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TIPS Policy Brief

EPAs in Southern Africa

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List of Abbreviations

ACP:	Africa, Caribbean and Pacific
CARIFORUM:	Caribbean Forum
EU:	European Union
EEC:	European Economic Community
EAC:	East African Community
EBA:	Everything but Arms Agreement
EPA:	Economic Partnership Agreement
GATT:	General Agreement on Tariffs and Trade
GSP:	Generalised System of Preferences
LDC:	Least Developed Country/ies
MFN:	Most Favoured Nation
TDCA:	Trade and Development Cooperation Agreement
SACU:	Southern African Customs Union
SADC:	Southern African Development Community
SPS:	Sanitary and Phytosanitary Requirements
WTO:	World Trade Organisation

Contents

1: History.....	4
2: EPAs in Southern Africa.....	5
3: EPA: View from South Africa.....	6
4: Focus for EPAs Going Forward.....	7
5: Conclusions.....	9

Table of Tables

Table 1: Historical Conventions between the ACP and Europe.....	4
Table 2: SADC EPA Members.....	5
Table 3: Export Analysis.....	7

Introduction

This policy brief seeks to highlight some of the developments in the process which led to the initialing of the Southern African Development Community's (SADC) Economic Partnership Agreement (EPA). Of concern is the fact that South Africa is the noticeable non-signatory to the Interim EPA. Many discussions have been held on the progress of negotiations, but this brief focuses on highlighting the historical developments which led to EPA negotiations. More critically this brief highlights some key issues (especially on export growth and regional integration) that will shape the future development of trade and trade capacity in the Africa, Caribbean and Pacific (ACP) region, more specifically within the SADC.

1. History

Trade between the European Union and the African, Caribbean and Pacific regions has historically been influenced by colonial links. The EU has had formal conventions with the ACP countries since the 1960s as listed in Table 1.

Table 1: Historical Conventions between the ACP and Europe

Year	Convention/Agreement	Details
1963	Yaoundé I	Agreement between European Economic Community (EEC) and 18 former, francophone African colonies, providing commercial advantages and financial aid.
1969	Yaoundé II	Renewal of Yaoundé I including Kenya, Tanzania and Uganda, introducing preferential trade agreements.
1975	Lomé I	Convention including preferential trade agreements on most ACP products and the system for stabilisation of agricultural export earning and development aid.
1979	Lomé II	Providing stabilisation aid to mining industries in ACP countries.
1984	Lomé III	Attention shift from industrial development towards food security and self reliance.
1990	Lomé IV	Convention focused on structural adjustment and cross-cutting themes.
1995	Lomé Revision	Revisions focusing on human rights, democracy and good governance and regional cooperation.
2000	Cotonou	Removal of most tariffs on imports from the ACP with sugar and beef and veal to be covered by Regional EPAs, and a new tariff-only banana regime to be phased in.
2001	EBA / EU GSP	Everything But Arms (EBA): Immediate removal of all tariffs on all imports from Least Developing Countries (LDCs) except arms, with a 3 stage removal of tariffs and quotas on sugar, rice and bananas.

		Generalised System of Preferences (GSP): Non-reciprocal preferential treatment granted to least developed countries offering duty and quota free access for almost all exports.
2007	Interim EPA	Reciprocal preferential trade, including services and new generation issues

Source: Bjornskov & Krivosos (2001:10) and author update (2008)

The Cotonou Agreement of 2000 was a result of World Trade Organisation (WTO) and General Agreement on Tariffs and Trade (GATT) complaints brought against the EU's discriminatory preferences which were offered to ACP developing countries especially in regards to trade of sugar and bananas. The Cotonou Agreement was set-up with the explicit intention of developing WTO-compliant trade agreements underscoring the negotiations of comprehensive EPAs.

The EBA agreement is a measure to offer duty free access for least developed countries in everything but arms. Specifically, tariffs and quotas were removed immediately except for sugar, bananas and rice. This is currently the best deal (in relation to the GSP) offered to LDCs prior to becoming signatories to the Interim EPA (IEPA), as it offered significant progressive protection for the sensitive goods listed in table 1 including beef in the case of Botswana.

2. EPAs in Southern Africa

The EPAs were instituted to counter the expiration (in December 2007) of the WTO waiver which allowed the EU to continue trade under the contested Lomé and Cotonou arrangements. A few years after the institution of the Cotonou Agreement, the SADC region has started to fragment into different groupings in negotiating EPAs. South Africa (which had no obligation to join EPA as it traded under the Trade and Development Co-operation Agreement¹ (TDCA) of 2000) decided to participate in the EPA negotiations with the objective of strengthening regional integration in Southern Africa and harmonizing the region's trade relations with the EU.

South Africa together with the SADC member states, consulted intensively between June 2004 and February 2006 in developing a negotiating framework for the SADC region. The EC responded to the SADC only in March 2007 agreeing to the inclusion of South Africa in the negotiations, but more importantly challenging the details of the framework which were meant to guide the negotiations. This response put heavy pressure on the negotiating process as only 9 months remained until the expiration of the waiver. In those 9 months of negotiations positions among SADC members began to change, the EU brought forward new demands and uncertainty prevailed on the extent of liberalisation set to occur under EPA.

