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EPAs and the post-Lisbon Implementation Status

The negotiations for Economic Partnership Agreements (EPA) between African, Caribbean and Pacific (ACP) countries and the European Union (EU) were launched in 2000. The talks are carried out in terms of the Cotonou Agreement, which seeks to replace the non-reciprocal export preferences ACP countries have had with the European Community (EC) with reciprocal free trade arrangements. These negotiations have been carried out on a regional basis since January 2008 in order to align the parties' trade regime with World Trade Organization (WTO) rules.[1] Accordingly, a number of ACP countries initialled Interim Economic Partnership Agreement texts at the end of 2007. The IEPAs are a stopgap measure meant to prevent trade disruptions while negotiations on fully fledged EPAs continue. The second stage of negotiations, which will include services, investment, competition and government procurement, is expected to lead to the conclusion of fully fledged EPAs.

This policy note seeks to provide a brief overview of the implementation status of the EPAs in selected African[2] regions. The paper also looks at the impact of the Interim Economic Partnership Agreements (IEPAs) on the countries that initialled them and provides recommendations on how to ensure that the eventual full EPA agreements promote the interests of African countries.

Implementation Status in Selected EPA Groups

Only one region, the Caribbean Forum (CARIFORUM), managed to conclude a full EPA with the EU by the end of 2007. The EU and its counterparts aim to conclude other EPA negotiations by early 2010.[3] The following groups have yet to conclude these negotiations and are at various stages of negotiation and implementation.

Southern Africa Development Community (SADC) EPA

In the SADC EPA group, the situation has been complicated. Of the 14 original SADC member states, only eight initially negotiated EPAs under the SADC banner. The SADC EPA initially comprised the BLNS countries (Botswana, Lesotho, Namibia, Swaziland), Mozambique, Angola and Tanzania. South Africa, which together with BLNS belong to SACU, already has a separate contractual free trade agreement (FTA) with the EU, namely the Trade, Development and Cooperation Agreement (TDCA). In a bid to rationalise the SACU trade relationship with the EC, South Africa was allowed to participate fully in the EPA talks, not just as an observer, as was the case when the talks began. By November 2007, South Africa, Namibia and Angola refused to initial[4] the IEPA. The rest of the SACU member states and Mozambique initialled, while Tanzania left the SADC EPA group to join the EAC EPA talks. Namibia later initialled the IEPA in order to preserve its beef and other agricultural exports to the EU.

The signing of the SADC IEPA on 4 June 2009 in Brussels has raised temperatures within SACU and has threatened to break the century-old customs union. Of the five SACU countries, Botswana, Lesotho and Swaziland (BLS) have signed the IEPA, whereas Namibia (though it initialled the agreement) and South Africa have indicated that they will not sign until changes are made to the agreement to their satisfaction. Mozambique, a SADC but non-SACU member state, has signed the IEPA and Angola continues to trade under the Everything But Arms (EBA)[5] preferential scheme for least developed countries (LDCs).

Through the EPA, the BLS countries also want to attract foreign direct investment (FDI) into their services sectors

1. The deadline came about because of a 2001 waiver from the WTO obtained by the EC and the ACP countries regarding the Cotonou Agreement, allowing for the continuation of the preference regime, but only until the end of 2007. Beyond that date, the EC would not be allowed to continue the preference regime without establishing a regional trade agreement under Article XXIV of the GATT. The waiver is given in WTO (World Trade Organization), 'European Communities: The ACP–EC Partnership Agreement', Decision of 14 November, WTO Document WT/MIN (01)/15, <http://www.wto.org/English/thewto_e/minist_e/mmin01_e/mindecl_acp_ec_agre_e.htm>

2. Due to space limitations, this briefing paper cannot cover all EPA groups, but endeavours to cover as many as practicable.

3. http://ictsd.net/i/news/tni/52360/ [accessed on 20 August 2009]

4. Initialling an EPA signals a political commitment to the agreement. Such agreement would only become legally binding when "signed", although it may still have to be ratified.

5. EBA is an initiative of the EU under which all imports to the EU from LDCs are duty free and quota free, with the exception of armaments. EBA has been in force since 2001.

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(particularly in financial services) and to gain market access to the EU for their clothing and textiles industries, while retaining existing preferential access.[6] The rules of origin under the EPA are particularly attractive, since they require only a single-stage conversion to enjoy market access. However, this would go against SA's defensive interests; SA wants to protect the clothing and textiles sectors along with other sectors that are seen as promoting employment. Nonetheless, it is clear that some of SA's defensive interests do not fit well with the aspirations of BLS countries. Having said that, the parties are reportedly not too far apart on making a common tariff offer, which would see the TDCA schedule aligned with the EPA schedule: apparently 500 tariff lines are in the balance.[7]

The full EPA would include chapters on services and investment, incorporating the EU services liberalisation offer. SADC countries (minus Angola, Namibia and South Africa) would include one services sector liberalisation commitment per member country, as well as a standstill clause to negotiate the rest of the SADC services liberalisation schedule within three years.

