Negotiating Economic Partnership Agreements

Challenges for East African Countries

Published by:

Friedrich Ebert Stiftung (FES),
P.O. Box 14932,
Nairobi, Kenya.
Peponi Road, Peponi Plaza.
Telefax: +254–020–3748338/9
E-mail: kenia@fes.de

and

Econews Africa,
P.O. Box 10332–00100,
Nairobi, Kenya.
Tel: +254–020–271099 / 721655
E-mail: info@econewsafrica.org

First published 2003

ISBN: 9966-957-15- 4

Design & layout:
Chai Safari Baya
& Jackee Omutimba
Tel: 254 2 312328
Email: info@sunburstnet.com

Table of Contents

1. List of Acronyms

ACP	African Caribbean Pacific
AGOA	African Growth and Opportunity Act
CAP	Common Agricultural Policy
CET	Common External Tariff
CPA	Cotonou Partnership Agreement
COMESA	Common Markets for East and Southern Africa
EAC	East African Community
EBA	Everything But Arms
EDF	European Development Fund
EPA	Economic Partnership Agreement
EU	European Union
FTA	Free Trade Area
GSP	General System of Preferences
LDC	Least Developed Country
MOF	Ministry of Finance
MIT	Ministry of Industry and Trade
NSA	Non-State Actors
S&D	Special and Differential treatment
WTO	World Trade Organization

2. Foreword

International Agreements are a culmination of intense, technical and sometimes drawn out negotiations. WTO and ACP-EU Trade Agreements are the two major treaties currently on the table for negotiations. Each party in the negotiation depends on factors like preparedness and readiness to negotiate, resources to sustain the long and sometimes difficult process, the expertise, experience and powers of the negotiators.

At present, the African Caribbean and Pacific countries on one side, and the European Union on the other, are sizing up each other to commence negotiations on the establishment of the Economic Partnership Agreements (EPAs). Incidentally, the Western and Southern regions of Africa are ready to launch phase two of EPA negotiations, while the Eastern African region is in dilemma.

The East African countries are faced with numerous difficulties that negate the region's readiness and preparedness for negotiations with the EU. The counties are uncertain whether to negotiate as the EAC, COMESA or SADC. It is just recently that Tanzania has decided to negotiate with SADC while Uganda and Kenya prefer to negotiate with a bloc referred to as Eastern and Southern Africa. These decisions will bring complications to the East African Community. Besides this confusion, they face daunting limitations like lack of expertise, definition and identification of the region's strategic interests and products, institutional competencies.

In an effort to unravel and comprehend some of the challenges confronting the countries of East Africa in the EPA negotiations, Friedrich Ebert Stiftung launched a small Cotonou Partnership Agreement Capacity Building Project in conjunction with Econews Africa for Kenya, Uganda, Tanzania and Ethiopia. The purpose of the project was to expand the knowledge base on the ACP-EU Partnership Agreement in the region. Papers developed as home assignments on various aspects of the agreement and in each country's experience form the basis of this booklet. It is worthwhile mentioning that the booklet by its nature being small could not take all the details of the papers, therefore the most relevant and vital for this purpose were selected.

The targeted users of this booklet are the officials in Civil Society organisations. Members of Parliament constituting the Trade Committees in the region of East Africa, and government officials involved in matters of the EPA negotiations will hopefully also find it valuable.

The Friedrich Ebert Stiftung and EcoNews Africa wish to acknowledge the honourable work accomplished by: Benson O. Ochieng and Elizabeth Mutunga towards the production of this booklet. Also deserving mention are all the participants in the consultants training and especially those who wrote the case studies; Arena Alemayu, Delphine Mugisha and Paschal Sebastian. Dr Otieno Odek and Paul Goodison who were consultants for the training project also edited this book and we are grateful for that. We also thank Peter Aoga, Programme Officer Econews and Collins Odote, Programme Manager, FES for their contribution in the project.

Dr. Roland Schwartz
Resident Director
Friedrich Ebert Stiftung
Nairobi

Odour Ong'wen
Executive Director
EcoNews Africa
Kenya

3. Introduction

Following the adoption of the Cotonou Partnership Agreement (CPA)[1] between the ACP States and the EU, there is a need for interaction between African, Caribbean and Pacific (ACP) trade negotiators to assess the implications of the overall framework agreement on their trade and development prospects. In respect of trade relations, the CPA provides for the continuation of Lomé type preferences for an interim period from 2000 till 2008, following which new WTO-compatible trading arrangements would be instituted. In preparation for this transition from basically non-reciprocal trade preferences to reciprocal trade relations, the CPA requires the ACP States and EU to begin to examine and negotiate as of September 2002 the various options available.[2]

In this light the East African countries negotiators are faced with the task of discussing and elaborating the alternative trading arrangements which they could then propose to the EU. They need to identify arrangements that best promote their trade and development interests, taking into account their level of development and safeguarding and strengthening their sub-regional and regional integration

---

[1] The new ACP-EU Partnership Agreement, - which, after the Lome Conventions, is to cover the next 20 years of the relationship between the European Union and the ACP countries -, was signed in Cotonou on 23 June 2000. This Agreement replaced the Lomé Convention, which provided the structure for trade and cooperation between the EU and the ACP since 1975.

[2] The EPA negotiations are not moving forward. ACP countries had hoped that in a first phase which would last untill September 2003 a number of issues could be clarified and commitments on how to deal with these issues could be put on paper. But the European Commission who never was in favour of such an exercise and who wanted to start regional negotiations straight away, has done nothing to move things forward. Instead there have been tiresome discussions on whether talks would be organised around the 6 themes that the ACP had chosen or the 4 themes that the EU Commission wants to use, and on what the status of these talks would be. The European Commission produced papers on the 4 themes it preferred to discuss and showed no preparedness to clarify the 20 plus issues that the ACP listed in their negotiating guidelines, nor to work on the basis of the 6 themes that the ACP had identified. The ACP 6 are Market Access, Agriculture, Services, Development issues, Trade-related issues, Legal issues; EU 4 are Market access, Rules, Procedures and the Toolbox; ACP 20 plus are: principles, objectives, scope and content, special and differential treatment, financing the cost of adjustment, rules of origin, standards, sanitary and phytosanitary measures, customs and administrative cooperation, framework agreement on trade in services, development of the service sectors, fisheries, treatment of trade-related issues such as competition policy, investment promotion and protection, trade and environment, institutional matters (including the Council and the future of Joint Assembly, CDE, CTA), modalities for the phasing of negotiations and the resultant implementation issues, dispute settlement mechanisms, safeguard measures, legal status of the Agreement, support measures to overcome supply constraints, capacity building, treatment of commodity protocols, trade facilitation, evaluation of the impact of CAP reform on agricultural exports, WTO-compatibility, product coverage and transitional periods, arrangements with respect to the establishment of the FTA, investment promotion schemes, including measures to promote the transfer of technology, know-how and skills.

processes. More specifically, they should assess the costs and benefits of the trading arrangements specified in the agreement, whether the transition period proposed will be adequate, how much of the existing trade preferences can be retained and for how long, what would be the cost of adjustment involved with the obligations associated with reciprocity, and whether the financial and other assistance promised by they EU will be adequate to offset the cost. Another important issue relates to the technical feasibility of the negotiations, including whether East African countries should negotiate as individuals or as a group, as well as their negotiating capacity at both the national and sub-regional level. They will also need to respond to a wide ranging EU agenda emerging from the EU's own experience of market integration.

Searching for and articulating appropriate policy options for the sub-region to manage EPA negotiations and address these issues adequately constitutes the essential focus of this paper and the Friedrich Ebert Stiftung (FES) Cotonou Training of Consultants programme.[3] Since the policy options can best be appreciated against the backdrop of the context in which they occur, the paper also explores the contextual questions. In particular, section 2 provides the background and framework for negotiations under the Cotonou Agreement. It goes on to give the timetable for the EPA negotiations. Section 3 turns the searchlight on the state of preparations for negotiations in East Africa. In so doing, it also examines the range of options from which the EAC and its member governments must make their choices. Using case studies, section 4 discusses some of the more salient country-specific issues, the challenges and principles upon which the negotiations should take place. The paper ends with some concluding comments in section 6.

---

[3] Launched in 2003, FES' EU-ACP Partnership Agreement Consultants Training Programme, under whose auspices this paper has been produced, seeks to create a core team of personnel with adequate knowledge and expertise on the ACP-EU Partnership Agreement. This is being done thorough training of selected consultants from the East African Region (Uganda, Tanzania, Ethiopia and Kenya) on the perspectives provisions, features, processes and insights of the EU-ACP Partnership Agreements in an effort to generate debates and comprehensions of the agreements and its import to the region. The goal is further political and economic dialogue linking the governance, trade and development concerns of the agreement with a view to improving mutual understanding of shared agenda between the ACP and EU States

4. The Framework for Negotiation

2.1 Some Salient Issues

The 25 years of Trade and Economic Cooperation between the ACP countries and the European Union (EU) under successive Lome Conventions and now the Cotonou Agreement will be put into new perspectives in the context of negotiations of Economic Partnership Agreements (EPA) between the two groups. So far trade and economic cooperation is based on the extension to the ACP of enhanced market access through trade preferences.

