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Regional Perspectives

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Negotiating an Economic Partnership Agreement for Eastern and Southern Africa

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Introduction

The main objectives of the Cotonou Agreement are, by building on existing regional integration arrangements, to assist with the smooth and gradual integration of the ACP states into the world economy through enhancing their production, supply and trading capacity as well as their ability to attract investment. These objectives are to be realised in conformity with the provisions of the WTO and, taking account of the respective levels of development of ACP countries, are to be achieved through the negotiation of Economic Partnership Agreements (EPAs).The negotiations on EPAs were launched in Brussels on 27 September, 2002. At the opening session an agreement was reached to sequence the negotiations in two phases. The first phase was at an all-ACP–EC level and during this phase it was intended to address horizontal issues of interest to all parties. The first phase lasted for one year and culminated with the preparation of a joint ACP–EC report (ACP/00/118/03/Rev.1 and ACP–EC'/NG/NP/43) which, among other things, agreed on the principles and objectives of EPAs.

The Joint Report also agreed on a common approach to guide the second phase negotiations (which were to be at the level of ACP countries and regions) in market access, agricultural and fisheries, services, trade-related issues and development support.

The meetings held during the first phase of EPA negotiations allowed the parties to converge on a number of issues but, at the end of the phase, divergent views remained. Therefore, both parties decided to continue discussions at the all-ACP–EC level, in parallel with the regional negotiations, and agreed:

- to establish an all-ACP–EC Technical Monitoring Committee (comprising representatives of the different regional groupings, the ACP Secretariat, the Troika of the ACP Committee of ambassadors, and the EC), in order to maintain transparency with regard to the regional negotiating processes;
- to request the Joint ACP–EC Ministerial Trade Committee to ensure mutual understanding on horizontal issues of interest to all parties; and
- that ACP–EC Ministers would meet as appropriate to take stock of the discussions.

These agreed actions took place, at best sporadically, if at all, and the second phase of EPA negotiations, which was launched in October 2003, have been conducted without the level of monitoring at the all-ACP level that was envisaged at the end of the first phase.

Configuration of the Eastern and Southern Africa Region

The regional negotiations in Eastern and Southern Africa were launched in Mauritius on 7 February, 2004. Prior to this launch, COMESA, represented by its Secretariat, had held negotiations with other regional organisations in the Eastern and Southern Africa region, these being the Secretariats of the East African Community (EAC), the Inter-Governmental Authority on Development (IGAD), the Indian Ocean Commission (IOC) and the Southern African Development Community (SADC) on the configuration to be used in the second phase of the negotiations.

The ACP, and the EU, have traditionally divided the ACP into six regions, these being the Caribbean, West Africa, Central Africa, Eastern Africa, Southern Africa and the Pacific Region. The Pacific Region and the Caribbean are, essentially, physi-

cally defined whereas the African regions are not. West Africa is usually defined as the region covered by the Economic Community of West African States (ECOWAS) and incorporating the member states of the West African Economic and Monetary Union (UEMOA). The Central African region is largely defined by the membership of the Central African Economic and Monetary Union (CEMAC).

In Eastern and Southern Africa, the ACP/EC boundaries of geographical regions do not conform to any of the memberships of the Regional Integration Organisations (RIOs). Both COMESA and SADC, the two largest RIOs in the Eastern and Southern African region, have ACP members that are in at least two ACP/EC geographical regions. The smaller RIOs, these being EAC, IOC and IGAD, are subsets of the two larger RIOs (except for Somalia, which is a member only of IGAD). Under the Lomé Conventions this overlap did not matter too much as there was a working arrangement that SADC had its own Regional Indicative Programme, which accounted for all of the European Development Fund (EDF) allocation to Southern Africa (as defined by the EC), while selected activities of COMESA, IOC, IGAD and EAC were financed from the EDF allocations to Eastern Africa.

In addition to this, the Lomé Convention provided non-reciprocal, duty-free market access to all ACP countries (except South Africa and with a number of tariff rate quotas and seasonal restrictions) into the EU, which is now dependent on a WTO waiver for its continued implementation, and up to 31 December, 2007.[1]

From the start of the EPA negotiations, in 2003, COMESA was in favour of being part of a large negotiating region. After it became obvious that EPAs were not going to be negotiated on an all-ACP basis, COMESA began examining the possibility of an all-Africa ACP. However, this also proved to be impractical so the COMESA Secretariat started a consultative process to gauge support for an EPA that would cover the memberships of SADC (excluding South Africa) and COMESA (excluding Egypt).

The rationale for this approach was the need to preserve and promote African unity, the need to comply with the provisions of Article 37.5 of the Cotonou Agreement and the need to pool scarce resources so that the region had the best chance of negotiating a favourable outcome.

This approach also recognised that EPA negotiations should not, in any way, weaken the process of regional integration already embarked on in Africa and should:

- ensure that the objectives of the African Union were promoted, which could only be done if Africa worked together in sub-regions as large as possible so that the continent remained united;
- ensure the solidarity and cohesion of the ACP group and preservation of the Lomé *acquis*;
- not force countries into making unnecessary choices about membership of Regional Integration Organisations: decisions that were taken for valid and sovereign reasons and which should not be questioned simply because of the EPA negotiating process;
- allow the optimal use of scarce resources (technical and financial) available to the region in the RIOs, and in member states;
- remove duplication of effort;
- recognise that ACP countries eligible to negotiate EPAs have similar market access constraints and common development needs;
- use negotiating structures already agreed on at the all-ACP level and maximise, not duplicate, the use of available expertise;
- send a strong political message to the rest of the world about the readiness of African countries to enter into multilateral and bilateral trade and development negotiations as a united force;
- allow the initiative of the negotiating process to be taken by the ESA ACP group so that it became a demandeur and was not continually responding to proposals from the EU; and
- maximised political leverage by working with as many African ACP countries as possible.

The rationale for negotiating an all-Eastern and Southern Africa EPA can also be seen in the fact

that the development needs of ESA ACP countries eligible to negotiate EPAs are remarkably similar. Exports from those countries into the EU are almost the same and include tourism; fish and fish products; horticultural crops and fresh vegetables; tea and coffee; cotton; textiles and apparel; and commodities covered by the protocols (mainly sugar but also including beef).

The structure of the Eastern and Southern Africa ACP economies is also very similar and, as a consequence, there are very few exports to the EU of manufactured items, except textiles and apparel, or of services, apart from tourism. For those ESA ACP countries eligible to negotiate an EPA and that actually export to the EU, the EU market access constraints they face are almost identical and can be placed into two main categories, these being rules of origin and regulations concerning sanitary and phyto-sanitary and environmental issues. Tariff issues have been of lesser importance in terms of market access.

The proposed joint COMESA-SADC configuration also recognised and respected the sovereignty of all member states. Although it was recommended that negotiations of EPAs would be done in the context of Eastern and Southern Africa, it was recognised that the actual signing of EPAs would be done only after 1 January, 2008 and would reflect the level of integration attained by the region and its member states at this time. Configuration of EPAs would be clear by 2008. If an ESA country was part of a customs union it would sign an EPA as a customs union. Otherwise it would sign an EPA as a country.

In the Eastern and Southern African region especially, there was a lot of debate amongst the Members of COMESA and SADC over configuration as a whole and the position of Egypt (as a COMESA member) and South Africa (as a SADC member). The position of Egypt was quite clear – it is not an ACP country, and already had a bilateral agreement with the EU, so was not eligible to take part in EPA negotiations.

The position of South Africa was not as clear. South Africa is an ACP member as it has signed the Cotonou Agreement. South Africa also has a bilateral agreement, the Trade and Development Co-operation Agreement (TDCA) with the EU, which it spent four years negotiating and which it signed in 1999. Partly because of the TDCA, a special protocol (Protocol 3) is included in the Cotonou Agreement to deal specifically with the ACP membership of South Africa. Article 8 of Protocol 3 sets out the Articles of the Cotonou Agreement and its Annexes that will apply to South Africa and those that will not apply. The entire Part 3, Title II, on Economic and Trade Co-operation of the Cotonou Agreement is designated as not applicable to South Africa. As EPA negotiations are dealt with under Part 3, Title II (in Chapter 2) of the Cotonou Agreement, according to the Cotonou Agreement South Africa cannot be a part of the EPA negotiations. In addition, Article 2 of Protocol 3 states that the TDCA takes precedence over the provisions of the Cotonou Agreement.

The TDCA covers, among other things, the Free Trade Area in terms of products and rules of origin. Under the TDCA South Africa has undertaken to achieve full liberalisation of 86% of imports from the EU by the end of a transitional period of 12 years.

