

A stylized world map composed of a grid of grey dots, with several dots highlighted in red to represent specific regions or countries.

Lost in a Spaghetti Bowl?

Mega-regional trade agreements, Sub-Saharan Africa and the Future of the WTO

EVELINE HERFKENS

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- Mega-regional trade agreements such as TPP and TTIP pose a threat to the multilateral trading system both by discriminating against all those countries that are not part of these agreements and by replacing multilateral functions and activities with regional ones. They sap the energy of the multilateral negotiations within the WTO. It is only in this multilateral forum that smaller and poorer countries have a voice and that their concerns can be addressed effectively.
- Moreover, mega-regionals, and TTIP in particular, are potentially damaging to exports from low-income countries, in particular from Africa. It is important to focus on the urgent needs of sub-Saharan Africa now as an integral part of TTIP negotiations, for example, by using TTIP to harmonize the unilateral trade preference schemes of the U.S. and the EU, making their respective rules of origin for products imported from Africa transparent and simple, and by extending mutual recognition of standards to products from low-income countries.
- Harmonizing preferential treatment schemes for Africa may also provide a useful basis for harmonizing and rationalizing special and differential treatment of developing countries more broadly. Action by the U.S. and the EU to improve market access for at least sub-Saharan Africa might alleviate the impression left at the WTO Ministerial Conference in Nairobi that they are indifferent to developing country concerns. Such a confidence-building measure might contribute to reviving multilateral negotiations in the WTO.

Introduction

In 2015 the international community was supposed to lay the foundation for multilateral action of major importance for the future of developing countries and sub-Saharan Africa (SSA) trade. The 10th Ministerial Conference of the World Trade Organization (WTO) in December in Nairobi, the first held in SSA, generated much hope among developing countries that the promise of the Doha Development Agenda (DDA) agreed to in 2001 would be finally realized. Yet, while the WTO Ministerial Conference produced some results, the real action in 2015 was in the progress made in mega-regional trade arrangements involving primarily developed countries, specifically in the Trans-Pacific Partnership (TPP) and the Transatlantic Trade and Investment Partnership (TTIP), both of which have potentially adverse effects on low-income developing countries. This paper will begin by exploring the implications of the mega-regional agreements for the future of the WTO and will go on to recommend a number of steps that developed countries can take to mitigate the negative impact of these agreements on developing countries, with a focus on TTIP and sub-Saharan Africa.

The WTO after Nairobi

Despite the promise, the Nairobi Ministerial Conference delivered little. The DDA or Doha Round was essentially buried in an agreement to disagree on the need for its continuation. The Nairobi conference ended with an agreement to eliminate agricultural export subsidies, something which had been agreed upon in principle more than a decade ago. But this agreement is of limited relevance as long as distorting domestic policies remain untouched. Moreover, the agenda in agriculture is changing, as some developing countries seek greater flexibility to introduce domestic policies that support food security objectives.

And the much-touted concessions to the Least Developed Countries (LDCs) are being phrased in such a way that they do not oblige any of the parties to do anything significantly more than they are currently doing. For example, the commitments on Rules of Origin (RoO) agreed in Nairobi are more detailed than the ones agreed in Bali; however, they only commit prefer-

ence-granting members to »consider« taking action or »encourage« them to take action, and even then only »to the extent possible« and »where appropriate«.¹

The most important agreement was on expanding the coverage of the International Technology Agreement (ITA) which has little impact on low-income countries and SSA.

The fundamental question is whether Nairobi delivered enough to keep the WTO alive, since its role as a forum for negotiations on trade liberalization will clearly be compromised for some time. Most WTO members, not just the richer ones, are voting with their feet by engaging in multiple regional trade agreements, thereby shifting the locus of negotiations away from Geneva.

