

## Update on regional EPA negotiations

### SADC - EU Economic Partnership Agreement



The purpose of this *Update* series is to provide relevant information on the Economic Partnership Agreement (EPA) negotiations between the 6 African, Caribbean, and Pacific (ACP) regional groupings and the European Union (EU). Each Update offers a snapshot of the progress made in the respective regions, including the main issues at stake and outstanding challenges. This Update series complements the Overview of Regional EPA Negotiations series and will be produced every 6 months until the conclusion of the EPAs.

#### The negotiating calendar

Following the first phase of EPA negotiations at the all-ACP level (September 2002 to September 2003), regional EPA negotiations between SADC and the European Commission (EC) were officially launched on 8 July 2004 in Windhoek, Namibia. The objectives, principles and phasing of the negotiations were outlined in a joint roadmap adopted at the launch.<sup>1</sup> The negotiations are being held in three phases.

**Phase one** (July to December 2004) was devoted to priority setting and preparations for the EPA negotiations.

**Phase two** (January 2005 to June 2007) was set aside for substantive negotiations, with emphasis on market access for agriculture, non-agricultural products and fisheries, trade in services, development cooperation, trade-related issues and legal provisions.

**Phase three** (June to December 2007) was reserved for finalisation of the agreement.

#### The negotiating approach

The SADC and EC negotiators agreed in December 2004 on a set of priority areas for the negotiations and on the terms of reference of the SADC-EC Regional Preparatory Task Force (RPTF). The RPTF was established to bolster the strategic link between the EPA negotiations and development cooperation. The SADC EPA member states decided to follow a phased approach to the negotiations, as outlined above. Each member is responsible for one of the priority areas. The legal and institutional arrangements for

implementation of the agreement will be prepared in the second phase.

In phase one, guidelines were finalised setting out the principles, objectives, general approach, areas and priorities, and the institutional set up of the negotiations.<sup>2</sup>

Priority areas discussed during the second negotiation stage relate to sanitary and phytosanitary (SPS) measures, technical barriers to trade (TBT) and, most of all, regional integration.

#### Taking account of the regional complexity

The regional integration process has so far received the most attention in the SADC-EU negotiations. This is largely due to the complexity arising from the simultaneous existence of three trade arrangements in the region, namely the Cotonou Agreement, the Everything-but-Arms (EBA) arrangement and the South Africa-EU Trade, Development and Cooperation Agreement (TDCA). SADC has proposed aligning the review of the TDCA to the EPA negotiations in an attempt to bring coherence and coordination to the process, and to move towards a single trade regime between the SADC EPA countries and the European Union.

The BLNS countries (Botswana, Lesotho, Namibia and Swaziland) are members of the South African Customs Union (SACU) together with South Africa. This means they de facto offer reciprocity to the European Union. Therefore BLNS countries would consider the TDCA as a basis for tariff nego-

tiations, on the condition that their sensitivities are accommodated and that the least-developed country status of Lesotho is taken into account. The other SADC EPA countries, Angola, Mozambique and Tanzania, are all least-developed countries and thus benefit from EBA access to the EU market, without being required to open their own markets to EU products. The region has requested this remain so under a future EPA. This framework for a SADC EPA was proposed to the European Union in March 2006.

#### SADC proposal surprised the EC

These proposals seem to have taken the European Commission aback, as they pose fundamental questions about the substance and implementation of the new trade regime, on the regime's World Trade Organization (WTO) compatibility and on the amendments necessary to accommodate the new configuration. A round of consultations on the matter was launched between the EC and the EU member states. So far Europe has given a positive signal for South Africa to be closely involved in the process, as this would reinforce regional integration in southern Africa. It seems unlikely however, that South Africa can be offered EBA access while it is clear that special and differential treatment will be a fundamental feature of any agreement. The European Union has voiced concerns about a permanent EBA status for Angola, Mozambique and Tanzania. It also still favours establishment and implementation of a SADC customs union before the signing of an EPA (i.e. before 2008). SADC, on the other hand, wishes not to precipitate the

trade agreement and customs union implementation, as many variables have to be factored in before these regional integration processes can become operational.

