

STATUS OF EPA NEGOTIATIONS

EASTERN AND SOUTHERN AFRICA APPROACH AND THE
CHALLENGES TO EFFECTIVE NEGOTIATIONS

EU

European Union

**ACP
Countries**

African Caribbean
& Pacific

ESA

Eastern and
Southern Africa

Onesmus Mugenyi

ACODE Policy Briefing Paper No. 3, 2004

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AND
THE CHALLENGES TO EFFECTIVE NEGOTIATIONS.

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List of Acronyms

| | |
|--------|---|
| ACP | African Caribbean and Pacific Countries |
| CAP | Common Agricultural Policy |
| CAEMC | Central Africa Economic and Monetary Community |
| COMESA | Common Market for Eastern and Southern Africa |
| EC | European Commission |
| EAC | East African Community |
| EPAs | Economic Partnership & Agreements |
| EU | European Union |
| ECOWAS | Economic Community of West Africa States |
| ESA | Eastern and Southern Africa Negotiating Region |
| EBA | Everything But Arms |
| EDF | European Development Fund |
| GDP | Gross Domestic Product |
| GSP | Generalised System of Preferences |
| IITC | Inter -Institutional Trade Committee |
| IGAD | Inter-Governmental Authority on Development |
| IOC | Indian Ocean Commission |
| LDCs | Least Developed Countries |
| MTTI | Ministry of Tourism, Trade and Industry |
| NDTPF | National Development and Trade Policy Forum |
| NSA | Non- State Actors |
| RoO | Rules of Origin |
| RNF | Regional Negotiating Forum. |
| SPS | Sanitary and Phyto - sanitary Measures. |
| WTO | World Trade Organization |

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Executive Summary

This briefing paper provides an overview of the ongoing negotiations for the planned Economic Partnership Agreements (EPAs) between the EU and the ACP countries. It explores the status of negotiations and in particular looks at the Eastern and Southern Africa approach to EPA negotiations. It gives an outlook of the emerging negotiating structures, negotiating mandate, objectives, guidelines and principles. The paper examines the unresolved issues under phase one of the negotiations which are of interest to ACP countries. It also provides a moderate analysis of the factors that may hinder effective negotiations of the economic partnership agreements. It is observed that issues relating to financial assistance for capacity building outside the European Development Fund (EDF) framework, compatibility of EPAs with World Trade Organisation (WTO) rules, alternative trading arrangements for non LDCs that may not be able to conclude and finally sign an EPA so as to ensure that no ACP country is left worse off at the close of the negotiations must be ironed out . There is need to revisit the rules of origin to open up substantial new export opportunities for ACP products. Market access, export refunds, service liberalization and domestic reforms that must proceed liberalization of trade in goods and services still remain dear to ACP countries and unless they are fairly resolved will continue to hinder progress in the negotiations.

The paper recognises that EPAs offer considerable potential benefit to ACP countries. However to realize the potential development benefit of the planned EPAs, ACP countries must be able to carry out a number of policy, institutional and administrative reforms that will be able to achieve pro-development outcomes through EPAs. It is important that the

ACP countries and institutions involved be well prepared in terms of human and financial resources. The EU must be more flexible and adopt a more development approach and where necessary, suppress their Commercial interests in the short run in favour of development needs of ACP countries.

It is contended that other than the unresolved issues under phase one, there are other potential challenges that may undermine the pace and effectiveness of the negotiations. These challenges include; geographical configuration adopted by the ACP countries, the overlapping nature of ACP-EU and WTO negotiations, the varying incentives to LDCs and non LDCs to negotiate EPAs, potential revenue loss and the need to restructure the fiscal instruments to ensure macro-economic equilibrium, limited capacity of ACP countries in negotiations and failure to address supply side constraints by ACP countries.

1. Introduction

The Cotonou Partnership Agreement came into force on April 1, 2003 in accordance with article 93(3) of the Agreement.² The Agreement provides a new partnership arrangement between the EU and the ACP States and creates a legal basis for further co-operation beyond the Lome Convention framework.³ One of the unique features of the Agreement is the commitment to negotiate new trading arrangements called Economic Partnership Agreements (EPAs) by December 31, 2007. Because of the nature of the ACP-EU trade relations,⁴ a number of trade issues ranging from agriculture and fisheries, market access, trade related issues, development dimension of EPAs, trade in services to legal issues are supposed to be covered during these negotiations.⁵

This policy briefing paper gives an overview on the status of the overall negotiation process for Economic Partnership Agreement.⁶ It particularly focuses on the ESA-EPA negotiations. The objective is to generate information for civil society and other stakeholders so as to enhance their knowledge of the negotiation process. It is also intended to provide independent analysis of the key issues for negotiation in order to inform the work of the Inter-Institutional Trade Committee during the negotiation process. The briefing paper therefore explores the status of the negotiations to date, the key challenges, and unresolved issues of concern to ACP countries.