The EU agreed to support capacity building aimed at strengthening the regulatory framework of the participating SADC EPA countries.[8] This may act as an incentive for the SADC EPA countries to engage in the negotiations. However, the three-year period for full agreement may be unrealistic, considering the wide coverage of the services sector.[9]

Namibia, just like South Africa, is generally opposed to the inclusion of services and trade-related issues in the EPAs. Namibia is therefore unlikely to participate in the services negotiations, except as a way to secure regulatory capacity-building and technical assistance.

Botswana and Swaziland, however, are interested in the services liberalisation under the EPAs. They see it as an opportunity for introducing more competition in their market. Lesotho demonstrated willingness to negotiate services. Together with Botswana, Swaziland and Lesotho felt South Africa wanted to impose its agenda, which they saw as an attempt to prevent EC companies from investing in the region. Mozambique is mainly interested in allowing market access, provided conditions are attached that would ensure development of supply capacities in their domestic services sector. Clearly, there is a challenge in negotiating the SADC EPA, in that there are different interests and there is no clear regional agenda. This is a very delicate issue and has caused much friction among Southern African Customs Union (SACU) member states.

Economic Community of West African States (ECOWAS) EPA

The ECOWAS EPA group incorporates 15 West African countries.[10] Twelve of the 15 members of this group are LDCs that are EBA beneficiaries. Hence, it is the three developing members of the group – Ghana, Côte d'Ivoire and Nigeria – that faced the threat of losing improved market access to the EU in the event of failure to conclude an IEPA with the EU.

This partly explains why the governments of Ghana and Côte d'Ivoire made a separate decision from the group to conclude IEPAs with the EU. They saw this as the only way to secure more preferential market access than that provided under the generalised system of preferences (GSP)[11] that is generally available to all developing countries.

With the conclusion of IEPAs by Ghana and Côte d'Ivoire, it seems Nigeria is the only country in the region that currently has no trade arrangement with the EU that provides better market access than the standard GSP. Though Nigeria had a tripartite meeting with Ghana and Côte d'Ivoire in Accra in 2008 to discuss the impacts of signing IEPAs with the EU, it made no move to sign such an agreement, instead retaining its notional leadership role in the negotiations between the EU and ECOWAS as a group.

The initial deadline of June 2009 set by ECOWAS members to sign an EPA with the EU has been extended to October 2009 in order to deal with a number of contentious issues. One of the areas where there is a firm difference between the EU and ECOWAS group is on the degree and phasing-in of tariff liberalisation by ECOWAS in favour of EU exports to comply with the requirement for reciprocal liberalisation of duties on substantially all trade under Article XXIV of the GATT. Based on its general definition that liberalisation of substantially all trade means liberalisation of at least 90% of total bilateral trade, the EU, which envisages 100% tariff liberalisation on its side, expects ACP regions, including ECOWAS, to liberalise at least 80% of their trade, in order to achieve the 90% average threshold. In respect of the transition period, the EU, as per the Understanding on the Interpretation of Article XXIV of the GATT, proposes a ten-year implementation period, with an extension up to 15 years in exceptional cases.

However, for the ECOWAS group, the maximum concession it is prepared to make to the EU is, apparently, liberalisation of 60% of its market within a transition period of 25 years.[12] Also, while the ECOWAS group stresses the need to incorporate development programmes into the EPA text and link the phase of liberalisation to the available finance,

6. BLNS countries would like to preserve their preferential market access for beef and other agricultural exports, but also for textiles and clothing, under more flexible rules of origin provided by the EPA. See Draper, P. and N. Khumalo (2009), "On the Future of the Southern African Customs Union",Trade Negotiations Insights Vol. 8, No. 6, July-August 2009, ECDPM/ICTSD, www.acp-eutrade. org/tni

7. According to parliamentary testimony given by the South African Department of Trade and Industries Chief Negotiator, Xavier Carim, on 26 August 2009.

8. Art 67 (1) (b) (1) states that: "The Parties recognize that trade capacity building can support the development of economic activities, in particular in services sectors. To this end, the EC Party agrees to support capacity building aimed at strengthening the regulatory framework of the participating SADC EPA States".

9. N. Khumalo (2008), "EPA Negotiations on Trade in Services: Implications and Recommendations for Southern Africa," Working Paper, GTZ, May 2008, www.gtz.de

10. Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, Gambia, Ghana, Guinea-Bissau, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone and Togo.

