BEYOND RHETORIC: ENSURING EPAs DELIVER ON DEVELOPMENT

A Guidebook to EPA Development Benchmarks

Beyond Rhetoric: Ensuring the Economic Partnership Agreements

A Guidebook to EPA Development Benchmarks

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Foreword

The negotiations of an Economic Partnership Agreement (EPA) between the European Union (EU) and African Caribbean and Pacific (ACP) States have been going on since 2002 when the negotiations were launched. The talks were envisaged under the Cotonou partnership Agreement signed between the EU and the 77 ACP states. EPAs are expected to replace the non-reciprocal trade arrangements that have existed between these parties since the Lomé Conventions.

The negotiations of EPAs have been undertaken by the EC on the one hand and by ACP states under regional groupings, of which there are six. In Africa the groups are Eastern and Southern Africa (ESA), Southern Africa Development Community (SADC), the Central African Economic Monetary Union (CEMAC) and the Economic Community of West African States (ECOWAS). The negotiations are expected to end by 31st December 2007. However, the process has been marred with controversy and disagreements. One of the areas of disagreements relates to whether EPAs would lead to reduction of poverty and the promotion of sustainable development within ACP states.

In 2002, during an ACP-EU Joint parliamentary Assembly meeting, a proposal was made to development benchmarks to ensure that the EPAs to be concluded are development oriented. Since then discussions on and necessity for benchmarking the EPA process and the eventual EPA agreements have gained currency. Within the ESA region, the need for benchmarks has been formally agreed upon. As a contribution to the process of developing benchmarks, Friedrich Ebert Foundation (FES) in collaboration with CUTS Nairobi Resource Center (NRC) organized discussions in Kenya amongst different groups involved in the EPA process. The discussions revolved around understanding the importance of benchmarks to the EPA process and finally agreed on broad proposals for benchmarks.

This publication provides a discussion on benchmarks for EPAs. It seeks to move the discussion on EPAs from suppositions and "fears and illusions" to possible realities by proposing standards against which EPAs should be judged and their implementation monitored. This way, the agreements to be entered into between the EU and the ACP states can be judged against their own standards set in the Cotonou partnership Agreement.

I would like to thank all the individuals who participated in the two national meetings at which early drafts of this document were discussed. Appreciation too, to CUTS for partnering with us in the process that led to the development and production of this publication. Victor Ogalo of CUTs authored this document and also led the discussion on benchmarks during both meetings. I am grateful for his input. I also acknowledge the role of my colleague, Collins Odote, who managed the collaboration on behalf of FES and also facilitated the workshops at which the document was discussed and refined.

I hope that this publication will enrich the process of monitoring EPAs and their implementation once adopted.

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Chapter I. An Overview of the Economic Partnership Agreements (EPAs)

1. Introduction

The twenty-fifth jubilee of the European Union (EU)’s trade relationship with the African, Caribbean and Pacific (ACP) countries was marked by the signing of Cotonou Partnership Agreement (CPA) in 2000. The CPA, though replete with several objectives and principles, has the contribution to sustainable development, poverty eradication and gradual integration of ACP countries into the world economy (CPA Article 1 (2)) as its salient end goals. The Lomé Conventions, buttressed with generous non-reciprocal preferential market access into the European market for ACP exports but having failed to achieve these goals, are now to be replaced with new reciprocal regional free trade agreements (FTAs). The five-year mandate for the negotiations that should lead to the establishment of these FTAs beginning January 2008 comes to an end in December 2007.

Very deliberately, these FTAs have been called Economic Partnership Agreements (EPAs) since they go beyond liberalisation of markets known of standard FTAs to include some of the development dimensions that characterized the Lomé agreements, albeit now, within the rubric of trade liberalization. For that reason, EPAs have been understood to be development-oriented, and not classical hard-nosed, FTAs. As tools for development, EPAs are intended to build the trading capacity and competitiveness, and strengthen the regional integration processes in the ACP sub-regions as a means to achieving the three end goals. At the same time, they are supposed to contain special and differential treatment (SDT) measures for some ACP countries that need them for their development purposes. The raison d`étre for provision of SDT is to take into account the wide hiatus in the levels of development between the Parties negotiating the EPAs.

The character of EPAs is, thus, one that is abounding with mutually exclusive perspectives; the challenge of reconciling the two incompatible goals of liberalization and of development in an FTA between an industrialised region and a predominantly least developed region could prove insurmountable. On the one hand, ACP policy-makers and socioeconomic planners, producers, enterprises and workers have to grapple with how to achieve standards of competitiveness that will enable them both to defend market share in the domestic market, and capture segments of international markets. And, on the other hand, ACP governments have to face the challenge of defending the interests of small or marginal producers, sectors and regions and to promote equitable distribution of the growth benefits that trade may bring.[1]

For purposes of negotiating EPAs, Africa was configured into four regional groups – based on, but not totally respecting, the existing regional organisations. The four configurations are the Economic Community of West African States (ECOWAS), the Central African Economic and Monetary Community (CEMAC), the Southern African Development Community (SADC), and Eastern and Southern Africa (ESA) – whilst the Caribbean and Pacific represent one regional group a piece.

There are key economic reasons why the Lomé Conventions wereoverhauled; however, political and legal challenges were the main reasons. The non-reciprocal trade preferences granted to ACP countries under the Lomé Conventions and, in the interim period, under the Cotonou Agreement, had been accused of contravening a fundamental principle of the World Trade Organisation (WTO) –the “enabling clause”. The clause allows industrial countries to give unilateral non-reciprocal preferential treatment to either all WTO least developed countries (LDCs), or, all developing country members but not to the two categories of countries in the same region. Therefore, since the ACP regions cover countries of both categories, the non-reciprocal Lomé preferences granted to the ACP countries contravene the current WTO rules.

After the establishment of the WTO in 1995, the EU managed to secure a waiver allowing it to continue contravening the WTO stipulations. The waiver was extended for seven years during the WTO’s Doha Round in 2001 to allow both parties ample time to find a way out of the WTO’s rule. The EPAs to be enforced beginning January 2008 has been claimed to provide the solution. Interestingly, under the proposed EPAs, the ACP-EU trade relationship will be reciprocal; meaning, it will be governed by Article XXIV of the General Agreement in Tariffs and Trade (GATT) founded in 1947 rather

[1] See ICTSD *“FORMULATING SUSTAINABLE DEVELOPMENT BENCHMARKS FOR AN EU-CARIFORUM EPA: CARIBBEAN PERSPECTIVES* Jessica B. and P Lewis, University of the West Indies, Mona, Jamaica; June 2007

than its "enabling clause". The Article XXIV stipulates that all countries in regional FTAs must liberalise "substantially all trade" between them within a "reasonable length of time". Conventionally, the two quotations have been applied variously but in the context of the proposed EPAs they are understood to mean liberalisation of roughly 90% of trade implemented within a conservative period of 10 years, which might be exceeded by two years only in very exceptional cases. The EPAs will constitute a unilateral liberalisation of ACP economies more than the EU's economy. This is so, since, in order to be fully liberalised the EU will only liberalise additionally by 3% as the rest of the market is currently liberalised, while ACP economies will liberalise in the range of 68%-83%.[2]

2. Recalling the Objectives and Principles of EPAs

Three end goals have been set for EPAs. They are to: -*promote sustainable development of ACP countries, their smooth and gradual integration into the global economy and eradication of poverty*... but the specific goals are:-

- Promotion of sustained growth in the ACP countries;
- Strengthening the economic development of ACP countries by strengthening the trade policy environment and supporting poverty reduction programmes;
- Increasing the production and supply capacity of the ACP countries;
- Fostering the structural transformation of ACP economies and their diversification, to allow them to be more competitive in a global environment and reduce their economic vulnerability;
- Supporting regional integration in ACP countries; and
- Promoting and enhancing co-operation in all trade-related areas such as non-tariff barriers.

The underlying principles that guide the achievement of the objectives of the EPAs are:-

Instruments for development: 'As instruments for development EPAs must (a) contribute to fostering the smooth and gradual integration of the ACP

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[2] The degree of liberalisation by ACP countries will depend on what percentage of trade between each ACP economy/region and the EU is currently liberalised taking into account also the trade balance between the Parties. Using 'Maerten formula', the degree of liberalisation by the ACP-EPA groups apiece will be Caribbean 83%, ECOWAS 81%, ESA 80%, CEMAC 79%, SADC 76%, and Pacific 67%.

States into the world economy, taking due regard of their political choices and development priorities, (b) seek to first build capacity and then enlarge ACP regional markets through the removal of barriers to trade at national and regional level and (c) improve the predictability and transparency of the regulatory framework for trade. This is expected to lead into creation of conditions for increasing investment and mobilising private sector initiatives and consequently enhancing the supply capacity of the ACP States.

Asymmetry: This principle posits that EPAs entail asymmetric and sequenced liberalisation between both parties. Asymmetry should take due account of the specific economic, social, environmental and structural constraints of the ACP countries including their development policy objectives and capacity to adapt to the EPA process. This implies that an EPA should be economically, socially and environmentally acceptable with regards to the developmental needs of ACP countries.

Support to regional integration: In order to support regional integration, EPAs are expected (a) not to undermine but to strengthen the regional integration initiatives existing within the ACP, such as expounded by the African Union and as outlined in the Lagos Plan of Action; and, (b) to help in reinforcing regional integration, in particular by contributing to the regional harmonisation of rules. In Africa, for instance, the first emphasis should be to consolidate the four African EPA markets, and strengthen the links between each region and other African regional markets and to Caribbean and Pacific markets, before fostering trade integration with the EU.

Maintenance of and improvement on the Lomé 'Acquis': The EPA is expected to build on, with a view of improving on, the current level of preferences. Concerning the status of commodity protocols, both parties should show commitment in safeguarding their benefits in conformity with CPA Article 36:4, and in particular as regards their compatibility with WTO rules.

WTO-compatibility: EPA negotiations are expected to be compatible with WTO rules then prevailing, by providing the necessary flexibility and safeguards necessary to meet the developmental objectives of ACP countries, including, in particular, special and differential treatment. ACP countries are therefore seeking to maintain, or improve on, the existing flexibilities of the WTO agreement while at the same time improving and clarifying the WTO rules on RTAs. This is to ensure that the WTO legal framework is coherent and consistent with the development objectives of ACP countries.

Special and differential treatment: Taking due account of the heterogeneously varying needs and levels of development in and between the ACP countries vis-a-vis the EU's, EPAs are expected to provide all ACP member states special and differential treatment (SDT), particularly providing SDT for LDCs, landlocked and island states as well as net-food importing countries.
as net-food importing countries.

3. The ESA-EC EPA Negotiations

After the unproductive conclusion of the first phase of negotiations at the all-ACP level (which started in September 2002), regional EPA negotiations between sixteen East and Southern Africa (ESA) countries and the EU were launched in Mauritius on 7 February 2004 and were concluded with a joint roadmap outlining main goals, principles as well as structure and indicative schedule of the negotiations.

The ESA member states lead the negotiation through the regional negotiation forum (RNF), rationalising all positions submitted via the national development trade policy forum (NDTPF) into forming a regional positions, as the basis on which the Ambassadors (based in Brussels) and Trade Ministers negotiate with the EC. Their indicative schedule for completion of the negotiations set three phases of negotiations, namely; priority setting (March-August 2004), substantive negotiations (September 2004-December 2005) and finalisation (January 2006-December 2007).

Phase-I saw the Parties agree on a list of negotiating priorities grouped into six clusters: *Development, Market Access, Agriculture, Fisheries, trade related issues* and *trade in services*; and a joint Regional Preparatory Task Force (RPTF) was established, which parallel to the negotiation structure, was to facilitate linkages between the trade negotiations and development assistance.

Phase-II saw the launch of substantive negotiations on the priority clusters of *Development, Market Access, Agriculture, Fisheries, and trade-related issues* including the broader issue of regional integration with the aim of reaching agreement on an outline EPA.

In the build up to phase-III, the parties agreed to carry forward all outstanding issues for continued negotiation. Discussions in this final phase are being held based on the text prepared by ESA and submitted to EC in September 2006. Issues being negotiated include tariff issues, rules of origin (ROO), technical regulations and standards, including technical barriers to trade (TBT), trade-related issues, trade in services, trade in fisheries and safeguard measures. This final phase is expected to produce a binding legal text laying out all the agreed principles, matters of substance and points of detail.

4. Key Developments, Main Controversies and Concerns in the EPA Negotiations

Two years after they signed the Cotonou Partnership Agreement, the European Commission (EC) and the ACP Brussels-based Ambassadors and Trade Ministers adopted separate negotiating mandates/guidelines for the EPAs.[3] Noteworthy is the divergence of the two mandates in their approach to the development dimension of the EPAs. The EC's approach follows the assumption that economic development and poverty eradication can only be achieved through trade and investment liberalisation. By contrast, the ACP's approach put strong emphasis on the structural transformation of ACP economies as the plausible means of enabling them to expand and diversify trade in high value-added products; and in so doing achieve the three end goals that underlie the Cotonou Agreement. In addition, the ACP negotiation mandate points to the critical need to tackle any possible effects that reciprocity may have on such transformation of economies. It could, thus, be surmised that these contrasting approaches to the development dimension of EPAs are what explains why a number of important issues to development have not been addressed even as the negotiations approach their slated end date in December 2007.

The most controversial approach to achieving the main objectives of the Cotonou Agreement – and by extension of the EPAs, is the requirement for a reciprocal trade relationship between regions of such hiatus development gap. It is clear that implementing reciprocal FTAs will be extremely difficult for the ACP countries whose level of development is not only behind the EU's but which is very heterogeneous between the regions themselves. While the economic, political and legal inefficacies remained as the major shortcomings of the Lomé non-reciprocal preferences, it is not plausible to argue, therefore, that, reciprocal FTAs present a realistic solution. It is true that premature

3 See (a) ACP Group, 17 June 2002, Directives for the negotiations of Economic Partnership Agreements with ACP countries and regions; and (b) ACP Guidelines for the negotiation of the ACP-EU Economic partnership agreements (June 2002)

liberalisation would lead ACP countries into further marginalisation from the global economy; therefore, the reciprocity element of the new ACP-EU trade relations needs guarded handling.

A trajectory to the problem of reciprocity could have been found if the two parties had cooperated in pressing for amendment of the GATT Article XXIV to allow for meaningful SDT of ACP economies in the EPAs. The two Parties would easily push for greater flexibility in WTO rules owing to the advantage of their voting strength, together, since the two parties constitute a two-third majority in the WTO. However, the EU has shown its reluctance to this approach.

