**Diamond Beneficiation and the WTO**

**by**

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***Abstract***

*This paper considers the economics and trade law implications of diamond beneficiation in Botswana and, by extension, thoughout the SADC region. It explains the shift in policy and market position of De Beers which has moved from strident opponent to supporter of beneficiation in Africa. It is argued that the current provisions of sightholder access to rough diamonds may not be WTO compatible and that the use of export taxes, a WTO compatible alternative may not be EPA comaptible. An estimate of the ‘implicit beneficiation tax’ imposed on Botswana based processors is determined.*

**Key Words**: Diamonds, De Beers, Beneficiation, WTO, Export Taxes

1. **Introduction**

The purpose of this paper is to examine the international trade in rough and polished diamonds and the move to diamond beneficiation by Botswana, the largest producer of gem quality diamonds over the last decade as well as by other SADC countries[[2]](#footnote-2). The paper considers the relevance that trade arrangements currently in place such as the WTO Agreements and the Interim Economic Partnership Agreements with the European Union will have on the ability of those countries of the Southern African Development Community (SADC) that wish to cut and polish their rough diamonds. SADC as a group was responsible for 58% of world diamond production in 2008[[3]](#footnote-3). This paper addresses the question of diamond beneficiation from the perspective of Botswana and also the other diamond producing SADC countries.

The paper begins with a discussion of the global rough diamond trade and the place that De Beers has played in the trade over the last century. Historically, De Beers was an opponent of downstream processing in Africa and has only recently shifted its position to one which is largely supportive. The paper briefly considers the changing structure of the diamond industry which has changed from that of a cartel arrangement where De Beers controlled approximately 90% of global trade in the late 1980’s and early 1990’s to that of dominant oligopoly with approximately 40% of global gem quality diamond sales by 2009. The demise of the De Beers cartel and its metamorphosis as a dominant oligopoly at the end of the last century marked a fundamental shift in its relations not only with its own customers or sightholders but simultaneously with its main sources of supply in the SADC region. It was this weakening of De Beers in the international market and its continued reliance on African supply that smoothed its shift in policy in favour of beneficiation. The third section of the paper considers the costs of beneficiation and why it occurs in SADC. In the final sections there is an analysis of the trade policy implications of DTC sightholder diamond allocation system within the context of the WTO and the EPA.

1. **The Evolution of De Beers and its role in Southern African Beneficiation**

*SADC, Botswana and De Beers*

Over the years diamond mining has extended throughout those countries that were part of the Southern African Development Community. De Beers had been involved in the mines in Botswana, South Africa Namibia, Lesotho as well as in Angola and Tanzania. While De Beers is not involved in the diamond industry in Zimbabwe, that country is rapidly emerging as an important global supplier. The most important mines are in Africa and from the late 1970’s onwards it became clear that the future of De Beers as a diamond cartel rested with Botswana given the enormous size of its deposits at Jwaneng as well as Orapa[[4]](#footnote-4). Approximately 70% of De Beers profits have of late from its operations in Botswana. Without the control of Botswana’s mines, the control by De Beers of the global diamond market would have vanished and indeed its very existence as a company in its current form would have been in question. Hence, the relationship between the Government of Botswana and De Beers was vital to the company’s survival. What emerged was a relationship that was unique in post-colonial African history. There has been no known attempt to nationalize the company in Botswana but rather a progressive increase in the country’s holdings in the parent company despite what were at times acrimonious disputes over the terms of mining and marketing contracts. The role of Botswana will remain central to the continued profitability of De Beers even following the sale of the Oppenheimer family interests in the company in 2011.

In the SADC region governments have declared their intention to move to downstream processing or ‘beneficiation’ of rough diamonds. In a remarkable about turn this has now been championed by De Beers but driven by local governments where diamond allocations to sightholders are offered in each of the producing countries. Botswana, the world’s largest producer of gem quality diamonds in 2008 with 25% of global production along with Namibia, which accounts for 6% and South Africa which is approximately 12% of global production are all part of the process by which De Beers has created a series of subsidiary organizations to the DTC which promote the downstream processing of diamonds. Other producers of diamonds in the SADC region include Angola, Democratic Republic of Congo, Lesotho, Namibia, Tanzania and Zimbabwe.

*The Decline of the De Beers Cartel*

The diamond industry over the last century and a half has been inextricably intertwined with the history of Southern Africa and the De Beers name[[5]](#footnote-5). Until the early 18th century diamonds were found principally in India though deposits there, which had been one of the more important causes of trade. Indian diamond deposits became exhausted 18th century when Brazil became the main sources following the exhaustion of Indian deposits[[6]](#footnote-6). The discovery of diamonds in South Africa in 1870 changed the entire diamond market. From a product that had long been considered the prerogative of royalty by virtue of its scarcity and price, the new discoveries meant that volumes increased rapidly and this resulted in substantial fluctuations in European markets as coalitions in the Kimberly sold diamonds in competition. The De Beers Mining Company was formed by Cecil Rhodes in 1874 following the discovery of diamonds in the Kimberly region of South Africa[[7]](#footnote-7). De Beers eventually came to control 98% of South African production[[8]](#footnote-8). The Oppenheimer family began to control De Beers in the 1920’s and has been closely associated as well as through Anglo-American and the control and association with those two names have continued until the acquisition of shares in the company by the Government of Botswana in 1987[[9]](#footnote-9).

Throughout much of the 20th century De Beers controlled, through its subsidiary the Central Selling Organization (subsequently the Diamond Trading Company –DTC) 90% of rough diamond trade world-wide[[10]](#footnote-10). Until World War II the cartel was tolerated by the UK and US in part because of the strategic use of diamonds in the production of high precision armaments[[11]](#footnote-11). However, the refusal of De Beers to provide all its industrial diamonds to the US during the war started a long period of conflict. With the commencement of commercial production of synthetics in the 1960’s and 1970’s the De Beers marketing arrangements came under ever greater scrutiny from respective anti-trust authorities in both Europe[[12]](#footnote-12) and the USA[[13]](#footnote-13).

De Beers has always been cited by economists as the ‘black swan’ of industrial organization i.e. the counter-example to the general conclusion arrived at by industrial economists that cartels are neither stable nor sustainable[[14]](#footnote-14). However, the diamond trade has many of the economic and institutional characteristics which explain the unprecedented longevity of the De Beers cartel[[15]](#footnote-15). These include the extreme difficulty of finding new diamond deposits, the very limited number of actors, the relatively price inelastic demand of diamonds and the ability of De Beers to punish cartel members and most interlopers that did not co-operate[[16]](#footnote-16). Thus the three qualities needed to assure the stability of a cartel i.e. co-ordination, control of entry and methods of controlling cheating were all addressed by De Beers during its cartel years. As diamonds are perceived as scarce they are also a store of value this creates a unique problem for cartel co-ordination. The key element that rendered De Beers so successful in maintaining a cartel over such a long period was its ability to control both supply and effect demand down the relevant portion of diamond pipeline.