The root of the problem is that, since the WTO was created, the world economy has changed dramatically, both in terms of its players and of challenges. Whereas 20 years ago the U.S. and the EU, with some help from Japan and Canada, ran the show, over the past decade their economic power has declined, while new economic powerhouses like China, Brazil and India have emerged and become indispensable players in the system. These countries have fundamentally different views about the role of trade in their economies and about the priorities for the WTO.

The unfulfilled promises of the DDA, and the declaration by the U.S., among others, that »Doha is dead«, are at the heart of the current impasse. Most developing countries were forced to conclude bitterly that rich countries do not care about their concerns. The most urgent concern for developing countries is agriculture: at the conclusion of the Uruguay Round and in Doha, developed countries pledged to finally subject their distorting domestic agriculture subsidies to the discipline of the multilateral trading system. In fact, the Doha Round was supposed to deal with agriculture first, as these subsidies depress world prices and reduce incentives to invest in agriculture in poor countries. But the EU and the U.S. have been stonewalling the Doha negotiations on agriculture. And they certainly give the impression that they are very much in favor of multilateral

1. »Preferential Rules of Origin for Least Developed Countries«, Ministerial Decision of 7 December 2013, WT/MIN/13/42- WT/L/917; »Preferential Rules of Origin for Least Developed Countries«, Ministerial Decision of 19 December 2015, WT/MIN (15)/47 – WT/L/917. https://www.wto.org/english/thewto_e/minist_e/mc10_e/1917_e.htm (last accessed 22 February 2016).

fora, but only as long as these serve their interests, and only as long as they can dominate them. Now that this has become much more difficult in the WTO, because emerging powers, in particular China, are evolving from rule-takers to rule-makers, they are opting for fora outside the WTO.

For the U.S., containing China – by binding its Pacific neighbors in order to undermine China's efforts for regional hegemony – is the main purpose of the TPP. In the case of TTIP, the EU and the U.S. see it as an instrument for shaping world governance by deliberately shifting the locus of trade policy discussion, circumventing and displacing the WTO. The objective is »to enshrine Europe and America's role as the world's standard-setters«, as the President of the European Council stated. When concluded, others can join – take it or leave it; choose capitulation or exclusion. Standards agreed between countries accounting for some 45 per cent of world GDP are going to be quite a challenge for excluded countries to review or reform.

But the wealthy countries are not the only ones to blame. Emerging countries have steadfastly refused to discuss the elephant in the room: Special and Differential Treatment (SDT). Within the WTO, members can decide for themselves whether and to what extent they are a Developing Country. Only the Least Developed Country (LDC) category is defined in more or less objective terms. Developing countries have pretended they are all the same and thus deserve the same more favorable treatment in trade; and developed countries have pretended to provide them with SDT – but they do so only for the LDCs, which together account for a minuscule portion of world trade. This culture of pretense needs to change. SDT needs to be differentiated according to the actual levels of development of the countries in question. How much longer do global trade powerhouses such as Brazil, China, Taiwan or Korea really require special treatment in trade? How can the EU be expected to extend special treatment to upper-middle income countries like Argentina, Brazil, Malaysia and Mexico while some of its own members (Bulgaria, Romania) are at the same income levels – let alone to high-income countries like Chile or so-called »developing countries« like Singapore whose per capita income is more than twice that of Portugal? It is time to redefine SDT eligibility. Only then will there be a chance for meaningful multilateral trade agreements in the WTO.

Indeed, poor developing countries do not have the institutional capacity to implement all of the commitments required under the various WTO agreements, some of which are not high development priorities anyway. And this holds not just for the formally recognized group of LDCs but also for most other small low-income countries. SDT should be made available to all low-income and lower-middle-income countries, as defined by the World Bank (countries with a GNI per capita of less than 4,125 US-Dollar in 2016), and to all countries that represent less than one per cent of world trade.

