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Executive brief

Southern and Eastern Africa: Agricultural trade policy debates and developments

1. Background and key issues

A number of regional trade integration initiatives are under implementation in the Southern and Eastern African region. These encompass:

- two customs unions (Southern African Customs Union – SACU and the East African Community – EAC);
- two free-trade areas (FTAs), both with aspirations to become customs unions (the COMESA FTA and SADC FTA) and a relatively newly launched initiative to try to overcome problems posed by overlapping membership by creating a grand FTA, known as the trilateral FTA (T-FTA).

Given the central role of agriculture in many economies and the political sensitivity of food security concerns, trade in food and agricultural products is particularly problematical within these trade integration initiatives. This routinely sees the imposition of trade-restrictive measures, some by prior agreement and some in contravention of prior commitments.

In 2011/12 the agricultural situation in Southern and Eastern Africa has highlighted the vulnerability of the region to drought and price volatility. It has also highlighted the impact that trade policy choices can have on prices and production. In Eastern Africa, 2011 began with warnings that climate change was likely to increase the frequency of droughts in Eastern Africa. This was already evident from the poor rains which affected production across large parts of the Horn of Africa and northern Kenya. By mid 2011 the situation was being described as the worst drought in 60 years, with 11 million people hungry and at risk of starvation. The drought also had an impact on food prices across the region (mainly cereals but also other crops).

> *"In 2011/12 the agricultural situation highlighted the impact that trade policy choices can have on prices and production"*

By contrast, in the southern part of the region, 2011 began with exceptionally large maize stocks in South Africa, with some 4 million tonnes potentially available for export. This situation, however, was to be transformed over the course of 2011, leading to far higher prices and the emergence of fears of a maize shortage.

During 2011/12 these divergent realities gave rise to the adoption of policy measures and initiation of policy discussions, which potentially have an important bearing on the future evolution of food and agricultural trade arrangements and future trade flows across the Southern and Eastern African region.

2011/12 also saw the continuation of trade negotiations, the implementation of trade agreements, the application of national trade policy measures and continuation of discussions on regional agricultural policy and regional standards harmonisation.

2. Latest developments

Overview of the trade dimensions of agricultural developments in 2011

Developments in agricultural production, trade flows and trade policy measures in 2011/12 threw into sharp relief the agricultural trade challenges facing Southern and Eastern Africa.

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contrary to the rising global maize price trend. This discouraged maize planting and resulted in a subsequent 15% fall in maize production. With perceived logistical constraints on exports, a prolonged period of depressed prices was anticipated (see *Agritrade* article 'Divergent trends within South Africa's cereals sector', 2 May 2011). This proved not to be the case, with a surge in exports occurring largely to overseas markets (mainly Mexico, with exports increasing

> *"South Africa's maize prices increased between 76 and 90% over 2011"*

from 72,000 tonnes in 2010/11 to 1,054,000 tonnes in 2011/12). This surge led to warnings in November 2011 of an imminent maize shortage, which served to drive up South Africa's maize prices, with white and yellow maize prices increasing 90% and 76% respectively over 2011. Once again, this was contrary to global maize price trends which fell 19% between April and December 2011 (see *Agritrade* article 'Large-scale maize exports threaten local supplies of maize in South Africa', 27 December 2011).

These developments put pressure on the livestock sector, whose competitiveness had previously been enhanced by the low South African maize price. With accusations of 'over-exporting' and the import prices that were paid substantially higher than the earlier export prices obtained (due to expectations that proved incorrect, and lack of market information and forward buying), this generated a considerable debate on the appropriate basis for the regulation of South African maize exports.

By comparison, because of the 2011 poor rains in the north-east of the region, drought, food shortages and rising food prices prompted the governments to adopt trade-restrictive measures. In Tanzania, following the release of maize from national food reserves in an effort to calm prices, a cereals export ban was introduced in May 2011 (see *Agritrade* article 'Debate on the use of national export bans in East Africa', 6 October 2011).

Although other EAC members such as Uganda maintained an open export policy, this led to much higher food price inflation in Uganda than elsewhere in the region. Surging demand in South Sudan also resulted in Ugandan maize being diverted away from traditional Kenyan markets. This, combined with the Tanzanian export ban, encouraged the Kenyan authorities to request and secure a waiver from the EAC common external tariff (CET) for maize of 50% (25% from COMESA FTA suppliers) until the end of 2011, to improve maize supplies and slow down the rise in food prices. All this occurred against the background of shortcomings in the functioning of cereals supply chains, with millers accusing farmers of hoarding maize in the expectation of higher prices, thereby creating artificial shortages. Farmers for their part accused intermediary traders of offering excessively low prices, given regional market conditions.

These developments led to a questioning of the EAC maize CET in Kenya (see *Agritrade* article 'World Bank adds to cereals policy discussions in the EAC', 12 February 2012), with a similar debate raging in the sugar sector as, despite shortages in some areas of the EAC, Kenya sought an extension of special safeguard measures restricting sugar imports from the COMESA region.

While the Tanzanian government removed its cereal export ban in October 2011, within 2 months Malawi had introduced a similar export ban. This followed the perceived 'over-export' of South African maize, the commencement of South African imports from the region (from Zambia, initially 66,000 tonnes but reaching 114,500 tonnes – see *Agritrade* article 'Good prospects for South African maize sector', 9 July

2012) and reports of poor rains across Malawi. This halted exports of maize to Kenya from Malawi, which as a COMESA FTA member had become an important supplier, leaving only Zambia as a COMESA source for Kenyan maize imports at the beginning of 2012 (see *Agritrade* article 'Malawi maize export ban complicates Kenyan tariff policy debate', 12 February 2012).

Such developments in 2011/12 raised the issue of the market management tools required to insulate the national agricultural sector from the worst effects of global price volatility in drought-prone regions. Currently in South Africa the preference among industry stakeholders is for improved supply and demand data collection and its open and transparent accessibility, with little enthusiasm for more active government intervention (see *Agritrade* interview with Jannie de Villiers 'The South African cereals sector: Recent developments and future challenges', 9 July 2012). Elsewhere in the region, efforts to establish a COMESA-wide Food and Agricultural Marketing Information System (FAMIS: see http://famis.comesa.int) have not come to fruition, in view of inadequate national allocation of resources to data collection, analysis and dissemination and under-developed institutional structures for trade in agricultural commodities (i.e. the absence of strong commodity exchanges such as South Africa Futures Exchange (SAFEX) in South Africa). Many neighbouring countries favour the more active use of traditional market management tools, such as quantitative restriction and export bans.

