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EPA Negotiations Coordination Meeting

17-18 May 2012

Arusha, Tanzania

TI/TD/EPA/01

Original: English

Report

EPA NEGOTIATIONS COORDINATION MEETING

REPORT OF THE MEETING

INTRODUCTION

1. The African Union/Regional Economic Communities (AU/RECs) Economic Partnership Agreement (EPAs) Negotiations Coordination Meeting was held at the Snow Crest Hotel, Arusha, Tanzania on 17 – 18 May, 2012. In line with the mandate given to the AU by Heads of State and Government, the objective of the meeting was, among others, to review and assess the current state of play of the negotiations and chart the way forward for the continent. The meeting was chaired by the Ambassador of Kenya in Belgium, Amb. Kembi Gitura.

ATTENDANCE

2. The Coordination Meeting was attended by the following EPA negotiating groups: Eastern and Southern Africa (ESA), and East African Community (EAC); the Economic Community of Central African States (ECCAS) and the Economic Commission of West African States (ECOWAS) were represented by the Ambassadors Group in Brussels while the, Southern African Development Community (SADC) was represented by its Brussels based regional co-ordinator and a SADC EPA unit representative. The Government of the United Republic of Tanzania attended the meeting as the host country. The Coordinator of the WTO African Group also attended the meeting. Other Organizations represented at the meeting are as follows: ACP Secretariat, African Court on Human and Peoples' Rights, United Nations Economic Commission for Africa (UNECA), European Centre for Development Policy Management (ECDPM), South Centre, Third World Network (TWN), CUTS International, East African Business Council (EABC), Federation of West Africa Chambers of Commerce and Industry, International Lawyers and Economists Against Poverty (ILEAP) and COMESA Business Council, National Association of Nigerian Traders (NANTS), and Association of SADC Chambers of Commerce and Industry (ASCCI). The list of participants is annexed to this report.

Agenda Item 1: Opening Ceremony

3. In his statement, the representative of the AU Commission welcomed the participants to the meeting and underlined the specificity of the present meeting, in that it also associated the private sector and civil society with a view to bringing their perspectives to bear on the discussions. He recalled the objectives of the meeting, including the last January Summit Decisions and stressed the need to ensure consistency of positions between the EPA, WTO negotiations and the decision of the AU Summit on boosting intra-African trade. He further recalled the controversial EU proposal to withdraw market access concessions as provided under EC Market Access Regulation 1528/2007 noting that it was an attempt to force Africa into concluding negotiations at all cost. In concluding, he called on the meeting to come up with a clearly defined and articulated strategy on the way forward and speak with one voice.

4. The Deputy Permanent Secretary of the Ministry of Industry and Trade of Tanzania, Dr. Shaban Mwinjaka, thanked all participants for their presence and underlined the need to address concerns of all partner states for a fair deal in the EPA negotiations. He particularly called on the African Union to create a database on the current situation of negotiations in each negotiating group with a view to facilitating coordination, sharing of experiences and preserving unity of purpose. He further emphasized the need to finalize negotiations at regional and WTO level before concluding EPA negotiations and, in so doing, to put contents such as supply-side constraints and policy space on top of the agenda rather than time frames. In this regard, he expressed the possibility of calling upon the AU highest political organs to lobby EU Member States and finally declared the meeting open.

Agenda Item 2: Adoption of the Agenda and Organization of Work

5. The meeting adopted its agenda and program of work which are annexed to this report.

Agenda Item 3: State of play of EPA Negotiations

6. The representatives of the EPA Negotiating Regions and Regional Economic Communities, namely, EAC, SADC EPA, ESA, ECCAS and ECOWAS made presentations on the state of play of EPA negotiations in their respective regions.

EAC

7. The region initialed the Framework Economic Partnership Agreement (FEPA) in 2007 and negotiations are going on with the EC with a view to conclude a full EPA. Contentious issues remain largely unresolved and these are the MFN Clause, Export Taxes, Non-execution clause. On Economic and Development Cooperation, there is divergence between the region and EC on the annexing of the EAC EPA development matrix and on when to develop benchmarks and indicators for monitoring the implementation of the agreement. Both Parties have agreed to negotiate Trade in Services and Trade Related Issues at a later stage. However, the EC is insisting on negotiating trade, environment and sustainable development while the region wants it negotiated at a later stage along with other Trade Related Issues. The European Commission has introduced new issues to the negotiations, for example, good governance in the tax area and obligations/consequences arising from Customs Union Agreements concluded with the EU, of which the EAC has not agreed to negotiate. The main focus of the region is to obtain an EPA that supports regional integration and the development of the region.