Table 2: SADC EPA Members (Bold members are signatories to the IEPA)

Region	Members		% Signatories EPA	Number of EPA Schedules
SADC	Angola	Namibia	71%	2
	Botswana	South Africa		
	Lesotho	Swaziland		
	Mozambique	Tanzania(EAC)		

Source: Stevens (2008:122)

As can be seen in Table 2, SADC (which has 14 official member states) began with 8 members negotiating the EPA. Over the course of negotiations the group has splintered due to economic, political, social and cultural differences.

3. EPA – A View from South Africa

The South African government decided to participate in the EPA negotiations in 2004. As stated previously, SA was under no obligation to join the EPA negotiations as the TDCA¹ was in effect. South Africa's main objective was to align the TDCA with the SADC EPA in order to consolidate the region's trade relations with the EU. South Africa now finds itself as one of two SADC countries that have not initialed the IEPA; all other members of SACU and Mozambique have initialed the Interim EPA. The exclusion of South Africa in the SADC EPA is irrational as any treatment of SACU members will also apply to South Africa. The EU insists on differentiating SA on the basis of its competitiveness, but this will be impossible without breaking up SACU.

South Africa's reluctance in initialing the Interim EPA was based on numerous concerns: the inclusion in the EPA of new generation issues, the provisions on export taxes and other provisions on procurement, customs administration and dispute settlement. These issues go to the heart of national policy and are possible reasons for the outcome (The Dti, 2008). Throughout the continent many nations still harbour reservations about proceeding with negotiations as they stand, hence only 18 countries out of 53 in the ACP have initialed the Interim EPA.

The inclusion of services in the EPAs is one critical component which has caused delay in other nations initialing the Interim EPAs. The South African government has highlighted its reluctance to include services in the negotiations as they are a critical component of South Africa's trade accounting for over 60% of GDP. SACU signatories have included the liberisation of services in their Interim EPA. South Africa has consistently maintained that the premature opening of service markets could unduly compromise any future growth prospects for the sector. Given the advanced infrastructure of global service providers, especially European providers, many in South Africa feel that local firms (South African or otherwise) could be at the bottom end (competitively) of the spectrum, although there is a suspicion that the South African government is unfairly trying to keep the regional market for services closed in order for South African firms to capitalize.

The SADC EPA has been considerably divisive and threatens to derail plans for fast-tracking regional integration.

4. Focus for EPAs Going Forward

Currently negotiations should be considered unfinished or on-going. All nations that are still to initial the EPA have a difficult task of ensuring that the resumption of negotiations leads to development-friendly outcomes. The following are 3 main focus themes which warrant further analysis in moving forward with the EPA process.

4.1.1 Export Markets – ACP

Although increased market access has been promised to ACP exporters, it will be important for the negotiating nations to ensure that the preferences due to them are enacted. Many of the ACP countries are negotiating to preserve the market access they currently have, and most will not gain

¹ The TDCA is the Trade and Development Cooperation Agreement between South Africa and the EU. The TDCA was signed in 2000 and effectively creates a Free Trade Area between Europe and South(ern) Africa, with duty-free access for goods and services.

significantly from the proposed EPA regime. The worrying fact is that, even with the EPA, countries are likely to encounter other substantive restrictions, which will limit the export potential of the ACP region. New, more stringent rules of origin will make access harder; SPS issues will curtail the extent of export penetration; and local markets will be overwhelmed by subsidized imports in key sectors namely agricultural goods and manufactured goods (Oxfam 2006).

Table 3 below highlights the difference in dependence for markets. Data shows that SADC is a small market accounting for less than 1% of EU exports, whereas the EU accounts for just over a third (34%) of SADC's export market. This relates to the immediate effect that the EPA will have on trade. Evidently, the end result of the EPA will be more costly to SADC countries as they are exposed to more reliance on the European market. Countries not meeting the prerequisite standards will forego any potential trade gains created by the new regime.

Table 3: Export Analysis

	GDP (US\$ Billion)	Exports to Partner (US\$ Thousand)	Total Exports (US\$ thousand)	% of Total Exports
EU	13300	33,675,352	4,468,763,854	0.75%
SADC	275	36,905,478	110,206,305	33.49%

Source: ITC Trade Map (2008)

4.1.2 Regional Integration

The support and consideration of regional integration initiatives was explicitly mentioned in the Cotonou Agreement, yet the EPA process has proved to be divisive on this criteria.

The EPA negotiations were meant to build on regional integration initiatives; instead they have fostered the splintering of regional groups and cast doubt on the practicality of integrating regionally. The process of integrating the continent was meant to consolidate markets for goods and services but also to pool resources for the advancement of development (Stevens, 2008).

