

REGIONAL WORKSHOP REPORT

Civil Society Responses on "Building an Inclusive East Africa Community"



Sarova Panafric Hotel, Nairobi, Kenya
27th-28th April 2009,

LIST OF ABBREVIATIONS AND ACRONYMS

ACP	African, Caribbean and Pacific Group of States
AfT	Aid for Trade
AU	African Union
BIEAC	Building an Inclusive East African Community
CARIFORUM	Caribbean Forum of African, Caribbean and Pacific States
CEMAC	Communauté Economique et Monétaire d'Afrique
CET	Common External Tariff
CITEE	Centre for International Trade, Economics and Environment
COMESA	Common Market for East and Southern Africa
CPA	Cotonou Partnership Agreement
CSO	Civil Society Organizations
CU	Customs Union
CUTS	Consumer Unity Trust Society
DFQF	Duty Free Quota Free
EAC	East African Community
EC	European Commission
ECOWAS	Economic Community for West African States
EDF	European Development Fund
EPA	Economic Partnership Agreement
ESA	Eastern and Southern Africa
EU	European Union
FTA	Free Trade Area
GDP	Gross Domestic Product
IGAD	Inter-Governmental Authority on Development
MFN	Most Favoured Nation
NGO	Non-Governmental Organization
NSA	Non-State Actor
NTB	Non-Tariff Barrier
PACP	Pacific ACP
PTA	Preferential Trade Area
REC	Regional Economic Community
RI	Regional Integration
RIO	Regional Integration Organization
RNF	Regional Negotiation Forum
SPS	Sanitary and Phyto-sanitary measures
SSM	Special Safeguard Mechanism
SADC	South Africa Development Community
VAT	Value Added Tax

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INTRODUCTION

Between 27th and 28th of April, 2009, Sarova Panafric hosted stakeholders from all over East Africa and CUTS Geneva representatives. Fifty participants (see appendix 1) honoured the invitation to attend the workshop on “Building an Inclusive East African Community” (The BIEC project). The two (2) day conference, organized by the Nairobi and Geneva offices of Consumer Unity Trust Society (CUTS) discussed the research findings on the BIEAC project from all the five (5) East African community partner states and provided insights on how EAC countries could better integrate in the global economy.

This report provides a summary of the seven presentations offered during the proceedings which included: *Status of EAC-EC Economic Partnership Agreements (EPAS) and Assessment of Revenue and Development Implications Case of Tanzania, Safeguarding the EAC Agricultural Sector in relation to the EAC-EU Economic Partnership Agreement (EPA) Case of Rwanda, A critical Analysis of implications of MFN provisions in the EC-EAC Economic Partnership Agreements, Standards and Market Access Under EPAS: Implications and Way Forward for EAC, Analysis of EAC-EC SPS Agreement: What are the challenges and Opportunities for EAC Trade and Value-Additions, Trade in Services and EPAs: What is at stake for the EAC Community? And Export taxes and EPAs: Another trade policy tool under threat from the EU?*

The East African Community (EAC) exhibits vast potential in terms of its large population and market (127 million) despite its low GDP per capita (US\$63.4 billion) as of 2007. The EAC was “reborn” in 2001 after its collapse in 1977. One of the key objectives of the “new” EAC is to promote free trade, with an ultimate aim of forming a political union. Since its rebirth, there has been a speedy progress in cementing the integration of the region that culminated in a customs union in 2005. Currently, the EAC is engaged in negotiations to establish a common market by 2010.¹

The Community is currently negotiating with the European Commission (EC) an Economic Partnership Agreement (EPA). There are also other regions, one each in the Caribbean (CARIFORUM) and the Pacific (PACP) regions and four in Africa: Western Africa (ECOWAS), Central Africa (CEMAC), Eastern and Southern Africa (ESA), and Southern Africa (SADC) which are also negotiating the EPA with the EU. Of all the regions, only the Caribbean region has signed a full agreement; others have initialled only part of their agreements, covering mainly goods trade, and are negotiating the rest of issues to have a comprehensive trade agreement with the EU. A majority within these regions, mostly least-developed countries (LDCs), have opted not to initial anything at all. The EAC’s agreement, containing trade in goods only, was initialled in November 2007 and the full agreement, which is still being negotiated, is expected to be concluded in July 2009. The Community countries comprising of Burundi, Kenya, Rwanda and Uganda (pulled out from ESA), and Tanzania (pulled out from SADC) regrouped towards the end of 2007 upon realization that they could only sign a common agreement if they belonged to the same customs territory.

The general objectives of the EAC-EC EPA (Article 2) are the following:

- establishing strong trade and development partnership to contribute to development
- promoting regional integration in EAC and integration of EAC in the global economy

¹ The draft protocol is expected to be out in April 2009, after the last round of negotiations that occurred in Kampala in March 2009 (<http://www.eac.int>).

