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International Centre for Trade
and Sustainable Development



The EC-SADC EPA: The Moment of Truth for Regional Integration

Aurelie Walker

Botswana, Lesotho, and Swaziland have broken with other Southern African Customs Union (SACU) members South Africa and Namibia by signing an interim Economic Partnership Agreement (EPA) with the EU. The signing, which took place amidst great controversy on 4 June in Brussels, ensures provisional application of the agreement by all parties.

In signing, Botswana, Lesotho, and Swaziland have cemented their commitment to engage with the EU in negotiations on trade in services and investment, government procurement, and competition toward a 'full' EPA while addressing the outstanding issues pertaining to trade in goods. Namibia initialled the interim agreement in December 2007 and continues to trade under the unilaterally applied agreement, whilst South Africa trades with the EU under the Trade and Development Cooperation Agreement (TDCA) concluded in 1999. Southern African Development Community (SADC) member country Mozambique has also signed the interim EPA whilst Angola, the last of the seven SADC countries negotiating an agreement, continues trading with the EU under the Everything But Arms initiative.

The signing of the interim EPA by three out of the five SACU members threatens the functioning and, possibly, the very existence of the SACU (see Draper and Khumalo on the future of SACU in this issue). The Customs Union has a Common External Tariff (CET) and therefore does not allow any single SACU member to negotiate a trade agreement bilaterally with third parties. The SACU-EPA 'three' were consequently faced with a stark choice: work to reach a consensus within the Union to respect its internal rules and sign the interim EPA as a bloc, or prioritise trade with the EU and sign immediately as individual countries.

Technical considerations

For its part, Botswana says it needs the interim EPA to maintain the preferential duty free access to the EU market for its exports. "We have agreed with the Europeans to sign and notify it to the WTO to have Duty Free, Quota Free access and confirmation from the WTO that trade under the EPA is actually WTO compliant," Daniel Moroka, Botswana's Minister of Trade and Industry, said in an interview with TNI. "The decision to get into an interim EPA was simply to ensure that there would be uninterrupted flows from the ACP countries into the European market." The Minister indicated that Botswana also has interests in the negotiations beyond trade in goods. "We have decided that we will negotiate other aspects of the EPA – services, investments, and outstanding issues – in parallel."

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The decision to get into an interim EPA was simply to ensure that there would be uninterrupted flows from the ACP countries into the European market.

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Daniel Moroka,
Botswana's Minister of Trade and Industry

A similar rationale applies to Swaziland and least developed country Lesotho but the

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Editorial

News and publications

In brief

The consequences of the 4 June signing of the EC-SADC EPA by some members of the Southern African Customs Union (SACU) – and refusal to sign by others – has been the subject of intense debate in the international press. Some now say the controversy threatens the existence of SACU and the aftershocks are being felt throughout the SADC region.

In this July-August issue, the lead article by ECDPM's Aurelie Walker presents this historic event as the moment of truth for SACU countries to demonstrate their commitment to the customs union, and to define their oft-repeated ambitions for regional integration.

SACU is a hot-bed of political tensions which are not known to many outside observers, but are critical to understanding the debate. Peter Draper and Nkululeko Khumalo from the South African Institute of International Affairs put the controversy into its local context from the economic and foreign policy perspective and put forward three 'minimum' solutions to the crisis.

In an interview with TNI, Botswana's Minister of Trade and Industry Daniel Moroka explains the need for his country to sign the interim EPA, and expresses his views on the impact this will have on regional integration.

In "Tracing the Special and Differential Treatment Principle through the CARIFORUM EPA" Alisa DiCaprio and Silke Trommer ask how well the EPA process preserves the possibility to revert to WTO Special and Differential Treatment clauses. The insights may serve as points of reflection for ongoing negotiations as well as implementation.

In "Protected Geographical Indications for the ACP Countries: A Solution or a Mirage?" the Technical Centre for Agricultural and Rural Cooperation, the French Development Agency and OriGIn discuss how using geographical indications (GIs), to differentiate and add value to local knowledge and techniques, enables ACP countries to overcome the challenges posed by their weak position in EU markets.

ACP countries are still combating the effects of the global economic crisis. Mauritius is one of the few ACP countries that designed a stimulus package to rescue key industries in December 2009. Raj Makoond from the Mauritius Joint Economic Council outlines the development, key components, and challenges of the Mauritius stimulus package. Ahmed Parkar, Chairman of Mauritius Export Association adds to Makoond's article by analysing how firms in the textile sector have been affected by the package.

As always, comments are welcome and can be addressed to aw@ecdpm.org

Scenarios for West African Region EPA Negotiations

This publication presents four possible outcomes of current trade negotiations to establish an Economic Partnership Agreement (EPA) between the West African Region and the EU. The variety of economic interests and capacities that comprise the complex position of the West African Region, which includes 16 countries, has made efforts to complete EPA negotiations with the EU challenging. The four scenarios, constructed by 20 experts from 10 countries—all closely involved with the negotiations, illustrate the options available to the region and the impacts and consequences resulting from the pursuit of any one course of action. The scenarios consider the regional impacts of full trade liberalisation, partial trade liberalisation agreement, three separate EPAs with no integration, and no trade agreement. The scenarios aim to encourage a broader discussion of the options while assisting efforts to preserve and advance regional integration while ensuring continued access to European markets. June 2009. To view this publication, see: Scenarios for West African Region EPA Negotiations, Friedrich-Ebert-Stiftung June 2009, <http://library.fes.de/pdf-files/bueros/benin/06493.pdf>

Turning African Agriculture into a Business June 2009.

Africa-Europe business relations in the agriculture and agribusiness sectors are the focus of this OECD report. Agribusiness remains in its infancy in most sub-Saharan African countries, many of which now pay higher prices for imported food products and struggle to keep inflationary pressures under control. Given the strong long-term prospect for world food prices, the paper argues that increasing food crop productivity should be a top priority. But this requires sizeable investments. Greater involvement of the private sector in designing and implementing such food-crop commercialisation programmes could develop viable local food industries, the authors contend. The continuous and effective support of the international development community is also needed. To view this publication, see: Turning African Agriculture into a Business, OECD, June 2009, www.oecd.org/dataoecd/58/56/42987772.pdf?contentId=42987773

G8 Summit "L'Aquila" Joint Statement on Global Food Security

The heads of state as well as government, international and regional organisations

approved the L'Aquila Initiative on Global Food Security on 10 July 2009. Their objective is to invest US\$20 billion in three years to encourage rural development in developing countries. The fund's initial investment will be US\$15 million. The declaration comes at a time when the combined effects of long-standing underinvestment in agriculture, price volatility and the economic crisis have led to increased poverty and hunger in developing countries. According to the UN, the number of malnourished people has risen over the past two years, reversing a four-decade trend of declines. The announcement was an opportunity for leaders to further promote the development of a global partnership focused on agriculture and food security with the aim of prioritising the importance of agriculture on the international agenda, launching new investments and improving the efficiency of aid programs and regional coordination by involving all the partners. Every country represented in L'Aquila subscribed to the initiative. To view the joint statement, see: http://www.g8italia2009.it/static/G8_Allegato/LAquila_Joint_Statement_on_Global_Food_Security%5B1%5D,0.pdf

EU, South Korea Conclude FTA Talks

Officials from South Korea and the European Union have concluded free trade talks and expect to finalise the deal before the end of 2009. The pact, which analysts say could be worth up to US\$100 billion, would be Seoul's largest bilateral trade agreement to date and would mark Brussels' first such deal with a major Asian economy. The two sides have been working toward a trade deal since 2007, but the negotiations hit a few stumbling blocks along the way. Particularly controversial topics included the discussions on auto imports and rules of origin. If the deal with the EU goes through, it could put significant pressure on the US to ratify its own free trade deal with Seoul. Negotiations for such an agreement were concluded in April 2007, but the US Senate has failed to ratify it, largely out of some lawmakers' concerns over the impact it might have on the US auto industry, which is paying close attention to the EU-South Korea deal.

News Sources

- "EU, South Korea Conclude FTA Talks," Bridges Weekly Trade News Digest, 15 July 2009.

