

## DAY 1

1. tralac hosted its flagship event together with international trade lawyers and economists, policymakers and practitioners from all over sub-Saharan Africa, Europe and Latin America. The annual conference formed part of a three day series of events, which not only focused on the substance of the EPA negotiations but also on the process. The objective of an EPA is to promote regional integration and regional development. There is however no guarantee that the outcome will be picture perfect. The focus of the conference was these two dimensions and the opportunities and challenges associated with this. The extent of regional overlap is unsurpassed anywhere else in the world and multiple commitments are causing serious challenges to the current negotiations. This was part of an effort to start a productive debate on regional integration across the stakeholder spectrum. This could promote development in the long term since development is fundamentally a beyond the border issue. Development is on the top of the African agenda but the challenge is to explicitly seek for it in the negotiations.

2. The first session was most suitably dedicated to the WTO compatibility of EPAs. **Roberto Fiorentino** from the WTO Secretariat provided a brief overview of the MFN principle and the main exceptions to this WTO principle. He elaborated on the two criteria relevant for the WTO when evaluating compatibility namely membership and scope. He made it clear that if a developed country is a member of an RTA, the only way to notify such an agreement is under GATT Art. XXIV. The problem is that there is strong opposition to special and differential treatment in Art. XXIV since WTO members do not want to water the requirements for Regional Trading Arrangements (RTAs). That is why the substantially all trade definition is so important for developing countries. Fiorentino however conceded that there is no clear definition of substantially all trade and that this will differ on a case by case basis.

3. **Gerhard Erasmus**, a tralac associate, continued to focus on the importance GATT Art. XXIV but recognised the opportunity to create some kind of flexibility for developing countries. The Doha Round was suspended and had no outcomes while the Enabling Clause cannot be the legal basis for an EPA. This means that no provision is made for any special and differential treatment when a developed country is a partner to any trading arrangement. This vacuum creates a space for negotiating the EPA in such a manner that will approximate the outcome of GATT Art. XXIV. This is an opportunity for the developing countries to articulate innovative responses to allow for flexibility to address their genuine and developmental needs. Prof Erasmus concluded that Art. XXIV and development are the only two products developing countries can take to the WTO that would provide an acceptable basis for an EPA.

4. **Boitumela Gofhamodimo** of the SADC EPA Unit was the next speaker on the agenda and gave an update on the state of play in the SADC EPA negotiations. She admitted that there were many unanswered questions about the negotiations in this configuration especially with regards to the Framework Agreement. The Framework agreement was an attempt to seek an approach to the negotiations that will solve the regional integration uncertainty existing in SADC.

She highlighted the key proposals and challenges contained in the Framework Agreement. This is most notably the variable geometry to ensure market access and the group's refusal to negotiate on new generation trade issues. She however assured the conference that they will harmonise their relationship with the EC so that EPAs can be a stepping stone to development.

5. The next session was an interactive discussion in which some speakers brought the conference up to speed with the progress of the ESA EPA negotiations. The ESA group has already submitted an EPA draft legal text to the EC and will spend the next months refining the text. The interactive session also focused on the TDCA review and the overall integration of the SADC EPA configuration in the envisaged SADC FTA.

6. The afternoon's session was opened by **Mark Pearson** from the Regional Trade Facilitation Programme (RTFP), who sketched the background of overlapping membership in the region and explained the nature and reasons for the overlap. He discussed the progress different regional groupings have made to reach their objective of becoming a customs union. He considered and tabled the amount of work already done on the CET, CTN, Revenue sharing, sensitive products and the free movement of goods. The Cotonou Agreement is suppose to strengthen these regional integration initiatives but is actually complicating it even further. There is no condition that the EC must negotiate an EPA with a Customs Union or a FTA, but this condition has been offensively pushed by the EC. Pearson feared that this could leave some countries within an EPA with different market access conditions. That is why he suggested the best approach is to negotiate as a SADC – COMESA configuration but admitted that it might be too late and that there won't be the necessary political will.

7. **Christopher Dent** from Leeds University presented the macro economics view on the nexus between trade and development. He considered the conditions for trade based development which includes an effective strategy, sufficient capacity, entrepreneurial dynamism, favourable global economic environment and economic diplomacy. He explained the recent developments in EC trade policy and in particular the development dimension of their policy. EPAs are instruments for development and he concluded by suggesting how EPAs can help to build trade capacity in the region.

8. **San Bilal** from the ECDPM highlighted the fact EPAs are first and foremost about development and that it must cover all three core dimensions of trade and development namely:

- trade related rules
- accompanying measures and policies to support development and
- an effective process to support delivery.

To implement an EPA like that would require significant adjustment costs but the EC failed to grasp the magnitude of these costs. The remainder of the presentation revolved around the targets for funding, the amounts of the funding involved as well as procedures and modalities for funding. He concluded with a list of advantages and disadvantages which he considers the best approach to fund EPAs.

9. **Wilhelm Smalberger** of the South African DTI focused his presentation on the history of the TDCA and the role it will play in the negotiations and regional integration. He explained the reasons for negotiating the TDCA with the EC and why SACU was not included in this bilateral agreement. He emphasized the importance of the Framework Agreement and the role the TDCA review will play in integrating the region. He concluded by considering if the TDCA is a hindrance to regional integration or an instrument to promote it.

