



tralac EPA Review Workshop

Critical evaluation of the EPA negotiation process

The Commodore Hotel, V&A Waterfront, 23 January 2008

The first phase of the EPA negotiations is now completed and Member States are preparing themselves for the next round of negotiations. The process up to now has been fraught with numerous challenges while some complications are even threatening to be carried over to the second phase of the negotiations. South Africa has refused to initial the interim EPA (IEPA), making its position regarding regional integration and its involvement in the EPA vague and unclear. Although Namibia eventually initialled the IEPA, this was done on the understanding that its concerns would be addressed through the negotiations towards a comprehensive EPA¹. The uncertainty about the manner in which the process will be taken forward obscures the current decision making processes, not only for the EPA but also for trade policy making in general. The workshop afforded participants the opportunity to critically reflect on the progress made since Cotonou and the obstacles encountered during the negotiation process. This was an inward-looking exercise to determine the effectiveness of the preparations, the reaction of the Member States to the constant challenges during the process and the synergy (or lack of it) within the SADC EPA configuration. The eventual EPA should facilitate good economic decisions and competitiveness to address the fundamental development challenges – a critical evaluation of the process up to now can be a crucial ingredient to chart the way forward.

¹ There was uncertainty during the workshop on the effect of such a statement and the implications of the omission of Namibia from Art. 67. This has been clarified to an extent by Note 587/07 to the 133 Committee which states: "*However on 12 December the EPA text and its relevant Annexes were initialled by Namibia. Therefore the attached text of the Agreement (and Annexes) has been reviewed in order to re-include all references and concessions referring to Namibia. A Statement by Namibia is also included.*" Art. 67 however remains the same and no specific reference is made to Namibia. It appears that this omission was done purposefully which begs the question: Did Namibia opt out of the trade related negotiations?

Background challenges:

- It seems as if Member States did not have a clear conception of the Cotonou principles or did not understand the full extent of the implications arising from the agreement. Time was wasted arguing about reciprocity for LDCs and the role of trade in services and other trade related issues.
- There was no enthusiasm or interest in the EPAs except for the narrow thinking around preferences². The commitment undertaken in the Cotonou Agreement was not embedded in national trade policy/strategies. Meaningful discussions only started much later when the deadline was coming closer.
- ACP countries did not support the EPA process. During the final and critical stages of negotiations, groups of ACP countries tried to derail the negotiations with last minute demands for an alternative outcome.

Process Challenges:

- There was a lack of national ownership of the EPA negotiations process. Additionally, institutions, policies and infrastructure to participate in the negotiations were weak at national level. The framework document which sets out the new approach of the SADC EPA group to the negotiations were also not owned by the Member States – a concern also identified in the SADC EPA review.

² It can be argued that this is exactly the reason why African countries initialed the EPA

- Negotiators were sent on an *ad hoc* basis to the negotiations without a clear mandate from the national governments.
- Member States are uncertain and anxious about the position of South Africa. The South African strategy for global and regional integration is not transparent to the rest of the region and its impact on the current decision making process in SADC. Serious efforts were made to include South Africa in the negotiations which meant additional resources, time and capacity. No real reasons were given as to why South Africa refused to initial the agreement. The fact that South Africa's offensive interests were not adequately addressed in the negotiations could have influenced its decision not to initial. This is unfortunate since it was not reason why South Africa was brought into the configuration.
- The EPA legitimises the alignment of the TDCA, but is complicated by the fact that South Africa is not a party to the agreement. It could be difficult to implement such an arrangement.
- There is further uncertainty around the conditions Namibia attached to its initialling of the IEPA. Namibia stated that *"these issues include, but are not limited to, the non-negotiable Most Favoured Nation treatment provision sought by the EC; the freezing of export taxes/levies/charges and thus our ability to use such measures as incentives for value addition and manufacturing; the abolition of quantitative restrictions on imports with impacts on cereal production and thus food security in Namibia; inadequate provision made for Infant Industry Protection; the abolition of restrictions on local content in manufactured or processed goods; and the modalities of administering the free movement of goods within the SADC EPA States in a manner that may not be compatible with our current Southern Africa Customs Union (SACU), or would predicate the modalities*

for a future SADC Customs Union.” It is still unclear whether certain issues will be opened up again in the second phase, or if negotiations will only focus on services and investment.

- National and regional interests were not clearly identified. The inclusion of South Africa was a scenario not clearly conceptualised. This infected the process with intra-regional conflict which resulted in tension and pressure within the SADC EPA configuration. It was a chaotic and complex process, dominated by divergence instead of convergence.
- Negotiating strategy of the officials: Time was wasted on the attempts to develop an own text instead of building on the EU text. Negotiating capital for the SADC EPA group was lost because of the insistence to develop its own text. Despite their resolve, there was no understanding on what to develop or what to put in the text. Claims were also made that officials refuse to read the EU text.
- The process was not transparent. There was little feedback from governments which meant industries could not provide input or advice. Certain industries were on the verge of collapse but were unable to influence the process due to a lack of information.
- The alignment of the TDCA to the EPA process was not adequately received and lacked transparency. There were no proper preparations or discussion on the real implications of such a convergence. The Framework document resulted in a fundamental trade policy shift towards the more dominant partner in the configuration and marked the start of intra-regional tensions and suspicions. Member States did not accept ownership of the Framework document which became a dividing mechanism in the region.

