



## Signing of the Interim Economic Partnership Agreement

### INTRODUCTION

Trade agreements between nations in the 21<sup>st</sup> century rest ultimately, as they always have, on national economic and political self interest. In recent public discussions regarding the negotiation of the Interim Economic Partnership Agreement (IEPA) with the European Union there has been considerable recrimination about who has been responsible for the signing and the subsequent division of the South African Development Community (SADC) negotiating group (Angola, Botswana, Lesotho, Namibia, Mozambique, South Africa and Swaziland). However, there have been few attempts to understand what are the interests of the respective parties. There are two kinds of interests that are pursued in any trade agreement. The first is economic, where national commercial and financial interests are pursued, while the second are equally valid and legitimate geopolitical and strategic interests. This BIDPA Brief will consider primarily the commercial considerations in the signing of the IEPA on the 4<sup>th</sup> June 2009 in Brussels, but these inevitably overlap with Botswana's sovereign political interests<sup>1</sup>. While the Brief considers the positions of other parties it aims to analyze the negotiations from the perspective of Botswana's interests.

### WHY WAS THE EPA NECESSARY?

Since 1975 all the ACP countries traded with the European Union (EU) under the Lome Convention which, in 2000 became the Cotonou Agreement. Both agreements provided virtually duty free access for most exports from the African, Caribbean and Pacific (ACP) countries. But this did not provide duty free access for EU goods coming into the ACP. With the advent of the World Trade Organization (WTO) the preferences that the EU had granted to the 77 ACP states were no longer WTO compatible as they had been granted to the ACP group and not to the more competitive Latin American and Asian countries of an identical development status.

In a landmark case in 1995 a WTO panel or court struck down the Lome Trade preferences in a dispute brought by, amongst others, Latin American banana exporters who did not receive the same market access for their bananas to the EU market as ACP exporters. The Latin Americans argued, to the satisfaction of the panel, that they are developing countries just like the ACP states and that there was no legal basis for discriminating against their bananas. The EU then sought and received a temporary waiver until the end of 2007 which allowed time to negotiate a WTO compatible regime. The only way the EU could continue the preferences that had existed since 1975 to the ACP was either to extend the ACP preferences to all developing countries, which it was unwilling to do for commercial reasons, or to negotiate a free trade area with the ACP regions. A free trade area would mean that developing countries like Botswana would have to eliminate their tariffs on substantially all EU imports. As South Africa

had already negotiated a free trade agreement called the Trade and Development Co-operation Agreement (TDCA) with the EU in the 1990's duties on EU imports were largely free and this had serious implications for all SACU members which included Botswana. For least developed countries (LDCs) like Lesotho or Angola, which are part of the SADC negotiating group, there was a special arrangement, called the 'Everything But Arms' initiative which allowed these countries to continue to have duty free access but this was extended to all the world's LDCs.

The negotiation of the Economic Partnership Agreement (EPA) which began in earnest in 2002 had to legally end by 2007 because of the expiry of the WTO waiver for EU preferences under the Cotonou Agreement. The EU has consistently argued publicly that from their perspective the benefit of the EPA to them was the increased regional integration in Africa and accelerated development. This would in turn create a larger market for EU exports. By the end of 2007, when the WTO waiver expired there had been no agreement between the SADC countries and the EU on the full EPA and so the EU proposed an Interim Economic Partnership Agreement (IEPA) which would allow continued market access for the existing export products from the ACP countries. Under considerable pressure this agreement was initiated in 2008 by Botswana, Lesotho, Namibia and Swaziland.

### WHAT ARE BOTSWANA'S COMMERCIAL INTERESTS IN THE EPA?

Approximately 75-80% of Botswana's total exports go to the European Union and on that basis alone one would logically expect that a trade agreement which would grant duty free access to the EU markets could be expected to be very valuable. However, as shown by Table 1 below, 94% of EU imports from Botswana are diamonds and nickel which would enter the EU market duty free whether the IEPA was signed or not<sup>2</sup>. The only product which is of significance to Botswana within the context of the IEPA at the moment is beef as it has been since the beginning of the Lome Convention. It is here that the preferential access to the EU market is most crucial. Since independence Botswana has had a quota based access to the EU market of 19,000 tonnes a year which it was never able to fill.

<sup>2</sup>It is important to note that in 2007, 90.7% of Botswana's exports to the EU went to the UK.

