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BRIEFING NOTE ON EPAs & AfCFTA

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Title: Implications of Commitments in Non-Tariffs Measures under EPAs and AfCFTA:
A focus on the Agro-Food Sector in Southern Africa

Introduction

Given the divergent tariff liberalisation commitments contained in the various sub-Saharan African EPAs will have implications for the implementation of Africa's Continental Free Trade Area; there is a remarkable consistency in the commitments made by signatory African governments in regard to the future use of non-tariff trade policy tools. The most significant of these commitments relate to:

- i. provisions dealing with tariff standstill commitments;
- ii. provisions on the 'Prohibition of quantitative restrictions'
- iii. provisions on 'National treatment on internal taxation and regulation'.

i. Implications of Standstill Commitments

The provisions related to tariff standstill commitments state 'no new customs duties shall be introduced, nor shall those already applied be increased in trade between the Parties as from the entry into force of this Agreement'. In the case of the EU-South Africa agreement this meant when tariffs on imports of poultry meat were increased within WTO bound ceilings, these tariff increases could only be applied to imports from non-EU sources of supply. EU suppliers continued to benefit from negotiated tariff reductions in a context of duty increases on imports from all other sources.

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Extracted from TWN-Africa Study:

- i. Title: The African Continental Free Trade Area, Brexit and EPA Implementation: Opportunities and Challenges Arising from the Brexit Process For Revising Economic Partnership Agreements with the EU in the Agro-Food Sector
- ii. Author: Paul Goodison (PhD)

These types of provisions in the various sub-Saharan African EPAs effectively lock-in as the maximum level applicable to imports from the EU the tariffs applied at the date of entry into force of the agreement. This effectively means that while tariff can be raised within 'bound' WTO ceiling on imports from non-EU sources of supply, no sub-Saharan African EPA signatory government can use the 'water' in their 'bound' tariff schedules to increase duties on imports from the EU once EPAs enter into force. This effectively restricts the utility of tariffs as a trade policy tool.

When South Africa increased its applied tariffs on poultry meat imports within WTO 'bound' ceilings, in October 2013 all this did was divert importers towards EU sources of supply since EU suppliers were not subject to the increase in tariffs.

With subsequent safeguard duties (July 2014) and anti-dumping duties permitted under the EU-South Africa trade agreement proving singularly ineffective, imports from the EU only fell after December 2016 when the South Africa government introduced a ban on imports of poultry meat from various EU member states on SPS grounds (linked to avian influenza outbreaks in the EU).

EU poultry meat exports to South Africa

	2012	2013	2014	2015	2016	2017
Tonnage South Africa	131,832	158,481	203,414	213,413	259,810	74,514
Total extra-EU exports	1,274,794	1,268,956	1,330,487	1,330,967	1,442,683	1,477,588
percent total extra-EU	10.3percent	12.5percent	15.3percent	16.0percent	18.0percent	5.0percent

Source: EC, Market Access Data Base.

http://madb.europa.eu/madb/statistical_form.htm

ii. Implications of 'Prohibition of Quantitative Restrictions' Provisions

Under most sub-Saharan African EPAs the provisions related to the 'prohibition of quantitative restrictions' commit signatory African governments to eliminating the use

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of quantitative restrictions on imports from the EU from the date of 'entry into force' of the agreements and to introducing no new quantitative restriction on imports from the EU.

Given the extent to which quantitative restrictions on sensitive agricultural products are applied by sub-Saharan African governments, these provisions if enforced could seriously restrict the existing use of such policy tools in support of agricultural sector development initiatives.

The only exception to these commitments ironically is under the SADC-EU EPA where this issue was fiercely contested. Under the SADC-EU agreement these provisions declare: 'The Parties may apply quantitative restrictions provided such restrictions are applied in conformity with the WTO Agreement'. This wording is seen as sufficiently vague to allow governments such as the Namibia government to apply their existing quantitative controls on agricultural imports as and when required in support of the development of production of cereals, horticulture products, poultry meat and dairy products.

iii. Implications of 'National Treatment' Provisions

In terms of the national treatment the main features of these provisions relate to a prohibition on imports from the EU being subject to 'internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to like national products' and a commitment to ensuring goods imported from the EU are accorded 'treatment no less favourable than that accorded to like national products in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use'.

This provision restricts the ability of African government to legislate local procurement obligations for private sector players, such as supermarkets and wholesalers, to oblige them to source a percent of supplies from local producers. It also prevents the granting of excise and other forms of tax rebates only to local producers

The Value of EPA Safeguard Provisions

While there are some differences in the various safeguard provisions included in the EPA agreements, how significant these differences will prove to be is unclear. The experience in using anti-dumping and safeguard provisions in the poultry meat sector under the EU-South Africa agreement suggests these provisions afford little or no

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effective protection against low priced imports from the EU. There is little relationship between the prices of EU poultry parts and domestic EU poultry production costs, with this EU export trade continuing so long as the price received exceeds the costs of alternative disposal minus transportation costs and other charges.

iv. The Africa CFTA and EPA Provisions on the Use of Non-Tariff Trade Policy Tools
Of these commitments on the use of non-tariff policy tools the most serious from the perspective of the creation of an African Continental Free Trade Area (AfCFTA) are those prohibiting the use of quantitative controls on imports from the EU. This needs to be seen in a context where it is generally agreed that because of the sensitivity of agriculture and food issues at the national level, moves towards free trade in an AfCFTA context will require a system of managed liberalisation of intra-African trade in agro-food products. This is likely to require the extensive use of tariff rate quotas within the trade liberalisation process. The negotiation of such TRQ based trade liberalisation arrangements will be greatly complicated if the use of quantitative controls on imports from the EU is prohibited.

Given the long implementation timeframes (beyond the SADC-EU EPA) it is likely to be the EPA provisions on the use of non-tariff measures which will first make themselves felt on EU-Africa agro-food sector trade. This needs to be seen in a context where from the perspective of EU agro-food exporters it is the use of non-tariff trade policy measures which are now seen as the main obstacles to the further expansion of EU agro-food exports to Sub-Saharan Africa.

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