

SADC – EC EPA NEGOTIATIONS

PAPER PRESENTED BY THE SADC SECRETARIAT ON THE SADC-EC EPA NEGOTIATIONS AT THE ANNUAL CONFERENCE OF THE TRADE LAW CENTRE OF SOUTHERN AFRICA (TRALAC) HELD IN CAPE TOWN SOUTH AFRICA 13 – 14 OCTOBER 2005

BACKGROUND

1. Seven Member States from the Southern African Development Community (SADC) configured themselves according to Article 37 (5) of the ACP – EU Partnership Agreement of 23 June 2000 (Cotonou Agreement) to negotiate an Economic Partnership Agreement with the European Union. The seven countries are: - Angola; Botswana; Lesotho; Namibia; Mozambique; Swaziland and Tanzania. South Africa is participating in the SADC EPA configuration as an observer. The SADC Council of Ministers took note of the commitment of the seven SADC Member States and the SADC Summit endorsed that position.
2. The SADC - EC EPA negotiations were launched on 8 July 2004 in Windhoek Namibia and a Joint Road Map among other things, providing a framework to guide the conduct of the negotiations was adopted by the two parties.
3. Both parties agreed that preparations for the negotiations will be undertaken between July and December 2004, whereas substantive negotiations will start from January 2005 to June 2007. The remaining six months starting July to December 2007 will be devoted to the finalization of the Economic Partnership Agreement ready for endorsement and implementation by January 2008 as agreed in the Cotonou Partnership Agreement.

PREPARATORY PROCESS

4. During the preparatory stage the SADC EPA Member States finalized its guidelines for the negotiations which included negotiating principle, objectives, general approach to the negotiations, areas and priorities for negotiation and the institutional set-up for the negotiations.
5. SADC EPA Member States agreed on a structure for negotiations and accordingly designated Botswana through the Ministry of Trade and Industry to coordinate the overall process of negotiations. Each SADC EPA Member State has also been assigned a negotiation issue or issues to coordinate.
6. The subjects which were agreed to be covered in the negotiations from the SADC EPA side included:-
 - i) Development Dimension/Regional Integration;
 - ii) Sanitary and Phytosanitary Measures;
 - iii) Standards/Technical Barrier to Trade;
 - iv) Market Access for – Agricultural, Non-Agricultural and Fisheries Products;
 - v) Rules of Origin;
 - vi) Trade Facilitation and Customs Cooperation;
 - vii) Legal and Institutional Issues;
 - viii) Other Trade Related Measures and
 - ix) Trade in Services

PROGRESS OF THE NEGOTIATIONS PROCESS

7. The first SADC – EC EPA Senior Officials negotiations meeting took place in Brussels-Belgium on 07 December 2004 and agreed on the priorities for negotiation for 2005, sequencing and rotation of meetings venues and also

adopted the Terms of Reference for the joint Regional Preparatory Task Force (RPTF)

8. The agreed priorities were Sanitary and Phytosanitary (SPS) measures, Standards (Technical Barriers to Trade - TBT) and Regional Integration/Regional Dimension. The Senior Officials further agreed that before negotiations on Development Dimension/Regional Integration commences, a Joint Factual Document (JFD) indicating the status of SADC integration should be jointly developed.

9. Joint SADC-EC EPA technical team working groups have been meeting since March 2005 to develop the Joint Factual Document and Joint Reports on SPS and TBT. The last Joint Technical Team meeting took place on 28 – 29 September 2005 in Maputo Mozambique to finalize the documents. The joint documents were submitted as work in progress to the 3rd SADC -EC Senior Officials Negotiating meeting on 6 October 2005 in Brussels. Finally a framework on these areas will be presented to the SADC EPA Trade Ministers meeting scheduled to be convened at the end of 2005 or early 2006 for further guidance.

10. During the 6th SADC EPA Trade Ministers Meeting in Johannesburg on 5 July 2005, Ministers approved three additional areas for the next stage of negotiations with EC. These areas are:- Market Access for agricultural, non-agricultural and fisheries products; Rules of Origin and Trade Facilitation. Preparatory process at SADC EPA technical level has started. Ministers also agreed at that meeting that negotiations on SPS and TBT should not be concluded before the negotiations on market access are finalized.

11. The EC side has already submitted at technical level its preliminary thinking of negotiations in these areas. The SADC EPA side has so far only indicated to the EC its preliminary thinking of the principles and objectives of negotiating market access issues. Position and issue for actual negotiations will be exchanged when the preparatory process at SADC EPA technical level is completed.

12. The first SADC-EC Trade Ministers Meeting which is planned to take place before the end of 2005 or early 2006 will review progress made in the negotiation and address any areas of divergences if any. Ministers will also review and probably reach a common understanding on the framework for the envisaged SADC-EC Economic Partnership Agreement.
13. As regards future work until the end of 2005, SADC EPA will submit its proposals on conclusions and recommendations for SPS and TBT joint reports by the end of October 2005 and finalize the joint report by November 2005. SADC EPA will finalize its proposal on the structure of the EPA Chapter on SPS and TBT by November 2005 and submit its proposal of a legal text by February 2006.

CHALLENGES IN THE SADC EPA NEGOTIATIONS

14. Unlike our negotiating partners on the other side, both our human and financial capacities to cope with the required technical preparations are limited. The challenge is therefore to build the capacity in terms of negotiating and analytical skills and negotiate within the agreed time frame. The capacity problems include at national level especially in the light of other parallel ongoing negotiations as well as at the secretariat level.
15. The main challenge for SADC EPA is to ensure coherence of positions and avoid conflicts in trade policy and commitments. EPA negotiations has to a large extent divided SADC and this is undermining the Regional Indicative Strategic Development Plan (RISDP)
16. SADC as an institution is defined by the SADC Treaty in which Member States take on obligations of integration of the region. The challenge here is that the EU would want the SADC EPA trade regime to have a common external tariff by 2008, whereas the SADC trade agenda proposes a customs union by 2010.

17. It is also difficult to engage in negotiations in those areas where common policies are not yet in place for the SADC EPA group.
18. The EC has indicated interest in negotiating subjects which include investment and government procurement whose modalities are yet to be agreed in the ongoing WTO multilateral trade negotiations.
19. The need to harmonize trade regimes with the EU in view of the existence of overlapping membership and trading arrangements is a challenge and concern from both an institutional and legal standpoint.
20. Within the SADC region we have Member States belonging to either Southern Africa Customs Union (SACU), or the Southern African-EU Trade and Development Cooperation Agreement (TDCA), or East African Community (EAC), or the Common Market for Eastern and Southern Africa (COMESA). Within the SADC EPA group four Member States namely Botswana, Namibia, Lesotho and Swaziland (BNLS) belong to SACU which is a de facto member of South Africa-EU TDCA. These are all challenges which need to be addressed. In this regard a Working Group composed of Angola, Namibia and South Africa has been established to ensure effective coordination for the SADC EPA negotiations and the TDCA ongoing review process.
21. Coordination between the SADC EPA group and ESA EPA group in the context of EPA negotiations is yet another challenge in view of the fact that four SADC Member States namely Mauritius, Malawi, Zambia and Zimbabwe are negotiating EPA under the ESA group. The SADC Chief Coordinator for EPA negotiations is arranging to meet his counterpart on the ESA side to establish a working relationship.