



DG Trade

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« The benefits of 'New Issues' in EPAs »

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The importance of trade-related rules in EPAs

- ▶ EPA's have the potential to create significant new opportunities and space for new business to develop in your economies.
- ▶ This will be the key gain of EPA's, and from this gain will flow jobs, viable long term fiscal resources for ACP Governments, economic oxygen and a new sense of hope, ambition and possibility
- ▶ This potential will only be realised if:
 - The liberalisation process is progressive and well designed.
 - Non-tariff barriers such as red tape are tackled through trade facilitation
 - The building blocks for services to develop are in place.
 - Good governance is promoted
 - South-South regional integration is consolidated



Enhancing SADC productive capacity

The challenges of globalisation.

- ▶ The SADC industrial sector needs to withstand the challenges of globalisation, which range from competitiveness to industrial and product diversification, productivity, technology transfer and research and development.
- ▶ This can only be achieved with an overall improvement in productivity and competitiveness combined with a diversified and balanced industrial growth in a wider, well-linked economic space that allows for the efficient and effective use of factors of production on the basis of increased value addition.
- ▶ SADC should pay particular attention to investment promotion, entrepreneurship development and ensuring that the manufactured products meet internationally recognised standards and quality in order to compete favourably in the global economy.
- ▶ **The EPA can help reaching these objectives**



Building supply capacity

- ▶ **SADC needs to build capacities in five key areas that will contribute to poverty reduction and enhancement of competitiveness of its productive sectors, facilitate technology transfer and contribute positively to human resource development.**
 - Upgrade the overall productive capacity
 - Export
 - Attract investment
 - Respond to market requirements; and
 - Engage in trade governance.
- ▶ **This is the objective of the EPA which links development assistance with rules for development**



Private sector development and sustainable growth

The EPA should be the main instrument to that effect by:

- ▶ **Lowering the cost of services which are essential for business development and competitiveness (Trade in Services)**
- ▶ **Attracting more sustainable investment to the region (Commitments on FDI)**
- ▶ **Ensure fairer market rules (provisions on Competition)**
- ▶ **Developing economic public activity (Government procurement)**
- ▶ **Cutting red tape and facilitating day to day business (Trade facilitation)**



I. TRADE IN SERVICES

1. Legal background

▶ The Cotonou Agreement

- Article 41 the objective of “the liberalisation of services in accordance with the provisions of the GATS and particularly those relating to the participation of developing countries in liberalisation agreements”.
- Article 42, maritime transport
- Article 43, information society use of new communication technology

▶ GATS

- GATS Article V,
 - “substantial sectoral coverage” and provide for
 - “the elimination of substantially all discrimination”.
 - However, flexibility is provided for developing countries and (...) in relation to a wider process of economic integration among the parties.
- Articles IV and IXX of the GATS. The principle of “progressive liberalisation ”, allow developing countries to open fewer sectors, at a slower pace,
- Sectors which strengthen the domestic services capacity and competitiveness of developing countries and (by developed countries) in sectors and modes of supply of export interest to developing countries.



2. Economic impact

- ▶ In most economies, services make up between half and two thirds of GDP
- ▶ high share of jobs are in services (e.g. in the EU more than 50%)
- ▶ in developed economies, up to 25% of exports are services
- ▶ The 2002 WTO trade and development handbook: services make up 10 - 20% of the production costs in a range of industries



3. What does liberalisation of trade in services mean?

- ▶ Provide greater market access for foreign firms through
 - reducing regulatory barriers to market access
 - eliminating discriminatory treatment of foreign firms (compared to domestic firms)
 - does not mean deregulation or privatisation



4. Main principles of services liberalisation

- ▶ A legal framework for liberalisation
- ▶ The structure and principles
 - Transparency
 - The “most favoured nation” principle
 - National treatment
 - The 4 modes of supply
- ▶ Flexibility is a key feature of the services negotiations



5. Scope of the GATS

- ▶ In principle, all services sectors are covered (exceptions air transport...).
- ▶ Transparency and MFN apply - regardless of commitments.
- ▶ All measures affecting trade in services (laws, regulations, rules, procedures...) are covered
- ▶ Each country takes specific commitments and identify the degree of market opening for each sector



