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Conference on EPA negotiations with
the European Union with consideration
of the DDA of the WTO

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WTO AND EPAS'S



Preferential Market Access agreements between the European Union and the African Caribbean and Pacific Group of Countries have been a trade and development measure since 1972 in an agreed upon formalised agreement between these two trading blocs.

WTO MEASURES GOVERNING CUSTOMS UNIONS AND FREE TRADE AREAS

- ◆ GATT 1947 – Article XXIV: 4+5
- ◆ Why has the application thereof on the trade arrangements between the EU and the ACP been brought to the limelight and has compelled the EU to look for WTO compatible measures to continue with its trade arrangements with ACP countries??



Review of article XXIV4

SUMMARY OF THE LEGAL FRAMWORK OF THE WTO GOVERNING FTA'S

- ◆ Review of article XXIV not concluded, original provisions are applicable.
- ◆ What does substantial all trade mean?
- ◆ Can arithmetic be used to clarify a percentage of all trade?
- ◆ How do sensitive and special products, as negotiated in the DDA Round, impact on the present dispensation?
- ◆ Does the EU really need a waiver that is difficult to defend legally?
- ◆ What does the reasonable length of time allowed for implementation really mean?

The Cancun Waiver

- ◆ According to reports, the EU had to bribe developing countries with substantial concessions to get a waiver for the period until the end of 2007.
- ◆ Also the EU had to promise that reciprocity will be introduced in future configurations between the EU and ACP countries, to give a more balanced trade picture.

RESULT OF THE WAIVER NEGOTIATIONS IN THE WTO

- ◆ At least since 1995 (Comments on article XXIV in the GATT 1994) the EU and ACP members were aware of the problems and this is why the Cotonou Agreement can be seen as a first step to WTO compatibility, with all provision of renegotiation.

The concept of Economic Partnership Agreements

- ◆ Article XXIV compatible (for what it is worth)
- ◆ Trade and Development Agreement
- ◆ Regional Integration Principle
- ◆ Result: Reciprocity
- ◆ Challenge or Threat?
- ◆ What about EBA??

Everything but Arms and article XXIV

- ◆ LDC's are excluded from the provisions of article XXIV ?? (As above and defined in the GATT 1947/1994)
- ◆ If so, this concession should really improve trade because tariff and quota free market access for all LDC exports is guaranteed.
- ◆ Has trade between LDC's and the EU improved since 2003?



Why EPAS

Present Exports of the ACP to the EU

- ◆ **5 PRODUCTS = 60 % of total Exports**
- ◆ **(petroleum, diamonds, cocoa, fish, and wood products)**
- ◆ **9 AFRICAN COUNTRIES REPRESENT**
- ◆ **60 % OF TOTAL ACP EXPORT**

Importance of Trade with the EU for Namibia (2003)

- ◆ Diamonds and base minerals are virtually free of any regulatory WTO measures
- ◆ Fish: Export value 1,5 bilj. N\$ (=Rand)
- ◆ Agriculture: Export value 1,2 bilj N\$
- ◆ Industrial goods Export value: 32 milj N\$ N\$
- ◆ UNDER THE PRESENT PROVISIONS OF THE COTONOU AGREEMENT

Can a “new” WTO compatible Trade Agreement with the EU be beneficial for Namibia I

- ◆ Principle: Cotonou Agreement, main body, article 37,7: The principle of aquis will be maintained in all negotiations
- ◆ Only applicable for exports, but what of imports??
- ◆ SACU Negotiation principle: **NO CONCESSIONS IN TRADE WITH SUNBSIDISED AGRICULTURAL PRODUCTS.**
- ◆ Is this principle defensible under article XXIV provisions??

Can a “new” WTO compatible Trade Agreement with the EU be beneficial for Namibia II?

- ◆ Configuration: The only question is : TDCA+ or SADC EPA??
- ◆ Reciprocity: Special Products; Sensitive Products; back loading; simple and swift trade remedies;
- ◆ But the question remains: Are these negotiation positions WTO compatible?
- ◆ Are these measures negotiable?

Can a “new” WTO compatible Trade Agreement with the EU be beneficial for Namibia III?

- ◆ Unique opportunity to negotiate for better market access:
- ◆ Tariff and quota free unrestricted access of agricultural and fishery products to the markets of the EU.
- ◆ But: Quota fill?? Meat average 82%, table grapes overfill 700%

Can a “new” WTO compatible Trade Agreement with the EU be beneficial for Namibia IV

- ◆ Tariff peaks and Rules of Origin: Definite negotiation positions by Namibia to be harmonised either with the TDCA (+) or the SADC EPA.
- ◆ Very little difference between the RoO of the Cotonou Agreement and the TDCA!
- ◆ Possibility to negotiate for simple and cumulative RoO (on TDCA or SADC level)

Can a “new” WTO compatible Trade Agreement with the EU be beneficial for Namibia V

- ◆ SPS Measures: Hot Issue: But not if addressed properly:
- ◆ Every exporting country has to comply with SPS and related standards of the targeted country.
- ◆ New and not SPS related measures: Capacity and remedial transfers from the EU!

Can a “new” WTO compatible Trade Agreement with the EU be beneficial for Namibia VI

- ◆ Loss of Revenue?
- ◆ Compensation?
- ◆ Supply side constraints?
- ◆ Development aid and support – focused and not EDF bound.
- ◆ Trade and Development ? Linkage or not??

Can a "new" WTO compatible Trade Agreement with the EU be beneficial for Namibia VII

- ◆ Configuration not of large impact: Negotiation partners and negotiation skills more important
- ◆ Forward negotiations for a better deal than Cotonou!
- ◆ Reciprocity to be addressed with all legal remedial actions for a soft landing or the SACU principle must be adhered to.

SUMMARY:

- ◆ The opportunities are much bigger than the challenges in the EPA negotiation process.
- ◆ Developmental actions and financing must be an integral part of the negotiation process
- ◆ In the end, these negotiations are different from other trade negotiations: political dimensions from both negotiation partners are interfering: This is the open end of the equitation