² The last instrument of ratification or approval was deposited on February 27, 2003

³ See Article 1 of Chapter one of the Cotonou Partnership Agreement.

⁴ For details see Mugenyi, O., Naluwairo, R., (2003). Uganda's Access to European Agricultural Market. ACODE Policy Research Paper No. 6.

⁵ Draft Joint Report on the all-ACP-EC phase of EPA negotiations, ACP/00/118/03 Rev.1; ACP-EC/NG/NP/43. Brussels, 2 October 2003.

⁶ Other issues of negotiations are dealt with in the subsequent briefing papers.

2. Status of negotiations.

The negotiations for the Economic Partnership Agreement are designed to take an evolutionary approach. The period between June 2000 and September 2002 was dedicated to initial preparations. This period was set aside for initial preparations for the negotiations. Formal negotiations were scheduled to begin in September 2002.⁷ The period, September 2002 to December 2007 referred to as the preparatory period is supposed to be used, *inter alia*, for “capacity-building in the public and private sectors of ACP countries, including measures to enhance competitiveness, for strengthening of regional organizations and for support to regional integration initiatives, where appropriate with assistance to budgetary adjustment and fiscal reform, as well as infrastructure upgrading and development, and for investment promotion.”⁸

⁷ Cotonou Partnership Agreement, 2000. Article 37:1

⁸ *Ibid.* Article 37(3)

The table below represents key timetables for the negotiations as set out in the Agreement and during the informal negotiations.

Table 1: Timetable for EPA negotiations

| Process | Time frame |
|---|--------------------------------|
| Exploratory discussions and ACP self selection of the basis for negotiations | 2000-2002 |
| Commencement of negotiations on future trade arrangements | September 2002 |
| Exploration of alternative possibilities for Non-LDCs | 2004 |
| Non-reciprocal duty free access essentially for all products from least developed countries to be introduced. | 2005 |
| Formal and comprehensive review of progress in negotiations. | 2006 |
| End of application of current Cotonou Partnership Preferences. | 31 st December 2007 |
| Entry into force of new Economic Partnership Agreements. | 1 st January 2008 |
| Transitional implementation of Economic Partnership Agreements. | 2008-2018 |
| Full entry into force of WTO compatible free trade area arrangements. | 2018/20 |

For practical purposes, the negotiations for EPAs were divided and sequenced into two phases. Phase 1 was to take place at an all-ACP-EC level and was intended to address “horizontal” issues of interest to all the parties.⁹ It was scheduled to last for one year beginning September 2002 to September 2003.

The ACP heads of State and governments adopted the decision on the negotiation of EPAs with the EU on July 19th, 2002¹⁰. The meeting endorsed the negotiating guidelines and called on the ACP Council of Ministers to ensure that EPAs contribute to the development of ACP states. The guidelines stressed the importance of negotiations that comprehensively address the external effects of the Common Agricultural Policy (CAP), the supply side constraints facing the ACP producers and fiscal consequences of moving towards free trade with the European Union. The guidelines highlight the need to structurally transform the ACP economies as the basis of their integration in the world economy. It was emphasised that given the adverse effect of reciprocity on domestic production, ACP countries cannot adopt reciprocity as the main objective of EPA negotiations. The EU Commission guidelines identified a number of key elements in the negotiating strategy which include enhanced market access to the EU for ACP exports, gradual liberalisation of ACP economies, support regional integration, open discussions on trade in services and adopt a comprehensive approach linking trade and development cooperation among others.¹¹

During this phase, negotiations were envisaged to take place at two levels; ambassadorial and ministerial. Indeed, work at ambassadorial level started in October 2002. The meetings at

⁹ ACP-EPA negotiations.; Joint Report on all-ACP-EC phase of EPA negotiations. Op.cit note 5.

¹⁰ Agritrade (2003) Economic Partnerships (EPAs) Executive Brief Available at <http://agritrade.cta.int/postCotonou> accessed on 23rd March, 2004

¹¹ The EU Commission guidelines were adopted on 12th June, 2002.

this level were intended to allow parties to exchange views on issues pertaining both to the conduct and substance of the negotiations. The technical preparations for the negotiations on the part of ACP countries are undertaken by ACP secretariat under the supervision of the committee of Ambassadors. On the EU side, the European Commission takes the lead role. Right from the beginning of the negotiations, commissioner Pascal Lamy took the lead at all levels.¹²

The process of negotiations during this phase was done in sessions. The dedicated session on legal issues allowed an exchange of views on issues such as principles and objectives of EPAs, defining of the parties to EPAs, dispute settlement procedures as well as ACP mechanism for monitoring the negotiations for the second phase.