Continued from front page

choice to move ahead with the EPA has greater implications. Both countries have seen the advantages of concluding a reciprocal trade agreement with the EC in terms of increasing investment and productive capacity at home. This is particularly because of the rules of origin for clothing, textiles, and sugar that are more favourable in the interim EPA than what they have as alternative trade arrangements¹. Of great concern is that 70 percent of Swaziland's and 60 percent of Lesotho's state revenue is earned through the SACU revenue-sharing arrangement which signing the interim EPA threatens to destroy. Economists in the region estimate that Lesotho could lose up to 25 percent of its gross domestic product overnight, and Swaziland could see a 20 percent decline. This contraction would have a devastating effect on growth, employment, and poverty.²

Namibia initialled the interim EPA to maintain its preferential access to the EU, but is not yet ready to sign it. Namibian Trade and Industry Minister Hage Geingob has cited, among other obstacles to concluding the trade deal, the EC's refusal to amend the interim EPA text or add an annex to the existing one³ to provide adequate legally binding assurance that the agreements reached during the ground-breaking Swakopmund negotiating session in March will be respected⁴. "It is not that we don't want to sign," Geingob affirmed during an interview with The Namibian. "Why else would we have provisionally initialled the interim EPA? We are genuinely trying. We'll sign when it's right."⁵ This position, shared by Angola and South Africa, has caused a deadlock in the negotiations. According to the EC, the amendment of the interim EPA text was not technically feasible in the complex decision making structures of the European institutions but the EC is committed to amending the text in the full EPA.

Angola and Namibia are showing solidarity with South Africa in outstanding issues of economic and political significance such as the Most Favoured Nation (MFN) clause and the definition of the parties to the agreement. Including an MFN clause is especially contentious in the SADC EPA because the TDCA does not oblige South Africa to offer the EC the better treatment that it might offer third parties in other trade agreements. Moreover, South Africa has clear offensive interests in advanced developing economies which, in the negotiation process, may require them to make greater trade-offs.

South Africa does not want to see this provision imported into the EPA. The EC has maintained that in view of its 100 percent duty free, quota free market access offer, it has the right to receive improved treatment from any ACP country if it is given in the future to large third countries.

Political considerations

The EU-SADC EPA actually offers the potential to remove differences between the trade regime offered to South Africa (TDCA) and the other SACU members that have existed for many years, thus bringing the region closer to a single trade regime with the EU than ever before. Out of several thousand product lines, only 53 will be covered by different tariffs, and work to align the rules of origin in the TDCA and the EPA has started. The SADC EPA, theoretically is conducive to regional integration and economic development.⁶

Nevertheless, the EC and South Africa have been at loggerheads throughout the negotiation process, with both sides responsible for walking away from the negotiating table at critical moments. Both sides have accused the other of bullying the smaller SADC states and are blaming each other for the possible disintegration of SACU.



Spectators are questioning the EC's impatience to sign a WTO compatible deal at any cost.



This is difficult to comprehend from a technical trade perspective, considering that the outstanding issues of the EPAs are not insurmountable. Since Catherine Ashton replaced Peter Mandelson as EC Trade Commissioner, progress has been made on the 'contentious' issues of the negotiations, and the parties are not far from reaching an agreement. In reality, the timing more than the signing is the problem in the region. The artificial deadline set to sign the interim EPA was agreed by both parties, but the imperative to sign now is not clear.

Spectators are questioning the EC's impatience to sign a WTO compatible deal at any cost. At least, timing should be taken seriously now that obligations in the full EPA will extend beyond goods to trade related



Rob Davies acknowledged this could have an impact on the future of regional integration. But ascribing blame for the disintegration of SACU to the EU, South Africa, Namibia or those countries that have signed the EPA, merely skims the surface of complex historical problems within SACU that stem from deep-rooted political tensions in the region.

Not the global economic crisis, nor trade negotiations with third countries, nor a continental call for regional coherence has prompted an alignment of national interests in the region. The political rationale for creating SACU in 1910, when it was an agreement between the then Union of South Africa and the High Commission Territories of Bechuanaland, Basutoland, and Swaziland has changed – but the economies are now inextricably linked. This crisis might yet push countries to design a regional arrangement that incorporates the contemporary interests of this diverse group, rather than simply watch the Union collapse. But for now, the EPA could be viewed as a convenient scapegoat at a time when the region would prefer not to air its dirty laundry in public.

Author

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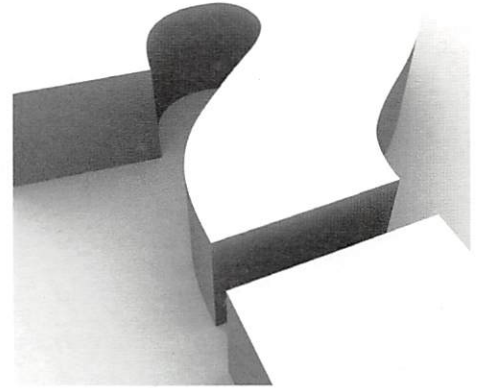
Notes

- 1 Lesotho has the Everything But Arms initiative and Swaziland has Generalised System of Preferences.
- 2 Mathabo Le Roux, "Southern Africa: Threat of Regional Upheaval If SA Torpedoes Customs Union" 8 June 2009 <http://allafrica.com/>
- 3 Jo-Maré Duddy, "EU hits back at trade impasse with Namibia", The Namibian 29 June 2009
- 4 Examples include agreements on export taxes, infant industry protection, food security, and the free circulation of goods.
- 5 Jo-Maré Duddy, "Namibia: Geingob Lays Into EU", The Namibian 1 June 2009

The Future of the Southern African Customs Union

Peter Draper and Nkululeko Khumalo

Tensions over the future of the Southern African Customs Union (SACU) and trade relations with the EU are rising, as reflected in the plethora of recent media reports. Unfortunately they are so complex that they defy simple categorisation.



The most difficult problem concerns the future of revenue distribution within SACU. South Africa substantially subsidises the smaller members – particularly Lesotho and Swaziland – and the South African Treasury is uncomfortable with the subsidy's extent, given competing domestic fiscal demands. Furthermore, South Africa's new Department of International Relations and Cooperation may administer an aid budget in the future; should that happen, the SACU transfer is the most likely source of funds.

By virtue of their membership in SACU, the smaller member states (Botswana, Lesotho, Namibia, and Swaziland – BLNS) are entitled to a share of the customs revenue. South Africa has a historical obligation to support them owing to the economic polarisation their membership of SACU apparently causes and their historical cession of trade and industrial policy autonomy to South Africa. However, those states must realise that South Africa cannot indefinitely subsidise them at current levels.

“South Africa is on a different path, favouring a sector-based industrial policy incorporating potential tariff increases, a renewed emphasis on state-owned enterprises in network services sectors, and a retention of policy space.”

Secondly, the member countries vary substantially in their trade and industrial policies. As noted, the BLNS have historically ignored these issues since they received revenue in exchange for ceding sovereignty to South Africa. That bargain changed under

the 2002 SACU Agreement. The BLNS now have a say and are paying them greater attention. Accordingly Botswana, Lesotho, and Swaziland (BLS) recently signed the interim Economic Partnership Agreement (IEPA) with the EU. They are keen to diversify trade and investment away from overwhelming dependence on South Africa's embrace. This ostensibly requires liberalising some import tariffs and opening up competition in domestic network services sectors (i.e., energy, transport, communications, finance).

South Africa is on a different path, favouring a sector-based industrial policy incorporating potential tariff increases, a renewed emphasis on state-owned enterprises in network services sectors, and a retention of policy space. These policies do not easily lend themselves to a binding liberalising agreement with the EU, nor to the BLNS' economic diversification agenda.

This dichotomy is at the heart of the differences concerning trade negotiations with the EU. The EU desires more access to the South African market – clearly the major prize – and naturally exploits this divergence. South Africa, which already has a free trade agreement with the EU, feels no compulsion to conclude a new one. The BLNS are caught in-between. It is therefore not surprising to find major tensions in EPA negotiations.

This highlights the third divergence: foreign policy orientation. Central to this is an old African conundrum – how to relate to former colonial masters and the West. In SACU two countries are at the centre of this tussle: Botswana and South Africa. Tensions were sharpest under the Mbeki Administration, and centred primarily on policy toward Zimbabwe. In some South African government quarters Botswana is viewed as a Western, particularly British, client as evidenced in the strongly critical stance the Khama government has taken towards the

Mugabe regime. This connects to a drive within some quarters of the governing tripartite alliance to reorient South Africa's trade relations towards emerging developing countries, away from the West. Hence the totemic issue in the EPA negotiations is the 'MFN clause', which requires all parties to offer the same trade concessions they accord to major emerging markets (i.e., Brazil, India, and China) to all EPA signatories. Unfortunately, the EU's insistence on this issue has aggravated matters.

