

tralac Annual Conference

The BMW Pavilion, V&A Waterfront, Cape Town 20 – 21 September 2007

tralac not only hosted its 5th Annual Conference but also celebrated 5 years of developing and building trade capacity in the region. Our flagship event was hosted at the BMW pavilion at the V&A Waterfront in Cape Town.

The negotiations to conclude Economic Partnership Agreements (EPAs) are entering a critical stage and many issues remain unresolved. The SADC EPA is unique in several respects which makes the successful outcome of negotiations in this region even more challenging. There is still no agreement on the treatment of new generation trade issues and the inclusion of South Africa is posing fundamental questions around market access and integration.

The EPA negotiation process should be considered against the backdrop of the emerging productive regional integration debate in southern and eastern Africa. . It is important that the SADC EPA support and build on existing regional integration initiatives; but is this really the case? The outcome of this EPA should ultimately promote the development objectives as stated in the Cotonou Agreement and yet, there is still no agreement on what development actually implies. The EU prefers to link development to the outcome of the negotiations.. To put this in perspective, the relationship between trade and development must be considered. Does causality run from trade to development or is this the other way round? At tralac's Annual Conference participants endeavoured to contribute to these debates and even came up with innovative solutions to some of the challenges facing the region in the current negotiations.

The first session provided an update on the progress in the SADC EPA negotiations. **Titus Nxumalo** from the SADC EPA Unit at the SADC Secretariat presented the SADC perspective in the context of the EPA negotiations. He reflected on the key negotiating points as contained in the SADC Framework document presented to the EC in March 2006. These points and the response from the EC mirror the contentious issues currently being grappled with by the negotiators. He conceded that progress was slow and that there are many issues still to be resolved before negotiations can be concluded; nevertheless all parties remain committed to the process. Substantial progress has been

achieved in the negotiations on SPS, TBT and customs cooperation and general agreement was reached on these three chapters. He identified the following as serious contentious issues where a great deal of work is still needed: Market access, Rules of Origin, trade related issues, services, trade remedies, legal issues and development cooperation and finance.

Eva Bursvik from the EC Delegation in Pretoria provided the EC perspective. The general observations of the EC were on a more positive note than that of SADC. She reminded the participants that the deadline is a sombre reality but emphasised that SADC had the potential to successfully conclude the negotiations. According to the EC, the only legal alternatives would be the GSP, EBA and the TDCA. The recent SADC – EC Officials meeting was disappointing and the parties did not make the progress they hoped for. The market access offers for Angola, Mozambique and Tanzania are still outstanding while the EC wants further clarification on the sensitive products identified by SACU. She highlighted the same contentious issues as SADC presenter and urged that a balanced package is the only acceptable outcome, and noted that provisional implementation of the EPA is possible provided that agreement is reached on the outstanding issues by 15 November.

One of the overarching themes of the conference was regional integration and the impact an eventual EPA will have on coherence in the region. **Paulina Elago** from the Tradehub in Botswana considered this the key issue: would the SADC EPA foster regional integration? She did a reality check after contemplating existing and emerging evidence in the areas of regional configurations, trade in goods, services and development support. The answers she presented were not encouraging. Four separate market access offers are to be tabled in the SADC EPA configuration which tend to be inward looking reflecting the individual objectives of that country. There is also no coherence between the members of SADC on the treatment of services and development support. At this stage, a priority is for countries to clarify their own policy thinking around regional integration.

Professor Gerhard Erasmus, a tralac Associate agreed with Paulina and urged the region to support the building blocks of regional integration. He noted that the region will develop around SACU and there seems to be convergence to this in the EPA process.

He emphasised that the only way forward is a rules based regime in which businesses could function efficiently and effectively. To date there have been many efforts to integrate the region, but there is a need for common policies, common institutions and common rules. While he considers SACU as an important building block he concedes that there will be many challenges to make this work effectively. He concluded by suggesting to make SACU a party to the SADC EPA. This makes sense in terms of other considerations as well – SACU has its own legal persona and such an arrangement would facilitate the administration of the common external tariff.