**Table I**  
**EU imports from Botswana- 2007**

EU27 import code	from Botswana	% total of country	cumul. % total exp	1000 euro	Share of Extra-EU	tons
7102	DIAMONDS, WHETHER OR NOT WORKED, BUT NOT MOUNTED	92,2%	92,2%	812.249	5,2%	2
0201	MEAT OF BOVINE ANIMALS, FRESH OR CHILLED	3,2%	95,4%	28.602	2,6%	5.475
2604	NICKEL ORES AND CONCENTRATES	1,6%	97,0%	13.797	1,7%	9.738
0202	MEAT OF BOVINE ANIMALS, FROZEN	1,4%	98,4%	12.771	2,9%	4.977
<b>total import from Botswana</b>		<b>100%</b>		<b>881.301</b>	<b>0,06%</b>	

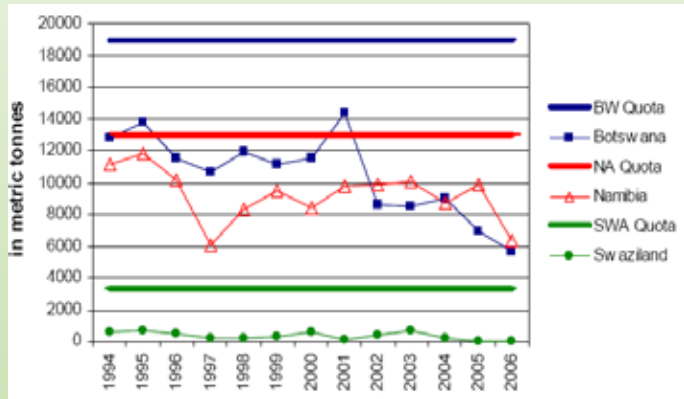
Source: Eurostat

<sup>1</sup>Mozambique signed the IEPA in Maputo on the 15<sup>th</sup> June 2009

The access for Botswana beef has been accepted widely as the main economic benefit of the Interim EPA, but what is it actually worth to Botswana? What the EU offered Botswana (and Namibia, which is similarly dependent upon beef) is duty-free quota free access. However, the benefit to Botswana of the improved market access in the IEPA which provides for quota free access is financially limited, as Figure 1 demonstrates. This was because Botswana's beef exports to the EU were already largely duty-free. Based on the 2006 data, the Overseas Development Institute (ODI) together with BIDPA had calculated that the increased benefit to Botswana was about P8 million from then improved market access for Botswana beef under the duty free quota free access. This was the 'carrot' in the negotiations leading up to the initialing in 2007-8 of the IEPA. However, increased market access is of little value to the three countries in the region which had limited quota based market access under the Cotonou agreement. Neither Botswana nor Namibia nor Swaziland had ever been able to fully utilize the generous quota that existed under the Cotonou agreement and the Lome Convention before that. The reason why they failed to do so was because there was no supply capacity to meet the quota. Thus the increased market access assured in the Interim EPA would mean very little for Botswana given the supply side constraints facing the industry, unless these constraints could be addressed and removed.

Figure 1

**Botswana, Namibia and Swaziland Beef access and trade with the EU under the Beef Protocol**



Source: ODI, 2007

The 'stick' in the trade negotiations with Europe (the loss of market access if Botswana did not sign) was considerably larger than the carrot (the improved access if Botswana did sign). According to the ODI/BIDPA study, Botswana stood to lose P120 million if it refused to initial the IEPA at the end of 2007. Not initialing the Interim EPA would have resulted in Botswana beef being subject to much higher import duties and essentially having the same market access to the EU as larger and much more competitive exporters such as Brazil and Argentina as is seen in Table 2 below. **There is a consensus amongst analysts that Botswana gained very little extra in terms of effective market access from the IEPA but had Botswana not initialled the EPA in 2007 it would have effectively lost the existing market access for its beef into Europe as it would have been unable to compete.** More significantly this would have almost certainly resulted in a decrease in producer prices for Botswana cattle as no regional market apart from South Africa would have been able

to absorb the excess capacity. This in turn could have depressed beef prices in South Africa. From the vantage point of assuring the beef trade, as well as alleviating rural poverty Botswana had no choice but to sign the IEPA with the EU.