The provisions of the Lome Convention relating to trade have been rolled over into the Cotonou Agreement until the year 2008. The European Commission is proposing that from 1st January 2008, new reciprocal agreement, EPAs should replace the current non-reciprocal preferential trade regime that governs trade relations between the ACP and the EU. The Cotonou Agreement contains detailed provisions on the nature of the Agreement to be negotiated, the time frame for the negotiations and the level at which negotiations should take place. The Agreement provides that:

> *"Economic Partnerships Agreements shall be negotiated during the preparatory period which shall end by 31 December 2007 at latest. Formal negotiations of new trading arrangements shall start in September 2002 and the new arrangements shall enter into force by 1 January 2008, unless earlier dates are agreed between the parties."*[4]

The Cotonou Agreement also provides that the EPAs should fully conform to the requirements of the WTO on regional trading arrangements.[5] This can be achieved in two ways. One is to maintain the non-reciprocal trade preferences by revising the EU's GSP scheme to accommodate all those ACP countries at the same level of development. The other is to move over to a reciprocal preferential trade arrangement consisted with GATT Article XXIV which deals with free trade area agreements. This is the option the EU prefers. This means that an ACP-EU FTA would

---

[4] Article 37(1), CPA
[5] Article 36(4), CPA

have to respect the guidelines of the relevant GATT rules and hence liberalize substantially all trade among parties over a reasonable period of time, usually taken by the EU to be 10-12 years.

Apart from signing an FTA with the EU however, the LDCs of the EAC (Uganda and Tanzania) have the option of retaining their existing non-reciprocal trade preferences. Since the late 1990s, the EU's trade policy towards all the LDCs recognizes the special fragility of their economies and gives them special treatment. In 1999, the EU introduced complete duty free access for all "originating" industrial products from LDCs, which in many areas were better than Lome trade preferences. In March 2001, under the Everything But Arms (EBA) initiative complete duty free access was extended to agricultural products "originating" in LDCs. The EU thus now grants complete duty-free access to all "originating" imports from LDCs, with the exception of arms and munitions, without any quantitative restrictions. Thus the LDCs of the EAC may chose not to open their markets to the EU and retain their existing non-reciprocal trade preferences with the added assurance that they can continue to have free access to the EU for essentially all their "originating" export products.

However, there are pertinent limitations in these options. For one, the GSP is unilateral and is offered at the discretion of the EU which may also withdraw the offer at will[6]. The rules of origin under GSP are also stricter than those provided under the Lome Convention. Regarding the EBA initiative, evidence shows that the benefits are so far relatively minor for currently exported products, primarily because over 99 per cent of the EU imports from the LDCs are in products which the EU had already liberalized, and the complete removal of barriers to the key remaining products - rice, sugar, and bananas - has been delayed.[7]

The options open to Kenya as the only non-LDC members of the EAC that Kenya may negotiate an FTA with the EU individually or through a regional grouping.

[6] However, this would require a complete volte face in EU policy, for the EU has been urging other developed economies and even more advanced developing countries, to follow the EU's example in granting complete duty free access to "originating" LDC products. The withdrawal of EBA preferences whilst a legal possibility is thus likley to be politically beyond the range of possibilities open to the EU.

[7] Brenton, P. 2003. Integrating the Least Developed Countries into the World Trading System: The Current Impact of EU Preferences under Everything but Arms. World Bank Working Paper No. 3018 of April 4, 2003.

The former would obviously deny Kenya the benefits of cooperative effort that would accrue from joint approach through the EAC. However negotiating as the EAC would embroil Tanzania and Uganda in reciprocal trade arrangements, the benefits of which are far from apparent. The EU may not also be willing to negotiate such an agreement with a single country because of the higher costs of negotiating a series of individual EPAs with many economically small ACP countries. From precedent, however, it would appear that this option remains open. For example the recent conclusion of an FTA with South Africa suggests that The EU is not completely averse to negotiating EPAs with individual non-LDC African members of ACP. The question is whether the EU would consider Kenya to be as significant in terms of trade as South Africa, which is classified as a developed country under the WTO. Another regional option for Kenya is to negotiate as a part of COMESA, although this also poses membership-related problems. Egypt for instance, although a member of COMESA is not a member of the ACP group, while Tanzania, with whom Kenya is seeking closer market integration is an ACP member but not a member of COMESA. This highlights the practical difficulties faced in defining an appropriate regional framework for EPA negotiations. Difficult decisions will have to be made. Below is a brief look at some of the options of approaching the negotiations as the EAC.

The EU appears to have a strong and explicit preference for negotiating EPAs with regional groupings of African countries. Proponents of this option argue that it has the advantage of conserving the negotiation resources and contributing to sustaining the intra-regional integration efforts of ACP states.

In selecting this option, however, East African countries must consider the technical feasibility of implementing it. In this regard, they need to examine the preconditions that must be satisfied before they can establish regional EPAs with the EU. For example, a regional grouping must be an effective free trade area or customs union before it can sign an EPA with the EU. This is yet to be achieved in the EAC. In addition, negotiating an EPA as a regional group would require prior negotiation among the member states of the group to decide on a common negotiating mandate and strategy. It may also require delegating the power to negotiate and reach agreement with the EU to a supra-national body. The problem is that member countries of the EAC belong simultaneously to more than one sub-regional group.[8]

Furthermore, EAC member-states are classified differently on the basis of their level of development. While Kenya is considered to be a developing country, Uganda and Tanzania are LDCs. This differentiation poses a very big challenge since the two categories of country face very different alternative options in terms of their future trade relations with the EU.

A final challenge is with respect to the negotiating capacities of the EAC member states. If the negotiating capacities of the individual countries are not particularly strong, those of the regional grouping are virtually non-existent. These capacities need to be considerably strengthened if meaningful negotiations are to take place. Although this is "doable", it is made considerably difficult by two key factors. First, the time available to prepare for the negotiations is very short and, second, there are other negotiations (such as the WTO, EAC, and COMESA negotiations) that are likely to run alongside EPA negotiations. These two factors have the combined effect of grossly overstretching the already limited negotiating capacity within the EAC.

The requirement that the respective regions must at least constitute FTAs in itself provides certain challenges. Weaker economies fear opening up the market for fear of domination by stronger economies in the region. In that regard, the establishment of an EAC customs union has met with proposals such as the imposition of community tax on Kenyan goods entering either Uganda or Tanzania. A bigger challenge though is from opening the market to the benefit of the EU at the expense of smaller firms of EA countries, which are limited in production capacity, and thus unable to substantially benefit from economics of scale. On the positive side, FTAs and customs unions encourage quality through competition and consequently improvement in production technology. There are benefits of increasing market size, likely to benefit Kenya most as it is closer to saturating its existing market on some of its product lines.

[8] Tanzania is a member of SADC; Kenya and Uganda are members of COMESA

What has happened without solving the above problems is the decision by Tanzania to negotiate as part of SADC and Kenya and Uganda to join the East and Southern African negotiating group.

2.2. Negotiation Modalities, Structures and schedules

The Cotonou Agreement provides that negotiations will establish a timetable for the progressive removal of barriers to trade.[9] As regards the procedures to be adopted, it is stipulated that,

> *"negotiations of EPAs will be undertaken with ACP countries which consider themselves in a position to do so, at the level they consider appropriate and in accordance with the procedures agreed by the ACP group, taking into account regional integration process within the ACP."*[10]

The Agreement goes on further to indicate that in 2004 an assessment will be made and for those countries that are found not to be in a position to enter into EPAs, alternative possibilities will be examined to provide a framework for trade which is equivalent to the existing situation.[11] Particular note should be taken of the fact that the Cotonou Agreement only commits those ACP countries to negotiating EPAs "which consider themselves in a position to do so" . If countries do not "consider themselves in a position to do so" then there is no compulsion on ACP governments under the terms of the Cotonou Agreement to engage in EPA negotiations. It is implicit in the Cotonou Agreement that alternative trade arrangements should be established in 2004 for countries not in a position to enter into EPA but also ensure that no ACP country is worse off in terms of future access to the EU market regardless of whether they enter into an EPA arrangement. While this is already ensured for LDCs through the EBA initiative, no such alternative trade arrangements extending Cotonou equivalent treatment have yet been established for non-LDCs such as Kenya.

---

[9] Article 37(7), CPA

[10] Article 37(5), CPA

[11] Article 37(6), CPA

Phase 1 of EPA negotiations

Negotiations were conducted in three levels; technical level, ambassadorial level and ministerial level. Work at the ambassadorial level started in October 2002. Several sessions on specialized topics were conducted, such as market access; agriculture and fisheries; trade in Services; development co-operation; trade-related issues and legal issues. For each of the six groups, various ACP countries were awarded posts as Ministerial Lead Spokespersons, Ambassadorial Lead Spokesperson or respective ministerial and ambassadorial alternatives.

Kenya was the Ministerial Lead Spokespersons on market access issues, while Uganda provided one of the two Ministerial alternatives. Uganda also provided the Ministerial Lead Spokesperson in Legal issues, while in Trade in Services, Ethiopia provided an alternate Ambassadorial spokesperson. Below is a full list of the roles with emphasis placed on EAC countries:

ACP Post	Market Access	Agriculture and Fisheries	Trade in Services	Development Co-operation	Trade Related Issues	Legal Issues
Ministerial Lead Spokesperson	Kenya	Lesotho	Barbados	Niger	Tonga	Uganda
Ministerial Alternatives	Uganda C. Africa	C. Africa Pacific	W. Africa C. Africa	Ethiopia Caribbean	Caribbean W. Africa	Pacific S. Africa
Ambassadorial Lead Spokesperson	Senegal / Niger	Mauritius	Figi	C. Africa	Malawi	Haiti
Ambassadorial Alternatives	Pacific ECS	Guyama	S. Africa Ethiopia	Pacific S. Africa	Sudan C. Africa	C. Africa W.Africa

C. Africa - Central Africa **S. Africa** - Southern Africa **W. Africa** - West Africa

During a meeting attended by officials and Ambassadors from the Eastern and Southern African Region in Nairobi in May 2003, the following were highlighted as the points of convergence between the ACP and the EU side:

- EPAs could be instruments for development for ACP countries and hence promote sustained development and contribute to poverty eradication, and not ends in themselves.
- Specific economic, social and environmental constraints faced by ACP states should be taken into account as well the development policy objectives of the respective countries.
- EPAs should support the regional integration process.
- EPAs should be WTO compatible and should take into account the evolutionary nature of WTO rules.
- EPAs should be built on the objectives of the Cotonou Agreement, hence provide for special and differential treatment and flexibility and maintain coherence and consistency of ACP development strategies, etc.
- An all-ACP-EU monitoring mechanism shall be maintained during the second phase of the negotiations to ensure coherence and transparency.