“Do we truly understand how much South African investment there is in the smaller member states, or how much trade is tied up within SACU's frontiers?”

So it is scarcely surprising that talk of dismantling SACU is in the air. But what are the implications? We start from the standpoint that it is easy to destroy, but difficult to create. SACU is deeply enmeshed in the five member states' economic fabric. Do we truly understand how much South African investment there is in the smaller member states, or how much trade is tied up within SACU's frontiers?

If the customs union was abandoned, what would replace it? Since all SACU members are also members of SADC, the SADC Free Trade Area would govern trade among the parties if SACU were to collapse. The SADC FTA came into force on January 2008 with an estimated 85 percent of all trade in goods having been liberalised, and the remaining tariff lines are expected to be phased out by 2012.

One problem with SADC is that it does not have strong enforcement mechanisms. Though the SADC Trade Protocol specifies a dispute settlement system modelled on the

WTO, the chances of a country failing to implement the findings of a SADC dispute settlement body are high; hence the prospect of a 'trade war' cannot be discounted. However, if the SACU collapse provoked a country to raise tariffs in violation of its SADC FTA commitments, it would no longer be dealing with its SACU counterparts only but with other Members of SADC.

This change will be very difficult for SACU Members since they have liberalised so much under the SADC FTA. But if any SACU Member decided to disregard SADC and raise tariffs, its WTO commitments would then provide the upper limit or ceiling. Since most countries' applied tariffs are often substantially lower than their bound rates, a current SACU country could legally raise import tariffs within the limits of the law if SACU dissolved.

From a trade perspective it would be extremely unwise for any BLNS Member to attempt to 'punish' South Africa by raising import tariffs since such a measure would be tantamount to self-destruction, given their reliance on South African imports. However, the revenue reductions resulting from SACU's dismemberment would impel the BLNS to either raise tariffs on imports from South Africa (their main import source) and external trade partners, or drastically raise domestic taxes. The former would reinforce the potential for a regional trade war, and both would choke economic growth in the BLNS, thereby decreasing the very revenue it seeks to raise. And if South Africa pulled the plug on revenue transfers, the administrations in Lesotho, Namibia, and Swaziland would collapse overnight. That would propel thousands of poor people to join their Zimbabwean, Mozambican, and other African citizens to cross South Africa's borders in search of economic opportunities. Given the xenophobic riots that gripped South Africa in 2008, that nightmare scenario is scarcely in anybody's interests.

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The EU would help matters immensely by dropping its insistence on the MFN clause in the IEPA negotiations.

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Consequently, this high stakes EPA poker game calls for cool heads. We don't have a ready resolution at hand, but believe it should encompass at a minimum the following:

First, the obvious *quid pro quo* is for the BLNS to accept less revenue, possibly on more

onerous terms, in exchange for South Africa affording them greater say over trade and industrial policy. The former may encompass 'conditionalities' in some form; the latter would require South Africa to recognise that the BLS have legitimate interests which, while perhaps divergent to the current South African policy thrust, could nonetheless be potentially accommodated within a consolidated SACU. The terms of that consolidation should be the core focus of discussions over the coming months and years.

Second, South Africa and Botswana need to engage in a top-level process to give guidance to the *quid pro quo* described above. Finally, the EU would help matters immensely by dropping its insistence on the MFN clause in the IEPA negotiations. In our view the

economics of this clause are not troubling, but its politics clearly are. South Africa, Angola and Namibia correctly argue such a clause would have the effect of limiting their policy space and is not in line with the provisions of the WTO governing free trade agreements. The EU has its own internal constraints, and to provide this 'favour' to SACU would invite other regions negotiating EPAs with the EU to request the same. Nonetheless, since the EU avers strongly that EPAs are supposed to promote regional integration, it should act on its own principles.

Author

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TNI Talks to Daniel Moroka, Botswana's Minister of Trade and Industry

TNI: How can an EPA help address the challenges of the global financial crisis?

Moroka: The EPA could contribute to that firstly because developing countries have got duty-free, quota-free access to the European market. Secondly, the development dimensions of the EPA would apply to the interim EPA so that we could improve production.

TNI: Why sign an interim EPA some 18 months after the conclusion of the negotiations? And given the recent progress towards a regional EPA, why does Botswana want to sign an interim EPA at this time, while some others don't? What is expected from the signed interim EPA?

Moroka: The decision to get into an interim EPA was simply to ensure that there would be uninterrupted flows from the ACP countries into the European market. The waiver, which was granted by the WTO, expired at the end of last December. And in order to forestall any possible challenges from any WTO member, we have initialed an interim EPA in November 2007. Eighteen months later we have to sign it because we are now giving legitimacy to it. We have decided that we will negotiate other aspects of the EPA, services, investments and outstanding issues in parallel.

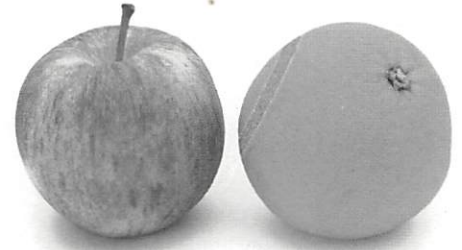
TNI: In view of the opposition from Angola, Namibia and South Africa, what are the risks that signing an interim EPA disrupts regional integration (SADC and SACU)? What would be the consequences for Botswana?

Moroka: The possible risk could be in the administration of the external tariff of members of SACU. But the EC Commissioner then said, well, what we have to do is to just align the IEPA tariffs with the TDCA tariffs, then you have a common external tariff. So if there is any problem, to me it will be purely administrative. There could only be the issue of rules of origin that could delay it, but the rules of origin do not only apply to us in the SADC EPA group, they apply to all ACP countries. The rules of origin are among those issues that will be negotiated in parallel as we continue with negotiations towards a full EPA. So I do see absolutely no obstruction of regional integration.

Tracing the Special and Differential Treatment principle through the CARIFORUM EPA

Alisa Dicaprio and Silke Trommer

The EU's decision to replace unilateral Lomé preferences with Article XXIV-compliant reciprocal agreements remains a subject of ongoing debate in trade circles. The major issue stems from the inequality of bilateral negotiations between the world's largest bloc of industrial countries and the African, Caribbean, and Pacific (ACP) group of states, which includes LDCs and other vulnerable developing countries. The EPA process is not the first time that highly unequal negotiations have taken place under Article XXIV. It is however the first time that LDCs are involved, a challenge that is compounded because the ACP group neither initiated nor supported the change in relations.



The assertion that EPAs would be trade and development agreements suggested that Special and Differential Treatment (SDT) would be a pillar of ensuing negotiations. But legally, Article XXIV does not acknowledge SDT. The extent to which SDT would ultimately inform the final agreements was thus unclear. Turning to EU-CARIFORUM, the only accomplished comprehensive agreement to date, we ask how well the EPA process preserves the possibility to revert to WTO SDT clauses. The insights may serve as points of reflection for ongoing negotiations as well as implementation.

Legal relationship between Article XXIV and SDT

GATT Article XXIV predates the institutionalisation of SDT by three decades. The accepted norm permitting countries at different levels of development to have trade rule exceptions was not formally incorporated into the GATT until the Enabling Clause was added in 1979. Subsequently, the Uruguay Round made revisions to integrate SDT provisions throughout the WTO covered agreements. Article XXIV, however, was not amended.

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The practice established by the EPA will set the precedent for future negotiations of this type.

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SDT encourages non-reciprocity and modulated compliance with other trade rules for LDCs and developing countries, which poses an added challenge to the EPA process in light of Article XXIV. Yet, Article XXIV defines a compliant FTA as one which covers substantially all trade and eliminates barriers to trade among all participants. While a lack of explicit linkage between Article XXIV and SDT opens the door

to interpretation, it does not indicate incompatibility. In services, for example, GATS Article V(3)a incorporates considerations for SDT in preferential agreements.

Ultimately, this ambiguity provides countries with a great deal of negotiating space to define this relationship. The particular EPA partnership format – industrial, LDC and developing countries – has no precedent in GATT Article XXIV history. This means that the practice established by the EPA will set the precedent for future negotiations of this type. Below we look at how the two major elements of SDT – non-reciprocity and modulated compliance – are treated in the CARIFORUM EPA.

