

BRIDGES NETWORK

BRIDGES AFRICA

Trade and Sustainable Development News and Analysis on Africa

VOLUME 2, ISSUE 3 – JUNE 2013



Towards a commercially meaningful market access for LDCs.

MARKET ACCESS

Ninety-seven percent: glass half full or half empty?

TRADE FACILITATION

Building a “Made-for-Africa” trade facilitation

INTELLECTUAL PROPERTY

Using TRIPS Agreement flexibilities to support food security



International Centre for Trade
and Sustainable Development

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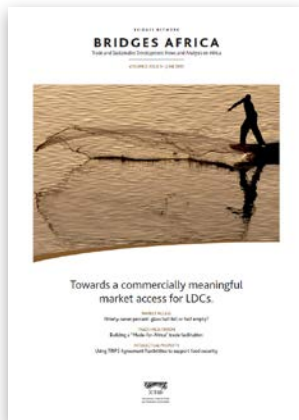
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Building a sustainable and solid future for LDC trade



Although significant progress has been made toward improving market access for LDCs since the World Trade Organization (WTO) Hong Kong Ministerial Conference in 2005, much remains to be done. Least Developed Countries (LDCs) only represent only 1.12 percent of world trade.

In 2005, WTO members agreed that "developed-country Members shall, and developing country Members declaring themselves in a position to do so, should provide duty-free and quota-free market access on a lasting basis, for all products originating from all LDCs by 2008 or no later than the start of the implementation period in a manner that ensures stability, security and predictability." However, this ambition was watered down in the following paragraph of the declaration which stated that: "Members facing difficulties at this time to provide market access...shall provide duty-free and quota-free market access for at least 97 percent of products originating from LDCs defined at the tariff line level..."

Most LDCs must work with a very concentrated export base, so it is possible that the remaining 3 percent exclusion could significantly neutralise the duty-free and quota-free (DFQF) market access scheme and make it ineffective.

With the upcoming WTO Ministerial Conference in Bali at the end of the year, DFQF market access is a priority issue for African LDCs. Indeed research shows that extending DFQF coverage to 100 percent in all OECD countries is expected to create additional gains of \$ 2 billion. Moreover, some developing countries "in a position to do so" — such as India and China, for example — have started to provide preferential access to their market to LDCs which could potentially generate huge benefits given their importance as export markets for many African LDCs.

In this issue of Bridges Africa, the article by Vinaye Dey Ancharaz and Sam Laird — the second in our series on LDCs and Structural Transformation — looks at what the real benefits are in the DFQF market access for African LDCs.

In addition, a range of other trade and development-related issues in Africa are covered in this issue. Jan Hoffmann and José Maria Rubiato from UNCTAD analyse trade facilitation issues in the context of African regional integration. Carlos Correa from the University of Buenos Aires, Argentina explains how TRIPS flexibility can be used in order to ensure food security in developing countries. Anne Balineau looks into the role that fair trade can play in aid-for-trade programs based on a cotton project in Mali.

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The Bridges Africa Team

TRADE FACILITATION

Promoting African intra-regional trade through trade facilitation negotiations

José María Rubiato and Jan Hoffmann

By adopting a common voice in the negotiation on trade facilitation, African members, as a group, could make future WTO rules primarily benefit intra-regional African trade.

African development is hampered by trade and transport facilitation issues more than any other region. With a population size similar to India's or China's, its 54 countries are separated by 104 bi-lateral borders. The negative impact of these borders on trade — in particular on intra-regional trade — has been subject of numerous studies. Most African countries have, in recent years, considered trade facilitation as a priority issue, and, accordingly, increasingly used financial assistance to modernise customs and promote other reforms.



Continental Africa adopts trade facilitation...

Experience with UNCTAD's technical assistance programmes in customs reform, in particular, suggests that most trade facilitation related measures have a high return on investment with a cost recovery within a short period of time. For example, pre-arrival processing and risk-assessment saves time and resources at customs; post clearance audits empirically help to increase legitimate revenue; and the transparent publication and dissemination of trade related rules and regulations reduce errors in declarations.

At continental and regional levels progress has also been consistent. In January 2013, the African Union adopted a plan of action to boost intra-African trade. To mention a few examples, the Common Market for Eastern and Southern Africa (COMESA) strategic medium plan 2011-2015, the West African Economic and Monetary Union (UEMOA) trade facilitation programme, or the regional indicative strategic development plan of Southern African Development Community (SADC), all have trade facilitation included in their respective agendas. The recently created Africa Trade Fund by the African Development Bank (AfDB) specifically targets trade facilitation programmes in Africa's regional organisations. This makes good sense as many, if not most, specific trade facilitation challenges and solutions, benefit from collaboration among neighbouring countries.

More generally, most trade facilitation related reforms have empirically had a direct positive impact on development. Along trade corridors in Africa, where more trade is formally recorded, it has increased the revenue for governments; lower waiting times at borders have led to a lower incidence of HIV; and, if it is easier for traders to engage in formal trade, this reduces the volume of informal cross-border transactions. In particular, women are often engaged in this informal cross-border trade, and facilitating formalities would allow them to enter the formal economy more easily.

Developing country members classify each provision of the future TF Agreement into one of three categories:

- Category A: provisions which the Member commits to implement from entry into force of the agreement.
- Category B: provisions which the Member commits to implement within a certain period of time after entry into force of the agreement.
- Category C: provisions for which the Member requires both time and technical assistance/ capacity building



These initiatives converge in a way towards a common understanding of how trade facilitation serves deeper integration processes and should lead to a common position for African members at the WTO.

... but remains hesitant in Geneva

The experience gained has helped understand the costs and expected benefits of trade facilitation but has not actually led to full agreement among African members, let alone an offensive stance supported by all 42 African countries. There are reasons for that and some of them are known.

While every WTO member is systematically confronted with the alternative to adopt a pro or con position in all negotiations, trade facilitation poses a specific dilemma.

Trade facilitation's positive effects are usually not completely refuted. It is widely acknowledged that, as a result of trade facilitation programmes, trade control administrations become more effective and more efficient, government revenue increases, transaction costs diminish and national trading communities become more competitive. This has led some African delegations to adopt a proponent position.

In the WTO context, however, trade facilitation reforms have been perceived by many developing countries as a way to impose best practices already in place in most developed economies as developed over more than 40 years. In that view, a trade facilitation WTO rule would cost little or nothing to those already compliant, whereas the burden of the high cost and pressing schedule to implement would have to be borne largely by developing members. For example, shipment expedition, post clearance audit, advance rulings and pre-arrival clearance are measures already in place in customs administrations of most developed WTO members. On top of that, trade facilitation is seen as easing foreign trade flows and therefore exposing weaker economies to massive increases in imports without commensurate gains in their exports.

Trade facilitation reforms have been perceived by many developing countries as a way to impose best practices already in place in most developed economies.

This has led some African members to oppose trade facilitation rules in WTO.

Paradoxically, such a position may have been exacerbated by many quantitative studies on the benefits of trade facilitation which compare favourably the effects of reduced transaction costs and times with the benefits of tariff reductions. While figures may not

lie, they also made analysts forget to explain that, while tariffs were meant to protect an economy from external competition, red tape, the main cause of avoidable transaction costs, has never served any defined or legitimate purpose. In other words: negotiating protections makes sense, defending inefficiencies doesn't.

The two arguments mentioned — high implementation costs and benefits mainly for stronger economies — exist also within Africa, where within regional groupings some economies are perceived as stronger than others. Another aspect is the particular situation of land-locked countries. LDCs hope to benefit not only from improvements and clarifications of GATT Article V on transit, but also from advances related to Articles VIII and X to the extent that transparency and improved procedures would also apply to goods in transit.

Proposed way forward

We believe that these concerns can be addressed positively by looking both at the negotiating text and the progress already made in Africa.

An African Group position in the negotiations on trade facilitation may build on two fronts.

One would concentrate on the substantive part (Section I) of the text in which the African Group should promote and make sure that priority actions agreed at African Union level are reflected in the future agreement. The rationale here is clear: as acknowledged in the African Union plan of action and other regional initiatives, some trade facilitation measures negotiated at WTO may actually boost intra African trade rather than increase flows from overseas. This is the case of measures applying to countries sharing a common border, such as border agency coordination including, joint border posts, advance information, or the publication of information and specific measures on transit trade.