Firstly, it would help if high- and upper-middle-income countries in the Global South took the lead by voluntarily abandoning SDT, provided that OECD countries commit to meaningful action for poorer countries. Of course, such a new differentiated SDT scheme needs to include time frames to phase out preferential treatment in certain areas and exceptions to maintain preferential treatment when phasing it out would have a direct and demonstrable negative impact on effective policies to reduce poverty. Some consideration should be given to the fact that large proportions of the populations of emerging economies are indeed still very poor. But more research is needed to determine which preferences are actually relevant for effective poverty reduction, as too much of the protection applied in developing countries solely benefits the elites. If the WTO is to regain its place as the prime locus for trade negotiations, such a redefinition of country groups, and thus of the obligations of its various members, is essential. Unfortunately, at present the economic climate is not favorable for a reform of SDT. A large number of emerging powers, including Brazil and China, are experiencing rough economic times and are not likely to agree to fundamental changes in the WTO arrangements at present.

Secondly, the agenda for negotiations needs to be such that all parties have an interest and a stake in it. The Doha Agenda cannot be discarded, lock, stock and barrel. However, developed countries should be allowed to propose new topics for negotiation, even if some other members have no interest in joining – room needs to be made for plurilateral approaches.

The E15 Initiative, launched by the International Center for Trade and Sustainable Development (ICTSD),² proposes such a »grand bargain«: »a package that allows the Doha Round to be concluded, which would be constructed by combining commitments where progress has been made with an explicit acceptance of the move towards using plurilateral approaches within the ambit of the WTO. The latter would be accompanied by a new committee or working group whose mandate would be to work out optimal design features for these plurilateral approaches«.³

Mega-regionals threaten the multilateral trading system both by discriminating against all those countries that are not part of these agreements and by replacing multilateral functions and activities with regional ones. They sap the energy of the multilateral negotiations within the WTO: only within this multilateral forum do the smaller and poorer countries have a voice and can their concerns be dealt with effectively. And, as Roberto Azevêdo, Director-General of the WTO stated: »the wider the gap between regional and multilateral disciplines, the worse the trade environment becomes for everyone, particularly small countries and all those not involved in major regional negotiations«.⁴

In the meantime, it would be helpful, as a confidence-building measure, if those engaged in mega-regional trade negotiations would make serious efforts to minimize their negative impact on both the multilateral trading system and on low-income countries. Unless such steps are taken, there is a clear danger that in future the role of the WTO will be limited to dispute settlement. And even that role may diminish over time as the mega-regionals introduce dispute settlement mechanisms for their members' trade.

2. ICTSD, together with the World Economic Forum and 16 partnering institutions, have brought together more than 375 leading international experts in over 80 interactive dialogues. The process has stimulated a fresh, strategic examination of key challenges and opportunities for the global trade and investment system and has focused on improving its efficacy, fairness and inclusiveness, as well as its ability to promote sustainable development.

3. Manfred Elsig, E15 Policy Option Paper. »The Functioning of the WTO: Options for Reform and Enhanced Performance«, E15 Policy Option Paper, January 2016, http://e15initiative.org/wp-content/uploads/2015/09/E15_no9_WTO_final_REV_x1.pdf (last accessed 22 February 2016).

4. Azevêdo, »Build on historic success of Nairobi to tackle urgent challenges facing the WTO«, Speech delivered at the University of the West Indies, Jamaica, 18 January 2016; WTO Speeches – DG Roberto Azevêdo: https://www.wto.org/english/news_e/spra_e/spra109_e.htm (last accessed 22 February 2016).

Mega-Regional Trade Agreements and Low Income Countries

The Impact of TTIP on Sub-Saharan Africa

Sub-Saharan Africa (SSA) needs to expand exports in order to create jobs, to raise incomes and, ultimately, to reduce poverty and aid dependency. Its domestic markets are simply too tiny to enable local industry to achieve economies of scale. Increased trade opportunities would encourage both domestic and foreign investment that is critical to long-term development. For SSA to improve its capacity to exploit trade opportunities and diversify its economies, many obstacles have to be tackled. First and foremost, it is critical to establish a single common regional market to reduce »internal« trade costs. The region acknowledged this when in 2012 the African Union announced the establishment of a Continental Free Trade Area (CFTA) by 2017. CFTA negotiations were officially launched in June 2015. Much also remains to be done on the supply side: investment is needed in reliable energy, in infrastructure to reduce transport costs, in human capital and institutional capacity and in general in improving the investment and business environment.