In the EPAs, therefore, there would certainly be need for properly sequenced liberalisation; implying thus that the EC should change its inflexible stance over the timescale currently in place. The Commission has shown its reluctance in negotiating for further waivers with other WTO members for fear that any waiver will impact on ACP market access to the EU and so is hell-bent at closing the EPA negotiations by end of December 2007, yet the ACP is not ready to liberalise at the time.

Furthermore, there is still adequate scope to interpret the WTO's rules regulating the implementation period for FTAs in a manner that is developmental. This is so since GATT Article XXIV (5) stipulates only that an interim agreement for a Regional Trade Agreement (RTA) should include a plan and a schedule for the formation of the RTA within a "reasonable length of time". Taking into consideration the variable levels of development between the two Parties and amongst parties in ACP, there are certainly all the reasons to present the EU-ACP EPAs as exceptional cases which requires more than just the conservative ten years of implementation period. An implementation period of just ten years could cause major economic upset in many of the ACP countries.

Another concern that has been repeatedly expressed by ACP country ministers and regional level negotiators is the need for greater resources. The six ACP regions suffer greatly from supply-side constraints and institutional shortcomings which will prevent them from truly benefiting from a liberalised trade regime with the EU. At present, not enough funding is being earmarked to alleviate these constraints. Greater financing is also needed to help ACP economies meet the increasingly demanding EU technical, sanitary and other regulatory standards.

In addition, means need to be foreseen to alleviate the social impact of the economic reforms, such as fiscal erosion and a cut in social expenditure that the EPAs will bring about. The income from import duties and levies constitutes an important element of the national budgets in ACP countries especially for funding basic social provisioning like healthcare and education. In case of extensive trade liberalisation this revenue has to be replaced by other forms of income such as direct taxes or VAT. Some of these forms might be regressive and inconsistent with the poverty reduction objective of the Cotonou Agreement.

Furthermore, many ACP countries do not have the scope and capacity in place to introduce or extend their tax systems sufficiently. The abolishment of import tariffs may lead to cheaper supply goods for domestic production (machines for industrial production etc.); however, the EPA negotiations cannot be concluded without a solution to compensate for the loss of ACP government revenue. The EU should therefore change its position that only EDF resources will be used for EPA projects/programmes. ACP countries need greater resources in the EPAs, mainly to help them cope with the major institutional reforms that have been demanded of them under the EPAs, and to avoid diverting EDF resources away from pre-existing legitimate priorities.

It is clear that all the costs mentioned above will require additional funding above and beyond what is currently being envisaged in the financial perspectives or the 10th EDF. In this respect it would be useful to benchmark triggers in the EPA negotiations, to ensure that a phase can start only when resources are available or when a certain result has been attained.

Developing countries have consistently rejected at WTO ministerial meetings the idea of drawing the so-called Singapore Issues – in particular investment, government procurement and competition policy - into the WTO’s mandate. The EU should respect the demands of ACP partners and maintain the commitments undertaken at the WTO meeting in Doha, avoiding discussion on the Singapore Issues in EPAs negotiations. The inclusion of the Singapore Issues in any EPA agreement would probably serve to strengthen EU companies’ rights at the expense of ACP national-level development plans. Hence, there would also be need to benchmark the exclusion of the Singapore Issues in the EPA negotiations in order not to close off the necessary policy spaces needed by ACP governments to direct trade agreements to their own developments.

There are also serious concerns regarding regional integration of ACP economies. EPAs should support and be based on existing regional integration initiatives and objectives. However EPA negotiations have led in some cases to the creation of new Regional Economic Communities (RECs), encompassing countries of markedly different development levels. This has caused major difficulties in ACP countries, undermining the protection of strategic industries because of the urgency to align their tariffs before the end of negotiations in December 2007. The regional integration efforts of the ACP countries should be given enough completion time so that they can be consolidated before being exposed to EU competition. In practice this means that such transition periods for intra-regional development would go well beyond 2008, the proposed start of the implementation of the EPAs. The three issues surrounding the growth of ACP regionalism would also, therefore, require benchmarking to ensure that EPAs are supportive of and are based on the existing regional integration initiatives and objectives of the ACP.

The review of the negotiations that took place in 2006/2007 should have represented a major assessment of the extent to which the negotiations was indeed contributing to the goals that underlie the EPAs. In order to ensure the assessment was comprehensive and open to all stakeholders, greater transparency with regard to the progress and the substance of the negotiations was needed. The reviewers needed to recall the Cape Town Declaration - unanimously adopted by the ACP-EU JPA in March 2002 - which called for the establishment of development benchmarks against which to assess the conduct and outcome of the ACP-EU trade negotiations. Moreover, regional negotiation should aim not only to ensure integration into the world economy, but also to ensure trade development accompanied by poverty reduction, and respect for workers' rights and relevant social rights. Strong involvement of civil society, such as the consultation of ACP civil society through local trade-scrutinising task forces, is consequently needed, as well as the continued involvement of national-level Parliaments. In this respect a monitoring mechanism should have been implemented, with full involvement of parliamentarians and civil society, to ensure political scrutiny and accountability against development objectives or established benchmarks throughout the negotiating process.

As the negotiations on EPAs come to an end, there are still alot of hurdles to be overcome if the objective of EPAs are to be realised. Amongst others, it may be necessary to rethink and build a different world trade and economic system where more attention is given to the protection of African countries' agriculture. Self-sufficiency and the guarantee of a decent income for small farmers should be the priorities. Local production should be increased to ensure food security and social services for the whole population. In order to retain the added value in ACP economies a different system, where production is prioritised for the domestic over the export market and where producers' income is guaranteed, needs to be forged.

Chapter II. A Diagnostic and Strategic Analysis of ACP-EU Trade and Moves toward EPA Development Benchmarks

Under the right circumstances, trade liberalization can be an engine of growth. But for the benefits from reductions in tariffs and trade barriers to be gained, at least three conditions must exist:-

- favourable market access;
- a balance between the need to maintain important flexibilities needed by states in trade policies and the need for a rules-based system from which all countries stand to benefit; and, more importantly,
- for those countries that face severe challenges such as lack of human, institutional, and production capacities, provision of adequate and well targeted Aid for Trade (A4T) to assist them in increasing trade growth and integration into the global economy.

This section of the publication puts into critical perspective the manner in which developing countries like those in the ACP regions have been affected under past trade relationships with the EU and the rest of the world, particularly in view of the impacts on the three factors mentioned above. The understanding of these issues will be essential in highlighting the proposal by ACP countries to link liberalisation with achievement of a set of development benchmarks as the practical way of orienting the EPAs toward sustainable development goals. The analysis will also help us to establish a framework for developing the development benchmarks and how the implementation of the EPAs can be monitored.

1. Value of EU Preferences for ACP Producers (Re. Kenya)

The value of the EU market preferences for ACP producers may be assessed in terms of:-

a) the number of products covered and the rules governing the use of those preferences;
b) the value of being a preference holder i.e. the preference margin provided vis-a-vis non-participating countries; and
c) the utilization rate of the preference provided.

Apart from losing their current 'valued' EU market preferences, non-EPA ACP countries might also be subjected to additional loss as the EU moves to fully liberalise its market to imports from ACP-EPA countries only. But, exactly what is the value of the EU market for these ACP countries?

Kenya, for instance, has up to 97% of its exports to the EU covered by Cotonou preferences. But this figure (97%) is potentially misleading since it is based on actual rather than potential trade. Had the latter been considered, most likely, the percentage would be considerably lower, and so is the hyped value of EU market for Kenyan products.

Despite the generous preferences, the potential of ACP countries to expand, diversify and fully take advantage of the EU preferences has seriously been constrained by four main things:-

- the persistence of barriers to market access such as highly restrictive rules of origin (ROO) applied to preferences and problems of tariff escalation;
- the persistence of barriers to market entry such as non-tariff barriers (NTBs) related to health and safety regulations;
- severe domestic competitiveness problems and supply-side constraints such as a lack of infrastructure, investment and skilled labour; and more importantly,
- preference erosion associated with zero MFN rates.[4]

Currently, nearly 45% of Kenyan products covered by Cotonou preferences cannot be exported competitively into the EU because of zero MFN rates[5] and so for those products the Cotonou preferences are, arguably, irrelevant.

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[4] Preference erosion occurs when the difference between the tariffs applied to non-preference receiving countries (i.e. the Most Favoured Nation (MFN) tariff rate) and that applied to preference recipients continuously narrows. As this margin approaches zero, the value of being a preference holder is eroded and at zero, the reference recipient country is said to face zero MFN. Two things have contributed to the erosion of EU preferences for many ACP countries (a) they are eroded as the EU continues to negotiate greater market access for other developing countries through bilateral and regional FTAs and as multilateral trade agreements progressively lower tariffs of all countries.

[5] See (a) M. Manchin (2005) and (b) Stevens and Kennan (2005a) 'GSP Reform: a longer-term strategy (with special reference to the ACP)', Report Prepared for the Department for International Development (DFID), Institute of Development Studies (IDS) February 2005, p. 16. According to Manchin, nearly 64% of total exports from non-LDC ACP countries to the EU enter under zero MFN tariffs (i.e. percentage of exports for which Cotonou preferences are irrelevant), but, in the Stevens and Kennan estimate, the figure is slightly higher at 70% of total exports of non-LDC ACP countries.

Furthermore, 70% of the products that enjoy higher MFN rates are horticultural (a sector that is owned by up to 75% by multinational corporations (MNCs) from Netherlands and up to 25% either by the Kenyan government and/or a few rich and politically-correct Kenyans) and for the rest, the EU market is less relevant as they are mainly composed of manufactures where COMESA (and mostly EAC market) provides a more competitive destination.

Illustration of the value of EU market for Kenyan producers

- 45% of 97% implies ≈ 44% of Kenyan products are covered by Cotonou preferences but are non-competitive in EU due to zero MFN (completely eroded preferences).
- 70% X (97%-44%) implies ≈ 37% of products have high MFN in EU but are made of horticulture.
- 30% X 53% implies ≈ 16% of products have high MFN but are mostly light-industry products and so are less exported to EU because of tariff escalation and low-technology problems. In 2001, the EU market attracted only 11% of Kenya's exports of light industry products.[6] For this group of products, COMESA is a more competitive destination than the EU. So, for
- 60% (44% + 16%) of Kenyan exports covered by Cotonou preferences, the EU is a less relevant market; COMESA (and mostly EAC market) is a more competitive destination than EU (for an illustration of Kenya's export destinations see Tables 1(a-d).

This conclusion is in line with the fact that the EU is Kenya's leading market after COMESA (and EAC for preciseness sake). The threat of a no-EPA is therefore greatly reduced from the theoretical 97% market loss to 37% (97%-60%) real loss. More research is needed to establish what Kenya would gain from the rest of its 3% of products currently not covered by the Cotonou preferences if they were to be fully covered by EU preferences. Similarly, it should be established how an EPA would improve the market for the 60% of Kenyan products that, though currently covered by Cotonou products, are non-competitive because of problems for zero MFNs and low-efficiencies.

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[6] This decimal market access may be traced to the negative implications of tariff escalation that makes value added products uncompetitive in EU markets. Even where tariff reduction is given under the preferential tariff arrangements, the percentage is too low to enable the retail price competitive in comparison to EU manufactured products (Simon Ihiga, 2005). As a result Kenyan exports to the EU are dominated by unprocessed products on which import tariffs do not apply or are low enough to allow competitive market entry.

Under a no-EPA scenario, there are mainly three groups of people in Kenya to lose, though with varied degrees, following possible disruption of market for horticulture. These are, the Netherlanders due to their large investments in horticulture; Kenyan employees doing menial jobs in horticultural firms and in the transport, freight, packaging and chemicals sectors directly related to horticultural exports; and, the Kenyan government because of loss of revenue from income tax, in that order.

The relative importance of the constraints affecting Kenyan exporters in the EU market is therefore critical to the EPA debate.

- In the areas where market access barriers are the reason for the failure to expand exports then the argument for improved value of preferences under the EPAs becomes valid. Otherwise,
- if the problem is primarily due to market entry barriers, such as restrictive trade rules and standards, then improving the value of EU preferences (offer of full market access) is unlikely to result to improved growth of Kenya's trade to the EU unless the problematic rules and standards are relevantly reduced and simplified to allow value-added exports under the EPAs.
- Similarly, regarding the issue of domestic competitiveness problems and supply-side constraints, unless they are also adequately solved to enhance productivities, there would be improved market in the EU for those products affected by these constraints.
- Finally, the issue of preference erosion seems to be an inevitable eventuality so that, regardless of whether an EPA is concluded, a country must continue seeing some degree of her preference margins in the EU progressively eroding.

2. Current status of ACP policy spaces

Under the past liberalisation waves, ACP countries have unsuccessfully sought to retain sufficient flexibilities allowing them continued recourse to usage of anti-liberalisation policy instruments such as tariffs, quotas, exchange rate policy, tax incentives, subsidies, and export taxes to pursue their own strategic developments until they are competitive enough to face a free global market system. However, this should not be surmised that ACP countries have wanted to retain a completely open-ended flexibility of 'policy space' in all circumstances. Ideally, a balance between the need for retaining strategic flexibilities and the need for maintaining the inherent value of a rules-based system would be very beneficial to all countries.

The rationale for retaining strategic flexibilities without compromising the inherent value of a rules-based free trade system is based on the fact that these ACP countries have very low incomes and their development strategies are normally dependent largely on the efficient application of these policy instruments. For instance, they need to use these policy instruments to be able to implement domestic policies that can:-

- overcome supply-side constraints hindering their competitiveness and productivity;
- achieve social objectives such as poverty alleviation; support poor farmers, reduce gender gap, and improve public health;
- avoid closing-off of areas of potential growth and future structural change;
- foster diversification, high-value addition, and research and development (R&D) within national and regional economy;
- pursue environmental objectives such as change of export patterns towards environmental-friendly products and production processes (necessary for preserving biodiversity);
- devise investment and government procurement rules that are conducive to the development of domestic enterprises, especially SMEs, and transfer of knowledge and technology; and
- ensure selective import liberalisation and support to their own regional integration initiatives.

Generally speaking, poverty eradication, provision of social goods, environmental health, job creation and income distribution are all largely dependent on national policy options and the degree to which governments are flexible to undertake active domestic policies aimed at achieving them. However, the policy options available to these countries for providing social needs and for shielding their industries from strong global competition have shrunk under past waves of structural adjustment programs and successive trade rounds under the GATT and WTO. As a result, they preponderously find themselves much less able to benefit from increasing global market access than other stronger and more developed developing countries (like Brazil) through the WTO or other trade negotiations.