The other position should deal with the concerns of opponents to the conclusion of the multilateral agreement at WTO and propose to adopt a carefully designed sequential implementation schedule, finely-tuned to benefit primarily African trade partners. A possible choice of sequence for the implementation of the agreement could place as top priorities those measures having an expected positive impact on geographical neighbours and regional partners.

Such a “made-for-Africa” trade facilitation approach in WTO would help dissipate doubts of opponents and serve the purpose of all African members to fully benefit from trade facilitation programmes.



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An African group position on special and differential treatment could also include in category B disciplines scheduled to become implemented at regional level before they turn to category A with full compliance for other WTO members. Similar implementation schedules and scope of application could apply to disciplines under category C, i.e. those that require technical assistance. On this particular category, preference to regional African partners and funding institutions could be granted as part of regional arrangements in full compliance with WTO principles.

Such a “made-for-Africa” trade facilitation approach in WTO would help dissipate doubts of opponents and serve the purpose of all African members to fully benefit from the returns of trade facilitation programmes at national and regional levels, while complying with multilateral disciplines.

LDCs AND STRUCTURAL TRANSFORMATION SERIES

DUTY-FREE, QUOTA-FREE MARKET ACCESS: WHAT'S IN IT FOR AFRICAN LDCS?

Vinaye Ancharaz and Sam Laird

Until now the implementation of the existing duty-free, quota-free (DFQF) market access schemes have brought rather limited gains for least developed countries as their design is not commercially meaningful for most of them. Recent studies show that full implementation of DFQF by developed countries and emerging economies would trigger substantial benefits.

It has long been recognised that trade preferences can stimulate diversification into higher value-added export activities. Indeed, the structural transformation of developing economies was a key goal of the Generalized System of Preferences (GSP) when it was launched in 1971. There has been a constant call since then to improve upon the GSP and to provide more meaningful preferences to the least developed countries (LDCs). While a number of such schemes have subsequently been set up (see Table 1), the demand for improved preferences has not waned.

At the 2005 Ministerial Conference in Hong Kong, WTO members ultimately agreed that: "Developed-country members shall, and developing-country members declaring themselves in a position to do so should, provide duty-free and quota-free market access on a lasting basis, for all products originating from all LDCs by 2008..." The zeal of this statement, however, was immediately tempered by an 'escape clause': "Members facing difficulties at this time to provide market access...shall provide duty-free and quota-free market access for at least 97 percent of products originating from LDCs defined at the tariff line level..." while taking steps to progressively achieve 100 percent DFQF.

Table 1: Existing trade preference schemes for LDCs

Country (Year)	Brief description of scheme
Canada (2003)	DFQF excluding over-quota tariff items for dairy, poultry and egg products
China (2010)	Zero-tariff treatment to 4,788 tariff lines (60 percent) to be extended eventually to 97 percent
EU (2001)	The EBA initiative provides DFQF access for all products from LDCs (except arms and ammunition)
India (2008)	Duty-free access on 85 percent of tariff lines at the HS 6-digit level
Japan (2007)	DFQF market access on 8,859 tariff lines (or 98 percent at the tariff line level), covering over 99 percent in terms of imports value
Korea (2000)	DFQF access extended to 95 percent of total tariff lines in 2010
US LDBC (1976)	3,451 products admitted duty-free under GSP; an additional 1,430 products for least-developed beneficiary developing countries (LDBDC)
US AGOA (2000)	1,835 products from qualifying African countries available for duty-free treatment in the US market

Source: Laird (2012)

DFQF market access was a prominent item on the 'LDC package' that was slated for an early harvest at the WTO Ministerial Conference in December 2011. However, no decision on the operationalisation of DFQF was taken then, and it seems unlikely to appear on the agenda of this year's meeting in Bali. With no progress on DFQF, the debate has focused on the potential gains under a 97 percent DFQF scheme versus full coverage and on related rules of origin. Available evidence shows that further trade gains for LDCs would be rather limited under a 97 percent DFQF scheme since the 3 percent of excluded tariff lines could potentially cover between 90 percent and 98 percent of all LDC exports. The very high share of trade reflects the fact that the 3 percent of excluded tariff lines tend to exclude the bulk of textile and clothing exports from LDCs like Bangladesh and Cambodia.

The 3 percent of excluded tariff lines tend to exclude the bulk of textile and clothing exports from LDCs like Bangladesh and Cambodia.

Mixed impacts

A positive outcome of the Hong Kong declaration is that some emerging economies have now joined the league of preference-giving countries. India's Duty-Free Trade Preference (DFTP) scheme, launched in 2008, is expected to provide duty-free access to 85 percent of its tariff lines when the scheme becomes operational in 2012. China started its duty-free scheme with 60 percent coverage in 2010 but with the objective of extending zero-tariff treatment to 97 percent of its tariff lines. Brazil announced that it would launch its DFQF scheme in 2011 – but is yet to follow up on that promise. Korea – not an 'emerging economy' in the conventional sense – launched a DFQF scheme earlier in 2000 under a waiver but extended it to 95 percent of tariff lines in 2011.

While it is too early to fully assess the effects of these schemes, available evidence suggests that they have, so far, not been very successful in stimulating higher value-added exports from LDCs. For example, while Africa's LDCs accounted for 21.5 percent of Africa's exports to India, worth US\$40 billion in 2011, excluding Angola, a major oil exporter, this share was a meagre 6.4 percent. Similarly, while 99 percent of all LDC imports into China in 2011 were under the duty-free scheme, China has imported little beyond oil, and a few other commodities, from African LDCs. It appears that the schemes' effectiveness is constrained by their very design – a criticism levelled against developed-country schemes in the past. India's DFTP scheme, for example, excludes a number of products of key export interest to African LDCs, such as fruit and vegetables, nuts, coffee, tea, maize and tobacco products, and provides limited concessions on several others (cut flowers, vegetable oils, and clothing).

Most developed countries have traditionally implemented DFQF schemes of various levels of ambition (Table 1). The US is implementing two regional duty-free schemes since 2000, including the African Growth and Opportunity Act (AGOA), which provides 40 designated African countries, of which 26 are LDCs, duty-free treatment on some 1,835 products. AGOA is set to expire in 2015.

However, whereas the DFQF schemes of Canada, Japan and the EU provide duty-free coverage to over 98 percent of tariff lines and feature few excluded products, the World Trade Organization estimates that, on the whole, US trade preference schemes admit on average only 82.4 percent of imports duty-free, with pervasive exclusions. However, this figure is misrepresentative since about 90 percent of all imports recorded under AGOA are in oil. Most Favored Nation duties on AGOA-excluded products average over 30 percent!

Not surprisingly, therefore, existing preference schemes have had mixed effects on African LDC exports, especially at the extensive margin. Within manufacturing, only apparel seems to have benefited from such schemes, specifically from AGOA, which proposes a single transformation rule for apparel and allows exporters to source inputs from third countries. Paradoxically, while textiles are generally recognised as a critical link in building a vertically integrated, higher value-added clothing industry, textile products are excluded under AGOA, as are leather products and footwear, a wide range of processed agricultural products, including dairy products, sugar, cocoa, and cotton. Stricter rules of origin in other schemes have also not been favorable to textiles. For example, the EU's double-transformation rule – which required apparel to undergo assembly plus at least one pre-assembly operation, such as weaving/knitting – has been perceived as technologically challenging by LDCs. This is, however, set to change after the EU significantly relaxed the GSP rules of origin in 2011.

Improving DFQF schemes

African LDCs could benefit from an ambitious program, especially one that offers more liberal access to the US market, according to recent research. For example, using a computable general equilibrium (CGE) model, Bouët et al in 2010 estimate that full implementation of a DFQF scheme by OECD countries would boost LDC exports by about US\$2 billion (or 17 percent) without affecting preference-granting countries in any major way.

Full implementation of a DFQF scheme by OECD countries would boost LDC exports by about US\$2 billion without affecting preference-granting countries in any major way.