10. **Ivano Casella** responded to the region's concerns by presenting the EC's perspective. He briefly referred to the Framework Agreement but conceded that a formal response will only be given at the end of the year. The EC has been considering how to include South Africa in a formal manner and how to change the mandate of the EC. He however assured the conference that if the EC integrates South Africa in the configuration it would not be unconditionally. The EC believes that treating SA the same as other developing countries would hijack the development dimension of the EPAs. To underline this development dimension and to develop their economies, SADC countries should consider the benefits of commitments on trade related issues. SADC should enhance their productive capacity and build their supply capacity in order to contribute to poverty eradication, develop the private sector and promote sustainable growth. Commitments on trade related issues are an important tool to realise these objectives. Casella dealt individually with the trade related issue and concluded how the liberalization of trade related issues can be a vehicle for deeper integration.

11. **Barbara Rosenberg** of the Getulio Vargas Foundation in Brazil, specifically dealt with one of these trade related issues namely competition. She briefly explained the rationale for including competition provisions in trading arrangements and which competition provisions to include when negotiating an agreement. She analysed which competition provisions will benefit the different parties. Different situations exist in each of the African member states but the task facing the countries are the same. Member states must consider which provisions make the most sense and which type of provision will be accepted. There are wide competition provisions in most agreements but there is a danger that these provisions cannot be implemented. She advised that countries should carefully consider which provisions can be implemented and to which extent local law and authority is needed. Rosenberg concluded by balancing the cost and benefits and speculated if competition provisions can help foster development.

12. **Maximiliano Santa Cruz** dealt with intellectual property (IP), another trade related issue. He provided an overview of the EC trade negotiations and the IP chapters included in the various agreements. He considered the impact of multilateral IP treaties and the implications of IP on the current bilateral arrangements. He was of the view that the IP provisions of the EC are very sophisticated and there are no signs that they will go beyond the current provisions. A list was however provided on areas where possible new demands can be made. Santa Cruz concluded by discussing the available options for developing countries when negotiating IP commitments in EPAs.

## DAY 2

13. **Sarah Richardson** from Meander Consulting and **Eckart Naumann**, a tralac associate kicked off the first session of the second by presenting a Sustainability Impact Assessment (SIA) on Rules of Origin in SADC. The SIA employs case studies to identify a causal link between trade, economic, social, and environmental sustainability. The case studies selected are those most affected by Rules of Origin – the garment sector in Lesotho and the Marine Fisheries sector in Namibia. In both cases the impact on other SADC countries are also considered. The complete study is available on the SIA website: <http://www.sia-acp.org/>

14. **Hunter Nottage** from the Advisory Centre on WTO Law examined the strategies of the SADC and ESA groups with regards to dispute settlement in EPAs. He discussed the desirability of including dispute settlement provisions in EPA negotiations and what the benefits would be of such an inclusion. He is convinced that the inclusion of dispute settlement provisions would legally secure the rights of developing countries. He explained the interaction between WTO dispute settlement and regional dispute settlement. WTO dispute settlement can not be used to enforce WTO plus provisions thus it cannot rule on matters outside its jurisdiction. He concluded by considering what form dispute settlement should take when including it in EPAs.

15. **Gerhard Erasmus**, a tralac associate agreed with the advantages of dispute settlement but highlighted a number of caveats:

- Negotiating a dispute settlement chapter calls for a great degree of understanding between parties in the region
- Dispute settlement is not one way traffic – developing countries can also be on the receiving side
- Dispute settlement is limited to the parties to the agreement and in the case of SACU / SADC it might be difficult to determine who that is
- Problem of standing and the choice of forum

He concluded by urging the conference to find sensible and logical ways to marry institutional provisions and choices which must also be compatible with regional arrangements.

16. **Xavier Carim** presented his views on the way forward in the last session of the annual conference. He acknowledged the importance of the TDCA and the role it will play in the integration of the region. Much of the discussion revolved around the Strategic Framework Agreement, which he sees as the political consensus of the way forward. The Framework sets out the technical and legal parameters to advance this process and seek to establish a framework in which South Africa can be associated in a more formal manner. It is proposed that BLNS countries accede to the TDCA while MAT countries, which are all LDCs, continue to benefit from the EBA initiative. He underlined the importance of regional integration and considers the September Maseru Summit as a turning point in the regional strategy. After the summit there is greater appreciation of the challenges facing SADC and the political will to address this.



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He also addressed the inclusion of new generation trade issues and reiterated that there is no compulsion to negotiate on any of these issues. The approach is rather to cooperate first on these issues in order to build national and regional policy and only eventually negotiating these issues in the review of the EPA. He also highlighted the importance of development assistance which so many developing countries depend on. Carim identified the following as critical issues that will have an impact in the future:

- identifying the sensitive products of BLNS and MAT countries
- the response from the EC with regards to the Framework Agreement

The rest of the way forward discussion was facilitated by Trudi Hartzenberg (tralac) and the following key point and questions were raised:

- the position of Botswana, Namibia and Swaziland if the EPA negotiations are not completed
- the legal certainty of the SADC EPA configuration and the role SACU plays in the configuration
- the parallel process of the TDCA review and EPA negotiations
- implementation and ratification of the EPA agreement once it is completed
- general transition arrangements and interim transition arrangements.