Table 2

**Imports and Tariffs for Beef Products in the EU**

Partner	Imports 2006		EU tariff 2007		Duty Payable (€000)		Advalorem equiv.		ACP post-Cotonou (e)
	Value (€000)	Volume (1000kg)	In-quota (c)	Out-of-quota	Current (a)		Current (a)		
					In-quota (d)	out quota	In-quota (d)	out quota	
<b>CN 02013000: fresh or chilled bovine meat, boneless</b>									
Brazil	419,622	731,769	20%	12.8%+303.4€(b)	83,924	275,730	20%	66%	
Argentina	345,042	478,241	20%	12.8%+303.4€(b)	69,008	189,264	20%	55%	
Uruguay	90,874	138,866	20%	12.8%+303.4€(b)	18,175	53,764	20%	59%	
Australia	46,750	81,023	20%	12.8%+303.4€(b)	9,350	30,566	20%	65%	
Namibia	23,110	44,451	0%+24.2€(a)	0%+303.4€(b)	1,076	13,486	5%	58%	71%
Botswana	19,574	36,668	0%+24.2€(a)	0%+303.4€(b)	887	11,125	5%	57%	70%
Chile	7,746	14,818	0%	12.8%+303.4€(b)	-	5,487	0%	71%	
New Zealand	7,418	11,813	20%	12.8%+303.4€(b)	1,484	4,534	20%	61%	
Canada	5,914	6,729	20%	12.8%+303.4€(b)	1,183	2,799	20%	47%	
<b>CN 02023050: frozen bovine boneless crop, chuck and blade and brisket cuts</b>									
Brazil	12,172	58,806	20%	12.8%+221.1€(b)	2,434	14,560	20%	120%	
Namibia	2,882	14,894	0%+17.6€(a)	0%+221.1€(b)	262	3,293	9%	114%	127%
Botswana	2,630	9,520	0%+17.6€(a)	0%+221.1€(b)	168	2,105	6%	80%	93%
Uruguay	600	2,696	20%	12.8%+221.1€(b)	120	673	20%	112%	
Argentina	427	1,635	20%	12.8%+221.1€(b)	85	416	20%	98%	
Thailand	54	250	20%	12.8%+221.1€(b)	11	62	20%	115%	
New Zealand	12	45	20%	12.8%+221.1€(b)	2	11	20%	97%	
<b>CN 02023090: frozen bovine boneless meat (veal, forequarters, whole or cut into a maximum of five pieces, each quarter being in a single block "compensated" quarters in two blocks, one of which contains the forequarter, whole or cut into</b>									
Brazil	288,866	834,361	20%	12.8%+304.1€(b)	57,773	290,704	20%	101%	
Uruguay	46,555	109,898	20%	12.8%+304.1€(b)	9,311	39,379	20%	85%	
Argentina	20,813	55,209	20%	12.8%+304.1€(b)	4,163	19,453	20%	93%	
New Zealand	9,209	12,305	20%	12.8%+304.1€(b)	1,842	4,921	20%	53%	
Botswana	1,508	6,310	0%+24.3€(a)	0%+304.1€(b)	153	1,919	10%	127%	140%
Namibia	802	2,677	0%+24.3€(a)	0%+304.1€(b)	65	814	8%	101%	114%

Notes: (a) calculated on the value/volume of 2006 imports.  
 (b) per 100kg net  
 (c) applies to high-quality (CN 0201300010) only  
 (d) ACP duties/AVEs shown are for within ACP Protocol quotas only, not any global quotas which may apply  
 (e) assuming MFN rate, out-of quota

Sources: (trade) downloaded from Eurostat COMEXT database (<http://fd.comext.eurostat.ec.eu.int/txtweb/>) 08 June 2007 and (tariffs) from EU Taric Consultation ([http://ec.europa.eu/taxation\\_customs/dds/cgi-bin/tarchap?Lang=EN](http://ec.europa.eu/taxation_customs/dds/cgi-bin/tarchap?Lang=EN), 8 June 2007); UK Tariff, 2007 Edition.