SADC EPA

8. The negotiations for a full EPA are ongoing and the unresolved negotiating issues, which are common to other regions, remain unresolved. On Market Access, progress has been made on the draft text on cumulation. However, SADC EPA Member States are required to put in place Administrative Cooperation arrangements that allow cumulation with one another, other African, Caribbean and Pacific (ACP) States, Overseas Countries and Territories (OCTs) and other preferential partners of the EU before cumulation can enter into force. Negotiations on Administrative Cooperation continue as well as on the principle and approach to exclude

products which do not enjoy duty-free quota free access into either market; rules of origin for fisheries as they relate to Exclusive Economic Zones (EEZ), Right of First Refusal and derogation for tuna; and the Southern Africa Customs Union (SACU) offer on Agriculture and Non Agriculture Market Access (NAMA). On Services, the two parties had a Joint reading of their services texts in November 2011 and are working towards harmonising divergent provisions with a view to arriving at a consolidated text. The services chapter is planned for completion by 2014.

ESA

9. The representative of ESA stated that the challenges being faced in the region are common to those in the other regions. The meeting was informed that the ESA –EC Interim agreement entered into force on 14 May 2012 and is being implemented by four countries in the region which are now working on the domestication of the agreement. Some countries in the region are interested in negotiating a services chapter with the EC while others are not. On development cooperation, the region has noted the importance of including a review clause in the agreement to allow for a review of the development matrix. The presenter also underscored the need to continuously review positions taking into account the new emerging economic realities that did not exist when EPA negotiations were launched ten years ago.

ECOWAS

10. The meeting was informed that there is lack of progress in the negotiations at the technical level in the ECOWAS region. Contentious issues in the negotiations also remain largely unresolved. There is need to pursue political level engagements to move the negotiations forward. The presenter noted that the emphasis that the EC is placing on differentiation and graduation of countries has implications for regional and continental integration. The region designed an Economic Partnership Agreement Development Program (EPADP) with an estimated cost of Euro 15 billion. There is need to engage other players in the EU in order to get the EC to show understanding and flexibility on the concerns of African countries in the EPA negotiations.

ECCAS

11. The meeting was informed that in the ECCAS region, progress on EPAs has been very slow. The lack of progress in the negotiations is attributable to divergences in market access and development issues. The region recently held meetings to discuss developments in the negotiations including the withdrawal of market access under Regulation 1528/2007. The region has set up three working groups on market access, accompanying measures and investment respectively on the negotiations.

12. In the discussions that ensued after the presentation, participants raised the following issues;

- a) The challenges that the regions are facing in the EPA negotiations are similar so there is need to ensure that there is exchange of information and sharing of experiences between the EPA negotiating regions;
- b) There is need to align the positions that African countries take in the EPA negotiations with their positions at the WTO particularly to ensure that the flexibilities available in WTO are not undermined;
- c) Considering that not much progress has been made in the negotiations, African countries should seriously consider alternative trade regimes for trade with the EU. The proposed Continental Free Trade Area could be the basis upon which such a regime could be built;
- d) On the issue of negotiating a trade agreement with Turkey, the meeting expressed the view that African countries should be free to decide their external trade policy;
- e) There is need for strong lobbying against the withdrawal of Market Access under Regulation 1528/2007 at all levels, national, regional and continental including by the private sector;;
- f) Some countries that are currently benefiting under the EBA preferential scheme will be affected by graduation to non-LDC status, hence the need to ensure that the proposed amendments to the MAR 1528/2007 are withdrawn;
- g) The lack of regional frameworks on services is creating a problem for regions to effectively negotiate in services negotiations.

Recommendations

- i. African EPA negotiators should safeguard regional and continental interests to ensure that EPAs do not further undermine regional integration and efforts being taken to boost intra-African trade. African countries should preserve the policy space needed to pursue regional and continental integration as well as industrialization in the continent;
- ii. The Member States, Regional Economic Communities and the African Union should indulge in political engagement with the European Union Member States, the European Parliament and Civil Society;
- iii. There is need to develop a database of African common positions, regional positions and other developments on EPA negotiations for use by regions in EPA negotiations;
- iv. The RECs and AUC should adequately prepare for the Summit of the Heads of State and Government of the ACP that will be held in December 2012, one of whose agenda items will be EPA negotiations. Efforts should be made to ensure that the African side participates effectively in the Summit. The purpose of the engagement is to enable the Heads of State and Government to provide political guidance on unresolved negotiating issues, issue a strong message against the withdrawal of Market Access under EC Regulation 1528/2007 and highlight Africa's interests in the EPA negotiations.