Since 1990 De Beers share of global diamond trade has diminished dramatically and it is no longer able to overtly manage global supply and prices as in the pre-2000 period when it was a cartel. There are numerous reasons cited for the decline of De Beers’ market power. These include the growth of production in Australia[[17]](#footnote-17) Canada and Russia which were increasingly willing to trade outside the CSO, the increased anti-trust activities in both the US and the EU, the shock to its corporate reputation from ‘blood diamonds’ when it was involved in the purchase of Angolan diamonds on the open market in the mid-1990’s along with development of new and very powerful new firms which were willing to challenge the dominance of De Beers in the global market[[18]](#footnote-18). De Beers can now be classified as a dominant oligopoly which maintains strong control over its buyers or sightholders. It is also instrumental in working with its partners in Africa to restrict supply, for example in the wake of the 2008 international financial crisis[[19]](#footnote-19). The shares of the dominant players in the global market are presented below. The market relationship and extent of co-ordination of pricing between the various oligopolistic producers is unknown.

**The Decline of De Beers Market Share**

**Source** :European Commission ( De Beers –LVMH Decision 2001 Official Journal of the European Commission), De Beers Annual Reports, RBC, Author’s estimates

*Supplier of Choice and Beneficiation*

Its existence as the pre-eminent 20th century cartel ended with a profound shift in corporate policy and strategy that came with the introduction of the ‘Supplier of Choice’ strategy which was introduced in 2000. The supplier of choice strategy was very much a response to the shifts that occurred in the market in the 1990’s that rendered the century old model of the diamond cartel headed by De Beers which was able to buy all excess supply as largely obsolete. The rise of new suppliers, its association with purchasing conflict diamonds and the inability to control the value chain meant a change in strategy was essential. The weakening of De beers in the 1990’s lead directly to the shift in De Beers position from that of being vehemently opposed to diamond beneficiation in the 1990’s to being amongst its strong advocates following the renegotiation of mining agreement stems from the need to maintain the SADC member countries on-side. The position that existed prior to the shift to the Supplier of Choice Strategy in the 1990’s is best typified by the statement by Gary Ralfe, managing director of De Beers:[[20]](#footnote-20)

... Particularly in the case of Botswana [the absence of manufacturing] is a recognition of economic realities. Botswana’s best interest are served precisely by having diamonds polished in the places where they can most economically be polished. Botswana is such a major [rough] producer and the Botswana government has such a clear view about these matters, that they recognize the truth of this. For a major diamond producer like Botswana, it would be national folly to prescribe that any percentage of their diamonds needed to be beneficiated locally. What Botswana, as the world’s major producer of diamonds needs to do, is to ensure that diamonds reach the place where they can achieve the highest price and that gives by far and away the best returns in terms of fiscal revenue ( emphasis added)

Just six years later the position of De Beers under a new Managing Director, Mr Gareth Penny, who was responsible for the Supplier of Choice Strategy, had been completely reversed[[21]](#footnote-21):

For the African diamond producing countries, beneficiation is not optional, not a passing whim motivated by political correctness, but an imperative, an absolutely essential and critical part of their macroeconomic policy designed to uplift their economies to provide education and jobs and healthcare for their people and to make poverty history...... we [De Beers] don’t embrace this out of misguided enthusiasm or altruism. No, we embrace it because it makes good business sense and because it is the right thing to do.

The most obvious question is how and why De Beers saw this as good business sense. While having some cutting and polishing capacity, De beers remains largely absent from this middle portion of the diamond pipeline even after the introduction of the Supplier of Choice strategy. Cutting and polishing is a vital but relatively competitive and unprofitable portion in the value chain but the choice of location of the processing does not substantively effect the profitability of De Beers at the other end of the diamond pipeline i.e. retailing where it has also strategically located. In the 1990’s De Beers had sufficient market power that it could disregard the resource nationalists in Botswana and elsewhere in SADC. But once weakened, if De Beers were seen to indefinitely object to the development of diamond processing facilities when many of the countries of the SADC region were calling for this, it ran a thoroughly unnecessary risk of undermining its position in Botswana where, at the time, it was renegotiating leases over the Jwaneng and Orapa mines.

It is the maintenance of the control of production from the main mining areas in the SADC region that remains until this day one of the main commercial strengths of De Beers as a company and supporting the development aspirations of Botswana and other SADC members and using its choice of sightholders to reinforce those aspirations strengthened its position. Moreover, the added cost of cutting and polishing in Botswana would be passed to sightholders who were now to become responsible for a host of new activities to which some were not ideally suited such as branding and marketing which, prior to the Supplier of Choice Strategy, had been the responsibility of De Beers. The Supplier of Choice Strategy was a response to its weakened market position and as a result De Beers played a pivotal role in championing beneficiation in Southern Africa.

1. **The Cost of Cutting and Polishing in Botswana and Southern Africa**

Whereas diamonds are in part valued on the basis of their clarity, the diamond market remains known for its opacity, where accurate and timely cost data is virtually non-existent. It remains one of the very few commodities where there is no international benchmark price upon which one can judge whether a rough diamond transaction has been arms length or not[[22]](#footnote-22). It is for this reason that the government of Botswana has insisted upon a public auctioning of a portion of its diamonds[[23]](#footnote-23). As a result, of the opacity of the industry the observed prices that are recorded in the Kimberly data and used in this analysis need to be treated with considerable caution. Perhaps the most glaring example which typifies the problem with the price data is the trade with UAE which has become an ‘international diamond trading centre’ ie a tax haven. According to the Kimberly public statistics in 2010 the United Arab Emirates, which produces no diamonds, imported 43 million carats of rough diamonds at USD2.3 billion. In the same year UAE exported 46 million carats of rough diamonds at USD 3.5 billion[[24]](#footnote-24). In other words 37% of world rough diamond production in 2010 transited the UAE without processing and over USD1 billion was added to its value in a jurisdiction where there is no tax[[25]](#footnote-25). In an opaque industry with over 5,000 different grades of products and with the complete absence of an ‘arms length’ price where trade is riddled with such practices as described above the meaning of cost must be treated with caution.

There are numerous estimates of the costs of cutting and polishing diamonds in Botswana in 2011 is now estimated by the government to vary from US$35 to US$ 60 per carat compared to India (US$ 10 per carat), China (US$ 17 per carat) and Thailand (US$ 20 per carat)[[26]](#footnote-26). This constitutes a substantial decrease from earlier government estimates in 2009 suggest that the cost of cutting and polishing in Botswana is as high as USD100/carat[[27]](#footnote-27) and with some producers in Botswana costs of processing are even higher when it comes to those producers involved in cutting and polishing for the top end of the market.