While the use of most of these policy instruments has been forbidden under the SAPs and WTO, the EU continues to use them, especially still providing huge subsidies, because of their dominance over the WTO itself. For those low-income countries that have attempted to bar imports of the EU subsidised products, the EU is best known to have prepared long lists of such countries for painful retaliation where it hurts those countries the most. While low-income countries are legally allowed special and differential treatment by the WTO to retain flexibilities in using anti-WTO policy instruments, in practice they are rarely granted such rights. Instead, their ability to export value-added products to the developed countries, such as the EU, is fatally crippled by the highly restrictive regulatory measures of rules and standards in those developed countries' markets.

In moving towards further forbidding ACP governments from using these essential policy instruments, an EPA with the EU could simply fuel the ongoing de-industrialisation process, degeneration of trade growth, poverty acceleration and marginalisation of the ACP countries from the rest of the world economy.

Unless appropriate measures are put to maintain a development-friendly balance between the need for these flexibilities and the need for a transparent rules-based system, ACP countries will find it very difficult to exploit the benefits possible through EPAs; instead their own domestic and regional markets could end up being leased for exploitation by the EU producers.

Tariffs, quotas, subsidies are essential instruments that developed countries used to climb to the plateau of development and only opened their markets after they were already developed, especially the market for manufactured goods. By forbidding their use while including agreements on investment and on intellectual property rights, the EU was effectively "kicking the ladder behind them".[7] Agreements on investment measures and intellectual property rights will rob poor countries of very essential policy tools and may lead to reduced competition if such agreements allowed EU monopolies to thrive through patent rights, leading to hiked prices for most pharmaceutical products needed by the poor.[8]

3. A litany of failures of past multilateral trade regimes

a) Unpacking the Mythology of Liberalisation and Exports

In a world where openness, integration and market access have become the mantra of global trading system, the actual experience of the countries that

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[7] Prof. Ha-Joon Chang, *Kicking Away the Ladder: Development Strategies in Historical Perspective* (London: Anthem Press, 2002).

[8] See Faizel Ismail, *The Doha Declaration on Trips and Public Health and the Negotiations in the WTO on Paragraph 6*, Journal of World Intellectual Property (May 2003).

expound the dogmatic system does not tally with what they preach[9]:-

- Since the beginning of the Uruguay Round, Africa has opened up its economy but its share of global trade has shrunk from the level of six percent to about two percent today.
- An open investment regime laced with heavy incentives has not brought Africa the promised windfall.
- In stark contrast, the Asian brothers –Korea, Taiwan, Singapore and Malaysia –that had tightly regulated their level of openness to the world market have emerged more successful in terms of exports.
- This experience of lack of positivism between openness and economic growth and integration into world economy, has made, Dani Rodrik, an astute Harvard economist, to conclude that: "the globalisers have [got] it exactly backwards. Integration is the result, not the cause of economic and social development."[10]
- The export orientation of openness policies pursued as the route to development, although has led to rising exports, sometimes rapidly, in many developing countries, has not been matched by attendant increases in overall employment and income levels; and so has not contributed to poverty reduction.
- This controversy, between growth in exports without growth in employment and income, has elicited comments from the, UNCTAD, saying thus:
    - "making sense of a system in which many developing countries are vigorously expanding their foreign trade but are not rewarded by a comparable rise in income requires some hard thinking."[11]
- UNCTAD in a separate report on LDCs (2004) also questions the doctrine of market access as the foundation of the global trading system, saying that:
    - "there is no guarantee that export expansion will lead to a form of economic growth that is inclusive there is a strong likelihood that export-led growth (in LDCs with mass poverty) will actually turn out to be "enclave-led growth."[12]

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[9] The experiences of developed countries have been amply illustrated by Prof. Ha Joon Chang, Kicking Away the Ladder: How the Economic and Intellectual Histories of Capitalism Have Been Re-written to Justify Neo-Liberal Capitalism, Cambridge University, UK 2000.

[10] Rodrik, D., ªTrading in Illusions´, *Foreign Policy*, March/April 2001, pp. 55–62.

[11] See UNCTAD, Trade and Development Report, Geneva 2002

[12] Enclave-led growth is a form of economic growth that is concentrated in a small part of the economy, both geographically and sectorally

b) Dismantling the Agricultural Sector

In Africa the agricultural sector continues to employ 70% of the workforce, as compared to between 2-5% in OECD countries, and local production is largely at subsistence level and is closely linked with people's access to food as well as ensuring national food securty. In Kenya, for instance, 3 million small scale farms (on less than 20 hectares), account for over 75% of the total agricultural production. Small farmers account for the production of about 70% of maize, 65% of coffee, 50% of tea, 80% of milk, and 70% of beef and related produce.[13]

In a world where the developing world has lost its lifeline because of agreements that systematically destroy the agriculture sector while at the same time providing the cover for the industrialised countries, notably the US and EU, to continue their high tariff, non-tariff border protection as well as enormous subsidies to producers, one cannot say there is still any window for the developing countries to engage in the global trading system. Agriculture remains the most distorted sector as a result of global trade. Consider that:

- At more than US$2 a day in subsidy, the European dairy animals are richer than 50% of Africans living on less than a dollar/day.
- EU subsidies remain the highest on dairy products in the world, making up about 1.7 billion euros (or ≈ US$ 2.2 billion in 1999) a year.
- Per given amount of milk powder produced, EU subsidizes producers by up to 87% of the world price of milk powder.
- Nearly yearly, European exports in dairy products account for about 50% of what is traded on the world market.
- This way, European dairy products set world prices.
- Similarly the US, had in 2002 come up with a Farm Bill that promised farmers at least US $190 billion over 10 years in subsidies on eight areas of the food crops and fibres viz. wheat, corn, soybeans, rice, barley, oats, sorghum and cotton; the Farm Bill has resulted in exports being sold at below production cost, thus displacing Third World farmers.[14]
- The second prong to the debilitating phenomenon of ever-declining commodity and food prices is the manipulation of world prices by EU and US agri-businesses through their market power and control over the global production chain. From 1997 to 2001, the combined price index of

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[13] Figures are for 2004 extracted from KIPPRA Study: Potential impacts of EPAs on Kenyan economy, 2005

[14] See the data in Institute for Agriculture and Trade Policy (IATP), United States Dumping on World Agricultural Markets, February 2004 Update, Cancun Series Paper No. 1.

all commodities had fallen by 53 percent in real terms, leading UNCTAD to conclude that the "commodity trap" had become the "poverty trap."[15]

c) Agreements on trade-related issues eroding development policy spaces

i) How investment agreements could destroy the industrial base of the Developing World

At the command of the industrialized countries, the WTO brought on the negotiation table what is known as Agreement on Trade Related Investment Measures (TRIMS). Prior to TRIMS, African countries were also coaxed and cajoled by the World Bank and IMF into signing Bilateral Investment Treaties (BITs). Both agreements compel governments to:-

- not to damage investor's interests;
- treat foreign investors like national investors, i.e. not to impose investment measures on foreign companies such as local content requirements, export-import balancing in terms of foreign exchange, and technology transfer;
- give freedom for moving MNCs' capitals in and out; and
- restrict governments on how they should expropriate foreign investors.

The BITs, despite the many pro-investment incentives, have not failed to justify their critics that most of the jobs they created were redundant, casual and of low quality and that most of the investments were directed to extractive industries like oil and minerals crucially needed by the developed countries:-

- The mining companies in Ghana employ foreign skilled labour rather than train local staff.
- In South Africa, manufacturing investors still make people redundant and dependent on contracts in order to save on labour costs.
- In Kenya, workers in garment industries, tea and horticultural farms, are ill-treated, underpaid, and their labour rights are breached.
- Investments in the dairy sector in many ESA countries have marginalized many small farmers.
- Garment industry investors have a tendency to quickly move in and out of countries, leaving many without a job and without payment for their last month's of work.

In fact, many MNCs shifted to other countries or changed their registration names completely after the end of tax holidays.

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[15] Greenfield, G., ªThe Agricultural Commodity Price Crisis: Back on the Agenda?´, *Focus-on-Trade* No. 100, June 2004.

The investment measures now being forbidden by the TRIMS and BITs have been used by the developed countries themselves in the past, as well as by several East Asian countries. Regulating foreign investors is critical if countries want to capture the benefits of foreign direct investment, such as increasing the tax base, job creation and backward linkages between the export and domestic sectors.

Developing a domestic auto industry is a benchmark of industrial development, and African countries, with their large continental market can build and sustain their own car manufacturing sector. But TRIMs will not allow such to happen. Take, for instance, the 11 WTO complaints in the automotive sector brought against four developing countries with potentially large automotive markets –Brazil, India, Indonesia and the Philippines by Japan, the EU and the US between 1995 and February 2002. The cases involved not just local content requirements but also subsidies, incentives such as tax exemptions and foreign exchange balancing. These cases are a manifestation that agreements on investment have been designed by the industrialized countries to maintain their hold on the global market for all industrial products by maintaining the industrialization and technology gap between industrial and developing countries.

The pressure to include investment agreements in the EPAs could be a direct way to de-industrialisation in Africa. According to Buffie[16] and UNCTAD,[17] rapid tariff cuts in sub-Saharan Africa since the 1980s resulted in deindustrialization:-

- In Senegal, one third of manufacturing jobs disappeared.
- In Cote-d'Ivoire, the chemical, textiles, footwear and automobile sectors were crushed.
- In Sierra Leone, Sudan, Tanzania, Uganda, Zaire and Zambia, imports displaced local production of consumer goods, causing large-scale unemployment.
- In Kenya, beverages, tobacco, textiles, sugar, leather, cement and glass industries have been negatively affected.
- The impacts have encouraged continued growth in export of resources and cheap-labor-intensive products without concomitant increases in income.
- The products have volatile prices just like for commodities.

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[16] Buffie, E., *Trade Policy in Developing Countries*, Cambridge, Cambridge University Press, 2001.

[17] UNCTAD, Trade and Development Report, Geneva 2002, p. 53.

- These cases are a manifestation that agreements on investment have been designed by the industrialized countries to maintain their hold on the global market for all industrial products by maintaining the industrialization and technology gap between industrial and developing countries.
- The pressure in the EPAs by the EU on ACP countries to reduce their industrial tariffs is therefore intended to maintain this industrial and technology gap.

ii) Intellectual Property rights agreements and the technological dominance of Northern Corporations

The TRIPS Agreement (trade related aspects of intellectual property rights) has little to do with trade. In fact, it stymies trade by allowing the patent holder to maintain their monopoly over potential competitors. The TRIPS agreement was brought into the WTO by strong lobbying from the information technology and pharmaceutical companies in the industrialized countries. It widens the divide between those that have the technology and those that do not. Whilst the rationale for TRIPS is that there should be a proper balance between the right of the inventor and public interests, the 20-year patents stipulated by trips give all the power to the patent holders.

The effects on the poor are manifold.

- TRIPS stifles technology transfer or catch-up by the developing world: Hence consigns majority of developing countries to simple manufacturing rather than progressing towards high-end products with increasing value added and economic benefits.
- Even though MNCs have been moving their production to the developing world, there has been no technology transfer. The know-how and technology are kept within the corporations.[18] This has contributed to exports in manufacturers being “enclaves” with little/no linkages to the domestic economy.
- It has allowed Biotechnology MNCs to engage in bio-piracy by simply altering very slightly the genetic modification of seeds bred by farmers for 100s of years and patenting them for 20 years.
- The resulting organisms are then privatised and sold to farmers world-wide; meanwhile, the rights holder enjoys monopoly for over 20 years.
- Using the patented seeds, farmers are not allowed to follow their tried and true practice of using seeds for the following harvest on pain of being sued.

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[18] UNCTAD, *Trade and Development Report,* Geneva 2002, p. 63.

- Public Health and Access to medicines/equipment: Patent protection has blocked imports of low cost generic medicines and increased drug prices considerably, pushing them beyond the means of the majority.[19]

d) How agreements on services could erode provisioning of basic services for the poor

Many developing countries cannot compete with the multinational services giants of the developed world. In fact, today, developed countries control up to 70% of world trade in services; the top ten DC exporters control 65% of world trade in services and the share is over 90% for some sectors, for example in financial services, computer and information services, royalties and license fees, and construction services.[20] Apart from the "movement of natural persons" (known as Mode IV), tourism and outsourcing, most developing countries have little or no competitive market access interests in these negotiations compared to the corporations of the us and EU.

How does multilateral services agreements affect the poor?

- Liberalization of services usually means that access to such basic services as water, health, education, housing is based on a "market model" rather than a "universal model" and this disproportionately affects the poorest sectors of society.
- In the area of utilities, MNCs have little incentive to invest in "unprofitable people"; privatisation of say water and electricity will lead to hiked prices to unaffordable levels for poor people.
- An EPA may not mandate privatization, but its liberalization agenda provides the conditions for wide opening of the essential services and eventual privatization.
- Complementary to their market access requests, the EU is also interested in limiting domestic regulation in ACP.
- The target is to remove domestic regulations subjecting foreign corporate takeovers to government approval, laws requiring foreign investors to form joint ventures when they enter the market, and regulation of land ownership.
- Many ACP countries do not have good regulatory frameworks to begin with. Current EPA negotiations could easily lock in these weak systems

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[19] See Sexton, S., "Trading Health Care Away? GATS, Public Services and Privatisation", *South Bulletin*, No. 15, South Centre, July 2001.

[20] Mashayekhi, M., gats 2000 Negotiations: Options for Developing Countries, Trade-Related Agenda, Development and Equity Working Paper No. 9, South Centre, Geneva 2000.

and pre-empt any future regulatory measures to limit the powers of monopolies and protect public and essential services.

4) Has past aid for trade support responded to the needs of marginalized producers/groups in ACP countries?[21]

Nearly all ACP countries are not only low-income countries with diverse domestic constraints to trade such as weak institutions, dilapidated infrastructure and rural remoteness to market centres, but are also largely dependent on agriculture as their main source of livelihood. Their national agricultural output is mainly organised around subsistence household productions. Such productions –which tend to be high-risk and low-yield – are associated with higher levels of poverty than more formal forms of employment. Like export-oriented activities in most ACP countries, the risk and low productivity is exacerbated by the weak development of the internal network of processing, marketing and distribution.

In addition, these countries are characterised by a large mass of micro and small enterprises in which the majority of the unskilled labour is employed in informal ways, including perpetual but seasonal casual wage labour. These enterprises are generally oriented to the domestic market, providing mostly non-elitist services or producing goods which are affordable for a majority of the poor. As with agriculture, it is difficult to estimate the numbers of SMEs people working in export activities, notably in mining, textile and garment manufacture, and tourism services.

However, the focus of A4T on improving institutional / government capacity and infrastructure has to a great extent bypassed the marginal producers who constitute a majority of the world's poor. Instead, past efforts through A4T has concentrated on 'getting the plumbing right' in the hope or expectation that those employed in small-scale agriculture, in rural areas, and/or in the large masses of informal sectors will at some point be in a position to take advantage of any trade benefits that do open up. In this sense there has been a 'trickle-down' approach in A4T support.