As the TDCA takes precedence over the Cotonou Agreement it is not clear how other SACU member states (these being Botswana, Lesotho, Namibia and Swaziland) that are part of one customs territory will be able to negotiate an EPA outside the TDCA. Presumably, to be in conformity with the provisions governing the operations of a customs union, the other ACP members of SACU will need to accept an EPA that is within the provisions of the TDCA, which implies that an EPA covering SACU will include full liberalisation of 86% of imports from the EU and the TDCA rules of origin.

This is not to deny that the Cotonou Agreement provides for ACP member states to not only decide for themselves whether or not to enter into an EPA with the EU but also to decide on the configuration of the EPA they want. However, it should also be borne in mind that the framework within which EPAs are being negotiated is the Cotonou Agreement and, as such, decisions on EPAs and their geographical configurations need to be in conformity with the provisions of the Cotonou Agreement and its three pillars of: the political dimension, econ-

omic and trade co-operation; and development finance co-operation.

The position held by COMESA was that, in the Eastern and Southern Africa (COMESA–SADC) region at least, if EPA negotiations started on the basis of the membership of RIOs, rather than on the basis of the process of regional integration, this would weaken the creation of the African Union. In this case, overlapping membership could be beneficial to continental integration as it would encourage members of COMESA and SADC to take similar positions in both the organisations they were members of, for the sake of consistency and against a 'common enemy', and so bring the two organisations closer through the use of internal forces of the membership, within COMESA and SADC, rather than trying to externally force a merger or a split.

The COMESA and SADC Secretariats held a number of meetings throughout 2001 and 2002 on the possibility of negotiating an EPA that encompassed the joint memberships of COMESA and SADC (excluding Egypt and South Africa for the reasons given above).

In January 2001, at a meeting at the SADC Secretariat Headquarters in Gaborone in Botswana, the two Secretariats agreed that it was essential for the two organisations to co-operate on developing an EPA and to have a joint approach to the EPA negotiations. It was further agreed that, to take account of the different levels of development, there needed to be acceptance of differential liberalisation of tariffs within an EPA against the EU.

In May 2001, the Chairman of COMESA and Chairman of SADC, meeting in the margins of the COMESA Summit meeting in Cairo, Egypt, established the COMESA-SADC Task Force, which was tasked with co-ordinating the process of rationalising and harmonising the programmes of both institutions and reporting to their respective policy organs on progress made. This Task Force was immediately endorsed by the COMESA heads of state.

At the same COMESA Policy Organs meeting, the COMESA Council of Ministers directed the Secretariat 'to prepare an orientation paper on the nature of the ACP–EU Partnership Agreement'.

In October 2001, at the Second COMESA–SADC Task Force meeting in Botswana, it was agreed that SADC and COMESA would work together to prepare a joint position on the EU Economic Partnership Agreements. Informal discussions between the COMESA and SADC Secretariats on taking a common approach to the EPA negotiations continued throughout 2002 and a number of meetings with the member states were held at which the issue of configuration was discussed.

In May 2002, at their meeting held in Addis Ababa, Ethiopia the COMESA Council of Ministers decided that EPAs should have a development dimension and be coherent with the overall objectives of the Cotonou Agreement and the development needs and choices of the ACP states and regions. Council further re-affirmed its decision regarding the two-tier approach to EPA negotiations. The Council of Ministers called on member states to determine what elements should be negotiated at the all-ACP and regional levels. It reiterated its concern for specificities of LDCs, small landlocked and vulnerable countries to be taken into account during the negotiations. Council also noted that COMESA needed to make a decision on regional configuration as a matter of urgency if it wanted to be able to negotiate an EPA rather than have one prescribed by the EU.

In January 2003 the COMESA and SADC Secretariats were invited to a meeting in London, England, organised by the Commonwealth Secretariat, to work together to prepare an annotated agenda for a meeting of COMESA and SADC member states from which a negotiating mandate could emerge. The outcome of the meeting was an agreement to prepare a series of studies on:

- negotiating structure and negotiating strategy;
- generic issues in market access;
- case studies in market access;
- market access in trade in services; and
- a regional investment agreement.

In March 2003, at its meeting in Khartoum, Sudan, (to which SADC was invited as an observer) the COMESA Council of Ministers decided that Eastern and Southern African countries that are also

ACP countries should negotiate an EPA as a group, and this was endorsed at the heads of state level.

The reaction by some SADC member states following the decision of the COMESA Council of Ministers that Eastern and Southern African countries should negotiate EPAs as a group, was strongly negative and critical. These SADC member states objected to the fact that COMESA seemed to have taken a decision on their behalf, although this was not the intention of COMESA. As can be seen from the above, COMESA and SADC had been holding discussions on the possibility of negotiating a single ESA EPA with the EC since 2001 and were under the impression that this was supported by the SADC Secretariat and the SADC member states. The understanding of COMESA at the time was that SADC would take a similar decision at its Summit, which was scheduled a few months later than that of COMESA.

Some SADC member states then started a campaign to create an EPA negotiating configuration comprising just SADC member states, with South Africa as an observer to the process. After a number of what were often heated and acrimonious exchanges between countries, the configurations stabilised into the Eastern and Southern Africa (ESA) configuration, which was the full membership of COMESA minus two countries[2] (Swaziland, which was a member of SACU so *de facto* part of the TDCA, and Egypt which is not an ACP country) and the SADC Minus configuration comprising seven of the fourteen SADC members at that time, these being the SACU membership (Botswana, Lesotho, Namibia and Swaziland minus South Africa, which is not part of the negotiations) and Angola, Mozambique and Tanzania.

Options on whether or not to negotiate an EPA

The options open to all ACP countries are to either negotiate EPAs or to not be a part of an EPA. The current options are dependent on whether the ACP country in question is a least-developed country (LDC) or not. If a country is not an LDC, its current option is to be a part of the EU's General System of Preferences (GSP) scheme. If the ACP country is an LDC it has the option of being a part of the Everything But Arms (EBA) arrangement.

In terms of the EPA negotiations, the options for ACP countries are, therefore, as follows:

1. **Not negotiate an EPA – option available is GSP for non-LDCs:** Market access under the EC's General System of Preferences (GSP) scheme is not as favourable as market access conditions under Cotonou. Therefore, if a developing (non-LDC) ACP country decides not to negotiate an EPA it will, in the short term, have its tariff preferences reduced compared to what was offered under the Lomé Convention. In addition, it would lose the opportunity to enter into a true negotiation process with the EC on such issues as market access and rules of origin and it would need to agree to accept whatever the EC chooses to give as a GSP.

2. **Not negotiate and EPA – option available is EBA for LDCs:** The EBA initiative came into effect in March 2001. It grants duty-free access to imports of all products from LDCs, with the exception of arms and munitions, and without quota restrictions. Liberalisation has been immediate except for three products, these being fresh bananas (to be liberalised in 2006), and rice and sugar (both to be liberalised in 2009). EBA is embedded in the EU's GSP scheme and access to the EU market is governed by the rules of the GSP. However, in contrast to the GSP, which will be reviewed at the end of 2004, EBA is for an unlimited period and not subject to periodic review. ACP LDC countries, because of the EBA arrangement, will face the same market access levels (these being zero tariffs into the EU) whether or not they are a part of an EPA. Therefore, as far as LDCs are concerned, being part of an EPA will not benefit them in terms of lower tariffs into the EU. However, EBA provides duty-free access to the EU market for all LDCs so the margins of preference that ACP LDCs had over non-ACP LDCs (such as Bangladesh) are eliminated.

3. **Negotiate an EPA:** The main advantages for LDCs and non-LDCs alike in negotiating an

EPA, as opposed to the GSP and EBA schemes, are as follows:

- EPAs give ACP countries the chance to actually negotiate better market access provisions with the EU, whereas EBA and GSP conditions are not negotiable – they are set by the EU.
- EPA negotiations give ACP countries a chance to negotiate more favourable rules of origin so that they improve market access for ACP producers. The rules of origin that apply to EBA are the same as for the EU–GSP and are even more restrictive than those of Cotonou.
- As EPA negotiations will cover both trade and development issues, there could be major gains for countries entering into these negotiations from the dynamic effects of EPAs. Although these dynamic effects are difficult to quantify, it may be these effects that make EPAs more interesting to ACP countries. The dynamic effects include using EPAs as a stepping stone to multilateral liberalisation by making it easier to 'sell' unilateral free trade to domestic producers as removal of protection is compensated by improved access to EU markets and possibly higher levels of investment; possibly enhancing the credibility of African trade reforms and 'locking in' these reforms; improving the regulatory environment in ACP countries; and protecting access into EU markets from further deterioration.

Since the start of the EPA negotiations, and immediately prior to this, there has been a healthy debate taking place on the costs and benefits of EPAs to ACP states. On the one hand there are those who hold the opinion that EPAs will, in principle, be detrimental to the economies of ACP states while, on the other hand, there are those who hold the opinion that EPAs could be a useful mechanism for accelerating the economic development and regional integration of the ACP regions.