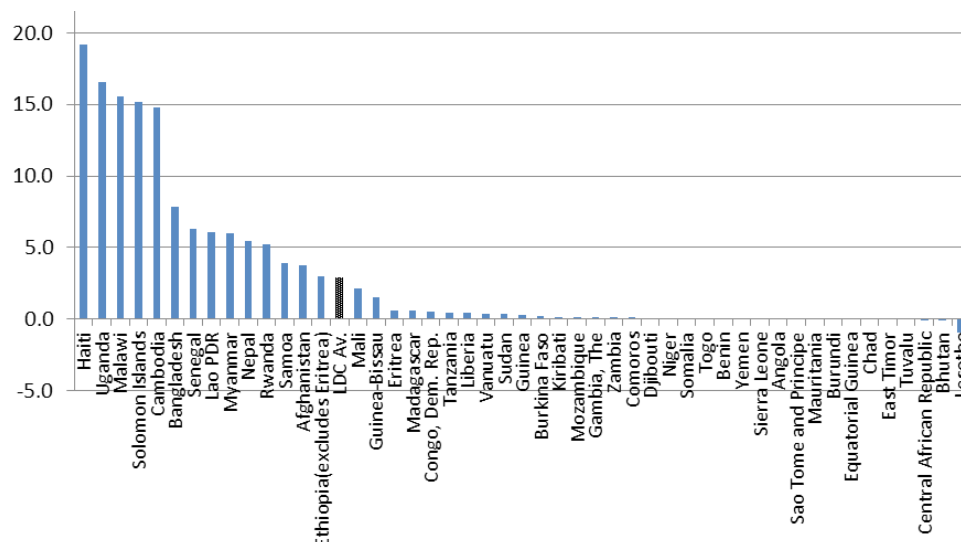
Another study by Sam Laird, 2012 – commissioned by the ICTSD – uses a partial equilibrium model to examine the impact of providing 100 percent duty-free treatment to LDCs' exports by a selected group of trade partners – including 4 major developed countries with long-standing trade preference schemes (Canada, EU, Japan and US), one with a fairly recent duty-free scheme (Korea), and two emerging economies (China and India). The results show that LDC exports would expand on average by 2.9 percent, with the biggest impacts coming from India (21.7 percent), Korea (12.9 percent) and USA (11.8 percent). Impacts on the rest of the world are negligible (Table 2).

The study shows that countries with close-to-full duty-free coverage, such as Canada and EU, will register very small increases in exports from LDCs. The estimated modest impact of extending the Chinese scheme (1.7 percent) seems to be linked to the fact that the bulk of China's imports (90 percent in 2011) from LDCs consist of raw materials and mineral fuels, which already attract little or no duty, while China is also competitive against LDC manufactures generally.

Table 2: Effects of full DFQF scheme on selected LDCs exports by preference-giving country (change in %)

LDC	Total	Canada	China	EU	Japan	Korea	USA
Angola	0	0	0	0	0	3.6	0
Bangladesh	7.8	0	63.5	0	0	73.8	22.2
Burkina Faso	0.2	0	0	0	0	20.8	27.9
Cambodia	14.8	0	19.3	0	0.1	4.1	27.8
Ethiopia	3	-	0.7	0	0.7	139	-0.1
Haiti	19.2	0	9.5	0	0	13.7	21.4
Lao PDR	6	0	8.3	-0.1	2.4	0.1	15.5
Madagascar	0.6	0	5.6	0	0	10.5	-1.4
Malawi	15.6	-	58.7	0	0	0	109.3
Nepal	5.5	0	66.1	0	0.1	3.2	7.6
Rwanda	5.2	-	0.2	0	0	0.1	0.2
Senegal	6.3	1.2	12	0	5.5	27	1.5
Tanzania	0.5	-	1.3	0	0.2	0.1	0
LDC total	2.9	0	1.7	0.2	0.1	12.9	11.8
ROW	0	0	0	0	0	0	-0.1
Total	0	0	0	0	0	0	0.1

Source: Adapted from Laird (2012)

Figure 1: Effects of full DFQF scheme on selected LDCs exports (change in %)

Source: Based on Laird (2012)

Country-wise, Haiti, Uganda, Cambodia, Bangladesh, Senegal and Nepal are among the biggest gainers. At the other extreme, Lesotho appears as the only country to lose in a rather significant way (Figure 1). Even so, its loss is a mere 1 percent of imports, or about US\$5 million. The loss derives from the erosion of Lesotho's preference margin – mainly in the US – to the benefit of other competing LDCs, such as Bangladesh and Cambodia.

Conclusion

Lesotho's loss should not be a barrier to negotiations by LDCs for the implementation of a comprehensive DFQF scheme. This loss is small relative to the overall gains by LDCs and it may be easily compensated by improved special and differential treatment for LDCs and continued Aid for Trade flows to help Lesotho adjust to the new situation. Lesotho received US\$194 million in Aid for Trade in 2010, and the amount has consistently increased since 2005.

Unfortunately, implementation of a DFQF scheme for LDCs is currently being held up in large part by the US's insistence that such a scheme be part of a Doha Round agreement. This position partly reflects the US's fear that opening up its markets in clothing could lead to increased competition from countries like Bangladesh and Cambodia. However, emerging research shows that such fear is unjustified. For example, Canadian imports from LDCs did not increase sharply after Canada launched its LDCT program in January 2003 and adopted flexible rules of origin for apparel. Moreover, CGE estimates suggest that the potential effects of the US providing full DFQF market access to LDCs will be a mere 0.5 percent fall in US apparel output. The resulting employment effects, although concentrated in traditional textiles-based states, will be, in aggregate terms, rather small, and dwarfed by global gains. It is time for US lawmakers to look beyond their defensive interests in textiles and show their real commitment to LDCs development, over two-thirds of which are African.



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INTELLECTUAL PROPERTY

TRIPS flexibility for patents and food security: Options for developing countries

Carlos Correa

In order to guarantee global food security, a legal system that allows free movement of information and plant materials is necessary with the aim of constantly improving and adapting crop varieties through research and breeding techniques, ensuring the availability of products that respond to different needs, and diversifying the supply of seeds and technology.

Achieving food security is a major objective of the international community. The effort to reduce the number of people suffering from food insecurity faces many obstacles, including underinvestment in agriculture and rural development, increases in food prices, poverty and the impact of Intellectual Property Rights (IPRs).

The development and production of commercial seeds is highly concentrated. There is a growing orientation of research and development (R&D) towards commercially attractive crops and varieties, while traditional seed supply systems are eroded. The spread of commercial plant varieties has significantly reduced the genetic variability and increased the vulnerability of agricultural production. In addition, some forms of IPRs can create barriers to the free flow of information and materials which is essential to sustained levels of food production as well as development of new plant varieties.

IPRs were originally conceived for innovations in manufacturing and artistic creations. However the recent expansion of IPRs to plant materials and food has given rise to concerns about the possible implications for food security. IPRs generally grant exclusive rights. This means that the right holder can exclude, for a period of time, anyone from using the protected subject matter, unless the national law provides for specific exceptions or limitations.

Thus, IPRs remove competition and enable the right holder to charge the price that the market will bear. Hence, the granting of IPRs affects access to protected products and their affordability. Higher prices for seeds and other agricultural inputs may be detrimental to small farmers and increase the concentration of agricultural production for food.

The growing use of patents to protect innovations in plants, as a result of the obligations arising from the TRIPS Agreement and from bilateral and regional free-trade agreements (FTAs) entered into by a number of developed and developing countries, may drastically transform the paradigm related to the free flow of knowledge and materials under which agriculture developed over the past centuries.

Although the TRIPS Agreement provides WTO Members with flexibilities for implementing its provisions in ways that are consistent with their agriculture and food policy objectives, such flexibilities have received little attention so far. In fact, many WTO Members have not used them or have done so only to a limited extent. This contrasts with the situation in the area of public health, where a large range of



Definition:

Food security implies "having access, at all times, to nutritious food which is adequate for consumption in sufficient quantities in order to satisfy needs and preferences which make for an active and healthy lifestyle." Article 1 in the Rome declaration on World Food Security, 1996.

measures have been debated and adopted nationally and internationally to ensure access to medicines.

