POLICY BRIEFING 97

Economic Diplomacy Programme

June 2014

The Way Forward for the Southern African Development Community Economic Partnership Agreement

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RECOMMENDATIONS

- The European Commission should abandon demands for a ban on export taxes.
- The MFN clause should require matching commitments on the percentage of quota lines liberalised, rather than on the specific tariff lines liberalised.
- The application of agricultural safeguards should be open to review by both sides and they should be able to activate them rapidly enough to be effective.
- Capacity building and trade finance funds should be made available to customs agencies and exporters respectively, to allow them to develop the skills needed to use rules of origin.

EXECUTIVE SUMMARY

Negotiations on economic partnership agreements (EPAs) between the European Union (EU) and African, Caribbean and Pacific (ACP) countries will end on 1 October 2014. After long and acrimonious talks, concessions must now be made. In the Southern African Development Community (SADC), the EPA can be completed with more flexibility on four issues: export taxes, the Most Favoured Nation (MFN) clause, agricultural safeguards and rules of origin. Abandoning restrictions on export taxes will cost the EU little and will respect African states' sovereignty. Changing the calibration of the MFN clause can offer the EU matching liberalisation without restricting SADC's future negotiating space. Safeguards that work for agriculture take into account the distorted nature of the EU agricultural market, while offering improved market access. Furthermore, support for rules of origin capacity building will assure the deal reached on paper can be applied in practice.

INTRODUCTION

The 10-year negotiations on free trade agreements between the EU and groups from ACP states will come to an end on 1 October 2014. It remains uncertain if all parties will have completed their respective regional EPA.

Regardless of the state of the deal, the EU will put an end to the difficult, and at times acrimonious, negotiations. The EPAs are the reciprocal trade component of the Cotonou Agreement, which replaced the long-standing Lomé Agreement that gave ACP countries non-reciprocal, duty-free access to the wealthy European market. This revised access provides a competitive edge that will

disappear if no agreement is reached. In the SADC EPA group, Botswana, Namibia and Swaziland would lose duty-free access to the EU market, while South Africa would maintain access under the Trade, Development and Co-operation Agreement, and Angola, Mozambique and Lesotho under the Everything But Arms Agreement.

A range of the most difficult issues in the negotiations on a SADC EPA has been left until last. Four issues have stood in the way of the completion of a deal: (1) export taxes, (2) the MFN clause, (3) agricultural safeguards and (4) rules of origin.

EXPORT TAXES

The issue

Exports taxes are duties placed on exports. They are applied to commodities to divert supply of the goods away from the export market and into the domestic market, thus driving the price up internationally and down locally. While they have been used to generate government revenue or improve local supply or food security, their primary use is to encourage local processing and beneficiation of basic goods. The EU insists on a ban on all export taxes for South Africa and Angola, and for other SADC EPA countries in all but extreme cases.

Why it is contentious

The EU views export taxes as fundamentally unfair. Export taxes can drive up prices, harming the importer (ie, the EU), while relatively wealthy countries such as South Africa benefit at its expense. The EU regards Africa as a vital strategic source of basic commodities and is concerned about anything that can interrupt its supply of cheap raw materials. African countries see export taxes as a means to move up the value chain, and to break the colonial relationship in which they sell unprocessed goods to the rich world and then buy back processed goods, making a loss in the process. The development of domestic processing is also a way to industrialise and create jobs.

THE WAY FORWARD

The EU should abandon its objection to export taxes, for three reasons. First, export taxes are unlikely to harm the EU market significantly. They impose costs on both the exporter and the importer. Exporters (African firms) have to pay an additional tax to export their goods. Importers (the EU) face extra costs because exporters raise prices to account for the tax. The mechanism by which the EU would suffer is thus rising prices. However, the prices of the commodities the EU cares about are set on the world market. Unless a country has a huge proportion of the global market for that commodity, it will not have the market power to change global prices significantly. In most cases individual African countries do not have this power. Therefore, local firms will bear the cost of export taxes, because they will have to accept both the tax and fixed world prices. Given this cost, there is a natural disincentive against the use of export taxes, and they will almost certainly be used sparingly and only in cases in which they can do so much good that this harm is offset.

