

CSO declaration on the EU-SADC EPA

Some member states of the Southern African Development Community (SADC) and the European Union (EU) are expected to sign the EU-SADC Economic Partnership Agreement (EPA) on 10 June 2016 in Katsane, Botswana.ⁱ

Although this agreement is called ‘SADC’ EPA, only 6 of the 15 SADC member states would become a signatory to the SADC EPA - the 5 Members forming the Southern African Customs Union (SACU) and Mozambique. Other Members are scattered in other regional EPA configurations, such as the EAC EPA (e.g. Tanzania), ESA EPA (e.g. Zimbabwe) or Central Africa EPA (e.g. Democratic Republic of Congo).

The current situation

- South Africa already has a free trade agreement (FTA) in force with the EU: the Trade, Development and Co-operation Agreement (TDCA).ⁱⁱ Since SACU is a customs union, Botswana, Lesotho, Namibia and Swaziland have in practice applied the TDCA. In other words, they also had to reduce and remove their tariffs on import from the EU.
- Since the EU stopped providing preferential market access to Africa, Caribbean and Pacific (ACP) countries under the Cotonou Agreement in 2007ⁱⁱⁱ and the interim SADC-EU EPA was never ratified,^{iv} Botswana, Namibia and Swaziland are currently receiving EU market access under ‘Market Access Regulation 1528/2007’. The EU has threatened to remove Botswana, Namibia and Swaziland from this Regulation by 1 October 2016, without a legally justifiable basis.
- Two of the SADC EPA countries expected to sign this EPA (Lesotho and Mozambique) are recognized by the United Nations as ‘Least developed countries’ (LDCs). LDCs can already export all of their products (except weaponry) to the European Union duty-free and quota-free, without having to reduce their own tariffs on imports from the EU.^v The EPA will not create more market access for LDCs.

Some of the problematic provisions of the EU-SADC EPA

- **Export taxes are severely restricted.** In WTO, export taxes are generally allowed. All SADC EPA countries use or have used export taxes.^{vi} This is the first time SADC EPA countries (except South Africa) can generally not use new or increase export taxes unless in case of exceptional circumstances, after consultation with the EU, and only applied temporarily on a limited number of products. (Article 26.2 SADC EPA). Besides that, export taxes may be applied for a maximum of 8 products, for a maximum period of 12 years, at a maximum level of 10% and when exempting a large share of exports to EU from export taxes (historical exports to the EU are exempted from export tax for first 6 years, after that 50% of historical levels). All these conditions make it practically difficult to use export taxes. Furthermore, a level of 10% is quite low in comparison with other agreements. For instance, Russia agreed to a WTO-plus requirement as a condition for WTO accession, a maximum rate of 30% export tax on natural gas exports to the EU – unquestionably a key raw material for Europe’s industries. The implications of the SADC EPA export taxes clause is the removal of an important policy tool to add local value to raw materials.
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- **Less policy space for local content policies, especially for LDCs.** The EPA appears to copy the restrictions on performance requirements from the WTO’s Agreement on Trade-Related Investment Measures (TRIMs Agreement), but without many of the exceptions, including for

LDCs (Lesotho and Mozambique). At the WTO, LDCs can use the existing as well as possible future transition periods. The implication is that SADC EPA countries especially LDCs would have less policy space for local content policies to develop their industries.

