

SADC EPA Services Negotiations: Lessons from Cariforum EPA

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1. Introduction: Cariforum EPA and potential implications for SADC

- Of all ACP EPA negotiating regions only the Cariforum countries have negotiated a comprehensive liberalisation framework covering trade in services.
- The EC may seek to secure similar commitments from other ACP groups
- Two key issues are covered:
 - What legal obligations on trade in services does the SADC IEPA impose?
 - Would Cariforum-type EPA provisions be appropriate for SADC in telecoms, finance, and tourism?

2. SADC Interim EPA commitments on services trade

- Only Botswana, Lesotho, Mozambique and Swaziland will participate in the second stage of the EPA talks that involve the liberalisation of trade in services.
- In the SADC-EC IEPA the parties commit themselves to:
 - negotiate progressive liberalisation with substantial sectoral coverage within a period of three years following the conclusion of the full EPA;
 - no introduction of new and more discriminatory measures to third parties as specified in Article V.1.b (ii) GATS, for all services sectors;
 - have a liberalisation schedule for one service sector for each participating SADC EPA State by 31 December 2008.
 - the EC Party agreed to support capacity building aimed at strengthening the regulatory framework of the participating SADC EPA States.

SADC Interim EPA commitments on services trade cont.

- The IEPA text is somewhat vague making it difficult to understand fully what exactly the parties have committed to.
- It is unclear for example what the statement 'By 31 December 2008 the Parties will complete negotiations on services liberalisation...' actually means. Does it mean that they would have secured a services liberalisation schedule for SADC EPA states or they would have completed negotiations on the modalities?
- Its also silent on the nature of the corresponding liberalisation commitment from the EC.
- It is also unclear when the 3 year period for substantial liberalisation begins – is at the time of initialing the IEPA or after 31 December 2008?

Offensive and Defensive Interests for SADC

- SADC EPA countries would like to use the EPA to inter alia:
 - attract investment from the EC;
 - enhance competition in order to reap efficiency and supply capacity gains and boost the business environment and benefit consumers;
 - obtain regulatory capacity building in order to maximise the benefits of liberalisation;
 - and to gain market access to the EC in Mode 4 (independent professionals not linked to commercial presence and semi-skilled and unskilled labour).

Lessons from Cariforum: Sector Studies for BLS and Mozambique

Telecoms:

- EU-CARIFORUM EPA regulatory provisions reflect GATS TRP establishing principles covering competitive safeguards, interconnection, independent regulatory authorities, allocation and use of scarce resources, and universal services obligations
- Notable TRP-plus measures include a far-reaching right of appeal against a regulatory decision, limitations on licensing including the capping of licensing fees at the level of costs, which would preclude the profitable auctioning of licenses (Article 96), the obligation to establish compensation mechanisms for universal service provision (Article 100), the obligation to ensure the confidentiality of telecommunications and traffic data (Article 101) and the obligation to settle disputes between providers (Article 102).

Lessons from Cariforum: Sector Studies for BLS and Mozambique...

Telecoms cont.

- SADC EPA countries have embarked on significant reforms in the telecoms sector thru both unilateral and regional measures.
- Botswana, Lesotho, and Mozambique all have independent telecoms regulatory bodies.
- Lesotho is the only participating SADC EPA country that made GATS commitments in telecoms
- Save for Swaziland all other SADC EPA countries have at least 2 licensed mobile telephone services providers in their market.

Lessons from Cariforum: Sector Studies for BLS and Mozambique...

Telecoms cont.

- Need regulatory capacity building assistance; appropriate transition times; SDT (especially for LDCs Lesotho and Mozambique; and Swaziland which lags behind in reform); and compensation for unilateral liberalisation
- They could commit to provisions similar to those in the GATS TRP under the EPA.
- They are at different stages of reform and their commitments this. that reflect these differences - Swaziland should not be expected to commit to the same level as Botswana
- TRP-plus provisions may be a jump too far for all SADC EPA countries considering that all but Lesotho made GATS commitments and none committed to TRP obligations.

Lessons from Cariforum: Sector Studies for BLS and Mozambique...

Financial Services (Banking):

- Cariforum provisions on financial services are a certain extent GATS-plus by adding provisions on new financial services; and data processing.
- Further the regulatory principles on effective and transparent regulation (Article 105) constitute mostly a “WTO Plus” approach but are not mandatory for the Parties in this respect.
- The measures governing new financial services (Article 106) slightly differ with those of paragraph 7 of the WTO Understanding on Commitments in Financial Services but do not necessarily impose huge burdens on a country provided such country committed to the Understanding. Similarly provisions on data processing mirror the Understanding.

Lessons from Cariforum: Sector Studies for BLS and Mozambique...

Financial Services cont.

- Only Lesotho (banking and insurance), and Mozambique (only banking) made commitments under GATS.
- SADC EPA countries could commit to the level of liberalisation they have undertaken unilaterally,
- seek compensation for it;
- and link any additional market access to provision of regulatory capacity building and the creation and or strengthening of competition bodies

Lessons from Cariforum: Sector Studies for BLS and Mozambique...

Tourism

- CARIFORUM text provides for principles of the regulatory framework for all tourism services liberalised.
- GATS does not contain any sector-specific disciplines in tourism, therefore this whole section constitutes "GATS Plus."

Lessons from Cariforum: Sector Studies for BLS and Mozambique...

Tourism cont.

- Tourism sector generally more open than other services sectors.
- Growth of tourism in southern Africa is also inhibited by constraints in tourist-originating countries or export markets.
- This is an area where the CARIFORUM EPA seems to have made a marked improvement to GATS.
- SADC EPA countries should accept these regulatory provisions that are aimed at the prevention of anti-competitive practices and abuse of dominance in particular by tourism networks.
- SADC requires capacity building to establish strong competition bodies that are able to discipline strong tourism players and cooperation with the EU would be crucial.

Thank You!

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