Exclusions from patentability

Food security may be negatively affected by the appropriation of plant genetic resources, as it may prevent further research and breeding or limit the possible sources of supply of seeds. TRIPS article 27.3(b) allows WTO Members considerable policy space to define national laws in this area.

Plants

TRIPS article 27.3(b) allows (but does not oblige) WTO Members to exclude plants from patent protection. It is important to note that, in the absence of any definition in TRIPS itself, the exclusion for plants can be interpreted in broad terms, inclusive of plants as well as plant varieties and species. In addition, countries that opt to implement this exception may exclude plants, whether obtained through conventional breeding processes or through the use of genetic engineering.

An important question is whether the possibility of prohibiting patents on plants may be understood, under the TRIPS Agreement, as applicable also to plant cells, genes and other sub-cellular components. It could be argued that none of those components are "plants" and, therefore, that they are not covered by the exclusion provided for in Article 27.3(b). But patenting of such components (even if modified) may be equivalent to patenting the plant as such, since the patent owner may prevent commercial acts relating to any plant that contains the patented subject matter and thereby nullify, in practice, the exclusion relating to patents for plants.

Essentially biological processes

TRIPS article 27.3(b) allows the exclusion from patentability of "essentially biological processes" for the production of plants. The meaning of "essentially biological processes" – a concept drawn from the European Patent Convention (EPC) – has been examined in many European Patent Office (EPO) decisions and given a rather narrow interpretation. For instance, in Decision T320/87, Lubrizol (1990), the EPO held that "a novel combination of traditional plant breeding techniques that results in plants and seeds" is patentable.

National laws should not allow for the patentability of conventional methods for plant breeding, even where selection is assisted by genetic markers.

A growing number of patent applications claim IP protection over conventional breeding methods. In 2010, about 200 patents on seeds with and without the use of genetic engineering were granted by the EPO, and 100 applications were received on plants bred without using genetic engineering.

National laws should not allow for the patentability of conventional methods for plant breeding, even where selection is assisted by genetic markers. The use of such markers should not be deemed either a sufficient ground to grant patents on the products obtained with those methods.

Plant varieties

The TRIPS Agreement mandates the protection of plant varieties, allowing several options: "patents, an effective sui generis regime or a combination of both." This was one of the most controversial provisions in the TRIPS negotiating process. The initial proposals by the US, Japan, the Nordic countries and Switzerland aimed at broad patent coverage for plants and living organisms. In contrast, most developing countries rejected such an approach. Meanwhile, EU countries wanted to preserve the freedom to exclude plant varieties (and animal races) from patentability, as provided for in the European Patent Convention.



The patentability requirements (particularly the inventive step) seem not only unsuited to plant varieties, but also, given the scope of rights generally granted under patents, these may deter further research and breeding on protected materials and erode the rights of farmers to save and reuse seeds.

Ordre public and morality

TRIPS article 27.2 provides for the possibility of refusing patents for inventions the commercial exploitation of which is "necessary to protect public order or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by their law."

Although TRIPS article 27.2 is likely to be relevant in only a limited number of circumstances, it may be applied, for instance, when the diffusion of a certain plant technology, such as the sterilisation of seeds, may have negative effects on agricultural production or the environment.

Proliferation of patents on plant materials

Although the patenting of plant materials raises a number of concerns from the perspective of food security, many countries do allow such patenting. Patents are routinely granted in many developed and developing countries (such as China, Chile, India and South Africa) on genetically modified plants, plant cells, genes and other sub-cellular components as well as on enabling plant biotechnologies. In order to address the proliferation of patents in this field, the following policies may be adopted:

- National laws should establish a clear-cut distinction between "invention" and "discovery" and consider that an "invention" does not exist where a natural substance, such as a gene, has been isolated or the properties or a function thereof identified. Allowing appropriation of plant materials found in nature through IPRs creates barriers that may negatively affect agricultural research. The TRIPS Agreement does not oblige WTO Members to confer patents on natural biological materials.
- National laws should apply an absolute concept of novelty and consider that a substance found in nature is not "novel" even if its composition, properties or characteristics have not been previously described. Maintaining access to genetic resources for use and improvement is crucial for agricultural development and food security.
- A low standard of inventive step may reduce the sources of supply and limit research and breeding. Patent offices should apply rigorous criteria to establish inventive step in plant-related innovations, so as to grant patents only when the invention is not obvious for a person, or a team of persons, with high technical qualification and experience in the field.

Allowing appropriation of plant materials found in nature through IPRs creates barriers that may negatively affect agricultural research.

The range of exclusive rights

In the case of patents covering genes, an important issue is whether the exclusive rights extend to any possible utilisation of the gene. If this were the case, nobody could use the patented gene even for functions not discovered or disclosed by the patent owner. An absolute protection of this kind is likely to discourage further research on and prevent other possible uses of a patented gene until the patent expires. Even if research is allowed under a "research exception" – as permitted under many national laws – a product that



contains the patented gene could not be commercialised without the patent owner's authorisation until the expiration of the patent.

In the same line of thought, and in accordance with TRIPS article 44.1, national laws should exempt from liability unintentional infringement caused by the dissemination of patented genetic materials.

Importantly, farmers should be free to save and re-use seeds as allowed under the 'farmers' privilege' generally recognised under plant variety protection laws. Few patent laws clarify the rights conferred with regard to reproductive materials, such as seeds. French law, for instance, makes it clear that plant material can be multiplied or reproduced where it has been legally put on the market by the patent holder or with his or her consent, where this was the purpose for which the material has been marketed; the obtained material, however, cannot be subsequently used for further reproduction or multiplication.

The continuous improvement of plant varieties requires freedom to undertake research and breeding where patented materials are involved. Exceptions to this effect should be adopted even where a country opts not to grant patents on plants (or plant varieties). If a country opts to grant such patents, national laws may permit the commercialisation of the newly obtained varieties, on the basis of non-remunerative exceptions. However, the compatibility of an exception of this kind with the TRIPS Agreement has not been tested.

National patent laws should provide for compulsory licenses in cases where the exploitation of a protected plant variety would infringe a patent. A cross-license may be granted to the patent owner with regard to the concerned variety.

Final considerations

When designing and applying IPRs, it is necessary to make decisions concerning the type and the scope of rights conferred regarding plants and food. Advances in the improvement of food crops are the fruit of centuries of free circulation of products and knowledge, through exchange of seeds and information empirically generated by farmers. Countries could do much more in the way of developing IPRs protection systems which, while complying with the TRIPS Agreement, are adapted to local conditions, promote genuine innovation and its diffusion and enhance food security.

Reference:

This article is based on a policy guide: TRIPS-Related Patent Flexibilities and Food Security: Options for Developing Countries, ICTSD, Correa, Carlos (2012), <http://bit.ly/RDITHl>



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FAIR TRADE

Fairtrade: From aid, to trade... to aid-for-trade? The Malian example

Gaëlle Balineau

Could there be an expanded role for fair trade actors in aid-for-trade programmes? Based on the fair trade-certified cotton experience in Mali, this article suggests that fair trade could be used to back and test innovative projects for agricultural development and/or export promotion.

The issues of falling commodity prices and unequal terms of trade has always been central to the fair trade movement. Besides the political wing of the movement that is still actively engaged in "awareness raising and in campaigning for changes in the rules and practice of conventional international trade" (Consensus FINE, 2001), fairtrade is also "a trading partnership [that] contributes to sustainable development by offering better trading conditions to, and securing the rights of marginalised producers and workers – especially in the South". There are different fair trade networks and labeling initiatives. The Fairtrade International Labeling Organisation (FLO) is the world leader with 827 fairtrade-certified producer organisations in 58 producing countries, representing over 1.2 million farmers. The fairtrade (FT) system basically relies on the premise that consumers in developed countries are paying more for producers to benefit from better conditions, guaranteed by the FT certification system. The 'fair' price is related to the sustainable production costs, and the 'development premium' goes to producer organisations. To be certified, smallholders must observe many economic, social, and environmental standards. After two decades of sales growth, FT is still confined to a niche market, and its efficiency is increasingly challenged. Indeed, in the absence of other benefits than improved prices, FT certification may not be worthwhile for farmers in a context of booming commodity prices. This article suggests other ways to make FT more efficient.