While the cost of diamond processing is relatively high in Botswana compared to low cost Asian centres there is no evidence that costs are any lower in South Africa or other parts of SADC. The estimates of the relatively high costs of processing in Southern Africa were confirmed from a South African Fridge Report which compared South Africa to other producers and more recent data from the Botswana Diamond Hub are used below[[28]](#footnote-28). This means that for countries like Botswana, Namibia and South Africa that all aim at beneficiation the only products that are profitable are likely to be relatively high value stones though there are a number of producers that are able to process relatively small diamonds. Indeed as we shall see below all countries import very high unit value rough specifically for processing.

**Estimated Unit Cost of Cutting and Polishing and the Implicit Beneficiation Tax**

**Source:** Data on actual costs of cutting come from various Diamond Hub presentations 2008-2009. The estimated maximum is based on the standard rule of thumb in the industry that diamond cutting cost should be no more than 10% of the value of the rough. Rough values are based on Botswana import data, Kimberly Process website.http://mmsd.mms.nrcan.gc.ca/kimberleystats/public\_tables/Annual%20Summary%20Table%202008.pdf

For the moment there exists abundant public data on the cost of rough diamonds used in processing because rough diamonds have until the recent 2011 marketing arrangement between the government of Botswana and De Beers sorting will be repatriated from the DTC in London to DTC Botswana by the end of 2013[[29]](#footnote-29). As long as these diamond are internationally traded unit costs, or at least those that are declared by traders are readily availabale. In Botswana this will amost certainly cease to be the case once the rough diamonds are no loner imported from the DTC in London for processing ceases in 2012. It should be noted that diamonds imported into Botswana along with other SADC countries appear to be at the very high unit of the range and amongst the most expensive average import prices of any countries reporting to the Kimberly process[[30]](#footnote-30). This means that sighthodlers are able to receive from De Beers the high value rough diamonds for processing which remain the commercially viable production is possible in high cost locations.

The normal industry rule of thumb for cutting and polishing is that the cost of cutting and polishing should not exceed 10% of the value of the rough. In the case of Botswana, as can be seen below that DTC imposed in 2009 a USD31.17 implicit tax on processors by requiring local beneficiation, equivalent to 4.5% of the value of the rough diamond imports. If the estimated costs of processing have decreased as dramatically as the recent government data indicates then such an implicit tax would simply not exist. While costs of production are relatively high and there is certainly an implicit tax imposed on firms based on 2009 data the costs to firms are outweighed by the benefit of gaining long terms access to Botswana’s rough diamond supply. However, while sightholders are anxious to obtain more rough, should the implicit tax rise as a result of government attempts to increase employment in the sector before prodcutivity has increased then the expansion of production will cease. Alternatively should the differential between the siteholder price paid by purchasers and the world market price equivalent decline over time as the industry becomes more competitive the advanatge of access to rough also declines and the incentive to processing in Botswana will diminish *pari passu.*

1. **WTO Rules and Diamond Beneficiation**

The cost data presented above along with more recent estimates beg several important commercial questions that bear upon the development of one of SADC’s most important export industries. The first question is that if the cost differentials are as large as suggested between that of SADC producers and lower cost cutting and polishing countries in Asia then why are there beneficiation activities beginning to occur throughout the SADC region? Second, if costs are such an important factor in determining the location of where diamonds are processed why are so many diamonds still cut in countries like Israel, Belgium and the USA where costs are considerably higher than in India or in Southern Africa?

The answer to the first question, as argued above, is that De Beers has adapted to the changing demands of the developing countries in which it has mining operations and has over the last decade created a new system of marketing diamonds that is seeing sightholders cutting and polishing diamonds in each country where the diamonds are mined. These sightholders are selected on the basis of several important criteria, one of which is the extent of domestic beneficiation. In Botswana the criteria used the DTC[[31]](#footnote-31) Botswana for allocation of supply of rough depend, *inter alia* upon local beneficiation [[32]](#footnote-32):

The criteria used to determine individual supply levels included global competitiveness criteria, which assesses technical; marketing and distribution efficiency; as well as local criteria, which sought to promote skills development; job creation; and local manufacturing.

The new structure that has been created in Botswana as well as Namibia and South Africa creates what are in effect subsidiaries of DTC in each of the countries. There is an important difference between DTC Botswana and DTC Namibia, for example. While both companies are 50% government owned, in the case of Botswana where the government of Botswana also own 15% of De Beers and therefore once can conclude that in effect DTC Botswana is majority state owned company. Through the creation of these progeny De Beers is able to maintain control of rough diamond supply while still allowing diamond producing SADC countries to market their own output. The actions of DTCB are a result of government policy which were outlined in Botswana’s 10th National Development Plan[[33]](#footnote-33) as well as in many statements by policy makers at the highest level[[34]](#footnote-34). The development of the diamond processing industry in the country is a result of a long-standing desire by strongly nationalist elements of the Botswana government to move in this direction of beneficiation[[35]](#footnote-35). Unfortunately the decision to proceed with processing was very late in the economic life of the country’s known diamond desposits. Had these occured in the 1980’s after the initail development of Jwaneng Botswana workers would have had 20 more years to develop the cutting and polishing skills needed in the industry[[36]](#footnote-36).

All this perhaps answers the question why De Beers moved in the direction of beneficiation but why their sightholders were willing to co-operate in what is in effect a tax on their profits is quite another question. The reason ultimately rests in the economcis of being a De Beers sighholder and having access to the primary diamond market as opposed to secondary or non-mined market for rough. The price at which ‘boxes’ of diamond are sold to sightholders from De Beers have recently sold at 20-30% below the price at which these stones can be purcahsed in the secondary market. This access to rough along with the margin of profit keeps sightholders wishing to reamin in the De Beers group. It is upon this advantage that De Beers is able to impose the cost of beneficiation.

**Imports of Diamonds by Value and Volume**

**Source**: Kimberly Process

For the siteholder as long as price differential between the De Beers price of rough and what the equivalent rough would cost on the secondary diamond market is greater than the differential cost of cutting and polishing in Botswnana then they will agree to beneficiate in Botswana. In 2008, it should be recalled, Botswana exported approximately USD100 million in polished diamonds from a rough allocation for polishing purposes of USD 300 million[[37]](#footnote-37). This would indicate that depending on the effciciency of cutting that only 30-35% of rough was imported was actually processed in the country and the balance re-exported. Some sightholders indicated that even with the high cost of processing in Botswana they are able to produce profitably because of cross-subsidization from their own factories in lower cost areas such as India and China. As long as the rough was also provided to those factories they could accept the cost of processing here in Botswana.