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[21] For detailed discussion of these impacts, see Conference Paper by Hugo Cameron (ILEAP): Orienting Aid for Trade toward Poverty Reduction; conference paper Prepared for CUTS International Conference on Linkages between Trade, Development & Poverty Nairobi, Kenya, 15-16 March 2007

The challenge with this approach is that, while trade with the world generally constitutes a large proportion of total GDP in these low-income countries, the linkages between export-oriented activities are not automatic but are affected significantly by outward looking trade policies. The danger that export expansion will not be broad-based in these economies is rooted in their very structures in terms of sectoral composition, types of enterprises and types of employment.

If diagnostic efforts through A4T maintained a strong focus on including marginalized groups and seeking out the links between trade and poverty reduction, there would be greater opportunities for these excluded segments to participate in and benefit from the global economy.

For a majority of these marginal producers to take part in more formalized economic activities, they require well targeted and sustained support to help households make the switch—through extension services, access to credit, and investments in infrastructure. Poor roads and ports, poorly performing customs, weaknesses in regulatory capacity, and limited access to finance and business services are all factors that have inhibited trade performance in large sections of these economies. By addressing these wider supply-side needs, the EU A4T support could increase the opportunities for marginalized ACP producers to take part in the fast globalising market economy.

The lack of domestic market integration, the high degree of subsistence orientation of rural households and the prevalence of non-tradables imply that large parts of the poorest population tend to be bypassed during the process of trade liberalization, economic reform and financial programming. As transition to free trade and more market-oriented activities increases, it is critical that ACP countries avoid as much as possible the so-called 'enclave-led' growth[22]. Instead, there would be need to empower smaller producers by providing them with more opportunities for broad-based growth and participation in the formal and export-oriented economy.

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[22] Enclave-led growth refers to a form of economic growth which is concentrated in a small part of the economy, both geographically and sectorally. It is exemplified by the pattern of development whereby a relatively rich commodity-exporting sector, well connected to roads, ports and supported by ancillary services, exists side-by-side with large undeveloped segments of the economy. It can also occur through expansion of manufactures exports confined to export-processing zones based on assembly of imported inputs, or tourism enclaves which are supplied through imports, or capital-intensive mines based on FDI. Because most people in ACP countries are not involved in export-oriented activities, avoidance of enclave-led growth under EPAs can be difficult, and in most cases export-orientation leads to enclave-led growth.

To be inclusive, export expansion should be linked to growth in the rest of the economy, which occurs for example if there are positive synergies between exporting enterprises and local suppliers of inputs, providers of services, subcontracting relationships and local purchases of wage goods. It is particularly important, therefore, that export expansion through EPAs should strengthen domestic linkages and development of complementarities between agriculture, where the majority of the population currently earn their livelihoods, and emerging non-agricultural activities.

This provides yet another reason to include marginalized producers and groups in the formulation of A4T activities. Their participation can help ensure that local suppliers of inputs are made aware of export-oriented opportunities in order to pursue possible emerging synergies. They can further highlight pro-poor technological innovation as well as developmental linkages between growing export activities and the rest of the economy, and help ensure that international trade strengthens the development complementarities between agriculture and non-agricultural activities.

Furthermore, adopting a value chain approach in EU A4T could help marginalized segments of ACP economies – particularly the informal sector – benefit from export-oriented activities[23]. This should entail shifting the focus of EU A4T from the traditional "last loop" of a national value chain (i.e. the ultimate company that makes the export transaction) towards more upstream activities. An 'end-of-pipe' approach is not likely to have very direct effects on poverty reduction, since in these ACP countries a vast majority of the population works in the informal sector, sometimes at the very beginning of the value chain.

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[23] Wilska, K. and von Bonsdorff, M. (2006), "Aid for Trade as a Vehicle for Enhancing Export Competitiveness". Prepared for the seminar: "Aid for Trade: Adjusting Capacity to Maximize Sustainability in a Liberalising Global Economy" 14-15 November 2006, Glion, Switzerland.

Chapter III. A Development Benchmarks Approach to Liberalisation: Orienting the EPAs to Development Needs of ACP countries

1. Introducing Sustainable Development Benchmarks

From the forgoing, we have established that there are key underlying problems characterising past waves of liberalisations in so far as their contribution to poverty reduction and sustainable development objectives of low-income countries is concerned. There is a key problem in the area of market access brought about by persistent market access and entry barriers while with regard to policy flexibilities, the development strategies of many of these low-income countries have been constrained by agreements such as on investment and TRIPs that have tight conditions prohibiting usage of pro-poor policy instruments needed for pursuing developments; but, more importantly, we established that in the area of Aid for Trade support, the bulk of funds are currently not going to the countries and particularly, the sections of the populations, that need them the most.

ACP countries are those most vulnerable to trade-related policy shocks, price changes, and other adjustment costs. Reductions in their tariffs can have a significant adverse effect on scarce government revenues, further hampering their already weak ability to re-deploy labour from sectors negatively affected by liberalization. Across-the-board tariff cuts could hurt many ACP countries reliant on preferential access to Europe and other developed economies. In addition, many net food-importing developing countries in the ACP region could face higher food costs as reductions in agricultural tariffs and subsidies in developed countries lead to higher prices for previously subsidized goods.[24] At the same time, policy options available to these countries for protecting government revenue and shielding industries from strong global competition have shrunk under SAPs, and rounds of GATT and WTO.

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[24] For further discussion of these adjustment costs, see stiglitz, J. and Charlton, A. (2006), *Aid for Trade: A Report for the Commonwealth Secretariat. London:* Commonwealth Secretariat. pp. 12-17.

It, therefore, becomes a fairly justifiable proposal by ACP countries to link liberalisation commitments to be undertaken under the EPAs with achievement of a set of development benchmarks as the surest way of orienting EPAs toward their own development.

The notion of sustainable development benchmarks involves formulating indicators that seek to determine if the EPA negotiations and the ultimate agreement live up to the sustainable development goals that have been spelled out in the CPA and in the EPA mandate. The idea to use benchmarks to assess the conduct and development content of EPA negotiations, thus ensuring that they are able to deliver on development goals, first emerged out of the Cape Town Declaration adopted by the EC and ACP in 2002. The aim, according to the Cape Town Declaration, was to assess the EPA (or other arrangement to replace the trade elements of the CPA) in terms of:-

- the main **objectives** which should determine the conduct and outcome of the negotiations;
- the **principles** which should inform the negotiations;
- the major **issues** which will need to be addressed within the process of negotiations;
- the **approach** which should be adopted to the forthcoming process of ACP-EU negotiations; the approach is to do with transparency and inclusiveness of the process in promoting debate and discussion among all stakeholders who are interested in promoting sustainable development and reducing poverty; and
- it has also been suggested that, other than the achievement of the above benchmarks, any liberalisation commitment to be undertaken by the ACP countries should be linked to achievement of the objectives that underlie EPAs at the implementation stage.

There thus appear to be two stages of benchmarking development in the EPAs; at the negotiation stage to make sure that the outcome to be signed can deliver development; and, at the implementation stage to monitor whether the implementation of commitments undertaken are yielding the development objectives set for the EPAs. The aim of identifacation of development benchmarks under the EPAs is, therefore, to:-

- provide development points of reference that can be used by all stakeholders in the development-focused monitoring of the progress of EPAs in delivering development at implementation stage;
- facilitate efforts by both Parties in identifying apropriate measures and

responsibilities, during the EPA negotiations, that they will each/jointly need to take in order to deliver development objectives that underlie them; and
- to help determine what mitigation measures would have to be taken if and when the agreed development objectives become elusive to attain.

The focus, therefore, of development benchmarks is to put EPA trade rules at the service of sustainable development objectives of the ACP countries. Ultimately, it is for each ACP government and stakeholders to decide what a good EPA is (in a development sense) and to do this based on overall national and regional development objectives and strategies. This way, the benchmarking approach becomes a tool for bridging the divergence of positions (between the antagonists like the ACP stakeholders who continuously doubt the development dimension of EPAs and the protagonists, like the EC, who believe the development content of EPAs is already there) in interpreting the 'development dimension of EPAs' and moving the discussions on the content of EPAs forward (without jeopardizing final judgments on whether an EPA is good or bad for ACP countries).

2. Benchmarking development in the EPA negotiations

At the negotiation stage, benchmarks would be expected to do the following:-

1) Assess the extent to which any agreement being negotiated can fulfill the main objectives of the Cotonou Agreement and of the Cape Town Declaration (2002).
2) Monitor negotiations to ensure that they accord with the salient principles of the EPAs.
3) Monitor the negotiations to ensure that they address these specific issues:-
    - Market access for agricultural, fisheries and manufactured as well as services exports,
    - Supply-side constraints,
    - Fiscal dimension of EPAs,
    - Effects of CAP review on ACP commodities,
    - Development support,
    - Regional integration
4) Monitor the negotiations to ensure that they adhere to the fundamental principles of partnership, transparency, and inclusivity that underlie the Cotonou Agreement.

a) Agreement on issues under market access in goods

ACP countries have varied market access concerns, but the main ones as were succinctly summarised in the ACP-EU Joint Parliamentary Assembly

Cape Town Declaration include:-

(a) a substantive improvement in market access opportunities for ACP exporters in areas of immediate benefit;
(b) asymmetric tariff dismantlement;
(c) a review and relaxation of the rules of origin;
(d) linking of tariff dismantlement to attainment of development benchmarks; and
(e) consultations on how genuine EU health concerns (human, animal and plant) can be addressed without creating new barriers to ACP exports.

Proposed negotiation benchmarks

Based on the Cape Town Declaration outlining ACP market access interests, possible benchmarks that positive outcome of the negotiations should reflect include the following:-

i) Maintenance of and improvement on the existing market access preferences in the EU.

Given the existing domestic constraints including low levels of competitiveness, small profit margins and high transportation costs, an agreement to maintain the current market preferences and an expeditious implementation of full duty free and quota free market access for all ACP exports would constitute a positive outcome in the negotiations.

ii) Asymmetric tariff liberalisation and guarded phase-out of tariffs over a sufficient transitional period but to be closely linked to achievement of development benchmarks.

Positive outcome of the negotiations should reflect flexibilities regarding the scope for defining “substantially all trade” in a manner that allows ACP countries to exclude all products where existing gains could be most rapidly eroded and those where the largest government revenue loss could come about as a result of full liberalisation. In this regard, positive agreement on asymmetry should be reflected on the three issues of what constitutes:-

- “a sufficient moratorium period” (say, 10 years as proposed by ESA) over which sensitive products are to remain protected from liberalisation;
- “a sufficient period of time” over which gradual liberalisation is to take place after the end of the moratorium period (say also, 15 years according to ESA) but this should be dependent on whether the agreed development benchmarks are being achieved; and
- “substantially all trade” that allows ACP countries to exclude all sensitive

products either permanently or over the sufficient moratorium period. If, say, sensitive products constitute 50% or more of all trade, the agreement should show how this is to be treated in respect of compatibility with WTO rules under the conventional treatment of GATT Article 24 and SDT provisions.

Otherwise for products that constitute inputs into key processing and manufacturing sectors needed for promoting diversification, vertical integration and value addition, the outcome of the negotiations should reflect agreement to expeditiously zero-rate their tariffs for immediate stimulation of industrial growth.

The raison d`étre for these asymmetries is to promote the building of ACP regional markets, nurturing their competitiveness as well as increasing the growth of their inter-regional and intra-regional trade before enhancing trade integration with the EU. In this case, positive outcome should allow ACP countries to open their markets, first of all, among themselves while opening to the EU should be linked to the attainment of pre-defined development indicators and not to pre-determined timetables.

iii) Comprehensive review and relaxation of rules of origin.

Rules of origin are a typical problem where efficient production and participation in global value chains requires input procurement from 'non-participating' countries (in this case, from non-EU or non-ACP country). Although the main motive for ROO of preventing trade deflection and possibilities of tax evasion by non-participating countries is justified, the stringency and complexity of the current Cotonou rules constitute a form of EU protectionism and requires comprehensive review. The stringency and complexity of the Cotonou ROO could probably explain why after EU made unprecedented market offer to all LDCs in 2001 no trade was recorded to have increased despite the generous tariff preferences or, quantitatively why exports of African apparels have recorded significant increases in the US market from US$ 83 million in 1996 to US$ 822 million in 2004 but stagnation in the EU market from US$ 183-210 million over the same period.[25]

In this case, therefore, positive outcome of the negotiations must entail "substantial transformation" of Cotonou rules, allowing ACP countries

[25] See figure 1 at the annexure for illustration on how less restrictive rules have promoted exports of African LDCs.

“substantial” improvement on the current cumulation of production inputs especially where value addition requires inputs not produced locally and where such inputs can only be obtained competitively from non-participating country.

iv) Harmonisation and capacity-building for compliance with EU trade-related rules and standards.

Although everyone should recognise the validity of the rights of the EU to safeguard public, animal and plant health, as a legitimate aim that can even sometimes justify controls based on the precautionary principles, there is also growing recognition that a range of technical barriers to trade (TBT) such as strict labelling and packaging requirements, the innumerable standards (both private and public) in some sectors including onerous procedures for inspection have unnecessarily constituted major obstacles for a diverse range of ACP value added exports into the EU. The long inspection procedures, for instance, create costly delays on fresh produce that require timely distribution to clients.

To be able to meet the EU trade-related (fauna and flora) measures, and to promote inter-regional and intra-regional trade among ACP regions, positive outcome of the negotiations should entail harmonisation of certification and standardisation and a relevant reduction on the number of rules and standards which can be identified to constitute unnecessary barriers to effective trade.

ACP countries have not been able to meet EU trade regulations for a number of reasons; key among them is a lack of information, capacity and testing facilities. Positive outcomes on rules and standards should also reflect agreement on elaborate programmes of technical assistance to enable ACP exporters to meet (only genuine) EU food safety and other standards without placing undue demand on exporters.

v) Effective trade remedies

A pro-development outcome of the negotiations should entail provisions for effective trade defence mechanisms which include the following:-

- Safeguards (including special safeguards);
- Burden of proof to be on the complainant;
- Antidumping measures;
- Subsidies and countervailing measures;
- all measures should be automatic and simple to apply, especially for the sensitive products;
- all measures should have both volume and price triggers.

b) Agreement on Agricultural and Fisheries Trade

Trade in agriculture and fish as well as fishery products is the most distorted one in Europe. There is particularly high restrictions on exports of value added food products that are in competition with the products covered by various aspects of the EU's Common Agricultural Policy (CAP) and Common Fisheries Policy (CFP). Both CAP and CFP are governed by a mixture of ad valorem tariffs (with high peaks and escalations), subsidies, special duties, quota restrictions, seasonal restrictions and very restrictive ROO (more restrictive for exports of fish and fish products).