The dedicated session on development dimension on EPAs largely focused on how to ensure that EPAs contribute to development. There was exchange of views on areas for negotiations and a decision was taken to conduct negotiations along 6 negotiating groups i.e Market access, Agriculture and Fisheries, Services, Development issues, Trade related issues and Legal issues. However, there were also sharp disagreements with a consequence that at the July-August, 2003 ministerial meeting, a number of ministers indicated that they were not ready for the second phase negotiations until the disagreements were ironed out. They were quickly reminded of Article 37(5) which is to the effect that those who considered themselves ready could proceed and start the second phase. At this level the negotiations were characterised by alliance building and arm twisting. The politics that surrounded this ministerial meeting facilitated the cohesion of the newly created loose negotiating blocks. The Economic Community of West African

¹² Mr. Pascal Lamy is the European Union's Commissioner for Trade

States (ECOWAS) and the Central Africa Economic and Monetary Community (CAEMC) from West and Central Africa opted to move on to the second phase whereas other blocks felt it was not yet the appropriate time.¹³

3. The unresolved issues under phase 1 negotiations

While there was a general agreement on the negotiating groups, the first phase of the negotiations has been marked by sharp disagreements that have limited the meaningfulness of the negotiations themselves. These disagreements constitute the first set of challenges and include the following:

Negotiating objectives of the phase 1

While the ACP states were keen to come up with a formal framework agreement on the six general areas for the negotiations which would be largely binding to guide phase II, the EU States insisted that the parties should restrict themselves to issues of clarification without a formal agreement. This implied that the outcomes of phase one are not binding and cannot be used as points of reference in phase II negotiations. This raises a question as to whether phase I of the negotiation was a success and useful process for ACP countries. It can be concluded therefore, that the outcome of phase I was the desired outcome of the European Union and ACP countries lost out.

Additional Financial Assistance for Capacity Building

There are continued difficulties with respect to availability of funds to support ACP countries to effectively participate in the negotiation process and restructure their economies.

At the current rate of disbursement and EDF complex and cumbersome procedures, it is doubtful that the funds will be

¹³ Personal discussion with Raymond Agaba Principal Commercial Officer MTTI, Kampala

fully disbursed by the 2010. Even then the EDF resources are already committed to focal sectors identified by ACP countries and cannot easily be channeled in the context of mid-term reviews.¹⁴ Although ACP countries have argued for the provision of special funds for the negotiations, as and when need arises there is general belief among the EU States that the funds to support the negotiations should come from the EDF grants. ACP countries still face enormous human and infrastructure resource constraints. There is need for institutional reforms in order to address supply side constraints. Unless additional and more flexible funding is provided to address these issues, to expect negotiation of EPAs that will address poverty concerns and transform the economies of ACP countries is next to impossible.

Compatibility of EPAs with WTO rules.

There are underlying disagreements on how to address issues of compatibility of the EPAs with the World Trade Organization (WTO) rules. Although the ACP countries have emphasized the need to adjust WTO rules in order to accommodate the needs of the ACP countries, the EU believes that those rules are adequately flexible to address ACP concerns. The continuous negotiations under WTO are basically intended to make the rules more fair so that poor economies are integrated further into the world economy. The European Commission's (EC) Pre-judgment that the rules are fair and flexible enough is unfortunate to say the least.

Alternative trading arrangements for non LDC countries

On market access, the ACP ministers maintained that no ACP state should be left worse off at the end of the negotiations whether or not participating in EPAs. This implies that the EU

¹⁴ Agritrade (2003) Economic Partnership Agreements (EPAs) Executive brief, op.cit note 10.

must explore alternative trade arrangement for ACP countries particularly non LDC ACP countries that are unable to sign an Economic Partnership Agreement. The European Commission still appears reluctant and contend that such alternative trading arrangement would not be WTO compliant. Further the EU is convinced that this position would encourage countries not to take EPA negotiations seriously. The approach by the EC seemingly does not take into consideration the economic and political dynamics within ACP countries that can constrain the process of negotiations. The assumption that by 2008, all ACP countries will be in position to trade within the framework of an EPA may not easily be realised.

Tariff dismantling, reduction and rules of origin

On tariff dismantling, the ACP ministers favoured a five-year moratorium on the introduction of any tariff reduction by ACP countries under Economic Partnership Agreements but the European commission felt that there was no need for moratorium on tariff dismantlement and that sensitive sectors can be addressed through back loading tariff reduction where it is necessary.¹⁵ In respect of tariff reduction the ACP ministries felt that phasing out of tariffs by ACP countries should be linked to the successful attainment of predefined development indicators. The European commission on the other hand was determined to link the tariff reductions to clearly defined timetable and not the attainment of development indicators, which it argues, are not WTO compliant. The EC's assumption is that the Development Aid to build capacity and infrastructure will be forth coming at the right time and quantities and applied appropriately by governments. However, the previous experience with donor aid shows otherwise. Insisting on measuring progress by timeframes rather than development indicators undermines the EC's commitment to integrate the

¹⁵ Ibid

ACP states in the world economy and eradication of poverty.