A third very important potential benefit to those DTCB sightholders involved in processing is that in 2009 Botswana only imported only 485,000 carats from DTC out of a total production of 17.7 million carats. It is the intention of the government to shift the sorting to Botswana and move to allocate rough through DTCB sightholders. There is nothing that stops the government of Botswana from raising this ratio of processing to allocation from the current 2.7% to much higher levels and the existing sightholders would most likely benefit through increased access to rough. It should be noted that in 2009 production figures reflect the depth of the global recession and hence is not typical of Botswana’s normal production which was severely curtailed. In 2008, a more ‘normal’ year, production in Botswana was 32.3 million carrats and if Botswana moved to localise more of the processing a greater proportion will be available to those sightholders. A further potential benefit is that the government of Botswana has in the past been more than willing to provide financial assistance to the diamond processing and jewelry sectors and in the 1990’s provided considerable grants to many large firms to locate there[[38]](#footnote-38).

However, processing of diamonds also occurs in very high cost destinations such as Antwerp, Tel Aviv and New York. Clearly for these locations where costs are considerably higher than in India, China or in SADC countries, production nevertheless remains profitable. Cutting and polishing of very high value diamonds are normally done in these destinations where considerable technical expertise exists in the local diamond industry thereby minimizing the risk of damaging a very high value gem. This then leads to the second question of whether the price of cutting and polishing matters in terms of choice of location. The answer to this depends very much on the quality of the diamond in question. At the top end of the market with the largest and most valuable gems the cutting cost is relatively insignificant. This is not the situation for small, low quality diamonds where the cutting price is all-important. Indeed the very entry of India into the diamond processing sector was a direct result of the fact that in the late 1960’s and early 1970’s when diamond processing began to accelerate in Surat and Mumbai the Indian processors were able to capitalize on a market niche due to their low labor costs[[39]](#footnote-39). India could process stones of such size and volume that were previously considered not to be economically viable. It is on this basis that the Indian processing sector was able to export some US$14.1 billion in processed diamonds in 2008 while net imports of rough diamonds were US$8.8 billion [[40]](#footnote-40). India has created a cutting and polishing industry which did not exist 40 years ago with employment of some 800,000 workers with no rough diamond production in the country whatsoever[[41]](#footnote-41). African countries view this record of employment generation in India with envy and seek to replicate this outcome. However, it is the very presence of the diamond deposits and the ensuing high incomes that the rents in the mining sector has generated that has meant that processing, especially of low cost, labour intensive diamonds is simply not commercially viable without significant state support to producers.

The first question determining the legal status of the rules regarding beneficiation is whether it is a commercial decision by a purely commercial entity or whether it is, as has been argued above, a matter of government policy. In the case of all three of the SACU members the decision is certainly a result of state policy but it is implemented by a commercial enterprise of greater or lesser state ownership. There is no formal definition in the WTO of what constitutes a state enterprise but certainly the three off-springs of DTC i.e, DTC – Botswana, Namibia and South Africa have a different formal ownership.

It should be noted that the provisions of the DTC Botswana sightholder system which allocate rough according to domestic processing could be a violation of the WTO agreements as they pertain to the *Agreement on Trade Related Investment Measures* (TRIMs). DTC Botswana does not publish the exact criteria employed for choosing its 16 siteholders but clearly they are based, in part, on the volume of domestic processing[[42]](#footnote-42). The illustrative annex of the TRIMs para 2(c) states:

TRIMs that are inconsistent with the obligations of general elimination of quantitative restrictions provided for in paragraph 1 of Article XI of GATT 1994 include those that are mandatory or enforceable under domestic law or under administrative ruling, or compliance with which is necessary to obtain an advantage, and which restrict:

(c) the exportation or sale for export by an enterprise of products, whether specified in terms of particular products, in terms of volume or value of products, or in terms of a proportion of volume or value of its local production.

Whether a particular trade or investment measure is in compliance with WTO rules is the prerogative of the WTO membership to determine following a panel report sparked by a complainant[[43]](#footnote-43). It is for this reason that at the moment the WTO compatibility of the provisions of DTC Botsawna criteria which are of little concern as there is unlikely to be a complainant given the small volumes that are being exported as processed diamonds. It has long been an axiom of the African interface with WTO trade rules that, *de facto*, these do not apply to anyone in Africa except South Africa as no trade measure is large enough to make the high cost of a WTO dispute worthwhile for the prospective litigant. This comfortable assumption is however untrue in the case of diamonds. In the event that De Beers, Botswana and other SADC countries move to restrict large quantities of rough exports from the global market the potential for a WTO dispute will increase and the candidates for litigation could be numerous. The most obvious would be India as it has by far the largest commercial interest in cutting and polishing. However, EU members, including Belgium and Holland as well as the US and Israel as well China have significant commercial interests in this matter.

Thus beneficiation using the DTC model could certainly see SADC countries in conflict with those countries that have substantial interests in cutting and the largest is certainly India. However, it should be noted that it is perfectly legal in the context of the WTO but of questionable legality within the context of Economic Partnership Agreement is the use of export taxes by Botswana.

1. **Export Taxes, Diamonds and the EPA**

Within the context of SADC the question of export taxes would appear to be a relatively insignificant matter as the only important export taxes are those imposed by Mozambique on cashewnuts and by South Africa and Namibia[[44]](#footnote-44) on unprocessed diamonds[[45]](#footnote-45). Those who have very little understanding of trade negotiations have argued that giving up a trade policy instrument such as export taxes is a minor concession to make in order to obtain an agreement with a large trading partner such as the EU. A great deal has been written on the impact that reductions in export taxes have had on Mozambique’s cashew nut processing industry and the unemployment created through those reductions[[46]](#footnote-46). However, what is of greater concern is the loss of access to a trade policy instrument that is potentially important to Africa’s industrialization and for providing skilled long term employement.

Much has been written about the on-going EPA negotiations and the remaining so-called contentious issues[[47]](#footnote-47). It is worth considering why the EU has become so concerned with this issue and the distance the EU has travelled on the question of export taxes over the last forty years. In the case of Botswana and the other signatories to the Beef and Veal Protocol of the Lome Convention[[48]](#footnote-48) the 90% duty remission that was granted by the then EEC was done on now quite ironic the proviso that the beneficiaries introduce an export tax so that the government captures the rents generated by the trade concession[[49]](#footnote-49). This export tax was to be used by the respective governments to support the cattle industry[[50]](#footnote-50). This in part alleviated the UK’s obligation to help support the beef industry in the post-independence era. The legal obligation to impose export taxes in the 1970’s and 1980’s is as we shall see driven by the interests of the EU as is the current efforts for a prohibition.

While export taxes may have been acceptable in an earlier period the EU position on this matter has now completely reversed. This is in large measure to the increased application of these intruments in the last few years to limit the access to strategic raw materials that has always been vital to the EU’s prosperity[[51]](#footnote-51). The EU had for many years, and the TDCA was a case in hand, imposed export tax obligations but it was only in 2007 that it began to insist on export taxes in EPA negotiations in all six regions in Africa and the Pacific and the Caribbean .