The eventual outcome of EPA negotiations, and how close EPAs will be to either of the above mentioned scenarios, will depend to a large extent on how well prepared the ACP side is for the EPA negotiations and how well they conduct these negotiations with the EC. If ACP regions are internally well organised and use the resources they have in an efficient and cost-effective manner, they will be better able to take advantage of the opportunities provided to them by EPAs and will be in a better position than they would have been if they simply used the provisions of Everything But Arms (for LDCs) or the Generalised System of Preferences (for non-LDCs). If, on the other hand, ACP countries are not able to get themselves well organised they will surely lose opportunities they may have had under the EPA process to improve their economic position.

This is not to deny that there will be costs to ACP countries in negotiating EPAs, in terms of the institutional costs of taking part in the negotiations and in terms of the possible revenue losses, higher competition and costs of fiscal adjustments that may be needed. However, unless an ACP country has opted not to implement economic liberalisation measures, these costs are inevitable. The challenge faced by ACP countries in the EPA process is how to make these adjustments under EPAs, and use the provisions of the Cotonou Agreement and the European Development Fund to help pay for these adjustments, rather than to attempt these adjustments outside of the framework of EPAs and at a later date. A further challenge for the ACP is how to obtain additional funds over and above EDF resources to help finance the process of adjustment necessary if ACP states are to play a more meaningful role in the global economy.

ESA negotiating structure

The countries that are part of the ESA EPA negotiating Group are: Burundi, Comoros, Djibouti, DR Congo, Eritrea, Ethiopia, Kenya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Uganda, Zambia and Zimbabwe.

The ESA Group launched negotiations with the EC on 7 February, 2004 in Mauritius, with the official launch followed by the first meeting between the ESA Ministers and the EC Commissioner of Trade. This meeting agreed on a joint ESA–EC Roadmap which, among other things, sets out the phases to be followed in the negotiations as being:

1. Setting of Priorities and Negotiating Procedures (March–August 2004)
2. Substantive Negotiations (September 2004 to December 2005)
3. Continuation and Finalisation (January 2006 to December 2007)

The negotiations are being carried out at two levels, the ministerial level and the ambassadorial/senior official level, and in six clusters. The ESA Group has selected six ambassadors (based in Brussels) and six ministers to lead the negotiations as follows:

Cluster	Ministerial lead spokespersons	Ministerial alternate spokespersons
Development issues	Sudan	DR Congo
Market access	Mauritius/ Rwanda	Burundi and Zambia
Agriculture	Malawi	Uganda and Ethiopia
Fisheries	Madagascar	Seychelles and Djibouti
Trade in services	Zimbabwe	Rwanda and Djibouti
Trade-related areas	Kenya	Djibouti

Cluster	Ambassadorial lead spokespersons	Ambassadorial alternate spokespersons
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	DR Congo and Burundi

Each ESA country has established a National Development and Trade Policy Forum (NDTPF) which is both multi-sectoral (agriculture, trade, investment, services, etc.) and representative of the public and private sectors and non-state actors (NSAs) involved in trade and development work. The function of the NDTPF is to determine what the optimal development and trade negotiating position for the country is and to prepare briefs outlining these positions, which can then be used by the representatives of the country in the Regional Negotiating Forum (RNF) in preparation of the ESA position for the negotiations with the EC.

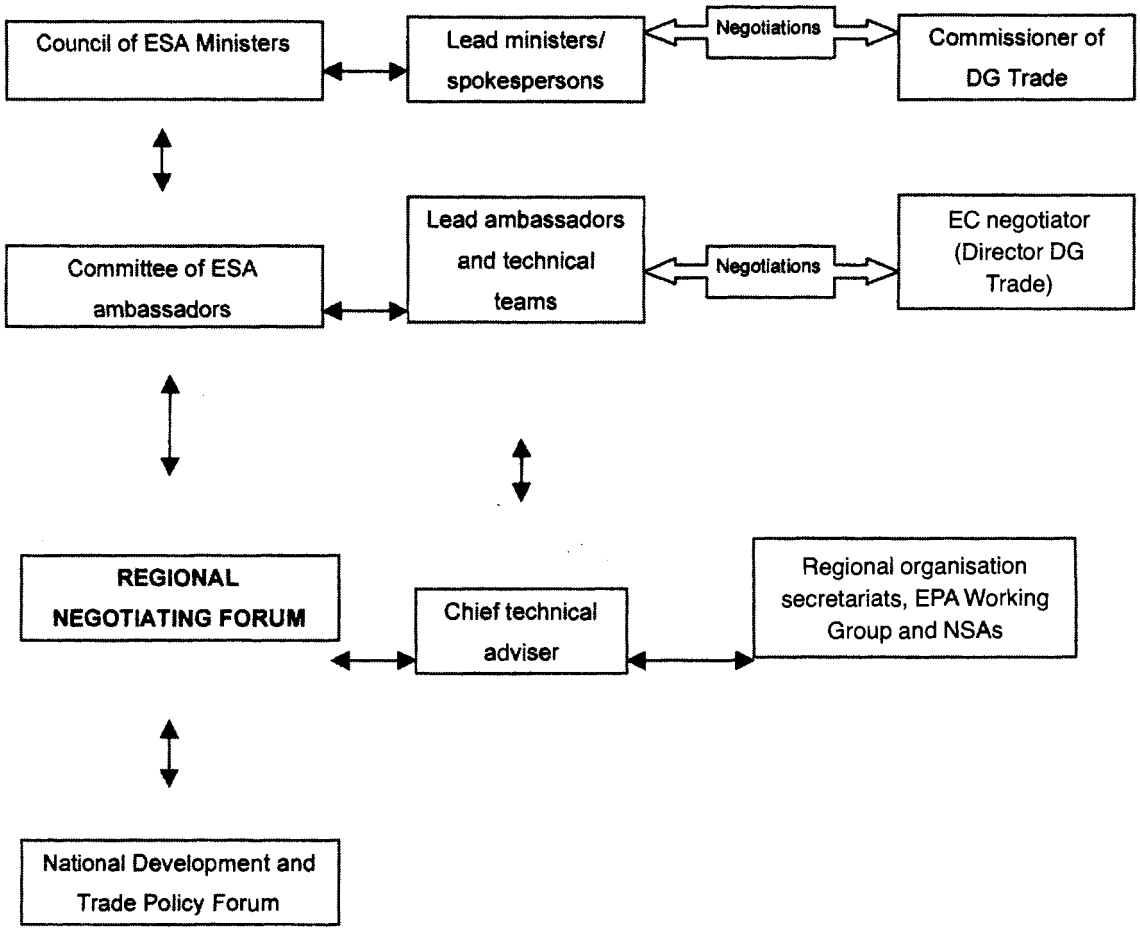
Each NDTPF sends at least three representatives to the RNF, which is scheduled to meet on average once every three months, and more frequently if necessary, during the EPA negotiating period. Each NDTPF has nominated a team leader and an alternate to the team leader, and the team leader or his/her alternate is to be present at all RNF meetings to ensure coherence, continuity and consistency. The members of the rest of the team from each NDTPF are experts in the various sectors to be negotiated under the EPA and vary according to the agenda of the RNF. Depending on issues being negotiated, an ESA member may co-opt experts with relevant expertise to act as advisers.

The membership of the RNF are the countries of the ESA EPA Negotiating Group, currently the sixteen members (public and private sectors and non-state actors) listed earlier. Other participants in the RNF are the ambassadorial lead spokespersons from Brussels and invited guests.

The Secretariats of the regional organisations involved in the ESA EPA negotiations (which are currently COMESA, EAC, IOC and IGAD) are mandated to act as the Secretariat for the RNF, with COMESA taking the lead and co-ordinating role. The Secretariat assists the RNF in the preparation of a series of written negotiating briefs to be used by the negotiating teams who will negotiate an EPA with the EC. Members of the RNF are part of the team to support the ESA ambassadorial lead spokesperson in the EPA negotiations.

The ESA EPA Group has also recruited a chief technical adviser (CTA) who, under the direction of the ESA ministers, Brussels ambassadors and the Regional Negotiating Forum will, amongst other things, help to develop and execute negotiating strategies for the EPA negotiations. The CTA is not the ESA region's chief negotiator but is in place to assist the lead ambassadors in the negotiations and in preparing for the negotiations.

The agreed negotiating structure is as follows:



Content of the ESA EPA

The ESA region has placed great emphasis on the fact that, as well as promoting regional integration; preserving the Lomé *acquis*; and being WTO compatible; EPAs must be instruments for development that contribute to the integration of the ACP states into the world economy, and to poverty eradication. In this context, it is imperative that, under the EPA process, capacity should be built first, then markets enlarged through the removal of barriers to trade and through improving the predictability and transparency of the regulatory framework for trade, thereby creating the conditions for increasing investment and mobilising private sector initiatives and enhancing the supply capacity of the ACP states. To achieve this, the principle of asymmetry and sequencing should be in-built into an ESA EPA, and due account taken of specific economic, social, environmental and structural constraints of the ESA region, as well as of their capacity to adapt their economies to the EPA process. They further need to take account of the development policy objectives of the ESA region.