Africa's improved trade and economic performance over the past decade shows that many of these issues are in fact being addressed. The region's exports have been growing and all across the continent »economic transformation« is the buzz word: governments are creating the conditions for investment in processing agricultural commodities and light manufacturing.

However, SSA's exports are highly concentrated. In addition to oil and minerals, they are concentrated in a small set of specific product categories: textiles, clothing and footwear, and some agricultural products like cotton and vegetable oils.⁵ The important trend toward the emergence of global value chains virtually by-passed the region: by 2010, SSA had lower ratios of parts and components in their total imports from all sources than in 1980. And its overall share of world

5. With the notable exception of South Africa, which has a more diversified export structure that includes manufactured goods such as motor vehicles and car parts (nine per cent of total exports in 2015) as well as machinery and mechanical appliances (seven per cent). <http://www.tradingeconomics.com/south-africa/exports> (last accessed 22 February 2016).

trade remains a miniscule 2.2 per cent. This marginalization of the region is a crucial factor in retarding its development.

Obviously, when tariffs and non-tariff barriers decline among participants in mega-regionals, the relative barriers faced by third countries become higher. For example, the TPP provides improved market access for Vietnam's exports of apparel, but at the expense of Bangladesh, Cambodia and Nepal. TPP at this point seems to be a done deal, although the delay in its approval by the U.S. Congress may result in further changes. But in any case its impact on SSA is likely to be less than that of TTIP. TTIP is likely to be of most concern for Africa because 40 per cent of Africa's exports go to the U.S. and the EU.

Tariffs between the EU and the U.S. are already very low, averaging less than three per cent. But some goods have tariffs that are in double digits – in other words, »tariff peaks«. The European Commission noted that tariff elimination could be especially »valuable« for EU consumers in sectors such as processed agricultural products, footwear, textiles, and clothing, given the high tariffs on those products. Sadly, these are exactly the processed products in which SSA's exports are concentrated and have potential. The highly concentrated nature of SSA's small amounts of exports of consumer products – 19 per cent of total SSA exports in 2014⁶ – implies that the erosion of preferences in a small set of specific processed product categories such as textiles, clothing and footwear as well as fish products and agricultural goods (bananas, vegetables, sugar) where protection is high, can have important negative consequences for these countries. TTIP potentially hurts Ethiopia's vegetables, Lesotho's textiles and Ghana's and Mozambique's fisheries.

And this is not just about tariffs: TTIP also aims to deal with a host of regulatory issues. If it is agreed that the different regulatory standards in the EU and the U.S. will continue to apply but will be mutually recognized, this simply means that SSA exporters will continue to struggle to meet the highly demanding but different standards in the two markets. In the event the more demanding of the two sets of regulatory standards currently prevailing is agreed upon, this will result in increasing difficulties for SSA exporters.

6. <http://wits.worldbank.org/CountrySnapshot/en/SSF/textview> (last accessed 22 February 2016).

Also, expected agreement on stricter intellectual property rights could have a negative impact on the introduction and production of generic drugs and their supply in SSA.