While overall 25 major areas of divergence have been identified at the nominal end of phase 1 (see annex for detailed tables), two major areas of divergence stand out, namely:

- **On the outcome of phase 1**: The ACP side would like phase 1 to be treated as a negotiation phase and result in legally binding commitments on ACP-wide cross cutting issues. ACP sees this as a precondition for the success of phase 2. The EU side, however, sees phase 1 as a EPA process of clarification and feel that the real negotiations will take place during the second phase.

- **On the availability of additional financial resources:** The ACP believes that resources currently available under the EDF will not be enough to effectively support the restructuring processes which will be needed to equip ACP producers to compete with EU produders under conditions of free trade. The EU believes that given the vast amount of EDF financial resources which remain unspent there can be no justifictaion for making additional resources available. For the EU the challenge is to make better use of the available resources rather than arguing over additional alloctaions.

Phase 2 of EPA negotiations

The second phase will deal with regional and/or national specific issues and hence will be conducted at regional and national level as opposed to the all-ACP level. Phase 2 will thus cover such issues as the negotiation of tariff reduction schedules and other specific commitments on trade in services and trade related areas. The EU has always favoured a regional approach and was never really committed to the all-ACP phase of negotiations. As the ACP prepares to enter into this second phase, there are still six major issues that are still unclear:

1. What will be the regional configurations for the second phase?
2. Who will actually negotiate? Will it be regional secretariats on behalf of the respective member states or the governments of member states themselves within a coordinated regional framework? (It seems more likely that the member states, who bear the responsibility for any commitments will be the negotiators)[12].
3. Where will negotiations be conducted? In Brussels or in the regions concerned? Or some combination of the two (in this context what will be the role of the Brussels based ACP Ambassadors.)?
4. How are lists of sensitive products to be drawn up at the national level (using what criteria) and consolidated at the regional level (using what criteria)
5. How long should the transitional period for the phasing in of tariff elimination commitments be? Should it be 10-12 years or where developing countries are involved with the EU should it be 15 to 18 years? Where least developed countries are involved should the transtion period be 20-25 years?
6. What will be the impact of the elimination of duties on imports from the EU on total government revenues? How can alternative sources of government reveneue be developed and how easy is it to implement such schemes under the specific circumstance facing individual ACP countries and the wider poverty alleviation objectives being pursued?

[12] See Annex for an Outline of the European Commission's proposed strcuturing of phase 2 EPA negotiations.

The European Commisison’s Timetable for EPA negotiations

Timing	Event	Comments
2002 - 2003 (Sept)	Exploratory discussions and ACP self selection on basis of negotiations.	Concluded with two major areas of divergence: 1. Treatment of phase 1 2. Additional of resources through EDF disbursement
September 2003	Commencement of negotiations of future trade arrangements.	
2004	Exploration of alternative arrangements for Non-LDC	Will explore levels of market access for non-LDC that are not in a position to enter EPAs. This will be equivalent to current preferences and compatible with WTO
2005	Non Reciprocal duty free access for essentially all products from LDCs to be introduced	
2006	Formal and comprehensive review of the progress in the negotiations	
December 31, 2007	End of application of current Cotonou Agreement non-receprocal trade preferences	Any country not committed to reciprocity in EPAs or REPAs will have to reverse to non reciprocal GSP or other trading arrangements.
1 January 2008	Entry into force of any EPAs which may have been concluded	
2008 - 2018	Transitional Implementation of EPAs	
2018/2020	Full entry into force of WTO FTA arrangements.	

5. State of Preparation for Negotiations in East Africa

From the foregoing, it is evident that EAC countries have a daunting task in considering whether and how to negotiate EPAs with the EU. It is clear that it may not be feasible for EAC to enter into a meaningful FTA with the EU in the time-frame proposed. Firstly these countries are not sufficiently competitive to withstand the premature and large-scale introduction of duty-free imports from the EU. Such a reciprocal arrangement will have most immediate benefit to the EU but greatly undermine local industries (particularly agro-processing industries) and also erode government revenues, given the heavy dependence of East African governments on import duties for their fiscal revenues. It is thus not surprising that little, if any, preparations have been made towards negotiation of EPAs under the auspices of the EAC.

	Total Tariff Losses	**Total Revenue Losses**
Tanzania	73%	20%
Uganda	69%	16%
Kenya	82%	12%

Nevertheless, there is evidence that individual EAC member countries have initiated minimal activities with respect to the pending EPA negotiations. In ***Tanzania*** the first meeting at a technical level was summoned by the Ministry of Finance (MoF) in January 2003. It resolved that:

i) the MoF appoints a task force to provide technical back-up on EPA negotiations;
ii) the Ministry of Industry and Trade (MIT) coordinates the EPA negotiations;
iii) the MoF works with the MIT in providing secretarial services;
iv) studies be commissioned to establish baselines and modalities for negotiations.

Unfortunately, this meeting remains a one-off event which has never been followed up to-date.

A more or less similar situation obtains in ***Kenya*** and ***Uganda***. Both countries have designated their respective Ministries of Trade and Industry as the focal points for EPA negotiations. But litle has been initiated towards preparation for EPA negotiations under the Cotonou Agreement. They are more inclined towards adopting a common strategy with the rest of their COMESA counterparts. For example, under a decision of the COMESA Authority taken in Khartoum, Sudan on 17th March 2003, member countries commit themselves to negotiate EPAs as one region to enable them to pool their technical and other resources. Kenya and Uganda are also parties to the Nairobi Declaration on Preparations for EPA Negotiations adopted 28th May 2003 for the purpose of exchanging views and agreeing on a common strategy for Phase II EPA negotiations.

Be that as it may, East African countries face a number of fairly similar challenges with respect to preparation for the EPA negotiations. In the first place, the relevant ministries have limited qualified personnel to deal with the complex tasks of overseeing EPA negotiations. The few staff available is over- burdened with other more immediate trade issues like the completion of the EAC customs union process scheduled for November 2003 and until recently preparations for the WTO Ministerial meeting in Cancun. Secondly, there is considerable lack of clarity among ministries on the division of responsibilities as far as the Cotonou Agreement is concerned. In Tanzania, for example, a number of various line ministries lack effective coordinating mechanism to deal with the range EPA issues. The MoF is the one responsible for authorizing expenditures under the European Development Fund (EDF). Although the MIT is responsible for the WTO, it has no say with regard to regional trade agreements. The Ministry for Foreign Affairs and International Cooperation is the one responsible for regional integration initiatives, including the economic and political aspects of the regional integration process. It is noteworthy that despite agriculture being Tanzania's main export sector, the Ministry of Agriculture and Food security has never been part of the trade negotiation and policy processes. To-date, it is the MOF which leads negotiations with the EU.

Of the three regional bodies that East African countries belong to, only COMESA has established an FTA. EAC is expected to sign an FTA by 30th November 2003 to be fully operational in 2004. The SADC trade protocol should lead to the liberalization of 85% of all intra-regional trade by 2008 (for the more developed SACU states) and 2012 for the rest but little progress has been made toward attaining the goal. Neither has any progress been made toward formulating a common external trade policy due to the wide divergence of external tariffs by individual countries. The EAC FTA and customs union seem closer to reality and a lot of ground has already been covered such as the completion of rules of origin. There are still outstanding issues on the CET with respect to time frames and modalities of implementation and also on the compilation of sensitive products.

6. Key Issues and Challenges for East African countries: Case Studies

There are numerous similarities between the East African countries in terms of the structure of their exports and the challenges faced. In terms of relations with the EU they are all exporters of primary goods and importers of manufactured goods. They have all at one time or another had coffee as the chief export commodity. To-date, Uganda, Tanzania and Ethiopia still rely heavily on Coffee. While the trends in coffee exports still continue to dominate the total export earnings for these countries, there is deliberate effort by all these countries to move toward non traditional exports[13].

All countries share many of the same supply side constraints although the emphasis may vary. Each however has their unique problems. Some of the common constraints include, human and financial recourse constraints, institutional policy formulation, uncontrollable factors such as weather and fluctuation in the world prices; technological constraints; infrastructure constraints, public service constraints e.g. water provision) , to name but a few.

Ethiopia case study[14]

Ethiopia like Uganda and Tanzania is classified as LDC and has a per-capita income of less than US$100. The country exhibits a lack of structural transformation and continues to show a continued dependence on primary exports and a dominance of manufactured goods within the import profile. The country is plunging into high levels of debt to the extent that it is unable to function properly without external assistance.