Although the EPA process has been on-going for nearly four years, there are still some issues as regards coverage and content of EPAs that are still not clear, such as the following:

1. **Whether the EPA process is just an FTA negotiating process or something more than this.** The EPA negotiations only take account of negotiations on trade and trade-related aspects. This is reinforced by the fact that DG Trade sup-

plies the Chief Negotiator and that the EC's position on development is that this is covered by the EDF programming activities. The EC has consistently stated that the finances available for development are those allocated to the EDF, which will be used in accordance with the EDF's agreed Regional and National Indicative Programmes (RIPs and NIPs). Realistically, (or unless there is a significant change of heart by the EU and its Commission) between now and when the negotiations on EPAs are to be concluded (end-2007) there is little that can be negotiated in the development context which is not already agreed in the EDF9 NIPs and RIPs.[3]

2. **Whether there is a policy or political dialogue, which should take place under EPAs.** There is no provision, either in the negotiating structures or the Cotonou Agreement, for a political dialogue, but the Cotonou Agreement is supposed to be a partnership agreement and, as EPAs are a major component of the Cotonou Agreement, it would follow that provision should be made for a policy or political dialogue. Under most negotiations with the EU, such as the TDCA, provision is made for initial discussions on the scope and depth of the negotiations. Unless this is considered to have been included in Phase I (all-ACP) of the EPA negotiations, no provision is made for this dialogue with the EC.

The ACP countries are also experiencing serious problems in accessing money which is allocated to them through the EDF. Although EDF resources are substantial, the EDF9 procedures the EC insists on applying significantly reduce both the efficiency and availability of these funds. As part of the negotiations some regions wish to include talks to explore ways in which the EDF procedures could be interpreted in a more liberal manner so that the implementation efficiencies of previous EDFs can be regained, without sacrificing transparency and accountability in any way.

In the case of the ESA Group, a Trade Negotiation Facility was negotiated with the European Commission to assist with the financing of preparations for an EPA. The facility, which was for just under €2 million, was intended to finance short-term technical assistance to carry out technical studies and to finance the regional meetings necessary to build consensus in the region before it could negotiate with the Commission. Owing to the procedures involved in recruiting locally based consultants,[4] the bulk of the funds provided under the EDF9 Regional Indicative Programme in support of EPA negotiations have been used to finance meetings. This has led to an impression being created in some parts of the European Commission that the ESA region's sole activity in preparing for EPA negotiations has been to hold workshops and meetings. This is, in fact, far from the truth. A significant number of studies have been carried out, and papers written, either by staff of the COMESA Secretariat and other Secretariats of Regional Organisations, or by consultants financed using other sources of funds.

Development negotiations

Economic Partnership Agreements are supposed to be both trade and development oriented and, in this respect, the ACP Group has continuously stressed the importance of the development component both as a cross-cutting issue and as a stand-alone issue. This is in recognition of the need to remove supply-side constraints if the region is to be able to take full advantage of the liberalised trade environment that the successful negotiation of EPAs implies.

1. For most negotiating regions, the development component of EPAs is the most important component as unless the benefits of economic liberalisation can be demonstrated to the electorate of ESA countries the process will be unsustainable and doomed to failure. It is only by addressing the supply-side constraints bilateral and multilateral economic liberalisation, in which trade liberalisation plays a part, will be realised.

2. The main concerns in terms of the development dimension are:

- how to measure the costs of implementing EPAs;
- how to access funds to meet the costs of adjustment, given that the EC consistently states that the only funds available to the ACP from the EU

are those in the European Development Fund; and

- how to implement a series of programmes that will remove supply-side constraints in the ESA region and so make the region more competitive so that it is able to participate in the global economy in a more sustainable and meaningful way.

Sectoral issues

As stated above, development issues are both sectoral and cross-cutting. Dealing with sectoral issues first, each ACP negotiating region needs to determine the sectors in which they require development assistance. These will probably include the sectors of sanitary and phytosanitary; standards; fisheries; trade facilitation (including upgrading of infrastructure); trade in services; and intellectual property. In these sectors, needs assessments will be required and, based on these assessments, a costed proposal could be produced. If the example of SPS is used, an ACP negotiating region will first need to carry out a stock-taking exercise of what is in place at present. Based on the stock-taking, the group could then do a needs assessment to meet a particular target, such as being able to conform to EU Food and Feed Regulations in cut flowers and fruit and vegetables. This needs assessment could then be costed and the resultant proposal could form the basis of negotiations with the EU. This exercise could take place in each relevant sector. It is not necessary to complete these negotiations by 31 December, 2007 to comply with WTO provisions but it may be necessary to complete this exercise as soon as possible to ensure that the EU makes the necessary budget provisions to meet these requirements.

Removal of supply-side constraints

Development as a cross-cutting issue refers to meeting adjustment costs and removing supply-side constraints. There has been a lot of emphasis placed on the demand-side of the development equation, meaning that if the ACP puts in place regulatory systems that are transparent, rules-based and investor friendly, foreign direct investment will flow into ACP countries and development will take place. It is, however, probably too simplistic to argue that once the demand side is taken care of, and economic distortions are removed, each country will have a competitive advantage in something and will be able to supply this to the rest of the world. What is required by the ACP countries is a set of tools that address the removal of supply-side, not just demand-side, constraints. The supply side involves ensuring that an infrastructure to support competitive production is put in place.

In the past, attempts to remove supply-side constraints have been general and generic. For example, there have been attempts to get donors to finance the rehabilitation and/or reconstruction of national transport networks, with varying degrees of success. A more targeted approach to the removal of supply-side constraints, which is linked to increases in productive capacity, could be a more effective and efficient strategy to adopt. An example of this more targeted approach could be linked to the Integrated Framework process in countries where there is an IF process. If the country does not have an IF process it could follow a similar process as follows:

1. The Diagnostic Trade Integration Study (DTIS) or similar process would include an analysis of which products or sector(s) in the country for which the study is being done has a competitive advantage in. The analysis should look at the whole value chain, and analyse the Production-Marketing-Distribution-Transport (PMDT) chain and examine what would need to be done for the country to be able to supply the regional and/or international market in the product selected.

2. Once a product or sector has been identified, negotiations with a major company involved in production, processing and supply of this product could take place. The purpose of these negotiations would be to determine what the company's requirements would be to invest in the country to produce the product identified for the regional and/or international market. For example, if the country was assessed to have a competitive advantage in coffee, an alliance could be made with a regional or European company to process coffee, and so add value to the coffee, and to sell this processed coffee on regional, European and international markets.

3. If the major company's requirements are acceptable, government could then start to meet those requirements it can meet (such as allocation of land, licenses, work permits, etc.).

4. If the company has requirements that have an infrastructure component (such as a requirement to get the product transported to a port at a predetermined tonne/kilometre price that will require an upgrade in the railway system to the port) the government will then be able to approach the European Union in the first instance for assistance to finance the infrastructure. The government will be able to show that the economic effect of the infrastructural improvement, will be in line with efforts to reduce poverty and meet the Millennium Development Goals.

These infrastructural upgrades would need to be done whether or not they have a positive economic rate of return over the immediate future. If this targeted approach to addressing supply-side constraints was taken on a regional basis, a number of multipliers would come into effect and other investors would be attracted to the country and the region in which the LDC is located.

In addition to supporting the above-mentioned activities, the European Union could also assist with the preparation of detailed product studies, which would identify five to ten non-traditional export products that have the potential to add significant export earnings (say over $10 million per sector per product per year) and to develop a programme that provides technical and financial support to the export producers in the form of production, processing/manufacturing, logistics and international marketing. This programme would need to be accompanied by improving the overall capacity of the national trade promotion organisation (such as an export promotion agency) and increasing levels of professionalism, in order to increase the competitiveness of the export sector and trade promotion organisation's impact on expanding the export capacity of the country; training trainers of local export consultants, including the development of training modules, in all aspects of export consulting for (potential) exporting enterprises; and setting up of information networks for exporters.

Adjustment costs

The EU could also support the development sector under EPAs through the creation of an Adjustment Facility. Trade liberalisation has provided opportunities for economic growth but a number of areas need to be addressed in the process, including how to make up for short-term losses of public revenue and how to improve competitiveness. As public finances are already in a precarious situation in all ESA EPA countries, any fall in customs revenue could have an adverse impact on budgetary balances. If this translates into public expenditure reductions, it should be recognised that these cuts could lead to political and social instability. It will be difficult to justify continued trade reform if this entails further immediate reductions in the population's welfare.