In the meantime, while public debate is raging in both the U.S. and Europe over TTIP's impact on their economies, specifically on jobs and health, there is hardly any discussion or research on its impact on third countries. Only a few studies on the likely impacts of TTIP deal with this aspect. The main findings of these reports are summarized below:

- The Report by the *Transatlantic Task Force on Trade and Investment*, promoting TTIP, acknowledges that »the capacity of such an agreement to generate positive systemic consequences, and improve conditions for trade beyond the Atlantic region, depends on the design of a transatlantic trade agreement and how it links up with common EU and U.S. initiatives with other countries«⁷. The Task Force argues that TTIP should address the integration, harmonization and modernization of their current preferential trade agreements (PTAs) with third countries, to limit the negative effects of trade diversion and help to reduce so-called »spaghetti-bowl« effects – i.e. the potential diversion of trade resulting from the participation of individual countries in many regional or sub-regional preferential agreements with multiple and varied tariff preferences and rules. The need for harmonization of trade preference schemes is particularly relevant for SSA, given the fundamentally different preference schemes the U.S. and the EU presently offer the region.

- The Bertelsmann Stiftung's report⁸ argues that if tariffs and non-tariff barriers, including those derived from regulatory standards between the USA and EU, do indeed fall, the relative barriers to market entry faced by developing countries will become higher. The poorer countries will suffer the most, and sub-Saharan Africa will experience the biggest losses.

7. Björling, E. and J. Kolbe. »A New Era for Transatlantic Trade Leadership«, Report from the Transatlantic Task Force on Trade and Investment, co-chaired by E. Björling and J. Kolbe, The European Centre for International Political Economy and the German Marshall Fund of the United States, 2012.

8. Bertelsmann Stiftung, »Transatlantic Trade and Investment Partnership (TTIP): Who benefits from a free trade deal?« 2013.

■ The German Development Ministry (BMZ)⁹ and the Dutch Trade and Development Minister¹⁰ commissioned studies on the impact of TTIP. Both reports acknowledge the risk of trade diversion. The BMZ study mentions preference erosion and concludes that regulatory cooperation might set the bar too high for poor countries. Notwithstanding these findings, both reports are surprisingly optimistic about the »trickle-down« potential of a TTIP: as TTIP would increase income for Europeans and Americans, this will lead to more demand for exports from third countries, such as more tourists on safari in Kenya. And this »spill-over« effect is supposed to compensate for the potential negative effects, which these reports expect to be »minimal« in any case.

A more serious problem is that, while at least the BMZ report has a few case studies from low-income SSA countries which spell trouble, the quantification of the damage is on average. This means that for some poor countries and some poor producers the losses could be devastating.

Moreover, TTIP will not only have an impact on present exports: it could also nip future Sub-Saharan exports potential in the bud even before it is unlocked. Agro-processing represents the best opportunity for industrial development in many low-income countries. TTIP threatens to snatch their markets away from them before they have a chance to develop them – for instance, the opportunity for Côte d'Ivoire or Ghana to enhance its market share in value-added cocoa products.

The SSA countries also hope that economic transformation will enable them to participate in global value chains that at present virtually by-pass the region. The Dutch study states that this lack of participation implies that potential changes in global value chains resulting from TTIP will not affect SSA; so the ladder might be kicked away even before these countries have made it to the first step!

9. Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung (BMZ), »Mögliche Auswirkungen der Transatlantischen Handels- und Investitionspartnerschaft (TTIP) auf Entwicklungs- und Schwellenländer«, Studie des IFO-Instituts gemeinsam mit dem IAW Tübingen im Auftrag des BMZ, January 2015.

10. S. Brakman, T. Kohl and C. van Marrewijk, »The Impact of the Transatlantic Trade and Investment Partnership on Low Income Countries' Agreement Heterogeneity and Supply Chain Linkages«, Report for the Directorate for Trade Policy and International Economic Governance, Ministry of Foreign Affairs, The Netherlands, 2015.

As WTO Director-General Roberto Azevêdo stated: »...the product specific rules that accompany RTAs 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«.¹¹

If TTIP is not to harm SSA, it would be very helpful to address relations with SSA now, and to do so as a precursor to the overall agreement, and not as just one of many issues on the EU-U.S. negotiations agenda sometime in the future. This is all the more urgent as both the U.S. and the EU have trade preference schemes for SSA whose benefits will be eroded by TTIP.