- economic cooperation and good governance
- helping to build trade policy capacity
- developing the EAC's production and trade capacity
- establishing a transparent regulatory system that will attract investment, and
- strengthening relations that exist between the EU and the EAC

Key objective of the EPA is regional integration which is aimed at removing trade barriers and establishing a free trade area with the EU and with other ACP regions and eventually with the rest of the world economy. This process is expected to come with trade development measures that should eventually contribute immensely to poverty reduction and sustainable development in the EAC. The free trade area to be created with the EU (Article 5) is to be achieved through provision of full duty free and quota free market access for products from the EAC into the EU while EAC would allow full access into its market for 82.6 percent of imports from the EU. While the EU's DFQF commitments are to be achieved immediately, the EAC's commitments are to be implemented gradually through three phases. The EU's full DFQF provision is seen as an improvement over its previous trade regime under the Cotonou Partnership Agreement that allowed entry into EU market for just over 90 percent of EAC products. The market access conditions in the EPAs are an improvement over the Cotonou terms to make sure that the EAC countries are not worse off in the new dispensation.

2.0 OPENING REMARKS: 27th April 2009

Introductory remarks were provided by Clement Onyango, Centre Manager for CUTS Africa Resource Centre (CUTS-ARC), Nairobi and Clarisse Bukeyenzeza, Civil Society Cooperation Officer of GTZ/EAC Secretariat. In their opening remarks, the organizers informed the participants that the workshop was an opportunity for the EAC stakeholders to share views and suggestions in the BIEAC project research.

2.1 Remarks by Clement Onyango, CUTS ARC, Nairobi

Mr. Onyango informed the participants that the project aims to support a range of civil society organizations (CSOs) in the EAC member countries in the coming two years to examine the implications of external trade policies on the welfare and livelihood of people as well as provide a better understanding of challenges and opportunities of trade integration.

2.2 Remarks by Clarisse Bukeyenzeza, GTZ/EAC

Ms Bukeyenzeza explained to participants how the EAC/GTZ Program has planned to support the regional integration of EAC starting with four components of their work since 2007. The four components of the GTZ work in the region focus on:

- the organizational development in the EAC Secretariat;
- strengthening the competencies of the EAC Secretariat to design economic and social policies;
- strengthening the capacities of regional business associations for representation of own interests;
- and on the enhancement of a dialogue regarding economic and social policy matters with representatives of civil society.

It is this last component on cooperation with civil society that had supported the BIEAC project that she wished to elaborate on. She explained that within the framework of the German Development Cooperation support to the EAC Secretariat, the civil society component aims at strengthening the role of civil society organizations in the decision making process while contributing to positive regional integration. She referred to the provisions of the EACT Treaty that “the Community will ensure the enhancement and strengthening of partnerships with Civil Society, so as to achieve sustainable socio-economic development” and “the Partner States undertake to promote a continuous dialogue with civil society at both national level and the Community level”. Seeing the EAC as a people-driven Community, it welcomes the participation of the civil society.

Within the framework of the EAC/GTZ Program support, the main objective is to have a strong civil society that is able to act as the democratic voice of the East African people and to enhance the dialogue between the EAC Secretariat and representatives of the civil society.

The EAC/GTZ Program is currently reaching the end of its 1st phase and among its early harvests during the period is the support to the organization of the East African Civil Society Forum which was held in Arusha last March with the full collaboration of the EAC Secretariat. This 3rd Annual Forum for civil society organizations brought together 100 civil society organizations, an effort which resulted in a series of recommendations which have been now incorporated in the Council report to the Summit which was being held that very week in Arusha.

However, despite this considerable achievement in the participation of the citizenry in the EAC regional integration process, the East African civil society has yet to be fully organized at the regional level and therefore is not fully participating in the decision making process, particularly in the trade negotiations, which was clearly emphasized during the 3rd Annual Forum.

In view of the above, the EAC/GTZ Program in its 2nd phase intends to focus its support on:

- the development of a civil society strategy for the EAC Secretariat and doing so in close collaboration with CSOs;
- the institutionalization of the East African Civil Society Forum which will become an independent institution comprising of CSOs working in various thematic areas. It will be fully recognized by the EAC Secretariat and therefore they will be working hand in hand towards the same goal of ultimately creating a political federation;

Finally, she said that it is important for their program to build partnerships and create synergies with other organizations so as to ensure full participation of all key stakeholders. The GTZ vision is therefore to collaborate with organizations such as CUTS to ensure their efforts are recognized and the findings and recommendations originating from the various researches undertaken are presented at the regional level to the Council of Ministers through close collaboration with the EAC Secretariat.

2.3 Overview of the "Building an Inclusive East African Community"

By Victor Ogalo, Programmes Officer, CUTS ARC, Nairobi

The main aspects of the presentation made in this session are summarised at http://www.cuts-grc.org/pdf/GRC-BIEAC_Backgroundpaper.pdf.