**If the Interim EPA is just about improved market access why didn't Angola, Namibia and South Africa initial the Interim EPA?**

If, as appears to be the case Botswana initiated in 2007 why didn't Namibia, in particular, sign the IEPA as it has similar commercial interests? The SADC IEPA was supposed, if the EU public relations is to be believed, to foster regional integration and development. Reality has proven to be pretty far from this rosy picture and the IEPA has arguably done more to divide the SADC region than any other economic issue in its history. In theory Angola, Botswana, Lesotho, Mozambique, Namibia, South Africa and Swaziland were part of the SADC group and could have initialled, signed and then ratified the IEPA. In practice four countries have with Mozambique signing in Maputo on the 15<sup>th</sup> June. Angola, Namibia and South Africa (the so-called ANSA group) have all not signed for quite different reasons. Clearly they do not see it in their commercial interest. **Angola** is a least developed country and exports oil which is largely duty free in any case and has duty free access under the so-called 'Everything-But Arms' arrangement for least developed countries. Angola therefore simply stands to benefit little from the IEPA. The EU's stick did not apply to them. **South Africa** had a perfect shield against what it saw as an IEPA that offered them no increased market access of any significance while imposing severe restrictions on the conduct of trade policy that will be discussed below. This was the fact that under President Mandela it had negotiated an extremely generous free trade area agreement with the EU in the 1990's, called the Trade and Development Co-operation Agreement (TDCA). Indeed trade negotiators often explain the apparent and unprecedented generosity of the EU during the negotiations of the TDCA as being caused by the 'Mandela factor'. Thus South Africa already had free trade access for many, but not all, of the products it wanted in the EU market and saw no further benefit in the market access being offered by the EU in the IEPA and therefore did not wish to sign because



many of the provisions of the IEPA would restrict its right to conduct trade policy in future.

The curiosity remains **Namibia**. As can be seen from Table 3 below there are a number of commodities that were of vital importance to Namibia and market access will certainly be harmed by the failure to sign an Interim EPA. These products include fish where the margin of preference ranges up to 24%, beef where it is 20% and grapes. These are all preference dependent exports and therefore one would logically expect an immediate move to signing after having initialed the agreement in late 2007.

third parties or amend existing agreements without the consent of other Member States’.

This ultimately provides the BLNS with a veto on South African trade policy. The legal question is whether South Africa and Namibia ‘consented’ to the other SACU members to initial the IEPA in the first place in 2007<sup>3</sup>. The view in Gaborone is that all SADC members including South Africa, were consulted and there was a general agreement that those SADC members that felt they needed to sign the EPA should do so. Certainly nothing emanating from official sources in Pretoria thus far indicates that South Africa views the signing as a fundamental violation of Article 31.3.

**Table 3**

**EU Imports from Namibia- 2007**

EU27 import rs4 from Namibia	% total of country	cumml. % total exp	1000 euro	Share of Extra-EU	tons
7901 UNWROUGHT ZINC :	27,7%	27,7%	265.628	13,8%	99.357
7102 DIAMONDS, WHETHER OR NOT WORKED, BUT NOT MOUNTED	26,6%	54,2%	254.699	1,6%	0
0304 FISH FILLETS AND OTHER FISH MEAT, WHETHER OR NOT MIN	16,7%	70,9%	159.784	3,8%	46.931
7402 COPPER, UNREFINED, COPPER ANODES FOR ELECTROLYTIC R	6,1%	77,0%	58.213	7,2%	11.118
0303 FROZEN FISH (EXCL. FISH FILLETS AND OTHER FISH MEAT OF	4,9%	81,9%	47.196	3,2%	16.107
2844 RADIOACTIVE CHEMICAL ELEMENTS AND RADIOACTIVE ISO	4,1%	86,0%	39.034	0,8%	909
0201 MEAT OF BOVINE ANIMALS, FRESH OR CHILLED	2,5%	88,5%	24.245	2,2%	5.377
0302 FISH, FRESH OR CHILLED (EXCL. FISH FILLETS AND OTHER FI	2,3%	90,8%	22.296	1,0%	4.660
0806 GRAPES, FRESH OR DRIED	2,2%	93,0%	21.277	1,7%	11.483
2529 FELDSPAR, LEUCITE, NEPHELINE AND NEPHELINE SYENITE; F	1,9%	94,9%	18.322	6,7%	112.673
2516 GRANITE, PORPHYRY, BASALT, SANDSTONE AND OTHER MO	0,9%	95,8%	8.333	1,2%	26.288
4104 TANNED OR CRUST HIDES AND SKINS OF BOVINE TNCL. BUFF	0,8%	96,6%	7.517	0,6%	4.452
4301 RAW FURSKINS, INCL. HEADS, TAILS, PAWS AND OTHER PIEC	0,6%	97,2%	5.621	4,0%	14
0202 MEAT OF BOVINE ANIMALS, FROZEN	0,5%	97,7%	5.206	1,2%	2.674
<b>total import from Namibia</b>	<b>100%</b>		<b>959.229</b>	<b>0,07%</b>	