The U.S. scheme, the African Growth and Opportunity Act (AGOA), covers most of the region, but its product coverage is less than generous. It removes tariffs on roughly 98 per cent of products, but excludes key agricultural products, such as cotton – in other words, precisely those products in which poor African countries have a comparative advantage and the sector that employs the vast majority of the poor. Restrictions on imports of sugar and dairy products discourage African cocoa exporters from processing cocoa beans into chocolate and other value-added products. As with all preferential treatment schemes, there are complex rules of origin which limit the number of products eligible for preferential treatment.

The European »Everything but Arms« (EBA) program allows all imports to the EU duty free and quota free (DFQF) – i.e. completely free access except for armaments – but it is limited to just the group of Least Developed Countries (LDCs), which encompasses only 34 (out of 48) countries in sub-Saharan Africa¹². This is problematic, as regional integration is presently high on the political agenda of SSA – as it should be; however, these efforts span both LDCs and non-LDCs, complicating the creation of truly common markets in the region. More fundamentally, by limiting this preferential access to LDCs, EBA excludes lower-middle-income countries such as Côte d'Ivoire, Ghana, Kenya

11. Regional trade agreements »cannot substitute« the multilateral trading system – Azevêdo; WTO Speeches – DG Roberto Azevêdo, 25 September 2014; https://www.wto.org/english/news_e/spra_e/spra33_e.htm (last accessed 22 February 2016).

12. European Commission, Everything But Arms (EBA) – Who benefits? http://trade.ec.europa.eu/doclib/docs/2014/october/tradoc_152839.pdf (last accessed 29 February 2016).

or Nigeria, which are precisely those African countries best placed to take advantage of preferences to diversify exports.

The EU is at various stages of finalizing European Partnerships Agreements (EPAs) with different groupings in the region.¹³ These agreements, which were promoted by the EU, require reciprocity and include issues beyond trade in goods, which might create unnecessarily burdensome obligations for these countries and may distract from or could be inconsistent with their more immediate development priorities. Moreover, the membership of the various African regional groupings overlaps; and most of them include LDCs that already have access through the EBA scheme, creating problems for groupings that have common external tariffs.

The Dutch Proposals

Last November the Dutch Government proposed to the Dutch Parliament four main steps aimed at ensuring that the TTIP is prevented from damaging low-income country exports¹⁴ which will be analyzed below.

- *To use TTIP to harmonize the unilateral preference schemes of the U.S. and the EU to improve their utilization.*

At present, both the EU and the U.S. have preferential trade arrangements with SSA, benefitting some poor countries and/or some products in SSA. The sum total of the present schemes is a hodgepodge of multiple and different conditions and rules, hardly generous or helpful; and quite a nightmare for Africans because they cover different countries, have different product coverage and different rules of origin. Harmonizing them would be very helpful – provided that the best features and most effective provisions of both programs are preserved and their rules are updated to make them compatible and relevant in today's globalized world.

13. On the current state of play from a European Commission perspective see: <http://trade.ec.europa.eu/doclib/html/144912.htm> (last accessed, 22 February 2016).

14. Letter to Parliament by the Minister for Trade and Development, 13 November 2015, <https://www.rijksoverheid.nl/documenten/kamerstukken/2015/11/13/kamerbrief-over-impact-ttip-op-lage-inkomenslanden> (last accessed 22 February 2016).

On country coverage, it is difficult to justify a U.S.-EU trade arrangement that treats developing countries differently. What particular European foreign policy interest would be served by the EU and the U.S. providing different access to Kenya's products? Thus, the best way to proceed is to be guided by the generosity of the U.S. scheme as it covers most of SSA, while EBA is limited to the least developed countries. For about a dozen other poor, or slightly less poor, countries in the region, the EU trade policy is less generous. It is important that the new agreement offers the same preferential treatment to all low-income and lower-middle-income countries in SSA.