More than 95% of Ethiopia's export items are agricultural primary products and coffee is the largest amounting to over half of Ethiopia's exports. Since 1995 the

---

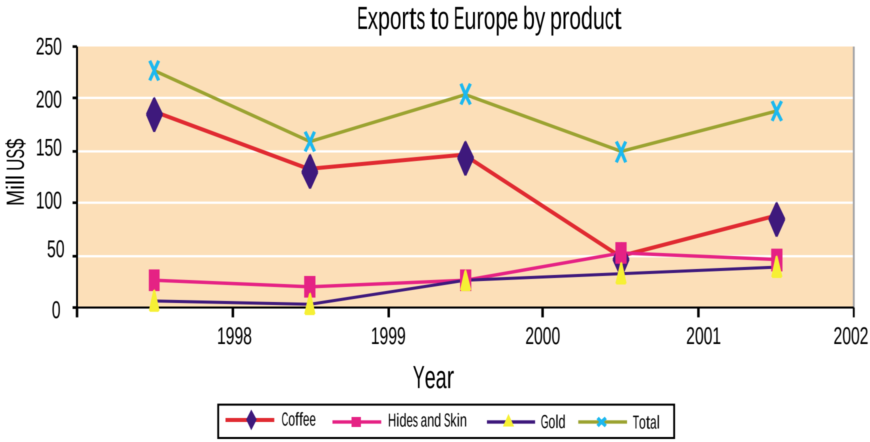
[13] For Ethiopia this includes sugar, a traditional export for many ACP countries in their trade with the EU and out of which many ACP countries are trying to diversify!

[14] Summary of presentation by Alemayhu Areda: ACP-EU Consultants Training (August 2003)

volume of coffee exports has declined to as much as a third owing to excess supply of coffee in the world market. This adversely affected its exports significantly. Ethiopia has started making efforts to encourage non-traditional exports through an Export Promotion Agency. The most significant of these is chat contributing to 16% of total exports.

Exports and export markets for Ethiopia

The EU remains the largest trading partner for Ethiopia with the dollar value of exports earnings obtained from the EU consistently above 40% of total exports. Coffee dominates the exports value to Europe and amounts to 45% of the total exports (2002). Imports from the EU are mostly in form of finished goods.



There has been a decline in the value of coffee exports to Europe which has also contributed to the overall downward trend in the total value of exports to Europe. Coffee's share has reduced from 82% of total exports in 1998 to just above 40% in 2002. The above trends show that total exports have continued to be dictated by coffee exports. It is also noteworthy that from 1999 non-coffee exports exhibited an upward trend, probably reflecting the need for diversification.

Development constraints in Ethiopia:

Agriculture sector constraints: The sector is facing several constraints that revolve around shortages or lack of flow of capital and knowledge, which is a function of institutional arrangements that guide resource allocation to the sector.

Some of the factors include diminishing farm size; soil degradation; inadequate and variable rainfall; tenure insecurity; weak agriculture resource base and extension system; lack of financial services and imperfect agricultural markets coupled with poor infrastructure. The agriculture land has remained fixed while the population has increased rapidly and remained largely in the rural areas. This has increased pressure on the land and has led to a depletion of agricultural resources. Lower reliance on this sector and an expansion of the manufacturing sector is seen as a means of alleviating poverty

Manufacturing sector constraints: Development of this sector is seen as the means of poverty eradication in Ethiopia but is faced with several constraints which fall within the following groups: technology-related problems; market issues; issues to do with finance; policy issues; input supply; issues to do with human resources and the political environment.

Constraints regarding technology mostly revolve around poor information on appropriate technology ; Low demand for manufacturing products coupled with competition from imports is the major market constraints; A monopolistic position of lenders has seen banks demanding prohibitively high levels of collateral, while the land-use policy did not allow the use of land as mortgageable collateral. The policy has changed and land is now acceptable as mortgageable collateral. The types of assets that can be used as collateral remain a barrier to new entrants to business. On policy related issues land acquisition for investment is a difficult and tedious process and also very expensive; There are related issues such as tax levied on imported inputs being higher than tax on imported finished goods making it difficult for local manufactures using imported inputs to be competitive with imported finished goods. This is further a constraint because local inputs are seen as either unreliable or of poor quality. Also tax assessments are seen to be unfair and use arbitrary procedures.

Skill in manpower is limited by the curriculum in schools and inadequate practical training. Socio-political factors such as a regionalization scheme, which does not encourage mobility of capital and entrepreneurial skills across regional borders also inhibits growth and development.

The fiscal dimension

Ethiopia government revenue is mostly made up of tax revenue, which has shown an upward trend over the years. It is made up of foreign tax, non-tax revenue and external grants. After the reforms there was a marked increase with foreign tax as the biggest contributor showing a 500% increase form 1990 to 1997 mostly because of the devaluation of the birr and a less significant factor is an increase in foreign trade. The tax and duty on foreign trade were reduced during that period.

The government expenditure is composed of recurrent expenditure and capital expenditure. Recurrent expenditure has grown substantially between 1989 and 1997 by an annual rate of 7.4%. The growth is attributed to duplication of government institutions due to the federal structure of government and debt re-payment obligations relating to expansion of extension programs in agriculture. Capital expenditure has also grown significantly due to increased intervention in such sectors as education, health and water supply. This could more strategically be taken over by the private sector.

Reforms undertaken to expand and diversify government revenue include lowering of tax and tariff rates, the introduction of new taxes and the reorganization of Inland Revenue Authority and Customs. Rationalization on the expenditure side has been in the form of increasing expenditure on social expenditures and infrastructure and a reduction in defense expenditure and a shift of emphasis from recurrent to capital expenditure.

The fiscal deficit shows a declining trend in the post reform period, after grant aid has been factored in, but increased in 1997/8 due to an increase of defense budget during the war. There is a marked deviation on the deficit before and after the factoring in of grant aid, showing a high dependency on grants to finance expenditure. This is risky as grants are very much dependant on political interests of the donors.

Free trade with the EU is expected to affect Ethiopia adversely, increasing the trade imbalance and also the external debt burden. This is particularly so as foreign trade is now the biggest source of government revenue.

Uganda case study[15]

The Uganda case explores the supply side constraints and development issues faced under EPA negotiations. While this case study looks specifically to Uganda most issues apply to other ACP countries and several similarities will be seen with the Ethiopia case.

Uganda has experienced its longest period of rapid and sustained development during the last decade with the annual rate of growth of 6.8% between 1992 and 1998; increase of average per capita income by 65% between 1990 and 2000 with the population living below poverty being reduced from 56% in 1993 to 35% in 2000. There are signs that the rate of growth is slowing down attributed to drought and to a decline in the terms of trade, demonstrating Uganda's economic vulnerability to both external and internal shocks.

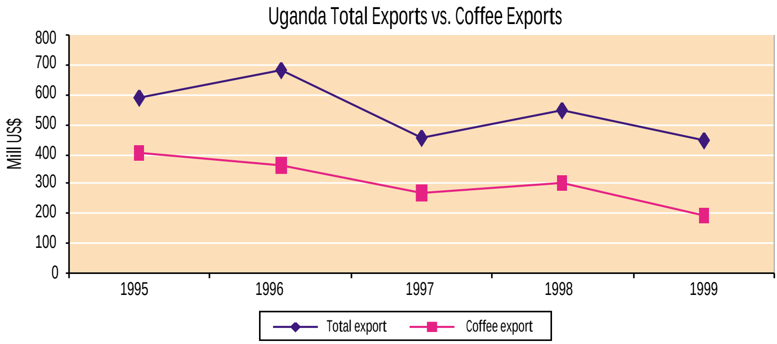
While there is increasing emphasis on EPAs, Uganda being an LDC can continue to enjoy complete duty free access to the EU market after 2008 for all originating products under the EBA initiative. For Uganda (and Tanzania and Ethiopia) therefore the major issues faced relate to the rules of origin applied under the EBA arrangements; resolving SPS issues in ways which minimize barriers to effective market access for LDCs and securing increased investment funds to address supply side constraints which inhibit competitive production of goods for export. In this context the EU's almost exclusive emphasis on EPAs, which are consistent with the EU's global free trade area strategy, seems ethically very questionable, given the disparities in levels of development between a highly industrialized and economically strong EU on the one hand and least developed and developing countries in the ACP Group on the other hand. For the EPAs to be acceptable, EU's current approach will need to be radically modified to ensure balanced

[15] Summary of presentation by Delphine Mugisha: ACP-EU Consultants Training (August 2003)

benefits are to accrue to the EU and the ACP and also ensure that development issues should be placed at the forefront of trade negotiations.

Uganda like most ACP countries was not able to benefit from the Lome conventions because of inability to produce and supply goods competitively. In order for Uganda to benefit from the trade preferences in increasingly liberalized trading environment the country must produce at a reasonable cost.

Below is a chart demonstrating one of the constraints facing Uganda. The graph gives falling prices on three export commodities.



Uganda relies heavily on coffee for its export revenues. The value of total revenues earned from exports closely reflects the trend of coffee exports. This situation is very similar to the Ethiopian.

Efforts to address supply sides constraints

Under EU-Uganda cooperation programmes there are several efforts in place to address supply side constraints which potentially have a bearing on preparations for engaging in free trade with the EU including:

- Basket funding approach: Much of the 9th EDF and STABEX funds are going in social sectors particularly health and education; modernization of agriculture and forestry and economic infrastructure, roads and rail.

- EU support on non-focal sectors: These include micro finance services, tourism sector, private sector competitiveness and business development services.