Non-reciprocity in EPA practice

On the issue of reciprocity, Ochieng has argued that Article XXIV cannot be applied in a way that undermines SDT, since SDT is a fundamental principle of the WTO legal order.¹ Diouf has added that nothing in the WTO Agreements prevents parties to an FTA from interpreting Article XXIV in asymmetrical ways.² However, the EU's insistence on liberalising 90 percent of trade flows in EPAs reveals their preferred interpretation of Article XXIV: Article XXIV conditions should be applicable to all FTAs regardless of the development level of the negotiating partner. Under CARIFORUM, the EU has admitted that the 90 percent was an average, which would allow the single LDC member to accept less liberalisation. However it is unclear how this norm will work in the EPA groups which consist primarily of LDCs.

Additionally, the EU's reading of reciprocity effectively applies WTO rules to the 25 percent of ACP countries that are not members of the WTO. Using tariff bindings to illustrate, all ACP countries that are WTO members have bound an average 63.5 percent of their tariff lines under the WTO;

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Not only will EPAs expand existing bindings, but they will also introduce bindings to ACPs that are not WTO members.

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non-members have zero bindings. Under an EPA, all CARIFORUM countries scheduled 90.7 percent of tariff lines for liberalisation. Not only will EPAs expand existing bindings, but they will also introduce bindings to ACPs that are not WTO members. Overall, the EU's position represents an ideological shift away from the norm of different treatment for countries at different levels of development, which is at the core of WTO SDT.

Modulated compliance in EPA practice

Today, the WTO has identified 145 SDT clauses threaded throughout the covered agreements. These provisions inform the EPA text in three different ways. The first concerns those elements of the EPA that explicitly refer to applicable WTO rules. It includes trade defence, customs valuations, technical barriers to trade, sanitary and phytosanitary measures and Article 9.4 Agreement on Agriculture. The wording typically confirms the application of relevant WTO Agreements or directly invokes the Article or Agreement in question. With the exception of the Agriculture Agreement, this is typical of FTAs and reflects WTO clauses stating that alternative rules violate WTO law. Although not confirmed specifically, it is reasonable to assume that WTO SDT provisions under these clauses, such as the exemption of least developed and certain developing countries from the export subsidy prohibition under the Subsidies and Countervailing Measures Agreement, can be called upon in the future.

In a second relationship, affecting the majority of WTO SDT provisions, norms are modified by the EPA. One example is GATT Article XVIII, which gives developing countries flexibility in the application of GATT rules for modifying or withdrawing concessions, imposing import restrictions for balance of payment purposes, and promoting the establishment of a particular industry. Under the EPA, policy flexibilities allowed by the WTO texts are effectively put under the control of the CARIFORUM-EC Trade and Development Committee.³ Furthermore, no EPA provision foresees the temporary foregoing of other EPA rules for the purpose of establishing a particular industry. Another example of modified rules concerns the EPA's dispute settlement mechanism. In the WTO, developing countries are granted specific timelines, legal assistance and special procedure, but this is not replicated under an EPA. Where SDT is replicated, it is attenuated. Thus, developed countries are expected to exercise due restraint at the outset of a proceeding, namely "in raising a matter"⁴ at the WTO when an LDC is involved. Under an EPA, on the other hand, due restraint is introduced at the final stages, when the EC is "asking for compensation."⁵

A third relationship includes those features where the EPA is silent on WTO SDT. This silence has two effects. First, by not including SDT, the developing countries are held to the same considerations as the EU. One example is provided by Article 12.2 of the Agreement on Agriculture, which frees developing countries from disciplines on export prohibition and restriction on foodstuffs. In prohibiting such measures, the CARIFORUM EPA identifies bilateral safeguards as the sole short term policy tool in the area of food security.⁶ Second, GATS, for example, typically includes best endeavour clauses and commitments to take into account developing countries' needs in negotiating liberalisations. There is no direct contradiction with EPA in legal terms, and judging the extent to which these SDT rules have been followed during negotiations is subject to personal appreciation. These modifications to SDT merit attention for two reasons. First, by limiting the availability of SDT, the EPA text goes directly against developing countries' articulated negotiating goals in the Doha Round. Second, while there are twenty-two specific LDC provisions in WTO SDT, the EPA reduces this to two provisions referring to LDCs and four provisions referring to Haiti. Together with its strict reading of Article XXIV, the EU's EPA practice virtually eliminates differential



treatment for LDCs. In the absence of other existing examples of this trade format, this practice will serve as the baseline for how LDCs are treated in North-South FTAs. Both observations suggest that EPA SDT treatment has repercussions for the space developing countries occupy in the wider trading system.

Global SDT trends

Looking at the bigger picture, EPAs can be interpreted as reflecting multilateral trends in SDT. The first is the shift from development to adjustment. Under the GATT, special considerations for developing countries were intended to balance these countries' inability to fully participate in the international trading system. Under the WTO, SDT is aimed at delaying, but not removing, eventual compliance with trade rules. A second trend is an increased emphasis on reciprocity. There is a global movement away from providing special levels of preference to categories of countries at different levels of development. Increasingly, unilateral preference programs are regional (as EPA or AGOA) rather than global (as GSP) and do not differentiate treatment between LDC and developing country beneficiaries.

EPA negotiations are well-suited to address these issues since only one EPA, CARIFORUM, been completed, and its single LDC member, Haiti, has not yet acceded. There is considerable room for negotiators to identify costs and benefits of SDT and to negotiate

more appropriate terms. The ultimate outcome will not only establish the template for future bilateral negotiations of this format, but also inform the multilateral development of SDT.

Authors

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Notes

- 1 Ochieng, C. (2007) "The EU ACP Economic Partnership Agreements and the Development Question: Constraints and Opportunities Posed by Article XXIV and SDT Provisions of the WTO" *Journal of International Economic Law* 10(2), 363-394.
- 2 Diouf, El Hadji (2008) "L'Article XXIV du GATT et les conditions d'ouverture du marché ouest africain" *Passerelles entre le commerce et le développement durable* 9(5), 4-18.
- 3 Art 16, 17 and 240 CARIFORUM EPA.
- 4 Art 24.1 DSU.
- 5 Art 213.3 CARIFORUM EPA.
- 6 Art 40 CARIFORUM EPA.

Protected Geographical Indications for ACP Countries: A Solution or a Mirage?

Vincent Fautrel, Solene Sureau, Marie-Cecile Thirion, and Massimo Vittori

The position of African, Caribbean, and Pacific (ACP) countries in the EU marketplace is inherently weak. Of late, this unequal trade relationship has been characterised by a marked reduction in commercial preferences awarded to ACP countries, increased competition among emerging economies, continued price instability of raw materials, and an increased demand for high quality foodstuffs by European consumers. But perhaps geographical indications (GIs) could serve as a tool to differentiate and develop local knowledge and techniques, thus enabling ACP countries to counter these challenges to some extent.



A GI is a distinctive marker used to designate a product that bears the name of its territory of origin and which possesses certain qualities, enjoys a certain reputation, or has particular characteristics due specifically to its geographical origin. GIs, which are extensively used within the EU¹, enable numerous products to be more widely recognised and valued for their quality. This system also enables producers to protect themselves against fraudulent use of these geographical names. Within the EU, the price of a product with a Protected Designation of Origin (PGI/PDO) may be as much as 40 percent higher than that of a similar non-GI product².

In ACP countries, very few GIs are protected even though there are many products of specific origin that have an international reputation. Examples include rooibos from South Africa, pineapples from Guinea, shea butter from Burkina Faso, white honey from Cameroon, carvings and cloth paintings from Korhogo in Côte d'Ivoire, hot peppers and pickled vegetables from Mauritius, and vanilla from Madagascar. Although products in some ACP countries are protected by the trademark system (e.g., Jamaican Blue Mountain coffee) GI protection may be more effective.

Easier said than done: conditions for instituting GIs

In addition to an appropriate institutional and legal framework, there are certain other prerequisites for the creation of GIs. These requirements include specific products that can find new markets at a fair price and the existence of producer organisations (POs) that can initiate the process. Experience in the EU has shown that the presence of a dynamic

and organised PO covering at least one group of actors in the sector is essential for the success of the operation. However, in ACP countries, POs have not yet acquired sufficient capacities to carry out such initiatives. They are the driving force in defining specifications and putting in place quality control processes but they must also take consumer expectations and the capacities of the downstream distribution chain into account from the outset. The experience of other developing countries, particularly that of Morocco with argan oil, shows that it is possible to ensure these conditions are met and that the associated costs, particularly of control and certification, can be largely offset by the increased value of the products. Thus, in order to be truly effective the technical assistance needed for the purposes of GIs must take account of the needs of POs.

