



Briefing Paper

Towards the 10th WTO Ministerial Conference

Some Issues of Interest to EAC Countries

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Summary

From 15 to 18 December 2015, the first-ever WTO Ministerial Conference to be held in sub-Saharan Africa will be held in Nairobi, Kenya. East African Community (EAC) countries expect that the event will further their developmental objectives. In this context, this briefing paper presents and analyses some issues of interest to EAC countries in the key negotiating areas of agriculture, non-agricultural market access, and services at the WTO.

Introduction

On 10 December 2014, the WTO General Council agreed that the 10th Ministerial Conference be held in Nairobi, Kenya – a member of the East Africa Community (EAC) – from 15 to 18 December 2015. The preparatory process to hold this meeting successfully is on-going. EAC countries expect that the meeting – the first-ever WTO Ministerial Conference to be held in sub-Saharan Africa – will further their developmental objectives.

It is in this context that this Briefing Paper presents and analyzes some issues of interest to EAC countries in the key negotiating areas of agriculture, non-agricultural market access, and services.

The EAC is a fast growing regional trade block comprising five African countries: Burundi, Kenya, Rwanda, Tanzania and Uganda. It has a market consisting of 143.5 million people, with an average annual population growth rate of 2.6% over the last three years. Presently the EAC has evolved into a unified regional market with a combined GDP worth USD 45 billion, making it a more attractive trading bloc. The work is already under way to move towards a monetary union with a common currency¹. In parallel, there seems to be strong political commitment towards a political federation.

The EAC has experienced a dynamic period of economic growth and regional integration over the last decade: a customs union was established in 2004, being progressively implemented over a five-year period. The Customs Union Protocol addressed the four areas of Internal Tariff Elimination, Non-Tariff Barriers Elimination, Common External Trade Policy, and Sensitive Products; the fully-fledged Union took effect in January 2010.

In 2007, the East African Trade Negotiation Act, which provides a framework for the region to act as one single bloc in bilateral and multilateral

negotiations was adopted; nonetheless, this critical mechanism has not yet become fully operational, notwithstanding the fact that pooling resources would clearly improve the representation of less capable states and would also allow the EAC bloc to have more bargaining power in conducting trade negotiations.

Based on the common negotiating mandate, it is worth examining what could be the main aspirations of the region with regard to the critical issues of Agriculture; Non-Agriculture Market Access (NAMA) and Services in the WTO Doha Round negotiations.

Agriculture

The EAC is predominantly dependent on agriculture, which is a major contributor to national income and the largest employer sector. Trade in agricultural products, both domestically and internationally, influences the performance of the sector and the profitability and viability of farming, thus contributing to national food security and the alleviation of poverty, particularly in rural areas.

The performance of the agriculture sector can have a major impact on the overall economic performance of EAC and therefore the region has a lot at stake in the agriculture negotiations. In order to avoid negative effects stemming from multilateral trade agreements (e.g. local production can be wiped out by import surges; the development of local value added processing can be inhibited and export markets can be lost), it is imperative that EAC negotiators are effective and can help secure outcomes that support their regions' interests including those related to agro-trade policy.

The question facing the EAC and indeed all other WTO members is whether the 2008 Draft Agriculture Modalities have been overtaken by time, especially in the light of major players' changing

¹ The Protocol for the Establishment of the EAC Monetary Union was signed on 30 November 2013.

agricultural policies and the circumstances and needs of EAC countries². Another development is the Economic Partnership Agreement (EPA) between the EAC and the EU that will completely change the character of the trading relationship between the two blocks³. These factors suggest that negotiating goals that were acceptable in the recent past might no longer be appropriate and might need to undergo analytical revisions.

With regard to WTO rules on domestic support to agriculture, EAC governments have interests at two levels. Firstly they need to safeguard their right to deploy adequate domestic support to their own agricultural producers. Secondly they need to secure a reduction in those domestic support measures applied by major agricultural exporters that result in excessive volumes of exports, which depress or destabilise prices, thereby undermining domestic production in EAC countries. EAC countries should therefore aspire for reduction and/or elimination of trade distorting domestic support programmes, while retaining their flexibility in granting domestic support.