Second, banning export taxes is an intrusion on African states' sovereign decision-making. Export taxes are complicated and many opposing voices need to be considered, but these voices should be heard in the context of a domestic political process that is accountable and balanced. Europe insists on similar sovereignty for the industrial support it provides under the Common Agricultural Policy. It is hypocritical to ignore these demands in the case of Africa. Domestic policymaking processes will make better decisions and will more closely reflect the views of those exporters that are most affected by the costs of export taxes.

Third, export taxes have become a contentious issue poisoning Africa–EU relations. They are seen as representing Europe's attempt to maintain colonial value chains and ignoring Africa's development interests. Coercing African states into accepting these conditions will not assure Europe's resource security. Europe has fallen behind the likes of China in tapping into Africa's natural wealth. Ultimately, a strained relationship with Africa will cost Europe more than export taxes ever will.

THE MOST FAVOURED NATION CLAUSE

The issue

An MFN clause requires that if any party to the EPA signs a trade deal with a third country and offers better market access, then this improved access must also be

given to the other EPA party. This comes into effect if the third party is a large economy which, given the current threshold, includes developing countries such as Brazil, India and China.

Why it is contentious

African states see the MFN clause as undermining South–South co-operation, and perpetuating a dependent relationship by stifling their ability to expand their network of free trade agreements in the future, as third parties will see less value in an agreement where the EU will automatically enjoy similar access. It also contradicts the World Trade Organization's (WTO) enabling clause, designed to increase developing country participation in global trade. The EU argues that it would be unfair for African states to offer market access that they claim is too sensitive to give to the EU, particularly since the EU is offering generous duty-free, quota-free access to its markets.

The way forward

It seems largely inconceivable that the MFN clause would soon be activated for a deal with developing countries. Southern African Customs Union negotiations with India and Mercosur (Mercado Común del Sur: Common Market of the South) have been stuck for years and are unlikely to move forward. A free trade deal with China seems suicidal for industrialisation. The major concerns in the near term are the possible conclusion of a preferential trade agreement with India and the potential for negotiations on a reciprocal deal with the US, particularly if the US Congress decides not to renew the African Growth and Opportunity Act in its current form. Matching US and EU market access would limit the capacity for controlled liberalisation, in which states open to some partners to spur competition, but limit the entry of all imports to protect local producers.

A compromise could be found in changing the nature of the clause. As it currently stands, if tariffs are reduced for a third party on any item excluded from the EPA, then improved access on this item must also be given to the EU. This is problematic because trade deals are a process of give and take, and opening up on a sensitive product might be a means to a better deal. This does not mean that the product is not sensitive or that the industry would not be threatened by market access for the EU and US, it simply demonstrates the uniqueness of the bargaining process in every trade negotiation. An MFN clause is not necessarily bad, but it should be changed from the current line-by-line calibration. An alternative would be an MFN clause that requires African states to match the percentage of tariff lines liberalised in any other deal. The EPAs are likely to liberalise 80% of overall tariffs.[2] If African states give the US 85%, it would not be damaging to extend Europe an extra 5%, so long as African states have the ability to manage the tariff lines on which the concessions occur. This compromise might limit and strain future trade negotiations, but it would be a less damaging concession that could help movement.

AGRICULTURAL SAFEGUARDS

The issue

Safeguards are tariffs that activate in the case of an inflow of exports that could threaten the survival of a local industry. Safeguards have been agreed in the context of the SADC EPA and are quite generous, with more flexible activation clauses than those found in the WTO. However, activating a safeguard requires a lengthy process of consultation, which might be unsuitable in some cases, particularly in agriculture.

Why it is contentious

The EU believes that it has given enough leeway on safeguards and that additional agricultural restrictions are unnecessary. SADC EPA states argue that current safeguards would be too slow to implement, requiring a 30-day notification period, after which the safeguards could still be rejected. They argue that protecting local agricultural industries requires more immediate action and that a specific agricultural safeguard is needed.