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These events highlighted the difficulties faced in establishing harmonised and consistent agricultural tariff policies within regional trade arrangements, given the often competing priorities and varied competitive capacities of member states. Fundamental questions were raised regarding the purpose of national and regional agricultural tariff policies and the appropriate use of non-tariff tools in the context of broader policy concerns (e.g. national food security), in view of rising and volatile global food prices. The situation also raised questions about the appropriate geographical basis for the pursuit of food security objectives and the role of trade policy in promoting food security in drought-prone regions affected by processes of climate change.

Real challenges are therefore raised for agricultural trade policy formulation at the national, sub-regional (SACU and EAC), regional (SADC and COMESA) and pan-regional (T-FTA) levels.

In 2011, apart from the issue of tariff policy, there were outbreaks of plant diseases, ranging from cassava brown streak to banana wilt, which highlighted the importance of effective national sanitary and phytosanitary (SPS) standards and controls, and regional harmonisation of SPS requirements, as necessary prerequisites for the expansion of regional agricultural trading networks.

Efforts to establish harmonised regional quality standards in the dairy sector, meanwhile, highlighted the political sensitivity of even apparently technical processes of regional harmonisation, in the context of the uneven national capacities to attract investment and develop competitive patterns of production.

EAC: Regional commitments and national policies

Getting to grips with non-tariff barriers

The launch of the EAC Customs Union on 1 January 2010 has not yet had the desired trade impact, as there remain significant non-tariff barriers to trade and a non-uniform application of the CET (see *Agritrade*, article 'EPA negotiations compete with other priorities', 9 August 2011). Despite these problems, intra-EAC trade has been increasing significantly (see *Agritrade* article 'Debate on the use of national export bans in East Africa', 6 October 2011).

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The increase in trade was considered a promising start, and more benefits are expected to emerge when non-tariff barriers (NTBs) to trade are removed. The slow progress made in the removal of non-tariff barriers to trade within the EAC has been attributed by some regional leaders to the absence of enforcement mechanism at regional level. Against this background and following an EAC Secretariat audit of NTBs in 2011, it was reported in April 2012 that the EAC Secretariat hoped by the end of 2012 to move beyond simply monitoring NTBs to a binding legal protocol that would prevent their use in intra-EAC trade.

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Despite these aspirations, the government of Rwanda has opted for the pursuit of bilateral negotiations in order to eliminate specific barriers to trade, and has launched such a process with Uganda. However, the Rwandan government has committed itself to taking legal action if necessary to secure the removal of NTBs in intra-EAC trade, given their impact on national competitiveness (see *Agritrade* article 'EAC to get tough on NTBs', 9 July 2012).

In a parallel process the EAC is also seeking to promote an alignment of legal and regulatory requirements. How important regulatory harmonisation is to regional trade facilitation is illustrated by the experience of Kenyan exports to Tanzania, where the decision by the Tanzanian Food and Drug Authority to ease testing procedures for food imports from Kenya provided a major boost to those imports.

However, this also illustrates another important issue, namely the uneven ability of national companies to benefit from the removal of NTBs to trade (see *Agritrade* article 'EAC trade integration lags behind schedule', 11 March 2012). How the uneven ability of member states' enterprises to take advantage of regional market integration is to be addressed in both the EAC and wider trade integration initiatives is likely to pose major political challenges in the coming years. It may require greater engagement with regional industry associations such as the Eastern Africa Grain Council and East African Business Council, which are partly insulated from purely national protectionist pressures.

Food security, export restrictions and tariff policy

The Tanzanian government ban on cereals exports of May 2011 included trade with fellow EAC members. The link between the release of national grain stocks and the introduction of the export ban is worthy of note, since it raises the question as to the appropriate level for the pursuit of food security objectives within a customs union aimed at promoting the free flow of goods within a unified customs territory.

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The Tanzanian export ban, which reportedly affected 100,000 tonnes of maize exports to Kenya, Rwanda, Burundi and Uganda, led to complaints from both farmers and traders. Farmers were concerned about the price-depressing effects of the measure (farm gate prices reportedly fell 30% following the introduction of the measure), while traders were concerned at the financial implications of the sudden disruption of planned trade flows, given the loans taken out to finance this trade. This led to complaints that the measure was 'against the spirit of the East African Community free market protocol'.

Tanzanian government officials rejected the suggestion that the ban 'was going against the spirit of East African cooperation' and indicated it would be lifted 'once the ongoing assessment has established there were enough cereal stocks for local consumption'. In response, the Kenyan government sought a waiver for the importation of maize duty-free from outside the EAC. This was introduced on 4 July 2011 and due to last to the end of the calendar year.

In response to the Tanzanian action, the EAC Secretariat called on members to 'remove barriers that hinder movement of food across the borders', so that available supplies can be delivered to famine-affected areas. It further called for the use of such agricultural trade policy tools within a harmonised regional framework.

These developments have intensified discussions on an appropriate cereals tariff policy for Kenya, given its structural cereals deficit. In November 2011 the World Bank published a short policy note calling for 'a review of the EAC grain trade policy so as to reduce Kenya's vulnerability to spikes in food prices'. It argued that Kenya was a 'food deficit country even in a bumper harvest year, yet the country levies import duty on food grains that are only suspended on an ad hoc basis in times of crisis'. It maintained that 'agriculture policy and trade policy distortions are compounding the drought's impact in Kenya' and keeping maize prices high with 'little impact on price stability'.

This is a fiercely contested issue in Kenya, with traders and millers seeking more liberalised trade and farmers pushing for continued protection to encourage domestic production. In an era of rising yet volatile global prices, the experience in the EAC in 2011 raises important questions about the link between food security and tariff policy and the most appropriate level of the pursuit for food security policy objectives.