On product coverage the U.S. scheme is much too limited. Most SSA countries' exports are highly specialized, producing a very narrow range of goods; in many cases, a few raw materials account for most of their exports. Excluding even a small number of products can rob a preference scheme of any meaning. Thus the coverage should be expanded to include all products as in EBA.

- *To make the Rules of Origin for TTIP not »unnecessarily strict«.*

Rules of Origin (RoO) are indeed a daunting obstacle for small and poor exporting countries.

First, they raise production costs, if, in order to meet the requirements, parts of the product must be produced in a different manner or different place than would otherwise be the case. And they have huge administrative costs because exporters have to adhere to documentation requirements, based on complicated cost accounting and apportionment, detailed and lengthy record keeping, exporter registration and so forth. And those costs are not just for exporters: they impose huge burdens on customs authorities with already limited institutional capacity.

Second, Europe and the U.S. use substantially different methodologies when it comes to defining origin. So poor producers have to adapt their manufacturing processes in order to comply with the different conditions that these methodologies impose, which are sometimes incompatible with each other and/or substantially different.

The third and probably most fundamental problem is that these RoO were created decades ago: with the emergence of global value chains, what is traded is no longer so much goods as tasks. Production of a commodity has

become fragmented between many countries, with each specializing in one narrow task. The vast majority of global trade – some 80 per cent – is linked to the international production networks of transnational corporations.

By requiring substantial added value, RoO can represent an obstacle to participation in global value chains as SSA countries typically have limited industrial capacity. RoO based on the assumption that a poor country can produce a significant share of added value are unrealistic and a major obstacle in promoting manufacturing specialization. The reality is that in sub-Saharan Africa few inputs are available domestically: the economies have a narrow base and rely on their neighbors to provide necessary inputs.

So, it is indeed important to make RoO flexible, and the TTIP provides the U.S. and the EU with an opportunity to deliver on their promise made in Nairobi.¹⁵ However, improved RoO should not only apply to products imported from LDCs but should be granted to all low-income countries in SSA. But more is needed to improve utilization of any preferential treatment scheme. The TTIP partners should also agree on mutual recognition of their origin regimes by accepting an import eligible in one market as eligible in the other.

- *To address the issue of standards.*

TTIP's aim is to harmonize standards. Harmonized standards would also imply that third-country exporters only have to deal with one set of standards for both markets. However, achieving this turned out to be too complicated on many issues, so now the objective has been changed to mutual recognition of each other's regulations. But this could mean that exporters from third countries will continue to face two different sets of standards when exporting to the U.S. or the EU. The Dutch suggestion to extend the benefits of recognition to imports from low-income countries if they comply with either the U.S. or the EU standards is appropriate if the TTIP partners do not intend to harm third countries.

- *To include in the TTIP Chapter on Trade and Sustainable Development the obligation to monitor the impact of TTIP on low-income countries.*

This is a worthwhile proposal. The problem, however, is that it might come too late, as the damage might already be done, unless action is taken soon.

The Need for Action

Now is the time to act and with some urgency. The European demand for reciprocity in its trade relations with SSA, which would give European companies preferential access to Africa, has inspired the U.S. to consider introducing the principle of reciprocity in its trade relations with the region as well. While the law to extend AGOA in July 2015 did not include such a provision, concern that EU exporters could potentially gain an advantage did prompt the Senate to task the President to negotiate free trade agreements with countries in SSA, which obviously would be reciprocal. Harmonization indeed – but to the detriment of SSA.