3.0 PRESENTATIONS

3.1 Status of EAC-EC Economic Partnership Agreements (EPA)

By Monica Hangi, ESRF, Tanzania

General Overview of the EPAs

The Economic Partnership Agreements (EPAs) is an evolution of long historical ties between Europe and the African, Caribbean and Pacific (ACP) countries. They have come about due to a requirement to reformulate ACP-EU trade relations to be in conformity with World Trade Organisation rules. For over four decades ACP-EU trade relations had been conducted via unilateral preferential market access granted to ACP countries by the EU. This arrangement was challenged at the WTO by many non-ACP developing countries on the ground that it discriminated against them and therefore contravened a fundamental WTO principle that prohibits such discrimination among its members. A waiver was thus granted to the EU to change its trade preferences by January 2008 to bring them in conformity with the WTO rules.

Launch of the Negotiations

Phase-1 of the negotiations of EPAs was launched in September 2002 in Brussels and took place between all ACP and the European Commission (EC) and was concluded in July 2003. Thereafter phase-2, which has continued to date, was initiated between the EC and different regional configurations. The EC put a demand that ACP form themselves into compatible regional configurations to hasten the negotiations and to be able to negotiate agreements that suited their varied needs. Six such regional blocs were formed, one each in the Caribbean (CARIFORUM) and the Pacific (PACP) regions and four in Africa: Western Africa (ECOWAS), Central Africa (CEMAC), Eastern and Southern Africa (ESA), and Southern Africa (SADC). Later, towards the end of 2007, as the deadline for the waiver approached another sub-group emerged from both the ESA and SADC configurations comprising of East African Community countries: Burundi, Kenya, Rwanda and Uganda (regrouped from ESA), and Tanzania (pulled out from SADC) upon realization that they could only sign a common agreement if they belonged to same customs territory.

Objectives and Principles of EPAs

Generally, the EPAs are being negotiated to support reduction and eventual elimination of poverty in ACP countries in ways that should lead to their sustainable development. Enhancement of regional integration among ACP countries and with the EU is viewed as the main avenue through which ACP would gradually integrate with the rest of the world economy and that should contribute to poverty reduction and sustainable development in the ACP. The EPAs are thus supposed to aid the existing regional integration efforts in ACP countries and policy measures as well as programmatic activities that will support such integration of ACP into the world economy are at the centre stage of the EPA negotiations. Increase of productivity and supply capacities, support for trade development, and promotion of economic diversification of ACP are necessary for expanding trade and in supporting regional integration in ACP.

The negotiations of the EPAs are supposed to honour the following principles:

- *Be oriented to Sustainable Development needs by being consistent with ACP's development strategies;*
- *Support and improve the ongoing ACP Unity and Solidarity (Regional Integration);*
- *Preserve and improve preferential access of ACP exports to the European markets (Lome Acquis);*
- *Be compatible with WTO rules;*
- *Provide special and differential treatment to ACP countries based on their varied development status;*
- *Entail reciprocity in liberalisation but must provide flexibility for asymmetry in liberalisation and;*
- *Be sustainable and locally owned hence must mainstream the participation of other stakeholders such as private sector and civil society organisations other than central government officials as equal partners.*

Anticipated Implications of the EPAs

The EPAs are certainly bound to bring benefits as well as costs to the negotiating parties. Benefits and costs will vary across parties to the EPAs as in some cases benefits may outweigh costs and vice versa and either result will depend on the negotiating capacity of either party. But, generally, the expected benefits include:

- *deepening integration within ACP and enhanced integration between ACP and EU thereby further enlarging the market for EAC countries;*
- *promotion of ACP economic liberalization; EU's access into ACP countries;*
- *promotion of stable, transparent and predictable framework for trade, which will bring the benefits associated with increased economies of scale, improvement in the levels of specialization, reduction in both production and transaction costs and altogether will help to increase ACP's competitiveness.*

- *Improved competitiveness will further influence positively trade flows, technology transfer, investment inflows, hence contributing to poverty reduction and sustainable development.*

In EAC, it is evident that the EPA is already influencing trade policy reforms within the EAC member countries. The EPA process has helped to consolidate and lock-in some trade reforms in the EAC which would lead to creation of more predictable and less reversible policies, and increase openness as well as transparency in the EAC trade and investment environment which will win the investors' trust and hence help mobilize economic operators and foreign investment.

On the flip side, some of the expected costs of the EPA include:

- *Huge erosion in government revenue for countries with bigger shares of tariff revenues in their total revenue which may negatively affect many basic social programmes, particularly, provisioning of health, education and other basic social services. Low income groups, the peasants and the unemployed may find themselves less able to access than before such services because the services would become very expensive;*
- *Dumping of cheap agricultural surpluses from Europe could be experienced and this may disrupt agricultural activities in some ACP countries and economically displace many who depend on agriculture for their livelihoods;*
- *At the same time, unemployment rate could rise which when prolonged may provoke economic insecurity and political instability within the region.*
- *Particularly in Africa, the EPA may, instead of supporting, disrupt the ongoing integration processes where some EPA configurations do not tally with the ones recognised by the African Union or otherwise where membership in some of the economic blocs has been rearranged or multiplied;*
- *Productive systems in ACP could also be affected by the influx of cheap inputs and primary commodities coming from the EU and may lead to industrial restructuring oriented away from original production towards production of goods whose inputs can cheaply be obtained from Europe;*
- *Decline in industrial development mainly due to industrial closures that may arise as a result of overbearing competition from efficient EU imports of the same products produced locally;*
- *Hindrance to trade diversification when ACP countries are not able to add value to their productions.*