### Juggling various regional integration processes

To complicate the regional integration agenda further, several SADC EPA negotiating countries belong to other regional economic communities: Tanzania belongs to the East Africa Community (EAC), which in January 2005 formed a customs union with Kenya and Uganda. Angola belongs to the Common Market for Eastern and Southern Africa (COMESA), which has also formed a free trade area and plans to implement a customs union in 2008. Hence, SADC EPA negotiating countries must juggle several regional integration processes, each involving a different common external tariff (CET).

Effective coordination is needed among the SADC EPA negotiating group with regard to customs union implementation and harmonisation of trade regimes, to ensure that the interests and sensitivities of all the negotiating countries are accommodated. In this regard, ministers from COMESA, EAC and SADC countries recommended, during a tripartite meeting in March 2006, harmonising their EPA negotiating positions, coordinating their positions on tariffs, including their phasing down, as well as their stance on sensitive products.<sup>3</sup>

### Limited regional trade capacity

The SADC region has further drawn attention to its very limited institutional, human and financial capacity to lead negotiations with Europe on a number of EPA chapters. SADC argues that its lack of negotiation and analytical capacity impedes its ability to negotiate the trade agreement within the agreed timeframe.

Both parties have made proposals on the structure of the EPA chapter on SPS and TBT

measures. Further, joint reports on the capacity building required in the areas of SPS and TBT have been drawn up, recommending a focus on priority sectors and products to meet food security and trade standards. However, SADC insists that the negotiations on SPS and TBT measures should not be concluded before the negotiations on market access are finalised, in all likelihood towards the end of the negotiation timeline.

### Divergences remain

As phase two of the negotiations moves forward, discussions have begun on additional negotiation areas, with divergent viewpoints being revealed. Talks on market access for agricultural, non-agricultural and fisheries products, rules of origin (RoO), trade facilitation and other trade-related issues have also commenced.<sup>4</sup> The SADC group insists on the necessity of simplification of RoO, to allow for full cumulation of production inputs from SADC countries, other ACP countries and other countries in regions party to a trade agreement with the European Union. This would allow SADC export goods to benefit from greater EU market access.

Trade-related issues are a major source of contention between the parties. The European Union considers trade-related issues, namely government procurement, investment, competition, and trade facilitation, as pillars of development. Mobilising foreign capital and technology, modernising customs procedures, reforming and harmonising government procurement procedures and making them more transparent, and reforming competition policies should help improve the business climate in the region and contribute to achievement of development objectives. SADC however does not want to include trade-related issues in a binding manner in the future EPA. To justify its position, it refers to the lack of negotiating capacity and common

regional policies in these areas and to the absence of binding rules on investment and government procurement at the WTO level.

### Progress is stalled

The negotiations and technical session have been effectively on hold since the SADC proposals made in March 2006. The SADC EPA technical and senior officials did meet, in late September, to elaborate the EPA strategic framework proposals. While development aspects are included in parts of the framework relating to SPS, TBT, RoO and trade facilitation, so far no discussions have taken place on how to integrate development into the legal text of the EPA and relate it to liberalisation commitments. The region is currently working on the outline of the 10th EDF regional indicative plan, which is likely to include support for implementation of EPAs. In some respects the issue of development support has not constituted as much of a stumbling block as in some other African regions, mainly because the negotiations are blocked on the fundamental issue of structure.

As the technical level negotiations are put on hold, until the European Commission puts its formal response and possible counterproposal on the table SADC continues to analyse the potential consequences of an EPA including South Africa. The region remains headstrong in its position on excluding trade-related issues. Hence, crucial developments in the negotiations are expected in the last quarter of 2006.

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### Notes

- <sup>1</sup> "Opening of the EPA Negotiations with Southern African Development Community - SADC-EC Joint Roadmap for the Economic Partnership Agreement Negotiations"; European Commission; July 2004.
- <sup>2</sup> See "SADC-EC EPA Negotiations"; Paper presented by the SADC Secretariat at the Annual Conference of the Trade Law Centre of Southern Africa (TRALAC) in Cape Town; 13-14 October 2005.
- <sup>3</sup> "Joint Communiqué of the Tripartite Meeting of Ministers of COMESA, EAC, and SADC on Economic Partnership Agreements"; COMESA, SADC, and EAC Secretariats; March 2006
- <sup>4</sup> See "EPA Negotiations Update" in *Trade Negotiations Insights*, Vol.5 No. 2 and 3; 2006; ECDPM.

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