However, the EU’s desire to see the introduction of bans on export taxes from the ACP, despite the fact that there existed no startegic or commercial interests was legal- this would set a precedent for the EU negotiations with Russia[[52]](#footnote-52). Russia imposed at the time a very high export taxes on oil and natural gas which gave Russian producers a huge competitive advantage and imposed a tax transfer on the EU and its citizens [[53]](#footnote-53). The EU was committed to assuring that there would be no trade agreement with any country that did not prohibit export taxes because of the implications that this would have for Russian WTO accession negotiations.

The most important recent uses of export taxes and restrictions on basic commodities ocured in 2007/2008 not in attempts by developing countries to establish local industry but to preserve domestic supplies of food and counteract the impact of rapidly rising food prices on the poor in developing countries[[54]](#footnote-54). Ironically a large part of the cause of that food crisis and the reaction of developing countries has stemmed from the development of bio-fuels by the EU and US which pushed up food prices dramatically during the period of rapidly rising oil prices[[55]](#footnote-55).

In the event of a challenge to the WTO compatability of the DTCB sightholder criteria and this, as discussed above, would only ever occur in the event that the allocations were of such an order of magnitude as to upset supply to cutting and polishing countries and regions like India or the EU, the option would be to replace the sightholder criteria and impose an export tax on rough diamonds instead[[56]](#footnote-56). However the SADC interim EPA has clear limitations on the use of such taxes[[57]](#footnote-57):

In exceptional circumstances, where the SADC EPA States with the exception of South Africa, can justify specific revenue needs, protection of infant industries, or protection of the environment, these SADC EPA States may introduce, after consultation with the EC Party, temporary export taxes or charges having equivalent effect on a limited number of additional products.

The EPA does not define temporary and as a result the disciplines imposed on Botswana in terms of export taxes are not strong, especially in light of the requirement to consult and justify than to obtain the agreement of the EU. However, should export taxes effect EU diamond cutters and polishers then no doubt that these provisions could be used to put pressure on government to limit these taxes. There are no explicit limitations in the provisions which have been further liberalized in the subsequent revised Swakopmund text[[58]](#footnote-58). The SADC negotiators achieved far more satisfactory text than that of the Caribbean where there is a blanket prohibition on export taxes[[59]](#footnote-59) or in the Pacific where agreement with the EU is necessary prior to introducing new taxes[[60]](#footnote-60). The TDCA between South Africa and the EU has far more stringent provision on export taxes and prohibits the introduction of new or higher export taxes[[61]](#footnote-61). Nevertheless further consideration to explicit carve-outs for the diamond sector in the final EPA should be considered.

While export taxes on rough diamonds may be an esoteric and abstract matter at this point in Botswana’s history this may not be the case towards the end of the current decade as revenues from Jwaneng mine decline and the second main source of revenues, the SACU revenue pool dries up given the pressure from South Africa for reform. At that point Export Taxes, despite the most unfortunate historic experience in South Africa, may appear to be an important revenue source given the very high rates of return in diamond mining and the limited opportunity for smuggling from Botswana. The most obvious constraint to their application is the Suite of Agreements with De Beers which are not in the public domain but define the tax and royalty regime for a period of 25 years. While it remains in the domain of speculation it would not be unreasonable to suggest that Botswana could not contractually raise or introduce new higher taxes on diamonds under the terms of its agreement with De Beers.

1. **Conclusions**

Several important conclusions stem from this analysis of the diamond beneficiation. The first is that beneficiation in Botswana and throughout SADC region was made possible by a fundamental shift in De Beers corporate strategy. Prior to 2000 De Beers was overtly hostile to local beneficiation of rough diamonds. With the advent of the Supplier of Choice strategy the fragmentation of the market and the increased role of sighholders in the process of marketing and advertising and product differenetiation became central to De Beers’ own startegy. This startegy was very much consistent with the desire of De Beers to be supportive of the interests of its mining country stakeholders in Southern Africa and thus the sightholder regime which links access to rough to domestic processing in SADC was developed.

Diamond beneficiation in the form of cutting and polishing would not naturally occur in Botswana at this point in the country’s development if it were not for the criteria for selection and allocation of rough to the DTCB sighholders. This confers a significant benefit on those sighholders in the form, amongst others, of the price differential between the De Beers and secondary market prices and potential future access to Botswana’s very substantial reserves of rough diamonds. Thus cutting and polishing in Botswana incurr a cost on producers over that which would otherwise be the case and in this way beneficiation acts as a tax. Cutting and polishing of diamonds, unless there is a considerable expansion in the allocation of rough to sighholders is unlikely to create significant jobs over and above the 3,000 currently employed in the industry. By the end of 2011 employment had not recovered to pre-financial crisis levels. Beneficiation in the diamond sector involves other activities beyond cutting and polishing and with sufficient investment these may well materialise and prove profitable.

The DTCB criteria for choosing sightholders may be WTO incompatible and more WTO compatible options can be found through the use of export taxes on rough which are already in place in Namibia and South Africa. This will create the same incentive to cut and polish locally as does the DTCB criteria but will simultaneously have external effects by creating unwanted incentives to smuggling of rough to lower cost destinations. These export taxes are very much opposed by the EU and because of the size of Botswana’s production any possible future increase in the allocation to domestic producers at the expense of firms in India, for example or the EU could invite a WTO challenge. It cannot be assumed in the diamond sector, as is sometimes the case in others, that possible violations of international trade agreements will go unnoticed. In the case of diamonds, Botswana is simply too big a market actor for such an assumption. And this is certainly the case where diamond exporting neighbors are involved in similar policies.

However, it is by no means evident that an approach to beneficiation predicated on either export taxes or the implicit tax in the sightholder selection criteria will suffice to develop a sustainable and profitable diamond cutting and polishing industry in Botswana. The government is keenly aware that unless Botswana succeds in lowering production costs through investments in ancilliary infrastructure that the sector will not be likely to survive longer than the allocation of rough diamonds by De Beers. A sectoral development plan for diamonds must therefore be the preferred approach to the development of the industry for only with those positive investments will the incentive to remain in Botswana outlast the rough diamond supply.

What government has not determined at a macro level is whether such a large investment in the required ancilliary infrastructure over a protracted period of time is worthwhile for Botswana or whether there are in fact better investments for its scarce public capital. In the final analysis developing a genuine comparative advantage is akin to obatining an education, but on a national scale. Like obtaining a good education, acquiring a national comparative advantage in the production of a product is time consuming, expensive and riddled with mistakes along the way. It is only in retrospect that it is possible to know, and even then with no certainty, whether the education was a worthwhile investment or not. What is certain is that it is not possible for a nation to acquire a comparative advantage in too many activities as the cost is prohibitive and therefore nations must choose to base that investment on a combination of rate of return and likelihood of success. This analysis needs to be done for the case of diamond beneficiation.