Fairtrade labeling: Successes and failures

While FT sales are still a drop in the ocean of international commodity trade (approximately €3.4 billion worldwide), the FLO has largely contributed to raise consumers' consciousness in developed countries about the environmental, economic and social consequences of their consumption choices. Ironically, however, the greatest promoters of FT also certainly contributed to its downfall as the marketplace has become crowded with socially and environmentally – responsible labels (organic labels, Rainforest Alliance, UTZ, etc.). Over recent years, competing in this market has become increasingly difficult as the growing body of evidence has raised skepticism about the ability of FT to generate sustainable benefits to producers in developing countries. Firstly, positive effects remain difficult to attribute to FT because of the lack of counterfactual impact evaluations. Secondly, it is not clear whether FT ensures a fairer distribution of value-added products throughout the value chain. Thirdly, narrowness in the FT market implies either that the number of certifications should be limited, excluding some producers from the system (raising questions of the fairness of the selection process); or that rents are dissipated through over-certification (i.e. producers sold a tiny part of their production on the FT market). FT supporters thus try to raise the demand for certified products, while its detractors claim that this is precisely because FT is not based on a real differentiation that demand is low, and that the very model of FT prolongs producers' dependence on products that have no prospects in the long run. This argument is frequently stated by multinational firms to defend their own quality-labels against FT.

Some argue that FT should be redesigned as a support to the development of commercial capacities. The networks and capacities built by the different FT organisations could, for example, help small-scale farmers get larger shares of the high-value export markets that FT tries to compete in. However, until now, we do not know if, and how, FT could support producers in developing countries in following high quality requirements and

gaining market shares on high value-added segments that are saturated. FT cotton in Mali is an example of how a FT project can go beyond the strict framework of international FT standards to generate more benefits for producers, including non-certified producers.

Using fair trade effectively: The Malian example

When the French affiliate of FLO launched an FT cotton project in Mali in 2002, it was established that survival of West African cotton producers on international cotton markets depended on two main factors: productivity gains and, importantly, quality improvements. However, in Mali, quality and reputation of the cotton fiber worsened as production increased due to insufficient care during picking. Prices paid by the Malian cotton company, Compagnie Malienne pour le Développement des Textiles (CMDT), to producers are not actually differentiated according to the quality of seed-cotton: it is more profitable for producers to grow more, rather than better, cotton. In 2002, CMDT and its then French shareholder, Développement des Agro-Industries du Sud (DAGRIS), thus decided to use the FT price (238 versus 180 CFAF per kilogram of seed-cotton paid by the CMDT on average) to differentiate prices on quality. Contrary to what occurs in other FT projects, certified producers would receive the FT price only for the part of their production which was graded in the four first grades of fiber cotton. This decision provided producers with strong, immediate individual incentives to adopt practices to improve quality. Secondly, quality should further improve because of the cooperation and peer-controls that the collective FT premium (34 CFAF/kg) should reinforce. Thirdly, contrary to what occurs in the conventional sector because of the lack of trust toward CMDT, producers are provided with clearer quality criteria and know that the third-party certification process prevents the cotton company from capturing FT premiums. Results of an evaluation conducted in Mali, in 2008, show that FT accounts for more than half of the quality improvement observed in the region where the share of top quality cotton increased from 3 percent to 16 percent over the period studied.

Fairtrade and the issue of quality

The Malian FT project is also illustrative of how important it is to deal with quality and quantity issues. Indeed, as recalled by de Janvry, McIntosh, and Sadoulet ("Fair Trade and free entry: Can a disequilibrium market serve as a development tool", 2012), "markets cannot be used to transfer rents through the price mechanism if the quantity and quality sold are not correspondingly controlled". In their example of a coffee cooperative in Guatemala, FT prices do not reward quality and, contrary to Mali, the number of certifications is not controlled. Thus, the large benefits are dissipated through two mechanisms: over-certification first, as all coffee producers want to sell through FT markets simultaneously. As a consequence, coffee producers only sell a small share of their production on FT markets when a price floor is most needed. Secondly, as FT prices do not reward quality, it happens that FT buyers get high quality coffee at a lower price relative to what they would have paid on traditional markets. For a particular year when both prices and quality were high on conventional markets, the above-mentioned authors even found that Guatemalan farmers would have lost money by participating in FT.

Lessons learned and the way forward

The Malian experience suggests other ways for FT actors to help small producers increase the profitability of their farms. It is clear that "one size fits all" has failed for FT. The comparison between Malian and Guatemalan cases, at least regarding the issue of quality, demands that FT reflect different market constraints. Also, through its marketing networks in both developed and developing countries, FLO and its national affiliates could definitely be a bridge to help producers' and consumers' needs match. Indeed, FT actors can provide information from consumers to producers; but also from producers to consumers: there are examples where FT certification bodies included sustainability standards suggested by producers themselves to defend local interests. Of course, this implies that producers are well-represented in FT organisations and that consumers are ready to trust less standardised brands and labels. FT projects could also act as laboratories for innovation and change. As suggested by the Malian example, the adoption of new technologies or innovative agricultural practices can be fostered through the funding of trials and training programs to improve the design of sustainable initiatives and lead to greater effects.



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AGRICULTURE

US farm bill discussions reignite; cotton programme changed

Both chambers of the US Congress discussed their separate versions of a potential 2013 Farm Bill in mid-May, following a long lull in activity from the two chambers on the subject. The Senate legislation already cleared its agriculture committee on 14 May, with the equivalent House panel expected to do the same. The farm bill is the main legislation governing US agricultural policy over a five-year period. In 2012, the two chambers of Congress reached a stalemate on forming new legislation, and agreed instead to extend by a year the existing Farm Bill. To avoid another extension, the two chambers will have to work out any differences before the new end-September deadline. This year's updated Senate version would lead to US\$24.4 billion in cuts over the next decade, while the House version aims to reduce spending by up to US\$39.7 billion over the same period.

The upcoming Farm Bill also represents an opportunity to resolve the long-running WTO dispute between Washington and Brasilia on the US' support of its cotton farmers. The WTO had ruled against the US in the row, authorising Brazil to retaliate for certain industrial goods and intellectual property rights. The two sides later came to a deal to delay retaliation, in exchange for a US annual payment to Brazil of US\$147 million and pledges to reform the non-WTO compliant measures in the next Farm Bill.

Under the agreement, Brazil will continue to receive the payments until the passage of successor legislation, when a new agreement will be formalised between the two countries to resolve the dispute. One of the main measures under discussion to resolve the WTO dispute is the Stacked Income Support Program (STAX), a supplemental crop insurance initiative. Observers of the farm bill process, however, note that the latest STAX proposal has been revised, allowing the programme to operate without a reference price — the price which guarantees payouts regardless of market-based losses — and function as a normal insurance programme.

Harry de Gorter, agricultural trade expert at Cornell University, indicated that the reference price set in earlier 2012 versions of the House bill would have been the most trade-distorting element of the proposed change in cotton policy. The House reference price would have led to large payouts if prices fell and would have been potentially trade-distorting in such cases.

Brazilian Ambassador to the WTO Roberto Carvalho de Azevêdo had echoed similar sentiments in a 2012 letter to the US Congress, urging legislators to find a less trade-distorting solution. An unnamed Brazilian trade official told Bridges that not having a reference price was essential in the new House proposal. The exclusion of a reference price also resolves the earlier disagreements between the House and Senate on the subject.

While the 2012 House bill had included a reference price, the Senate had not, and officials close to the process had indicated that the Senate version would likely have prevailed.

Projections from the Congressional Budget Office on the costs of the bill indicated that the US would spend identical amounts on STAX between 2014-18, regardless of which chamber's version is used: nearly US\$1.5 billion.

UNITED NATIONS

Kenya's Kituyi nominated as next UNCTAD Head

Former Kenyan trade minister Mukhisa Kituyi has been nominated by UN Secretary-General Ban Ki-moon to serve as the new head of the UN Conference on Trade and Development (UNCTAD), the agency announced on 16 May. Kituyi's candidacy is next set to go to the UN General Assembly for approval by the organisation's 194 member states. He will replace current UNCTAD Secretary-General Supachai Panitchpakdi, who has served two terms as the organisation's head since being appointed in 2005. Before taking the top job at UNCTAD in 2005, Supachai was the WTO's Director-General for three years.