Source: Eurostat

If Namibia is even more widely dependent upon EU preferences for its trade than Botswana the interesting question remains why it did not proceed to sign the IEPA when the EU demanded it? There are at least two possible explanations for Namibia’s refusal to sign the EPA, which after having initialed the agreement last year leaves Namibia vulnerable to the decision of Brussels as to whether they will continue to extend trade preferences or not. The most widely held explanation is that Namibia, like South Africa expected the IEPA to contain the changes that had been agreed to by Baroness Ashton at the ministerial meeting in Namibia in March this year. The IEPA did not contain these provisions. The second explanation is that Namibia is even more concerned with its commercial and financial relations with South Africa and places a greater importance on access for its beef into the South African market and the SACU revenue formula than do the other BLNS states.

## THE SACU REVENUE FORMULA AND THE EPA

In 2002 the five members of the Southern African Customs Union completed a historic rewriting of their now 99 year old customs union treaty which was the first since the end of the apartheid era. Largely as a result of what was perceived by Botswana, Lesotho, Namibia and Swaziland (the BLNS) as the unilateral South African signing of the TDCA with the EU in 1999 they demanded the inclusion of Article 31.3 which stated that:

‘No Member State shall negotiate and enter into new preferential trade agreements with

SACU is a customs union and therefore by definition that means that there can only be **one** common external tariff<sup>4</sup>. There cannot be two or more, no matter what political leaders may decide. With more than one external tariff SACU, by definition, ceases to be a customs union. South Africa now trades with the EU under the terms of the TDCA but Botswana, Lesotho and Swaziland trade under the terms of the IEPA. Namibia, at the time of writing, is understood to have an ambiguous relationship with the EU imposing duties on goods coming into Walvis Bay while accepting duty free access for EU products entering overland from South African ports. Unless the two agreements ie the TDCA and the final EPA are in effect identical there is no longer a SACU customs union. There is a declaration in Annex 3 of the IEPA which aims to facilitate the alignment of tariffs between the IEPA and the TDCA. However, as South Africa is not party to this agreement and virtually all trade with the BLS, which are landlocked, occurs through South African ports and airports, unless South Africa agrees to implement the harmonisation then there can be no harmonised external trade regime.

However, the problem of a common trade regime goes deeper than just the question of tariffs. The BLS have agreed under the IEPA to extend to the EU access equivalent to that which they will provide to any other third party ie what is called Most Favoured Nation. So what happens if SACU completes negotiations with India or China, for example. Will the BLS provide equivalent access to the EU and will South Africa and Namibia refuse? More importantly how will this be implemented? Suddenly SACU, despite all the political will in the region, looks very vulnerable and fragile and the EU, has through the IEPA greatly weakened and not strengthened regional integration in Southern Africa as it promised at the beginning of the EPA negotiations.

Given the weakening of SACU, the reluctance of a very preference dependent Namibia not to sign the IEPA remains all the more mystifying. However, what is vital to understanding the position is an understanding of the dependence of all the BLNS on the SACU revenue formula.

<sup>3</sup>Perhaps more significant than the possible failure of some SACU members to comply with Article 31.3 of greater significance is that all SACU members failed to implement the provisions of Article 31.2 which states:

Member States shall establish a common negotiating mechanism in accordance with the terms of reference to be determined by the Council in accordance with paragraphs 2 and 7 of Article 8 for the purpose of undertaking negotiations with third parties.

<sup>4</sup>There are bilateral treaties such as the Botswana-Zimbabwe Agreement which have been grandfathered in the 2002 SACU agreement. Strictly speaking these created two trade regimes but these bilateral agreements were always of minor economic importance until the time of the TDCA which was with a very substantial trading partner.



The following revenue estimates made by Professor Flatters and Dr Stern in Table 4 below, while dated show the extent of dependence in 2006.