It would almost certainly have been better had Botswana pursued this policy of beneficiation in 1982, with the opening of the huge Jwaneng mine for it would have given workers in Botswana almost an entire generation to acquire the necessary skills for beneficiation to become profitable. Unfortunately the position of De Beers on beneficiaition at the time and its relative power made that impossible and thus Botswana is pursuing processing at a time when its reserves are in decline. The process of beneficiation may succed but there certainly appears to be no clear plan as to how the implcit beneficiation tax will be compensated for once the country has fully exploited its diamond deposits.Without an effective plan to lower procssing costs the industry will certainly leave once the supply of rough diamonds decline.

1. The authors are, respectively Senior Research Fellow and Researcher at the Botswana Institute for Development Policy Analysis, Gaborone, Botswana [↑](#footnote-ref-1)
2. The world’s biggest producer of diamonds is China which in 2009 produced 5.5 billion carats of synthetic industrial diamonds (USGS) . China has almost no mined diamond capacity. It is responsible for over 90% world production by volume. In 2009, largely as a result of the way in which Russia produces and markets diamonds it became for the first time, the world’s largest producer of gem quality diamonds by volume and value. It is expected that Botswana will, once the figures for 2010 are available which reflecting recovery from the global financial crisis and the substantial downturn in production will become the world’s biggest producer by value. [↑](#footnote-ref-2)
3. Data from the Kimberly process dated July 2009 for the calendar year 2008. 2008 was used because 2009 figures were distorted because of the effects of the international financial crisis on shares. http://mmsd.mms.nrcan.gc.ca/kimberleystats/public\_tables/Annual%20Summary%20Table%202008.pdf [↑](#footnote-ref-3)
4. Former officials of the Department of Minerals, Energy and Water Resources had indicated to the author that when they were negotiating the first mining agreement with De Beers the company insisted that the Jwaneng mine was ‘marginal’. Pers com. May 2010. [↑](#footnote-ref-4)
5. The De Beers name comes from the two South African farmers upon whose land sizable diamond deposits were found. The other deposits were in the Kimberly. [↑](#footnote-ref-5)
6. Lenzen, G. The History of Diamond Production and Trade , New York, Barrie Books , 1970 [↑](#footnote-ref-6)
7. Chilver H.A The Story of De Beers: Toronto, Cassell and Company, Ltd 1939 [↑](#footnote-ref-7)
8. Even-Zohar From Mine to Mistress: Corporate Strategies and Government Policies in the International Diamond Industry. Mining Communications Limited, London 2007, page 33. The Rothschilds have been closely associated with De Beers since the 19th century and in 2000 when the company became a private company it was Rothschild’s that financed the operation. [↑](#footnote-ref-8)
9. In 1987 Debswana, the local subsidiary of De Beers and the Government of Botswana sold its stockpile of diamonds to De Beers and in return was given a 2.63% share in De Beers. By 2010 the share of the government of Botswana had grown to 15% of De Beers K. Jefferis, “Botswanaand Diamond-Dependent Development”, in Edge, W. and Lekorwe, M. (eds.) Botswana: Politics and Society ( Pretoria : J.L. van Schaik), 1998. [↑](#footnote-ref-9)
10. Stein N ‘The De Beers Story: a new cut on an old monopoly’ Fortune 2001, [↑](#footnote-ref-10)
11. During World War II De Beers was extremely reluctant to comply with the US demands that its stock of diamonds be placed in US hands and the animosity between the cartel and the US government has continued since. The tolerance by the western powers for the control of diamond marketing by the CSO and De Beers came to end soon after synthetic diamonds started to appear and natural diamonds lost their strategic significance to the armaments industry after the Korean war. An independent diamond synthesis was first achieved on February 16, 1953 in by the Allmänna Svenska Elektriska Aktiebolaget, (ASEA) one of Sweden's major electrical manufacturing companies. See R. M. Hazen (1999). The Diamond Makers. Cambridge University Press. pp. 100–113. [↑](#footnote-ref-11)
12. EC –Supplier of Choice Decision –Official Journal of the European Communities- C273/2 -9/11-202 [↑](#footnote-ref-12)
13. US vrs General Electric Company, De Beers Century AC, in the US District Court, Southern District of Ohio, Case No CR-2—94-019, filed on February 17, 1994. GE paid a fine of USD 10 million. As result of this decision which was on industrial diamonds which was De beers was effectively unable to conduct business in US until it finally came to an agreement with the US Justice Department. This did not occur until after its change in business model with the ‘Supplier of Choice’ strategy. [↑](#footnote-ref-13)
14. Stigler, G. ‘A Theory of Oligopoly , *Journal Political Economy* , 1964, Vol 72, number 1 pp. 44-61 [↑](#footnote-ref-14)
15. For a complete review of cartel success see Levenstein M.C. & Suslow V.Y. ‘What determines Cartel Success’ *Journal of Economic Literature*, Vol XLIV, March 2006 pp. 43-95 [↑](#footnote-ref-15)
16. Bergenstock D.J., Deily M.E., & Taylor L.W., ‘A Cartel’s response to Cheating: An Empirical Investigation of the De Beers Diamond Empire’ *Southern Economic Journal*, 2006 Vol 73, Number 1 pp. 173-189 The evidence suggests that De Beers managed departures from cartel practice by punishing [↑](#footnote-ref-16)
17. See Shigley J.E, Chapman J. & Ellison R.K. ‘Discovery and Mining of the Argyle Diamond Deposit, Australia’ *Gems and Gemology* , Spring 2001, pp. 26-41 [↑](#footnote-ref-17)
18. Economist ‘The Cartel Isn’t Forever’, 15th July 2004 [↑](#footnote-ref-18)
19. The Russian state diamond monopoly Alrosa became the world’s largest producer of rough in 2009 ‘ In spite of the recession in its sector,” the company communique says, “ALROSA managed to preserve jobs and maintain its production levels, and produce in 2009, in the aggregate, 34 m carats of rough diamonds. This enabled the Company to rank first in the world in terms of physical volumes of diamond production.’ John Helmer ‘Alrosa unveils production to beat De beers’ <http://johnhelmer.net/?p=2842> 19th March 2010, downloaded 4th June 2010. The only reason for this was a difference in corporate strategy of the two companies. Whereas Alrosa, as a state monopoly was able to continue production and stockpile by selling to the Russian state stockpile agency Gokran, De Beers as a private commercial entity had no choice but to cut production in order to avoid unsustainable stockpiles. However the burden of the 2008/9 crisis was unevenly felt throughout the De Beers Group with mine closures predominantly occurring in Botswana and Namibia but not in South Africa [↑](#footnote-ref-19)
20. Gary Ralfe, Managing Director said in 2001’ from Even Zohar op.cit, page 246. [↑](#footnote-ref-20)
21. Gareth Penny, Ralfe’s replacement as Managing Director of De Beers, in John Helmer ‘Alrosa Attacks African Diamond Beneficiation’ at <http://johnhelmer.net/?p=289>, downloaded on 4th June 2010 [↑](#footnote-ref-21)
22. The author requested a historic time series on the price of one carat diamonds from De Beers in May 2011 in order to facilitate research on this issue and in order to determine the elasticity of demand for diamonds. De Beers declined the request in line with its policy of not providing such data on prices. De Beers and Anglo American are formal supporters of the Extractive Industries Transparency Initiative. <http://eiti.org/supporters/companies> downloaded 7th December, 2011

