

Why Should India Be Bothered About EPAs?

European countries have historically provided preferential tariffs to the African, Caribbean and Pacific (ACP) countries in violation of the Most Favoured Nation (MFN) provision of General Agreement on Tariffs and Trade (GATT) through periodic waivers by the GATT and WTO. During the Doha Ministerial Conference of the WTO in 2001, the WTO members waived until 2007 the application of the MFN clause to the ACP-EU Partnership Agreement (the Cotonou Agreement) signed in June 2000. The parties to the Cotonou Agreement were expected to enter into reciprocal tariff reduction arrangements by the end of the waiver.

As part of the efforts to bring themselves into consistency with their MFN obligations, European Union (EU) and ACP countries have been negotiating Economic Partnership Agreements (EPAs) with different regional economic communities (RECs) in the ACP countries since 2002. The EU has set a benchmark of 100 percent tariff liberalisation by EU immediately and 80 percent by the ACP countries with a transition period of 15 years to satisfy the condition of reciprocity. Negotiations are ongoing towards the conclusion of full EPAs.

In sub-Saharan Africa (SSA)¹, the five EAC members (Burundi, Kenya, Rwanda, Tanzania and Uganda) have initialled a regional interim EPA. Among the Southern African Development Community (SADC) members, Botswana, Lesotho, Mozambique, Namibia and Swaziland have signed interim EPAs, while in the Eastern and Southern Africa (ESA) region Comoros, Madagascar, Mauritius, Seychelles, Zambia and Zimbabwe have done so. In Central Africa, only Cameroon has initialled an interim agreement, and in West Africa, only Ivory Coast and Ghana. Some of these agreements are more comprehensive than just on tariffs. All goods originating from an African country that has initialled an EPA get duty free market access to the EU except for sugar on which such access would be available from 2015².

Most African countries that signed these agreements have excluded about 20 percent of tariffs from duty free access on account of the sector being sensitive (agriculture, vulnerable industry sectors) or import duties being a prominent revenue stream. The implementation period for tariff elimination for the African countries last up to 25 years.

The broader aim of EU in negotiating the EPAs is to facilitate a comprehensive economic relation with the ACP partners that encompasses investment as well as other trade related

issues. Motivated by its own experience over the past 50 years, the EU has been a long-standing supporter of regional integration, including in the ACP countries where there has been a steady expansion, in both depth and breadth, of regional integration initiatives. Under the Cotonou Agreement, one of the main trade tools to support regional integration is the EPAs. The ACP partners, while agreeing to the rationale of comprehensive economic partnership through EPAs, emphasise on the development dimension of the EPAs that needs compensation for the revenue loss, support for adjustment measures and overcomes the supply-side constraints they face when competing in the world markets.

As the negotiations in EPAs progress, what does it mean to India? Should India be concerned?

A major concern in terms of obligations under the project is the MFN clause in all the interim EPAs. This ensures that either party is able to benefit from better terms entered into by the other party with third parties. The concern on this clause in the EPAs has two dimensions.

First, it restricts the potential of SSA countries developing better trade relations with other developing countries such as India as any new trade preferences extended to India would automatically have to be extended to the EU as well thus placing limits on the potential use of the Enabling Clause³ in the WTO by developing countries for trade expansion among themselves.

Second, in a future free trade negotiation by India with any SSA country, the MFN clause could encourage India to insist that the starting point of such a negotiation should be the tariff elimination offers of the SSA country to the EU in the EPA, thus narrowing down the political negotiating space available to the SSA country⁴. This applies also to Rules of Origin (RoOs) particularly to the extent that they are different in the Indian Duty Free Tariff Preference Scheme from those in the EU-EPAs.

SSA countries, aware of the possible adverse effect on their South-South cooperation endeavours, have tried to negotiate a narrow MFN clause. For example, the EU-EAC EPA obliges EAC members to accord to EC any more favourable treatment resulting from an economic integration agreement with any 'major trading economy'. This term covers all developed countries and any developing country accounting for a share of the world trade merchandise exports above one percent.

India's share in 2009 was 1.6 percent, so it continues to be adversely affected.