The standards challenge: The illustrative experience of the dairy sector

Efforts are under way to establish a common East African framework for dairy sector development under the auspices of the East African Regulatory Authorities Council. This is looking at:

- improving milk production;
- promoting milk consumption;
- establishing 'regional dairy industry sanitary standards';

- facilitating access for dairy products to all markets in the EAC.

This initiative is taking place against a background of concerns that NTBs could replace tariffs as a form of dairy sector protection within the EAC. However, there are also fears that efforts to establish harmonised EAC dairy standards could themselves become a source of trade conflicts in the future. The current proposals under development have been described in a World Bank-financed study as 'unrealistic', with microbiological levels set at levels presently 'unreachable for nearly the entire EAC industry'.

According to this analysis, the process of upgrading and harmonising standards could lead to 'most EAC dairy products… [being] denied entry with reference to the harmonized EAC standards'. This would carry serious trade consequences, particularly as currently 'the infrastructure necessary to prove compliance is not in place', creating a situation where trade is likely to continue without any reference to the harmonised standards. This led the World Bank-commissioned report to call for a review of the new standards, and their withdrawal if they 'do not meet public health or market demands' (see *Agritrade* article 'Initiatives to establish an EAC regional dairy development strategy', 6 October 2011).

The debate on standards needs to be seen against the backdrop of fears in the region over Kenyan dominance in the dairy sector. In 2011, major investments took place in the Ugandan and Kenyan dairy sectors with an eye to expanding supplies to domestic, regional and international markets (see *Agritrade* article 'New milk processing plant to be established in Uganda', 28 November 2011).

Currently, increasing Kenyan investment in the production of long-life milk is leading to concerns in Tanzania over the possible imminent collapse of the dairy sector, in the face of 'stiff competition from well established players in the East African Community common market'. It has led to calls for the government 'to devise policies that protect local dairy industries against cheap imports from other countries as the unfair competition curtails the growth of budding local milk factories' (see *Agritrade* article 'Potential expansion of Kenyan long-life milk production could raise regional concerns', 5 July 2011). This is also a concern in the wider T-FTA context (e.g. in Namibia, whose dairy sector – which accounts for only 1% of SACU milk production – lies under the long shadow of the South African dairy sector).

These concerns are real, particularly in view of the earlier collapse of the EAC in 1977. It will be important to find ways of evening out imbalances in the ability of national producers to compete within a common market governed by common standards, if standards and non-tariff measures are not to emerge as the principal barriers to trade within the EAC. In this context, recent calls by Kenyan Livestock Minister Mohammed Kuti for initiatives to be taken to 'address the imbalances that exist in the value chain and ensure that the interests of all stakeholders from the farmers through to the consumers are taken care of', would appear to open up opportunities for the development of a regional policy initiative on strengthening the functioning of dairy supply chains across the EAC (see *Agritrade* article 'Scope for expansion and strengthening of functioning of Kenyan dairy sector', 31 March 2012).

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SACU: Regional commitments and national policies

Infant industry protection and import licensing in the SACU

Within the SACU, amid continued deadlock over the revenue-sharing arrangement and the development of regional structures to govern trade policy (e.g. the Tariff Board and Tribunal), member states continued to make use of available food and agricultural trade policy tools. Most notable in this regard in 2011 was the invocation by Namibia of the previously agreed infant industry protection for poultry products. From March 2012 this saw the implementation of a 46% levy, which will be charged up to March 2016, after which it will be reduced, first to 30% until 2018 and subsequently to 20% until March 2020, when it will be removed (see *Agritrade* interview 'Trade policy and the development of a new integrated poultry operation in Namibia', 12 November 2011). Despite the prior agreement under the relevant SACU provisions, the initiation of these policy measures has been criticised.

These poultry sector policy commitments need to be seen in the context of, on the one hand, the pending removal of infant industry protection from the Namibian dairy sector (scheduled for 2012, after a further extension in 2007), and on the other the continued use of import licensing arrangements in the Botswanan poultry sector, which have been in place, in one form or another, since 1979 (see *Agritrade* article 'Balancing consumer and producer interests in the poultry sector', 25 March 2012).

Infant industry protection in Namibia has also been applied to safeguard local pasta manufacturers (a 40% levy). This came into effect in 2007 and is set to expire in 2014. Furthermore, import licensing arrangements continue to be used to regulate access to the market for horticultural and specified cereal products under 'controlled product' regulations. The dairy sector is looking to the extension of similar mechanisms to dairy products, given the lapsing of infant industry protection in 2012.

In October 2011, this use of import licensing arrangements for horticulture products was extended to include the introduction of 'a blanket ban on the importation of onions from South Africa to boost the sale of local onions'. The measure was introduced in response to the accumulation of stocks of unsold onions by farmers in the Kavango region. However, this occurred without other SACU members being notified. This highlights the need for such measures to be taken within the framework of predictable and transparent rules, with member governments being accountable for their actions to fellow customs union members.

According to the WTO, infant industry protection and import licensing arrangements are also used elsewhere in SACU, e.g. in Swaziland, with import levies on a range of agricultural products and the National Agricultural Marketing Board (NAMBOARD) empowered to adopt quantitative restrictions, and even import bans, as a means of managing local markets. This policy framework leaves aside the impact on consumer welfare of such measures, even in a context of escalating poverty levels in Swaziland.

Similarly in Botswana infant industry protection is extended to UHT milk (40% levy) and bread flour (15% levy), with the aim of protecting local processors, while import licences are also used to limit poultry imports.

In the case of Lesotho, according to the WTO, 'imports and exports from and to all sources (including SACU), of all agricultural produce, except cereals and cereals products, require a permit under the Agricultural Marketing Act of 1967.' Non-tariff measures are applied to agricultural products imported from South Africa, specifically fresh vegetables, with the aim of managing local supplies.

Ensuring effective and transparent disciplines in the use of infant industry protection and import licensing arrangements represents an important challenge in the SACU context, given the disparities in size of the constituent economies. It could, however, hold some lessons for wider pan-regional FTA negotiations.

> *"Ensuring effective and transparent disciplines in the use of infant industry protection and import licensing arrangements represents an important challenge"*

In addition, within the SACU, the development of a stronger competition policy aimed at preventing abuse of a dominant market position and the elaboration of complementary policies on strengthening the functioning of supply chains could, over time, lay a basis for reducing the use of import licensing arrangements in a trade-restrictive manner.