    The EITI Principles, agreed at the Lancaster House Conference in June 2003, are, inter alia :

    * We recognise that a public understanding of government revenues and expenditure over time could help public debate and inform choice of appropriate and realistic options for sustainable development.
    * We underline the importance of transparency by governments and companies in the extractive industries and the need to enhance public financial management and accountability.

    [↑](#footnote-ref-22)
23. Firestone Diamonds, the only currently producing independent operator sells its diamonds through a tendering process which began in 2011. Other small independent producers are expected to follow this pattern. See Firestone diamond auction grosses P5.8m <http://mmegi.bw/index.php?sid=4&aid=29&dir=2011/September/Friday16> downloaded 9th December 2011 [↑](#footnote-ref-23)
24. <https://kimberleyprocessstatistics.org/public_statistics> downloaded 9th December 2011 [↑](#footnote-ref-24)
25. In large measure this type of transaction amongst many others is why most large diamond jurisdictions such as Israel and Belgium impose ad valorem taxes on transactions rather than income based assessments on those in the diamond industry. [↑](#footnote-ref-25)
26. These estimates were provided from a presentation in 2008 by the then Co-ordinator of the Botswana Diamond Hub, Dr Akolong Tombale <http://www.globalexpo.co.bw/upload/Investment%20Forum%20BOTSWANA%20DIAMOND%20CENTRE-BEDIA-PRESENTATION.ppsx>. [↑](#footnote-ref-26)
27. Presentation of Ms Lesogo Matsheka and Dr Akolang Tombale, Botswana Diamond Hub 2009 [↑](#footnote-ref-27)
28. Kaiser Associates (February, 2005) ‘South African Diamond Value-Addition Project -Intervention Options and Strategic Recommendations’, FRIDGE Study. [↑](#footnote-ref-28)
29. ‘Botswana and De Beers sign 10-year Sales Agreement’ 16th September, 2011

    <http://www.debeersgroup.com/en/Media-centre/Press-releases/2011/Botswana-and-De-Beers-sign-10-year-Sales-Agreement/> downloaded 9th December 2011 See also By Chaim Even-Zohar Anglo American is Blocking the New Botswana Diamond Marketing Agreement: A Game of Ultimate Brinkmanship’ Diamond Intelligence Brief, September 2011, Vol.26 No.673 [↑](#footnote-ref-29)
30. For the SADC region the preparation of the stones for cutting is often done in high cost destinations before the product is ultimately cut and finished in Southern Africa. This also explains the very high unit import prices observed in the data. [↑](#footnote-ref-30)
31. DTC Botswana is part of the De Beers group and is the successor of the De Beers, Central Selling Organization which controlled the global diamond trade up until the 1990s. This shift is part of the evolution of the De beers marketing chain which saw the fundamental shift away from a traditional cartel arrangements with the Supplier of Choice Model’ DTC Botswana is 50% owned by the government of Botswana and De Beers and with 15% of De Beers owned by the Botswana government. [↑](#footnote-ref-31)
32. Downloaded on 10th April 2010 from [http://www.dtcbotswana.com/sightholders.php](http://www.dtcbotswana.com/sightholders.php%20%20) . [↑](#footnote-ref-32)
33. The National Development Plan (page 166) states that:

    By 2010, USD 550 million worth of rough diamonds will be allocated by DTCB annually, with up to 80% of those diamonds polished in Botswana factories. This comprises 4% of global rough production of USD13 billion. By 2016 the proportion of locally traded rough will increase to a level mutually agreed by the government and the suppliers. [↑](#footnote-ref-33)
34. State of the Nation Address by HE Lt General Seretse Khama Ian Khama, to the 2nd Session of the 10th Parliament , 8th November 2010, Gaborone. He said

    ‘All 16 diamond cutting factories are operational, with a combined workforce of just over 3000, representing an 18% increase over last year. As of September 2010 the factories had cut and polished diamonds worth over P2 billion, a value already above last year’s total. One of the companies will also soon be starting up jewelry manufacturing ’ [↑](#footnote-ref-34)
35. See Magang David ‘The Magic of Perseverance’, Centre for advanced Studies of African Societies, Book Series No 51, Capetown, 2008. See in particular pp 437-53 & pp 606-10 [↑](#footnote-ref-35)
36. Revenues from diamond mining are expected to decline precipitously post-2018 when the diamond deposits at Jwaneng are expected to go into decline. (see 10th National Development Plan). Two new diamond mines are expected to open in the coming years but their size is not expected to replace the decline in Jwaneng. [↑](#footnote-ref-36)
37. Lesogo Matsheka and Dr Akolang Tombale- Botswana Diamond Hub ‘Botswana Diamond Center-Capturing Value from Diamonds’ Diamond Beneficiation Task Force-2009 [↑](#footnote-ref-37)
38. In Botswana the government has invested heavily in the development of the older generation of down stream processing firms. Through the Financial Assistance Program the government helped establish the Teemane (Debswana) factory with a grant of P5 million. Lazare Kaplan Diamond cutting received Pula 10 million in 1993 and in 1992 Orobot enterprises received the largest ever FAP grant of Pula 26 million to establish a jewelry factory. [↑](#footnote-ref-38)
39. Indu Rao ‘Organizing the un-Organized? The Rise, Recession and Revival of the Indian Diamond Industry’, Indian Institute of Management, Ahmedabad-380 015, India Working Paper . No. 2009-09-01, September 2009 see also Roberts, J, ‘Glitter and Greed: The Secret World of the Diamond Empire’, New York, The Disinformation Company Limited , See in particular Chapter 2 ‘In Bondage- The Child and Adult Cutters in India’ [↑](#footnote-ref-39)
40. The net imports is the measure after re-exports. The gross imports into India were USD 9.6 billion and re-exports were 0.8 billion. [↑](#footnote-ref-40)
41. India imports roughly 147 million carats or 40% of world rough diamonds imports by volume in 2008. These are generally very low priced diamonds at an average of USD 64.90 in the same year. While it does not produce any diamonds India no longer processes the cheapest rough and exports some 38 million carats of rough diamonds at an average price of USD 22 per carat. [↑](#footnote-ref-41)
42. In his budget speech the Hon Honourable O.K. Matambo Minister of Finance and Development Planning

