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Global Development:
The Lisbon Treaty, Trade and Sub-Saharan Africa.

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Introduction

The Lisbon Treaty enshrines two priorities for global development: (a) poverty reduction as the main objective of European development cooperation; and (b) policy coherence for development. These two objectives should be at the center of any future progressive agenda for Sub-Saharan Africa.

While global poverty is rapidly being reduced, Sub-Saharan Africa's share is ballooning: from 15 percent in 1990, Africa's share of the world's poor is projected to rise to 82 percent in 2030. At present only about a third of EU's ODA is focused on the Region: this must be increased substantially. And our aid needs to be effective: it is time to implement longstanding commitments for improved division of labor among EU donors, while respecting ownership by the recipients and aligning aid to their programs and priorities.

But as urgent is dealing with the most blatant lack of coherence in EU policies towards Sub-Saharan Africa's development: trade, the focus of this article. Trade policies around the world discriminate against manufacturing and agricultural exports of poor countries. Tariffs on manufactures in rich countries are in the low single digits, but tariffs are still high in sectors where poor African countries do well, such as textiles; and there are many restrictions affecting their agricultural exports.

Ostensibly, the EU is attempting to address this problem in two ways: for the Least Developed Countries (LDCs) in SSA, it has established a scheme that permits them access to European markets without any tariffs or quantitative restrictions—the so called "Everything But Arms" (EBA) scheme. For some twenty other poor, be it slightly less, countries, the EU trade policy is less generous.

Since 2002, which is for more than a dozen years, the EU has been trying unsuccessfully to negotiate “Economic Partnership Agreements” (EPAs) with regional groupings in SSA. For a variety of reasons, Africa has shown little appetite for EPAs. Now, the EU is trying to negotiate a major new preferential agreement with the US. Whatever the merits of the proposed Transatlantic Trade and Investment Partnership (TTIP), it is going to have adverse effects on third countries, in particular sub-Saharan Africa. It does not have to be this way. The TTIP offers an opportunity to improve trade policies towards SSA and contribute to the alleviation of its poverty.

The Problems with the EPAS

The EPAs require commitment for reciprocal opening of markets in the EU and in SSA. Given the state of development of most SSA countries, opening up to the EU is burdensome, even with long transition periods. The inclusion of policies that go beyond merchandise trade (services, intellectual property rights, government procurement) also create obligations that exceed what these countries have committed to do in the WTO. The EU is using the leverage it has by offering preferential market access to extract concessions from SSA countries that it is not able to obtain from them in the WTO. This is likely to limit their policy space and might well be inconsistent with their more immediate development priorities.

Also, the membership of the various African groupings overlap, and all of them include LDCs that already have unrestricted market access through the EBA scheme. As some of the groups have common external tariffs for all their members—LDCs or not, this de facto means that LDCs in regional groups negotiating an EPA would continue to benefit from the EBA but in addition would have to open their markets on a preferential basis to EU products—something they did not have to do under the EBA scheme.

As EPA negotiations have dragged on they have overburdened already limited trade negotiation capacity which should urgently focus on deeper integration within the African market. A number of EPAs have been signed but little, if anything has been implemented. More recently, the EU upped the stakes by threatening loss of all preferential market access for those non least developed countries that have not ratified and implemented their interim-EPA.

As Ben Mkapa, former President of Tanzania and now Chairman of the South Centre stated: "*I believe that the Economic Partnership Agreements which the EU is trying to get African countries to agree to, is the most critical trade and negotiations issue facing Africa. If the EU's model is accepted, it would cause immense damage to our agriculture, industry and development prospects. It will also make it very difficult if not impossible to achieve effective economic integration within the African continent, which has been a dream of our political leaders since independence".*

The EPA's have soured the relationship with many SSA countries. Leaving these issues to trade technocrats, stands in the way of an effective strategic policy for SSA.

It is time for a fresh start in EU trade policy vis-à-vis Sub Sahara Africa.

The Transatlantic Trade and Investment Partnership and Sub Sahara Africa

At the same time the EU and the US are embarking on a Transatlantic Trade and Investment Partnership **(**TTIP**).** Such a mega regional preferential trade agreement will have a huge impact on the development of non-signatory countries, including Sub-Sahara Africa.

In general, such agreements have three kinds of effects on third countries:

First, is the traditional trade diversion. Obviously, if tariffs and non-tariff barriers between the USA and the EU decline or are eliminated, the relative barriers to market entry faced by third countries become higher. This will particularly impact Africa as 40% of Africa's exports are destined either for the US or EU market. A TTIP providing preferences to US and European exporters to each other's market erodes existing SSA's preferential access to both. SSA's exports are highly concentrated: erosion of preferences in a small set of specific product categories: textiles, clothing and footwear, where present EU and US tariffs are typically more (and often much more) than 10 %; and specific agricultural products such as fish, bananas and sugar can have important negative consequences for these countries. And the higher the current existing protection in the US and EU markets, the greater the scope for hurting African exporters through the TTIP.