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In ACP countries, very few GIs are protected even though there are many products of specific origin that have an international reputation.

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The legal framework: are current provisions being used to the full?

The new EU ruling on GIs and Appellations of Origin for agricultural and food products³ allows producers from third countries, and hence ACP countries, to register their indications in the European GI Register, which would thus allow their products to be protected within the 27 EU member states.

With regard to ACP countries, efforts have been made by Caribbean and Pacific members to implement institutions and an appropriate legal framework. In West and Central Africa, the African Intellectual Property Organisation (OAPI), within the framework of the Bangui Agreement on Intellectual Property, allows for official recognition of GIs and protection of appellation of origin products simultaneously within its 16 member states. However, despite this developed legal framework, it should be noted that not a single GI has been formally registered.

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Only the CARIFORUM-EC EPA has debated the issue of GIs in the intellectual property discussions of their EPA negotiations.

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Economic partnership Agreements (EPAs) and GIs

EPAs could play a part in improving protection for GIs from ACP countries in the European market. However, a number of issues must be addressed in this regard: will the signing of EPAs with ACP countries provide an additional element of protection, with respect to the 2006 EU ruling? Will EPAs simplify procedures for EU recognition of GIs for ACP countries that have signed up to them? Only the CARIFORUM-EC EPA has debated the issue of GIs in the intellectual property discussions of their EPA negotiations. Article 145⁴ of the agreement provides for a rendezvous clause whereby CARIFORUM member states will draw up a

scheme of protection for GIs by 2014, the date by which the two parties will begin negotiations on a complete agreement on GIs. The agreement also provides for the strengthening of cooperation on identifying and promoting GIs, through the Trade and Development committee.

The development of GIs, as a tool for increasing competitiveness, may qualify for specific support measures within aid-for-trade programmes being negotiated with various ACP countries. This will depend largely on the ACP countries making specific demands on this subject.

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The EU proposal to the WTO to extend the multilateral register of GIs to other agricultural products is now supported by a large number of ACP countries.

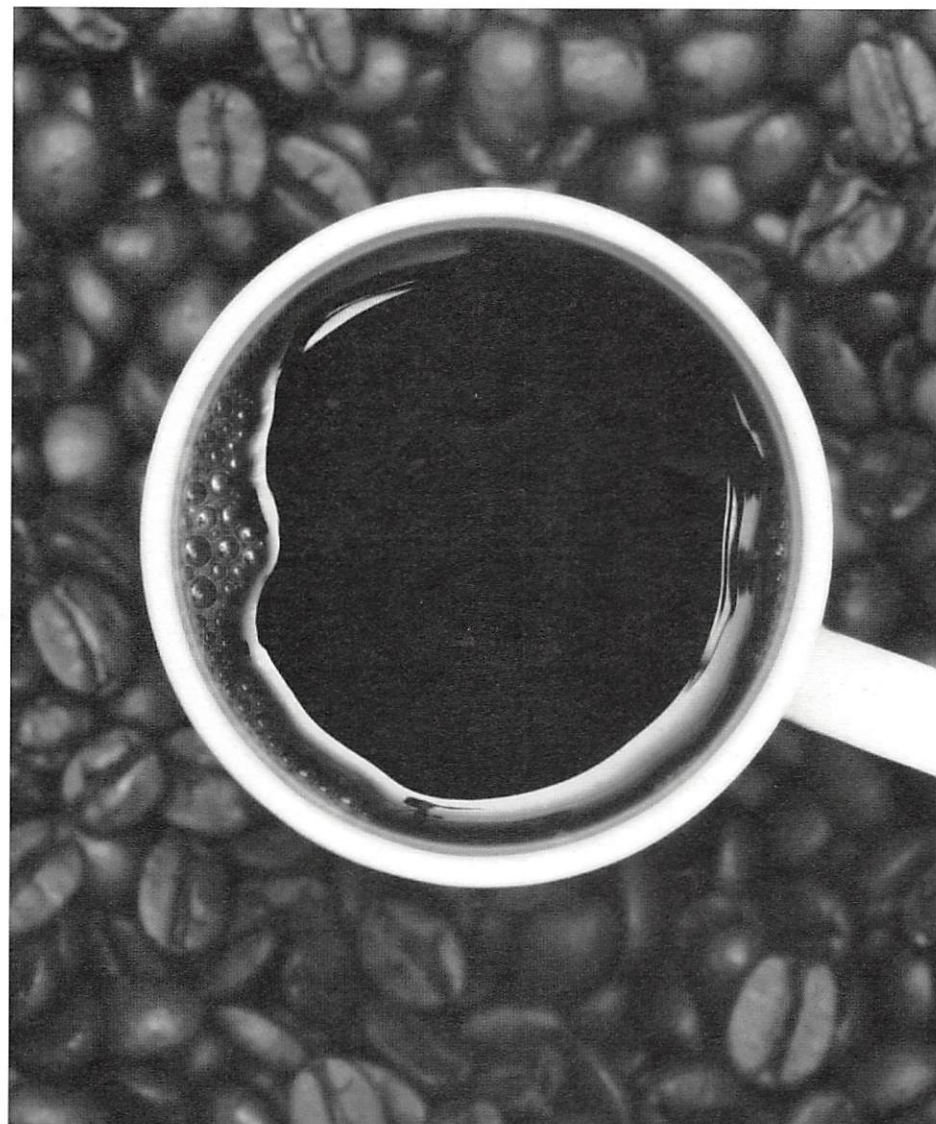
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Beyond the European market

While the EU forms a sizeable market for most ACP countries, other developing countries (particularly those in Asia) boast markets with high growth potential for ACP exports. It is therefore important that GIs developed by ACP countries are protected also at the international level and not solely within the European market. In this respect, the World Organisation of Intellectual Property (WIPO), by means of the Lisbon Arrangement for the protection of appellations of origin and their international registration, and the WTO through the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS – articles 22 and 24) ensure a minimum level of protection for GIs. However these agreements are insufficient, as the Lisbon Arrangement applies only to its 26 signatory countries and TRIPS only provides adequate protection to wines and spirits⁵. The EU proposal to the WTO to extend the multilateral register of GIs to other agricultural products is now supported by a large number of ACP countries (with the notable exception of South Africa).

More information

The issue of the stakes involved in GIs for the ACP countries was the subject of a workshop last March organised jointly by the CTA (Technical Centre for Agricultural and Rural Development ACP-EU), AFD (French



Development Agency) and CIRAD (Agricultural Research Centre for International Development). An electronic discussion forum hosted by CTA and oriGIn (Organisation for an International Geographical Indications Network) containing all the presentations and workshop materials can be accessed at: www.dgroups/cta/GI

See also: CE, Impact Assessment Report for a Communication on Agricultural Product Quality Policy, Annex B on Geographical Indications, April 2009 http://ec.europa.eu/agriculture/quality/policy/communication_en.htm

Authors

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Notes

- 1 To date there are approximately 5,000 GIs in the EU, mainly in France, Italy and Germany, for wines and spirits (from 4,200 GIs in 2005) but also for agricultural and food products (around 798 in 2008).
- 2 O'Connor and Company, CTA. Les Indications géographiques et les enjeux pour les pays ACP (Geographical Indications and the stakes for ACP countries). 2005 <http://agritrade.cta.int/fr/content/view/full/1794>
- 3 Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products foodstuffs, http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/l_093/l_09320060331en00120025.pdf; OriGIn, Note sur le règlement de la CE N°510/2006, http://origin.technomind.be/fileadmin/origin/PDFs/English/OriGIn_publications/News/Note_on_GIs_under_the_modified_EC_Regulation.EN.pdf
- 4 EC Information sheet, CARIFORUM-EC EPA: Innovation and Intellectual Property, Octobre 2008 http://trade.ec.europa.eu/doclib/docs/2008/october/tradoc_140978.pdf
- 5 World Trade Organisation website, http://www.wto.org/french/tratop_f/trips_f/ligi_f.htm

Stimulating an Island Nation: The Logic behind Mauritius' Additional Stimulus Package

Raj Makoond

At the end of October 2008, there was a consensus in Mauritius between policy makers and economic operators, that although the country was not facing any systemic financial risk, the global economic downturn would hit, in a significant manner, our main exports, namely, textile and tourism.