In the run-up to the WTO Ministerial Conference in Nairobi, the U.S. and the EU put significant pressure on SSA countries to ratify the WTO Trade Facilitation Agreement (TFA) concluded at the WTO Ministerial Conference in Bali in 2013, even though little effective action has been taken to date on their promise made at the WTO Ministerial Conference in Hong Kong a decade earlier to »ensure that preferential rules of origin applicable to imports from LDCs are transparent and simple, and contribute to facilitating market access«.¹⁶

It is of course in SSA's own interest to adopt simplified and harmonized customs procedures to facilitate imports, if only to accelerate integration of the region itself. But the demands of the EU and the U.S. would enjoy greater credibility if they made some effort to facilitate access for Africa exports to their markets in return by reducing their own onerous and different sets of import requirements.

It is important to focus on the urgent needs of sub-Saharan Africa now as a precursor to the overall TTIP agreement, instead of relegating them to just one of many issues on the EU-U.S. negotiations agenda to be decided sometime in the future. That would help SSA's econom-

15. »Preferential Rules of Origin for Least Developed Countries«, Ministerial Decision of 19 December 2015, WT/MIN (15)/47 – WTL/917, op. cit.

16. The Hong Kong Ministerial Declaration, WT/MIN(05)/DEC, 22 December 2005, Annex F »Decision on Measures in Favor of Least-Developed Countries« (Annex F).



ic transformation, lend tremendous impetus to its integration into the world economy and help lift millions of people out of poverty.

Also, now is the time for Africans to make their voices heard, to tell the EU and the U.S. to deal with the negative effects of TTIP on them promptly and to demand action to create breathing space to focus on their own integration. Africa's already overburdened trade negotiation capacity urgently needs to focus on deeper integration within the African market.

SSA countries should request a moratorium on all trade negotiations with third parties that would require reciprocity. This should include a moratorium on the implementation of the EPAs until such time as CFTA has been negotiated, signed and implemented. The EPA's are disruptive of Africa's own regional integration efforts, because the different African groupings overlap and all of them include LDCs that already have unrestricted market access through the EBA scheme.

Given the state of development of most SSA countries, more opening up to the EU on a reciprocal basis, even with long transition periods, is not helpful. Africans can remind their European and American counterparts of the most important feature of the Marshall Plan – namely, that the U.S. allowed Europe to give priority to regional cooperation and integration, while in the meantime allowing full asymmetric access for European exporters to the U.S. market.

Harmonizing preferential treatment for Africa may also create a productive basis for harmonizing and rationalizing special and differential treatment of developing countries more broadly. It could help future multilateral negotiations in the WTO if preferences provided to developing countries were based on objective criteria of need and the capacity to trade rather than on the political preferences of individual developed countries. And, finally, action by the U.S. and the EU to improve market access for at least sub-Saharan Africa might alleviate the impression left at Nairobi that they are indifferent to developing country concerns. Such a confidence-building measure might even rekindle hope that striking a bargain to revive negotiations in the WTO could be possible after all.



About the author

Eveline Herfkens is a Senior Fellow at SAIS, Johns Hopkins. Since her retirement in 2008 she has been active as a consultant and lecturer and on boards of international NGOs. She founded and led the U.N. Millennium Campaign, having been appointed by S.G. Kofi Annan in 2002. Between 1998 and 2002 she was Minister for Development Cooperation of the Netherlands. She served as Ambassador, Permanent Representative to the U.N. and the WTO in Geneva (1996-1998) and as a Member of the Board of Executive Directors of the World Bank Group (1990-1996). Ms. Herfkens was a Member of Parliament in the Netherlands from 1981 to 1990.

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Friedrich-Ebert-Stiftung | Global Policy and Development
Hiroshimastr. 28 | 10785 Berlin | Germany

Friedrich-Ebert-Stiftung | Geneva Office
Chemin du Point-du-Jour 6bis | 1202 Geneva | Switzerland

Responsible:
Hubert René Schillinger | Director, FES Geneva

Phone: +41-22-733-3450 / Fax: +41-22-733-3545
<http://www.fes-geneva.org>

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Christiane.Heun@fes.de

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