Supply side constraints by sector

Sector	Contraints	Comments
Private Sector	- High cost and poor delivery of utility services - Poor transportation - Weakness/corruption in tax administration and commercial justice - High cost of accessing capital hence high transaction costs - Insecurity - Poor technology - Lack of skilled labour	- Costs of production in Uganda higher than most countries in region - Uganda being landlocked depends highly on air transport, which itself is faced with problems such as unprofessional handling, inadequate storage facilities for perishable goods, high cost of aviation fuel, etc
Financial Sector	- High costs of credit - Large spread between lending and borrowing rates - Access to capital by medium and small scale entrepreneurs	There has, however been a steady growth in the financial sector over the past decade
Agricultural Sector	- Dependence on small scale farmers - Rudimentary technology - Limited external inputs such as fertilizers, herbicides and pesticides - Vulnerability to weather patterns - Outbreaks of pests and diseases - War in high productive areas - Dependence on few commodities such as coffee (see below) - Changes in trading terms - Imposition of qualitative restrictions	
Manufacturing and Construction	- Small domestic market	Hence need to increase market through regional integration and international trade
Government Sector	- Dependency on donor funds - Donor funds converted into local currency be central bank hence appreciation of exchange rate and loss of competitiveness of external sector	This dependence has resulted in inflation because of government spending on local currency. Central bank often has to sell T-Bills to reduce currency in circulation, which in effect causes commercial banks to have reduced interest in lending to private sector
Export Sector	- Weather such as El Nino - Deteriorating terms in commodity exports - Ban of fish exports - Falling price on export commodities such as coffee, tea and cotton (see below)	
Constraints beyond Uganda Control	- Variation in weather - Changes in trading terms - War and civil conflict	

- Addressing corruption: More than ten institutions have been put in place to fight corruption. It is not, however, clear how effective these institutions are.

- Addressing HIV/AIDS: Mass campaigns; expansion of laboratories and blood transfusion centers that ensure HIV free blood is available in hospitals; care and support to affected and infected and peer education in post primary and tertiary institutions.

- Addressing challenges in export sector: Attempts to diversify the exports base through agro processing and adding value to products. Uganda's non-traditional exports have increased significantly through fish, flowers and fresh fruits and vegetables. Uganda is also exploring alternative markets such as COMESA and the United States under AGOA.

- Poverty alleviation measures: Priority areas in each sector are financed through Poverty Action Fund, which is a pool of funds from government and donors.

- Addressing challenges in the government sector: An integrated financial management system introduced by the government covers a wide range of public expenditure management reforms. This is expected to lead to the establishment of a reliable system to produce accurate and timely budgeting and financial information.

If free trade with the EU is to be introduced these efforts will need to be massively stepped up for Ugandan producers to compete effectively with EU producers under conditions of free trade.

Tanzania case study[16]

Tanzanian exports are largely agricultural with agricultural products making up over 60% of Tanzania's exports to the European Union. The Five top exports are coffee, tobacco, fish, cut flowers and gold. These make up 65% of all exports. Fish alone accounts to 28% of Tanzania exports to the EU.

---

[16] Summary of presentation by Sebastian Pascal: ACP-EU Consultants Training Workshop (August 2003)

The EU market absorbs most of Tanzania's agricultural exports and the agriculture sector has benefited from preferential market access in many ways. Agriculture contributes about 62% of the total country's GDP; is responsible for the employment of 80% of the population, with the coffee sub sector alone supporting the livelihood of over 1 Million people, tea over 0.2 Million people and fish over 2 Million people. The Agriculture sector also provides 75% of Tanzania's foreign exchange. It is thus a very important sector while the EU market is very significant to Tanzania.

Tanzania imports from the EU have changed over the last 10 years to include more commodity items such as processed tea, coffee, cereals, bottled fruits and other foodstuffs. The actual impact on the local Tanzania industry and that of Tanzania's neighbors need to be carefully investigated prior to any reciprocal trade negotiations with the EU.

Trade Preferences

About 99.5% of Tanzanian agriculture products enter the EU market duty free. This is now largely attributable to the Everything But Arms (EBA) initiative which Tanzania enjoys as a least developed country (LDC). Tanzania, like Uganda and Ethiopia would thus continue to enjoy duty free entry into the EU market without any successor arrangement to the Cotonou Agreement.

Tanzania charges the highest import duties on tobacco, beer and textiles and in terms of trade liberalization considers leather, textile and agro-processing sectors as sensitive. Duties charged range from 25-40%. Removal of duties on imports from the EU is expected to have a negative and significant impact on local products and also on products imported from the neighboring countries, and will particularly affect tea, sugar, coffee and tobacco sectors the most. These are also the sectors that are most important in terms of the GDP and would thus negatively impact on employment.

Non Tariff Barriers

These come in the form of Sanitary and Phytosanitary Standards (SPS) and administrative barriers. Meat, livestock, leather (hide and skin), textiles, processed foods are some of the products that are affected by SPSs. EU health standards often prevent the entry of Tanzanian products to the EU market, despite the duty free access enjoyed. The EU has banned meat products citing animal disease concerns while leather products have been banned on the basis of high chemical residues. Such barriers have had an adverse effect on the meat processing industry, which as a result has remained dormant for years. The Tanzanian fish industry in particular suffered greatly between 1999 and 2000 through bans attributed to inability to meet the required SPSs. Apart from barriers created by health and safety standards, Tanzania also faces administrative barriers. The country has limited laboratory facilities, which are largely under equipped. The Tanzanian Bureau of Standards lacks the necessary capacity to verify compliance with EU standards as does the Arusha-based Research and Pesticide Control Institute. Even where companies are able to technically meet EU standards cost factors related to compliance and verification can price Tanzanian goods out of the EU market. This is a particular problem for small scale producers. Supply side constraints such as poor infrastructure, lack of packaging services and preservation problems also play a part in creating NTBs. The exporters are further disadvantaged by lack of information on the market or on the standards required.

Common Agricultural Policy (CAP) Reforms

Under the EU CAP reforms a shift is occurring that move away from price support to direct support to farmers. This is leading to a decline in EU prices for basic agricultural commodities falling under the CAP. This affects products such as beef, tobacco, fruit and vegetables and cereal products. The impact of this process on Tanzanian exporters has not been quantified but elsewhere in Southern African beef exporters have found the prices they receive 28-30% lower since 1999 largely as a result of CAP reform. Further, the EC estimates that sugar sector reform involving a "fall in price" scenario would result in annual income losses to ACP sugar exporters of Euro 300 million

Unlike the EU and other neighboring countries, the agriculture sector in Tanzania has in the past been neglected and instead been treated as a major source of tax revenue. The agriculture sector has been a net contributor of government funds and not a net user. Comparative analysis for instance shows that only 37.2 percent of the revenue derived from coffee goes back to the sector in Tanzania while the bulk is treated as general revenue for the government and its other institutions. In contrast in Kenya 95.7% of coffee derived revenue goes back into the sector.

There is, however a shift and support in terms of policy, fiscal and infrastructure provision are now being organized. The government is preparing to put in place mechanisms to promote the sector through three initiatives. Firstly there will be a removal of a wide range of taxes. Cash crops have been facing over 40 taxes but this will be much reduced. Secondly the Land Act will be reviewed with the effect of empowering landowners. Thirdly the government is considering selectively offering subsidies, although the scope for this is limited given that the agriculture sector contributes 48% to the GDP and effectively supports other sectors.

Kenya Case study[17]

Approximately 25 - 29% of all Kenya exports are agricultural exports to the EU. Kenya exports to various markets and participates in various initiatives that facilitate market access, which include regional markets such as the COMESA FTA and the EAC; and other multilateral and bilateral initiatives such as the WTO and AGOA. While the EU market has remained stable over time (approximately 30% of Kenya total exports), COMESA has been growing at a relatively fast rate owing to the establishment of the COMESA FTA. Currently 41% of Kenyan exports end up in the COMESA region and the full potential of the COMESA market is yet to be realized as 12 countries are still to sign the protocol.

There has been a shift from the early 1990s when Kenya's main trading partner was Europe. Uganda and Tanzania are now absorbing a majority of the goods. This has important implications for the introduction of free trade between the EU and Kenya's trading partners in East Africa and the wider COMESA region.

[17] Summary of presentation by Elizabeth Mutunga: ACP-EU Consultants Training Workshop (August 2003)

The Kenyan government in its policy formulation will not only have to take account of the impact of reciprocity with the EU on Kenyan production for the local market but also on Kenyan production for East African and wider COMESA markets.

Kenyan exports have changed since the middle 1990s with a decline in Coffee exports. Tea is the major export and accounts to about 19% of the total exports. Horticulture and floriculture, mostly cut flowers have also continued to rise (13% of total exports). Kenya's leading foreign exchange earners in 2000 were: tea (18.7%), transportation services (16.7%), horticulture (11.3%), petroleum products (5%- mainly re-exports). The EU remains the largest market for Kenyan Agricultural products which make up approximately 90% of all exports to the EU. The value of agricultural exports rose by 68% in 2000 from 1990 and the contribution of Agricultural products to the total exports to the EU have remained very high since the early 1990s. Currently cut flowers are the leading export to the EU (22%) followed by Tea (17%), coffee (11%) and vegetables (14%).

Despite attempts to diversify Kenya continues to rely heavily on basic agricultural product exports. Such reliance is risky since earnings on agriculture exports are dependant on uncontrollable factors such as world market price fluctuations and the weather. Both factors continue to have a big impact on the counties exports earnings, with world market price declines playing a major role in the decline of coffee as a chief export earner for the country. Kenya, as noted for the other three countries must put in place mechanisms to develop its industrial sector in order to increase the contribution of finished and semi-finished goods in its total exports. In this context the East African and COMESA markets are more important than the EU market and so the Kenyan government will need to take a keen interest in the development of future trade relations between the EU and other East African countries and the wider COMESA region.

Focus on Tea.