In Mauritius the banking sector is properly regulated, well capitalised with loan to deposit ratios typically in the range of 70-75 percent and, with minimal wholesale financing dependency, the sector has a strong balance sheet position.

However, it was felt that the global downturn would impact adversely on our more important export and tourist markets, namely, France, UK, USA, and Germany. Accordingly, there was a concern that the year 2009 would be difficult for our tourism and exports of textiles with high risk of job losses.

It was also agreed that the other sectors of the economy – such as sugar, ICT/BPO, and offshore activities – would be less adversely affected.

The shared understanding by the authorities and the business community led to intensive discussions regarding measures to be put into place to face the global crisis. Paragraph 2 of page 7 of the ASP summarises clearly this consultative process.

"Government has had intensive consultations with all sectors of the economy and with [Small and Medium-sized Enterprises (SMEs)] and set up a joint Committee with the [Joint Economic Council] to complement the one earlier instituted with the Chamber of Commerce and Industry. We also obtained inputs from the Association des Consommateurs de l'île Maurice (ACIM), Association of Inbound Operators, Institute for Consumer Protection (ICP), Association of Trust and Management Companies (ATMC), AHRIM, Building and Civil Engineering Contractors Association (BACECA), the Chamber of Agriculture, Outsourcing and Telecommunications Association of Mauritius (OTAM), MBA, MEXA, AMM, the SME Federation and representatives of small and medium planters. These consultations and the work of these Committees have been important elements in putting together this stimulus package within a short period of time. In fact, they have allowed us to go beyond the calls to deal with the problems of textiles and tourism to take a holistic

approach that will further strengthen our resilience and better prepare us for the rebound."

Policy makers felt there was an urgent need to support companies in difficulty with a view to save jobs and mitigate the adverse impact of the expected global economic slowdown. Furthermore, government agreed to accelerate the pace of reforms and frontload certain public infrastructure in order to maintain the investment rate. Accordingly, a whole range of measures in a document entitled "Additional Stimulus Package" (ASP) was announced in December 2008.

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The government estimates that the MTSP...has already saved approximately 3000 jobs.

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Details of the package

Though the ASP should be considered in a continuum of reforms already in motion, it is important to highlight that it focuses on the following objectives:

- prevention of job losses by direct support to companies on the basis of burden sharing between shareholders, financial institutions and government;
- introduction of a work mix training programme to prevent lay-off in spite of significant decrease in turnover and profitability;
- provision of temporary relief through suspension of a range of fiscal measures across a wide range of sectors of the economy. The relief was targeted towards sectors 'vulnerable' to the global economic downturn;
- maintain investment through a massive public infrastructure programme and frontload a wide range of projects announced in the 2008/2009 Budget;

Job saving mechanism

One of the key components of the ASP is the Mechanism for Transitional Support to the Private Sector (MTSP). The main feature of the MTSP is to provide additional financial support through a rescue plan based on the principles of 'risk sharing' as well as 'burden sharing' by companies, financial institutions, and government. In a typical rescue plan, the company would meet 20 percent of the additional finance, while the remaining 80 percent would be equally shared by the banks and the government on concessionary terms. The guidelines for banks have also been set under the "Mauritius Approach" with clear 'pricing and standstill' policies. The government estimates that the MTSP, which is co-chaired by a representative of the government and the private sector, has already saved approximately 3000 jobs.

The implementation process

In December 2008, after the announcement of the ASP, government met with all of the country's main business organisations to establish eleven Working Groups. Each Group, it was agreed, would be co-chaired by a representative of the government and a representative of a business organisation with a mandate to operationalise the measures announced. A Steering Committee, co-chaired by the Secretary to Cabinet and the Director of the Joint Economic Council, was put into place to monitor the overall implementation of the ASP.

By March 2009, the Ministry of Finance and Economic Empowerment passed the ASP Finance Act to give legal authority to the measures announced in the ASP. The government's 2009 Budget, announced on 22 May 2009, reinforced the objectives of the ASP and earmarked additional funds to face the crisis.

Challenges

Mauritius appears to be sailing through the crisis reasonably well. Although the growth of the country's GDP over 2009 is expected to be approximately half of the average seen over the past three years (2.5 percent versus

5.1 percent) and unemployment is expected to rise to 8 percent from 7.2 percent in 2008, the total budget deficit will remain below 5 percent with overall debt at 59 percent of GDP. These macroeconomic indicators show that Mauritius would be able to weather the crisis without a major recession.

However, we are concerned about the adverse impact of the crisis on the SME sector which, so far, has been resisting quite well. There is an urgent need to operationalise a series of measures announced in the 2009 Budget (MTSP for SMEs, a Mauritius Approach for SMEs, Leasing facilities at concessionary rate to equipment modernization). These instruments were finalised by the MTSP at the end of July.

There is also a need to implement the infrastructure projects on a fast track mode. Accordingly, the 2009 Budget has placed special emphasis on capacity building as well as removing systemic constraints for implementing infrastructure projects.

With the global economic crisis starting to show signs of stabilisation, we would expect our export markets not to continue deteriorating and therefore see some respite on the textile and tourism sectors. Mauritius, however, is continuing to implement all the measures of the ASP and the 2009 Budget with the same sense of urgency as was done in the first half of 2009.

At present, it would appear that Mauritius has been 'ahead of the curve' in terms of measures to contain job losses and mitigate the impact of the global economic downturn. We are closely monitoring our performance for the next six months and look forward to 2010 with more optimism.

More information

The Additional Stimulus Package is available on the website of the Ministry of Finance and Economic Empowerment (<http://www.gov.mu/portal/goc/mof/files/minibud1208.pdf>).

The ASP Finance Act can be accessed at the following website: (<http://www.gov.mu/portal/goc/mof/files/stimulusact.pdf>).

Guidelines of the MTSP as well as details on the Mauritius Approach can be found on the Enterprise Mauritius website (<http://www.enterprisemauritius.biz>).

The 2009 Budget is available at (<http://www.gov.mu/portal/goc/mof/files/budspeech09.pdf>).

Author

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The Efficacy of the Stimulus Package

Ahmed Parker

The first initiative of Mauritius' Additional Stimulus Package (ASP) was launched as a response to a request from the private sector through the Joint Economic Council (JEC) and the Mauritius Exporters Association (MEXA).

The reason for this initial approach by the private sector was the urgent need of some major textile firms who were having difficulties accessing working capital. These firms had come to a standstill and the consequences of their closure would have been negative both on an employment side and by the message it would have sent to the country.

Implementation Phase

In December 2008, following the different proposals put forward by the private sector, the government announced the conditions under which it would help and what funding would be available.

The main advantages of this immediate action were as follows:

- It created a mechanism through the Mechanism for Transitional Support to the Private Sector (MTSP) to evaluate companies in need of finance to have a response within two working weeks.
- Banks that were financing these companies were more willing to temporarily provide more time and funds to these companies. The initiative also included three-way participation: 20 percent shareholder, 40 percent banks, and 40 percent government in new funds.
- A buy and lease back of assets scheme was established to allow companies to access working capital through the buildings they owned at market value.
- The export sector was significantly buoyed by the initiative. For example, at least 3,000 jobs in the sector have been saved, companies in poor shape that we previously unable to find support through banks were rescued, and a transitional 'fall-back' position was created, which prevented a major closure of the export industry at a time of shrinking international demand.

To conclude, the ASP is a major help for Mauritius' export industry. However it is not a complete solution as it does not address some of the issues that created the weaknesses of the country's industries. Two of these are the currency competitiveness and the level of interest rates in relation to important markets, such as the EU, UK, and US. These points must be addressed for a more durable future to be realised.

Author

Ahmed Parker is Chairman of the Mauritius Export Association and CEO of Star Group of Companies.

WTO

Roundup

Pork Exporters Condemn 'Swine Flu' Import Bans

Several exporting countries chastised fellow WTO Members in June for imposing 'unjustified' import bans on live pigs and pork products in response to the recent outbreak of the H1N1 'swine flu' virus. The complaints were one of several grievances aired at a June meeting of the WTO's Committee on Sanitary and Phytosanitary Measures, which deals with trade-related aspects of food safety and animal and plant health.

Countries ranging from China to Ecuador implemented a string of pork import bans shortly after the virus, which is thought to have originated in pigs, first made international headlines in April. Pork prices tumbled with the fall in demand for exports, and producers in many countries were affected.