Status of the EAC EPA Negotiations

The EAC-EC EPA was initialled on the 27th November 2007 in Kampala Uganda as an interim agreement covering only goods trade but providing the framework for further negotiations in other areas. The parties agreed to provisionally apply the agreement until July 2009 when the comprehensive EPA would be agreed. The initialled agreement is made up of some key sections: general provisions, market access for goods, development cooperation, fisheries agreement, dispute settlement, and areas for further negotiations. Issues that have been left for further negotiations are listed in a Rendezvous clause in Article 37 of the initialled agreement as follows:

- *Customs and trade facilitation;*
- *Outstanding trade and market access issues including Rules of Origin;*
- *Technical barriers to trade and sanitary and phyto-sanitary measures;*
- *Trade in services;*
- *Trade related issues namely:*
 - *Competition policy;*
 - *Investment and private sector development;*
 - *Trade, environment and sustainable development;*
 - *Intellectual property rights;*
 - *Transparency in public procurement;*

- *Agriculture;*
- *An elaborated dispute settlement mechanism and institutional arrangements;*
- *Economic and Development Co-operation; and*
- *Any other areas that the Parties find necessary.*

The interim EPA also provides for flexibility for EAC to exclude sensitive agricultural and industrial sectors/products from liberalization in order to shelter their nascent industries, mostly agro-based, from external competition. Percent of trade liberalised is 82.6 while 17.4 percent of trade has been excluded as sensitive for a number of reasons. The rules of origin provided for clothing products is fairly simple and would allow EAC countries to be able to source fabrics from all over the world and export their products to the EU without duty or quota restrictions.

The new trade regime would be implemented in accordance with the EAC common external tariff structure which consists of three bands. Goods which have been zero-rated in the CET (65.4 percent), mostly raw materials and capital goods will be liberalised first, followed by intermediate products (14.6 percent) which are currently charged duties of 10% and final liberalisation will be in the consumer products (2.6 percent) which currently attract duties of 25 percent in the region.

In terms of progress, the EAC and EC last met in March 2009, during which areas such as Services and Agriculture were expected to be opened for negotiations for the first time. New issues were as well meant to be introduced in the negotiation. These are, competition policy, intellectual property rights and government procurement (the last idea is not shared by Tanzania). Concerning Development, a very brief discussion and at a technical level was anticipated during this meeting because most of the areas have been agreed upon.

Way forward for the negotiations

EAC region faces numerous challenges in the EPA process such as: inadequate human and technical resources/capacities to effectively engage in the remaining issues of the EPA negotiations; there is a major issue of adequate funds to ensure that enough studies on the remaining subjects are carried out, to raise awareness and even in organising meetings that should bring together negotiators and key stakeholders. Tight bureaucracy and cumbersome access procedures to funds are also a major challenge in making use of the available EDF funds. There is also the challenges of poor co-ordination between EU-SADC, EU-ESA and EU-EAC groups considering the issue of overlapping memberships in the three blocs and the ongoing Tripartite discussions between the three groups. The other challenge relates to the Everything But Arms (EBA) initiative which is the main reason for some LDCs not signing the EPAs, and which may further complicate the expected integration of the three blocs.

In conclusion the presentation cast doubt on the benefits of EPAs considering the enormity of the challenges it would bring to EAC countries. The issue of exclusion of views or participation of lower economic classes/grassroots in the negotiations, while focusing mainly on a small section of the economy engaged in export activities is also of major concern. Furthermore, the current global financial crisis raises concerns as to whether the EC will be forthcoming on their financial commitment. The presentation left unanswered the question of what options are available to EAC governments (second best option) should the EPAs not deliver on their development needs.

Discussions on the Paper:

- *Both objectives and principles* are fundamental but EC has, since phase-1 of the negotiations, deviated from them and manipulated the process, thus limiting the EAC chances of moving forward positively with the process.
- *Deadline of the FEPA.* This cannot be completed in time since there are a number of contentious issues yet to be completed before the set July 2009 deadline. There is need to take off the time pressure of having to meet negotiation deadlines and focus on developing a pro-poor content of the EPAs which should entail renegotiations of the all the contentious issues such as rules of origin, export taxes, and MFN.
- *In the case of Tanzania,* CSOs have been engaging the government through an approach that involves all the stakeholders in raising awareness on the interim EPA. A major challenge has however been limited capacity (both technical and financial) in analysing the market access (trade in goods) component where Tanzania has key interest.
- *Africa negotiating as one block under AU is a cumbersome effort.* This proved a huge challenge considering the dynamics involved in the different blocks thus all of them have to go regional.
- *Information sharing among the EAC CSOs is fundamental.* This is so as to address the gaps faced by the EAC partner states by making activities all inclusive, which calls for more research and advocacy activities.
- *Challenges relating to substantive issues such as MFN, Export taxes and SPS.* This could be resolved by tackling the in house setbacks within the EAC as stipulated in this project. Also, in the second phase of the project, more research and advocacy would be conducted on topical issues in the EAC integration where no current studies have been done.