In order to bring out some of the issues facing the Agriculture sector, the teas sub-sector, which is the leading foreign exchange earner, is examined. The world tea production has grown at an annual rate of 1.81% while consumption has grown at a rate of 2.05%. The tea industry in Kenya exports over 250 Mill Kg of tea with about 70 Million Kg ending up in the EU market. The UK takes up over 90% of the tea; destined for the EU. It is worth noting that 3 countries take almost 70% of the total tea exports from Kenya, namely the UK Pakistan and Egypt.

There is a clear reliance on a few market destinations and strategies must therefore be put in-place to protect the country's exports revenue and avoid a situation like that facing Ethiopia and Uganda where total export earnings are dictated by trends in coffee prices with any fall in coffee prices dramatically affecting total export earnings. A similar thing can happen through market over-reliance.

In terms of competition, Kenya is the third largest producer and the second largest exporter of tea second to Sri Lanka. While Kenya faces competition from these countries, many other factors come into play. The usage of the tea is also important. In the UK Kenyan tea is used for blending with other teas and hence becomes a bit of a necessity. This somewhat minimizes the threats by the other exporters. More serious competition comes in other forms such as a growing preference for other beverages such as coffee and soft drinks. Increasing preference for tea bags is also a factor and it not only reduces the amounts of tea required but also lowers the demand for quality teas.

In terms of global market developments, the world imports have grown annually at a rate of 1.2% over the last decade with the largest tea importers being the Commonwealth of Independent States (CIS), UK, Pakistan, US, Egypt and Japan. The EU total market accounts for about 20% of all tea imports and Kenya commands almost 18% of this market. Sri Lanka and India also contribute significantly to this market.

Non-Tariff barrier

The most significant non tariff barriers faced are the quality standards established for the EU. In July 2002, the EU imposed strict standards that greatly reduced the acceptable pesticide levels for tea. Japan, USA and Russia are also launching similar restrictions.

The full potential of growth of the COMESA market will continue to be threatened by NTBs. Kenya exports to Egypt have been affected by such barriers and recently barred Kenyan tea exports which it claimed was harming the local market. In most COMESA countries tea is seen as a potential source of government revenue and hence heavy taxes are imposed. Kenya has an interest in this policy changing. However, this is unlikely if government revenues throughout the region are put under strain from the introduction of free trade with the EU.

Some steps Kenya is taking:

Kenya is taking several steps in an attempt to expand and protect its exports markets in agricultural related products such as expansion of market destinations for Kenyan tea. Kenya Tea Packers is working at exporting both branded and packaged in Kenya to the American market; Kenyan senior officials are making efforts to look for markets in Asia while also making efforts to promote better market access arrangements to other EAC countries and South Africa. The government of Kenya is also reviewing tax arrangements to facilitate exports.

Kenya needs to greater efforts to penetrate the CIS market and other large tea markets. Kenya should also start an aggressive marketing campaign for processed tea and coffee to COMESA countries. This will reduce Kenya's reliance on basic agricultural exports which are subject to declining prices.

7. East Africa's Options for Negotiations

Taking into account the above, it becomes imperative for East African member states to develop a strategy for negotiating with the EU. Such a strategy needs to be based on some fundamental principles that would ensure that they attract the greatest benefits for these countries. Below we examine some of the more salient principles upon which such a negotiating strategy should be based.

5.1 Solidarity and Inclusiveness

Unity and inclusiveness are important for successful trade negotiations by East Africa under the CPA. While focusing available capacities on those issues of greatest national importance, the sub-region needs to build alliances with other ACP states with similar sectoral interest or those facing similar policy challenges.[18] In addition, the sub-region should look towards learning from other ACP governments who have been able to mobilize greater analytical capacities on issues in which they also have an interest. Developing a functional division of labor, based on fully utilizing what capacities exist within enhanced systems for targeted information sharing, should form a vital component of any ACP negotiating strategy, given the vast inequalities in the negotiating capacities of the ACP and the EU.

It is only through such cooperation that East Africa may be able to counter the likely negative impacts of the emerging "divide and rule" strategy being employed by EU. The EU has placed considerable emphasis on the need for ACP governments to define the geographical basis for the conduct of EPA negotiations. The EU has strongly favored the regional based negotiation of EPAs and has pressed the ACP over the last year to clarify the regional configurations within which they wish to conduct EPA negotiations. Yet most ACP regions are not yet sufficiently integrated for such complex negotiations to be conducted at a regional level. Control over tariff policy has not yet been ceded to regional decision-making

[18] For example, how to respond at the policy level to the price depressing effects of CAP reform on markets of importance to ACP exporters

bodies (unlike the EU where trade policy is a common EU responsibility and regional structures are in place to ensure collective decision making) and is unlikely to be so ceded in the foreseeable future.

National governments will have to formulate their national positions and then harmonize them with their neighbors prior to the submission of detailed tariff offers to the EU. Considering that different countries in the same region often have different sensitivities or in some instances, opposing interests, mechanisms will have to be put in-place to allow these divergent interests to be reconciled.

Further, WTO rules require free trade area agreements to be concluded between customs territories yet even progress towards the establishment of free trade areas within the ACP has been painfully slow. It is highly unlikely that by 2008, the various ACP regions with which the EU is seeking to conclude EPAs will have formally constituted themselves as customs unions. This means that not only will individual ACP governments need to take responsibility for the substantive conduct of negotiations but they will also have to sign such agreements as individual governments not as a regional trading bloc. This raises the question: what then is the regional dimension of these negotiations?

It is important that East African governments ensure broad participation both in defining its trade agenda and also in developing and implementing negotiations strategies. These countries should move away from the tradition of looking at multilateral negotiations as the preserve of governments and work with special interest groups and NGOs to help shape policies. The CPA already makes unique provisions for engaging non-state actors in the political dialogue, the national and regional programming, as well as in the formulation and implementation of cooperation policies on trade. It also commits Parties to provide capacity support to non-state actors and local governments in such areas as information provision and awareness creation, organization and representation of non-state actors, networking and promotion of public-private sector partnerships.[19] However, no initiatives for mainstreaming civil society participation in ACP-EU cooperation in East Africa are underway.

---

[19] Articles 4, 5, 7, 33 of the CPA.

In this regard, private sector producer associations and exporters associations often have a detailed knowledge of how specific markets work and how these markets are evolving. They also often have an understanding of the scope for moving "up the value chain" and thereby reducing dependence on the basic commodity market. However, they commonly lack knowledge and understanding of the trade policy issues faced, the policy options available and the scope for promoting particular policy options. Thus the need to link the market knowledge of the private sector with the trade policy knowledge of public sector officials cannot be overemphasized. This requires the creation and facilitation of targeted exchanges between the public and private sector so as to draw together the existing information and knowledge base available in the country.

Looking beyond the private sector, other non-state actors can also play a role in preparing and supporting the negotiations, either through the specialist knowledge they have available (e.g. in policy research institutes) or through the broader networks of international contacts they are able to mobilize (local development NGOs, trade unions and farmers associations).

An additional means of enhancing positive outcomes of negotiations is through ensuring that East African governments and their ACP counterparts develop a dialogue with all concerned EU institutions (the EU Council of Ministers, the European Parliament and the European Commission) on the major issues of concern. This would increase the ability of the ACP to ensure that broader EU development co-operation policy objectives are given a practical relevance when it comes down to hard-headed trade negotiations

5.2 Preservation of economic and trade interests

A crucial issue for East Africa is the need to clearly identify its greatest economic and trade interests in the economic partnership agreement negotiations with a view not only to defending existing preferences but also ensuring the maintenance of the value of existing trade preferences. Some of these beneficial interests exist in the agricultural sector, although CAP reform is systematically bringing down prices of basic agricultural products on the EU market. While for the ACP as a whole only around 10% of currently traded goods enjoy significant margins of preference as a result of the provisions of the Cotonou Agreement, for some ACP countries the significance of Cotonou Agreement trade preferences is far higher[20]. Establishing a basis for extending existing trade preferences beyond 2007 is of considerable importance for these countries, for in a number of product areas the loss of these preferences would result in de facto exclusion from the EU market, as the tariffs then applied make exporting unprofitable[21].

The issue of addressing the impact of moves towards free trade with the EU on total government revenues is particularly important for East African countries where customs duties constitute a major component of government revenues and where the EU is a major trading partner. The introduction of free trade with the EU would require the introduction of fundamental fiscal reform in East African countries as revenues from customs duties declined. If this issue of fiscal reform is not addressed at an early stage ACP governments could find themselves facing a fiscal crisis at precisely the time when they need to be establishing measures to support local enterprises in meeting the challenge of free trade.

Against this background East Africa needs to clearly identify its interests and elaborate appropriate tools for protecting these interests under any economic partnership agreements. If this task is not thoroughly undertaken and reflected in sub-regional and pan-ACP negotiating positions then these countries could find themselves carrying the costs of moves towards free trade with the EU, without gaining any of the benefits. From the viewpoint of East Africa and ACP countries, the aim of the on-going negotiations must be to ensure an agreement which minimizes the costs of moves towards free trade with the EU whilst maximizing the benefits gained from a deepened relationship.

At the same time, it is imperative to enhance dialogue between the Brussels-based trade negotiators and those in Geneva involved in WTO trade negotiations. The

---

[20] This percentage varies depending on the price trends in the basic commodities which dominate ACP exports - oil, diamonds, gold, cocoa, coffee, all of which in their basic form attract zero duties regardless of the trade regime applied by the EU.