Australia, Canada, the Dominican Republic, Mexico, Japan, and the US were among those leading the charge against the imposed embargoes at the meeting. The US delegate argued that not a single case of H1N1 flu had been linked to the consumption of pork or the handling of pigs. A joint statement issued by the WTO, the World Health Organization, the UN Food and Agriculture Organization, and the World Organization of Animal Health (OIE), in May found "no justification" for bans on pigs or pork products. Exporters argued that several of the import prohibitions had not been notified to the WTO - an oversight that amounts to a violation of the WTO's Agreement on Sanitary and Phytosanitary Measures (the SPS Agreement).

But the countries that have imposed the pork bans countered that the temporary measures had been taken to protect public health, and might be removed after scientific evidence has been examined.

WTO, UNEP Issue Joint Report on Trade and Climate Change

The WTO and the UN Environment Programme (UNEP) have jointly published a report describing the links between trade and climate change.

The analytical review acknowledges that reducing trade barriers could lead to increased greenhouse gas emissions as a result of increased economic activity, which could cause greater energy use. But it stresses that the relationship is not as straightforward as it may seem: trade opening could push economic activity to less polluting sectors,



lower tariffs on climate-friendly technology could reduce the cost of fighting climate change, and climate change itself could affect trade patterns.

Notable as much for its content as for the unprecedented cooperation it represented between the global trade body and the UN's environment office, the report includes a survey of current scientific knowledge about climate change, outlining different projections for atmospheric greenhouse gas levels and estimates for how various parts of the world would be affected in terms of food security, water resources, coastal infrastructure, health, and biodiversity. It looks at options to reduce the rate and magnitude of climate change, as well as actions to soften the effects of climate change.

Aid for Trade Review Urges Trade Opening to Combat Global Recession, Draws Donor Support

Developing countries should open their borders to trade in order to stimulate economic growth, according to participants at the Second Global Review of Aid for Trade, which was held at WTO headquarters in Geneva. The July meeting, which brought together the heads of regional and global financial institutions, international development agencies, as well as the Membership of the WTO, considered strategies for improving trade capacities for developing countries amid the ongoing global economic slowdown.

The meeting drew substantial pledges from several donors. Japan pledged US\$ 12 billion for 2009-2011 to support Aid for Trade, the United Kingdom promised US\$1.6 billion per year, France committed to giving nearly US\$1.2 per year, and the Netherlands promised to contribute US\$764 million per year. In addition, the Global Trade Liquidity Programme (GTLP) pledged to raise US\$50 billion to finance trade. Funds from the GTLP will ultimately be disbursed through a network of more than 500 banks in over 70 developing countries around the world.

The Aid for Trade initiative was launched four years ago to help developing countries integrate into the global economy and take advantage of export markets. The review considered four objectives: moving from commitment to implementation; integrating trade in national and regional development strategies; sustaining aid flows during the global economic downturn; and assessing the effectiveness of Aid for Trade.

World Bank President Robert Zoellick urged countries to avoid protectionism in order to benefit from Aid for Trade, and advocated for the conclusion of the WTO's Doha round of trade negotiations as an avenue for opening markets worldwide. Asian Development Bank President Haruhiko Kuroda pushed for regional approaches that support national development strategies to multiply the benefits of Aid for Trade. Kuroda also highlighted the importance of strong partnerships between governments, the private sector, and the donor community to ensure that the benefits of Aid for Trade are sustainable.

In assessing the affects of the global economic recession on aid flows, participants discussed the role of South-South assistance in facilitating Aid for Trade. Speakers addressed the need for recipient countries to advocate their priorities and donor countries to respond to those needs. Panellists also discussed triangular aid strategies, in which industrialised and emerging economies pair up as donors.

This information has been summarised from ICTSD's Bridges Weekly Trade News Digest.

EPA Update

Melissa Julian

ACP, EU set early 2010 deadline for concluding EPA talks

William Haomae, co-president of the ACP-EU Council of Ministers and foreign affairs and external trade minister of Solomon Islands, reiterated ACP EPA demands at a meeting of the Joint ACP-EU Council of Ministers meeting held on 29 May 2009 in Brussels. The two key demands are greater flexibility in the negotiations and guarantees that no country should be worse off at the end of the process. Haomae welcomed assurances by EU Trade Commissioner Catherine Ashton that these concerns would be accommodated in future consultations.¹ "The ACP side is looking for decisive steps - guided by political will - that can move the process forward," Haomae added. The Joint Council agreed to continue EPA negotiations with a view to concluding deals by early 2010.²

EU Council confirms commitment to reach 2010 Aid for Trade target despite delays

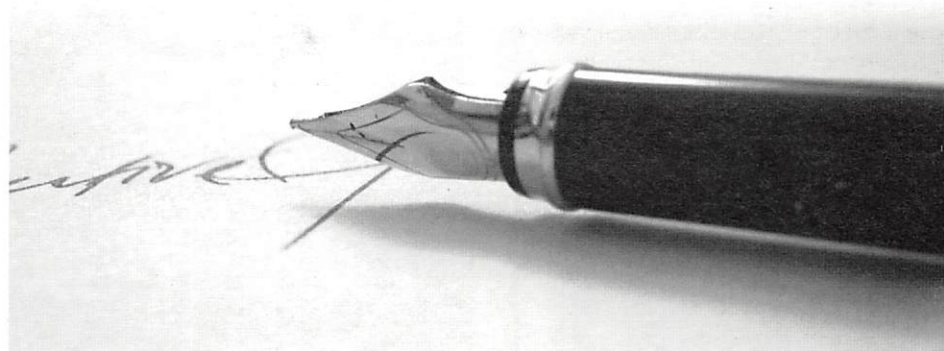
The EU Council adopted conclusions on 18 May 2009 which note that, although the deadline for meeting its Trade-Related Assistance target has not yet been reached, the EU is close to meeting its collective pledge of €2 billion. The conclusions also reaffirm the EU's commitment to reaching its 2010 target.³ The EU will continue implementing its 2007 Strategy on Aid for Trade in all its dimensions, including financial commitments and aid effectiveness principles.

Central Africa EPA negotiations remain stalled

The ongoing internal CEMAC secretariat re-organisation is continuing to hamper efforts to continue EPA negotiations with the European Commission, reports say. European Commission officials have indicated that while the pace of negotiations may seem slow to some observers, this should not mislead them as to the two parties' intentions: to devote as much time as is necessary to the negotiations in order to reach a complete and balanced agreement that accounts for the specific needs and ambitions of the Central African region.⁴

West Africa EPA negotiations deadline extended from June to October 2009

West African Heads of State and Government at their meeting in Abuja on 22 June 2009⁵ reaffirmed the region's commitment to the conclusion of a balanced agreement, focused on development and emphasised the need to continue with the regional approach to the negotiations. They urged the chief negotiators to finalise discussions on



outstanding issues, such as the improvement of the development-oriented market access offer. They called on the EU and its member states to demonstrate clear commitment to the financing of the EPA Development Programme.

West African leaders also reiterated their commitment to the consolidation of the regional integration process. With regard to the regional common market, this will see the Common External Tariff (CET) for the region increase from the four tariff regime bands of between 0 and 20 percent for goods imported into the region from non-ECOWAS member states to include a fifth band to allow for member states to increase their peak tariff on imported goods from 30 percent to 35 percent for certain categories of goods imported into the region.

EU and West African negotiators agreed to conclude a regional agreement on trade in goods and development cooperation by October 2009 at their 17 June⁶ meeting as conditions that must be on the ground for the overall development of the region are not yet in place.⁷ There are contentious issues that need to be settled before the conclusion of the EPA such as development issues, supply-side constraints, infrastructure facilities, capacity building, regional integration, and adjustment cost of liberalisation. Both sides reaffirmed their commitment to moving forward the longer term process to build a lasting partnership between the EU and West Africa.

ECOWAS EPA Negotiating Ministers called for an unequivocal EU commitment to funding an EPA development programme to ameliorate the effects of the agreement on West Africa before signing an EPA at the Ministerial Monitoring Committee meeting in Abuja, Nigeria on 15 May.⁸ Such a contribution to the EPA Development Programme (EPADP) should be "adequate

and accessible" beyond the commitment already made in the European Development Fund (EDF), the Ministers said. They stressed the need for a financing plan to be presented by the EU prior to the signature of the agreement. On the issue of the liberalisation of market access for European goods, the ministers reiterated their position that only between 60 and 70 percent of the regional economy should be affected by liberalisation over a transition period of 25 to 30 years (preceded by a 5-7 year moratorium period in which no liberalisation would take place).