3.2 Assessment of Revenue and Development Implications of EPAs: Tanzanian case

By Dr. Beatrice Mkenda, University of Dar es Salaam, Tanzania

Most EAC countries heavily rely on revenues from trade taxes which form a huge chunk of their total revenues (see table below); hence the EPA is expected to have significant revenue implications for EAC countries. This presentation sought to examine the revenue and the budgetary implications which would affect development in Tanzania.

The Importance of Trade Taxes in Total Revenue (in percentage terms)

	2006	2007
Kenya	39.5	38.6
Uganda	49.9	50.8
Tanzania	44.3	44.2

Source: EAC Trade Report 2007.

Revenue Implications of EPAs: Tanzanian Case

- Based on the current data of trade in 2008 collected from Tanzania Revenue Authority (TRA), after goods with positive tariffs (10 percent) start to be liberalised in the second phase (2015-2023), Tanzania will lose revenue amounting to TSh 3.5 trillion. This amount is approximately 75 percent of the total customs revenue on trade from the EU.

- The next phase of tariff removal (2020-2033) will involve products that attract 25% duty and this will lead to revenue loss amounting to TSh 2.1 trillion which is currently approximately 45 percent of total customs revenue from trade with the EU.
- These revenue losses are likely to increase with a positive trade diversion.
- However, these estimates have been calculated using static data for 2008 which are likely to change as trade and growth of the Tanzanian economy changes and should merely be seen as indicative of the outcome.
- One way to make the estimates dynamic is to make projections of the growth of GDP and trade along the timelines of liberalisation schedules and then use the projected growth rate to project the growth in customs revenue losses.

Development Implications

- The loss in customs duties means a loss in funds going to the government's budget which may permanently affect development objectives if it leads to government's inability to fund its development programmes.
- Given the huge reliance on customs revenue as a source of government revenue, it is quite possible that as a result of the loss in revenue, the government will cut back on expenditure on key social services which will result in declining quality and provision of such services.
- A reduction in critical social services such education will set back the objectives of providing free quality basic education and increasing gross and net enrolment rates that the government of Tanzania has been spearheading in its Primary Education Development Programme (PEDP). Such a setback will undoubtedly affect the long-run human resource development of the country.
- Another possibility is that the government might resort to increasing user fees on social services to counteract the revenue losses. Such a response will aggravate the already high cost of living that the citizens face, thus locking-out many more people from accessing such basic services.
- The development impact of EPAs, other than being looked at from the revenue loss perspective, should also be analysed from structural changes which will come about due to the EPAs and that could occasion huge employment effects. It is obvious that EU firms will out-compete the Tanzanian firms which will affect the local industries in terms of production activities, leading to closure of firms/industries as well as loss of employment levels.
- The fact raised by the presentation is that EU's industrial base is much more advanced in terms of technology, and that their products are of a higher quality than Tanzanian. Once tariffs are removed, revenue losses will be experienced but EU goods will additionally be cheaper, and it is this that will make the demand for local products to fall in favour of imports from EU; this will lead to closures of local industries and loss of employment.
- Furthermore, a number of EAC industries are likely to be out-competed and not likely to remain profitable owing to the many supply-side constraints that they face that limit their competitiveness. Unlike EU businesses and industries, those in Tanzania are less able to access inputs (e.g. electricity and finance) at a cheaper cost as EU firms are; EU producers are more heavily subsidized than their Tanzanian competitors; and it will not be automatic for Tanzanian firms to upgrade their production facilities or acquire technology to compete with EU.

The presenter concluded by posing the following questions to participants:

- *To what extent will the government mitigate the loss of revenue so that key aspects of its expenditure are not affected?*
- *Are there other ways the government can raise revenue so that important budgetary expenses are not cut?*
- *To what extent is the government prepared for the decline in government revenue?*

- *Is the liberalization grace period sufficient to undertake fiscal reforms and devise other means of raising revenue?*
- *What compensation measures by the EU can be devised to counteract the revenue losses?*
- *To what extent can the government improve the tax base as a measure for capturing tax revenue?*

Discussion Points

- *Revenue losses.* There should be mechanisms of raising revenue by expanding the tax bracket such as improving collection from the informal sectors to mitigate losses. These issues could be taken up at the negotiations level by policy makers. Also, policy measures should be taken into account to increase tax bases through increased efficiency in tax administration.
- *EU providing budgetary allocations,* to assist Tanzania mitigate revenue losses.
- *Liberalization.* For liberalization to take place it should address the supply side hurdles which could eventually increase exports to the EU. The focus of the study should be more on the implications of liberalising our economies in phases that probably could lead to loss in revenue. Strategies could also be taken up to counter the effects of liberalization by looking keenly at the schedules of liberalization.
- *GDP growth.* These issues have been raised in the LDCs as benchmarks in the growth index of any country. The challenge has been in capturing of the GDP figures in cases where those countries with low GDP growth have all the factors such as infrastructures, industries, thriving businesses while those with high GDP do not have such growth movers.
- *Private-public-partnerships.* This could be addressed in the negotiations by including all the stakeholders to influence the process.
- *Inequalities within the EAC region.* It is the experience that both human and technical capacity hampers the negotiations process a great deal.
- *Need for cooperation in regard to undertaking the studies.* The studies have to involve the revenue authorities and treasury departments which could help in the understanding the possible implication of EPAS on revenue collection.