**Table 4**

**Receipts from SACU Revenue Pool – 2006**

	Excise	Devel'mt	Customs	Total	Total % of GDP	Total % Gov Rev	Total per Capita
	R million						
<b>Botswana</b>	586	483	4565	5634	9.0	20.1	3,692
<b>Lesotho</b>	85	560	2191	2836	28.2	53.0	1,398
<b>Namibia</b>	357	523	4584	5463	12.2	41.0	2,695
<b>Swaziland</b>	152	534	3023	3708	24.1	56.9	4,256
<b>South Africa</b>	13512	493	3620	17625	1.0	3.9	666

Source: Flatters and Stern (2006)

SACU revenue formula has three components, based on a share of excise and customs revenue and third equalisation component to aid with development. As is evident the poorest of the SACU members, Lesotho receives the greatest relative benefit. While the data in table 4 is somewhat dated it shows the dependence of all three IEPA signatory countries on the revenue provided by SACU. Namibia's behaviour vis-a-vis the IEPA could be explained by a perception of greater risk to its revenue than the other BLNS and hence has not moved without South Africa. Why this was not the case in other BLS states which are even more dependent remains unknown.

Botswana's dependence on the SACU revenue has grown steadily over time. By 2008 Botswana's dependence on SACU revenue had grown to 27% of total revenue in the 2007/8 budget and is estimated by the Bank of Botswana to rise again to 29% in the 2009/2010 budget. As a result of the global downturn and its impact on diamond exports the transfers from Pretoria of SACU revenue will be Botswana's single largest source of revenue in 2010. How important SACU revenues will be in the longer term ultimately depends upon how quickly Botswana's diamond sector recovers from the global recession.

**Table 5**

**Effective and Nominal SACU duties**

	Rate
Nominal Average SACU Tariff (2007)	7.8%
Trade Weighted Average (2006) <sup>a/-</sup>	6.4%
Estimated Effective Rate of Customs Duty – Botswana (2007/8) <sup>b/-</sup>	21%

Source WTO - Tariff Profiles, Bank of Botswana Annual Report, author's calculations a/- based on South African estimates b/- calculated as the estimated customs revenue divided by total imports. Estimated customs duties is determined by applying ratios of customs to total SACU transfers from Table 4 above.

**Botswana accounted for some 4.5% of total SACU GDP in 2006/7 but received almost 25% of the customs revenue from the SACU customs pool while South Africa which accounted for 92% of the SACU GDP received only 20%. Why is this the case? It is because the revenue sharing formula for customs revenue is based on a share of intra-SACU imports**

and not a share of global imports or GDP. South Africa imports very little from the other SACU members while Botswana and the other BLNS import most of their goods from South Africa. The

formula thus benefits Botswana and the other BLNS because of their dependence on South African imports. As a result, if Pretoria were to abandon the SACU revenue formula and raise customs revenue itself thereby leaving the BLNS to collect their own revenue it would have somewhere between Rand 11-13 billion more in tax revenue. Moreover, if the extra 2 billion rand which is provided as the so-called 'development component' were also eliminated the gains to Pretoria from the elimination of the SACU formula would rise to 5-6% of South African GDP. This has become a source of significant commercial tension between Pretoria and the BLNS. In Pretoria this is now seen as a massive and unsustainable income transfer to its SACU partners. In the BLNS it is seen as rightful

compensation for the cost raising effect of the SACU tariffs, for a tariff regime that has been historically skewed in the interests of South African producers and a polarized customs union where almost all production occurs in South Africa.

Arguably, the very acceptance of so favourable and skewed a revenue formula by South Africa during the renegotiations of the SACU agreement constituted a de facto recognition by Pretoria of the historical inequities of the old SACU to the BLNS and the constraints it placed on BLNS development. Indeed it is difficult to think of another credible explanation for Pretoria's agreement to a revenue formula that has created such a burden on its treasury. However, what is clear from the data is that all BLNS countries are as a result, to a greater or lesser degree, financially dependent upon the SACU revenue formula and by extension Pretoria's acceptance of this formula.

What Table 5 above indicates is that while Botswana's import duties are 7.8% of imports, what it actually earns from customs revenue is approximately 21% of imports. This is a direct result of the SACU formula and Table 5 implies that in the absence of SACU and the revenue formula Botswana would have to raise a level of import duty equivalent to 21% of imports in order to assure that there is no loss of government revenue. Botswana, based on the above figures, would have had to collect approximately 3-4 billion Pula extra in 2007 if import duty collection based simply upon the share of GDP rather than on the SACU formula. It should also be recalled that Botswana received approximately 500 million rand transfer from Pretoria automatically as the 'development component' of the SACU formula.