In the case of market access, issues of concern to EAC countries in the WTO agriculture negotiations are multi-faceted. They include: i) impact of tariff reduction commitments on the levels of domestic agro-food sector protection; ii) the scope for effective safeguards against import surges and for safeguarding the commercial space for the development of agricultural production and broader agro-food sector development; iii) the scope for securing improved market access for EAC exports to non-traditional markets; and iv) the scope for limiting or deferring the erosion of the margins of EAC tariff preferences on traditionally high value markets (notably the EU).

² Since 2008, the global environment has undergone considerable transformation. Major trading partners like the EU and the US have implemented or are preparing for significant adjustments in their agricultural policies that could affect EAC countries, whether directly or indirectly. Agro-food sector trade relations could well be further complicated by the provisions of mega-FTA arrangements such as the Transatlantic Trade and

The 'defensive' interests of the EAC in the agro-food sector emanate from the need to promote increased agricultural production and value added agro-food processing aimed at national and regional markets, and enhancing overall food security. The underlying 'offensive' interests of the EAC in the agro-food sector stem from the desire and need to expand exports. Specific interests in the negotiations include seeking: i) the minimisation of non-tariff barriers faced by their exports to traditional EU markets where premium prices can still be attained (with the changing implementation modalities for official food safety and SPS controls being a particular source of concern); ii) the removal of tariffs and minimisation of non-tariff barriers faced by their exports to non-traditional markets that have strong demand growth and favourable price trends; and, iii) the removal of barriers faced by their exports of value added agro-food sector products.

From the foregoing, a positive outcome with regard to agriculture would be the realization of a) permissive rules of origin, including regional 'cumulation' provisions which allow greater use of non-LDC originating inputs (to accommodate the non-LDC Member); and b) the mandate to 'fast-tracking' of negotiations and the conclusion of the SPS and food safety protocols; as well as c) a comprehensive response to preference erosion upon which the region is reliant for its agricultural exports.

Non-Agricultural Market Access

In the WTO, Non-Agriculture Market Access (NAMA) refers to all products not covered by the Agreement on Agriculture, namely manufacturing products, fuels and mining products, fish and fish products, and forestry products. Negotiations on

Investment Partnership (TTIP), which may establish new standards for the placing of products on the market that become generalized across all sources of imports.

³EAC exports will immediately enjoy duty free quota free entry to the EU market, whilst EU exporters will get similar reciprocal access, though phased over 25 years.

NAMA at the WTO aim to reduce tariffs and eliminate tariff peaks, and address tariff escalation and Non-Tariff Barriers (NTBs) on these products.

In the context of EAC members' ambitions for manufacturing-driven growth, along with overall declining trends in agriculture, enhanced market access in the manufacturing sector assumes increasing significance in the region. Since tariffs are one of the instruments for achieving trade integration and for enhanced market access, the ongoing NAMA negotiations offer a potential avenue to the EAC for furthering its growth agenda.

The EAC Industrialization Policy was approved by the EAC Summit in November 2011 and provides a regional framework aimed at growing and expanding the manufacturing and small and medium enterprise (SME) business so as to create employment and income for the benefit of the region, in order to significantly improve the living standards of the people of East Africa. The mission of the EAC Industrialization Strategy is to create a market driven, competitive and balanced industrial sector based on the comparative and competitive advantages of the EAC region; hence the importance of expanding trade in manufactured products, both at the intra-regional and international level.

Non-Tariff Barriers (NTBs): a Major Concern to EAC

In general terms, NTBs refer to any restrictive measures unrelated to customs tariffs that governments take to protect domestic industry. Many non-tariff barriers are based on a legitimate goal, such as the protection of human health through technical and sanitary restrictive measures; agreements such as the SPS and TBT aim at allowing governments to take due care of the population while minimizing the impact on trade.