3.3 Safeguarding the EAC Agricultural Sector in Relation to the EPAs: Case of Rwanda

By John Bosco Kanyogoga, Trade Development Links, Rwanda

This presentation served as a civil society input in the ongoing negotiations towards a comprehensive EPA. It was based on an ongoing research being undertaken by the presenter. In this respect, the presenter assessed the best ways and means of safeguarding the Agriculture sector as well as identified the potential opportunities to take advantage of. He also explained how farmers and exporters of agricultural and agro-based products will benefit in the EPA process focusing on Rwanda as a case study.

The importance of Agriculture in EAC and Key Challenges for Development

Agricultural sector has been the key sector in the ACP-EU trade relations. The sector is important to ACP group, in terms of GDP contribution, income-generating activity and as a major source of food. The agriculture sector has been identified as an important pillar in the EAC Treaty for the region's economic development agenda; it is seen as key to ensuring food security in the region, and has influence on key economic variables such as employment, foreign currency, share of contribution to GDP and share of exports. About 80 percent of the population of the EAC Partner States lives in the

rural areas and depends on agriculture for their livelihood; hence, agriculture is seen also as key to rural development.

However, public expenditure in the sector is still low in all the five EAC Partner States. For example, the budget allocations are currently at 5% for Rwanda, 4% for Kenya, 3.4% for Uganda and 6.4% for Tanzania which are all below the 10% requirement of the Maputo Declaration and NEPAD commitments to which EAC Partner States are a signatory. Growth in the sector and its ability to take advantage of the EU's preferential trading scheme provided under the EPAs will continue to be inhibited by common challenges related to market conditions and preference erosion:

- limited financing and inadequate new investments;
- outdated/inefficient agricultural health and food safety;
- inadequate research and development;
- fragmented and disorganized private sector
- inefficient land distribution and management systems;
- insufficient irrigation: e.g., in sub-Saharan Africa, only 4% of the arable surface area is irrigated, as opposed to 39% in South Asia and 29% in East Asia (World Bank, 2008);
- deficient and uncoordinated risk management measures;
- inadequate transportation (especially for perishables);
- Rudimentary techniques of farming;
- weak and non-integrated information/intelligence systems;
- weak linkages/participation in markets; and
- lack of skilled human resources.

The key challenges are the result of a number of factors such as:

- policy factors, mainly governance, legal and regulatory framework, insecurity, inadequate access to productive resources, inadequate participation of local communities, poor physical infrastructure and utilities, weak institutional framework, low public expenditure; and unfavourable terms of trade;
- technology factors including mainly inadequate research, extension services and training; and prevalence of pests and diseases
- Nature related factors include degradation of natural resources; and climatic and weather unpredictability; and finally,
- cross-cutting constraints such as high incidence of poverty; inadequate social infrastructure; and gender imbalances

The Case of Rwanda: Importance and Constraints to Agricultural Development

The sector's contribution to Rwanda's GDP is 31% in 2008 and contribution to per capita GDP is approximately \$272. It employs approximately 80% of Rwandese; 70% of export revenues is generated from the sector and it is the sole source (90%) to Rwanda's national food needs. The main challenges to development are scarcity of land; dominance of the sector by the production of low value food crops, although farmers are beginning to shift slightly towards higher-value crops, such as fruit and vegetables, rice, maize, groundnuts and soybeans; low share of production meant for exports (the main export crops are legumes, cereals, roots and tubers, bananas); traditional cash crops such as coffee, tea, and pyrethrum); and new export crops including fruits and vegetables, flowers, spices etc; and insufficient budgetary allocation to the sector.

Another issue that presents a big challenge is the fact that most Rwandan exporters do not export directly to the European market. Most of the exporters supply to buyers (middle-men) who get these products to the European market.

The main constraints for the development of the sector include

- lack of sufficient experience and entrepreneurial capacity in the country, especially in the areas of marketing and agro-processing;
- lack of sufficient awareness of international product quality standards and ability to comply with them;
- inadequate infrastructure for post-harvest management and agro-processing;
- an insufficient network of all-weather rural roads and insufficient rural electrification;
- inadequate international air transport linkages for export products;
- lack of sufficient research on non-traditional crops;
- insufficient finance for producers and insufficient investment capital for agro-processing and export development

State of Negotiations

After the initialling of the EAC EPA further negotiations on the agriculture cluster have been based on a text developed by EAC. Key elements in the text include:

- ensuring food and nutrition security;
- rural development;
- development cooperation;
- removal of EU's subsidies & domestic support; and
- special safeguard measures.