The term of the new UNCTAD chief will begin on 1 September and last for four years. Kituyi, who served as Kenya's trade minister from 2002-2007 and was a member of his country's parliament for over a decade, is currently the chief executive of the Nairobi-based Kenya Institute of Governance and a non-resident fellow at the Washington-based Brookings Institution's Africa Growth Initiative. The former Kenyan government official was reportedly under consideration for the UN agency's top post in 2009, before Supachai was nominated to serve a second term. Kituyi also briefly vied for the position of WTO Director-General in late 2004, in a race that ultimately went to current chief Pascal Lamy.

The news of Kituyi's UNCTAD nomination on 22 May was announced just days after the WTO formally concluded its own leadership contest, which saw Brazil's Roberto Carvalho de Azevêdo win the role of Director-General from a nine-candidate field. Some trade observers have speculated that the elimination of the WTO selection's two African candidates — Alan Kyerematen of Ghana and Amina Mohamed of Kenya — in the first round of that contest may have helped set the stage for someone from that continent to be chosen to head the UN trade and development body. While the WTO race dominated news headlines since it kicked off in December, the UNCTAD process has advanced much more quietly, with comparatively little information on who was vying for the role or what stage the selection was in.

The former Kenyan official's appointment comes at a time where many observers have questioned how best to keep the UN organisation relevant, and what role it should play in the ongoing global economic crisis. Questions were raised at last year's UNCTAD XIII conference, for instance, on whether it was duplicating the efforts of other international bodies, such as the Bretton Woods institutions, and whether the agency's work should be geared at tackling the causes — versus the effects — of the crisis. Before Supachai, previous UNCTAD Secretaries-General have hailed from Brazil, Ghana, Sri Lanka, Venezuela, and Argentina.

Patricia Francis, head of the International Trade Centre (ITC) — a joint WTO/UN technical cooperation agency — is also slated to step down from her post in June, having held the job since 2006.

Outgoing WTO Director-General Pascal Lamy and incoming chief Azevêdo, together with Supachai and Kituyi — assuming the latter is confirmed — have been tasked with making a joint recommendation to Ban as to who should take on the ITC role. However, the final decision on who shall serve as Francis' replacement will ultimately lie with the UN Secretary-General.

WORLD TRADE ORGANIZATION

Draft Bali decision on ag export subsidy cuts tabled

Developed countries should halve ceilings for budgetary spending on farm export subsidies in a decision at the WTO's ministerial meeting in the Indonesian resort of Bali this December, the G-20 group of developing countries has said.

The group, which seeks farm policy reform in the developed world, has said that the move would be a token step towards ending the controversial payments — widely seen as the most trade-distorting type of support to producers. Quantity commitment levels should also be cut to actual average levels in a 2003-05 base period, the G-20 also said.

WTO ministers agreed that farm export subsidies would be eliminated by 2013 when they met in Hong Kong nearly eight years ago — alongside parallel moves to curb other forms of "export competition." But slow progress on the broader Doha Round of trade talks, launched in 2001, has stymied efforts to phase the payments out. Ministers agreed that the Doha negotiations were at an "impasse" when they met in Geneva eighteen months ago, and said they would focus instead on small steps that could be fast-tracked as the basis for a broader accord.

"Another milestone missed"

The G-20 non-paper, which was submitted on 23 May, said that the group regretted that the 2013 deadline for ending farm export subsidies "is yet another Doha Round milestone to be missed." The group's proposal should therefore be seen as part of an "incremental approach" to achieving the more ambitious goal, according to a copy of the submission seen by Bridges. While the latest version of the draft Doha accord "continues to deserve the unwavering support of the G-20," the group was nonetheless willing to propose agreement on "intermediate" commitments for Bali, "in a spirit of flexibility and pragmatism."

Export credits: "intermediate" targets

The proposal therefore sets targets in a number of areas that are less ambitious than those included in the draft Doha "modalities" text, the most recent version of which dates from December 2008. Developed countries should immediately set maximum repayment terms at 540 days, the group proposed, while developing countries would have to do so no later than three years after implementation.

The original Doha accord would instead have set a maximum of 180 days for subsidised export credit repayments. However, the non-paper's sponsors do not set out in detail new disciplines for addressing any trade-distorting effects arising from the activities of exporting state trading enterprises or the provision of international food aid. In 2005, WTO members had agreed to address these in the Doha talks in parallel to negotiations on export subsidies and export credits.

"Overloaded" boat for Bali?

Trade sources said that the EU and US immediately opposed the G-20 non-paper. Some members of the G-10 group of countries with highly-protected and subsidised farm sectors were also reported to have expressed concerns: "The boat is already overloaded," warned one negotiator who expressed misgivings about the G-20 proposal. "If you add

one extra issue, you make things much harder," the source explained. Many trade officials have cautioned against adding too many items to the global trade body's agenda ahead of the ministerial conference, fearing that another high-profile failure could potentially deal a death-blow to the faltering Doha Round talks.

However, others cautioned against setting the bar for ambition too low: "This year, we're supposed to be eliminating fully export subsidies," another trade source said. Actual spending on agricultural export subsidies and export credits has dropped substantially from the levels seen in the 1980's and 1990's, when the European Community and US used these programmes to keep producer prices high at home by shifting surplus production off of domestic markets.

Trade facilitation: finding the balance

Some developing countries have argued that a Bali deal on trade facilitation — seen by many as a potential centerpiece of the ministerial gathering — would have to be complemented by action in other areas, such as agriculture, if it is to generate consensus amongst the organisation's membership. A proposal last year from the G-20 on tariff rate quotas was aimed at establishing this "balance," as was another submission on food stockholding and domestic food aid from the G-33 group of developing countries with large populations of smallholder farmers.

Trade sources told Bridges that countries such as India are making progress on trade facilitation conditional on corresponding action on their priorities — such as increased flexibility for developing countries to purchase food at administered prices when building food stocks or providing domestic food aid. Others reported that the US was also proving reluctant to entertain new proposals on other issues in the absence of faster traction on trade facilitation.

G-33 proposal: some convergence?

The chair of the agriculture negotiations, New Zealand ambassador John Adank, told a meeting open to all negotiators last Thursday that "elements of potential convergence have begun to surface" in two areas on consultations on the G-33 proposal. Countries might be willing to explore whether WTO members could agree to exempt a set of developing country farm programmes from subsidy limits, so long as these cause no more than minimal trade distortion, the chair said. They may also be willing to agree not to bring legal challenges to minimally trade-distorting support programmes under a possible "peace clause," perhaps along the lines of similar commitments made in the past.

However, members are "still very much divided" over any possible amendment to the Agreement on Agriculture, or an agreed interpretation of its provisions, in the run-up to the Bali ministerial. They were also divided over the utility of setting up some kind of case-by-case mechanism that could allow members with specific concerns to seek additional flexibility. "I know that some delegations will be disappointed that I am not able to report rather more definitive progress," Adank acknowledged. However, he proposed to continue holding further informal consultations "to identify more clearly the range of potential landing zones."

OECD meeting: negotiators look for a signal

Several trade officials told Bridges that they were hopeful that ministers meeting in the sidelines of an OECD event in Paris this Thursday and Friday might be able to provide some sort of signal on how to move forward in the talks. A number of ambassadors, including Adank, were due to attend, sources said. Both OECD members and some other countries would be there. "Maybe right now it's too early to make a compromise," mused one negotiator. Another concurred, telling Bridges that "the deal is always going to get done closer to the time." Negotiators will "have a better idea" of prospects for the ministerial by September, the source said..

Regional news

West Africa amends its market access offer

In a regional meeting held in Banjul, Gambia, from 6-10 April 2013, experts from West African states and regional organisations responsible for EPAs amended the market access offer initially put forward by West Africa in 2009. It has now increased from 70 percent to 74.8 percent, which brings it nearer the European Union's insistence that West Africa open its market by 80 percent over fifteen years. However, this new offer is the result of a feeble consensus, as many countries and players in civil society and the private sector are not convinced that it is relevant.