The other side of the coin is that countries have notified several NTBs to the WTO, arguing that different standards, labeling systems, and other policies are serving to unjustifiably restrict their exporters' market access. Presently, NTBs cast a vast shadow on firm competitiveness and economic growth of developing and least developed countries; they constitute a major hindrance to the ability of firms in EAC to take up the full quantum of preferential trade margins on offer.

The costs of complying with international standards and regulations – both public and private – as well as struggling to meet complex Rules of Origin and eligibility criteria for preferential trade agreements, are factors that add to production costs and weigh down competitiveness.

While NTBs continue to sit on the margins of the NAMA negotiations, partly because of the technical difficulties of elaborating multilateral rules to reduce these barriers, Members have agreed as a first step to identify obstacles encountered by their exporters when exporting to various markets. This should be vigorously pursued so that the NTBs are adequately addressed in the NAMA negotiations.

Determining the region's aspirations in NAMA is challenging. At its most simplistic level, since four of the five EAC members being LDCs are exempted from any commitments under the NAMA framework, negotiations under it may be deemed to have little relevance for the EAC. Kenya's inclusion as a Para 6 country means, however, that the EAC is involved by proxy, and that the position it takes will impact the rest of the EAC members, the EAC

customs union and the Common External Tariff (CET) under it.

There are other reasons too why the NAMA framework is of significance for the EAC: firstly, the decisions taken in terms of tariff binding and tariff reduction will have implications for EAC members in terms of preference erosion. Hence, the interests and perspectives of the region need to be embedded

in the outcome. Secondly, the EAC is part of a region that is expected to experience sustained high levels and pace of economic growth. Despite their current status as some of the poorest countries in the world, the EAC members have demonstrated the aptitude, ambition and political will to seize opportunities in trade and industrialisation.

The NAMA negotiations thus become an important platform for the EAC to harvest economic opportunities in line with the strategies designed to this end for the region to maximize benefits through: i) stronger special and differential treatment in their favour; ii) ensuring the provision of policy space for developing countries and LDCs to pursue industrial development and diversification of their economies; and importantly, iii) addressing the issue of NTBs in order to ensure meaningful market access for the region.

Services

Services play a key role in EAC countries. The contribution of the services sector, measured as a percentage in GDP calculations, is substantial in all EAC countries. In 2013 for example, it was 47.2% in Burundi, 53.3% in Kenya, 53.3% in Rwanda, 47.4% in Tanzania and 50% in Uganda. This indicates that services are an important part of the economies of individual EAC countries. While acknowledging that the EAC is in large part an agro-based economy, services are deemed to be the growth sector of the future and will be central to the region's economic development prospects.

Companies in EAC are taking advantage of developments in communication technology, notably in mobile telephony, to reap benefits from the growing regional market. The education sector

has also been a catalyst for growth in intra-EAC trade. The rise in private universities continues to attract students from all over the region and beyond⁴. Trade in health services is also thriving in the EAC. Thanks to the opening up of the sector, a series of private hospitals and specialized treatment facilities have mushroomed across the EAC, creating opportunities for highly skilled medical treatment and for employment of EAC citizens.

It is clear that the EAC has domestic, regional and even international players in the services industry and that services will be critical in advancing the region's integration as well as its economic growth. In the forthcoming WTO Ministerial Conference, the aspirations of the EAC, majority of whose members are LDCs, is to consolidate the progress made in the "operationalization of the Preferential Treatment to Services and Service Suppliers of Least-Developed Countries". This would include that the majority of the WTO Membership notify preferential treatment in response to the LDC collective request of 2014.

On its part Kenya, which is the non-LDC member of the EAC, finds in the principle of progressive liberalization and appropriate flexibility for developing countries in deciding their contributions to multilateral services negotiations enshrined in Article XIX⁵ the main aspiration to be pursued at the Ministerial conference.