The best ways and means of safeguarding the agriculture sector within the EPA context are;

- having strong safeguard measures in the EPA agriculture text;
- putting in place a financing mechanism specifically for agricultural related activities, such as, an agricultural fund;
- the development cooperation chapter of the EPA must clearly include agriculture among the priority areas; and
- ensuring the effective implementation of the provisions of the agriculture chapter in the EPA text.

The main opportunities for the farmers and agro business in the region are;

- The EPA has resulted to an open EU market (duty-free and quota-free) for all agricultural products;
- It has led to more awareness on what is going on in relation to the ACP-EU trade relations;
- EU's commitment on the development cooperation includes supporting agricultural related activities; and
- The regional governments are aware of the importance of the sector and can only work towards getting better concessions in the EPAs

The advocacy and awareness areas by the Civil Society

These could include, for instance, lobbying with governments, negotiators and members of parliament; raising awareness and discussing the implications with trade unions, non-governmental organizations and business groups. CSOs also are part of stakeholders to be affected or to affect the implementation of EPAs, hence the need to involve them in all capacity building and awareness creation activities on these agreements including update on negotiations, commitments made in these negotiations, benefits of these negotiations and effects and the possible mitigation measures. In particular, the awareness creation and capacity building can help CSOs to:

- become familiar with the agreement including the rules of origin for agricultural products;
- articulate demand for technical assistance especially in the areas identified for co-operation in agriculture;
- utilize opportunities provided from provisions on liberalization;
- seek technical/development assistance to meet EC's market requirements: standards, technical regulations, food safety regulations;
- focus on developing and maintaining competitiveness on domestic, regional and external markets – based on cost, efficiencies, quality, marketing etc.
- advocate for appropriate and sufficient Financing Mechanisms;
- articulate demand for enhancement of competitiveness of the sectors by advocating for improved technologies, increasing productivity; promote export diversification; development of export marketing capabilities: market research; identification of options for the improvement of marketing infrastructure and transportation, identification of financing and cooperation options for producers and traders and improving access to rural financial services.

Points from Discussion on the Paper:

- *Environmental and land issues.* In order to solve environmental issues, it is necessary for all EAC to take environmental protection measures. To achieve this, land and environmental policies could include environmental protection measures in the region.
- *Common Agricultural Policy in Europe.* This could be replicated in the EAC through deepening of integration agenda by up scaling the intra-EAC trade or rather south-south trade through removal of trade barriers. This could facilitate an EAC CAP
- *Advocacy work.* CUTS and its research partners could get more involved in this through awareness creation and more research in areas where critical areas have not been tackled.
- *Standards and harmonization.* In the NTBs, the EAC partner states should necessitate harmonization due to different levels of development. Technical issues could be resolved and envisage extension of negotiations beyond the July 2009 deadline
- *Political will and commitment.* This would help in enforcing recommendations after all the stakeholders have finalized an EPA
- *Agriculture fund.* The facilities such as the EDF should give a spotlight to increasing the scope within the EAC to include agriculture. EAC should get additional resources through pushing for more aid for trade (from sources such as the WB), revise aid disbursement and strengthen the institutions monitoring aid for trade. The region should also formulate strategies and programs for AFT in Agriculture. It should be specified who is to fund what between the EAC and the EU
- *Addressing the supply-side constraints in Agriculture.* This could be ensured through translating market access opportunities into market entry, overcoming technical barriers to entry through considering quality safety and technical conformity to standards.
- *Enhancing competitiveness.* This could be done through improving EAC technologies which will raise productivity and push the region in the global competitiveness.

- *CSOS in Rwanda* have done capacity building, research and advocacy in the area of their National trade policy through a joint forum who eventually take their issues at regional level.
- *Special safeguard measures*. Import surges could undermine agricultural production and consequently food security, livelihood security and rural development. EAC should consider applying SSM or SSM type protections against such import surges.
- *Text on agriculture and development chapter*. It should have a specific approach to be used in the advocacy by the EAC partner states. SSM is not an issue of the EAC but there is a prospect of the region (under article 37) of a safeguard measure which involves domestic capacity.

3.4 Implications of the Most Favoured-Nation provision in the EAC-EC EPA

By Julian Mukiibi, CUTS Geneva Resource Centre

Implications of MFN on EAC

The MFN clause as drafted in the interim EPA does not add much value to EAC integration because the market access offer by the EC is already free of duty and quota restrictions and therefore no better preferences are to be expected from their entering into trading arrangements with other parties. However, the EC will be able to trigger the clause if and when the EAC enters into a trade agreement offering better preferences to the major developing economies. To this extent their, trade policy making mandate is curtailed.

Inclusion of an MFN clause in the EPA is novel in that no other regional agreements have previously included a similar provision. Although advocates of the multilateral trading system see it as positive step towards “multilateralizing regionalism”, the clause tampers with the policy space needed by developing countries, particularly LDCs as is the case of four of the EAC member states and may affect their capacity to enter into trade agreements with major developing economies offering better preferences/terms of trade than the EC. This stands in the way of the much coveted south-south trade promotion.