Agenda Item 4: An Analysis of the Proposed Amendment to EC Market Access Regulation 1528/2007

13. The presentation on the above highlighted a number of key elements, namely, Understanding the Market Access Regulation (MAR) 1528/2007; which countries are affected; what are the likely impacts of the withdrawal of the concession; legal interpretations/implications regarding the proposed action; and possible ways forward. The presenter recalled the origin of the MAR, which was conceived as a temporary, unilateral instrument which allowed for the extension of duty free quota free market access, to countries which have signed or initialed the Interim EPA, pending the implementation of the EPA. However, this required the said countries to initiate the ratification process within a “reasonable period of time”.

14. Should the proposal be effected, a number of countries which have initialed the interim EPAs would be seriously impacted. Indeed, seventeen African and Pacific countries would lose EPA market access to the EU, out of which nine are LDCs, seven are lower middle income countries and two, upper middle income countries.

15. The proposal has generated some unease among beneficiaries and other interested parties alike, among them the legal implications or interpretation of the planned measure. These include the concept of temporary, unilateral instrument; definition of “reasonable period of time” for signing the Interim EPA; whether the proposal to withdraw the market access is legal or illegal, particularly in the context of interpretation of failure to ratify within reasonable period of time as opposed to failure to take steps to ratify as well as the question of the possible violation of the Article 25 of the Vienna Convention of the Law of the Treaties among others. Debates also continue even at the level of the EU institutions, particularly the International Trade (INTA) Committee, while a final decision will be taken at some point in the near future.

16. The presenter also raised some broader strategic issues that can guide consideration of the subject, namely: that the environment in 2007 and 2014 are no longer the same, as Africa has overcome the fears hyped in 2007, over the consequences of disruption of trade that never happened. Current economic conditions of Africa are positive and projects for the near future indicate very bright prospects; Other players, especially the emerging economies have strengthened their relations with Africa, foreign direct investment is equally being attracted even without signing free trade areas with these countries; Europe is currently in crisis, which has further weakened the EU, hence factor that needs to be taken into account; and emerging economies are also changing the geo-political equation and global balance of power.

17. In the deliberations that followed, participants particularly welcomed the insights given by the presenter on an otherwise seemingly complicated and controversial proposal. The meeting contended especially with the legal issues raised, with an agreement that the legal aspects remain unclear and hence more exploratory work would need to be done. However, it was noted that the path to dispute settlement would not seem to be the best approach that African countries are willing to take. Drawing from insights of the EU’s engagement with other countries, Canada, Asia, US, but especially so the Asians, otherwise referred to as the Asian

way, participants wondered why things cannot be done the African way and what factors actually constraint the ability of doing so?

Recommendations

18. After deliberations, the meeting reached the following conclusions:
 - i. There is clear indication that Africa remains committed to concluding partnership Agreements on the basis of win-win for all;
 - ii. Reiterated however that such considerations for balanced agreements must be guided by the broader strategic considerations earlier highlighted in the presentation;
 - iii. Africa at every level (Member-states, Political leaders, the African Union, Brussels based African representatives, the Private sector), must step up efforts at bringing pressure to bear on targeted interests and influence centres: the EU Member-States, parliaments, the EU private sector in order to get the proposed amendment to Market Access Regulation 1528/2007 withdrawn; ;
 - iv. In addition to the foregoing, underscored the necessity of the African Private sector to seriously engage with their colleagues in Europe, in particular those who import strategic African products;
 - v. Recalled and reiterated the common position reached by the ACP Council of Ministers in December 2011 which insists that the proposed amendment should be withdrawn as negotiations continue.

Agenda Item 5: The experience (Opportunities and challenges) of the Government of Tanzania in implementing the Framework Economic Partnership Agreement (FEPA).

19. The Representative of the Government of the United Republic of Tanzania informed the meeting that Tanzania initialed the FEPA under the EAC in November 2007. To date, there has been no implementation because of the failure of both parties to resolve contentious issues such as the MFN, export taxes and development cooperation among others. Tanzania already has market access to the EU under the Everything but Arms (EBA) preferential scheme. The FEPA provides opportunities in the areas of fisheries, trade in goods and customs facilitation, SPS and TBT among others. The presenter noted that intra-regional trade in the EAC region is steadily increasing and there are interesting developments with other regions of the world such as China, India and United Arab Emirates among others.