- **No restrictions on current payments flowing in and out SADC EPA countries.** The EPA prohibits restrictions on all payments for **all** current transactions between SADC EPA and EU countries, whereas at the WTO this is only for sectors where the WTO countries have committed to liberalising services. This takes away important policy space to combat currency volatility and tame the possible negative effects from short term financial flows or ‘hot money’.
- **Most Favoured Nation Clause.** SADC EPA states are under an obligation to extend to the EU better preferences provided to third parties under ‘preferential trade agreements’ with ‘major trading economies’. Compared with the interim EPA, this clause has expanded to also include South-South agreements that do not necessarily liberalize ‘substantially all trade’ (Enabling Clause), as well as ‘free trade agreements’ that substantially liberalize trade (as per Article XXIV GATT). One implication of this clause is that it deters trade agreements with other developing countries.
- **Agricultural subsidies are not dealt with.** The EU gives more than USD 100 billion in agricultural subsidies which is making it difficult for third countries to access the EU market. These subsidies also support EU exports to developing countries, negatively impacting domestic farmers and processors of agricultural products.
- **The SADC EPA has a built-in negotiating agenda covering services and investment.**
- **Rising prices for IP-intensive goods, such as books.** In the area of Intellectual Property (IP), at the WTO, LDCs have a transition period effectively for as long as they are LDCs before they have to protect IP such as copyright on textbooks. However in the EPA, all countries including the LDCs must provide adequate and effective IP protection and in accordance with the IP treaties they are party to, apparently without the LDC transition period exception.¹ Since Lesotho and Mozambique are Parties to the Berne Convention which requires copyright for life of the author + 50 years (even for textbooks), they may be required to do this by the EPA, even while they are LDCs. This would prevent students etc in Lesotho and Mozambique from being able to photocopy textbooks instead of paying the unaffordable price to buy them.
- **The General Exceptions clause of EPA is worse than TDCA.** For instance, a broader test is introduced for determining whether measures are ‘a means of arbitrary or unjustifiable discrimination’ which makes it harder to use the exception. This limits space to implement legitimate public policies, such as health and environmental policies
- **No additional, specific, enforceable financial or other aid or cooperation** in the EPA.

The hollow promise of better market access to the EU

- **South Africa’s market access to the EU has marginally improved, but at a cost.** Under the SADC EPA, South Africa would benefit from enhanced market access, beyond the preferential conditions under the existing Trade, Development and Cooperation Agreement (TDCA), that currently governs its trade relation with the EU. This includes better trading terms for wine, sugar, fisheries products, flowers and canned fruits. Ninety-five (95) percent of South Africa’s exports to the EU are duty free under the TDCA,^{viii} this would increase to 98 percent under the EPA after 10 years, with some restrictions remaining on South Africa’s agricultural exports.^{ix}

¹ The SADC EPA would be a more recent agreement than the WTO agreement on the LDC TRIPS transition period.

- In exchange, the EU will obtain better access to the Southern African Customs Union (SACU) market - in particular for wheat, barley, cheese, meat products and butter. Eighty (80) percent of the EU's exports to SADC will be phased out over 8 years by SACU. SACU fully or partially removes tariffs on 97.8% of tariff lines coming from the EU (or 86.2% of historical trade volume) under this EPA.^x
- For South Africa, the marginally improved agricultural market access concessions of the SADC EPA (compared to TDCA) will only materialize if South Africa provides effective protection to 251 Geographical Indications and all members of SACU have ratified or provisionally applied the SADC EPA.
- **Mozambique's level of liberalisation is very high for its level of development.** Mozambique will phase out duties on 80 percent of EU imports over 10 years. At the WTO, developed countries are obliged to provide Duty Free Quota Free market access for at least 97 percent of tariff lines (and 100 per cent once the Doha Round ends). The EU implements this through the Everything But Arms scheme. At the same time, LDCs are not required by WTO to liberalise (i.e. 0 per cent liberalisation). Compared with that, 80 percent for Mozambique is an extremely high level of liberalisation. It is also noted that LDCs in other EPA regions have levels of liberalisation in the range of 50-60 per cent, and Mozambique should not give more concessions than these LDCs.
- **The SADC EPA agreement on Geographical Indications (GIs) reduces sales for South African producers.** South Africa has to provide additional protection on EU's Geographical Indications (beyond the TDCA and the 2002 Agreement on wines and spirits), including for listed cheeses, olives, fruits and vegetables which will reduce the sales of South African producers of these products. The SADC EPA requires South Africa to give greater GI protection than TRIPS, for instance by extending the prohibition on using 'kind', 'type', 'style', 'imitation' from wines and spirits (TRIPS) to all 251 EU GIs listed in Protocol 3. (110 GIs are not wine nor spirits).
- **Market access for sugar is uncertain.** The SADC EPA contains a special safeguard only available to the EU which allows the imposition of a safeguard when EU market price of white sugar falls during two consecutive months below 80 per cent of the EU market price for white sugar prevailing during the previous marketing year. (Part III, Annex I of SADC EPA). The implication is that EU market access for sugar from SACU and Mozambique is not entirely guaranteed.
- **Rules of origin are restrictive especially for SADC EPA states other than South Africa.** The rules of origin of the SADC EPA are largely similar to those of the TDCA. For many manufactured goods, the value of all the materials used must not exceed 40% of the ex-works price of the product, i.e. domestic value addition should be at least 60%. In the proposed East African Community (EAC) EPA, the rules of origin for EAC exports to the EU are often more liberal – in many cases requiring only 30% domestic value addition. The SADC EPA probably sets the bar too high for SADC EPA states other than South Africa to enable exports of manufactured goods to the EU. In other words, the SADC EPA does not provide effective market access due to restrictive rules of origin.
- **More competition at the breakfast table which will increase with TTIP.** In the area of agriculture, the SADC EPA rules of origin now allow the use of non-originating *Zea indurata* maize (flint corn) in the manufacture of breakfast cereals such as corn flakes. Flint corn is mostly grown in the United States. TTIP is likely to make US corn cheaper for EU producers of breakfast cereals, which can then be exported to SADC EPA countries.