6. How are services traded - the four modes of supply

- ▶ Mode 1 - cross border (e.g. by mail, telephone, e-mail,...)
- ▶ Mode 2 - consumption abroad (consumer travels to producer - e.g. tourism services)
- ▶ Mode 3 - commercial establishment - the exporter establishes in the export market
- ▶ Mode 4 - temporary movement of service supplier (e.g. lawyer comes for a short period to give legal advise to client)



7. Schedules of specific commitments - set out degree of trade liberalisation

- ▶ one list per member – (eg. EC has one schedule of commitments)
- ▶ principle of positive listing - sector by sector - flexibility guaranteed
- ▶ sets out conditions and degree of market access and national treatment - allows gradual and partial liberalisation



8. Why regional economic integration?

- ▶ Gains from trade derive from 1) economies of scale, 2) comparative advantage, 3) knowledge spillovers, and 3) FDI
- ▶ Unilateral – multilateral – regional – bilateral
 - Regional trade blocks can be building blocks for global trading system
- ▶ Integration: continuum from loose integration (tariffs, quantitative restrictions) to deep integration (harmonisation of market framework)
- ▶ Regulatory convergence – adopting common standards, mutual recognition, adopting partners' regulation, adoption of global standards.... lead to deeper integration of neighbouring economies



9. The Continuum of Deeper Integration

- ▶ Regional integration between economies a continuum from shallow (FTA for goods) to deeper forms of integration
 - ▶ Both theoretical arguments and empirical evidence to show that deeper economic integration can yield important welfare gains.
 - ▶ ‘North-South’ integration can be beneficial for developing countries (more potential for trade, knowledge spillovers, FDI).
- How can the SADC Partners move up along the continuum of deeper integration?



10. Liberalisation of Services as the Vehicle for Deeper Integration

- ▶ **Barriers to trade in services = rules and regulations (e.g. restrictions to market access or rights of establishment).**
- ▶ **Liberalisation of trade in services requires ‘behind-the-border’ policy reforms (e.g. introduction of competition, etc.).**
- ▶ **Very similar policy reforms needed for (1) domestic economic adjustment, (2) deeper regional integration, and (3) liberalisation of trade in services.**
- ▶ **Political commitment to liberalise trade in services regionally (Cotonou Agreement) and multilaterally (GATS / WTO).**



11. What does liberalisation of trade in service entail?

- ▶ Main restrictions are ‚behind the border‘: laws, regulations,
 - Right of establishment
 - Rules for market access
 - Licensing regimes
 - Investment rules
 - Competition policies

- ▶ Liberalisation of trade will often be similar to domestic reform: obstacles to market entry for foreign firms the same as for domestic firms ⇒ important implications of trade liberalisation for domestic reform agenda ⇒ need for integrated reform strategies



12. The ACP context

- ▶ Trade in services is growing. Telecommunication, energy, finance and transport favour trade and economic development.
- ▶ Liberalisation of trade in services can improve consumers' lives, service providers, and help to make a region more competitive globally.
- ▶ The rules need to be simplified and harmonised to reap the benefits of this kind of trade.
- ▶ The EPA can build on these initiatives and reinforce them to realise their potential, both within the SADC region and in trade with EU.



13. Key issues in SADC context

Some key issues that will affect the role of services within an EPA:

- ▶ Harmonising existing SADC ad bilateral agreements relevant to services trade.
- ▶ Understanding the existing legal basis,
- ▶ Policies on the movement of people providing services.
- ▶ Meeting the needs of SMEs with few links to formal services trade.
- ▶ Getting appropriate information and data sources to assess changes and inform negotiations.
- ▶ Identifying the best structure for negotiations around modes, cross cutting issues and sub sectors.
- ▶ Understanding the role of development assistance as consumer of services, driver of reform and source of support.



II. FOREIGN DIRECT INVESTMENT

1. Why rules for Investment matter?

- ▶ Investment agreements provide security for investors. EU commercial interests are not in the ACP – we need to convince them to invest.
- ▶ Foreign investment to developing countries is 5 times larger than in 1990 and hugely diversified. The ACP receives hardly any of this outside industries like oil and mining.
- ▶ Private business and investment need rules. Without rules, the risks are too high.
- ▶ If we want diversification and transformation activities – longer term, job creating investment – we need rules. EPA's are the opportunity to help put those rules in place.