In the scheduled CAP reforms (starting by 2008 and beyond), serious price reductions on commodities is to ensue while the distortion effects of EU support measures is to remain as intractable as ever; this is so because the shifting of support from the illegal system of price support to a new system based increasingly on de-coupled direct aid payments to farmers (the latter considered as legal under the WTO) does not change the distortion effects of the former system.

It should be pointed out that without addressing these critical issues and putting measures to cushion ACP countries against their potential impacts, the new EU commitment of 100% preferential market treatment for all ACP-EPA countries would amount to another rhetoric demonstrated at a high political level.

Proposed negotiation benchmarks

In general, the benchmarks under the two clusters of agriculture and fisheries are in line with the concerns and interests of ACP countries as were summarised in the Cape Town Declaration. These include, agreement to:-

i) implement elaborate programmes for the development of processing, marketing, distribution and transportation (PMDT) systems targeted at the sustainable development of the two sectors before they are exposed to any competition from imports;

ii) set up sound environmental and social regulations to regulate the activities of production and processing industries in order to avert pollution that might come about as a result of increased economic activity;

iii) exclude from tariff liberalisation (permanently or over sufficient transitional period) all products from the two sectors because of their sensitivity to agro-based industries and rural development;

iv) establish practical ways of maintaining the value of current acquis and various measures for solving the negative impacts associated with CAP reforms, which may include, *inter alia,* the following:-

- non-conditional elimination of all anti-competition CAP support measures such; and
- implementation of export refunds as mandated under article 54 of the Cotonou Agreement.

v) implement capacity building programmes for compliance with genuine regulatory measures such as SPS and TBT;

vi) exclude fisheries from the mainstream EPA Text and having it as a stand-alone bilateral agreement as it concerns only a few countries with lakes and those with coastal borders.

c) Agreement on trade in Services

The potential for trade in services to promote poverty eradication cannot be overemphasised. To improve the development of the sector and its contribution to national development objectives, the following priority issues have been identified:-

a) Funding to enhance trade in services;
b) Asymmetry in terms of scope of negotiations on trade in services; and
c) Free movement of natural persons.

Proposed negotiation benchmarks

Positive progress in the negotiations should entail *a relevant reduction of restrictions in general trade in services and obtaining EU concessions for effective liberalization of services in all areas where ACP countries have a competitive edge and are ready to compete under an effective regulatory framework.* In this case, ACP countries should not be pushed to make commitments on services areas that they have not made at the WTO. Therefore, progress in the negotiations would include:-

- more liberal conditions allowing temporary movement of workers to EU (Mode 4);
- removal of all restrictions in health services in mode III (economic-needs test) or including it as committed sectors (as many EU health sectors are unbound or uncommitted);
- allowing, for example, an African business travel card; recognition of professional credentials;
- provision of additional funds with rapid and flexible disbursement procedures to support ESA service sector development;
- provision of effective services safeguards such as commitments not beyond the WTO offers; and
- asymmetric liberalisation of services by EU first opening all services sub-sectors of ESA's interests.

d) Trade-related Areas

The concerns in this area of the negotiations are mainly two:-

a) Coverage and scope of trade related issues
b) Sequencing of assistance and negotiations

Agreements on areas (such as investment, competition, government procurement, intellectual property rights, etc) that forbid governments from taking recourse to policy instruments that are essential for supporting development in ACP have been fervidly opposed by many northern including Southern NGOs.

ACP countries have been trying to improve their access to Europe's markets, but the EC maintains that it was not "an acceptable option" to do this without including "supply side commitments such as services, investment, government procurement, trade facilitation, intellectual property rights, environment, labour and competition."[26] The commission is seeking to use desperately needed market access into the EU to bribe ACP countries into accepting trade rules that would be against their interests.

Proposed negotiation benchmarks

The following is a broad view of benchmarks on trade-related areas that the outcome of the EPA negotiations should reflect:-

- Asymmetric liberalisation. Positive outcome of the negotiations should reflect agreement to limit liberalisation to only those trade-disciplines where ACP countries have the necessary expertise or can develop the capabilities needed through usage of additional finances from the EU.
- Coverage of trade facilitation: broad and covering all areas.
- Cohesion with WTO. Positive outcome of the negotiations should not bypass ESA's WTO commitments. That is, ESA countries should not be forced to make further concessions to richer countries on issues that they have already roundly rejected at the WTO.
- Flexibilities and discretion in applying supply-side instruments. Positive progress in the negotiations should allow ACP countries the flexibilities to exercise discretion in applying supply-side instruments to support goals related to their own diversification: development of domestic capacities in servie sectors: programmes focused on productivity in informal activities and poor

[26] EC's internal meeting in Brussels, December 8, 2006, the *http://business.guardian.co.uk/story/0.,1966940,00.html*

farmers. Such agreements may include, but not limited to, public procurement preferences: IPRs flexibilities: domestic regulations in services: and retaining (with the flexibility of increasing) sufficient tariff levels on all products to be affected by CAP reform and providing them with appropriate safeguards.

e) Development Resources

Following an EPA, ACP countries will need to undertake certain adjustment programmes; institutional reforms and new policies to improve their competitiveness and address their supply-side constraints so that the benefits of liberalisation may be realised. The effectiveness and successes of all these measures will depend on whether there will be sufficient and easily accessible resources including aid for trade (A4T) support for such developments. There are also practical cases where more resources will be required to tackle constraints to trade facing the development of ACP countries before they start to implement their liberalisation commitments.

Furthermore, it is not possible to see how an EPA will promote enhanced trade without promoting backward and forward linkages and without addressing domestic constraints to internal trade such as rural infrastructure, illiteracy and poor health that continues to compromise innovation and productivity of the marginal producers. It would be important to condition the implementation of liberalisation on first securing adequate resources to satisfactorily tackle all the underlying domestic constraints to internal trade in order to lay down a robust environment that will support trade expansion (both internally and externally).

Broadly speaking, the main concerns under the development dimension of EPAs include the following:-

- Securing additional funding (a separate EPA facility);
- Avoidance of diverting EDF resources away from pre-existing legitimate priorities;
- Addressing the effectiveness of use of EU’s aid instruments;
- Sequencing of provision of funds to match EPA timetable;
- Support to fiscal and economic restructuring to address the costs of adjustments.

Proposed negotiation benchmarks

The following provides a broad illustration on benchmarks for development support that negotiators could use to evaluate whether the quantity and quality of development resources provided are sufficient for all support measures elaborated in regional development matrices:-

i). *Comprehensiveness of development support and unlocked accessibility:* Positive progress in the negotiations should entail agreement on a detailed regional development matrix that elaborate specific instruments and resources needed to address challenges arising from EPA implementation.

ii). Similarly, progress should show an *agreement on the criteria and guidelines for rationalising and prioritising the use of EDF resources and providing additional resources* to avoid diverting EDF resources away from pre-existing legitimate priorities and to ensure their speedy and effective use.

iii). ACP negotiators would have to check that the A4T support has a direct link with the productivity of the marginalised groups; poverty reduction; equity and environmental goals and not just economic growth.

iv). *Sequencing of liberalisation and support to pre-EPA restructuring programmes*: There are certain things that must be done as pre-conditions for implementing an EPA, but they require substantial resources. Hence, positive progress in the negotiations should entail identification of such pre-EPA restructuring programmes and getting EU's concession to advance resources to support the identified areas before ACP states start to implement commitments.

v). *Technical assistance to enhance trade in agriculture and fisheries*: Positive progress in the negotiations should entail EU agreement to extend and deepen technical assistance programmes on all technical issues affecting ACP trade in agriculture and fisheries (e.g. SPS and TBT issues) before an EPA can be implemented in its entirety.

vi). *Comprehensive assistance to enhance PMDT programmes for agriculture and fisheries:* The resources should be channelled to enhance necessary PMDT programmes and other identified financial support areas to strengthen both agricultural and fisheries infrastructure needed to stimulate agricultural productivity, inland fisheries and aquaculture development including their strong linkages with exports. All these measures are pre-conditions for a truly intentioned sustainable development and enhanced trade before exposing the sectors to free trade with the EU.

vii). *Assistance to enhance trade in services*: Progress in the negotiations should also entail developing a comprehensive strategy for the development of ACP service sector with regard to market access measures and supply-side policies and obtaining EU's concession to make available sufficient resources with unlocked deployment procedures for the identified services development projects.

f) Legal Issues

This is the most sensitive component of the EPA negotiations since it determines the relevance of any agreement made. In this area, positive progress in the negotiations should entail the following:-

i) *Having binding agreement on financing:* In the EPAs, ACP countries will be making commitments lasting for unlimited period hence the need to seek EU's binding commitments in the provision of development resources as without which ACP countries would have been pushed into agreements that will further their marginalisation from the rest of the world.

ii) More so, *no conditionality at all should be linked to binding agreements on provision of additional resources* as this may undermine an important policy space.

iii) *Doha Work Programme superseding EPAs***:** Based on the CPA, an EPA is supposed to be WTO-compliant. Therefore it was intended that the Doha Round would have been concluded before EPAs. The completion of Doha is not envisaged soon given the existing impasse. Thus it would be premature to conclude EPAs before the Doha Work Programme as chances are that EPAs will contain obligations which are inconsistent with WTO obligations. However, positive outcome of an EPA to be concluded before the Doha Round should have a provision legally allowing both parties to revisit its terms against those of the WTO.

iv) *Cooperation to review WTO rules (GATT Article 24):* ACP countries together with the EU constitute a two-third majority of the WTO membership. With this fact in mind, and taking into account the WTO's democratic rules, both parties had agreed to cooperate to identify and review all WTO rules (especially GATT Article 24) that are inconsistent with typical North-South FTAs and defending the same positions. Hence positive progress in the EPA negotiations should entail implementation of the commitment to review WTO rules.

v) *Agreement on structure and scope of EPAs:*
ACP wanted to retain their cohesion and defending common interests but because the EU wanted different concessions from the ACP countries, the EC insisted on configuring ACP moving to launch phase-two of the negotiations only with those countries that had configured themselves, and in the eastern and southern Africa, EC threatened not to release RIP funds until SADC and COMESA configured themselves into EPA-compatible regions).

vi) *Agreement on sufficient safeguard mechanisms and scope for product exclusion:*
The raison d`étre for allowing adequate application of safeguard measures

is, for instance, to help in protecting ACP industries from the effect of import surges, while that for product exclusion is to assist ACP countries in achieving objectives like food-security, industrial growth, employment generation, macro-economic balance and building of regional markets. Positive outcome of the negotiations should, therefore, include legal provisions allowing ACP countries to exclude from liberalisation "all" products that are sensitive to the development of their economies. The EPA text should have a review clause and the flexibility allowing ACP to pull appropriate safeguard measures to restore any negative impacts of EPAs, including where necessary, derogation of tariff liberalisation commitments.

vii) *Dispute avoidance and settlement mechanism:* Although discussions in this area have hardly started in some regions, and recognizing the need for a common approach, positive outcome of the negotiations must reflect similar texts on dispute avoidance and settlement mechanism for all ACP countries involved.

viii) *Non-execution clause:* The ACP position adopted by Council is that the Cotonou Agreement non-execution clause should not apply to EPAs and should be confined to political cooperation arm of the as it gives a right to the EU to take punitive measures against the entire region if one member state is considered to be failing to fulfill conditions on a good human rights record and good governance. Sanctions on one ACP country could have adverse impact on regional trade and integration, particularly, if the country concerned is a key trading partner or an outlet for landlocked neighbouring countries. Therefore, final outcome of EPAs must reflect just this position.

3. Development Benchmarks for Monitoring Implementation of EPAs

The main development expectations contained in the Cotonou Agreement – and by extension, the EPAs – and as reflected in the ESA negotiating positions include, but not limited to, the following:-

- Promotion of smooth development of the ACP countries;
- Strengthening of trade policy environment of the ACP countries;
- Supporting poverty reduction programmes;
- Enhancing the production and supply capacities of the beneficiary countries;
- Fostering of structural transformation of the ACP economies to increase their competitiveness;

- Promotion of regional integration before the beneficiary ACP countries open up to global trade;
- Promoting and enhancing cooperation in trade related areas including simplification and harmonisation of non-tariff barriers such as ROO, TBT, SPS;
- Making sure no country is worse off under the EPAs than when trading under the Lomé –and in the interim the CPA –that is, making sure all the Lomé benefits are safeguarded and enhanced;
- Considerable improvement on market access for all ACP exports;
- Making sure LDC do not make any market access commitments in the EPAs (i.e. no reciprocity by LDCs) but allowing for sufficient degree of asymmetry for the non-LDCs;
- Provision of effective SDT for island states, those coming out of conflict, LDCs, landlocked, single commodity exporting countries,and highly indebted countries;
- Making sure EPAs are WTO compatible and are in cohesion with national development plans;
- Providing for a long transition period before ACP countries open up their economies; and finally,
- Monitoring the achievements of these aims under the EPAs by using benchmarks.

Given the scope of EPAs, the following sets of benchmarks may be explored to be linked with liberalisation commitments by the ACP countries.

a) Macroeconomic (Fiscal) Stability

Benchmark: - Mitigate the estimated revenue losses from tariff dismantlement and preserve margins from estimated preference erosion.

There are three key ways to avoid impact of EPAs on government revenue:
i) Exclusion and back-loading of sensitive products from liberalisation (important especially where an ACP government is heavily dependent on import taxes as a source of money for its budgets and where there is no real scope in diversifying forms of taxation partly because of high cost associated with administering new frms of taxation and partly because in many ACP countries the formal private sector is small and thus does not provide an alternative tax base);
ii) Lowering MFN rates in ACP to avoid further revenue loss through trade diversion (important especially where an ACP country's imports, hence

import taxes, come largely from the EU). Apart from the loss of tariff revenues on existing imports from the EU, reciprocity in liberalisation could cause ACP countries further revenue loss through the effect of trade diversion, where following an EPAs an ACP country switches its imports from a relatively efficient, low-cost supplier from a third country in favour of imports from a less efficient higher cost producer from the EU. The further tariff revenue loss expected to be greater as more imports will come in duty-free from the EU, rather than under MFN tariffs which ACP countries have in place;

iii) Budget support and balance of payment (BOP) support.