Second, the TTIP also aims to harmonize product standards – at a high level. This is potentially an even greater problem for SSA than trade diversion resulting from preferences. For some successful third country exporters having the same standards might facilitate exports to a broader market – but for most poor countries' exports, higher standards will be more difficult to comply with and could even lock out SSA exporters. And more advanced intellectual property rights rules might impact on introduction and production of generic drugs and their supplies to the SSA.

Third, the TTIP will tend to undermine multilateral negotiations in the WTO just as the WTO, following its Bali Ministerial, appears to be recovering from its slide to irrelevance. Only in this multilateral forum smaller and poorer countries have a voice. And by negotiating regulatory issues outside the WTO the EU and U.S. intend to agree to rules, which they intend to impose on other countries, which are excluded from the negotiating process.

One of the few reports on the potential impact of a TTIP on third countries by Bertelsmann Stiftung (2013) provides striking proof: if tariffs and non- tariff barriers, especially barriers resulting from different regulatory systems between the USA and EU fall, the relative barriers to market entry faced by developing countries become higher. The poorer countries suffer the most, and Sub-Saharan Africa (SSA) suffers the biggest losses.

The *Transatlantic Task Force on Trade and Investment* established by the German Marshall Fund of the United States (2012) also expresses these concerns and urges to take into account the interests of third countries; and to particularly increase efforts for unrestricted market access for the poorest countries. Much depends on the TTIP's design: does it provide room for the EU and the US to codify, align and extend their existing free trade agreements and preferential arrangements with others? Can that be part of the architecture from the outset, or is it going to be an afterthought following years of exclusive negotiations?

More recently BMZ, the German Development Cooperation Ministry commissioned a study, which acknowledges the risk of trade diversion, preference erosion; and that regulatory cooperation might set bars too high for poor countries. This study is optimistic however about the “trickle-down” potential of a TTIP: as it would increase income for Europeans and Americans, this will lead to more demand for exports from third countries, e.g. more tourism for Kenya.... Few case studies in the Report are from low-income SSA, and they spell trouble: for Cote d’Ivoire the TTIP would make it more difficult to enhance its market share in value added cocoa products; and Kenya might suffer trade diversion for its flowers, vegetables and textiles.

US and EU Trade Preferences: More Complications for SSA

At present both the US and the EU operate a complex set of preferential trade arrangements vis-à-vis Sub Sahara Africa. The American scheme is more generous in terms of country coverage: 40 of the 48 countries in SSA qualify; the European EBA scheme is more generous in product coverage (“Everything But Arms”) but is limited to the 27 Least Developed Countries (LDC’s) in Sub Saharan Africa, excluding countries that are low-income such as Kenya or lower middle income (Lesotho, Ghana), which are precisely those African countries best-placed to take advantage of preferences for export diversification.

All preferential trade schemes contain what are called Rules of Origin: how do you determine that a product comes from a country which is a member of the scheme and hence deserves preferential treatment. Rules of origin define how much processing must take place locally before goods and materials are considered to be the product of the exporting country and can get preferential market access. Both the EU and the US schemes suffer from the complex requirements SSA exporters need to meet to benefit from the preferences provided.

In the original EBA scheme the RoO defined access so restrictively and inflexibly, that the scheme was so underutilized that it had minimal impact on LDCs exports to the EU. A decade after the introduction of EBA the European Commission finally revised the rules of origin for EBA in 2011, acknowledging that *"a correlation was indeed proven between the stringency of the rules of origin and the utilization rates of the tariff preferences.* The new rules appear to have been improvement over the old one.

It is not clear however, what will be used in the EPAs. And in any case the EU RoO system is different than what the US uses. This means that unless there is a radical rethinking of the preferences schemes offered by both sides of the Atlantic, the TTIP will result in SSA exporters losing out markets to US and EU exporters as well as continue to face a different set of preferences in the two markets, for different products as well as different rules in each market in order to take advantage of whatever preferences are available.

TTIP as an Opportunity

Sub-Saharan Africa (SSA) needs to expand exports in order to create jobs, raise incomes, and, ultimately, reduce poverty and aid dependency. Domestic markets in most SSA countries are simply too small to enable local industry to achieve economies of scale. Increased trade opportunities would encourage both critical domestic and foreign investment and help lift millions out of poverty. The region's exports have been growing rapidly, about 14% per annum in the last decade. But the bulk of the growth has come from increased exports of oil and raw materials. The important emergence of global value chains virtually by-passed the region. And its overall share of world trade is a miniscule 2.2%.This marginalization of the region is critical in holding back its development. The region also needs generous and effective preferential treatment as a "breathing space' required to be able to compete on international markets.

The TTIP provides the opportunity to codify, align and extend the present preference schemes for SSA - instead of undermining them.