Developments in COMESA's agricultural trade and agricultural policy framework

Continued non-participation of COMESA members in the FTA

In 2011 COMESA undertook a study on the economic preparedness of Ethiopia to accede to the COMESA FTA. It concluded that 'the Ethiopian manufacturing industry is neither internationally competitive' nor showing signs of improvement since the previous similar assessment. Ethiopia is one of eight COMESA members that do not yet participate in the COMESA FTA.

Meanwhile, in Uganda, exporters are complaining that the country's absence from the COMESA FTA is undermining their position on the South Sudan market, with companies from Kenya, Rwanda and Burundi, which are part of the COMESA FTA, enjoying distinct tariff advantages. This led exporters to call for Uganda's early accession to the COMESA FTA. This suggests there remain continued problems linked to the full rolling out of the COMESA FTA.

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Tariff policy and agro-industrial development

In July 2011 in Zimbabwe the Minister of Finance announced the reintroduction of import duties on foodstuffs (of between 10 and 25%). While its consumer price increasing effects were acknowledged it was felt to be essential to 'rebuild local production capacity' and strengthen the fiscal base. Such measures, however, sit uneasily with Zimbabwe's regional agricultural trade liberalisation commitments. It is also unclear what relative weight will be given to the interests of agricultural producers in contrast to agro-processing companies (see *Agritrade* article 'Zimbabwe reintroduces import duties on foodstuffs to promote local production', 6 October 2011). Across a number of sectors where strong agro-processing industries existed, there is now the option of developing value-added production on the basis of either locally produced raw materials or imported inputs (e.g. in the dairy sector).

This issue is of wider regional significance, since in the elaboration of regional trade arrangements the choice of the relative weight to be accorded the interests of agricultural producers and those of agricultural processors may differ from country to country, depending on each country's natural resource endowment and chosen trajectory for agro-food sector development.

Issues arising in the sugar sector

While COMESA's aspiration is to establish an FTA with all tariff and non-tariff barriers removed, provision is made for infant industry protection and special safeguards. In 2011 the Kenyan authorities sought a further extension of sugar sector safeguards, which were scheduled to lapse in March 2012. The extension was duly granted by COMESA despite the lack of structural progress in reforming the Kenyan sugar sector since 2007 (see *Agritrade* article 'Uncertain future for Kenyan sugar sector and wider EAC developments', 20 October 2011).

The Kenyan sugar sector can be seen as a critical test of COMESA commitments on agricultural trade liberalisation, because regular renewal of safeguard measures can be seen as undermining the commitment to trade liberalisation. This highlights the need for more rigorous definition of allowed safeguard measures and stricter control of their application.

> *"The Kenyan sugar sector can be seen as a critical test of COMESA commitments on agricultural trade liberalisation"*

Despite sugar surplus in the wider Southern and Eastern African region, EAC governments are seeking to promote greater sugar self-sufficiency. This raises questions about the relationship between policy directions within the EAC and wider COMESA trade policy commitments. Because EAC governments currently pursue different sugar sector trade policies, potentially undermining EAC trade arrangements in sugar and sugar-based food products, there would appear to be a need for the harmonisation of sugar sector policies at the EAC level, with this providing the basis for reconciling EAC sugar sector policy with COMESA sugar sector trade liberalisation commitments.

Developments in SADC's agricultural trade and agricultural policy framework

Ongoing concerns over non-tariff barriers

Despite the generally positive perspectives on intra-SADC trade noted in various reports and analysis (see *Agritrade* article 'SADC's trade performance reviewed', 10 June 2011), at the SADC ministerial meeting held in Windhoek on 4 March 2011, 'serious concern' was expressed at the impact of NTBs on intra-regional trade. These range from divergent food laws and SPS requirements to outright import bans. Technical work is taking place to deepen trade integration by easing and removing these barriers to trade.

Irrespective of the problems faced in fully operationalising the existing FTA commitments, SADC ministers reiterated their commitment to working towards a customs union, seeing no contradiction between the deepening of trade and economic integration and the broadening out of trade integration arising from wider FTA commitments.

> *"The implementation challenges currently faced under the SADC FTA will be replicated within any grand tripartite FTA"*

It was however felt that the implementation challenges currently faced under the SADC FTA will be replicated within any 'grand tripartite FTA'.

In looking at NTBs to trade, one can make a useful distinction between:

- infrastructure-related barriers;
- regulatory barriers;
- administrative barriers;
- agricultural trade policy-induced barriers.

Infrastructure constraints can be seen as the most financially demanding challenge, but the least politically controversial, while the use of trade policy tools can be seen as the least financially demanding but most politically controversial challenge (see *Agritrade* article 'Non-tariff barriers are focus of discussion in Southern and Eastern Africa', 2 May 2012).

NTBs can have a particularly disruptive effect on regional trade in fresh agricultural products, hence getting to grips with them can be seen as particularly important for promoting intra-regional trade in fresh produce. However, bearing this in mind, with regard to trade in food and agricultural products, trade-restrictive policy tools are most commonly deployed to insulate domestic agricultural producers from regional competition. Indeed, within one of the SADC sub-groups, the SACU, such tools are enshrined in various provisions linked to infant industry protection and agricultural safeguards. Trade policy tools are also used extensively to defend sensitive agricultural sectors in the wider Eastern and Southern African region.

In addition, across the region it is felt that SPS and food safety requirements are increasingly being applied in ways that block trade.

Developments in SADC's regional agricultural policy framework

In 2011 the SADC Secretariat continued work on establishing a common SADC agricultural policy framework, which was first substantively initiated in March 2008. After detailed technical discussions with member state officials, it was concluded that a common agricultural policy was needed. This included legally binding instruments backed up by an appeals mechanism, developed on the principle of 'subsidiarity' (with primacy accorded to national-level decision making except where regional action was more effective). It was argued in the draft text that such a policy should aim to:

- harmonise and align key agricultural policies;
- provide legally binding guidelines and establish common standards and norms;
- encourage countries to concentrate on areas of comparative advantage;
- establish a regional approach to the promotion of investment in agriculture;
- support agricultural research and extension services;
- facilitate dialogue and information sharing.