The COMESA Secretariat, on behalf of the ESA EPA Group, has submitted a Financing Proposal to the European Community for an adjustment facility, called the Regional Integration Budget Support (RIBS) Facility. The RIBS Facility arose from demands from the ESA countries to develop a mechanism that would assist them to counteract the short-term adverse effects of implementing economic policy changes associated with globalisation and growth. The direct result will be the implementation of macroeconomic reform programmes that will strengthen regional integration (by allowing ESA countries to be a part of regional free trade areas and customs unions) which, in turn, will drive the process of Economic Partnership Agreements and the implementation of the Doha Development Agenda of the WTO.

The RIBS Facility is designed on a need-assessment basis and takes into account the need for countries to qualify for budgetary support, with trade liberalisation being part of a package of macro-reform measures. At the same time as trade reforms are taking place, ESA countries are addressing other macro-economic issues such as restructuring their revenue collection systems, using monetary instruments to control inflation, building capacity in financial and economic management, letting the market set interest rates and exchange rates, privatising state-owned industries and services, etc.

For a country to qualify for budgetary support under the RIBS Facility, it must be in conformity with Cotonou Agreement's Article 67 (which addresses Structural Adjustment Support) as well as Article 61.2 (which requires that public expenditure management is sufficiently transparent, accountable and effective; that a well defined macroeconomic or sectoral policies are in place; that public procurement is open and transparent; and that Public Finance Management (PFM) indicators are met).

In addition, a country should:

- be a COMESA or EAC member state and an ACP country signatory to the Cotonou Agreement;
- have prepared, negotiated and signed a Country Strategy Paper (CSP) with the EC and have an on-going indicative programme for the CSP; and
- be implementing a programme of trade tax adjustments in order to join or align itself with a CU or FTA promoted by COMESA or EAC.

Once a country qualifies for budgetary support, the level of budgetary support that could be provided will depend on what adjustments will need to be made to implement the regional liberalisation programme and cover the short-term financing gap that there will be as a result of the implementation of the liberalisation measures and which cannot be covered from the budget.

The fund allocation mechanism from the RIBS Facility would be based on the following principles:

(a) An eligible COMESA or EAC member state will notify the COMESA Secretariat that it proposes to reduce its trade taxes in line with a COMESA or EAC programme and will give specific details of the proposed tariff reduction, including timing of the reduction.

(b) The member state will, with the assistance of the COMESA and EAC Secretariat, if necessary, estimate the potential loss of revenue as a result of the tariff reduction in the first six months after the tariff reduction takes place.

(c) The member state will also outline measures that it will take to balance its budget within six months of the implementation of the tariff reduction so that the tariff reduction does not become a permanent reduction of public revenue.

(d) The revenue loss calculation will be a static analysis as follows:

- calculation of the theoretical tariff revenue for the six-month period of a year previous,[5] not taking into account exemptions or exclusions, but taking into account existing preferences. This calculation will be done by multiplying the values of imports to which tariffs are applied (taking account of preferences) with the tariff rate of each tariff band;
- calculation of the theoretical tariff revenue for the six-month period after the tariff cuts come into effect, using the same values of imports as the reference period; and
- subtracting the theoretical tariff revenue total of the six-month period after the tariff cuts have been made from the theoretical tariff revenue total for the reference period. This will give the amount that the member state will be eligible to claim from the RIBS Facility.

(e) The amount of budgetary support each qualifying member state will be entitled to claim from the RIBS Facility will be calculated by the formula:

$$\sum_n((x_n y_n)-(a_n y_n))$$

where:

x_n is the tariff rate for band n for the reference period

y_n is the value of imports for tariff band n for the reference period

a_n is the tariff rate for band n in the period after the tariffs have been reduced

(f) In case the total amount applied for by the eligible member states (and accepted as justified) exceeds the value of the Facility (€80 million), then the allocation of the Facility will be done pro rata to the amount that each applicant country would otherwise qualify for.

(g) In case the total amount applied for by the applicant countries (and accepted as justified) is less than the value of the Facility, then the balance of funds will be brought forward to a second annual round of applications.

(h) Budget support will be granted as Direct Budget Support without earmarked use.

The ESA EPA Group has also expressed concern about the large debt overhangs that are a common problem for ESA EPA countries. Countries recognise that unsustainable debt perpetuates domestic macroeconomic instability, causes stagnation or reduction in real outputs, and adversely affects their international trade performance, so weakens the multilateral trading system.

What is required, possibly under an EPA, is a system that allows countries that have introduced accountable and transparent systems of governance a 'fresh start', without having to atone for the sins of past dictatorships and undemocratic governments that were often propped up, and encouraged to borrow by the Western world that are now the creditors, as part of their cold war strategy.

The long-term solution to the debt problem of ESA EPA countries is not through increased protectionism but through assistance from the European Union and other partners in the developed world to deal with the problem of debt overhang in the short-term through debt forgiveness, debt swaps and debt buy-back schemes and, in the longer term, a combination of levelling of the playing field that is the multilateral trading system, with successful conclusion of the EPA negotiations and the Doha Development Agenda, and a supply-side response resulting in a diversification of exports into competitively priced valued added exports, supported by an ambitious Aid for Trade programme.

The impact of HIV/AIDS, malaria and TB on development

It is a well-known fact that the ESA region is strongly affected by the burden of the three diseases of HIV/AIDS, Malaria and TB. Africa as a whole accounts for 78% of the cases of HIV/AIDS, 88% of people suffering from malaria and 33% of the global burden from TB. Comparing the ESA countries with the developed countries of Europe, Europeans have:

- 20 times the level of GDP per capita;
- double the percentage of their population with access to safe water;
- 70 times the capacity for communication by telephone;
- 45 times the level of health expenditure per capita;
- 33 times the level of provision of physicians per 100,000 population; and
- 50% more of their population with access to essential drugs.

In comparison to their European partners, ESA countries suffer:

- 300 times the burden of disease from HIV/AIDS, malaria and TB per million population;
- 7 times the level of infant mortality;
- much lower life expectancy;
- 50% the overall level of human development, and
- one-third adult illiteracy rates compared to 4% in developed European countries.

There is an urgent need, within the framework of the ESA EPA, to develop an outline for a strategy for addressing the three health problems in the ESA region as part of a programme of economic and social development. Preliminary studies conducted in the ESA region would suggest that significant improvements would be made if a programme costing just over $1.1 billion a year, or $4 per capita, were to be implemented over the next three years. The annual cost of the three diseases is estimated at nearly $60 billion, based on calculations by the *WHO Commission for Macro-economics and Health*, a figure that compares favourably with $1.1 billion annual investment for a period of three years.

Market access

Tariffs

Market access negotiations revolve around negotiating a Free Trade Agreement between each ACP negotiating group and the European Union. This is the part of the EPA negotiations that need to be completed by 31 December, 2007. As things stand at present, if an ACP negotiating group wishes to negotiate an EPA it will need to have negotiated a Free Trade Agreement with the EU, which is in conformity with Article XXIV of GATT 1994 by 31 December, 2007. The main provisions of Art. XXIV to consider are that duties and other restrictive regulations 'are eliminated on substantially all the trade between the constituent territories in products originating in such territories' and the schedule for the formation of a free trade area should be completed within a 'reasonable length of time', which should 'exceed 10 years only in exceptional cases'.

As is well known, the EC requested a waiver in the WTO from its obligations under paragraph 1 of Article I of the 1947 General Agreement on Trade and Tariffs (GATT) with respect to the granting of preferential tariff treatment for products originating in ACP states and this waiver was agreed as part of the Doha Development Agenda. The 'Decision on waiver for EU–ACP Partnership Agreement' which forms part of the Doha Ministerial Declaration considers that the 'Agreement establishes a preparatory period extending until 31 December, 2007, by the end of which new trading arrangements shall be concluded between the Parties to the Agreement'. The waiver is, therefore, time-bound and expires at the end of December 2007. The initial waiver 'cost' the ACP a concession of 25,000 tonnes of tuna imports into the EU from Thailand and the Philippines at reduced tariff rates, which eroded the preference margin for tuna for ACP countries into the EU market. If the ACP countries press for another waiver it is unclear as to what the cost of the waiver to the ACP would be. It is also unclear as to where a challenge would come from but if there is a challenge it will most probably come from non-ACP developing countries.

There is some debate about the whether the ACP should be held to the time limits of the waiver when the Doha Development Round is far from reaching completion point, and has missed the original 'single undertaking' deadline of 1 January, 2005. This is particularly relevant when one considers the close link between EPA negotiations and negotiations taking place at the WTO. However, rather than divert scare resources to debating whether or not the waiver should be extended, emphasis should be placed on whether there is a need for an extension of the waiver, meaning concentrating resources on assessing whether or not ACP regions can complete the components of the EPA negotiations necessary to be completed by 31 December, 2007 in order to be in conformity with WTO requirements.