Tariff reduction/elimination between EU and the SSA countries would normally mean that there will be trade creation for EU and SSA countries and trade diversion away from others such as India. However, the extent of such trade diversion in each interim EPA is unclear due to the differences in tariff lines proposed to be liberalised, transition periods for such liberalisation on the part of the SSA countries, standstill clause⁵, and the possibility of unilaterally halting⁶ tariff reduction for a year. Trade diversion will also be tempered by the extent of regional trade creation with tariff walls lowering among the SSA countries. That is again complicated by the lack of complete congruence of the tariff lines scheduled for reduction/elimination by individual countries in each REC. The only REC that has initialled a region-wide EPA is EAC. Trade diversion in these five countries, therefore, is a clear possibility for India to ponder over.

The application of Rules of Origin (RoO) is another issue of relevance. Changes to these rules primarily affect Fisheries, Textiles and Clothing and certain Agriculture products. For fisheries, the removal of requirement of local or EU crew in qualifying vessels, removal of crew requirement from charter vessels and introduction of a 15 percent tolerance for non-originating fish could open up some opportunities for India. Local or EU ownership of vessels however, still poses a challenge. For textiles and clothing, the removal of tolerance threshold makes it more onerous than the generalised system of preferences (GSP) or Cotonou Agreement related RoOs. Introduction of single stage transformation to calculate value addition may only partially compensate through potential opportunities for outsourcing of semi-finished products from India.

The interim EPAs are just that: interim. For comprehensive EPA negotiations, the model text shared by the EU with RECs has services and a number of non-trade issues such as investment, competition, trade facilitation, intellectual property rights. While a comprehensive EPA has so far been signed only with Caribbean Community (CARICOM), provisions relating to investment, services, competition and intellectual property rights therein provide an idea of the shape of things to come in SSA countries. The services sector

of EU members are clearly at an advantage based on those provisions, both in terms of investment opportunities and market access. However, since the requirement to have a WTO consistent preferential arrangement following the lapse of the Cotonou Agreement does not require any obligations to be committed on any of these areas, the SSA RECs are much more circumspect in agreeing to provisions in the EU model Centre for European Policy Analysis (CEPA) text.

Nevertheless, India needs to keep a close watch on the ongoing negotiations of comprehensive EPAs between EU and various RECs in SSA. A case in point is the thwarted attempt to have a law on counterfeit products across all EAC countries that would have had a significant adverse effect both on the supply of generic medicines from India to the region but also the ability of these countries to protect their citizens from having to cope with a regime making affordable medicines that they have benefitted from in the last decades inaccessible to the common man. Similarly, the provisions in the CARICOM EPA relating to EU getting the right to establish, right to unfettered movement of capital and substantial elimination of discrimination would provide a competitive advantage to EU companies over Indian (and other) companies both in services and investment.

The EU proffers EPAs to the SSA countries not only as a means to make their post-Cotonou preference regime consistent with the WTO rules, but as a means to foster regional integration and provide development support. Both these are laudable objectives. It is no surprise, therefore, that most SSA RECs have started negotiating with a clear objective of getting development support to further their regional integration and more importantly prioritise their development needs and present them as a pre-requisite to signing EPAs. An Africa with the capacity and capability to use trade and related liberalisation processes to improve its economy is beneficial to India both as a potential larger market for its goods, services and investments, but also a development partner in South-South cooperation, as was captured succinctly in the statement of the Indian Prime Minister during the Indo-Africa Forum Summit in April 2008 when he talked of creating a new architecture for engagement with Africa in the 21st century based on the visualisation of a partnership anchored on equality, mutual respect and mutual benefit.

Endnotes

- 1 Information obtained from http://trade.ec.europa.eu/doclib/docs/2009/january/tradoc_142188.pdf
- 2 Tariffs on rice were eliminated in the year 2010.
- 3 In the WTO General Council, India has expressed reservations at the possible implication of the MFN clause in the EPAs on operation of the Enabling Clause and sought notification of the EPAs.
- 4 This, however, may apply primarily to non-LDC SSA countries as for the LDCs India is already offering Duty Free Tariff Preference Scheme for most products of their interest.
- 5 Standstill clause phrasing in the SADC EPA is less restrictive than in the others
- 6 For example, in the CEMAC EPA, tariff reduction can be unilaterally halted for a maximum period of one year

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