Proposed indicators

- Budget of payment (BOP) support equals the component of BOP deficit attributed to the tariff reduction induced by imports from the EU. By setting up a compensation mechanism ACP countries could engage in far-reaching trade liberalisation without possibly compromising the vital government programmes. Although the fiscal losses are permanent, many envisaged benefits of EPAs, such as economic growth and hence a wider tax base, will take time to materialise. In the period preceding these longer-term benefits, temporary BoP support can be a valuable relief to ACP countries during this adjustment period. Also, many (African) ACP countries are already very dependent on sector-specific and budget support by donors; the support needed as a result of the fiscal impact is generally small compared to existing aid flows.[27]
- Tariff reforms per the agreed schedule in the trade in goods chapter (to show whether government tariffs and income taxes have been safeguarded).
- Trends in government revenue (should be improving).
- Trends in government revenue as a percentage of GDP. If products sensitive to government revenue are excluded and trade diversion is avoided, then this ratio should not fall but improve.
- Value of excluded products plus those back-loaded enough to protect government revenue of the country concerned, i.e. constitutes 43% of

[27] But this strategy has some serious shortcomings (a) it would be very difficult to come up with an acceptable and accurate compensation mechanism. (b) under this strategy, the more developed-developing ACP countries stand to get much higher compensation than the poorer countries –something that donor countries may not favour; and (c) it will be difficult to estimate beforehand the period it will take for the longer-term benefits to materialise or to establish the moment these benefits outweigh the fiscal losses in order to stop the strategy.

total trade in the case of Kenya. For example, by excluding as many sensitive products as possible and back loading the remaining sensitive products Uganda could retain approximately three-quarters of its revenue, while Ethiopia would be able to retain half of the current customs proceeds.[28] The more liberal a trade regime is the higher the share of fiscal revenue is that can be retained.[29]

- Existence of non-regressive fiscal reforms. For example, instead of increasing consumption tax (and therefore regressive tax) like VAT, non-regressive fiscal reforms could entail measures to improve tax collection efficiency and tax administration in order to make a VAT system work in these ACP countries whose collection rates are still low.[30]
- Trends in the share of government expenditure on essential public services such as health and education.
- Economic growth and poverty reduction trends as these will be directly negatively affected by shocks in economic activism (basically due to potential cuts on government expenditure and the attendant social costs related to restructuring and loss of jobs in import competing sectors).

b) Development of Sectoral Productivities – Solving Supply-side Constraints

Achievement of EPAs objective of integrating ACP countries into the global market through trade development depends to a large extent on addressing the supply side constraints to build the supply capacity of ACP countries.

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[28] See Bilal, S. And V. Roza (2006) on the Potential Fiscal Effects of an EPA on Irish Aid Programme Countries: Ethiopia, Mozambique, Tanzania, Uganda, Zambia (and Lesotho).

[29] However, this strategy has three major shortcomings (a) the bi-regional nature of the EPA negotiations will mean national sensitive lists have to be harmonised to be within 20% SDT of GATT Article 24, and so many national sensitive products are likely to be exposed to competition; (b) because the lists are compiled on the basis of past trade flows, yet, trade patterns may change and are expected to change drastically as a result of EPAs; it is difficult to determine which products are most sensitive and will generate the highest revenues; and (c) the biggest shortcoming is that this strategy negates any strategic thinking about trade and leaves out any trade and/or industrial policy considerations.

[30] In page 95-132 of D. Greenway and C. Milner (1991) study: Fiscal Dependence on Trade Taxes and Trade Policy Reform', *Journal of Development Studies* 27 (April), it is found that Mauritius, Kenya and Jamaica were able to enhance their government revenue while instituting previous trade liberalisation policies due to improvements in their tariff administration and collection efficiency.

The programmes being proposed cover capacity and institutional development and infrastructure development (energy, roads, air, water transport and ICT); cross cutting issues (regional integration, investment and private sector development, environment, policy and regulatory environment, gender, market access, etc) and sector specific support in agriculture, fisheries, industry, services including tourism, trade related issues). Other humanitarian and social programmes will also form part of the EPA. Broadly the support programmes include:-

c) Trade Policy and Regulations

This refers to support for the effective participation of developing countries in multilateral trade negotiations, analysis and implementation of multilateral trade agreements, trade-related legislation and regulatory reforms (including Technical Barriers to Trade and Sanitary and Phytosanitary measures [TBT & SPS]), tariff structures, support to regional integration and trade arrangements, trade facilitation, including customs regimes and equipment, and issues such as security of the supply chain.

A number of programmes highlighted by ESA member states include:-

i) Capacity building in human resources development, Policy, Legal and Regulatory Refor ms and Regional Frameworks.

Generic indicators:

- improvement in the business environment for increased domestic investment,
- existence of new court procedures and alternate dispute settlement systems and commercial laws to entrench new trading patterns [e-commerce],
- simplification of rules/procedures for access to EDF resources;
- provision of targeted resources for SME sector including affordable credit;
- create the requisite analytical capacities in the public and private sectors and the civil society including research institutions to negotiate pro-development trade agreements as well as establishing sector policies and improving competitiveness at national and regional level.

ii) Deepening Regional Integration through programmes that are aimed at:-

- harmonization of rules, economic, social and tax policies, customs procedures and trade statistics;
- capacity building for meeting NTBs such as SPS, TBTs, rules;
- facilitation of regional integration;

- trade expansion and trade related knowledge for development;
- harmonization of agricultural and livestock policies and regulations in the region in order to enhance trade and regional food security; and
- improving negotiating capacities at national, regional and multilateral level.

Generic indicators:-
- execution of programmes identified for deepening regional integration are implemented as proposed in the development matrix;
- all products of export interest for ESA into EU are negatively listed so as to build the requisite capacities and regional markets;
- the regions sensitive list is addressed in the content of the development agenda of the region and of each member country;

iii) Management Information Systems

The analytical capacities in the region are hampered by both lack of trade information and comparable trade statistics and data bases of producers, traders etc. moreover, the modalities of trade in the globalised arrangements today are principally transacted on the internet thus calling for information disclosures in trade user friendly modes.

Generic indicators:-
- establishment of information management systems and networked data bases for ease of information exchange and sharing at all export centres;
- improvement in database development and communications systems;
- Data Management Courses provided to exporters
- Development of Software Engineering and Provision of ICT equipment;
- strengthening the trade information system and trade development support capacity of the trade and investment support institutions;
- setting up a national database of producers and supply chain operators.

d) Trade Facilitation

In the majority of cases, ESA businesses are hampered due to lack of effective trade facilitation by way of customs procedures and documentation, export/ import market requirements and laws, transport and storage systems. Some of the immediate programs identified by the ESA countries include:-
- establishment of one stop import/export facilities supported by computerized systems for business transaction;
- standardized and simplified ROO,
- governance, customs/tax administration, smooth transit arrangements and safeguard mechanisms;

- computerization of customs procedures and trade delivery systems for online operations;,
- standards development, accreditation and certification of test procedures and technical standards and regulations;
- accreditation of Certification bodies in Quality Management System (QMS) and Environmental Management System (EMS) and Hazard Analysis Critical

Control Point (HACCP) Schemes;

- Promotion of regional competition and consumer protection policies and IPR and restructuring of Trade Facilitating and financial institutions in support of the business community.
- Capacity building for customs officials and clearing agents, transporters, standards and technical regulations.
- Establishment of chains of cold storage facilities, sully equipped laboratories.
- Establishment of trade facilitating institutions.
- Efficient IT facilitated transport systems and corridors.
- Institutionalized collaboration between the public and private sector.
- Simplification of trade laws.

e) Environmental Management and Conservation

Besides environment principally being associated with sustainable productive capacities, the latest trade developments patterns have incorporate environment issues into trade support and facilitating measures with some environment goods fetching premium prices in international markets. Most of the developing country environments remain in natural states and it is the wish of the ESA countries that special programmes be mounted on:-

- environment education, awareness creation;
- biodiversity conservation, genetic preservation;
- sustainable utilization of natural resources including fishery products; indigenous knowledge documentation and utilization;
- capacity building programmes on GIS and remote sensing; Hydrogeology; Engineering Geology; Geophysics; and a coordinated approach to regional/ continental management of trans-boundary programmes.

e) Trade Development

This category covers business development and activities aimed at improving the business climate, business support services and institutions, access to trade finance, trade promotion and market development in the productive and services sectors, including at the institutional and enterprise level. The programmes being proposed cover:-

i) Development, Reforms and Strengthening of trade-supporting Institutions

The trade supporting institutions are characterized by weak and inefficient structures, uncoordinated and duplication of efforts, limited outreach to the business community, concentration of such service providers in urban areas among others. The immediate programmes being proposed include:-

- restructuring of the trade support and facilitating institutions;
- privatization of commercial activities associated with energy generation, distribution, water transport, air transport, ICT institutional arrangements to improve accessibility and affordability;
- harmonizing and establishing regional coordinating bodies and frameworks to facilitate cross border and global trade;
- restructure and strengthen public and private sector associations; contractor associations and private contractors; and,
- upgrade training institutions particularly regional centres of excellence.

ii) Industrial and Trade development

In addition to a conducive policy framework supportive of expanded trade and production capacities in order to improve market access at national, regional and global levels, there will be need to operationalise such policies particularly at the national levels through:-

- development of Standards and Quality Assurance instruments;
- research, Production, productivity, VA, marketing and information management systems;
- product and market diversification and removal of NTBs;
- enforce safeguard mechanisms particularly with regard to domestic and regional markets as liberalization takes root;
- transformation and streamlining of SMEs in the production chains;
- promotion of value addition and product diversification in selected products (e.g. tea, coffee, cotton, pyrethrum, spices, vegetables & fruits, flowers).
- intensify trade promotion activities in different media formats and more importantly trade promotion between ESA and EU countries;
- export promotion and trade facilitation;
- capacity building programme to empower NSA including SMEs in understanding trade issues and use trade to fight against unemployment and poverty;
- financial and technical assistance for training of exporters and business support organizations on international marketing procedures and ethics,

- business plan preparation, website development and internet marketing, marketing entry strategy,

iii) Entrepreneurship development

The ESA business community is characterized by lack of business skills and acumen to the extent that they have relied on narrow products and markets, often missing out on higher value new market opportunities. The short to medium term ESA proposals to address these problems include:-

- capacity building on export skills in particular for business associations and SME enterprises;
- Build the capacity of IT and web site development;
- promoting inter firm strategic alliance;
- sector specific business data, marketing and logistics, setup of e-commerce trade hubs in rural and urban economic centres;
- developing consumer welfare legislation and enforcement mechanism; and
- building sector/product specific sourcing data & data on Market trends especially for products of export interest.

iv) Investment and private sector development promotion

The lack of tradable goods and services even for the preferential global and regional markets can only be redressed through programmes targeted at improving and promotion of investment and private sector support associations. In this connection therefore ESA has prioritized a number of action programmes which include:-

- publicity and promotion of investment opportunities and possible financial instruments (eg equity, shares, bonds, revolving funds, franchise);
- restructure investment support institutions to provide for autonomy and flexibility to operate with the business communities;
- develop private sector service providers;
- widen private sector involvement including those in diaspora to participate in investment;
- strengthen the chambers of commerce and sectoral associations across the region so that they can provide efficient and effective advocacy and trade support services;
- strengthen and facilitate trade information access, networks and sharing;
- train professionals on trade facilitation, export promotion, market research;
- development of facilities and institutions for private sector participation in a wide range of activities;
- promotion of Public Private Partnerships (PPP) through guidelines and the legislation;

- promote investment in value addition in selected products (hides & skins, coffee, tea, cotton, textile and apparel);
- training for experts of the national and regional investment organs in investment promotion techniques and skills and in negotiating Bilateral Investment Promotion and Protection Agreements;
- facilitate private sector services sector in the regional market
- facilitation for adoption of new technology

v) Improve access to business support services

- Improve the capacity and efficiency of the business arbitration.
- Improve access to affordable finances and grants, which includes:-
  - provision of credit and concession loans in the different business sectors;
  - support financial development of cooperatives and farmers' organizations to reinvest surplus resources from the memberships;
  - creation of investment and trade facilities to facilitate access to such resources from different markets;
  - deepening financial reforms to provide for mobilizing domestic resources for access for investment and trade;
  - improve information on available financing at the domestic and foreign markets; and
  - training to suppliers, bankers and cooperatives on project preparation, evaluation and financing mechanisms.
- Improve access to technical standards and regulations.
- Improve access to information, customs services, research etc.

vi) Building and strengthening the capacities and trade in the services sectors in the region

The ESA countries have undertaken autonomous liberalisation in spite of WTO flexibilities in which disciplines of the services sectors could be delayed. Apart from trade facilitation, Singapore issues are not to be negotiated. However more effort is to spend on capacity building and institutional development. The ESA countries have nevertheless made the concerted decision of complementing the capacity building activities with trading in services in the region. Each individual ESA member state will have the option of selectively liberalising its service sector to the global level.

The support required in the short to medium term includes:-

- capacity development in IPR, competition, procurement, investment and trade facilitation;

- policy and legal framework to support trade in services in the region with the option of selected liberalization of trade in services;
- diversification of traded services over time; and establishment of institutions to coordinate private sector trade in services;
- market the region as a single tourism destination;
- expand support for development of ISO standards competences in the tourism sector and
- improve tourism infrastructure and services;
- tourism market research and product diversification; and
- promotion and widen benefit sharing to include communities.

f) Development of Trade Related Infrastructure

This refers to the development of infrastructure as a means to reduce the cost of doing business and build up the region's ability to trade. It covers infrastructure development related to transport, communication and telecommunication, energy, storage capacity as well as port facilities amongst others.

The proposed infrastructure support targets:-

- Policy reforms and institutional restructuring including establishment of new institutions to facilitate synergies between public and private sector, and wider private sector involvement in the delivery of infrastructure programmes;
- Design and implement regional master plans in energy, roads, railways, air and water transport and ICT;
- Research on alternative and sustainable forms of energy, road building materials, alternative modes of transport particularly to decongest traffic in cities and build linkages between rail, water and road transport;
- Infrastructure development, rehabilitation, upgrading and expansion and modernization at national and regional levels, aimed at creating linkages that are supportive of connectivity to productive centres and expanded national, regional and global trade. These include roads; ports, transport systems, energy generation, transmission and distribution; and water ways transport equipment; purchase of rail wagons coaches, ferries; modernizing and expanding airports and related infrastructure to international standards; and liberalization/reforms and expansion of ICT sector, air transport and other economic sectors;
- Establishment of a mechanism which will restructure, modernize, upgrade and rehabilitate the region's main transport and communication links both internally and with the outside world;

- Establishment of import handling, storage and distribution facilities;
- Privatisation, Decentralisation, Commercialisation, outsoucing for the delivery of infrastructure activities;
- Design of financial instruments; Modalities of accessing ACP wide/global infrastructure resources and Facilities.

g) Building/Expanding Productive Capacities

This category covers direct support to the productive sectors as well as the improvement of services to the enterprises including access to finance and technological support. The production capacities of the ESA region are based on agriculture, fisheries and mining in which the outputs are traded in commodity form with very limited value addition. In the process therefore jobs are exported and poverty is intensified in the region. Apart from the limited manufacture of some agricultural products there is very little activity by way of industry. In line with WTO aspirations, the EPA also sets to expand the industrial activities of the region.