    Delivered to the National Assembly on 8th February 2010 said ‘With regard to diamond beneficiation, all the 16 licensed diamond cutting factories are now operating. However, between November 2008 and August 2009, there was a reduction of 26 percent in employment (from 3 226 to 2 391), of the beneficiation industry, due to the global economic crisis’. [↑](#footnote-ref-42)
43. Article III of the GATT provides for at least three exceptions that could be used by Botswana in the event of dispute. These three exceptions could justify such restrictions if they were used to:

    The use of safeguard measure to protect injured domestic industries

    General provisions relating to the conservation of exhaustible natural resources and restrictions relating to ‘restrictions on exports of domestic materials necessary to ensure essential quantities of such materials to a domestic processing industry during periods when the domestic price of such materials is held below the world price as part of a government stabalization plan’

    Security exemptions [↑](#footnote-ref-43)
44. Namibia imposes a 10% export tax on diamonds – WTO SACU Trade Policy Review 2009. [↑](#footnote-ref-44)
45. South Africa levies a tax on exports of unpolished diamonds in order to promote the development of the local economy, develop skills, and create employment. The diamond export levy of 5% based on the value of exported unpolished diamonds. Diamond Export Levy Act (Act No. 15 of 2007), and Diamond Export Levy (Administration) Act (Act No. 14 of 2007). This tax had been lowered from 15% to 5% because of the impact that the high export tax had on smuggling which was estimated to be 2.5%-5% of the value of diamonds. In presenting the bill Trevor Manuel, then Minister of Finance said ‘The proposed 5 percent rate is high enough to deter unpolished exports without hidden benefits of smuggling. According to informal police estimates, diamond smuggling costs are between 2.5 and 5 percent of gross diamond values, S. Africa finalizes lower export duty on diamonds, Reuters UK, Jun 19, 2007 [↑](#footnote-ref-45)
46. See McMillan, Margaret and Karen Horn and Dani Rodrik. "When Economic Reform Goes Wrong: Cashews in Mozambique." (2003): 1-33. also Raman, Meenakshi. "Effects of Agriculture Liberalisation: Experiences of Rural Producers in Developing Countries." *Third World Network Trade & Development Series*, no. 23 (2004): 1-36 [↑](#footnote-ref-46)
47. For an excellent explanation of the contentious issues see Dan Lui and Sannousi Bilal ‘Contentious Issues in the interim EPAs: Potential Flexibility in the negotiations’- ECDMP 2009 [↑](#footnote-ref-47)
48. The original signatories included Madagascar, Kenya Swaziland and Botswana. Namibia, upon independence also became a beneficiary of the Beef and Veal Protocol [↑](#footnote-ref-48)
49. See Hudson D.J. ‘Botswana’s Membership of the Southern African Customs Union’ in Harvey C. *Papers on the Economy of Botswana*, Heinemann, 1981 page 156 [↑](#footnote-ref-49)
50. Initially the Botswana Meat Commission imposed the export tax and passed this to government. The BMC is by statute a ‘not-for-profit’ organization and the government of Botswana in turn funded its losses from general revenue. In Botswana this export tax has ceased and producers are paid a Pula 2/kg (USD 0.30/kg) premium for beef destined to the EU market. [↑](#footnote-ref-50)
51. ‘The challenge of raw materials’ Speech by Peter Mandelson at the Trade and Raw Materials Conference Brussels, 29 September 2008 <http://trade.ec.europa.eu/doclib/docs/2008/september/tradoc_140781.pdf>. In his speech on raw materials then EU Commissioner Mandelson said:

    On average, raw material costs make up around a sixth of the costs of manufactured goods in the EU. In industries like plastics, chemicals and paper the costs of raw materials can be easily as much as a third or more. The imposition of an export tax can price a European company out of the market overnight….The costs to EU companies that rely on these raw materials *and compete with producers in these countries* is obvious. If it costs more just to *export,* say, phosphorus, from China than it costs a Chinese company to buy it domestically *and transform it,* then European industry can't compete – in Europe, in China, or anywhere else in the global market. The export duty acts like an indirect subsidy.

    So, the goal of the EU's trade policy is, and will remain, an open global market completely free of all distortions on trade in energy and raw materials. The question is: how do we get there? ….The first is by writing commitments on free trade in raw materials into all our bilateral trade agreements, where they are clear and enforceable. [↑](#footnote-ref-51)
52. This was the explanation offered to the current author in 2007 by EU negotiators of EPA in the Pacific. [↑](#footnote-ref-52)
53. Russia established a tax-based system where government export duties were set at 100% as of 2004 and income taxes were cut by a flat 13% and profit taxes from 35% to 24%. This in effect became a massive tax on EU oil consumers and allowed Russia to introduce tax incentives that facilitated greater investment while not raising fuel and energy prices in Russia. See Parker, Elliott and Judith Thornton. "Fiscal Centralization and Decentralization in Russia and China." *Comparative Economic Studies*, no. 49 (2007): 514-542. See pages 528 and 533. [↑](#footnote-ref-53)
54. See Yang J, et. al. ‘Fighting Global food price rises in the developing world: the responses of China and its effect on domestic and world markets’ *Agricultural Economics*, Supplement to Issue 39.3, November 2008, pp 443-452. [↑](#footnote-ref-54)
55. See Mitchell D (2008) ‘A Note on Rising Food Prices’, World Bank Policy Research Paper 4682, July 2008 World Bank (2009) Global Economic Prospects: Commodities at the Cross Roads: 2009 IFPRI (2008) Derek Heady & Shenggen Fan , Anatomy of a Crisis: The Causes and Consequences of Surging Food Prices International Food Policy Research Institute, Discussion Paper 00831December 2008. [↑](#footnote-ref-55)
56. It should also be noted that it may not be legally possible for the government of Botswana to levy any further taxes on diamonds under the terms of the agreement with De Beers. That agreement is not in the public domain [↑](#footnote-ref-56)
57. Article 24.2 SADC Interim EPA, 2007 [↑](#footnote-ref-57)
58. Ministers of SADC EPA negotiating countries met with Baroness Ashton, then EU Trade Commissioner, in March 2009 in Swakopmund, Namibia where revised language for the EPA was agreed. [↑](#footnote-ref-58)
59. See Article 6 Caribbean EPA. There is a three year transition period negotiated under Article 6(2) [↑](#footnote-ref-59)
60. See Article 10(b) Interim EPA with the Pacific, November 2007. [↑](#footnote-ref-60)
61. Article 19(3) TDCA [↑](#footnote-ref-61)