t once the 3% MFN ID paid) against 175.2 €/t for the 24,602 t imported from Ghana, implying that the competitive margin of Ghana will shrink once the CETA is implemented.

Let us conclude by summarizing the EU's fraudulent behaviour that led ACP countries to sign EPAs or iEPAs:

- refusal to circulate the last 3 evaluations of the WA EPA concluding on their negative impact
- no mention of the huge loss of import duties on its exports to the countries that signed EPAs
- no additional specific funds for the PAPED for the WA EPA or the EAC EPA
- impossible promise to finance the PAPED at 6.5 billion euros every 5 years until 2035
- interdiction to raise export taxes even though the population will rise by 61% in WA and 71% in the CEA from 2015 to 2035
- hence impossible promise to cover the net fiscal impact of ACPs having signed EPAs
- in 2010 the EU cancelled its commitment to provide a trade framework equivalent to the Cotonou regime for ACPs refusing to sign EPAs
- it did not propose the two alternatives compatible with the WTO, namely a WTO derogation or the GSP+
- huge overestimation of import duties to be paid to the EU if they do not ratify the EPAs
- the EU offers much better access to its market to wealthier developing countries and developed countries that have signed FTAs than to ACP countries that have not signed EPAs
- the EU does not care that countries having signed FTAs are violating human rights

If these EU fraudulent behaviour had been known by the SSA States negotiating EPAs, they would not have signed them, but would have requested to receive the GSP+ status or a WTO waiver. Similarly, the European Parliament and the EU Council of Ministers would not have followed the European Commission to impose regional EPAs and iEPAs. But it is not too late for them to retract their decisions which are largely due to the fraudulent behaviour of the European Commission which misled them in many ways and failed to honour its commitments. Article 1130 of the French Civil Code stipulates that "*Error, fraud and violence vitiate consent if they are of a nature that, without them, one of the parties would not have contracted or contracted on substantively different terms, and their determining character shall be assessed in the light of the persons and circumstances in which the consent was given*"<sup>16</sup>. Similarly article 49 of the Vienna Convention on the Law of Treaties states: "*If a State has been induced to conclude a treaty by the fraudulent conduct of another negotiating State, the State may invoke the fraud as invalidating its consent to be bound by the treaty*"<sup>17</sup>.

Rather than resorting to the Mediator established in the regional EPA and iEPAs, ECOWAS and EAC and the EU and WA and EAC civil society should resort to the EU Ombudsman and the EU Court of Justice, the EU Court of Auditors and the European Court of Human Rights but also to the ECOWAS' Court of Justice<sup>18</sup> and EAC's Court of Justice<sup>19</sup>, in order to render null

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<sup>16</sup> <https://iej.univ-paris1.fr/openaccess/reforme-contrats/titre3/stitre1/chap2/sect2/ssect1/para2-vices-consentement/>

<sup>17</sup> [http://legal.un.org/ilc/texts/instruments/english/conventions/1\\_1\\_1969.pdf](http://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf)

<sup>18</sup> <http://www.courtecowas.org/site2012/index.php?lang=en>

and void the signatures of these EPAs that were extorted through the fraudulent manoeuvres of the European Commission.

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<sup>19</sup> <http://eacj.org/>