On the rules of origin, the ACP countries maintained that they should be revised with a view of opening up substantial new export opportunities for ACP manufacturers whilst still allowing substantive value to be added in ACP countries. The EC felt that the rules of origin should be harmonised across different agreements. The net impact of the position adopted by the EC is to limit opening up new market opportunities for ACP exports. Consequently, such a position contradicts the adopted negotiating principle for ACP countries to the effect that EPAs must provide for a special and differential treatment for vulnerable economies.¹⁶

Market access

The ACP countries felt that processing, marketing, distribution and transport are essential to the transformation of ACP economies and should be in place before phasing in free trade. The European Commission on the other hand believes that these issues will have real impact only if there is a vibrant private sector and the conclusion of EPAs should take precedence. It is my contention that development of vibrant private sector will depend on the development of infrastructure and not the other way round. Governments in developing economies still have a primary responsibility of putting into place the necessary infrastructure and reform institutions that facilitate trade in order to attract development of the private sector. All the literature reviewed during this study does not show any developed economy in the world where trade liberalisation proceeded infrastructure development and institutional reforms. The European Commission position therefore, cannot be taken in good faith.

¹⁶ See ACP negotiating guidelines endorsed by the Head of states on July 19th, 2002.

Furthermore, the ACP countries demanded to see a standstill of the SPS measures for 5-10 years and the launching of a meaningful dialogue on how genuine EU health concerns can be addressed without excessive burden on the ACP suppliers, which may make the EU markets uneconomical. The EC believes that the equivalent agreement is not possible given the weakness in ACP countries testing and verification arrangements. Yet, Article 10 of the Agreement on the Application of Sanitary and Phytosanitary Measures provides in part that where the appropriate level of sanitary or phytosanitary protection allows scope for the phased introduction of new sanitary and phyto sanitary measures, longer time frames for compliance should be accorded on products of interest to developing economies. This is intended to maintain the opportunities for the export of developing economies. The EU position seems to ignore the mischief intended to be addressed by Articles 4(1),¹⁷ 5(4),¹⁸ 9¹⁹ and 10 of the Agreement.

Export refunds.

The ACP countries considered export refunds trade distorting and demanded that they should be comprehensively addressed but the EU felt that it has already made agriculture support less distorting under CAP reforms. It is important to note that CAP reforms merely constitute changing the nature of support given to EU farmers. From price support, CAP will now be a direct support system.²⁰ This will not have substantial effect on agriculture overproduction with its attendant consequences of dumping that devastates local production systems in developing countries.

¹⁷ Article 4 (1) provides for equivalent Sanitary Mesasures.

¹⁸ Article 5(4) provides that members should when determining appropriate level of sanitary or Phytosanitary Protection, take into account the objective of minimizing negative trade effects.

¹⁹ Article 9 provides for provision of technical assistance to developing countries to fulfil Sanitary and pytosanitary conditions

²⁰ For details see Mugenyi O., Naluwairo R., (2003) Uganda's access to European Agricultural Market Challenges and opportunities, . ACODE Policy Research Series No 6

Fisheries Framework Agreement

Further the ACP countries felt that there is need for establishing a framework agreement on the ACP-EU fisheries incorporating fundamental principles on responsible and sustainable fisheries management and other measures to stimulate local fisheries development. On the other hand, EU argues that such a framework agreement especially where it relates to inland fisheries is not necessary. It is my submission that for purposes of sustainable fisheries such framework is vital and ought not be brushed aside.

Trade in services

There was a disagreement on whether discussion on free movement of persons (mode 4 service) should constitute an integral part of any reciprocal liberalisation of trade in services. This mode of service is of a particular importance to developing countries because of their poor developed service industry. Mode 1 (cross boarder trade), mode 2 (consumption abroad) and mode three (commercial presence) all require substantial investment in infrastructure and institutional reforms yet resources are not available. Mode 4 has the potential of benefiting poor countries. Consequently, EU's position of a more restricted approach to liberalisation of this mode of service should not be taken lightly and further negotiations in this area becomes a must do. Temporally workers still face a range of barriers in the EU. The barriers are not inherent in the trade policy but in immigration legislation and labour policy. The visa and work permit requirements and procedures do not only constitute barriers but are also humiliating and demeaning.

Trade related areas.

There has not been any movement in negotiation on trade related issues. There has been only an initial exchange of views which have highlighted areas of disagreement. The ACP countries believe that only trade related issues mentioned in the Cotonou Agreement should be covered by EPA negotiations²¹ and only in areas where ACP countries have expertise. The argument has been that even then, the scope of the trade related issues should not go beyond what the countries have agreed to at a multilateral level. ACP countries demanded to see capacity building support programs for the development of specific service sectors under implementation before entering into negotiations.