FTA negotiations with the EU will need to cover trade from the EU into the ACP group and trade from the ACP group into the EU. The latter would not seem to be contentious and the EU must provide each ACP negotiating group with full market access covering 100% of all trade into the EU from the ACP negotiating group. Most, if not all, ACP negotiating groups are a combination of developing countries and least-developed countries (LDCs). The EU has already granted EBA to LDCs so, in order to fulfil the objective of using EPAs to strengthen the regional integration process, it must grant equal market access to all countries in an ACP negotiating group, whether they are developing countries or LDCs. Failure to provide each member state of each ACP negotiating group with equal market access into the EU will preclude the negotiating group from deepening its integration as, for example, the group will not be able to move towards a customs union as it will not be able to implement a Common External Tariff. It can, therefore, be reasonably assumed that the EU will grant 100% market access to ACP EPA negotiating groups and that, unlike EBAs, this market access will be contractual.

The main tariff issue to be addressed by ACP negotiating groups is, therefore, the level of access each group should provide to the EU into its markets. The level of 'substantially all trade' referred to in Article XXIV of GATT is often interpreted by the EU as covering 90% of trade. In the case of the EPA negotiations, if the ACP group has 100% market access into the EU, it could offer the EU 80% market access into its markets, to get an average of

90% of trade covered. However, the 90% definition of 'substantially all trade' used by the EU is generally accepted as referring to FTAs between developed countries. As there has never been an FTA negotiated between a developed country and a group of predominantly LDCs, there is a strong argument to agree the definition of 'substantially all trade' to be significantly lower than a 90% average. There is also a strong argument to suggest that the time period for full implementation should be longer that 10 years as EPA negotiations would surely qualify as an 'exceptional case'.

The EC has consistently stated that ACP countries should first build regional markets and then address trade liberalisation issues with the EU. All countries in the ESA negotiating group are COMESA member states and, as COMESA is aiming to move towards a Customs Union,[6] the emphasis, in terms of market access, should be to build regional markets by first implementing the agreed Common External Tariff and only then to address opening regional markets to the EU.

The approach to negotiations with the EU should, therefore, be to offer the EU a Common External Tariff, with exemptions on sensitive products, and then, where appropriate, to phase in some sensitive products (backloading) after a negotiated period.

The principle of asymmetry should apply, meaning that the ESA region will expect the EU to fully open its markets to ESA exports but that the ESA will not allow market access to 100% of EU exports.

The overall objective should be to negotiate an EPA in such a way as to ensure that the European Union meets the costs of adjustment in meeting an EPA so that EPAs are neutral in effects on revenue and competitiveness and positive in additional resources from the adjustment facility and in the safeguard measures, which would need to be automatically triggered if there are sharp increases in imports from the EU.

Rules of Origin

Rules of Origin (ROO) are required in any preferential trading arrangement. They are usually put in place to ensure trade deflection[7] is at least minimised by ensuring that the product to be exported into the customs territory granting the preference is produced (however that is defined) in the customs territory the preference is granted to. However, Rules of Origin can also have development objectives and can also be used as a means of protection.

Rules of Origin are important in that they can affect the sourcing and investment decisions of companies and can, at the same time, distort the relative prospects of similar firms within a country. The adoption of restrictive rules of origin are more likely to constrain than to stimulate regional economic development and can act to undermine regional trade agreements.

There are three main ways to determine origin, these being:

1. change of tariff classification, usually at the HS 4-digit level;
2. percentage value added and/or maximum value of non-originating materials (including wholly produced); and
3. specific manufacturing process.

The EU–ACP Rules of Origin are a combination of all three of these tests, and there is significant variation in the way these tests are applied and in the combinations they are used. It is, however, not necessary for the EC to use Rules of Origin to control imports as they have a set of safeguard measures, consistent with the WTO Agreement on Safeguards, which can be used for this purpose.

The Cotonou Rules of Origin vary by product in terms of their scope and complexity. It is not clear that they have a development dimension or, conversely, successfully protect the market share of any group of EU producers. There has been no assessment done of the Cotonou Rules of Origin to show that they either promote the interests of the EU or the ACP. What is clear, however, is that the Cotonou Rules of Origin impose a significant cost in terms of compliance to both ACP exporters and customs administrations.

Regarding the current list of goods exported into the EU from the ESA region, the exports that are most affected by Rules of Origin are apparel and fish.

The Rules of Origin for apparel require manufacture from yarn or other natural or man-made fibres. ESA countries are not able to manufacture cloth in volumes necessary to benefit from the economies of scale required for international competitiveness and must source cloth and fabrics from lower cost suppliers if their apparel is to be competitive in world markets.

In the fisheries sector, EU rules confer origin when:

- The vessel is registered in the EU or any ACP state.
- The vessel sails under the flag of any ACP country or the EU.
- The vessels are at least 50% owned by nationals of any ACP or EU state and the chairman and the majority of the board members are nationals of any of those countries. Under certain conditions the EU will accept vessels chartered or leased by the ACP state under the Cotonou Agreement.
- Under the Cotonou Agreement, 50% of the crew, and the master and officers are nationals of any ACP state or the EU.

The main problem with the Rules of Origin is seen to be concerning the vessel's ownership. Vessel ownership rules also affect an exporter when that exporter seeks to add value by processing, such as tuna canning. Although Title V of the Cotonou Agreement provides ACP countries with a right to request suspension of all origin rules for canned tuna and tuna loins within an annual quota derogation, it should be noted that only six ACP countries operate under the current exemption and it is unclear how much of the quota is used in any year.

Apart from the damage caused to ACP exports, it can be argued that the restrictions on ownership are inconsistent with a liberal foreign investment policy. The general consensus has been that developing countries should attract direct foreign investment by offering the appropriate safe and market-driven environment. However having invested, the firms in question find that they do not qualify for preferential treatment on the EU market.

The cumulation rules applied under Cotonou are relatively straightforward in that there is full cumulation between ACP states, meaning that one ACP country can source inputs from another ACP country and, in terms of the Rules of Origin, those inputs will be considered to have originated in the ACP country which is exporting the product to the EU. This should, in theory, encourage the sourcing of inputs from ACP states and so promote regional economic integration. However, the exporters still need to prove origin of these inputs from ACP states and this can be a time-consuming and costly exercise.

Materials originating from the EU or its Overseas Countries and Territories (OCT) are considered as materials originating in the ACP state when incorporated into a product that is exported to the EU by the ACP state.

Materials originating in South Africa are also considered as materials originating in the ACP state when incorporated into a product that is exported to the EU by the ACP state, although there are a number of exceptions and a number of products to which this conferring of origin will either not apply, or which came into force either three or six years after the signing of the Cotonou Agreement.

The Cotonou Agreement provides for a tolerance level (or de minimis) on cumulation, meaning that up to 15% of non-originating materials are tolerated before a good no longer satisfies the EU's origin criteria for imports from the ACP.

The Cotonou Agreement also provides for, on request, materials originating in a neighbouring developing country, other than an ACP state, belonging to a coherent geographical entity, as originating in the ACP state if the materials are used as inputs for the item to be exported to the EU. There are also a number of exceptions to this, including Chapters 50 to 63 (textiles and garments) of the Harmonised System, tuna products and rice.

Both the ACP and the EC agree that the Rules of Origin that apply to EPAs should be simplified. The current thinking in the EC would appear to be that origin should be conferred through a single application, that being the value-added criteria, which is the difference between the ex-factory cost of the finished product and the cost of all the materials used in the production of the finished product.

Although use of value added to determine origin may well be an improvement to the existing method of determining origin under Cotonou, it also has its serious disadvantages. For example, the percentage of value addition is dependent on the value of the currency of the exporter *vis-à-vis* the importer and an overnight appreciation of the currency of the exporter can result in a product no longer conferring to rules of origin, despite the fact that the sourcing of goods and the manufacturing processes have remained the same. Another example is if a manufacturer invests in capital which improves the efficiency of the manufacturing process and reduces the cost of production. He may well find that he has reduced the value added to below the threshold considered to confer origin.

It is also extremely difficult to calculate value addition when multiple products are manufactured from a single raw material. For example, cooking oil, margarine and soap are manufactured from palm oil and it is very difficult to calculate the difference between the ex-factory cost of the different finished products, and the cost of the palm oil and other materials used in the production of the finished products.

The most simple and effective solution would be to use the change of tariff heading (CTH) criteria to confer origin. In such a case, if the manufactured product has a different HS code at the 4-digit level to the raw material it is manufactured from then origin is conferred. However, there are some instances where a process application should also be applied to guard against a simple packaging exercise or, conversely, to confer origin when a fundamental manufacturing process has taken place but the HS code at the 4-digit level has not changed.[8]

Agriculture

The agricultural sector is at the heart of the economies of ESA countries, accounting for a large share of their gross domestic product; employing a large proportion of the labour force; representing a major source of foreign exchange; supplying basic food requirements; and providing subsistence and other income to the bulk of the population.