Three main policy pillars were envisaged:

- production, productivity and competitiveness;
- trade and markets;
- financing and investment.

A final regional agricultural policy document is expected during 2012, with a clear regional policy framework being in place by the end of 2012. However, given the problems faced in establishing the SADC Tribunal, the prospects for early agreement and implementation of legally binding instruments to regulate national agricultural policies would appear remote (see *Agritrade* article 'Moving forward SADC's regional agricultural policy', 5 July 2011).

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The trilateral FTA: Developments, issues and challenges

Moving forward the trilateral free-trade area process

On 12 June 2011, agreement was reached on the way forward for the T-FTA for Eastern and Southern Africa. This 'road map' covered the principles to guide the negotiations, and the processes and institutional framework for further negotiations. The first phase of the negotiations is intended to lead to a trade in goods agreement within 3 years, with provision being made for special and differential treatment for the smaller states within this process. Phase Two of the agreement 'will tackle trade in services, competition policy, and intellectual property rights across the three regional blocs', and 'a work programme to address industrial development'. A structure to monitor progress, reporting every 3 months has also been established (see *Agritrade* article 'Road map for Trilateral FTA agreed', 21 July 2011).

A draft text of a T-FTA has been prepared by the regional secretariats, based on the establishment of a 'tariff-free, quota-free, exemption-free' FTA, with sensitive lists and exemptions having been broadly eliminated by 2012 (and limited exemptions vis-à-vis big trading partners). In terms of the use of traditional trade policy tools, the draft treaty includes a prohibition on the use of export duties, the elimination of all quantitative restrictions on imports and exports and indeed all NTBs to trade.

This would appear to sit uneasily with the existing national agricultural trade policy practice in some countries. A number of governments have taken the view that the proposed draft is simply a starting point for negotiations, which will need to be primarily member-state driven. Issues related to the use of trade policy tools and the elimination of NTBs to trade will need to be resolved both within the discussions around a SADC regional agricultural policy and the broader discussions on the T-FTA.

> *"The proposed draft is being seen as simply a starting point for negotiations, which will need to be primarily member-state driven"*

Perspectives on the T-FTA process

Some analysts have expressed scepticism over the trade liberalisation aspirations of the T-FTA. A research paper by the South Africa-based Trade Law Centre argued that 'if past experience is anything to go by, the prospects for a successful Tripartite FTA are minimal', since 'some COMESA members have yet to adopt the common external tariff, while some SADC members have still not complied with their free trade obligations long after deadlines lapsed.' The paper warned of the dangers of a T-FTA being characterised by extensive exclusions of sensitive agricultural products, if this was based solely on national exclusion lists, without any commonly agreed criteria to guide product selection.

Other analysts have questioned the wisdom of pushing ahead with larger FTA arrangements, when existing FTA initiatives have yet to be fully implemented. However, any process of identifying and tackling unwarranted trade restrictions would appear to benefit from economies of scale. As experience in the Eastern and Southern African region highlights, a critical issue will be how to establish effective enforcement mechanisms to ensure compliance with commonly agreed rules.

Getting to grips with infrastructure constraints on trade in the T-FTA region is regarded as a critical policy challenge. Considerable importance is attached to developing major transport corridor initiatives, involving cooperation between public authorities, the private sector and international cooperating partners to remove all obstacles to trade within the transport corridor. This more holistic approach moves beyond simple tariff elimination commitments (see *Agritrade* article 'African intra-regional trade should increase', 3 March 2012).

> *"Getting to grips with infrastructure constraints on trade in the T-FTA region is regarded as a critical policy challenge"*

The 2011 cereals sector experience: Challenges for the T-FTA

Within the cereals sector in 2011, governments made use of different trade policy tools in response to drought and rising prices. Nominally the highest level of free trade in grains takes place within customs unions, notably the SACU and EAC customs union. However, even within these customs unions non-tariff trade policy measures either manage or restrict trade. Thus in the SACU, infant industry protection and import licensing arrangements for cereals and cereal products are common, while in the EAC, an export ban on cereals by the Government of Tanzania was imposed during 2011, even on trade within the customs union.

> *"Within the cereals sector in 2011, governments made use of different trade policy tools in response to drought and rising prices"*

Furthermore, as the Eastern Africa Grain Council has highlighted, a number of NTBs to trade remain, ranging from SPS approval and quality certification to inefficient and corrupt border controls.

Tariffs are thus only one dimension of the challenge faced in promoting greater intra-regional trade in basic grains. The reality is that other priorities – such as promoting greater national food self-sufficiency in the face of rising global food prices or maintaining effective SPS controls (in 2011 particularly the case of cassava) to prevent the spread of crop diseases, or even ensuring consumer safety in the context of food poisoning outbreaks – are commonly accorded greater priority at the national level than the promotion of intra-regional trade.

Given these wider concerns, problems can arise even within customs unions where nominally a single regional market is being created.

These problems can be even more pronounced in FTA arrangements, where broader policy concerns can lead to disruption of trade flows even from countries whose governments have previously been encouraging investment in the development of export-oriented cereals production (e.g. the December 2011 decision of the government of Malawi to impose an export ban on cereals). This in turn can lead to supply difficulties in countries who, in the context of FTA arrangements, have sought to source cereals from regional partners (see *Agritrade* article 'Malawi maize export ban complicates Kenyan tariff policy debate', 12 February 2012).

Significantly, the Malawian government action followed on from a rapid escalation of the maize price in South Africa, which was attributed to an over-commitment to exports. It was notable that, despite the regional cereals shortages in East Africa and the high level of South African maize exports, trade from South Africa to neighbouring regional markets declined (-7% with no exports to Kenya from May 2011 to February 2012). This needs to be seen in the context of:

- the maintenance of a 50% import duty on South African maize, given that South Africa is not a member of the COMESA FTA;
- concerns over genetically modified (GM) maize;
- logistical constraints in the port of Mombasa.