If we want to show that we do not intend the TTIP to harm others, it would be very helpful to deal now with our relations with SSA, and to ensure the TTIP would improve rather than undercut SSAs access to our markets, as a precursor to the overall agreement, NOT as just one of many issues on the EU-US negotiations agenda somewhere in the future.

Why not, in the context of the TTIP, harmonize trade preferences for SSA, taking the best features and most effective provisions of both our programs and updating the rules to make them compatible and relevant in today's globalised world?

On country coverage, it is difficult to justify a US-EU trade arrangement that provides different developing country treatment. What particular European foreign policy interest would be served by the EU and the US providing different access to Kenya's products? Preferences need to benefit those countries that need it most, without excluding only slightly less poor countries that can make use of the preferences. Preferential treatment should be extended to all low-income and lower middle income countries in SSA.

Product coverage should be as generous as the EBA scheme. Most SSA countries' exports are highly specialized, producing a very narrow scope of goods; in many cases, a few raw materials account for most of their exports. Excluding even a small number of products can rob the initiative of any meaning.

Finally, for Sub-Sahara Africa to be able to exploit preferential access, qualification requirements have to be relevant, simple and harmonized. Updating the preferential RoO to the realities of production networks that define trading conditions in the 21st century is very important and long overdue.

First, RoO raise production costs, if, to meet the requirements, (parts of) the product must be produced in a different manner or different place, than would be the case otherwise.

Second, exporters have to adhere to documentation requirements, based on (at times) complicated cost accounting and apportionment, detailed and lengthy record keeping, exporter registration and so forth. And those costs are not limited to exporters: they create huge burdens to customs authorities with already limited institutional capacity.

A third problem with the current rules is that the EU and the US employ substantially *different methodologies* to define origin (a specific proportion of the total value added; and/or that the product has undergone sufficient transformation so as to be classified in a different tariff category). So poor producers have to adapt their manufacturing processes in order to comply with the various conditions that they impose, sometimes incompatible with each other and/or substantially different. For example, an exporter based in Tanzania will face different rules when exporting goods to Europe or the US, each of which also differs from the RoO under its regional COMESA trade agreement. The differences in these rules stand in the way of diversification in Sub Sahara Africa, because it is easier to diversify by selling products that have been successfully sold in one market into other markets than selling different products into more markets.

Probably the most fundamental problem with current RoO is that they were created decades ago. Since that time, the world globalized: production of a good became fragmented between many countries, with each specializing in one narrow task. Comparative advantages are less and less at the level of whole products, but simply a specific transformation step. As the former DG of the WTO, Pascal Lamy phrased it: "*Global value chains have profoundly changed the way we trade. Whereas before we traded in goods, today we trade in tasks."*

By requiring substantial value added, RoO can be prohibitive to participate in global value chains. RoO based on the assumption that a poor country can create a significant share of value added are unrealistic and hinder specialization in manufacturing.

To quote the present DG of the WTO, Roberto Azevêdo: "*these strict, product-specific rules of origin may actually be detrimental to value chains and therefore exclusionary for some. The smaller the country, the smaller the company, the smaller the trader, the bigger the likelihood that it will be excluded."*

The unilateral rules that guide exports from Sub-Sahara Africa should be relaxed to ensure genuine utilization of preferential market access. The simplest way to create the necessary flexibility, which does not need any negotiations among the TTIP partners: *mutual recognition* of origin regimes across preference givers, accepting an import eligible in one market as eligible in any other. This should be feasible as the TTIP is expected to rely extensively on the principle of mutual recognition, given the extent to which the US and EU regulatory approaches differ.

Now is the time to act. The EU has declared 2015 "the European Year for Development". And, given the gridlock with EPA's, it is appropriate to hit the reset button now, as it seems that – even with the Commission threatening loss of all preferential market access – there is simply no appetite in Africa for this approach. In the meantime, the European efforts to demand reciprocity in its trade relations with SSA, which would give European companies preferential access to Africa, has inspired the US recently to consider introducing the principle of reciprocity also in its trade preference scheme for the region: harmonization indeed – but to the detriment of SSA…

So it is high time for the EU to come up with new ideas for our trade policies with SSA: a new EU-US harmonized preference scheme for the region would fit that bill.

The TTIP itself would benefit from harmonization of agreements with third countries anyway. But instead of being just one of many issues on the EU-US negotiations agenda somewhere in the future, focusing on the urgent needs of Sub Sahara Africa now, as a precursor to the overall agreement, would help the Region's economic transformation, give a tremendous push to its integration in the world economy, and lift millions of people out of poverty.

In fact, such an action would be in keeping with the spirit of the Marshall Plan; the most important feature of the Marshall Plan was that the US allowed Europe to give priority to regional cooperation and integration, while in the meantime allowing asymmetric full market access for European exporters to the US market.