Agricultural trade is already a major source of export earnings for ESA countries, particularly for products covered by the Commodity Protocols. However, despite this, participation of the ACP countries in international trade is severely limited by a number of structural factors as well as unfavourable market access conditions in markets of greatest export interest to them, including the EU.

Under the Cotonou Agreement trade in agricultural products is governed by specific rules and disciplines and access to EU markets is subject to a series of constraints in the form of separate commodity protocols, tariff rate quotas, seasonal and ceiling restrictions, etc.

Erosion of preferences

EU–ACP agricultural trade preferences, apart from those covered by the Commodity Protocols, have been continuously eroded in size, product coverage and effectiveness over time. GSP duties for most tropical products have been progressively reduced and in some cases eliminated by the EU. The EBA Initiative has further eroded the preference of all ACP states, including ACP LDCs.

According to a FAO study the estimated potential value of preference on ACP agricultural exports to the EU was €710 million in the year 1996, or roughly 14% of the total value of agricultural imports by the EU from the ACP countries and was projected to decline to less than €600 million in 2000. About 52% of the total value of preference is due to sugar alone, followed by bovine meat (21%), tropical beverages (10%) and bananas (8%).

High tariffs

Above-quota tariffs are often high or prohibitive for ACP suppliers. ACP tariff quotas are specifically defined in terms of quantity and rates, thus expansion of ACP exports to the EU is hindered except for ACP LDCs under the EBA.

Seasonal tariffs are still high for certain agricultural products and some fruits and vegetables are subjected to seasonal restrictions based on European horticultural calendars. Quotas limit entry to the EU market though within quotas, exports benefit from CAP prices that are higher than world prices. Beyond those quotas, which are governed by the

'Commodity Protocols' and the duty-free access to out-of-season products, there are instances of tariff escalation along the processing chains.

The issue of tariff escalation in agricultural products is very important given that growth in world agricultural trade is shifting more to processed products. ACP countries with high dependence on commodity exports have a strong interest in this matter as they are trying to escape from the circle of producing and exporting primary products only.

The effects of the reform of the Common Agricultural Policy (CAP) on ESA

CAP reform is having the following general effects:

- substantially lower prices for affected agricultural products on the EU market, which reduces the value of ACP trade preferences;
- reductions in prices generated by CAP reform make the raw material costs of EU food and drink manufacturers cheaper, leading to an expansion of simple value food product exports from the EU to the ACP in product chains linked to the basic agricultural raw materials whose price has fallen; and
- the process of price reductions induced by CAP reform reduces the need for EU export refunds and high levels of tariff protection, which then brings the EU's agricultural policy more into line with the WTO provisions.

The impact of CAP reform on ACP countries can be divided into four main areas:

- the reduction of the value of preferential access to the EU market, as a result of the reduction in EU prices arising from the shift from price support to direct aid payments;
- the enhanced price competitiveness of EU agricultural and value-added food products on both domestic and overseas markets;
- the increased costs and difficulties in securing market access as a result of the EU's strengthened food-safety policy; and
- the growing product differentiation within the EU market and associated divergent price trends, which will require ACP importers to concentrate on developing appropriate marketing strategies into specific markets in the EU.

The ESA region will need to define sensitive products in terms of the EPA negotiations. Sensitive products should be to defined within the context of product chains if the aim is to increase local value-added processing to serve regional markets. Sensitive products can be protected through the following mechanisms:

- **backloading** – whereby tariffs are eliminated only at the end of the phase-in period;
- **exclusions** – whereby products are excluded from the process of tariff elimination;
- **special arrangements** – whereby some form of tariff rate quota (and associated administrative arrangements) is established, as a means of reconciling divergent regional interests in the product concerned; and
- **pre-emptive safeguards** – whereby tariffs may be maintained or reduced, but the trade is subject to close monitoring and surveillance so that where a threat of market disruption emerges, pre-emptive action can be taken to prevent the actual disruption of the markets concerned.

Inland fisheries

The inland fishing industry is an important source of food for the region, as well as constituting an important source of exports. As most fish that is exported, or has the potential to be exported, is caught in lakes that are on the borders of ESA countries, so shared between countries, inland fishing promotes co-operation between countries that share these common resources.

The EU has enacted specific legislation concerning fish products,[9] which are also applied to imports, including:

- health conditions for the production and placing on the market of fish products;
- freshness of fish products;

- restrictions on veterinary medicines concerning aquaculture animals and products; and
- the obligation to introduce a system based on the principles of Hazard Analysis Critical Control Point (HACCP) in fish-processing companies.

In addition to this, all fish products (fresh, chilled, smoked, frozen, canned, salted or dried) imported from third countries must come from a preparation, processing, packing or storage facility approved by the national competent authority.

In effect, the EU has tried to move from a process of end-product inspection and certification to a preventative assurance approach. This approach means that producers must allow investigations to be carried out during the production phase of various products and must record the data for a supervisory authority.

The ESA inland fishing industry has suffered from a number of bans and restrictions put into place by the EC. In each of these cases the EU has imposed import restrictions (testing and/or bans), although the exporting countries concerned remain unconvinced of the scientific evidence justifying the import restrictions, and this position would appear to be re-enforced by the findings of the WHO and FAO, as concerns the cholera case at least. The impact of these import restrictions on fish products has been severe.

The ESA Region has prepared a programme in support of the inland fisheries sector and this is being discussed with the EC.

Sanitary and phytosanitary measures (SPS)

A major challenge faced by ACP countries is raising the SPS/TBT standards to at least internationally recognised levels. ACP countries face an additional challenge when the EU, on risk assessment grounds, adopts higher standards than those currently recognised by international standard-setting bodies. Most ACP states lack the capacity and regulatory mechanism to both participate in the setting of international standards and meet those standards.

SPS issues that will directly affect levels of exports from the ACP into the EU include the fact that each EU member state has its own approval system for agrochemicals. Similarly, for pesticide residues, there is no harmonised system, with each EU member state having its own Maximum Residue Level (MRL) for chemicals used to grow crops. If field trials have not been done for a particular chemical, which is not unheard of, as ACP producers often make use of chemicals that have been discontinued in other parts of the world for economic rather than health and safety reasons, the MRL is set at zero.

Another major concern for ACP agricultural producers is the EU system of traceability, which covers the complete food chain from the farm to table. Many small production entities will not be able to comply as mixing produce from different production sources is a common feature in ACP countries.

SPS measures, therefore, represent a particularly difficult barrier to the successful achievement of increased market access for all African countries. For this reason the focus must be moved from continually pushing for more market access to the more useful one of freeing up and increasing the actual capacity of the ACP region to avail itself of the access that is being made available.

Concentrating on identifying what precisely is needed to achieve this objective and how much this will cost will provide the basis for a more positive and targeted negotiating position with the EU. It would seem a reasonable position to adopt for ACP countries to link the reciprocal aspects of EPA trade to the provision of sufficient assistance from the EU (EDF or otherwise) to enable exporters to be on the same level playing field (as EU exporters) as regards their ability to meet EU SPS requirements. The large amounts of assistance provided to the new EU members can be cited in evidence that the EU accepts that very significant aid is needed for countries outside its region to actually be able to meet its new ' equivalent ' standard.

The WTO SPS Agreement includes (Art. 10) provisions relating to SDT in respect of SPS measures. They state that 'where the appropriate level of SPS protection allows for the phased introduction of new SPS measures, longer time frames for compliance should be accorded on the products of interest to developing country members so as to maintain

opportunities for their exports'. Also that, 'with a view to ensuring that developing country members are able to comply with the provisions of this Agreement the Committee is enabled to grant such countries, upon request, specified, time-limited exceptions in whole or in part from the obligations under this Agreement, taking into account their financial, trade and development needs'.

This possibility of 'phasing' in of SPS requirements is an important element to be actively pursued in negotiations. Provisions exist for such phasing in of the measures needed under the Food and Feed Control Regulation 882/2004 and for account to be taken of the ability of counties to comply. This provision basically reflects the WTO SPS Agreement noted above.

Marine fisheries

ESA countries that have a marine fishing industry have prepared a draft Fisheries Framework Agreement (FFA) that is designed to protect the interests of the ESA states who have access to stocks of ocean fish and avoid a depletion of fish stocks, upon which many ACP coastal and island states are economically dependent, while at the same time preserving the sovereignty of ACP states to negotiate national access agreements with the EU. The FFA does not replace a bi-lateral agreement with the European Union. It should, rather, be seen as a minimum set of conditions within which a fisheries agreement on access to fish stocks in each Exclusive Economic Zone (EEZ) will be negotiated by each country.