2. Business perspective / opportunities for established and new investors

- ▶ Increasing pan-African GDP growth
- ▶ Generally positive returns for investors but volatile (e.g. Lesotho)
- ▶ Improving economic and political environment
- ▶ Some incentives to attract FDI
- ▶ Recognising the importance of streamlining the investment process
- ▶ Larger consumer market potential / economies of scale
- ▶ Speed of business: communication
- ▶ Growing brand awareness
- ▶ Low cost of labour



3. Business perspective / Challenges and main figures

- ▶ Weak infrastructure raises capital and running costs
- ▶ Tax and fiscal systems not conducive to formal business
- ▶ Lack of respect for slow implementation of RTAs
- ▶ Weak judicial frameworks / Bureaucratic inertia and corruption
- ▶ Lack of business consultation / Business/labour skills need to be developed / Lack of funding / Negative perceptions to overcome
- ▶ **Positive figures:** FDI increased 55% in SA for the period 95/96. In 1996, outflows were equal to inflows.
- ▶ Since 1994 about 250 companies have entered SA, while SA companies continue to invest abroad. At regional level situation is negative with impact on productive capacity.



4. Key principles for the EPA

- ▶ Transparency
- ▶ Stability and predictability
- ▶ Openness
- ▶ Movement of key-personnel
- ▶ Freedom of investment-related capital movement

These principles could be applied to specific market access and national treatment commitments covering a number of sectors.

The commitments could be made in terms of positive list which would set out any limitations to be retained in relevant sectors



5. Framework for an Investment Chapter

- ▶ The EPA would:
 - recognise the right of the parties to determine their own regulatory arrangements
 - include provisions for safeguards to be taken in circumstances related to capital movement
 - give recognition to the relationship between regional integration and investment
 - Include provisions on Corporate Social Responsibility with respect to investment
- ▶ The EU is ready to discuss all these issues and explore the interests of the region in order to tailor the EPA to its needs



III. COMPETITION

1. The legal basis

- ▶ Cotonou Art. 45 recognises the importance of introduction and implementation of effective and sound competition policies in order to improve and secure an investment friendly climate
- ▶ Cotonou refers to the undertaking of the parties to implement national or regional rules such as: control of agreements, decision and concerted practices that may induce restriction, prevention or distortion and prohibition of abuse of dominant position
- ▶ Due consideration shall be given to different levels of development and economic needs



2. The development value of Competition policy

- ▶ Copetition is not about increasing market access but to ensure proper market access conditions to enable market access to become effective
- ▶ Countries without competition law pay more for imports, shipping and services. Cartels target these countries.
- ▶ Price fixing conspiracies in 1997 affected almost 9% of the poorest countries imports.
- ▶ Running competition policy is inexpensive compared to the gains.
- ▶ In developing countries companies and consumers are the victims of anti-competitive practices



3. Competition and regional integration

- ▶ The SADC region is in the process of developing a model Competition Policy. Not all SADC countries have competition policies.
- ▶ This instrument will therefore be used as a basis to assist SADC Member States without competition policies to design national policies on competition.
- ▶ Article 25 of the SADC Protocol provides that Member States shall implement measures within the Community that prohibit unfair business practices and promote competition.



4. Competition policy in Southern African region

- ▶ Competition framework which would curb anti-competitive practices and ensure that this market remains competitive and able to reap full benefits resulting from the EPA agreement.
- ▶ Discussions with SADC should help us to explore different possibilities based on existing or new frameworks
- ▶ The need for appropriate level of technical assistance should also be defined in order to facilitate the setting up of the necessary regulatory structures



IV. PUBLIC PROCUREMENT

1. Why public procurement serves development ?

- ▶ Transparent public procurement cuts costs by a third and reduces favouritism and corruption.
- ▶ ACP Governments are important employers of international companies, as domestic companies frequently lack the technology and skills.
- ▶ EPA's will provide a clear framework for this activity, and will include price preference or offset systems, to ensure that local companies also benefit.