[21] In some product areas such as the fisheries sector, the market situation is such that the re-imposition of relatively high duties (15-22%) would have little effect on exports. In other sectors such as clothing, which are high turn over low profit margin operations, the re-imposition of even relatively low duties (5%) could make exports unprofitable. This situation will be compounded for ACP clothing and textile exporters by the end of the multi-fibre agreement.

latter are engaged in the launching of the negotiations on agriculture and services, mandated under the WTO built-in agenda. The dialogue is important to ensure that the trade interests of African, Caribbean and Pacific States under both the EPA and the WTO Agreements are protected. It is important to ensure that the new trading arrangements that would govern ACP-EU trade relations from 2008 are consistent with the rights and obligations the ACP States would propose under the continuation of the reform process of agriculture trade under the WTO. The review of agriculture trade in the case of the ACP States would need to consider also the reformation within the EU itself of it common agriculture policy.

5.3 Enhancing access to EU Market

A key element of the Lomé Conventions and one of the principal premises of Cotonou Agreement has been the need for ACP countries to have duty free access to the EU market. Trends in global trade negotiations and developments within the EU however point towards significant threats to continued preferential market access. Increasingly globalized patterns of production and input sourcing have placed the limitations on duty free access arising from restrictive rules of origin and are becoming an increasingly serious problem for ACP countries. This is particularly the case in the clothing and textile industry, where with the emergence of combination fabrics, ACP cotton producers find it increasingly difficult to produce clothing acceptable on the EU market without losing the duty free access traditionally granted them by the EU.

Perhaps of more serious concern in terms of future ACP-EU trade relations is the likely impact of CAP reform on the value of current trade preferences and any future new preferences which might be extended to the ACP in the agricultural sector (see earlier references to beef and sugar sector developments). In addition CAP reform is improving the price competitiveness of EU agricultural and processed agricultural product exports as prices of basic EU agricultural products fall, as a result of the shift away from price support to direct aid to farmers. Such unfair competition is making it easier for EU exporters to win markets formerly served by ACP and East Africa country producers.

Further, East African countries must not lose sight of the value of special mechanisms like special and different (S&D) treatment in addressing their market access needs. Where they are institutionalized in trade agreements, such mechanisms provide special dispensation to ACP countries to protect their economies and gain preferential access to the markets of industrial countries on a non-reciprocal basis. For example, under Article 37 of Part Four of the GATT (the Enabling Clause), industrialized countries commit themselves to reduce and eliminate tariff and non-tariff barriers to the exports of developing countries without expecting reciprocal tariff reduction. They also undertake to make structural changes in their own economies to accommodate exports of interest to developing countries. Although these are not contractual commitments, they have given rise to expectations of economic justice among developing countries.

Unfortunately, many Northern countries have begun to question the validity of S&D mechanisms and are dishonoring such commitments. These industrialized countries continue to use escalated tariffs against manufactured products from African countries, which prejudice their chances of industrialization. Industrialized countries are also using new forms of protectionism against agricultural exports from Africa, including sanitary and phytosanitary, and safeguard measures. The direct impacts of these have been felt in East Africa, especially when the EU used such barriers to impose ban on fish exports and agricultural products from the region. Countries such as the US are now advocating for the removal of S&D provisions altogether in the interest of "leveling the playing field". Such 'equal' relations between non-equals can only reinforce inequality. Thus East Africa and ACP countries should work towards the restoration of the legitimacy of the principle of S&D treatment for the weaker members of the international community.

5.4 Gradual liberalization

The need for gradual as opposed to drastic liberalization of trade under multilateral treaties is well recognized. That is why some S&D treatment provisions are related to 'transitional measures', which enable developing countries longer 'grace periods' to comply with some of the provisions of these agreements. But the issue tends to turn on a moot point whenever attempts are made to determine time frame for the phasing out of tariffs in trade relations between developing and developed economies. What would be the ideal time frame for the phasing in of any tariff reduction and tariff elimination commitments under moves towards free trade with the EU?

The European Commission is increasingly interpreting WTO references to "substantially all trade" as meaning 90% of all trade over a 10 to 12 year period. Yet these rules were drawn up with free trade between neighboring developed economies in mind, not free trade between a major industrialized trading bloc like the EU and groupings of developing countries which mainly consist of least developed countries. The question arises given the highly unequal levels of development of ACP and EU economies and the vast differences in size and economic weight would not a longer transition period and lower product coverage appear to be more appropriate? Where least developed countries form the majority of states involved as in East Africa could not the degree of product coverage required fall as low as 65% to 70% and could not the transition period be much longer, for example 20 to 25 years? Would this not provide more time for the consolidation of regional market integration processes, which could then provide a basis for more effective ACP competition with EU enterprises under conditions of free trade? Whatever time frame agreed for the phasing in of free trade with the EU between EU on the one hand and ACP and East African countries on the other hand, it should be long enough for the fundamental supply side constraints on competitiveness to be substantially addressed prior to the introduction of free trade for EU exports

5.5 Supply Side Constraints and Human and Institutional Resource Constraints

Many supply side constraints inhibit the ability of East African countries to competitively produce and trade into world markets, some of which are highlighted under "Case Studies" in this volume. What are more, major human and institutional constraints are faced in East Africa and elsewhere in the ACP in effectively preparing and engaging in trade negotiations. In many ACP countries the trade officials who will be responsible for dealing with the negotiations with the EU are also responsible for WTO negotiations, regional trade negotiations and even similar reciprocal arrangements with other OECD countries. In East Africa, the institutional machinery for co-coordinating trade policies, never mind jointly and collectively formulating trade policies, is yet to be firmly and effectively established. In contrast the European Union has given the European Commission a clear legal competence in trade matters, has an established institutional structure for the collective formulation of trade policy (most notably through the structures of the Article 133 Committee) and full time teams of experienced officials dedicated to the conduct of negotiations with the ACP, backed up by specialist services at the EU and member states level. This means that when it comes to negotiating with the EU the ACP will "always be outgunned". The East Africa sub-region and ACP governments will need to carefully marshal their available human and institutional capacity and carefully target it on the issues of greatest importance to their national economies. This will require ACP governments to bring in all available capacity to analyze the challenges faced, identify the options open and formulate appropriate national policy responses. While in the first instance this will apply to various government departments (Ministry of Trade and Industry, Ministry of Agriculture, Ministry of Finance etc), given the internal capacity constraints and the challenge faced, it will also require these governments to reach beyond government structure to a wide range of concerned non-state actors who may have relevant expertise and provide assistance in the areas most affected by moves towards free trade with the EU.

In addition, developing country governments (including those in East Africa) are particularly vulnerable to pressures from big powers, especially those that give them 'aid', and from agencies such as the International Monetary Fund (IMF) and the World Bank (WB). These agencies shape the policies of most African countries through Structural Adjustment Programmes (SAPs) and other economic policy reform conditions. Strategies will need to be developed for dealing with this "real politik"

5.6 Addressing development agenda

East Africa must ensure that trade negotiation take on board their key development concerns. Indeed the key yardstick for measuring the outcomes of negotiations must be the extent to which they address poverty concerns and improve living standards of the people of East Africa. This means that such negotiations must reflect the development policy agendas of East African governments as well as those of their ACP counterparts. In other words, strategy for negotiations must be development-focused.

A good example of structured and development focused strategy had been proposed by Mauritius where the all-ACP phase would focus on those issues that cut across all the ACP countries and be geared towards assisting the ACP to develop supply capacity, address problems relating to competitiveness and fiscal adjustments required under an FTA would be negotiated. Phase 1 was to take place between 2002-2004/2005 and culminate in a formal legally binding agreement which would be developmentally orientated. Detailed negotiations at regional levels taking into account the specific problems of the regions would comprise the second phase. Such an approach would have had the merit of preserving the unity and solidarity of the ACP group, addressing the common development problems of the group whilst taking into account the different regional specificities. The proposal was, however, rejected in part by the European Commission which telescoped the phase 1 process into one year and declined to substantively negotiate with the ACP on the issues of common concern. EU also refused to conclude any formal binding agreement at the end of phase 1. New creative thinking is now required as to where the ACP should go from here in its general approach to the negotiations with the EU, which are ongoing.

8. Conclusions and Conjectures

Managing the process of trade negotiations is a daunting task which requires the commitment and participation of all concerned with trade in East Africa. In light of the proposed EPA negotiations, it calls for critical consideration and delineation of key priority issues in respect of alternative trading arrangements with the EU, and in respect of agricultural trade liberalization. It is also essential for trade negotiators to identify areas where synergies could be achieved between the EPA and the WTO trade negotiations, and where possible better coordinate the sequencing of negotiations in both forums. These priorities once identified could be used as a synoptic tool to promote the trade and development interests of the sub-region and the entire African, Caribbean and Pacific Group in both the EPA and WTO negotiations, and to achieve greater coherency between them.

East African countries can draw a number of important lessons[22] from South Africa's experience of negotiating its Trade, Development and Co-operation Agreement with the EU. First, national decisions to enter into Economic Partnership Agreement negotiations should be consciously based on a coherent national economic development strategy. Second, once you are into the negotiations the development objectives which the EU claims to support becomes secondary to the promotion of the EU's economic interests, (rhetoric to the contrary not withstanding). Third, the scope of "linkages" between different issues needs to be understood before entering into negotiations, since linkage between different areas can delay progress in areas vital to wider development objectives. Fourth, East African countries should avoid commitments in areas where their own domestic policy framework is not yet established and should avoid entering into commitments bilaterally which have been deemed unacceptable at the multilateral level. Finally, given the importance of agriculture to many ACP economies they must be willing to challenge the constraints and distortions imposed on trade flows by the CAP.