A number of pro-active activities or projects need to be earmarked for enhancing the expansion, diversification and integration of the industrial sector to the regional and global economy. The activities should be aimed at:-

- adding value to the current products being exported in commodity form,
- strengthening the supply/production value chains across the region,
- improving on productivity,
- investing more in partnerships,
- widening the private sector involvement in the productive sectors,
- investing in (business) support services to improve on competitiveness,
- selective investment in products/services of global interest,
- regular research and development activities and modalities of technology transfer should be employed at all times to improve on competitiveness.

i) Industrial development

Manufacturing and mining sectors

The manufacturing sector of the ESA region is heavily depended on agriculture, mining and fishing most of which account for very limited global trade besides being subjected to fluctuating international prices and synthetic substitutes. The ESA programme of industrial development entails:-

- support towards promotion of value addition and product diversification in selected products of social, political and economic interest, namely selected sectors with growth and export prospects (e.g. leather and leather

products, tea, coffee, cotton, pyrethrum, spices, vegetables & fruits, flowers);
- Modernization of the manufacturing sector through technology transfer; transformation and streamlining of SMEs in the production chains
- policy, legal and regulatory reforms in support of region integration and globalization;
- effective public-private sector partnerships;
- accessibility of quality and affordable inputs;
- promotion of new technology and viable and reliable support institutions

Agriculture and Fishery Sector
- Disease control programmes
- Research, production, productivity, value addition, marketing and information management systems
- Product and market diversification
- Improve on market access
- Development of standards and removal of NTBs
- Enforce safeguard mechanisms
- Capacity building on standards development and quality assurance
- Public and private sector partnerships
- Development of irrigation infrastructure and water management capacities
- Investing in product specific infrastructure
- Environment education, awareness creation in biodiversity conservation and genetic preservation
- Training on extension services

ii) Development of the SME Sector
- Business support to SMEs on product development, marketing, technology innovations and design capacities;
- Skill development of MSE's through study tours (educational trips, visits to manufacturing enterprises and technology vendors in selected countries & visits to technology trade fairs and exhibitions);
- Capacity building for micro and small enterprise development agencies and technical skills training centres including reviewing the strategy of MSE development; training of key staffs in strategies of SME development and training of business support experts in areas of marketing & technology innovation;
- Establishment of concession loan facilities for extension to SMEs;
- Implement SME business development program to transfer knowledge, experience and best practices;
- Development of a regional policy on SMEs;

- Provision of credit lines for small and medium enterprises;
- Assess policy and regulatory environment for SMEs

iii) Technology Transfer

- Technology transfer and improvement in the manufacturing sectors
- Technology adoption and automation of production processes
- Research development;
- Research and technology transfer
- Strengthening science and technology training and applications

h) Trade Related Adjustment Costs

Trade related adjustments include two components: fiscal revenue losses and economic cost of adjustment, which also arise from the loss of preferences.

The reduction of tariff will have the immediate impact of reducing public revenues in the short term, which is bound to have a negative impact on crucial expenditure (such as on health and education) that matter most for poverty reduction and attainment of the MDGs.

- Budgetary/Adjustment resources to support liberalization in the region and at national level (Budgetary support for revenue losses and BOP adjustments and loss of preferences and those related to the dismantling of commodity protocols);
- Establishment of support mechanisms to facilitate harmonization and coordination of macroeconomic and sectoral policies including fiscal and customs areas, loss of jobs;
- Retraining redundant manpower to acquire new skills and be able to switch across sectors;
- Management and implementation of programmes with liberalization;
- Debt forgiveness by EU member states to all African countries;
- Structural transformation of economies on liberalization, dismantling of the commodity protocols;
- Support for net food importing countries;
- Social programmes.

Proposed Indicators

In each sector, the following generic indicators may be considered:-

i) Existence of an enabling legal/institutional/policy environment, as agreed by both parties;

ii) Quantity and quality of financial support towards identified projects/

programs in each sector is as agreed by both parties in the matrix;

iii) Legal and institutional reforms in support of the specific sectoral development;

d) Number of projects completed per sector per given period equals and compatible with number of projects a priori-identified

i) Improvement of performance in trade

How important is the contribution of trade for economic growth and development of the country in question? What gains does the country yield from the new trade regime? How can the positive effects of trade and development be strengthened?

Possible benchmarks include

i) Increased diversification of structure of the economy through the development of non-traditional export goods which improves the stability and quantum of foreign exchange.

Kenya has long been regarded as a tri-pronuclear economy virtually dependent on the export of three commodities to the EU, namely horticulture, coffee and tea. This has rendered the economy highly vulnerable to fluctuations in the world price of these products. To what extent are EPAs helping in the diversification of exports?

ii) Improvement in terms of trade of exports of the concerned country

Again, there are many episodes in Kenya's economic history to show that fluctuations in terms of trade have a significant impact on the country's growth and trade performance.

Competition arising from EU goods is expected to influence resource reallocation in the ACP economies away from heavy and light manufacturing, textile and services increasingly towards the sector of comparative advantage – agriculture – through increased use of the abundant factor –unskilled labour. This will lead to a shift in sectoral trade as well. The net effect will be negative terms of trade arising from the big sectoral price margins between agricultural products, manufactures and services. Similarly, deterioration in ACP ToT is expected because EU market is already nearly fully liberalised compared to ACP economies that is relatively protected; therefore, cuts on tariffs will be higher reduction effects on ACP imports than on EU imports. This implies ACP exports will be relatively expensive compared to EU exports, hence negatively affecting ACP ToT.

iii) Increasing traditional and value addition from exports

Everyone knows that most developing countries in Africa including Kenya export raw materials and primary goods to the EU. Do EPAs enable the country to export processed goods through value addition to the primary commodities?

iv) Revitalizing the commodities sector

About 50 developing countries, including many LDCs, depend on just two or three commodity exports for the majority of their export earnings. Some 39 among them depend on exports of a single commodity. Raising the profile of commodities in the multilateral and wider international trade and development cooperation agenda whilst fostering a supportive international trade and development for commodity dependent developing countries is critical for the timely achievement of the MDG on poverty.

Proposed indicators

The following indicators could be considered for monitoring trade performance:-

- Support towards efficiency and capacity building in trade facilitation
- Enabling legal/institutional/policy environment in support of effective trade facilitation system
- Legal and institutional reforms in support of efficient trade facilitation system
- Increase in Intra-regional trade (volume and value) by x% per annum
- Increased exports to the EU for target commodities (value and volume) by x% per annum
- Accompanying trade support reforms (foreign exchange regime, export/ import licensing systems etc)
- Trends in export concentration
- Trends in commodity dependence
- Trends in commodity prices and earnings
- Trends in domestic processing of commodities in developing countries (how about environmental policies regulating activities of processing industries?)
- Incidence of tariff escalation
- Trends in domestic value retention in the value chain (technology transfer)
- Needs and adequacy of commodity sector assistance

j) Effective/Improved Openness of the Markets

In principle, the ability of any developing country to fully exploit existing and potential export opportunities depends critically on the openness of markets (both in terms of access and entry) for their exports.

Possible benchmarks include

i) Elimination of tariffs (including peaks and escalation) applied to principle exports

ACP countries have been forced to confine their exports to unprocessed raw materials because of escalating rates of tariffs. In the case of Kenya, such tariff peaks and escalations occur in respect of the very products in which Kenya is deemed to have comparative advantage namely: food beverages (coffee, tea), tobacco, textiles, leather and fish and fish products.

ii) Reduced incidence of market entry barriers

Many ACP countries are subjected to a large number of non-tariff barriers (NTBs) including sanitary and phyto-sanitary (SPS) measures, Minimum Residual Level (MRL), market standards, Pest and Risk Assessment (PRA), and ROO. The simplification of rules may prove to be of specific benefit to the smaller companies of these ACP, since these companies, lacking the resources to address the cumbersome rules in these areas due to their smaller scale, find it too difficult and costly to enter the European market. Simplification of rules could also help to speed up dispute settlement procedures. If rules can be sufficiently simplified to make the procedures less cumbersome and taxing on ACP capacity, dispute settlement procedures may provide more equitable outcomes and hence become more ‘development-friendly’.

The benchmark here is that, following an EPA the ACP country in question must be relieved of a relevant number of these NTBs. Remember that, according to the EC, one of the main aims of the EPAs is precisely to address the issue of NTBs.

Proposed Indicators:-

- Trends in exports of value-added products to the EU by the developing country in question.
- Trends in tariff peaks and escalation on value-added exports, reduced from Z% to X%.
- Increase of cumulation of inputs necessary for efficient production from x% to xx%.
- Simplified rules in trade related areas, verified through, *inter alia:*-
    - reduction in custom procedures from number Z to X;
    - reduction in numbers of sanitary and phyto-sanitary measures from Z to X – however, in this area, simplification of rules must balance the health concerns for EU customers with the need to make rules transparent and controllable;

- reduction in the number of dispute settlement procedures, say from XYZ to CBA and this could also entail harmonisation of certain homogeneous procedures;
- successful accumulation of capacity to comply with trade-related rules.

k) Ensuring Equity between unequal Partners

Equitable rules and their fair application are the ultimate protection of the weaker trading nations. The principle of special and Differential Treatment under the WTO is meant to factor structural transformation and asymmetries between the developed and developing countries in to the trade agreements to make them fair and equitable.

A relevant reduction/elimination of EU subsidies:-
This is an issue that does not need any further elaboration since it is at the centre-stage of all trade discussions. For ACP countries to liberalise any sector affected by EU support measures, complete elimination of the EU support measures will have to be established. There should be no conditionality, such as the ‘double-zero’ conditionality on EU eliminating their support measures.

Development of indicators of infrastructure, technology, human development:
Development of all these factors that constitute the supply side constraints to the development of developing countries is the underlying philosophy of Aid for Trade (A4T). Again this is one of the avowed objectives of the EPAs.

Proposed indicators:-

- The trends in the per capita income of the developing country in question
- Size of subsidies provided by the EU after EPAs
- Trends in the provision of A4T (qualitative/quantitative) to the ACP country in question; is A4T being channelled to promote the productivity of the marginalised groups?
- Levels of domestic and foreign investment
- EPAs hope to attract investment through the establishment of effective regional markets. What is the trend in domestic and foreign direct investment after EPAs?

l) EPAs as Supporting social Goals

The millennium declaration calls upon the international community to create an environment at national and global level conducive to development and to the elimination of poverty. To that end; continued efforts must be made to ensure that the trading system is responsive to the key public interest issues already stated earlier, namely, eradication of poverty, fighting infections diseases and epidemics and ensuring provision of basic social services to the poor and the underprivileged.

Proposed indicators:-

- *Trends in poverty, relevant social indicators:*
  This can include a host of indicators including in the main of Human Development Index (HDI) and the Human Poverty Index (HPI).
- *Trends in access to basic services:* This can include trends in the ratio of government's annual expenditure on health, education.
- *Trends in the female and child labour participation in export sectors.*
- *Trends in world prices of exports from poverty–sensitive sectors:* Kenya, for instance, currently enjoys the benefit of a boom in horticulture prices in the EU market. But a widely prevalent view is that since the sector is largely owned by foreign firms, a lot of the economic earnings from any price boom may not accrue to Kenya and hence may have no major Impact on poverty reduction.
- Tariff and quota –free treatment of ACP exports.
- Trends in the imports of medicine by ACP countries without significant pharmaceutical base.
- Trends in food security status (ratio of food imports to food exports in volume and value).
- Exclusion of all products identified as necessary to protecting domestic agricultural producers.
- Trends in employment in the vulnerable food-crop sectors, such as - wheat, rice, sugar, dairy, maize, meat in the case of Kenya.

m) Achievement of Effective Market Integration and Improved Inter-regional and Intra-regional Trade

Proponents of EPAs have maintained that the EPA will promote increased trade. However, they deliberately fail to point to the direction of such trade increases. Under the standard EPA (that fulfils GATT Article 24 requirements), it is clear how the introduction of EPAs with the EU will increase EU exports to African markets since tariffs will be eliminated on EU exports (trade creation) and at a minimum EU goods will be made more competitive vis-a-vis third country suppliers (trade creation). But it is far from clear how this will increase African exports to the EU.

Equally, one of the avowed goals of EPAs is to build ACP regional markets and consolidating them before they are opened to the EU. The expected benefits from this type of market integration are to accrue from trade creation, and to the extent that there is more trade creation, ACP market integration will be deemed as successful. Other benefits of market integration accrue from comparative advantage that integration imposes on member states.

However, a successful market integration project requires certain conditions to obtain. The following would be considered minimum benchmarks for a successful implementation of market integration:-

a) A similar level of industrial development among member countries.
b) Harmonized national macroeconomic policies.
c) Regional macro-economic stability.
d) Regional political stability.
e) Significant intra-regional trade.
f) Complementary industrial development among member countries.
g) Significant differences among member countries factor endowments.
h) Significant distribution of the benefits of integration, and
i) A political willingness to share some level of sovereignty.

It is fairly obvious that many of these conditions are lacking in ESA, as in the rest of the ACP regions. As in ESA, most countries are at different levels of economic and industrial development, with little complementarities between their respective macro-economic policies, minimal reciprocal intra-regional trade. In fact intra-regional trade within ESA appears to be coming from Kenya and Mauritius, the (strongest) economies in the region to the rest of the member countries. Given the nature of uneven development in the region, the strongest economies with relatively developed manufacturing, financial and service sectors, have been enjoying a competitive edge over the rest of the countries and therefore have been the main beneficiaries of the economic arrangement. To the extent that these disparities remain unattended, the ESA-EPA region for all practical purposes will remain an unviable project.

Proposed indicators:-

- Trends in sales of ACP products in the EU market as well as between ACP countries.
- Rate of increase of sales from ACP exporters on the European market vis-a-vis growth in the rate of exports from the EU to ACP markets.
- Trends in output of the light and heavy industries in the ACP countries
- Trends in integration of trade in ACP countries; where does the balance lie between trade displacement resulting from EPAs and trade creation? What is the share of each ratio to the regional trade growth, which is bigger?