Developments in the economic partnership agreement (EPA)

The EC's September 2011 proposal

The negotiation of EPA processes continued during 2011 across the Southern and Eastern African region, both with regard to the signing and ratification of initialled EPAs and the conclusion of comprehensive regional or sub-regional EPAs. This process was given new impetus on 30 September 2011 by the tabling of the EC proposal to modify the December 2007 regulation (1528/2007) governing market access for ACP countries whose governments had initialled an EPA. This proposal sought to establish a deadline of 1 January 2014 for the signing and ratification of initialled interim EPAs, after which time the duty-free, quota-free access provisions of the December 2007 regulation (no. 1528/2007) would lapse. EU Trade Commissioner Karel De Gucht argued that the current situation was 'unfair' to countries whose governments had already signed an EPA and were implementing its provisions. The Commissioner, nevertheless, acknowledged that 'the loss of preferential market access may hit several countries hard', but pointed out that the EC was intensifying its efforts to conclude comprehensive EPAs and reaching out 'to the governments concerned to ensure timely completion of legal obligations'.

The EC proposal has caused concern among agricultural exporters in countries whose governments had not yet signed and ratified their initialled interim EPA (IEPA). Particular concerns arose over loss of duty-free, quota-free access in sectors where:

- high tariffs would be introduced, such as sugar (Swaziland, Kenya and Zimbabwe), beef (Namibia and Botswana) and tobacco (Zimbabwe);
- moderately high tariffs would be imposed, such as beans (Kenya), peas (Kenya and Zimbabwe), pineapples and pineapple juice (Kenya and Swaziland) and citrus fruit (Zimbabwe and Swaziland).

Concerns have also been raised over the impact of the proposal on short-term commercial contract negotiations and efforts to develop joint marketing strategies for quality-differentiated products with European partners (e.g. in Namibian efforts to strengthen the marketing of its premium 'Natures Reserve' brand for meat), because of the uncertainty that is created over future tariffs to be applied to these imports (see *Agritrade* article 'Progress in diverse EPA negotiations', 28 November 2011).

However, the September 2011 EC proposal appears to have focused the minds of trade negotiators in the final quarter of 2011 and first quarter of 2012, although African governments continue to push for the withdrawal of the EU proposal (see *Agritrade* article 'Perspectives on the state of EPA negotiations', 2 July 2012).

The EAC EPA process

In September 2011 an EAC–EU negotiating session was held in Zanzibar which, by establishing a road map for the resolution of contentious issues, gave new impetus to the EAC–EU EPA process. Efforts continue to conclude the EPA process with, according to an EC information note, negotiations focusing on agriculture, rules of origin, SPS, technical barriers to trade, customs cooperation, and trade facilitation provisions. It has been agreed to postpone negotiations on trade-related rules and trade in services.

Current delays in finalising the EAC EPA process have been attributed to regional concerns over the 'operationalisation of the EAC customs union, monetary union and new membership of South Sudan', as well as issues arising from wider economic developments. Overall the process was described as EAC Ministers being 'at an advanced stage', with the expectation that the negotiations would 'probably be concluded within the year' (see *Agritrade* article 'EAC–EU EPA negotiations entering the final stage?', 25 February 2012).

However, debate on the signing of the EAC–EU EPA continues to take place in broader civil society bodies. This can be seen as indicative of the wider concerns of the least developed partners in the EAC over the impact of trade liberalisation processes on national economic development. These concerns impact not only on the approach

> *"Debate on the signing of the EAC–EU EPA continues to take place in broader civil society bodies"*

to the EPA negotiations, but also the approach to the elimination of non-tariff policy barriers to trade within the EAC, and even the process of harmonisation of product standards designed to facilitate intra-EAC trade. In this context it should be recalled that Uganda is still not a party to the COMESA FTA.

The Eastern and Southern Africa (ESA) EPA processes

In May 2012, the entry into force of the EPA signed with Mauritius, Madagascar, Seychelles and Zimbabwe was announced. Talks aimed at concluding a comprehensive EPA continue, involving four governments now implementing their

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signed IEPAs, two of which have initialled IEPAs, and four which have not initialled an IEPA. Outstanding issues include the trade coverage of the agreement, export taxes, agricultural safeguards and rules of origin.

The participation of the four ESA governments that have not yet initialled an IEPA needs to be seen in the wider trade context. For example, the government of Ethiopia, along with seven other COMESA members, has not yet acceded to the COMESA FTA. In addition to the study findings (see above) that 'the Ethiopian manufacturing industry is neither internationally competitive', but also because an EPA would also extend trade concessions made by Ethiopia to the EU to all regional parties to the agreement, early Ethiopian signature of a regional ESA EPA looks unlikely.

It is in this context that in civil society dialogue meetings, EC officials have acknowledged the reluctance of governments of countries in the Horn of Africa to conclude an EPA.

This would appear to be moving towards a situation where the countries of the original ESA configuration will end up with different trade arrangements with the EU, involving different levels of duty-free access for EU exports.

Concerning rules of origin matters, a common source of delay at border crossing points within the ESA FTA grouping, it is unlikely that the differential tariff treatment of imports from the EU will facilitate trade.

The SADC EPA process

Although concerns were initially expressed about the EC's 30 September 2011 proposal, an air of optimism now appears to prevail in the SADC–EU EPA negotiations. Reports in October 2011 indicated that agreement had been reached on about 80% of the agricultural products for which South Africa was seeking improved market access under the SADC–EU EPA. However, there was still no agreement on further market access concessions for sugar, despite the supply shortfalls on the EU market and the shrinking surplus of raw sugar for export to the EU across the Southern and Eastern African region. Equally, agreement was still outstanding on wine and starch, with agreement in these areas potentially being linked to further progress on geographical indications (GI) protection, while new concerns have arisen regarding the 'standstill' clause.

According to the EC delegate to Namibia 'the Swakopmund agreements would be an integral part of the text' (see *Agritrade* article 'Optimism prevails in SADC–EU EPA negotiations', 16 January 2012). These covered the measures that will be allowed to:

- promote food security;
- permit use of export taxes;
- provide for infant industry protection;
- enable the use of quantitative restrictions on trade.

The most favoured nation (MFN) issue was thought not yet to be completely resolved although progress was reported on a toned-down language which would involve case-by-case consultations. Concerns also remained about ambiguous language on the technical issue of 'definition of the parties', with these provisions in their current form seen as destabilising the SACU process, where a deadlock on some substantive institutional reform issues remains (see *Agritrade* article 'Namibian concerns in the EPA negotiations close to being addressed', 6 October 2011).