---

[26] These points are documented in "A South Africa Perspective on trade negotiations with the European Union (SA-EU TDCA), Brussels, 29 March 2001, ACP/61/032/01.

9. Annex 1

Areas of Divergence - Market Access

ACP	EU
Outcome on Market Access No ACP state should be left worse off in terms of market access "whether of not participating in an EPA".	 No proposals have been forthcoming on the establishment of non-punitive alternative trade arrangements for non-least developed ACP countries
Tariff Dismantlement Favours a five year moratorium on the introduction of any tariff reductions by ACP countries under any EPA agreement.	 Believes there is no need for a moratorium on tariff dismantlement and that sensitive sector s can be addressed through back loading tariff reductions where this is necessary.
Link to Attainment of Development Indicators The ACP believe that the phasing in of tariff reductions should be linked to the successful attainment of pre-defined development indicators.	 EU believes tariff reductions should be linked to clearly defined timetables and not the attainment of development indicators. Believes the latter is incompatible with WTO rules.
Rules of Origin The ACP want rules of origin which recognise the increasingly global nature of input procurement decisions and wants rules of origin which open up substantive new export opportunties for ACP manufacturers whilst still allowing subsstantive value addition to place in ACP countries.	 The EU wants rules of origin harmonised across different agremeents and does not favour particular asymetrical rules for ACP countries. It is however nominally open to tailoring rules of origin to the needs of different regions.

Areas of Divergence - Agriculture and Fisheries Issues

ACP	EU
Processing, Marketing, Distribution and Transport PMDT programmes are essential to the transformation of ACP economies and should be in place before the phasing in of free trade.	PMDT programmes will only work if the right policy framework is in place and so should only be established once the implementation of EPAs is underway.
SPS Issues 5-10 year standstill on new SPS measures and initiation of detailed dialogue on how to meet genuine EU health concerns without placing undue burdens on ACP exporters.	EU has sovereign rights to establish its health rules through SPS meaures. SPS measures are an integral part of EU food safety policy. Equivalency agreements with ACP governments not possible because of institutional weaknesses in the ACP.
Export Refunds Exports refunds should be comprehensively addressed as should the production and trade distorting outcomes of the new CAP policy instruments.	Willing to address export refund issues on a case by case basis. New forms of agricultural support are less trade distorting or non trade distorting, so no problems arise.
Maintaining the Acquis Maintaining the acquis should relate to the maintaining and value of preferences (including under the commodity protocols), not just specific measures the value of which is being eroded by the process of CAP reform.	Commitment to ensuring under EPA arrangements that no ACP country is worse off in terms of current market access.
Taking Account of CAP Reform There is a need to address as an integral part of EPA negotiations, the distorted production and trade outcomes arising from the new forms of CAP support the EU is moving towards.	Willingness to discuss the implications of CAP reform for EPA negotiations, within the framework of recognition of the EU's shift from more trade distorting to less trade distorting forms of assistance.
Fisheries Relations Wants the establishment of a framework, ACP-EU fisheries agreement incorporating fundamental principles on responsible and sustainable fisheries management and obligatory landings and other measures to promote local fisheries sector development	See's no need for a such a framework fisheries agreement, preferring to adopt a case by case approach to fisheries arrangements with ACP states (given the on going evolution of EU policy in this area).

Areas of Divergence - Development Issues

ACP	EU
Funding Believes additional funding will be required using simpler and swifter aid deployment procedures, so as not to divert funds from existing priorities.	EU believes no case can be made for additional funding until existing EDF funds have been fully utilised.
Sequencing Restructuring assistance should be made available and programmes implemented before free trade is introduced, so that ACP economies are equipped to meet the challenges posed by moves towards free trade with the EU.	The policy context should be right with moves towards free trade being implemented before restructuring programmes are designed and implemented, since only if a dynamic private sector operating in the right policy context exists will such assistance be effective.
Support to Fiscal and Economic Restructuring The ACP wants to see a comprehensive approach adopted to addressing the issues of both fiscal and economic restructuring as an integral part of any moves towards free trade with the EU, with the negotiations giving rise to specific instruments and programmes designed to address these challenges.	The EU believes more detailed discussions are needed on this issue before any commitments are made on the policy and programme response required.

Areas of Divergence - Trade in Services

ACP	EU
Additional Funds Additional funds with rapid and flexible disbursement procedures are needed to support ACP service sector development.	No additional resources are needed, any programmes required can be funded from unspent EDF funds.
Free Movement of Natural Persons ACP wants to include discussion on free movement of natural persons as an integral part of any reciprocal liberalisation of trade in services.	The EU wants a more restricted approach to this issue since it touches on the sensitive issue of migration.
Scope of Negotiations The ACP do not want to go beyond the commitments their governments are willing to make in a WTO context.	The EU favours a WTO+ approach to trade in services negotiations.

Trade Related Areas Listed in the Cotonou Agreement
The Cotonou Agreement contains provisions on a range of **trade related areas**, with the EU committing itself to assisting ACP countries in strengthening their regulatory frameworks with regard to: • competition policy; • intellectual property rights; • standardisation and certification; • sanitary and phytosanitary standards; • trade and environmental issues; • labour standards; • consumer policy.

Areas of Divergence - Trade Related Areas

ACP	EU
Coverage of Trade Related Issues The ACP believe only some of the trade related issues mentioned in the Cotonou Agreement should be covered in EPA negotiations and only where the ACP have the necessary expertise.	The EU wants to go beyond the trade related areas listed in the Cotonou Agreement to include procurement and data protection.
Scope of Trade Related Issues The ACP do not want to go beyond anything which their governments have agreed to at a multilateral level.	The EU wants negotiations on trade related areas to go beyond comitments made in the WTO, the so called WTO+ approach.
Sequencing of Assistance and Negotiations The ACP would like to see capacity building support programmes for the development of specific service sectors under implementation before entering to negotiations.	The EU would like to see agreement on trade related areas first with specific programmes being designed and implemented in the light of these agreements.

Areas of Divergence -Legal Issues

ACP	EU
Outcome of Phase 1 The ACP Favoured the conclusion of a formal agreement, which would be legally binding to guide phase 2. The document agreed on October 2nd 2003 is not legally binding and only serves as "a point of reference" to "provide guidance" for phase 2	See's phase 1 as a clarifictaion phase with no need for a formal agreement, although its is open to further discussion on this issue. The outcome of phase 1 is closer to the EU 's preferred outcome than the ACP's preferred outcome.
Financing Believes additional funding subject to swift and effective deployment unencumbered by the current delays which plague the EDF is required to meet the challanges which EPAs will pose for ACP countries	Believes that there can be no case for additional funds being made available until such time as existsing EDF funds have been fully utilised.
WTO Rules WTO rules need to be adjusted in order to accomodate the needs of ACP countries under moves towards reciprocity between a group of developed economies and a group of least developed and developing economies.	No need for modification of WTO rules, since existing WTO rules provide the necessary flexibility to address ACP concerns.
Agreement on Scope and Structure The ACP favoured an agreement on the scope and structure of EPAs as a specific outcome of the phase 1 negotiations.	The EU believed there is no need to formally agree on the scope and structure of EPA under phase 1 since this is covered by the minutes of the joint meetings.
Dispute Settlement Favours using existing mechanisms in line with international norms and a role for the ACP Group as a third party arbitrator.	Favours mutually agreed procedures involving consultations prior to the invocation of arbitration procedures
Non-Execution Clause ACP are concerned that no "non-execution" clause should provide a basis for the imposition of trade sanctions.	Favours provisions based on articles 96 and 97 of the Cotonou Agreement

Annex 2

Proposed Structure of Phase 2

Initial Phase: Until End 2003

- identify main objectives, policies and tools for regional integration;
- review priority issues for in-depth discussion;
- discuss and agree on negotiating structure and exact timetables for next 15 months;
- establish immediate research and capacity building priorities;
- establish regional task forces;
- rolling programme of seminars with regional negotiators;
- reach out to regional networks of non-state actors.

Convergence on Strategic Approach: 2004- Mid 2005

- analyse regional trade and production data;
- review tariffs and revenue implications;
- review regulatory framework and regional policies;
- identify priority issues for regional integration around 6 issue groups

  – agriculture ?
  – non-agricultural market access ?
  – SPS and TBTs?
  – services ?
  – trade and investment facilitation ?
  – trade related areas ?

- review current tariff structure as starting point for liberalisation;
- put in place assistance for research and capacity building;
- develop regionally based trade related support programmes through 9th EDF mid term review process;
- organisation of sector/issues based consultative meetings.

Structuring and Consolidation: Mid 2005-Mid 2006

- agree on structure of EPA;
- consolidate outcome of discussions on EPAs and channel into draft text;
- focus on sensitive issues and find solutions;
- continue capacity building work and continue outreach work.

Finalisation: Mid 2006 – End 2007

The Structure of Work Under Phase 2

Negotiating Format

- Technical Groups on specific issues to feed into high level EPA Group

  – trade in goods
  – core sectors
  – statistics
  – trade in services
  – investment
  – competition etc.

- High Level EPA Steering group ("trade co-ordinating meeting"), to work on the overall structure, guide the technical work and liase with all ACP and other ACP regions

- Ministerial Level (Ministerial level meetings of negotiators) to guide negotiations and agree on results

Structuring Co-operation

- Regional Preparatory Task Force to link regional and national assistance and negotiations

- Consultation groups with stakeholders to work on social dimensions of EPAs, impact on specific sectors, environment, gender etc.

- Meetings to be held alternately in Brussels and region

- Technical groups should be small (4-6 people)

- Ministerial meetings should include all regional member government