The way forward

Whether or not a separate safeguard measure is necessary, safeguards should be calibrated to work for the agricultural sector. Even if tariffs are liberalised in the EPAs, the EU does not engage in free trade in the area of agriculture. In 2013 Europe provided approximately $78.8 billion (EUR[3] 57.5 billion)[4] in support of agricultural firms, while maintaining 539 special agricultural safeguards[5] at the WTO, with only Switzerland, Liechtenstein and Norway holding more.

Despite this, consultation on the activation of safeguards is fair and reasonable. However, the burden

of proof should be inverted. Instead of safeguards requiring notification and approval, they should come into force immediately and stay in force until they are proven to be unnecessary. Doing so provides for the consultation the EU requires, while assuring the measures are strong enough to protect firms operating in the highly distorted agricultural market.

RULES OF ORIGIN

The issue

Rules of origin are complicated legal procedures that track the origin of products. They aim to prevent third countries from taking advantage of free trade deals by, for example, producing goods in Brazil but sending them to Europe via Angola. Rules of origin usually require either that a good entirely originates in a given country or that the country adds significant value to it.

Why it is contentious

Rules of origin are not particularly contentious at this point in the negotiations. Crucially, this deal includes substantial leeway for cumulation. Cumulation is an exception to usual rules of origin that is offered to other members of the same free trade agreement and to neighbouring or closely related countries. In the case of the EPAs, countries may cumulate their rules of origin with any ACP countries or with neighbouring states. This assures that the connections between countries in the region can be maintained, and allows for the development of value chains flowing across multiple regional economies and onwards to Europe.

The way forward

While a deal is being negotiated, work should still be done on rules of origin because of how complicated it will be to implement the deal. These rules are technical, requiring much paperwork issued by well-equipped and well-trained customs agencies and overseen by specialist lawyers. The legal requirements are often costly and discourage exporters from building beneficial relationships with compatible manufacturers in regions where cumulation is possible. The EPA can assist in overcoming these barriers in three ways. First, finance should be made available to upskill and streamline local customs agencies. Second, one-stop offices to assist with paperwork should be established in major trade hubs similar to the US trade hubs. Third, additional trade finance should be made available for first-time exporters. The export process becomes marginally less expensive the more companies engage in it. Adequate finance for new exporters will overcome the deterrent of high initial costs and provide the learning-by-doing needed to build an efficient system of rules of origin.

CONCLUSION

Ultimately, the EPA will only make a meaningful contribution if it can succeed outside negotiations, when it is entrusted to domestic regulators to put into practice. Successful implementation will be possible if those politicians and civil servants believe the deal is beneficial. Strategic concessions on these final issues hold the key to building the necessary political will to give life to the deal, and to strengthen the vital Africa–EU partnership.

ENDNOTES

1 Christopher Wood is a researcher in the Economic Diplomacy Programme at SAIIA.

2 EC (European Commission), 'How economic partnership agreements benefit both consumers and producers in Europe and developing countries'. Brussels: EC, http://trade.ec.europa.eu/doclib/docs/ 2013/april/tradoc_151010.pdf, accessed 27 March 2014.

3 Three-letter currency code for the European Union euro.

4 BBC (British Broadcasting Corporation), 'Q&A: Reform of EU farm policy', 1 July 2013, London: BBC, http://www.bbc.com/news/world-europe-11216061, accessed 27 March 2014.

5 WTO (World Trade Organization) Committee on Agriculture Special Session, 'Special Agricultural Safeguard, Background Paper by the Secretariat', G/AG/NG/S/9/Rev.1, Geneva: WTO, 19 February 2002, http://docsonline.wto.org/imrd/directdoc.asp?DDFDocuments/t/G/AG/NGS9R1.doc, accessed 27 March 2014.

The Economic Diplomacy Programme is funded by the Danish International Development Agency. SAIIA gratefully acknowledges this support.

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