If SACU were to break up, and this must be seen as a distinct possibility if South Africa chooses not sign the final EPA, and Botswana were to have to collect its own revenue then strengthening the Botswana Unified Revenue Service (BURS) would be imperative. Moreover, the administrative and financial burden of raising customs revenue would certainly rise. However, some 80% of originating imports come from South Africa and those that are originating in the SACU region are currently duty free and would presumably continue to be so in future under SADC. It would therefore be necessary for Botswana to either impose very much higher tariffs on the remaining non-SACU import base to raise the current level of duty or alternatively impose tariffs on South African and other SACU imports which would have serious ramifications for the economy and external relations with South Africa, the other BLNS states as well as all SADC members.



**The other far more probable but unpalatable alternatives available to the government of Botswana in the event that SACU broke up would be to significantly raise value added tax or income tax to compensate for the loss of SACU revenue.** This is especially so given that South Africa and Botswana, along with other SACU members are also signatories to the SADC Trade Protocol as well as the SACU Agreement. The SADC Trade Protocol, which is a free trade agreement, will severely limit Botswana's policy space in terms of using tariffs to either raise revenue or increase protection against South African imports in the event that SACU broke up.

## CONTENTIOUS ISSUES IN THE INTERIM EPAS

A number of issues remain unresolved between the European Community (EC) and SADC member states (and other African countries) which have stalled progress in the EPA negotiations and have led South Africa, in particular to not initial or sign the IEPA. There is a major concern that this may result in regional disintegration as other members do not ratify the final agreement and opt out in response to their dissatisfaction with the terms of the agreement. Some of the controversial issues were discussed and agreements reached at the Ministerial meeting held in Namibia in March 2009. These include:

- Removal of duties and restrictions/bans on exports: the EC wanted all the ACP countries, including SADC to freeze/remove and not impose new export taxes or restrictions as these will restrict the supply of raw materials to its industries. However, as argued by Namibia, export taxes currently applied aim to discourage the export of raw materials and to encourage local industries to add value to their products before export (in line with the country's industrial or diversification policy).
- Food security
- Infant industry protection
- Free circulation of goods: this clause stipulates that the EU goods are only taxed once upon entry to any ACP region.

However, certain issues remained unresolved and these concern:

- The Most Favoured Nation clause: this clause requires that all trade benefits that the bloc agrees to with third parties be automatically extended to the EU. SADC member states called for the removal or revision of this clause. Concerns are that this clause will constrain the ACP's ability to negotiate independent trade relations with third countries (limits the countries' negotiating leverage) and this will also discourage the ACP's integration into the global economy.
- Definition of Parties: this issue is driven by the EC's desire to deal with countries as a single group. More specifically, the EC seeks to define Parties to the Agreement as the EC and EU Member States on one side, and the SADC EPA States as a single Party collectively on the other. This means that the SACU countries would de facto have to include Angola and Mozambique in the customs area, a move that will undermine regional integration achieved so far under SACU and SADC.
- Bilateral agriculture safeguards

- Rules of Origin: the rules of origin offered under the EPA differ from those set out under the TDCA and are more simplified and favourable as they require single stage processing. Under the TDCA South African garments need to undergo two stages of conversion, while under the EPA this is reduced to one stage. This according to South Africa will threaten its vulnerable clothing and textiles sectors as cheap imports could reach South Africa's market via the BLS countries (Botswana, Lesotho and Swaziland) because of the EPA.
- One clause restricts local content requirement in the manufacturing sector. As indicated by Namibia, the country intends to support its local industries, hence does not want to abolish any legislation that requires the use of locally produced inputs by investors.
- Exclusion of South Africa from the duty free quota free access to the EU market (offered to all SADC EPA countries)
- Limited legal capacity by the SADC countries to take future disputes to the WTO (only South Africa has the capacity to do so).

According to the EC these issues will be negotiated in the run-up towards a full EPA.

## CONCLUSION – IS THE EPA MAKING SACU GRAVELY ILL?

To those who study the history of Southern Africa there is much that resonates in the scene on June 4<sup>th</sup> when leaders and ministers from Botswana, Lesotho and Swaziland went to sign an agreement with European powers that protects their economic interests and in the process weakens their links with South Africa. Indeed the analogy of the signing of the (IEPA) to the 19<sup>th</sup> century British protectorates of the BLS has not been lost. However, then as now the interests of Europe have never been specifically to protect small nations. The protection offered to Bechuanaland in 1885 was being offered largely to create a buffer against the German colony in SW Africa and even this was intended only to protect the Cape Colony which remained vital to the UK's global commercial interests in Africa and Asia.