The EU on the other hand pushed for commitments beyond those made at WTO level and demanded the list of related issues under Cotonou to include procurement and would want to see negotiations starting as programs for capacity building are designed. In my view, this position is not fair to ACP countries approach. Negotiations cannot be entered into when the parties are not able to understand the issues. This is erroneous and ACP countries ought not to give in on this position.

4. Phase 11 of the EPA negotiations

The second phase of the EPA negotiations was scheduled to commence in September 2003. However, because of the failure to agree on common negotiating objectives and principles during the first phase and therefore failure to achieve an agreement, most ACP countries by September 2003, remained undecided as to whether negotiations should start. Unlike the first phase, the second phase of negotiations are taking place at the level

²¹ See Chapter 5, part 3, Title Two of the Cotonou Agreement. These are competition policy, intellectual property rights, standardisation and certification, Sanitary and Phyto-sanitary standards, trade and environmental issues, labour standards and consumer policy.

of ACP countries and negotiating regions are expected to address the commitments and demands of specific ACP countries.

5. The Eastern and Southern Africa EPA Negotiations

Whereas phase one negotiations were at the ACP-EU level, phase II negotiations are at regional level. This aspect has therefore stimulated the development of new and loose negotiating blocks. However, the signing of EPAs between ACP countries and the EU is expected to be with those blocks that fall within a given Customs Union. The alliance under ESA block therefore, is for purposes of strengthening the capacity to negotiate but they cannot sign an EPA as a block unless they are integrated into a Customs Union.

During the 8th summit of the COMESA Heads of State that took place in Khartoum in March 2003, it was found convenient and strategic that the Eastern and Southern African states which are also ACP countries should negotiate an EPA with the EU as one block. This culminated into the ESA-EPA negotiating region. Since that time, countries that committed themselves to negotiate under ESA block have been engaged in a series of consultations. On the 7th of February 2004 these countries officially launched the ESA-EPA negotiations. The ESA-EPA negotiating region is basically composed of 16 countries drawn from different regional groupings ie COMESA, SADC and IOC.²² The launch was a signal that these countries were ready to start phase two negotiations. This was the third negotiating region in the ACP region to launch negotiations, the ECOWAS and SADC having launched negotiations in October, 2003.

²² These countries include Uganda, Kenya, Ethiopia, Mauritius, Zambia, Zimbabwe, Malawi, Rwanda, Seychelles, Eritrea, Djibouti, Democratic Republic of Congo, Burundi, Madagascar and Comoros.

6. ESA negotiating guidelines, principles and mandate

At the close of the year 2003, the ESA configuration revised and adopted the negotiating guidelines and recognised among others the following negotiating principles.

- That the ESA configuration shall be an open arrangement with an opt-in provision for COMESA and SADC countries that may wish to take advantage of the negotiating configuration.
- The ESA configuration shall recognise the sovereignty and interests of member states but the signing of the EPA in 2007 shall reflect the level of integration attained by the region and its member states at the time.
- The negotiations under phase two will be done in parallel to the negotiations in respect of unconcluded issues under phase one.

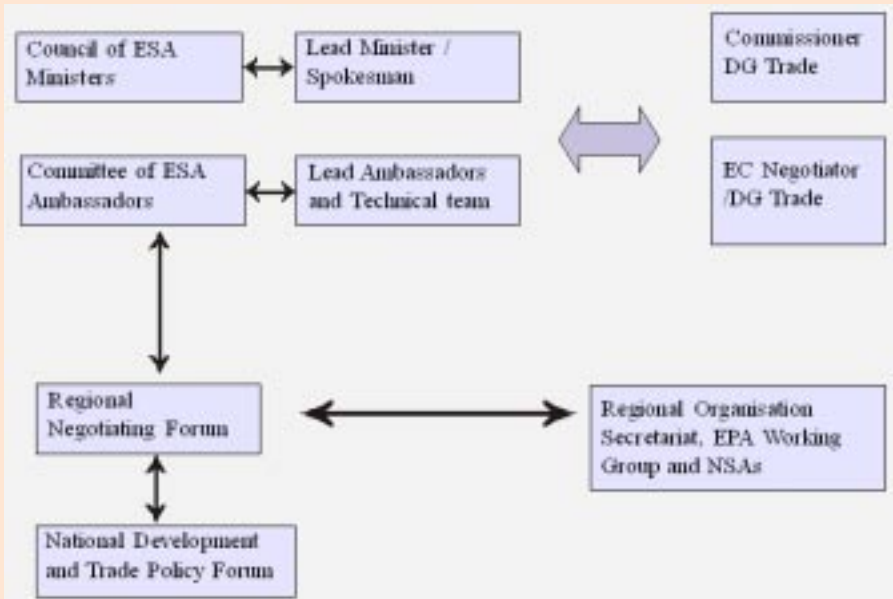
Members also agreed on the negotiating principles and reiterated that EPAs should be sustainable and development oriented, compatible with WTO rules, incorporate special and differential treatment for LDC group, vulnerable economies, land locked and Island countries. It was also agreed that the ACP regional integration should take precedence over EPAs implying that ACP states must be allowed to first consolidate their own regional integration process.