Professor Colin McCarthy a tralac Associate opened the afternoon's proceedings by assessing the development impact of EPA design and implementation. He affirmed that an association exists between trade, growth and development but admitted that it is unclear in what direction the causality runs. Does increased trade lead to growth and development or is it the other way round? He compared selected EU Member States and the SADC EPA group and not surprisingly found a total unequal dimension in the size and levels of economic development, both on the SADC and EU sides.. He emphasised that the SADC EPA group faces not only the challenge of dealing with the complex architecture of the group, but also serious constraints with respect to demand and supply side challenges such as infrastructure, labour skills, investment, institutions, governance, and non-tariff barriers. His conclusion was that real development gains will only be achieved if much more than simply market access and asymmetry are included on the negotiation agenda.

Dr Ron Sandrey, from tralac presented his paper "*Living in the shadow of the mountain*" which examines the implications of South African trade and trade-related policies on the BLNS countries. In particular, he looked at the existing trading regime between the BLNS countries and the TDCA. He concluded that the main impact of the TDCA will be through the SACU revenue pool. Tariff reductions would shrink the revenue pool and it was considered what effect this will have on the BLNS countries. Ron identified the apparent challenges relating to revenue sharing and the options moving forward. He further recognised the importance of common policy development, especially of a common industrial policy as stipulated in the 2002 SACU agreement. The two sectors of critical interest, clothing and motor vehicles must be given careful consideration when developing the industrial policy of the BLNS countries. He concluded by investigating the

trade related areas, mainly competition and investment and the progress made in the SACU context.

The importance of strong linkages between the government and the private sector were highlighted several times during the conference. **Catherine Grant** of Business Unity South Africa (BUSA) improved these channels with her presentation on the perspective and interests of the private sector in the EPA negotiations. The South African private sector takes the position that the EPA process must support regional integration. It is not in favour of a differentiated approach as proposed by the EC and feels that an arrangement should be devised around SACU. Of major importance to the private sector in the wider region is the need to formulate temporary provisions for Botswana, Namibia and Swaziland access into the EU markets after expiry of the waiver. It was emphasised that this should not be seen as an alternative – the commitment still remains, but there is a definite call for clear thinking around the deadline. It was however noted that the real interest of the private sector lies in non-tariff barriers, rules of origin and trade facilitation. The difference between the approach of government and the private sector in South Africa was duly acknowledged. The private sector feels liberalisation is not enough and that it the agenda should include trade related issues. The focus should initially be on services linked to facilitating trade in goods but should also be widened to include appropriate domestic policies, particularly in the area of competition. It became apparent that there is a general lack of awareness amongst the private sector regarding EPAs. The negotiations are almost complete but there is a definite need for greater involvement of the private sector in the implementation and monitoring phases of the concluded EPA.

Rules of Origin was identified by the private sector as one of its true interests and **Eckart Naumann** a tralac Associate, specifically considered the the importance of the rules. He emphasised that Rules of Origin go to the heart of a preferential trade arrangement; duty free quota free access will be of no use if the rules are overly restrictive. He sketched a number of practical scenarios to illustrate how decisions and choices of exporters can influence profit margins. These examples revealed the shortcomings in the current structures and demonstrated how the restrictive Rules of Origin influence the duties paid by exporters. He concluded by explaining the recent progress made on Rules of Origin as well as the key challenges the region will have to deal with in the future.

The experience of the CARICOM EPA group was reviewed on the second day of the conference. The picture painted was more positive and the presenters were confident that the CARIFORUM EPA will be initialled on 31 October and ratified before the end of the year. **Keisha-Ann Thompson** from the Anti-dumping and Subsidies Commission provided a brief background on the CARICOM and CARIFORUM configurations and their integration processes. It was noted that as with the SADC EPA configuration, CARIFORUM is not a legal entity; similar challenges will therefore also apply to this region. CARIFORUM does not see the need to form a customs union since it is believed that most challenges can be solved through cooperation and coordination. Keisha-Ann continued to discuss the trade profile in the Caribbean and highlighted some critical issues which shaped the CARIFORUM EPA.