2. The importance of transparency

- ▶ Transparent public procurement brings better value for money. Public entities have a duty to purchase goods, services and works through the most advantageous offer.
- ▶ Transparent procurement procedures can attract more investment and encourages local partnerships in view of 'home-driven growth'
- ▶ Transparent set of rules help in fighting corruption
- ▶ Transparency enhance the efficiency of local suppliers
- ▶ A transparent regime contains a number of detailed obligations relating to: the value of contracts, technical specifications, procurement methods, qualification of suppliers, invitations to participate, time limits, award of contracts and provision of information



3. Moving towards a regional procurement market

The EC would encourage the SADC countries to negotiate a regional agreement with a view to reach 4 main goals:

- ▶ **to expand access to the government procurement markets of the SADC countries**
- ▶ **to achieve a normative framework that ensure openness and transparency without implying the establishment of identical systems in all countries**
- ▶ **to ensure non-discrimination**
- ▶ **to ensure impartial and fair review for the resolution of complaints and appeals**



4. An approach adapted to the Southern African market

- ▶ According to the OECD, the value of the PP in South Africa amounts to 19% of GDP. The interest for the region to negotiate PP commitments is evident.
- ▶ The EC suggests a pragmatic and pro-development approach limited on scope to some sectors which are key to development and attracting investment
- ▶ Key sectors are: water, transport ports, airports, urban transport, motorways, railways), energy (gas, oil, electricity)
- ▶ This chapter could be extended to 'Public-Private Partnership'; i.e. projects financed by the private sector where there is not enough public financing for infrastructure



5. Negotiating with the EC

- ▶ The EC recognize the fact that SADC countries need time to put in place government procurement regimes based on principles of transparency, national treatment and non-discrimination. Therefore due consideration will be given to transitional measures and special and differential treatment which would:
 - grant SADC countries immediate access to the EC procurement market;
 - give SADC countries time to adopt and implement government procurement regimes based on the above mentioned principles
 - allow SADC countries, based on their development needs, to adopt or retain one or more of transitional measures
- ▶ Finally SADC countries may consider joining the WTO Agreement on Government Procurement



V. TRADE FACILITATION

1. Why trade facilitation is a key driver for trade ?

- ▶ EPAs will make trade easier. World Bank figures estimate gains worth billions of dollars to the ACP from trade facilitation.
- ▶ On average, it takes 18 signatures to clear cargo from Africa but 3 in the OECD.
- ▶ It costs about the same to clear a 20-foot container through the port of Dakar as it does to ship it from Europe.
- ▶ Delays add up to 10% to the cost of ACP exports. This is two to three times more than the average tariff the EU charges the rest of the world.



2. Increasing the value of Market access

- ▶ Transparent and predictable rules within EPAs
- ▶ Harmonise rules in a regional framework will not impede countries to support SME's or to put in place investment and employment policies and social safety nets
- ▶ Improving customs procedures (simpler requirements and faster clearance techniques)
- ▶ This will increase overall trade flows, reduce costs of trade transactions, increase revenue collection and improve overall efficiency



3. Rationalizing costs of trade transactions

- ▶ Costs of trade procedures represent as much as 4-5% of the overall costs of trade transactions
- ▶ Same cost as the current tariff average on trade in industrial goods of industrialised countries
- ▶ Reducing these costs would mean saving 325 billion Eur a year (wasted for SMEs)



4. The importance of reaching the status of customs union (CU)

- ▶ Consequences on participating countries:
 - Common external tariff
 - Common customs legislation and practices
 - Revenue collection
 - Internal decision making arrangements
 - Common rules on non-tariff barriers
 - No customs duties or quantitative restrictions
 - Common enforcement mechanism
 - Common policies towards third countries
- ▶ The advantage of SACU (world oldest CU) and the future of SADC (2010 ? Prospects ? Refoms ? **Is free circulation a reality ? The importance of SADC Trade facilitation agenda**)



GENERAL CONCLUSION

- ▶ Trade related rules are at the essence of the EPA development agenda
- ▶ The EC remains ready and committed to explore ways and means to implement this agenda taking into account differences of development and differential treatment
- ▶ Excluding commitments in these areas would be very difficult to reconcile with Cotonou
- ▶ The EC does not look for access for its companies
- ▶ The EC wants to promote regional harmonisation and regional preference so that operators would be faced with predictable, transparent and enforceable rules
- ▶ The EC proposes a step-by-step approach with Review clauses in order to define a sustainable package of EPA rules