Procedural issues

- **Transparency issues.** In January 2016, the European Commission's proposal to the Council of ministers to sign and provisionally apply the SADC EPA does not appear to include key Protocols

which are an integral part of the EPA, in particular Protocol 3 (on Geographical Indications) and Protocol 4 (on the relationship between TDCA and SADC EPA). At any rate, these documents were not made available on Eurlex, Official Journal of the EU.^{xi} One question is whether the European Commission should update its proposal to the Council of Ministers, at least for transparency purposes.

- **Negotiations continue after conclusion of the EPA.** A (second) revised version of the legally scrubbed EPA text was only made available on 23 May 2016 on the Council website.^{xii} What does this mean for European Commission's policy stance that no negotiations can take place after a concluded and legally scrubbed text?

Conclusion

The SADC EPA contains various problematic provisions that cannot be considered pro-development. In particular, it is outrageous that the EU is forcing the LDCs to unnecessarily take on the liberalisation and other obligations contained in this EPA. For Mozambique, the EPA is unambiguously worse than its current situation today.

Even for South Africa, the promised market access benefits seem to be very marginal and came at a high price.

Furthermore, the process of finalising the EPA has been needlessly rushed and there has been insufficient time for stakeholder consultation on the final (second) revision of the legally scrubbed version of the text, published on 23 May 2016.

The undersigned Civil Society Organisations therefore demand that:

- this SADC-EU EPA is not signed on 10 June 2016
- if this SADC-EU EPA is signed, it should not be ratified
- Members of Parliaments in all SADC and EU countries should oppose provisional application, which undermines the authority of parliaments.
- the SADC-EU EPA be renegotiated to be more pro-development, in particular for Mozambique.
- the EU should continue to provide market access to the non-LDC SADC EPA countries beyond October 2016 and not use again artificial deadlines that are not based on international law.

ⁱ <http://www.mmegi.bw/index.php?aid=60276&dir=2016/may/26>

ⁱⁱ <http://ec.europa.eu/trade/policy/countries-and-regions/countries/south-africa/>

ⁱⁱⁱ https://ec.europa.eu/europeaid/where/acp/overview/cotonou-agreement/index_en.htm_en

^{iv} http://trade.ec.europa.eu/doclib/docs/2009/september/tradoc_144912.pdf

^v http://trade.ec.europa.eu/doclib/docs/2014/october/tradoc_152839.pdf

^{vi} According to latest WTO Secretariat Trade Policy Review reports, Mozambique imposes an export tax of between 18% and 22% of the f.o.b. customs value on raw cashews. Lesotho imposes an export levy of 15% to diamonds and Namibia has export taxes in the range of 15-60%, see https://www.wto.org/english/tratop_e/tpr_e/tpr_e.htm

^{vii} For examples of how export taxes have been used for value addition, see www2.weed-online.org/uploads/case_study_leather_sector_in_kenya.pdf and www.twn.my/title2/par/Export_Taxes.doc

^{viii} <http://www.dfa.gov.za/docs/speeches/2000/paha0612.htm>

^{ix} http://europeanmemoranda.cabinetoffice.gov.uk/files/2016/02/EM_5608-16.pdf

^x http://trade.ec.europa.eu/doclib/docs/2014/october/tradoc_152818.pdf

^{xi} EUR-lex. For this analysis they were obtained from

<http://europeanmemoranda.cabinetoffice.gov.uk/memorandum/proposal-for-council-decision-on-the-signing-provisional-application-of-the-economic-partnership-agreement-between>.

^{xii} <http://data.consilium.europa.eu/doc/document/ST-5730-2016-REV-2/en/pdf>. Since this document was released so close to the projected date of signature, only a preliminary analysis was possible.

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