- The effect of Art. 31 of the 2002 SACU Agreement: The provision requires South Africa to give the necessary permission to the other SACU Member States to enter into the EPA. It is still unclear if South Africa will give this consent or the consequences if it is not given.
- There is no oversight of trade activities to ensure transparency and legitimate outcomes. Who guard the guardians?
- Coordination has not taken place to link the wider regional processes with that of the EPA. There is no clear indication of how the EPA will support regional integration in SADC. When negotiating trade in services and investment, the SADC dimension must be considered.

Structural challenges:

- Ineffective negotiation structure: The EPA Negotiating Forum (ENF) and other Senior Officials also had many other trade and policy responsibilities at national level. It can further be argued that the Technical Negotiating Forum made up of technical experts was not fulfilling a useful supporting function.
- The structure of the formal SADC EPA review was not conducive to produce a positive outcome. What was done with the report and was it disseminated in any way?
- The role of the SACU Secretariat in the EPA negotiations was not clear – there was no level of engagement or clear policy direction from the SACU Secretariat.
- Botswana was formally appointed as the overall coordinator of the negotiations, but there was no coherent and transparent regional

negotiating strategy. It is also unclear who will be leading the second phase of the negotiations.

- There is an urgent need for a more effective negotiating machine. The Secretariat, or in this case, the EPA Unit must be improved to play a more effective and useful role in the negotiations. Up to now the Unit lacked the capacity and authority to influence negotiations. Apparently the Unit has been disbanded as from the end of last year with only some external consultants remaining in office.
- EU negotiators are far more experienced than their counterparts. EU negotiators were responsible for specific areas of negotiations and an effort was made to harmonise issues across the different configurations. There was no basis for that – the EU admitted in its trade strategy ‘Global Europe’ that *“in designing the rules for each specific negotiation it is important to take into account the situation and the capacity of our partners”*.
- The legal status of the IEPA is unclear. The process of signature, ratification and deposit of instruments need to be followed before the agreement will legally enter into force. National constitutional processes must also be followed to ensure legitimacy. In the meantime, the EU adopted a domestic instrument to provide market access for ACP countries, but this can be suspended on certain grounds.

Substance challenges:

- The Namibian dimension: Namibia attached certain conditions to its involvement in the IEPA. A list of concerns was noted in a statement, which was attached to the final text of the IEPA. The implications of this statement are unclear, but could possibly denote the re-opening of the

negotiations. This could also be of benefit to the other Member States, however their reaction to such an approach remains to be seen. South Africa should support such a move due to its position on the trade related issues. This serious point of contention could undermine the second phase of the negotiations.

- It appears as if Namibia opted out the negotiations on services and other trade related issues. Although the amended text (see footnote 1) include references and concession referring to Namibia, Art. 67 remains unchanged. Did this imply that Namibia opted out of the negotiations on the trade related issues, and if so, how would this influence the second phase?
- The inclusion of the extended MFN clause is problematic. SADC EPA Member States or signatories must in terms of the IEPA provide the EU with additional favourable treatment to the same extent as negotiated in subsequent FTAs with a 'major trading economy'. Many of the emerging markets SADC EPA Member States is currently engaging with fall within the ambit of the definition of 'major trading economy'.
- The recently negotiated Rules of Origin only applies temporarily. If a comprehensive EPA is not concluded, these more favourable rules will fall away.

Achievements:

- The delayed initialling of Namibia provided a larger negotiation space for the Namibia government. Other Member States could also benefit if certain issues are revisited.

- The private sector and industry associations in Namibia have been approached to become involved in a technical task force to investigate government's concerns. This would entail the provision of position papers and input in the next round of negotiations. This could signify a move to more inclusive approach by government.
- The clear and rational offer by Mozambique. As LDC Mozambique was keen to reciprocate and open up their markets. The offer will see 81% of its trade being liberalised within 10 years.
- The beneficial Rules of Origin negotiated for the Clothing and Textile industry which represent a major departure from the provisions contained in Cotonou. The key changes relates to the treatment of textile and clothing products concerning the number of processing operation that are required to take place locally in order to confer origin.

The way forward:

A number of clusters were identified that need urgent attention:

- The position of South Africa must be clarified;
- An oversight function for negotiators must be developed;
- An effective regional integration strategy must be formulated;
- The responsibility of the Secretariats must be further expanded;
- Negotiations in the second phase must be streamline and better organised;
- Lessons from the first phase must be applied;
- Industry associations and the private sector must be more closely involved in the second phase of the negotiations;
- Position papers must be circulated to interested parties; and

- The process of formalities to ratify and implement the agreement is crucial.