The main features of the FFA are the Basic Principles; Fisheries Management and Conservation Issues; Financial and Trade Measures; Vessel Management and Post Harvest Arrangements; and Development Issues. However, the EC has proved itself reluctant to negotiate a regional FFA. The reasons for this would appear to be the alternative views on FPAs that exist in the Commission itself. The Common Fisheries Policy of the EC is couched in very general language that can be interpreted in a number of ways and which took 17 months for the EU to reach a compromise agreement on. In the Commission itself, at least four Directorate Generals (DGs) have an interest in Fisheries Partnership Agreements, these being DG Fish, DG SANCO, DG Trade and DG Development. In simplified terms the interests of the various DGs are as follows:

- DG Fish – looking after the interests of the main (Spanish and French) EU national distant-water fleets (DWFs);
- DG SANCO – implementing the food and feed regulations (Sanitary and Phytosanitary) of the EU;
- DG Trade – ensuring that the FPAs and CFP are WTO compatible, particularly in the way subsidies, rules of origin and preferential access agreements are applied; and
- DG Development – seeing how the fishing industry could contribute to the economic development of the appropriate country or region.

There is, therefore, a real or potential conflict of interests within the Commission itself as regards the negotiations of FPAs. However, to date, the responsibility for negotiating FPAs remains firmly with DG Fish and they do not regard fisheries negotiations as part of EPA negotiations and seem not to be in favour of a regional FFA, despite the fact that the fish resource is at least regional.

Trade in services

Preparations for negotiations with the EU on trade in services should be guided by the provisions of Article 41 of the Cotonou Agreement and Article XIX of GATS, with particular focus been given to Mode IV.

In the case of the ESA EPA, in preparing for the EPA negotiations as agreed in the Negotiating Guidelines, Mandate and Work Programme, a regional assessment of the state of trade in services is necessary. This regional assessment, which is being financed through the DFID-financed Regional Trade Facilitation Programme (RTFP), is ongoing and covers 18 COMESA member states, these being all the ESA countries plus Swaziland and Egypt. This approach will enable adequate preparation for request and offers with the EU under EPAs, negotiations in the GATS and the development of a regional programme in trade in services and the further integration of the sub-region.

The assessment covers the financial, telecommunications, transport, construction and related engineering, professional, tourism, health, education, business, computer and energy services. The temporary movement of labour (Mode IV) is treated as a horizontal issue.

The assessment is based on the collection of regulations in trade in services and the conversion of this regulatory information into GATS-type language. In addition to this the prevailing regulatory and policy environment, market structure and sector performance in each country is being analysed. These national assessments will be discussed at national level and the output will be used to develop a regional assessment that will be used to develop a strategy for the EPA negotiations, WTO negotiations and the development of a regional programme on trade in services.

The trade in services assessment began with the development of National GATS Templates for each member state and government experts have been trained in the conversion of all regulations for all service sectors into GATS-type language. At the same time, COMESA pre-tested available assessment questionnaires for the in-depth sector analyses and embarked on the development of questionnaires for sectors for which questionnaires currently did not exist. Teams of national experts were trained on how to undertake in-depth sector assessments in February 2004. The GATS templates and the sector assessments will, together, form the National Assessment Reports.

Part of the work in trade in services covers Mode 4 issues, specifically temporary migration of nurses from the region to Europe. The departure of healthcare workers for posts in Europe is a serious concern. Britain is the main recipient country. In 2002 and 2003, more than 6,500 African nurses were admitted to the British Registry. The most severe problem generated by the exodus of nurses is the shortage of qualified healthcare workers in African countries. For example, Malawi has a ratio of nurses per 100,000 people of 29, while in Britain the ratio is 840. The result is poor and worsening treatment in African hospitals and poor working conditions for the nurses that remain.

The outflow also implies that African countries are subsidising industrial countries, by paying the investment costs in workers that eventually leave. And, as more nurses leave, conditions facing those that remain worsen. There may also be less incentive for governments to invest in training nurses if their duration of service declines. While Britain has imposed guidelines to reduce recruitment by national agencies, it does not stop recruitment from developing countries by the private sector. Nor do the guidelines stop nurses from abroad from applying directly for health service posts in Britain. This problem is only likely to worsen in the coming years as more nurses will be required to tend to the ageing population in Europe.

The on-going ESA EPA study is evaluating the mutual gains, and identifying the major problems, of a pilot scheme to bring nurses from selected ESA countries to certain EU countries for limited periods, probably between three and five years.

Trade-related issues

The position of the ESA region is not to start negotiations on trade-related issues, especially on competition policy, public procurement and investment. However, the region has started by examining in detail trade-related issues and is assessing whether there is any value added in including trade-related issues in an EPA or whether these issues should be negotiated under the framework of the WTO, if at all.

The assessment as to whether EPA negotiations should include trade-related issues should be done at two levels. The first level is to assess whether negotiating trade-related issues in a EPA will compromise the countries' negotiating positions in the WTO.

A second issue is to assess at what level negotiations on trade-related issues should be. For example, in competition, the ESA region may find it useful to have an agreement with the EC's Directorate General on Competition to exchange information at the regional and national levels. A number of ESA countries have competition commissions or authorities and COMESA has agreed a regional competition policy and regulations and to establish a Regional Competition Commission. If anti-competitive

behaviour is cross-border in nature it may well be extremely useful for COMESA's Competition Commission to share information with DG Competition so as to build a case against the individual or company involved in such anti-competitive behaviour, which usually results in distortions or restrictions in trade flows.

A further example may be in agreeing on a bilateral investment programme between the EU and the ESA region where, for example, companies in Europe are given tax breaks as incentives for investing in the ESA region.

Conclusion

In conclusion, it can be said that a considerable amount of effort and resources have been expended by the ESA countries and the Secretariats of the Regional Integration Organisations in preparing for the EPA negotiations. These preparations will have benefits not only for the actual EPA negotiations but also for other negotiations ESA countries will be involved in at the WTO and regional levels. The emphasis placed on ensuring adequate preparations have been made for the negotiations has allow the ESA region to develop negotiating positions by consensus so that common positions have evolved. The next phase of the negotiating process is the actual negotiations with the EC and it is important that during this phase the Group's cohesion is maintained, along with the support structures already put in place through the Regional Integration Organisations.

Endnotes

1. This waiver was agreed at the 4th Ministerial Conference in Doha. The Ministerial Decision of 14 November, 2001 (WT/MIN(01)/15) states, among other things, that 'Subject to the terms and conditions set out hereunder, Article I, paragraph 1 of the General Agreement shall be waived, until 31 December, 2007, to the extent necessary to permit the European Communities to provide preferential tariff treatment for products originating in ACP States as required by Article 36.3, Annex V and its Protocols of the ACP–EC Partnership Agreement, without being required to extend the same preferential treatment to like products of any other member.'
2. The countries that are part of the ESA EPA negotiating group are: Burundi, Comoros, Djibouti, DR Congo, Eritrea, Ethiopia, Kenya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Uganda, Zambia and Zimbabwe.
3. In the framework of the all-ACP–EC negotiations, the ACP side has consistently expressed the view that EDF and other resources, which are currently available to the ACP, are insufficient to meet the needs of ACP countries, particularly for eliminating obstacles to trade including those related to infrastructure. For this reason, additional resources are required so that ACP can effectively implement development-oriented EPAs. The EC has made its view clear: the resources available for financing of development co-operation in the next five years have been agreed in the framework of the Cotonou Agreement, and that this question is not up for renegotiations in the framework of EPA negotiations.
4. Under EDF9 procedures it is relatively simple and quick to recruit consultants if the cost of the consultancy input is less than €5,000, but much more complicated and time-consuming to recruit consultancy inputs above €5,000. To carry out studies and technical assessments for the ESA Group, comprising 16 countries, the costs of consultancy inputs for any one activity is invariably more than €5,000 so it has been difficult to use the funding provided under the Trade Negotiating Facility to finance consultancy inputs.
5. For example, if a country states it will reduce tariffs in January 2006, the tariff revenue for January–June 2005 will be calculated and compared to the theoretical tariff revenue loss with the tariff reduction in place and the same volume of goods for the period January–June 2006.
6. The COMESA Council of Ministers decided, at their meeting in Kigali, Rwanda, in May 2005, that 'Member States should work towards attaining a Customs Union by December 2008 but, in the event that some Member States are not ready to implement the Customs Union in December 2008, those that are ready should proceed with implementation'.
7. Trade deflection is taken to mean the export of products originating in a third country which does not have preferential access into a first country being re-routed through a second country which does have preferential access. This re-routing could take the form of simple transhipment or could involve a simple operation, such as repackaging the goods.
8. For example, if a refrigerator manufacturer imports compressors, the HS code of the compressor is the same as that of the refrigerator at the 4-digit level, so a process application would need to be applied so that the refrigerators were considered to originate from the country they were manufactured in.
9. These health conditions are laid down in Directives 91/493/EEC and 91/492/EEC.