11. GSP exempts developed countries from strict compliance with the non-discrimination rules of the WTO for the purpose of lowering tariffs for developing and LDCs.

12. http://www.abcburkina.net/content/view/705/45/lang,en/ [accessed on 26 August 2009]

[13]the EU maintains its position of excluding development assistance as a condition for undertaking liberalisation commitments.

East and Southern Africa (ESA) EPA

The ESA EPA group comprises 11 countries from Eastern and Southern Africa.[14] All the countries in the group except Mauritius, Seychelles and Zimbabwe are LDCs. While six of the 11 members have signed IEPAs with the EU, the remaining five countries,[15] all of them LDCs, have refrained from signing a deal with the EU. All of them are, however, beneficiaries of the EBA initiative.

In addition to the fact that the ESA IEPA was initialled by only six (Comoros, Madagascar, Mauritius, Seychelles, Zambia and Zimbabwe) of the 11 countries in the group, each of the six countries adopted a different tariff reduction schedule with a different exclusion list. The adoption of such different trade liberalisation schedules will inevitably render formation of a single ESA-EPA impossible, since tariff reduction schedules, together with lists of products that will be excluded from liberalisation, form a vital part of EPAs.

This group also plans to conclude the EPA agreement by October 2009 on the basis of agreed issues. Four countries, namely Mauritius, Seychelles, Zimbabwe and Madagascar have signed an IEPA while Zambia and Comoros have indicated their willingness to sign at a later date.[16] It is also important to note that COMESA (Common Market for East and Southern Africa) has launched a customs union from which eight of the 14 free trade area members opted out.[17] EAC countries in particular have opted out, citing the fact that they are already members of another customs union.

Since it is not possible for a country to belong to more than one customs union, it is not clear how EAC countries will relate to COMESA after the launch of this customs union. Apparently EAC countries have requested a three-year transitional period to consider their options.[18] Countries like Kenya will have very difficult choices to make, since the COMESA market is very important to them. Perhaps the proposed FTA among SADC, COMESA and EAC might solve some of these challenges since it could enable a country that is already a member of a customs union to maintain better market access offered by another regional body through its FTA membership of the latter.

East African Community (EAC) EPA

The EAC EPA group is composed of five East African countries,[19] four of which are LDCs.[20] Unlike the situation in the SADC, ECOWAS and ESA EPA groupings, all five countries under the EAC EPA group on 27 November 2007 collectively initialed a single EAC-EU IEPA. Besides, unlike the ESA EPA where four countries have currently signed an IEPA with different tariff schedules, countries in the EAC EPA group have agreed to a single tariff schedule that will be applicable to all five members in accordance with the common external tariff under the EAC customs union. In this respect, the EAC IEPA with the EU can be regarded as a pro-regional integration initiative, reinforcing the common external tariff of the EAC customs union.

Though an agreement has been reached between the EAC group and the EU that the former will undertake liberalisation on 82% of imports from the EU within 25 years (which is above the EU's minimum threshold of 80% but allows the EAC a transitional period longer than the standard 15 years), agreement is still needed on various issues, including the standstill clause,[21] Most Favoured Nation treatment, rules of origin, agriculture, trade related issues and incorporation of new generation issues as well as a legally binding development assistance provision under the full EPA text. The deadline of 31 July 2009 to conclude a full EPA has lapsed

Despite the fact that an agreement was reached under Article 13 of the EAC-EU IEPA over the application of the standstill clause, renegotiation is necessitated in the move towards a comprehensive EPA since the EU gave a more flexible deal to the SADC, CARIFORUM and Pacific regions on the matter. As per Article 13 of the EAC-EU interim EPA, the standstill clause will be applicable to all products. This clause is restrictive compared to EU's deal with the abovementioned regions: the application of the standstill clause is limited to products that are not on the exclusion list.

In short, for progress to be made towards a full EPA deal, a number of important issues still require agreement between the parties.[22] However, the consequences of failure to sign a framework for EPAs could result in devastating trade disruptions for EAC countries like Kenya, since their exports would then be governed by the less generous market access terms under GSP, "which Kenya estimates would see some of its products currently being exported to the EU at zero rates attracting duties ranging from 8.5 to 15.7 percent".[23]

Recommendations

It is clear many EPA regions have a number of outstanding issues that need to be ironed out before the parties can move on to regulatory issues such as services and investment. It is, however, also clear that the outstanding issues are largely surmountable but that the current global economic crisis is compounding the challenges facing African countries. In particular, adjustment costs arising out of EPA-inspired re-