The ESA region has also concluded the negotiating mandate that sets the negotiating structure, the co-ordination, negotiating principles and objectives.

7. Structure of ESA - EPA Negotiations.

The ESA region has opted to carry forward negotiations under six clusters, these being; Development issues, Market access, Agriculture, Fisheries, trade in services and Trade related areas. Negotiation of these issues is expected to take place at Ministerial and ambassadorial levels. However, the preparatory process shall be done by the National Technical Committees. Below is the negotiating structure.

Figure 1: Negotiating structure



Source: Negotiation Mandate for the ESA-EU Economic Partnership Agreement, Final Version, 2004

At the regional meeting held in Lusaka in December 2003, the COMESA and ESA Ministers approved the negotiating guidelines for carrying forward the negotiations. The ministers agreed on the allocation of responsibilities as indicated below;

Ministerial Level

| Cluster | Misterial lead spokesperson | Misterial lead spokesman |
|---------------------|-----------------------------|--------------------------|
| Development issues | Sudan | DRC |
| Market access | Mauritius/Rwanda | Burundi and Zambia |
| Agriculture | Malawi | Uganda and Ethiopia |
| Fisheries | Madagascar | Seychelles |
| Trade in services | Zimbabwe | Rwanda |
| Trade related areas | Kenya | Djibouti |

Ambassadorial level.

At the ambassadorial level, in terms of taking lead role in the negotiations, countries agreed as indicated in the table below;

| Cluster | Ambassadorial lead spokesperson | Ambassadorial alternate spokesperson |
|---------------------|---------------------------------|--------------------------------------|
| Development issues | Ethiopia | Zambia and Burundi |
| Market access | Kenya | Zimbabwe and Uganda |
| Agriculture | Mauritius | Zimbabwe and Madagascar |
| Fisheries | Eritrea | Seychelles and Madagascar |
| Trade in services | Malawi | Rwanda and Uganda |
| Trade related areas | Sudan | DRC and Burundi |

At the National level each country is requested to establish a National Development and Trade Policy Forum (NDTPF), which should be multi - sectoral.²³

This committee is required to determine the optional development and trade negotiating position for the Country and to prepare briefs outlining these positions, which would be used by the country representatives at the regional negotiating forum. Each NDTPF is required to send at least two representatives to the Regional Negotiating Forum (RNF), nominate a team leader and an alternative team leader.²⁴

The Regional Negotiating Forum shall be composed of representatives from capitals of each country participating, ambassadorial lead spokes-persons from Brussels, representatives from a regional NGO involved in trade and development issues.

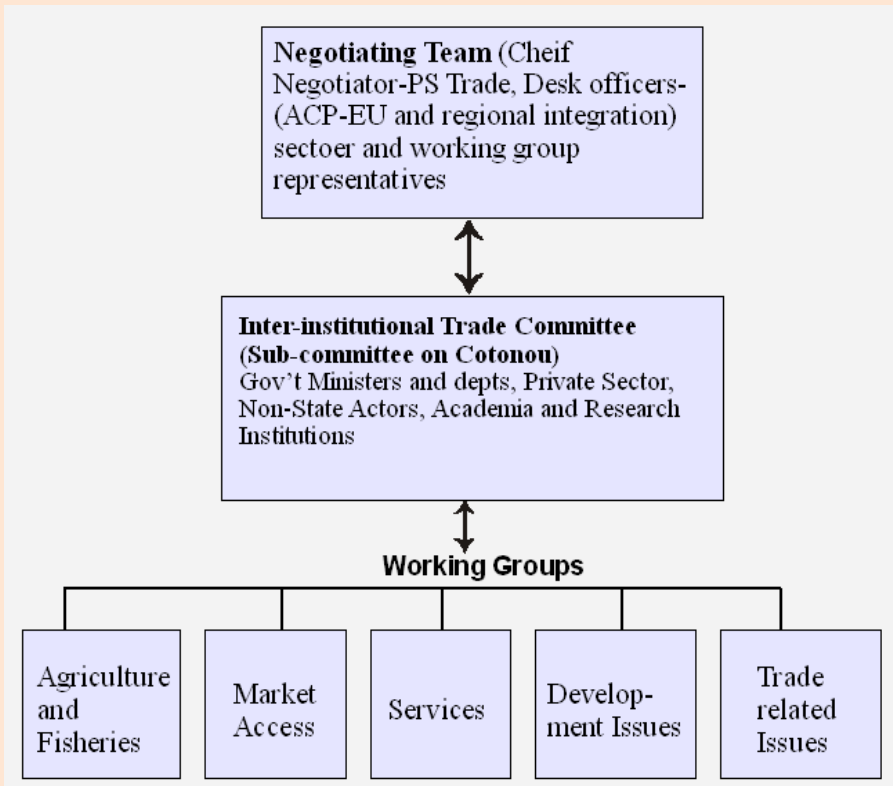
8. Uganda's progress in EPA negotiation Process.

