

EPA REVIEW WORKSHOP

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REVIEW OF THE SADC EPA NEGOTIATIONS

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Background

- On 23 June 2000, ACP countries and the EU Heads of States signed the Cotonou Partnership Agreement:
 - end of unilateral non-reciprocal trade preferences on trade in goods by 31 December 2008
 - progressive trade liberalization on a reciprocal basis leading to a WTO compatible FTA
 - economic cooperation also to lead to progressive trade in services liberalization (in future) and trade-related rules
- Contention and tension have surrounded the ambitions of this Cotonou framework
- Many ACP countries have not displayed much enthusiasm about EPAs – only wanted to safeguard their preferential market access to Europe after the expiry of the WTO waiver

As the deadline drew closer

- By 31 December 2007 only the Caribbean region has completed EPA negotiations as a cohesive regional configuration
- The majority of ACP countries (not necessarily as cohesive ACP regions) have initialed interim EPAs as a measure to prevent trade disruption upon the expiry of the WTO waiver
- This legal basis is provided for by EC Regulation No 1528/2007 of 20 December 2007
- There are many multitude questions (legal, institutional and political questions) arising from this interim legal basis
- This arrangement is still unilateral and can be terminated in whole or in part if the agreements in question do not enter into force within a reasonable period of time

SADC EPA initialled without South Africa and Angola

- Botswana, Lesotho, Mozambique, Namibia and Swaziland initialled on 23 November 2008
- Namibia initialled on 12 December 2008 but there are questions – specific concerns - but has also opted out on second phase of negotiations (Article 67 of the IEPA)
- South Africa has not initialled and the TDCA continues to be applied – has also opted out of the second phase of negotiations (Article 67 of the IEPA) – what next?
- Questions around the implementation of the interim EPA tariff offer (for BLNS countries) and TDCA offer (for South Africa) as relating to SACU
- Tanzania initialled in the context of the East African Community (EAC)
- Angola not yet party to the EPA – EBA regime continues

SADC EPA Process: inherently problematic

- Process has not been adequately inclusive of national policy frameworks
- A mere ad-hoc process led by junior officials in governments without clear and rational mandates
- National and regional priorities for the EPA were not clearly defined and divergent
- The inclusion of South Africa brought significant challenges in efforts to deal with divergent policy positions
- The end result was a chaotic, complex and challenging process - often dominated by intra-regional negotiations, tensions and mistrust as the deadline drew closer

Negotiation strategy and structure: largely inappropriate

- Ineffective negotiation structure : EPA Negotiation Forum (ENF) and Senior Officials who also had a multiplicity of trade and industrial policy responsibilities at national level.
- Botswana as overall coordinator of the process and related dynamics.
- EPA Unit (as Secretariat) lacked effective capacity and authority. Lessons for SADC and SACU Secretariats / regional integration
- This approach is inherently ineffective especially in the absence of a coherent and transparent regional negotiating strategy
- Negotiation strategy: e.g. decision to waste time on attempts to develop own text instead of engaging the other negotiating partner (EC) with bad consequences

TDCA alignment with EPA process: a tricky paradigm shift

- Alignment of the TDCA to the EPA process was not adequately conceived and lacked transparency
- Its purpose was to harmonize trade relations between SADC and the EU with a view to ultimately achieve a single SADC-EU trade regime (in essence to address TDCA / SACU realities) and advance regional integration
- The result was a “Strategic Framework” – which fundamentally altered the SADC EPA guidelines for negotiations particularly as regards reciprocity for LDCs and approach to services and trade related issues
- Arguably, an opportunity to streamline existing trade relations in Southern Africa (in particular to revise the TDCA tariff regime to accommodate BLNS sensitivities) resulted in fundamental trade policy shifts in favour of the dominant party in the configuration and the beginning of intra-group tensions and mistrust

Interim Outcome in a nutshell....

- Trade in goods:
 - FTA between the Parties: asymmetry in terms of levels and timing of commitments
 - EC tariff offer: duty-free and quota-free (DFQF), except rice and sugar (affecting Mozambique and Swaziland) – different arrangements by 2010
 - BLNS tariff offer based on the TDCA and only 77 tariff lines modified to accommodate their sensitivities (full implementation by 2018): revised timelines; re-imposition of MFN duties; and exclusions. No controversies.
 - Mozambique tariff offer to cover more than 80% of trade by entry into force and 2018 and the rest is exclusion list. No controversies.

Interim Outcome in a nutshell....(cont.)

Trade in goods:

- A prohibition on new customs duties on exports with exemptions, after consultation, on exceptional circumstances for specific revenue needs, protection of infant industries or protection of environment on a temporary basis. A review mechanism no later than 3 years after taking into account impact on development and diversification of SADC EPA States economies
- A provision on free circulation of goods stating that customs duties shall only be levied once and any duty paid upon importation in a SADC EPA State shall be fully refunded when re-exported to another SADC EPA
- A non-discrimination (MFN) treatment resulting from free trade agreements with major trading economies, with a consultative mechanism to consider exemptions

Interim Outcome in a nutshell....(cont.)

Ongoing negotiations for full EPA:

- Only applicable to Botswana, Lesotho, Mozambique and Swaziland
- Not later than 31 December 2008, the Parties will complete negotiations on services liberalization and investment chapter.
- For services: liberalisation schedule of one service sector for each participating SADC EPA States; commitment to standstill for all services sector; and agreement to negotiate progressive liberalization with substantial sectoral coverage within a period of three years following the conclusion of the full EPA
- Cooperation activities: services, investment, competition and government procurement

Interim Outcome in a nutshell....(cont.)

- Rules of Origin: transitional arrangements while a comprehensive review of the RoO is envisaged within the first three years. Some improvements on RoO for textile, fisheries and agriculture
- Development Cooperation: A development chapter to provide a legal basis for development cooperation for EPA implementation: support for capacity building in trade areas; increasing competitiveness of the SADC EPA industries and institutional support for EPA implementation

Conclusions

- An interim agreement is not a full EPA – there still an opportunity
- The need to prepare adequately for the second phase of negotiations (services, investment) and to utilise development cooperation resources effectively
- The need to learn lessons from the first phase (preparedness, negotiation strategies and structures, inclusiveness)
- The need to ensure that the process continues to respond positively to regional integration challenges
- South Africa's role in EPA negotiations and the regional integration process