The EC has committed itself to being 'as flexible as possible' in addressing Namibian concerns. This is important given the implications of contentious issues for ongoing agricultural development programmes and policies. In this context it should be noted that, within the SACU, consensus has been reached that broader processes of trade negotiations should not undermine the benefits of existing agreements but should seek to be more inclusive, extending existing benefits to a wider group of countries. Within this approach it is recognised that full accommodation of national sensitivities must be taken into account (see *Agritrade* interview with Hon. Rob Davies, Minister of Trade and Industry of South Africa, 'The challenge of regional integration in Southern and Eastern Africa', 7 May 2012). It is against this background that in October 2011 Namibian officials reiterated their resolve not to sign a 'bad' EPA that would deprive the country of 'the opportunity to develop our own industries and to export finished goods to other large markets'.

Bearing in mind that negotiators are demonstrating the necessary flexibility, a comprehensive EPA agreement could well be concluded in the course of 2012. This would coincide with the full implementation of the pre-existing EU–South Africa Trade Development Cooperation Agreement (TDCA), which *de facto* has already introduced free trade in 'substantially all trade' between the EU and the SACU (see *Agritrade* article 'Academic assessment of EU–South Africa TDCA published', 6 September 2011).

Developments in trade relations with third countries

Developments in SACU's trade relations with third countries

At the beginning of 2012 it was revealed that a number of agreements were pending between SACU and emerging economies. These include a SACU–Mercosur agreement and a SACU–India trade agreement. The agreements, however, involve only a limited number of tariff lines and commonly involve tariff reduction rather than tariff elimination commitments. This contrasts with the breadth and depth of the trade liberalisation commitments under EU EPAs (see *Agritrade* article '"Trade lite" agreements pending between SACU and emerging economies', 7 January 2012).

Bearing this in mind, products such as EU processed oil crop products could begin to lose their tariff preferences relative to Latin American suppliers, depending on the nature of the tariff concessions granted under any final 'tariff-lite' agreement (see *Agritrade* article 'Review of South African oil crops sector', 5 July 2011).

More broadly, in August 2011, the South African Revenue Service issued a report highlighting the changing geographical orientation of South Africa's external trade. Exports to the EU have fallen from 34% of the total value of exports in the first half of 2006 to 27% of total exports in the first half of 2011, while exports to Asia rose from 26 to 35%. The rise exports to Asia can be seen as a product of the more rapid rate of growth of Asian economies in the past decade, compared to more developed economies. The emerging trade agreements with advanced developing countries also need to be seen in the light of IMF projections of growth rates for emerging and developing economies three times larger than those of advanced economies (6.6% compared to 2.2% for 2011). As a consequence, over the coming years, 'the world economy will depend on emerging markets to drive growth' – within both food and agricultural markets. However, the principal benefits for Southern Africa may lie in the general price-increasing effects of rising Asian demand rather than any new direct trade in food and agricultural products, given the structure of Asian demand in the products concerned.

Developments in the EAC's trade relations with third countries

In November 2011 press reports indicated that the USA was seeking a new trade and investment agreement with the EAC. It was reported such an agreement would have five pillars:

- developing a new trade and investment partnership;
- investing in infrastructure;
- strengthening governance;
- promoting financial integration;
- improving food security.

According to Florizelle Liser, the Assistant US Trade Representative for Africa, the US is 'seeking a full-scale free trade treaty' within the next year, delivering 'some quick wins'. However these aspirations need to be seen in the light of similar earlier abortive negotiations between the SACU and the US.

Any negotiation for a new agreement between the EAC and the USA would be likely to increase pressure on the EAC to finalise the EPA process and begin implementing commitments entered into through the interim EPAs initialled at the end of 2007 (see *Agritrade* article 'USA seeking new trade deal with the East African Community', 28 November 2011).

3. Current policy debates and issues

Getting to grips with unequal capacities to benefit from free trade

The concerns among members of subregional groupings over the economic dominance of larger economies are only too real in Southern and Eastern Africa. An important challenge will be to find ways of evening out imbalance in the ability of national producers to compete within a common market, governed by common standards. This will require the elaboration of national and regional policy initiatives to strengthen the functioning of agricultural supply chains, including investment support, rules to manage the transparent and accountable use of traditional trade policy tools such as import and export licences, initiatives to promote the development of intra-regional supply chains and the adoption of policy measures to address the abuse of unequal power relationships along supply chains.

As in many areas, active involvement of organised and strengthened industry associations will be required, including farmers' organisations and associations, in getting to grips with these challenges.

Ensuring transparent and accountable use of trade policy tools

The experience in the SACU highlights the extent to which trade restrictions are used to deal with the economic realities arising from vast inequalities in economic size and levels of development between regional partners. It also highlights the importance of establishing effective disciplines for the transparent and accountable use of restrictive trade policy tools.

Within the SACU and broader FTA initiatives, careful consideration will need to be given to:

- the mechanisms for determining which trade policy tools are to be permitted within regional trading arrangements;
- the mechanisms for establishing the parameters for the use of agreed trade policy tools;
- the mechanism to be established for ensuring the transparent and accountable use of permitted trade policy tools, within clearly defined parameters.

Practically defining regional aspirations

The anomaly, whereby governments commit to new trade liberalisation arrangements while failing to fully implement existing trade liberalisation commitments, requires recognition of the wider policy concerns that drive national decision making. This suggests a need to establish transparent and accountable mechanisms for the accommodation of these sensitivities and concerns within moves towards greater free trade.

Existing trade practices in the region are currently being catalogued, potentially providing the basis for the identification of a permissible toolbox of measures and the basis for their transparent and accountable deployment.

It is increasingly being recognised that this approach will also need to include the establishment of flanking policies and flanking measures to address underlying concerns. These will range from elaborating regional food reserve policies, through infrastructure development to strengthen the functioning of regional markets by facilitating the physical movement of food and agricultural products, to the establishment of agro-industrial development strategies and supporting policy tools.

However, realistic ambitions will be required in elaborating these flanking measures, given the human, institutional and financial capacity constraints that exist across the region.