A few months earlier, in February, ECOWAS' Commission presented a simulation of market access offers in Accra to show that it was willing to be flexible and to prove its commitment to concluding the regional EPA. However, this simulation was not approved by the Member States, most of which estimated they needed more time to assess the impact the new offer would have on their national economies before giving their final opinion. They were therefore granted an additional month to complete their research and present their conclusions and positions at the Ministerial Monitoring Committee in Praia, Cape Verde, in March. However, this deadline proved too short for many countries that were unable to finish their studies. The ministers then asked ECOWAS to provide assistance to the states who requested it to complete their research.

Pursuant to the ministers' decision in Praia, the new offer will be sent to the ECOWAS Council of Ministers, which would need to approve it before sending it to the next Summit of Heads of State. Only after this it could be formerly presented to the European Commission, probably during the next round of negotiations.

In parallel with the work on the market access offer, West Africa has also made significant progress on two topics, in particular the common external tariff (CET). Indeed, the five-band tariff structure, which was adopted by experts in Abidjan in December 2012, was formally approved by the Finance Ministers in Praia, in March. The trade defence measures to accompany the implementation of the CET were also adopted by experts following a meeting in Dakar from 3-6 April, before being approved by the Finance Ministers. They cover anti-dumping measures, subsidies and countervailable subsidies, as well as safeguard measures. Along with the CET, these instruments should provide the necessary leverage to finalize the regional trade policy.

EAC-EU: Overcoming the remaining differences

The East African Community (EAC), like many other African regions, is also trying to overcome the remaining technical differences in order to adopt a set of political issues to send to the ministers during the final stage of the negotiations. The latest meeting of experts, which was held in Brussels at the beginning of May, re-examined the rules of origin and institutional provisions, among other issues.

In February, the chapter on support measures, also known as the "development" section, was adopted after lengthy and difficult negotiations. This chapter deals with the support measures from which EAC countries will benefit once the EPA has been implemented. This chapter, which represents a major issue for the EAC region, has now been concluded, following a few textual adjustments made after the meeting of experts. According to experts, adopting this chapter could be seen as a strong political message, showing that both sides are willing to turn the EPA into a real tool for development. It should also facilitate progress on other technical issues.

Indeed, during the latest session, experts successfully concluded the chapter on fishing, which was negotiated as part of the rules of origin. However, differences remain for other elements of the rules of origin, in particular the cumulation with other ACP states. The EU has reiterated its previous stance on this issue, supporting the idea that only ACP states who have signed an EPA will be eligible for cumulation. These technical issues are heightened by deeper, political differences that affect the MFN clause, full cumulation with South Africa, etc. These issues will be forwarded to the next meeting of senior officials.

Both the EAC and the EU are hoping to conclude the negotiations before the end of 2013. Few technical issues now remain, and the parties should come to an agreement if they can find solutions to the outstanding political issues.

In a meeting held in Kampala, Uganda, at the end of May, many players in civil society, members of parliament and government representatives called upon the EAC negotiators to focus on this issue. They urged the EAC to make sure that the intent to sign the regional agreement to maintain access to the European market for countries like Kenya did not hinder regional integration in East Africa.

ACP-EU Council of Ministers

The ACP-EU Council of Ministers took place from 6-7 June 2013 in Brussels, and relationships between both partners were dominated by the EPAs and renewing the European Development Fund (EDF). After the European Parliament set the deadline for signing and ratifying interim EPAs to the 1st of October 2014, the ACP countries deeply regretted the European Commission's insistence and the imposition of a unilateral deadline. In response to the criticism from ACP countries, the European Commissioner for Development, Andris Pielbags, stated that, since the deadline was only for interim EPAs and not full EPAs, it should be seen as a sign of appeasement.

However, the ACP countries did not seem convinced by this argument. The Co-President of the ACP-EU Council of Ministers, Botswana's Minister of Foreign Affairs, the Hon. Phandu Skelemani, highlighted the concerns of the CARIFORUM countries – the only area to have signed a full EPA – and other ACP states about the policy of differentiation, which might result in reduced funds for countries with better development performances. He believes that this differentiation could affect the long-term ability of these countries to implement EPAs. "The region is urging the EU to step up engagement on the remaining aspects of the negotiations which include a development cooperation chapter."

The Co-President of the ACP Council also regretted the risk of division inside ACP regions between LDCs (beneficiaries of the Everything but Arms Facilities, or EBAs) and non-LDCs, even though "it is necessary for both to move together and operate under the same regime with third parties, if successful regional integration is to be realized".

The issue of the EDF was also at the heart of the discussions. The ACP countries welcomed the adoption of the 11th EDF, which will have a financial allocation of 31,589 billion Euros. However, these funds will only be available at least a year after EU and ACP countries have adopted the revised Cotonou Agreement. Until the 11th EDF enters into force, the remaining balances of the 10th and previous EDFs and funds that have been allocated but not committed will be used. The Commission considered that funds should be accounted as an advance to the 11th EDF, whereas the ACP countries requested that they be provided in addition to it. They reached a consensus by agreeing to postpone the final decision on this issue. The financial envelope of the 11th EDF will be divided into two elements: (a) grants, in particular for national and regional indicative programmes, intra-ACP and inter-regional cooperation and the European Investment Bank (EIB)'s Investment Facility; and (b) loans from the EIB's own resources.

AU summit adopts a strategic plan

Member States of the African Union (AU) met in Addis Ababa, on 28-29 May, for the 21st summit of the committee, 50 years since the inception of its predecessor, the Organisation of African Unity (OAU). During this commemoration, the heads of state adopted the Declaration of the OAU/AU 50th anniversary along with a strategic plan for 2014-2017, which charts the course for short and medium-term development for a more integrated, prosperous, developed and peaceful Africa.

The summit's press release revealed eight priority areas for the commission. These areas include "inclusive economic development through industrialisation, infrastructure development, agriculture and trade and investment"; "peace, stability and good governance" and "strengthening the institutional capacity of the union and all its organs". The union's golden anniversary was labelled as timely by the declaration, which reintroduced the notion of 'pan-Africanism' at a time when African states are looking to decrease their dependence on foreign entities. .

SADC bloc rushes to meet EU trade deadline

Trade ministers from South African development community (SADC) states convened in Botswana, on 20 May in order make progress on establishing a comprehensive economic partnership agreement (EPA) with the European Union (EU) before next year's deadline.

Negotiations are made difficult due to the diversity in economic development of the SADC members, who therefore have different needs. Moreover, certain contentious areas impede consensus, including negotiations on rules of origin, infant industry protection and the application of the controversial most favoured nation principle (MFN).

All parties are understood to be working to finalise a deal on the trade in goods before moving on to negotiations on services and investment; issues of government procurement, intellectual property rights, competition and sustainable development; a more complex set of issues which lie at the route of the current stalemate.

The newsroom

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Diamonds aren't forever

The international body responsible for curbing the trade in conflict diamonds — The Kimberly Process Initiative — recommended a temporary embargo on diamond exports from the Central African Republic (CAR), due to suspicions of them being used to finance conflict by the new regime directed by the Seleka rebels.

According to a source from the Wall Street Journal, the Kimberley Process has advised member states and the diamond industry to refuse diamonds exports from the CAR until a fact-finding mission can be sent to the country to assess the situation.

Rebels overthrew the government of the CAR in March and suspicions have arisen that the Seleka movement that deposed President François Bozizé may have been, and continues to be, funded by the diamond trade.

The Kimberley Process Certification Scheme (KPCS) is a process established in 2003 to prevent "conflict diamonds" from entering the mainstream rough diamond market.

EU-ESA discuss EPA implementation

The second high-level meeting under the Interim Economic Partnership Agreement (EPA) for Eastern and Southern Africa (ESA) took place on 14-15 May 2013. A year after Mauritius, the Seychelles, Madagascar and Zimbabwe started implementing this agreement with the European Union, discussions revolved around development cooperation and customs issues, tariff commitments and rules of origin. A joint communiqué summarised the meeting as taking place in a "very cordial atmosphere", and current progress was celebrated.