20. The meeting took note of the Report.

Recommendation

- i. Moving forward, there is need for coherence in national and regional positions as well as preserving flexibilities available for developing countries in the WTO. EPAs should not undermine efforts aimed at establishing the Continental Free Trade Area.

Agenda Item 6: Private sector perspectives on the EPAs.

21. This item was introduced by a representative of the East African Business Council (EABC) who first gave an overview of the private sector partnership with the African Union since two and half years in developing a strategy on how to synchronise the activities of the regional business councils in policy formulation and regulation under the umbrella of an African Business Council.

22. This was followed by the joint views of the SADC, COMESA and ECOWAS private sector on EPA negotiations which in general tallied with those of the regions. Those views included the following, among others:

- a) Negotiators should be cautious and preserve the progress and benefits acquired so far and commitments taken at national and regional levels;
- b) Focus should be on the development of the region through trade;
- c) Africa is urged to keep negotiating as a bloc;
- d) Negotiators require sufficient time to consult adequately and to agree;
- e) Regarding the Standstill clause and other contentious issues, the private sector believes that negotiators should stick to the agreed principles;
- f) On duties and export taxes, there should be no elimination since export taxes are development tools that encourage value added production; neither should there be any prohibition of the right to introduce new taxes;
- g) The MFN clause undermines the possibility of African countries entering into trade agreements with other partners;
- h) Additional resources should be negotiated to accompany the implementation of EPAs;
- i) Effects of EU subsidies should be included in the negotiations agenda;
- j) Africa should trade more within itself' and with other partners in addition to the EU;
- k) Africa should negotiate outside a situation of intimidation, pressure and threats;
- l) Governments should consult more with the private sector.

23. During the discussions that ensued, the following issues were raised;

- a) The private sector was called upon to engage more with the Government, take more interest and make itself felt.;
- b) The general feeling was that Africa was going in the right direction in terms of regional integration;

- c) There is a need to take common positions, common stands, and to extract common areas and deal with them as a continent;
- d) The danger of having different clauses governing different regions/countries was highlighted;
- e) A paper on cost-benefit analysis was recommended for reading;
- f) EPAs could compromise regional integration due to the various trading arrangements on the continent;
- g) National Governments should develop trade defense instruments in dispute settlements for unfair trade practices.

Recommendations

- i. EPAs should not be concluded at all cost, should not compromise regional integration and should deliver on development, In this regard, new issues such as good governance, human rights, social justice should not be added;
- ii. EPAs should not crowd out other trading arrangements that are beneficial to African business.
- iii. Africa should be more proactive in the negotiations.

Agenda Item 7: Summit Decision on Boosting Intra –African Trade

24. In presenting this item, the representative of the African Union Commission highlighted the main elements of the Decision, namely, the endorsement by Summit of an Action Plan for boosting intra-African trade, a Framework, Architecture and Road Map for fast tracking a Continental Free Trade Area by the indicative date of 2017, a Monitoring and Evaluation Mechanism for the latter as well as a proposal for enhanced trade preferences for LDCs and low-income countries.

25. In the ensuing discussions, the following issues were raised:

- a) The decision by Heads of State and Government was welcome and all stakeholders should be committed to its implementation;
- b) The CFTA takes precedence over the EPA process; AUC will need to monitor and report regularly on CFTA processes as provided for in the adopted Decisions;
- c) The role of the private sector is acknowledged both in the Action Plan and Architecture; hopefully in the coming months, the African Business Council which is expected to push for the implementation of the Action Plan and fast tracking of the CFTA should be established;
- d) Neither EPA nor WTO trade negotiations seem to deliver on their expectations , this is why a proposal for enhanced trade preferences has been developed, targeted at

- OECD countries and aimed at redressing imbalances and weaknesses that have been identified in currently existing trade preference schemes;
- e) As a result of engagement with the EU, positive responses are being echoed from European quarters, namely the Belgian Senate Resolution on EPAs, adopted on 28 March 2012;
 - f) On infrastructure challenges, the Programme for Infrastructure Development in Africa (PIDA) is the continent's response just as the Accelerated Industrial Development of Africa (AIDA) is for industry, the Accelerated Agribusiness and Agro-Industries Development (3ADI) is for agro-industry and the Comprehensive Africa Agriculture Development Programme (CAADP) is for Agriculture;
 - g) Regarding the concerns raised on capital market, the ADB and the three pan African financial institutions, among others, such as the African Central Bank, the African Monetary Fund and the African Investment Bank are the corresponding initiatives; the ACP is also exploring the possibility of establishing an ACP Trade and Development Bank; opportunities offered by the Aid for Trade initiative could also be further harnessed as well as exploiting the enthusiasm being demonstrated by international organizations such as UNCTAD, UNIDO, World Bank etc; to lend their support;
 - h) Taking into account the increasing geo-economic strategic importance of Africa and high rate of return on investment, Africa must now engage with the rest of the world from a position of strength and aim at achieving mutually beneficial outcomes;
 - i) Services are indeed an important sector and are not being neglected by the AU; recently a joint workshop was organized on services with ILEAP.