Basing regional policy commitments on recognised realities and the subsidiary principle

The process of establishing a SADC regional agricultural policy is to be a member state-based process. The country-based analysis of the agricultural context, the issues faced, and existing policy measures provides the basis for regional consultation on the way forward in terms of harmonisation of national agricultural policies within a common regional framework. This approach offers considerable scope for the identification of inconsistencies between agricultural policy objectives and practices and regional trade policy commitments. It also offers scope for the identification of practical modalities for the resolution of inconsistencies in ways that are minimally trade distorting. This could be an important issue in the context of the intensifying negotiations process on the planned T-FTA of EAC, COMESA and SADC (see *Agritrade* article 'Moving forward SADCs regional agricultural policy', 5 July 2011).

A critical issue faced within this process will be clarifying the approach to be adopted in dealing with the use of trade policy tools and the elimination of NTBs to trade. This will need to reconcile the approach to agricultural policy development with the approach to regional free trade set out in the draft T-FTA proposals.

Balancing the interests of producers and processors

Although balancing the interests of agricultural producers and value-added food processing sectors is a challenge at national level, it takes on added significance in terms of regional trade arrangements when certain member governments favour agricultural processors (either because of land constraints or their overall chosen trajectory for agri-food sector development) while others favour agricultural producers. This can lead to disputes not only over the relative level of tariff protection to be accorded to agricultural and processed agricultural product, but also over the rules of origin to be applied on intra-regional trade (e.g. existing disputes over rules of origin for wheat and wheaten products, and future disputes over sugar and sugar-based food products).

Given the focus on the development of agro-industrialisation at the regional level, it is unclear how these competing interests are to be reconciled. In all probability, it will give rise to sector-specific accommodations within regional trade arrangements.

In this context, it seems critical to support the set-up of national and regional industry associations that would bring together the different stakeholders (farmers, traders, processors, exporters etc.) and come up with clear and coherent messages to be passed to policy makers. An interesting example in this regard is the work done by the EAGC in Eastern Africa.

The case of sugar: Reconciling policy commitments at different levels

Tariff-rate quotas (TRQs) and safeguards have been used extensively in both COMESA and EAC to manage trade in sugar. In the EAC sugar sector, the current divergence between sector development policies and trade policy commitments would appear to require closer harmonisation of sugar sector policies and trade policy commitments not just within the EAC, but also within COMESA and at the T-FTA level. In this context, TRQs could play a role in managing moves towards free trade, as for example under the SADC sugar protocol.

Against this background, with per capita consumption of sugar rising across the region, where some governments are pursuing national self-sufficiency strategies and other governments are pursuing strategies for the regional marketing of value-added sugar products, the question arises: on what basis are moves towards regional free trade in sugar products to be undertaken within the T-FTA?

The 2011 cereals sector experience: Issues arising for the T-FTA

The experience in the cereals sector in 2011/12 raises a range of questions related to the T-FTA process:

- If COMESA tariff preferences (25%) had been extended to South Africa or a zero duty TRQ had been in place, would this have made East African markets more commercially attractive for South African maize exporters?
- Given the infrastructure constraints faced, would the ready availability of South African maize have reduced the fears of maize shortages across the region, which contributed to the introduction of export bans and other forms of export restrictions?
- Given the various trade policy tools in use in the cereal sector across the T-FTA, how is progress towards the freer movement of cereals within the region to be managed?
- What types of intra-regional trade arrangements are required for maize, in order to support higher levels of national production, greater intra-regional trade and enhanced food security across the whole Southern and Eastern African region?
- How do you go about harmonising SPS and food quality standards to facilitate intra-regional trade in cereals and at what level should this harmonisation process first take place (within customs unions, existing FTAs or across the T-FTA as a whole)?
- What flanking measures in terms of regional food security reserves are needed to keep trade open in drought-prone regions, and will these need to go beyond current sub-regional initiatives such as the East African Community Food Security Action Plan?

The EAC discussions on dairy standards: Lessons for the T-FTA

Efforts to harmonise standards in order to facilitate trade within the EAC are likely to carry important lessons for wider trade negotiations. This is particularly the case in the T-FTA context, since the level of development of dairy sectors across the region varies considerably. It is further complicated by the scope that exists for the development of dairy product manufacturing capacity quite unconnected to the process of dairy cattle farming.

This raises general questions as to:

- the process by which common standards are to be established within any T-FTA in order to facilitate trade in directly comparable products;
- the rules of origin to be applied within the T-FTA for value-added food products, in sectors where value-added processing activities can be developed entirely on the basis of imported raw materials.

Dealing with EPA complications

Various IEPA provisions, particularly those on the use of quantitative restrictions and import and export licences, bring into question regional accommodations related to infant industry protection, special arrangements for 'controlled products' and agricultural safeguards, which were designed to address the problem of the vast inequalities in economic weight of the partner countries. Although in some EPA negotiating contexts the inconsistencies between intra-regional accommodations and IEPA provisions are being addressed, this is not the case across the whole Southern and Eastern African region.

Given the importance of the EU as a trading partner, these inconsistencies could complicate intra-regional processes to establish a more open and transparent basis for agricultural trade. In this context, a pragmatic approach may be required that gives priority to intra-regional commitments over inter-regional commitments.

Furthermore, within regional integration schemes in Southern and Eastern Africa, rules of origin issues are a common source of delay at border crossing points. In this context, the many and diverse tariff elimination commitments contained in the various IEPA arrangements across the region are unlikely to facilitate intra-regional trade in food products.

Context of US-EAC negotiations

The growing US interest in a new trade deal with the EAC cannot be separated from China's growing economic presence in the East African region. Chinese companies are currently involved in large-scale infrastructure projects across the region and appear to be keenly eyeing the new state of South Sudan, with its huge untapped mineral resources. South Sudan's request for accession to the EAC would mean that any EAC agreement could ease the way for US companies into Sudan in a context where severe institutional capacity constraints are likely to be faced in working with the new administration in South Sudan.

Such negotiations however, could provide opportunities for the East African Community to address certain limitations in the current US African Growth and Opportunity Act (AGOA) framework, from which the Kenyan textile sector has, to date, been unable to benefit. This in turn could serve to lay a basis for strengthening the functioning of cotton supply chains in the East African region.

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