Southern African Development Community Members split to sign interim EPA with EU

A Southern African Development Community (SADC)-EU EPA was signed by three members of Southern African Customs Union (SACU) – Botswana, Lesotho and Swaziland – on June 4 2009 and on June 15 2009 by Mozambique to secure EU market access for these countries while negotiations for a full EPA with the seven country SADC EPA group are ongoing.⁹ The signing was notwithstanding South Africa, Namibia and Angola's insistence that negotiations continue until a "fair and equilibrated accord" is reached.¹⁰ The SADC EPA should not be allowed to undermine the Southern African Customs Union (SACU), South African Trade and Industry Minister Rob Davies said on 17 June.¹¹ The South Africa Trade Minister, however, says the country is planning to set tariffs "on the basis of evidence, case by case"¹² to prevent goods with easier rules of origin treatment or different import tariffs entering South Africa.¹³ South Africa's Department of Trade and Industry (DTI) says that the legal requirements under the EPA were, in many instances, inconsistent with the requirements of SACU and these issues regarding the way various members of SACU would comply with differing obligations to the EU now need to be addressed.¹⁴ DTI international trade and economic
(Continued on page 14)

Continued from page 13

development deputy director-general Xavier Carim emphasised that South Africa was not threatening the union or the region, however, it was important to "deal with the real issues that arise through legally binding agreements and how they relate to one another". "How we manage the fact that we have different commitments to the EU, within a single customs union - that will be the difficulty and that is what we will have to address now," said Carim. Carim also said SACU would also have to reassess the distribution of revenues from the customs revenue pool. Economist Matthew Stern, a director of Development Network Africa who previously worked at South Africa's Treasury department, warned that the unshackling of Swaziland and Lesotho from South Africa would be a "catastrophe for these countries."¹⁵ State revenue in both countries would be halved and the effect on growth, employment and poverty would be devastating.

Agreement on two declarations and a letter of confirmation from the European Commission outlining in detail the deal reached by chief negotiators after their discussions in Namibia on 10-12 March 2009 (texts agreed by parties on export taxes, infant industry, prohibition of quantitative restrictions, food security and free circulation) and referred to in those declarations, that will accompany the already agreed interim EPA text forms a firm commitment by all parties concerned to abide by and implement this deal were agreed on 27 April 2009.¹⁶ The interim EPA and Southern African Customs Union tariff schedules will be aligned at the earliest opportunity through a joint decision of the interim EPA institutions.

In terms of other EPA negotiations, the European Commission says it stands by its commitment to offer the same deal to any other EPA region that wishes it, recognising that the choice of whether or not this is the right solution is theirs. From recent discussions it appears parties are likely to arrive at a solution tailored to each region and reflecting the variation in context, interim EPA content and status of full EPA negotiations.

Eastern and Southern Africa deciding between signing interim or full EPA

Officials attending a Common Market for Eastern and Southern Africa (COMESA) Summit emphasised the need for the ongoing negotiations on the EPA to support the development of the COMESA region and to deepen regional integration. Leaders directed negotiators to conclude the agreement by



October 2009 on the basis of agreed issues.

The summit, which was held in Victoria Falls Town from 7-8 June under the theme "Consolidating Regional Economic Integration through Value Addition, Trade and Food Security," also launched the COMESA customs union; however, more than half of the 14 free trade area (FTA) members opted out.¹⁷ Thus far, approximately eight countries in the FTA have withheld their signatures stating that they are not yet ready.

Caribbean reviews EPA implementation status

Caribbean leaders meeting at the Conference of Heads of Government of CARICOM from 2-5 July adopted a communiqué in which they acknowledged that a number of important matters remain to be addressed as a consequence of provisional application of the Agreement from 29 December 2008. Leaders reviewed measures to be taken in relation to the establishment of institutions to manage the Agreement, particularly those that would facilitate an early meeting of the Joint Ministerial Council and the Joint Trade and Development Committee. Heads of Government agreed to intensify efforts to persuade the EU on the need for a smaller reduction of the MFN tariff for bananas and a longer transition period for its implementation. They also agreed to take

concerted action at the highest political level of the EU, consistent with other ACP banana exporting countries, to obtain a flexible, front-loaded and speedily disbursed financial package that fully takes into account the losses in export earnings and adjustment costs that will be incurred by banana exporting countries.

In recent weeks, deepening rifts within Caricom have become apparent in the areas of migration, trade, implementation, and the status of inter-regional relationships, according to regional commentator David Jessop.¹⁸ There is also growing concern at the highest levels about regional governments' and regional institutions continued failure to implement in real time what is agreed.

Pacific optimistic on flexible EPA conclusion

Leaders expressed optimism over concluding an EPA at a Pacific ACP Trade Ministers Meeting, which was held from 15-16 June in Samoa.¹⁹ The meeting received an update on recent developments in the EPA negotiations from the lead Pacific EPA spokesperson, Associate Minister Hans Joachim Keil. Keil highlighted the outstanding contentious issues for Pacific countries that are preventing the conclusion of a comprehensive EPA. The ongoing commitment of all regions to concluding an EPA was maintained on the

understanding that the outstanding issues would be resolved.

Pacific leaders agreed to renew efforts to conclude the EPA. Countries that had not yet participated were encouraged to submit their trade in goods offers for inclusion in the EPA, if possible prior to the next Joint Technical Working Group (JTWG) (date to be confirmed). Provisions are also to be drafted on certain trade-related areas for inclusion in the draft EPA for possible consideration at the next JTWG meeting.

Leaders also acknowledged the European Commission's communiqué dated 8 June 2009 regarding further proposals on several outstanding issues and indications that the EC may be more flexible in interpreting WTO-compatible "substantially all trade" coverage definitions. The communiqué also suggested that the lead spokesperson respond to the EC Trade Commissioner reiterating the region's position and proposed that a JTWG meeting be held in July 2009 with a view to resolving outstanding contentious issues.

Visit <http://www.acp-eu-trade.org/> for all the latest EPA news.

Author

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Notes

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Calendar and resources

ACP-EU Events

July	15-16	2nd Joint COMESA Agricultural/Environmental Ministers Meeting, Cairo	22-23	7th meeting of Organisation of Eastern Caribbean States, Trade Negotiating Group, Saint Lucia
EU- West Africa Senior Official Meeting, Brussels (tbc)				
EU- EAC Ministerial Meeting, Brussels (tbc)	18-21	2nd Meeting of the EAC Sectoral Committee on Free Movement of Persons, Immigration, Labour & Employment, Arusha	23-25	CARIFORUM/French Caribbean Overseas Regions/ European Overseas Countries and Territories TF on EPA, Martinique
EU- Pacific Technical Meeting, Brussels (tbc)				
29-30	31	ECOWAS Workshop on Regional Integration and Development Issues, Ouagadougou	28	17th Session of the ACP Parliamentary Assembly and Intersessional Meetings of the ACP-EU JPA, Brussels
African Union Workshop for Parliamentarians and Civil Society on Economic Partnership Agreements, Addis Ababa				
29-31	September Negotiations for the final EPA, incl. with South Africa and Angola (venue/date tbc)			
2nd East African Community Investment Conference, Nairobi, Kenya				
30-31	11	EU- South Africa Summit, South Africa		
Seminar on Professional services providers and the CARIFORUM-EU EPA, Bahamas, Nassau				
August	16-18	ILO/CARICOM Workshop on International Trade Negotiations, FTAs and the Decent Work Agenda, Port-of-Spain, Trinidad and Tobago		
4-7				
40th Pacific Islands Forum Leaders' Meeting, Australia				
5-6	21-26	EU-West Africa EPA negotiations (venue tbc)		
Meeting on the initiative 'ACCESS for African Business women in International Trade', Lusaka				

WTO Events

July	
27-29	WTO: Trade Policy Review Body - Zambia
28-29	WTO General Council
September	
6	WTO Open Day
14-18	WTO Regional Workshop on Trade Related Intellectual Property Rights negotiations and activities, Barbados
15-17	WTO Regional Workshop on topical Intellectual Property issues for Caribbean countries, Barbados
22-24	WTO: Trade Policy Review Body — Southern African Customs Union (SACU)
28-30	WTO Public Forum 2009: Global Problems, Global Solutions: Towards Better Global Governance
October	
6-7	Annual Meetings of the World Bank Group and the International Monetary Fund Istanbul, Turkey

Resources All references are available at: www.acp-eu-trade.org/library

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