The overlapping membership of different regional groups contributed greatly to the current split. Member states scrambled to align themselves with the most convenient and potentially beneficial grouping so as to capitalize on regional competencies/or advantages, hence the uncertainty of which grouping to join e.g. Tanzania², part of SADC, initially negotiated within the SADC EPA only to

² Tanzania is a member of SADC and the EAC, both customs unions. It is untenable for a country to be part of two customs unions and a likely reason for the switch to the EAC EPA was a realization of the better prospects offered by the EAC which is more cooperative and aligned with COMESA. Tanzania's interests would possibly not have been best served by staying in SADC, as South Africa dominates trade and already has a FTA-type agreement with the EU (Sandrey and Fundira, 2007).

switch to the East African Community (EAC) EPA in the final stages of negotiations. The split also highlights the significant differences between the regional groups in terms of priorities and competencies.

4.1.3 Development Impact

The basis of this round of EPA negotiations was to build a mutually beneficial trade regime which would extend market access to ACP countries by offering reciprocal preferential access to all negotiating partners. Tied to this would be the need to develop the institutional frameworks which would govern trade.

The ACP region is undoubtedly low on capacity and funding in terms of trade facilitation, hence the uneven levels of research conducted in preparation for the negotiations. Although the SADC (and South Africa in particular) organised summits to discuss preparations for negotiations, many nations did not or could not conduct the necessary assessments required to inform the discussions; very few sectoral studies were conducted to determine key sectors which countries would like to develop.

Also, the extent of liberalization expected by the EU is above that expected by the WTO. Some nations could, albeit unintended, compromise any future hope of developing industries if they are included in the EPA schedules. Industrial policy is at the core of most nations' future developmental plans, and as such should not be included in these negotiations.

The ACP regions set out to consolidate markets and resources, unwarranted liberalization could leave regions with no measures to protect critical industries as the EU is expecting liberalization on "substantial trade". All negotiating parties should realize the sovereign right to determine which sectors are critical to its development and should therefore be able to choose to protect those sectors from hostile, often subsidized and excessively competitive foreign interests.

Case: MFN Clause

One sticking point for South Africa has been the inclusion of a MFN clause within the Interim EPA. The clause would require automatic extension of any advantages offered to any other region in any other future negotiations trade to the EC.

SACU has recently concluded a preferential trade agreement with MERCOSUR. Under the current EPA any benefits accruing to MERCOSUR would need to be automatically extended to the EC. South Africa maintains that this would restrict a nation's "negotiating leverage and options in future."

Source: Dti (2008) and Le Roux (2008)

5. Conclusions

EPAs have clearly been divisive in Africa. Only the CARIFORUM and the EAC have achieved regional consensus on the EPAs. For the Southern African region the situation is dire; the current status could effectively break up the oldest customs union in the world.

For the EPAs to be implemented successfully, greater consultation within negotiating parties will be critical. Principally the EU must recognize the diverse interests vested across the region and so structure their negotiation processes in accordance to this trait. Key to note is that nations have different priorities and differing capabilities, and the EU will have to take this into account. Renegotiation of the IEPAs has been effectively ruled out by the EU, meaning countries will have to stick to initialed texts³ (Mandelson, 2008).

The Overseas Development Institute in 2007 identified five possible options in reaching a solution:

- To institute the “next-best” regime while negotiations continue. This would result in an increase in the EU tariff applied to exports under the GSP regime.
- To continue with imposed schedules. This would limit negotiators’ leverage and cause tension.
- To seek an extension on the WTO waiver. This would entail the perpetuation of WTO non-compliant policies.
- To create a better “interim regime”. No better regime exists currently which would not be up for a challenge at the WTO.
- To agree to EPA agreements that establish key principles and to negotiate details at a later stage. This would keep the momentum of negotiations going, and would create room to maneuver for the negotiators. (ODI, 2007)

Hopefully the negotiations for Full EPAs will have a decidedly different outcome. Some countries have spoken out against perceived pressure to initial Interim EPAs, others have lamented the steam-rolling of the negotiations process, these highlight the need for the negotiating clusters to pool resources to ensure a more favourable outcome for the region as a whole.

The EU has been accused of using strong-arm tactics in the EPA negotiations, many ACP leaders are complaining about the process followed. All parties will need to shift focus from securing rudimentary concessions, to building a trade framework which along with liberalizing trade, empowers nations to fast track the development of their markets and capabilities. With many contentious issues still outstanding (including the inclusion of services, rules of origin, aid for trade, infrastructure and institutional development) the impetus for renegotiation is great. ACP member states must realize that forging ahead with EPAs in an environment of such contention will only lead to disputes in future and worse yet lead to trade regimes which undermine the developmental goals of member states and the region.

Given the divergent interests of the different ACP regions, it will prove difficult to produce an all-inclusive agreement which will cater for all these interests. Member states will need to ensure a policy framework which will enable the optimum outcome from future negotiations. Member states still to initial the Interim EPAs will have to ensure that the trade-offs agreed to in the negotiations are mutually beneficial and extend enough sovereign control on the pace and extent of liberalization to ensure that they do not compromise local initiatives for growing industries in line with their developmental plans.

³ In January 2009 the EU made an expanded offer to South Africa which would allow the SACU to stay intact. This offer effectively aligned the TDCA with the EPA for the region allowing for the maintenance of a common external tariff. Also, it excluded South Africa from negotiations on trade in services. South Africa has maintained that the MFN clause was still a major hurdle in its participation.

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