The EU started eliminating tariffs and quotas for ESA products since 2008, a process both parties declare to have mutually benefited from. Discussions welcomed progress in several areas, insisting on the importance of tariff reduction. They also proposed to tweak the Harmonised System, a coding system aiming to standardise tariff nomenclature across traded products. In addition, the parties agreed on an EPA fund, with an option of fast-tracking support for urgent short term needs of ESAs.

Three billion dollar boon for African smallholders

According to a recent [report](#), 800,000 small scale farm enterprises have benefited from 3 billion dollars' worth of private investment over the last two years.

The achievement has been claimed by the Grow Africa partnership, a development aid funded vehicle focused on fostering investable environments to enterprises across the continent.

Ninety companies managed to secure investment, with a vast majority of smallholders, sourcing approximately 270,000 metric tons of commodities.

This comes as good news for the continent, as endeavours to improve access to funds to these groups are on the international agenda. The partnership now aims to scale up activities to reach the colossal half billion smallholders who still struggle with access to fund their operations.

Nigeria chosen as host for WEF 2014

The closing statement of the 23rd edition of the World Economic Forum held in Cape Town saw the announcement of Nigeria as the next host of the talks. Approximately 800 delegates from 70 countries are expected to congregate in Abuja in May of next year, a first for West Africa.

The announcement does much to highlight growing confidence in the international community about the country's readiness to embrace its economic and trade potential. Despite the challenges presented by ongoing governance issues, high corruption levels, lack of infrastructure, and transparency, the coordinating minister of the economy and of finance, Dr Ngozi Okonjo-Iweala, insisted on Nigeria's qualities as a proactive force in the region.

Increasing interest in WEF Africa ensures a decent exposure for host countries, and by accommodating the forum, Nigeria hopes to attract investment, tourism and cement its place on the continent as a beacon for economic growth and entrepreneurship.

Fiji PM lambasts prospect of EPA deal delay

The current Prime Minister and minister of trade for Fiji, Aiyaz Sayed-Khaiyum, insists that Pacific and African Caribbean and Pacific (PACP) countries cannot afford any further delays on negotiating an EPA with the European Union. Addressing PACP trade ministers in Nadi, Fiji, at a two day event ending on 17 May, Sayed-Khaiyum encouraged ACP members to work together on a favourable deal.

The EU criticised the inflexibility shown by the Pacific countries concerning negotiations over fisheries, questioning the effectiveness of the conservation measures applied in the fleets owned by the Pacific countries.

There are concerns amid Pacific countries that without a full and definitive deal, PACP countries would be liable to lose their trade relations with the EU.

Negotiations have been ongoing for the past 10 years, and the LDCs are pushing for a comprehensive deal to be struck before the end of this year.

Improved patent rules could unleash CETs

Clean Energy Technology (CET) patents, which could unlock carbon free growth in Africa, are currently undermined by a lack of legal frameworks for intellectual property rights. According to a new United Nations Environment Programme (UNEP) and European Patent Office (EPO) joint publication, Africa's share in the patent application pool for Clean Energy Technologies (CET) represents less than 1 percent of the total.

Africa has a colossal amount of untapped renewable energy resources, its hydroelectric power alone would be enough to provide for the continent as a whole, even with some surplus for export. Hydropower currently remains the most prominently used, but only uses 4.3 percent of the continent's total capacity.

One of the key means to achieving this is technology transfer, currently impeded by a lack of intellectual property right enforcement. As a result, companies are currently reluctant to offer knowledge necessary for CET implementation. However, patent application rates in Africa between 1980 and 2004 have been higher than the global average, at 5 percent and 4 percent respectively.

African Economic Outlook report for 2013

The African Economic Outlook (AEO) 2013, published on 27 May, focuses on the dual theme of structural transformation and natural resources. It underlines Africa's growth potential amid a stagnating global economy, epitomised by Europe's ongoing recession and fiscal uncertainty in the US. Africa's GDP grew by 6.6 percent in 2012, a 3.1 point improvement on the previous year.

As far as trade is concerned, the report summarises the feeling that regional trade agreements must be implemented quickly, in order to improve the continent's bargaining position in international trading negotiations, particularly for the smaller nations.

Self-sufficiency continues to be elusive, as external assistance — from Official Development Assistance, remittances and Foreign Direct Investment — constitutes majority of development finance.

As a fragile continent, observers will look to improve human rights concerns, increasing education, democracy and literacy levels.

EU/ACP tug of war over sugar quota deadline

The EU Agriculture and Fisheries Council, at a meeting in Brussels on 18 March 2013, proposed to advance the deadline ending sugar quotas for Africa, Caribbean and Pacific countries (ACP). The 2020 deadline previously suggested by the European parliament has been pulled back to 2017 by the European council, whereas the EU commission would even prefer 2015. Negotiations will continue until 20 June in order to confirm an exact date.

Sugar quotas are decided within the Single Common Market Organisation (SCMO) where producers benefit from an EU-funded scheme intended to assist crop growers. Quotas limit the guarantee on price for set quantities of sugar.

The ACP/LDC countries feel that the 2017 deadline is too short to allow for adaptation, modernisation, diversification and improvement of their competitiveness.

However, according to the head of soft commodities of Ecobank — a commercial entity operating in several African regions — the end of sugar quotas could encourage further intra-African trade in sugar given Ethiopia and Nigeria's current plans to increase production.

Publications and resources



Local Content Requirements and the Renewable Energy Industry – A Good Match? – ICTSD – June 2013

Can local content requirements (LCRs) contribute to more effective sustainable energy policy? In spite of being prohibited by global trade rules, LCRs are on the rise. The authors of this paper suggest that this is perhaps more for political than economic reasons. An examination of the LCRs in two national energy policies provides insights into the drivers of current policies and analysis that will help policymakers understand key economic variables in designing effective sustainable energy policy. As a valuable piece of research, it has the potential of informing innovative policy responses on sustainable energy trade initiatives and will be a valuable reference tool for policymakers involved with LCRs as well as trade negotiators. <http://bit.ly/13iNqgB>



ICTSD Profile 2013: Pursuing Sustainability in the Global Economy – ICTSD – May 2013

International policy frameworks can be powerful drivers of systemic change. Since 1996, ICTSD has worked with policymakers, advocates and business, and leading thinkers globally and regionally to ensure that trade related policies contribute to a fairer and more sustainable global economy. The ICTSD Profile 2013 offers a strategic view of this complex and evolving landscape of policy development and shows how ICTSD and a global network of actors collaborate to achieve these objectives. <http://bit.ly/193xLoD>



Technical Note: The LDC TRIPS Transition Extension and the Question of Rollback – ICTSD – May 2013

When the WTO agreements entered into force in 1995, least developed countries (LDCs) were given until 1 January 2006 to implement the obligations contained in the then-newly adopted TRIPS Agreement. In 2002, the LDC transition period was extended until 2016 for pharmaceutical patents, with a later decision in 2005 extending the period for all intellectual property rights until July 2013. The 2005 decision also had a “no roll back provision” providing that LDCs should not implement policies during the transition period with a “lesser degree of consistency with the provisions of the TRIPS Agreement.” This Policy Brief prepared by Frederick M. Abbott, Edward Ball Eminent Scholar Professor of International Law, Florida State University College of Law, USA, considers the technicalities of the no-rollback issue bearing in mind the legislative history of the TRIPS Agreement and its implications for LDCs. One concluding observation is that the central concern for LDCs is promoting the creation of their technological base. <http://bit.ly/13iF3k0>



How Uncoordinated Biofuel Policy Fuels Resource Use and GHG Emissions – ICTSD – May 2013

In recent years, global trade in biofuels has grown dramatically, albeit against a background of highly distorted markets for agricultural goods and for energy, and in a context of weak global governance for environmental public goods. While the development of the biofuels sector has helped generate new economic opportunities, it has also led to some unforeseen economic, social and environmental outcomes, including in the area of greenhouse gas emissions. Policy-makers in various countries are currently exploring how best to reform current policies and targets so as to improve environmental outcomes, while ensuring coherence with broader public policy goals such as the need to reduce poverty, enhance food security and expand access to energy and improved technologies. <http://bit.ly/18KEwL1>

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