During the 8th summit of the COMESA heads of state that took place in Khartoum, Sudan, it was agreed that Eastern and Southern Africa countries should negotiate EPA as a region. The initial membership was constituted by countries from COMESA, EAC, IOC and IGAD. Uganda being a member of EAC and COMESA committed itself to negotiate the EPA under ESA geographical configuration.

²³ See Negotiating Mandate for ESA -EU Economic Partnership Agreements with the EU, Final Version Feb, 2004

²⁴ Ibid

Figure 2: Uganda's current negotiation structure.



At the national level, trade related issues are discussed under the frame work of the inter-institutional trade committee. The committee has been acclaimed as a useful and innovative consultative forum for trade policy formulation and evaluation as it involves a number of stakeholders. Recently, it was restructured into four broad sub-committees namely; sub-committee on WTO, sub-committee on Cotonou, sub-committee on regional agreements and Bi-lateral initiatives and sub-committee on domestic initiatives.

Because of the relevancy and mandate of these committees, it was considered appropriate to constitute a committee on Cotonou into a National Development and Trade Policy Forum. The committee is mandated to develop a working programme taking into account the ESA road map for EPA negotiations as well as continue to assess the impact of EPAs at all stages of negotiations. It is also required to design and supervise the implimention of national capacity building programmes on trade policy, negotiating technique and related issues, hold national dissemination workshops at which results of the studies carried out by NDTPF and national positions on EPAs can be assessed and generally to start work on negotiating duties in preparation for negotiations. The first committee meeting after the constitution thereof was on the 22nd March, 2004.

9.Challenges to Effective EPA Negotiations.

Geographical configuration

Although EPA process offers an opportunity to advance outward oriented regional negotiation, determining the nature of EPA groupings while supporting the existing regional trade agreements is not an easy matter. The high degree of heterogeneity in regional trade arrangements which include a number of overlapping preferential trade areas, free trade areas and customs union with

Box 1

| | |
|--------|--|
| AMU | Arab Maghreb Union |
| CB | Cross Boarder Initiative |
| CAEMC | Central Africa Economic and Monetary Community |
| CILSS | Permanent Inter-state Committee on Drought |
| COMESA | Common Market for Eastern and Southern Africa |
| EAC | East African Community |
| ECCAS | Economic Community of Central African States |
| ECOWAS | Economic Community of West Africa States |
| IGAD | Inter-Governmental Authority on Development |
| IOC | Indian Ocean Commission |
| SACU | Southern African Customs Union |
| SADC | Southern Africa Development Community |
| WEAMU | West African Economic and Monetary Union |

Note: COMESA and SADC are not customs Unions Currently. COMESA has 20 Countries, twelve of which are LDCs and SADC has 14, seven are LDCs, and 9 (Angola, Democratic Republic of Congo, Malawi, Mauritius, Namibia, Seychelles Swaziland, Zambia and Zimbabwe) are members of both blocks.

different structure, operational rules and implementation levels complicate the situation further. The 77 ACP countries have been divided into six broad regional groupings; the Caribbean, the Pacific and the four loosely defined African sub-regions:- Western, Central, Eastern and Southern. In Africa itself, there are about 13 regional and sub-regional economic integration agreements with countries belonging to more than one grouping as presented in box I

The ESA geographical configuration raises a number of issues that could affect the negotiations. In the first place, within the configuration, some countries are regarded least developed and others developing and this raises difficulty when it comes to determining regional interest. For example Kenya, Tanzania and Uganda belong to the East African Community but some of these countries also belong to other different regional groupings. If the three countries were ever to sign an EPA as a Customs Union, then reconciling interests negotiated under different -blocks becomes complicated. Furthermore, the negotiating guidelines provide that regional integration takes precedence over EPA negotiations and ACP states must be allowed time to consolidate their own regional process. Given the trend of the regional processes characterized by limited human and financial resources, it remains uncertain whether by 2007 the ACP configurations within the region will be in position to sign Economic Partnership Agreements.

Overlapping negotiations

The EPA negotiations between EU and the ACP countries overlap with the multilateral negotiations of the WTO Doha Development Agenda, and there are several important interactions between the two sets of negotiations. Many of the difficult trade liberalisation issues especially agricultural ones need to be addressed under WTO. Issues of export subsidies and trade

distorting domestic production support are subject of WTO's Doha negotiations. Because of the sensitivity of these issues and the involvement of a number of countries, they ought to be settled at WTO level. More progress on EPAs is possible if the Doha Agenda is concluded and a framework for resolving these issues established. The speed at which liberalisation issues are disposed off at the multilateral level determines the progress of EPA negotiations at regional level. Consequently, if the Doha Round current schedule is pushed back for a year or two, which is apparent given the trend of events, the two sets of negotiations will be carried out in parallel. Most ACP countries are already over-stretched, and simultaneous negotiations of EPA could increase the strain on the analytical capacity of these countries and undermine the quality of the outcomes.