Calvin Manduna a trade policy analyst at the Ministry of Foreign Affairs and Foreign Trade in Jamaica took a closer look at the CARIFORUM objectives in the EPA negotiations. The CARIFORUM negotiations were logically guided by Art. 34 of the Cotonou Agreement to establish a WTO compatible trading regime. It was further of great importance that the EPA supports and complements the current process of regional integration and promotes the CARIFORUM development objectives. Calvin described how the negotiations were structured and organised in this region. A three-tier structure conducts the negotiations with support from technical working groups and the RPTF. The substantive issues were further divided into four groups comprising; market access, services and investment, other trade related issues and legal and institutional issues. He weighed up the costs and benefits of negotiating an EPA but found it hard to qualify. Although he found it difficult to isolate specific costs or benefits, he identified a number of issues in the general sense. Calvin also gave a comprehensive update in each of the specific negotiating areas by discussing the areas of convergence and divergence. Parties are in agreement on many of the salient substantive issues although there are still differentiated approaches in the areas tariff liberalisation, parties to the agreement, development cooperation, governance in taxation and certain trade related issues. He concluded with a detailed look at the significance of trade in services in the Caribbean. The Caribbean consists of small and environmentally sensitive islands with virtually no natural resources; this compelled the Member States to consider the inclusion of services on the agenda. Tourism and Communications are the most successful services sectors while CARIFORUM also enjoys trade surplus in transport

and government services. Although a side by side text was agreed for further development, it seems that several areas of divergence still need to be settled.

Keisha-Ann Thompson continued the session on the CARIFORUM negotiating experience by examining trade defence instruments and competition in the EPA negotiations. Trade defence instruments include anti-dumping, countervailing duties and safeguards. There is an ongoing debate whether these should be included in a RTA but the Caribbean countries feel that certain measures should be put in place to ensure deeper integration. There are however some arguments to dilute the prominence of trade defence instruments such as the harmonisation of competition policies and deeper integration into a single economic space. Studies have also showed that small states stand to gain little without putting the necessary regulatory frameworks in place like trade defence instruments, subsidies, competition policies and standards to increase the flow of trade. In the early stages of the EPA negotiations there was no real discussion on the inclusion of trade defence instruments, but the principles underpinning the CARIFORUM negotiations demanded the inclusion of measures on anti-dumping and countervailing duties. CARIFORUM finally decided to include provisions on competition in the EPA; this can be more viable than trade defence instruments and their inclusion could be less trade restrictive. Keisha-Ann however urged negotiators to be very careful when balancing the two mechanisms. Many unresolved issues in this area require an appropriate timeframe before implementing these provisions. The presentation was concluded by looking at the progress of the current CARIFORUM negotiations and the outstanding issues on the agenda. Most of the EPA draft text is completed; however the market access offer must be finalised, services offers need to be revised and investment exclusions must still be agreed.

Conclusion: The conference was concluded by a panel discussion consisting of representatives from government, the SADC EPA Unit, private sector and an NGO. They identified the most important challenges and opportunities in the context of the EPA negotiations and national policy debates. The representative from the South African government proposed that negotiations should focus only on trade in goods to accommodate the expiry of the waiver. Only after an agreement can the agenda be expanded to include the new issues. The representative expressed concern about the differentiation within SACU and how this can be reconciled with regional integration. In

the area of trade in services, the representative felt that region has limited offensive interest and is not ready to include this on the agenda. Support is needed to prepare, build capacity and establish regional operations first. He mentioned pre-commitments, but pointed out that this would be a difficult process to agree between the parties.

The representative SADC EPA Unit was also concerned about the looming deadline and the position of Botswana, Namibia and Swaziland after the expiry of the waiver. He urged the Member States to complete their outstanding market access offers and push to finalise the negotiations before the deadline. He also conceded that the retro-fitting of the TDCA and the EPA remains problematic; it is difficult to balance the interest of all the parties. The ratification and entry into force was further identified as a challenge; it is still not clear who the parties will be and how the process will function.

The private sector representative from Mozambique pointed out the language barrier challenge present in countries like Angola and Mozambique. He agreed that negotiations should concentrate on trade in goods and that services should follow later. The sequencing of services negotiations are really important considering the SADC Protocol on services and its wider regional implications.

The NGO representative expressed the need for continuous dialogue between the government and all stakeholders to guide the implementation phase. There must be a clear agenda for cooperation and awareness. She urged SADC to consider the current regional dilemma and find solutions to deepen the integration process. The representative confirmed the need for complementarity in the services arena to ensure that the SADC process and the EPA process happen in parallel. She also felt that there is a need to raise awareness for trade related issues, particularly in the private sector. A common understanding and a coherent strategy is important if the region want to move forward on these new issues.