13. Ibid.
14. ESA comprises Comoros, Madagascar, Mauritius, Seychelles, Djibouti, Ethiopia, Eritrea, Sudan, Malawi, Zambia, Zimbabwe. Mauritius, Zambia, and Zimbabwe are members of both SADC and COMESA.
15. Ethiopia, Eritrea, Djibouti, Sudan and Malawi.
16.http://www.comesa.int/lang-en/component/content/article/34-general-news/234-press-release- selected-countries-in-the-eastern-and-southern-african-region-sign-an-epa-with-the-european-union [accessed on 02/09/2009]
17.http://www.tralac.org/cgi-bin/giga.cgi?cmd=cause_dir_news_item&cause_id=1694&news_id=68199 [accessed on 30/08/2009]
18. http://www.lusakatimes.com/?p=13581 [accessed on 26 August 2009]
19. Kenya, Uganda, Tanzania, Rwanda, and Burundi.
20. Kenya is the only developing country in the group.
21. This clause prevents any increase in applied tariffs once the agreement is signed.
22. *TradeWorld* (A briefing on monthly updates from the Ministry of Trade, Kenya), Vol. 1, Issue 1 available at <http://www.trade.go.ke/downloads/Keplotrade%20E-Newsletter%20April.pdf> [accessed on 25 June 2009]
23. See A. Odhiambo, "EAC states demand development deal before signing EU trade pact", *Business Daily,* Nairobi, 2009-07-29. Also available at: http://www.tralac.org/cgi-bin/giga.cgi?cmd=cause_dir_news_item&cause_id=1694&news_id=70675&cat_id=1026 [accessed on 15 15 August 2008]

forms could be substantial and very tough for African countries facing balance of payment difficulties. This challenge is exacerbated by the fact that developed countries are unlikely to meet their development assistance commitments due to the crisis, and the EU in particular is unlikely to provide aid for trade over and above that provided through the European Development Fund. This leaves EPA regions like ECOWAS and EAC in a quandary, since they have made their signing of the IEPA conditional on the EU's specifically agreeing to include development provisions in the agreements and have tied their commitments to the development assistance offered by the EU.

In order for EPAs to be positive instruments in relieving African countries of the pressure occasioned by the economic crisis, and to ensure that the agreements meet their stated objectives of promoting regional integration, development and the beneficial integration of ACP countries into the world economy, the following should be taken into account:

- The implementation of the EPA should be supported by a strong aid-for-trade agenda encompassing assistance to develop or improve institutions such as customs authorities and infrastructure systems.
- EPA-related adjustment assistance funds should be galvanised as soon as possible to help especially those countries that stand to suffer revenue losses as a result of implementation of the agreements. Alternatively, the liberalisation schedules should be flexible enough to prevent substantial revenue losses.
- The EPAs should effectively support regional integration in tangible ways, such as building of regional trade infrastructure, and to support regional initiatives such as the simplification of rules of origin in terms of the EAC, SADC and COMESA tripartite alliance, which is doing much work in the area of trade facilitation.
- Greater flexibility should be introduced into the EPA process such as:[24]
  - revision of some EPA provisions regarding market opening by introducing, where appropriate, some flexibility in the scope and speed of trade liberalisation as well as in some other specific provisions (revision of schedules, safeguards, infant industry support measures, export restrictions, standstill clauses, rules of origin);
  - careful services liberalisation, considering proper sequencing and regulatory requirements, notably in the sensitive sector of financial services, and possible postponement or built-in agenda for commitments in this area when desired by the African party concerned;
  - some flexibility and restraints in trade-related areas when the African side does not express an interest in the issue at stake. For instance, it will be best for EPAs to steer clear of controversial issues like disciplines on public procurement unless the African country concerned is interested in this issue; and
  - Generally the scope and depth of reforms on regulatory issues should be directly related to the amount of capacity building available to African countries.

24. This point is largely extracted from a paper by S. Bilal, P. Draper and D.W. te Velde (2009), "Global Financial and Economic Crisis: Analysis of and Implications for ACP-EU Economic Partnership Agreements (EPAs)", ECDPM Discussion Paper 92. Maastricht. Also available atwww.ecdpm.org/dp92Discussion Paper No. 92

Conclusion

This paper shows that the EPA negotiations should take into account the economic crisis and its potential effects on African countries' ability to implement the agreements and, in some cases, their willingness to conclude such agreements in the absence of aid-for-trade measures tailor-made for specific regions and countries.

It is clear from the implementation update above that the IEPAs have helped many ACP countries to maintain their favourable market access to the EU. In fact, preserving market access has been the primary motivator for most countries that initialled IEPAs at the end of 2007. There are, however, some countries that have interests that go beyond the mere preservation of market access in goods and see an opportunity in the second stage of negotiations to cover services, among other issues.

Further, there should be a process of rationalising and harmonising the African EPA regions' trade relationships with the EU. The EC and various EPA negotiating groups should give substance to the object of promoting regional integration by ensuring that the final EPA outcomes advance rather than impede regional integration in Africa.

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