Least Developed Countries and non-LDCs varying incentives to negotiate EPAs.

The Cotonou Partnership Agreement provides that cooperation arrangements and priorities shall vary according to partners level of development, its needs, its performance and its long term strategy. The EU subsequent adoption of the Everything But Arms (EBA) Initiative was in this spirit and the initiative accords LDCs special treatment in order to enable them overcome serious social and economic difficulties hindering their development. In contrast to LDCs the non LDCs in Sub-Saharan Africa have greater need for securing quota and tariff free access to EU market through the trade components of the EPAs. When the Cotonou arrangement expires in 2008, the non-LDCs that will not have concluded the EPAs will have to revert to the Generalised System of Preferences (GSP) status. The EU-GSP currently provides less favourable preferential access than the Cotonou Agreement. The product coverage is narrower, margins of preference are much lower and the rules of origin are less favourable. Since it is apparent that the LDCs and non-

LDCs will have varying incentives to negotiate EPAs with the EU, difficulties may arise when two or three groups of these countries are members of the same customs union or free trade area. This is likely to undermine regional integration efforts. For example if the three E. African countries were ever to sign an EPA as a Customs Union, how can Kenya trust Uganda an LDC country that has an option to negotiate the EPA or not to.

Potential revenue loss and the need to restructure the tax system.

One of the critical issues that is likely to affect the process of the negotiations is the potential loss of revenue that is posed by EPAs. Revenues from tariffs still constitute a big portion of the GDP of the countries in the region. Loss of such revenue has a big impact on the macro-economic stability. Countries would need much long time to restructure the indirect tax systems in order to fill the gaps. In line with Article 29 of the Cotonou Agreement, the EU would need to provide technical and financial assistance to carry out the necessary tax reforms so that elimination of tariffs on imports does not devastate the economies.

Lack of flexibility within the EU.

The first phase of negotiations has set a bad precedent in terms of EUs flexibility in the negotiations. It is apparent that EU has pre-determined positions which it is set to guard at what ever cost. The deliberate effort to frustrate the conclusion of an agreement at the close of the first phase raises doubt as to whether the EU is committed to the negotiations that are intended to improve the poor economies.

Limited Capacity of ESA negotiating region.

The negotiating capacity of ESA region in terms of human

resource as well as financial capacity is still wanting. There is still limited skilled human resource to carry out analytical work to inform the negotiations at national, regional and multilateral levels. Most ESA countries run cash budgets and are heavily indebted. The economies are financially constrained and unable to invest in research and training in relevant areas. The negotiators in most cases are not equipped with researched information and data to support their positions. Most countries have not done impact assessment studies and have not yet identified the offensive and defensive strategies that will help to identify sensitive products that require protection from the imports and those that can be used as a bargaining chip to obtain trade concessions from the EU.

Failure to define national interests and to address supply side constraints.

A number of countries within the ESA region still lack coherent trade regulatory frameworks and policies that define national interests. Countries like Uganda are yet to put in place the national trade policy that define national interests and objectives among others. Most ACP countries still face a lot of structural problems that greatly hamper production and marketing. Agitation for markets must be supported by quality products and consistent supply. Countries must therefore address supply side constraints.

Failure to make timely and necessary preparations for effective negotiations.

In all the preparatory processes, especially at the national level, there is always limited time allowed for consultations with relevant stakeholders. The time for consultations is always unrealistic to allow preparations for any meaningful

contributions to the negotiations and the agenda for meetings. Preparatory meetings are often called and the agenda and background documents provided late and at times in the course of the meetings allowing little time for analysis and synthesis. Dissemination of key timeframes to the members of the National Development and trade policy forum and other stakeholders has hitherto not been effective and undermines the preparatory process.

10. Moving towards effective negotiations

In conclusion, it is observed that for ACP countries to benefit from Economic Partnership Agreements there is need for sufficient preparations, critical analysis of the issues for negotiation, EU flexibility, relaxation of Technical Barriers to Trade (TBT) and additional funding for structural transformation to meet the challenges of free trade. Because of limited analytical capacity, many ACP countries will need substantial technical assistance to prepare for EPA negotiations. The financial support must be increased in real terms beyond the Cotonou level to finance the transitional and adjustment costs associated with trade under the EPAs. ACP countries must deal with supply side constraints, address food safety systems that take into consideration safety concerns of the intended markets. There is need also to understand the consequences of CAP reform on the ACP economies and develop strategies to deal with the negative consequences.

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