THE NATIONAL LAW REVIEW

EU Makes Significant Progress In Trading Relationship with Western, Southern Africa

Monday, August 4, 2014

Article By Covington & Burling LLP
Jean De RuytCov Africa

Antitrust & Trade Regulation
Lesotho
Mozambique
South Africa
Nigeria
European Union
All International

While U.S. government officials have been aspiring to strengthen trade and investment ties between U.S. and Africa, the **European Union** ("EU") has begun to realize its ambitions in that regard. In July, the EU concluded two regional **European Partnership Agreements** ("EPAs"), one with the members of the **Southern African Development Community** ("SADC") and one with the **Economic Community of West African States** ("ECOWAS"). Although EPAs still need to be concluded with the three other major regions on the continent, the finalizing of these agreements gives a glimpse of the light at the end of a long tunnel in the trade relations between the EU and the African, Caribbean and Pacific Group of States ("ACP countries").

Until the end of the 1990s, the EU had granted these countries non-reciprocal trade preferences which were then renewed through successive conventions. In the face of mounting opposition from third-party countries and condemnations by World Trade Organisation panels, the EU entered into a new agreement with the ACP countries. Signed in 2000, the Cotonou Partnership Agreement offered a new approach to the trade relationship between the EU and the ACP countries. With an aim towards a gradual integration of the ACP countries into world trade, the Cotonou Agreement provided for an end to all non-reciprocal preferences in 2008.

In 2002, under the Cotonou Agreement, the EU launched negotiations for comprehensive free trade agreements — the EPAs — with six regional groups: four African regions, the Caribbean and the Pacific. Under this proposed framework, the EU would continue to offer duty free access to its market for products from these markets and, in turn, EU products would be given privileged access to these markets over products from other markets such as the US, China or others from outside the EU. However, the framework allowed for two key loopholes. First, countries with "least developed countries" status ("LDCs") would be allowed to continue to benefit from non-reciprocal trade preferences through the Everything but Arms regulation. Second, the other countries could still benefit from the EU's Generalised Scheme of Preferences (either the GSP or the GSP+).

The proposed beneficiaries of the EPAs proved reluctant to relinquish the non-reciprocal preferences arrangement already in place and, at the end of 2007 (the original deadline for concluding the negotiations), only the Caribbean countries had concluded an EPAwith the EU. Instead, any countries initialed bilateral interim EPAs in order to secure the continuation of their exports to the EU but even most of these agreements were still not ratified by the end of last year.

In order to apply pressure, the EU Commissioner for Trade declared that ACP countries which had not ratified or started to implement their interim EPAs by October 1, 2014 would lose their preferential market access to the EU. A breakthrough occurred in February 2014 when the EU concluded a regional agreement with ECOWAS. Under the agreement, West African countries will open 75% of their market for EU imports over a 20 years period, while 100% of the EU market will be open for them by the entry into force of the EPA. The LDCs in the region, who already enjoyed duty-free and quota-free access in the EU, had some pain in swallowing such a high percentage of opening to EU goods (even over 20 years). Despite blockage efforts by Nigeria (the largest of the 16 ECOWAS member states), on July 10, ECOWAS heads of state endorsed the EPA for signature.

Negotiations with the SADC also were complicated by the most prominent country in the region — South Africa — but for different reasons. Party to a bilateral free trade agreement with the EU since 2004, South Africa indicated that it would prefer to hold onto and build onto its existing agreement rather than enter into a regional arrangement. As a result, the EU entered into negotiations with a select group of SADC member countries: Botswana, Lesotho, Mozambique, Namibia, and Swaziland. (The remaining eight SADC member states are negotiating parties to other regional EPAs.) On July 22, the EU announced that it had concluded a regional EPA with these countries, including South Africa who will "will trade with the EU on the basis of improved conditions that build on the existing" bilateral agreement. South Africa will receive a preferential access to the EU market while the other countries party to the EPA will receive duty-free and quota-free access to the EU market. In turn, the EU will receive increased access in these markets for its agricultural products on the promise that the products will not receive export subsidies.

The improved conditions of the bilateral agreement with South Africa will include better EU market access for 32 South African agricultural products, including wine, sugar, and ethanol. Another interesting aspect is the treatment of geographical indications ("GIs"), which are a critical component of all trade agreements currently being negotiated by the EU and have been a major obstacle in the EU's Transatlantic Trade and Investment Partnership negotiations with the U.S. Under its agreement with South Africa, 251 EU GIs will receive protection in South Africa and 105 South Africa GIs, primarily wine, will receive protection in the EU.