The same is true of the IEPA today. The protection of Botswana's commercial interests in the beef industry today is merely co-incident to Europe's larger commercial concerns with the rest of the world. If the EU had wanted a genuine development EPA with all SACU/SADC members as then Commissioner Lamy had said in 2000 before he became Director of the WTO, then it could have easily been achieved simply by tidying up the TDCA and providing the BLNS with the same market access for beef, sugar, fish and grapes etc. But as one can see this is not what the EU and SA are arguing about. All the so-called contentious issues in the EPA negotiations were introduced by the EU in order to protect Europe against competition from Asia - they have almost nothing to do with the development and regional integration of SACU or SADC.

If the SADC website is to be believed then SACU should disappear next year i.e. 2010 when the SADC customs union is, at least in theory, established. However, judging from the length of time it has taken SADC members to negotiate and implement the SADC Trade Protocol, the completion of a SADC Customs Union will take much longer to negotiate.



This is especially so given that any SADC negotiation must simultaneously resolve the issue of overlapping membership which arises because some SADC countries are members of COMESA e.g. Swaziland and some are also members of the East African Customs Union e.g. Tanzania.

The June 2009 signing of the IEPA is, from a purely legal point of view, a non-event because all the EU needed was an initialed agreement for the purposes of WTO notification. It was the political symbolism that mattered and it mattered to both the BLS and Brussels. In the coming months or years the SADC members will negotiate a final EPA which will replace the Interim Agreement. If SA does not sign this then SACU is in serious peril. However, the demise of SACU and its replacement by SADC would certainly result in a considerable dilution of South Africa's political and economic power in the region. Despite this the revenue formula, which was so skillfully negotiated by the BLNS, is resented in some quarters in Pretoria because of the very significant transfers and the failure of South Africa to sign the final EPA would certainly provide strong impetus to those in South Africa who, for economic reasons, wish to see SACU come to an end. The dilution of South African political power in East and Southern Africa in any future SADC/COMESA Customs Union is not lost on any of the SACU members nor is it lost on Brussels which has considerably more financial influence in SADC and COMESA than it does in SACU.

Africa's tragic history of contact with Europe has not at all been corrected by the signing of the Interim EPA. It was meant to be a partnership of equals where development and regional integration were at the very centre of the agreement. However, what separates the parties and forced (some say gave an excuse for) South Africa not to sign the agreement were the strongly mercantilist issues such as Most Favored Nation treatment and the attempts to eliminate infant industry protection that were demanded by then EU Trade Commissioner (now Lord) Mandelson. These are provisions aimed directly against the use by South Africa and any other country that signs from using discretionary trade policy to move away from resource export dependence. The BLNS, are, as they were a century ago, merely coincidental to Europe's greater commercial interests. Europe may well show greater flexibility in its negotiating position in the final EPA as witnessed by the statement of Baroness Ashton, the new EU Trade Commissioner, at the ministerial meeting in March 2009 in Namibia. However if Europe ultimately decides not to show sufficient flexibility in the final EPA negotiations then the one consequence of the EPA negotiations will be the very opposite of what the EU said was its intention, the destruction of Africa's oldest trade integration agreement, SACU.

## POLICY IMPLICATIONS

What are the policy implications of the EPA for Botswana? Before finalizing the EPA, which will include the rest of SADC, it is imperative that Botswana should carefully weigh its options in terms of its commercial and political interests in continuing with SACU against what it would benefit from an EPA with Europe. This is especially so if South Africa chooses not to sign the final EPA. We would like to suggest the following issues for further consideration by the government:

- Review the revenue sharing formula under SACU which, while skillfully negotiated and extremely beneficial to Botswana and all the BLNS states in SACU, needs to be reconsidered as it encourages an unhealthy and almost certainly unsustainable dependence on RSA for government revenue. Such dependence breeds resentment from both sides;
- In view of the potential for increased beef export earnings arising from quota free duty free provision of the IEPA, there is need to encourage beef industry development;
- Assess the legal implications of many of the so-called contentious issues;
- At the highest level, assess both the long term commercial, financial and political interests of Botswana related to trading under the SACU and the implications that the EPA will have for commercial relations within Southern Africa;
- Analyse realistically the potential for the EPA to develop the services sector as a means to diversifying the economy, especially if South Africa does not sign.

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