Finally, another issue that is worth underlining is that trade in services is in many cases affected by domestic measures that are beyond the scope of GATS commitments on market access (Article XVI) and national treatment (Article XVII). Even more than in merchandise trade, such domestic (regulatory) measures, even if adopted solely for

⁴ Uganda, for example, has at least 30 universities with some offering specialized courses such as Mbarara University of Science and Technology. In Kenya, Strathmore University and the United States International University are known to take students from the world over, EAC inclusive – providing internationally respected education.

⁵ Article XIX of the GATS provides that liberalization takes place

with due respect for national policy objectives and Members' development levels, both overall and in individual sectors. Developing countries are thus given flexibility for opening fewer sectors, liberalizing fewer types of transactions, and progressively extending market access in line with their development situation. In addition, developing countries are entitled to receive technical assistance.

public policy reasons, will have an important effect on trade in services: for example, excessively lengthy, complex and non-transparent licensing procedures may discourage foreign services providers to seek access to the market of another WTO member. Lack of objective and transparent criteria, on the basis of which authorities would grant a qualification, may give rise to hidden protectionism by such authorities.

Effective regulation can be a pre-condition for liberalization to produce the expected efficiency gains without compromising on quality and other policy objectives. Article VI.4 of GATS indicates that the disciplines are intended to ensure that domestic regulations are, *inter alia*: a) based on objective and transparent criteria, such as competence and the ability to supply the service; b) not more burdensome than necessary to ensure the quality of the service; c) in the case of licensing procedures, not in themselves a restriction on the supply of the service.

At the same time, it shall be noted that negotiations on disciplines for domestic regulation in the GATS raise a number of concerns for the EAC countries, and developing and least developed countries at large. Among these concerns is the attempt to adopt universally applicable regulatory frameworks or standards, based mainly on the experience and practice of developed countries that already have such frameworks in place. This risks conflict with domestic values, institutions, and practices especially in LDCs, given their varied levels of development. This also raises the issue of whether due account will be given to legal infrastructure, bureaucratic culture, market realities and political values of the EAC.

Additionally, EAC countries are faced with institutional weaknesses, coupled with low regulatory capabilities as well as fragile private sector institutions, which all raise implementation concerns of the future disciplines on domestic regulations.

The EAC should push the disciplines on domestic regulation to be general in nature such as to accommodate a wide variety of national circumstances. It should also push for the linking of resulting obligations from the disciplines on domestic regulations to the development of regulatory and institutional capacity at the local and regional levels of government. In fact, it is important to recall that the development of regulatory capacity and the use of regulation to attain development goals are closely linked either to undertaking or benefitting from liberalization.

Conclusion

The willingness to significantly advance the DDA negotiations has been repeatedly expressed by WTO members; what remains to be seen is the extent to which concrete outcomes will be achieved in the 10th Ministerial Conference.

MC 10 in Nairobi is an occasion that cannot be missed by EAC countries for affirming their trade-related interests in the perspective of securing concrete benefits in the key areas of agriculture, non-agricultural market access, and services. Negotiation outcomes will influence the profitability and viability of the economy of the region, as well as the prospects for EAC countries' growth and development, achievement of food security and alleviation of poverty. It is therefore absolutely vital that the negotiators secure outcomes that support their interests and needs.

The identification of the national and regional interests has to be informed both by what suits the member countries and region, and by an appreciation of the dynamic global environment in which EAC countries operate. Of course these interests have to be pursued in the context of constantly changing economic, commercial and negotiating realities. Market conditions are dynamic and can sometimes be volatile whilst positions of negotiating partners shift over time as their interests change along with national and global circumstances.

A new level of complexity is added at the regional level, where working out objectives also entails reconciling the various national interests and the positions of the five EAC members; this can be particularly challenging when, as it is sometimes inevitable, national interests diverge. Although there should be no illusions as to the scale of the challenges

and the difficulty of the task, success can be achieved with the full commitment of the negotiators, policy makers and other relevant stakeholders.

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