- Trends in terms of trade.
- Exclusion of products to protect domestic industrial producers is per the identified percentage by each ACP country.
- Price of industrial inputs imported from EU relative to pre-liberalisation prices.
- Size of change in prices of industrial inputs imported from EU relative to size of tariff cuts on those products –does tariff cuts lead to price reduction by the same amount, otherwise if custom revenue lost through a tariff cut is bigger than the gain in a fall in price of the product the developing country in question loses.
- Increase in production arising from specialization according to comparative advantages by X% per year.
- Increase in output resulting from better exploitation of scale of economies by X%.
- Improvement in terms of trade of the (ACP) group with the EU and rest of the world.
- Forced changes in efficiency arising from increased competition among the group, and
- Integrated-induced changes with direct effect on the quantity or quality of factor inputs, such as increases in capital inflows, and changes in the rate of technological advancement.

n) Coherence with other Trade Regimes to which ACP Countries are Party

Key to the development orientation of the international trading system is the degree of coherence that can be brought to bear among the different areas of trade negotiations and disciplines, between the different multilateral institutions and policies, and between these and regional and national processes and strategies. Special and differential treatment provisions under EPAs must not be less favourable than under the WTO.

Possible benchmarks and indicators include

i) *Donor conditionalities in the bilateral and multilateral trade agreements*: For example, World Bank conditionalities have robbed Kenya of the fiscal space needed for expenditure on social services. This has caused an inversion of social priorities that has restrained growth and poverty reduction and weakened response to the HIV/AIDS Endemic. The moral here is that liberalisation and other policies should not occur at the expense of the scope of fiscal adjustment.

ii) *Scope and coverage of WTO Agreements and those of EPAs (WTO plus/ WTO minus)*
iii) *Trade-related financial and technical needs and commitments*
iv) *Trends in ODA flows, debt relief, and debt service /export ratio:* Trends in ODA flows is important because one has to see if the resources from debt relief or AfT resources promised under any EPA comes as additional resources or substitute for the already existing levels of aid .If it is merely substitutes new aid for the already existing aid channelled say for development in areas such as health and education, the loss in terms of human development and poverty reduction may outweigh the gains from a new trade regime.
v) *Coherence with, for instance, the MDG and NEPAD/CAADP:* According to the NEPAD/CAADP initiative, African governments committed to allocate 10% of government revenue to agriculture. Does revenue loss through EPAs compromise this requirement?-7--

Conclusion

African countries have comparative advantages in the production of many commodities. But the comparative advantage does not automatically translate to competitive advantage. While the professed aim of EPAs is to facilitate the achievement of competitive advantage, there could be many a slip between the cup and the lip. As Rampa summarizes, agreements could entail huge costs to the development countries in terms of loss of fiscal revenues and other restructuring costs, loss of policy space for other national development strategies, loss of preference margins and expensive requirements to regulatory harmonization in areas of standardization and trade facilitation. Such losses could negate the benefits of market liberalization through an EPA. The benchmarks suggested are designed to ensure that this does not happen.

The categories of benchmarks and the specific benchmarks within each category mentioned are not exhaustive. They are mainly intended to show the complex nature of the EPA process in terms of judging and monitoring the benefits of EPAs to a given country like Kenya. They also give indications as to the broad areas which should be the focus of the benchmarks and the accompanying indicators. Once exhaustively identified, the biggest hurdle will be how to integrate development benchmarks in the EPA text. However, in Table 2 in the annexure, we illustrate how such a process can be undertaken. The table illustrates how trade policies in the three critical areas of market access, policy space and A4T can be directed to the four dimensions of sustainable development goals in economic, political, social and environmental goals. To the extent that this is achieved, the EPA project will be a successful one.

Table 1 (a) Values of major Kenyan export products to COMESA countries in 2001 (figures in Ksh.'000)

Product	Destination Country																
	Angola			D.R. Congo		Eritrea		Malawi		Rwanda	Sudan		Uganda				***Total***
Tea	-			-		103,691		-		-	1,200,863		11,001				6,935,070
Cigarettes	-			126,706		7,633		-		22,636	193,714		26,391				509,796
Refined petroleum products	-			25,775		100		-		289,478	40,329		6,917,038				307,529
Oils, perfumes, polishing & cleansing products	-			66,309	192	7,863	150,430	35,619	23,014	63,991	23,043	875,840	679,273	29,985	20,433	13,145	299,050
Paper & paperboard	-			73,285	219	1,370	85,451	1,988	14,067	31,311	7,904	307,770	1,071,693	4,423	5,360	180,558	180,558
Textile yarn	-			28,185	-	-	4,078	19,302	14,121	5,322	5,831	42,838	137,701	2,338	15,379	4,801	67,640
Made up garments	-			103,271	149	40,740	64,952	11,361	-	23,400	39,866	74,425	237,066	7,297	12,195	10,223	252,177
Cement	-			7,498	-	-	14,172	-	2,538	38,535	5,704	13,901	471,882	265	-	-	71,172
Iron & steel bars	-			58,945	-	-	-	-	-	82,348	2,646	105,661	354,876	3,321	-	-	65,634
Plates of iron & steel																	
Manufactured items of base metals																	
Office & stationery supplies																	
Total exports to COMESA, all products			243,837		7,022,843		1,993,784		329,429			9,327,535		389,709	168,948	1,030,293	

Source: Statistical Abstract 2002, published by Kenya's Central Bureau of Statistics

Table 1 (b) Export values of major manufactured products to other world markets outside COMESA in 2001 (figures in Ksh.'000)

Product	Destination Country										
	Germany	UK	Netherlands	USA	Italy	Sweden	Finland	Canada	Egypt	Stores	Other Countries	Total
Tea	175,050	7,287,998	121,573	1,042,764	9,380	3,850	10,166	135,633	6,810,772	1,747	18,886,169	34,485,101
Sisal fibre & tow	18,278	28,204	1,059	39,710	12,921	-	-	10,218	45,590	6	572,993	728,979
Pyrethrum extract	68,266	-	96,689	433,167	43,759	8,529	28,944	31,252	2,123	-	279,990	992,716
Petroleum products	-	1,042	-	-	15,546	-	-	-	3,085	3,030,565	9,295,474	12,345,712
Hides, skins	-	2,943	-	-	48,876	1,803	-	-	27,154	-	553,986	634,762
Wattle bark extract	-	-	-	-	1,738	-	-	-	3,068	-	214,503	219,309
Tinned Pineapples	637,425	50,128	707,526	20,981	239,049	5,084	58,180	-	-	-	1,299,364	3,017,737
Cement	-	-	-	103	-	250	-	-	-	-	1,031,076	1,031,429
Sodium carbonate (Soda ash)	-	-	-	-	-	-	-	-	1,277	-	1,991,698	1,992,975

Source: Statistical Abstract 2002, published by Kenya's Central Bureau of Statistics

Table 1 (c) Values of Kenyan manufactured exports to EU markets in 2001 (Ksh.'000)

Product	Destination Country								
	Germany	UK	Netherlands	Italy	Sweden	Finland	Total to EU	Other non-EUCountries	Total to all world Countries	% of manufactured exports to EU
Sisal fibre & tow	18,278	28,204	1,059	12,921	-	-	60,462	668,517	728,979	8.3
Pyrethrum extract	68,266	-	96,686	43,759	8,529	28,944	245,914	746,802	992,716	24.8
Meat & meat preparations	68,266									
Petroleum products	-	1,042		-		-		12,329,124	12,345,712	
Hides, skins		2,943		15,546		-		581,140	634,762	
Wattle bark extract		-		48,876		-		217,571	219,309	
Tinned Pineapples		50,128		1,738		-		1,320,345	3,017,737	
Cement	-	-	-	239,049	5,084	58,180	250	1,031,179	1,031,429	0.024
Beans, peas & lentils	-	-	147	-	250	-	147	106,472	106,619	0.14
Raw wool	-	42,588	-	-	-	-	42,588	40,626	83,214	51.2
Oil seeds, nuts & kernels	1,398	-	13,312	-	-	-	14,710	51,416	66,126	22.3
Total manufactured exports to EU	725,367	124,905	819,096	361,889	15,666	87,124	2,134,047	17,270,500	19,404,547	11

Source: Statistical Abstract 2002, published by Kenya's Central Bureau of Statistics

Table 1 (d) Values of major manufactured items imported from EU countries in 2001 (Ksh billion)

Product by broad definition	Year	UK	Germany	France	Italy	Belgium	Netherlands	Switzerland
Bevarages and Tobacco	1998	0.2	0.003	0.06	0.03	0.009	0.04	0.07
	1999	0.2	0.006	0.03	0.22	0.002	0.015	0.3
	2000	0.2	0.15	0.06	0.05	0.005	0.03	0.2
	2001	0.2	0.15	0.07	0.04	0.022	0.03	0.2
Crude inedible materials, except fuels	1998	1.4	0.4	0.2	0.2	0.05	0.5	0.002
	1999	1.4	0.3	0.08	0.2	0.08	0.4	0.03
	2000	1.3	0.4	0.09	0.3	0.1	0.5	0.05
	2001	1.2	0.6	0.07	0.3	0.1	0.6	0.09
Mineral fuels, lubricants & related materials	1998	0.1	0.2	0.9	0.01	0.07	0.3	0.05
	1999	0.1	0.1	0.6	0.01	0.04	0.2	0.04
	2000	0.4	0.3	0.3	0.5	0.03	0.6	0.005
	2001	0.05	0.2	0.2	0.3	0.2	0.3	0.3
Animal vegetable oils & fats	1998	0.02	0.007	0.002	0.006	0.002	0.04	0.001
	1999	0.04	0.007	0	0.003	0.0009	0.02	0.00001
	2000	0.04	0.009	0	0.1	0.04	0.004	0
	2001	0.02	0.01	0.00002	0.07	0.0002	0.002	0
Chemicals	1998	3.7	2.5	1.9	1.0	1.1	1.7	1.0
	1999	3.9	2.2	2.2	0.8	1.1	1.5	1.1
	2000	3.4	1.9	2.4	0.8	1.4	1.9	1.1
	2001	3.3	2.5	3.0	1.0	1.9	1.9	0.7
machinery & transport equipment	1998	12.0	5.3	3.7	2.2	0.9	1.7	0.9
	1999	9.1	6.5	1.9	2.3	0.8	1.5	1.0
	2000	11.9	4.1	3.9	2.5	2.5	4.3	0.8
	2001	9.5	6.5	5.4	2.0	3.8	1.3	0.9
	1999	7.0	1.9	1.7	1.1	0.9	1.2	0.4

Source: Statistical Abstract 2002, published by Kenya's Central Bureau of Statistics: Kenya

Table 2: Illustration on EPA Development Benchmarks and Monitoring

DRAFT Table for illustration on EPA Development Benchmarks and Monitoring

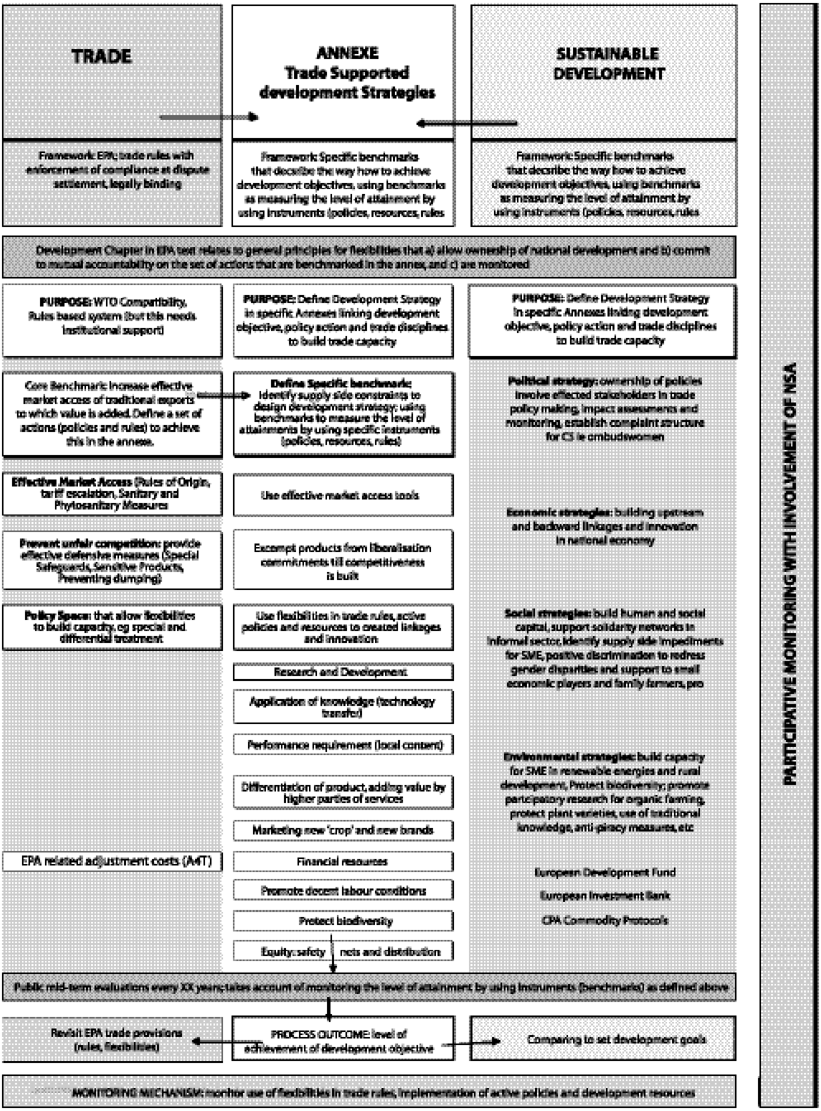
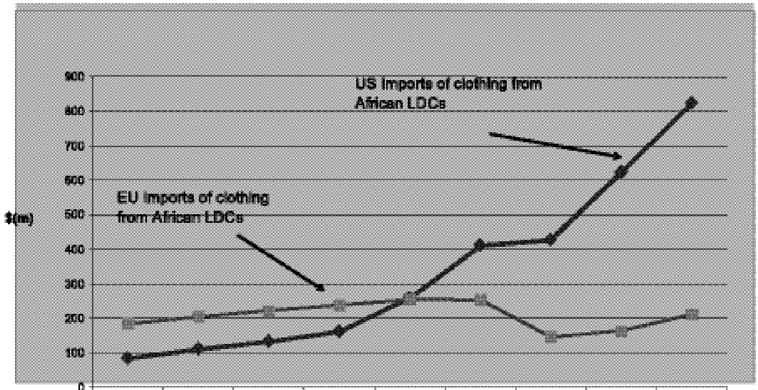


Figure 1: Less restrictive US rules of origin have strongly stimulated imports of apparel from African LDCs but EU imports have stagnated with strict rules



	1996	1997	1998	1999	2000	2001	2002	2003	2004
US	83.053	110.421	132.027	160.789	258.78	410.937	425.983	622.421	822.821
EU	183.003069	203.277855	221.364102	237.672807	253.63329	252.544378	144.996337	162.726034	210.504624

Adapted from paper presented by Dr. Mary Mbithi of University of Nairobi at Institute of Economic Affair's Workshop (Nov 2006)

FRIEDRICH EBERT STIFTUNG

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