Recommendations

- i. Member States, RECs, AUC should ensure the coherence of national, regional and continental policies to boost intra-African trade and fast track the establishment of the Continental Free Trade Area;
- ii. The AUC should take the lead in monitoring the fast tracking of the CFTA based on progress at the level of RECs in accordance with the endorsed Road Map;
- iii. Since the CFTA should take precedence over EPAs, priority should be put on deepening Africa's market integration and whatever is granted to the EU through EPAs should be automatically granted to African countries;
- iv. The African Business Council, through its various private sector apex bodies in the RECs should promote the implementation of Summit's decision on boosting intra-African trade and fast tracking the CFTA;
- v. The AU should engage the European Parliament, Member States and the European Commission on the AU proposal for a Common and Enhanced Trade Preference

System for Least Developed Countries (LDCs) and Low Income Countries (LICs) as an alternative to EPAs.

Agenda Item 8: Way forward on EPA negotiations

26. Following discussions on the way forward, the meeting adopted the following recommendations;

- i. The Member States, Regional Economic Communities, the African Union, Civil Society and other Non-State Actors should continue to engage at all levels with European institutions, European Union Member States, the European Parliament and Civil Society among others. The purpose of the engagement is to provide political guidance on unresolved negotiating issues, issuing a strong message against the withdrawal of Market Access under EC Regulation 1528/2007 and highlight Africa's interests in the EPA negotiations;
- ii. Private Sector Companies and Business Associations involved in trading with the European Union companies should pro-actively engage their business counterparts in Europe with a view to addressing the issue of the withdrawal of the proposed amendment to the Market Access Regulation 1528/2007;
- iii. The African Union Commission and the RECs should facilitate effective communication, exchange of information and sharing of experience among others, on the EPA negotiations, with a view to reinforcing the EPA negotiations coordination Mechanism;
- iv. Member States and RECs should strengthen measures aimed at developing intra and inter-regional trade. In this regard efforts should be taken to ensure that EPAs contribute to boosting intra-African trade and strengthening Africa's integration;
- v. Member States, RECs and the AU should adequately prepare for the ACP Summit of the Heads of States and Government that will be held on 14th and 15th December 2012 in Equatorial Guinea. Efforts should be taken to ensure that the Summit sends a strong political message on EPAs;
- vi. Alternatives to EPAs should be seriously considered. In this regard, the AU proposal for a Common and Enhanced Trade Preference System for Least Developed Countries (LDCs) and Low Income Countries (LICs) should be pursued by the African Union;
- vii. The multiplicity of trade regimes in one regional grouping and indeed at the Africa Union level is a threat to regional and continental integration. The proposed continental FTA can be a solution whereby all trade regimes will be harmonized, including with third

parties. EPAs should be inclusive by accommodating the interests and concerns of LDCs to enable them join;

- viii. The African EPA negotiation configurations should regularly share information, including texts under consideration, so that they can benefit from each other's experiences, harmonize their positions and identify concessions granted to one configuration that could be adopted by another configuration;
- ix. There is need for a rethink of EPA negotiations taking into account current developments and the rise of emerging economies. The new issues (geographical indications, investment, Trade and the Environment etc.) that are being introduced in the negotiations should not be negotiated to ensure that the interests of African countries are not compromised
- x. .The African Regions negotiating EPAs and the African Union should continue to collectively maintain their positions on the following: Most Favoured Nation (MFN), Export taxes, Safeguards, Rules of Origin, Non-Execution Clause, which are considered to be of critical importance to the development aspirations of regions and the continent as a whole.

Agenda Item 9: Consideration and Adoption of Report of Meeting

27. The Report of the Meeting was considered and adopted with amendments. However a reservation was expressed by one Member State on the late submission of the French version of the Report.

Agenda Item 10: Closing Ceremony

28. The representative of the African Union Commission thanked the participants for their active participation during the meeting. The Commission also thanked the African Court on Human and Peoples' Rights for its assistance in organizing the meeting. The Representative of the Government of the United Republic of Tanzania thanked the participants for attending the meeting and called for the effective implementation of the recommendations. Finally, the Chairperson brought the meeting to a close.