Recommendation

There is a critical need to carry out a thorough study of the future trade implications, if the MFN clause is included in the EC/EAC final EPA in its current form. This would inform the EAC member states on the trade opportunity foregone and whether the preferences obtained under the EPA are worth giving-up their policy space in this regard.

Further the EAC can still negotiate for an increase in the threshold of what should constitute a major developing economy, which could be defined at 3% and 6% share of world exports for a country and regional trading block respectively. This could be decided suitably going by the 2007 WTO trade statistics. The countries in the two categories proposed above are likely to be developed economies where other modes of preferences are already available to the EAC member states and therefore may not affect the region’s capacity to expand their trade relations with the fast developing economies.

Discussion on the Paper:

- *MFN Principle under the WTO*. The debate on this issue focused on two dimensions: recognition and application of international standards while developing national standard particularly in the

EAC, and the use of unilateral measures that act as NTBs. Safety and technical regulations serve important objectives but are also prone to be used for protectionist purposes.

- It also emerged that most EAC countries *lack the resources and capacity* to keep up with the ever increasing standards in developed country markets that often nullify the market access gains through multilateral trade agreements.
- *Exceptions of MFN*. Under article 24 of GATT, it is allowed to violate MFN if a country is entering into an RTA.
- If EPA has a clause on liberalization, that is not a difficult threshold since it can be renegotiated. Under the FTA, states have to compete with EAC if negotiators refine more MFN provisions.
- Under article 24, all commitments under MFN are applied to all members. If a tariff commitment is lower, it will apply to imports from EC who provide support to the EC. This could be a disadvantage to the EAC region.
- A clearer understanding of the implications of the MFN clause is required before a cost-benefit analysis can be made.

3.5 Standards and Market access in the EPAs: Implications and Way Forward for EAC

By Gloria Otieno, Institute of Social studies (ISS), Netherlands

Tariffs are no longer the barriers to trade for EAC countries; an ever-increasing range of standards and other non-tariff barriers are the main barriers even into markets such as EU's that are already accessible to EAC free of customs charges or quota restrictions. Rising income leading to increased demand for high quality, health, and ethical standards are the main drivers for higher trade standards touching on food safety and other technical measures. But there are standards which are legally mandated by the WTO while there are also private standards which pass as voluntary but they are the main determinants whether EAC countries would be able to access the EU market because it is the private sector, after all, that conducts trade, not governments.

Standards therefore play numerous roles in a country's trade development policy: they are the pre-requisite for exploiting tariff free market access; they therefore determine EAC's competitive advantage in the EU as lack of which may lead to their exclusion from trade with the EU; they are also instruments for EU's commercial policy; their demand spurs innovation and upgrading of production systems; and more recently (less researched) it has been argued that they are a precursor for institutional transformations or development.

International standards are divided into two: sanitary and phyto-sanitary (SPS) standards which is a separate agreement on food safety and animal and plant health standards and there is also technical barriers to trade (TBT) which applies to technical regulations (mandatory), standards (voluntary), and conformity assessment procedures.

The WTO SPS Agreement seeks to protect:

- Human or animal health from: risks arising from additives, contaminants, toxins or disease organisms in food, drink, or feedstuff. Types of SPS here may include limits on residues in fish and shellfish; limits on aflatoxin residues in nuts; and compliance with HACCP to limit risks from salmonella poisoning.
- Human life from: diseases that may be carried in plants or animals, e.g., requirement that susceptible animals such as dogs be vaccinated against rabies and chicken against avian influenza.

- Animal or plant life from: pests, diseases, or disease-causing organisms where SPS measures that may be encountered include measure to prevent introduction of foot and mouth disease (FMD) to animals and measures to prevent introduction of fruit flies in the importing country.
- A country from other damage that may be caused by entry, establishment or spread of pests e.g., a measure to prevent introduction of zebra mussels through ballast water of ships or seed regulation to avoid introduction of exotic weeds into the importing nation.

Other standards measures are related to environment protection, consumer interests other than health related, and animal welfare. These are not covered by SPS agreement but by TBT Agreement.

But, then the WTO allows its member countries to stipulate even stricter SPS measures so long as they are aimed at meeting the above goals without causing unnecessary barriers to trade. It also allows its members the right to adopt technical regulations, standards and conformity assessment procedures as long as they do not constitute unnecessary obstacles to trade.

The constraints EAC countries face with regards to compliance with standards are the following:

- non-existent or obsolete infrastructure,
- inappropriate sanitary legislation,
- technology limitations (testing facilities)
- limited financial means
- lack of international standards
- participation in international organizations
- proliferation of private standards - requirements are tougher than international standards

The major challenges with private standards are that:

- they often go beyond official food safety requirements and have since become de facto market access requirements for the concerned countries;
- different schemes of private requirements keep emerging haphazardly and sometimes contradict each other, lack in harmonization and have no equivalence to each other which makes it difficult for traders what and how to invest in the necessary standards infrastructure;
- Costs associated with private standards such as costs of compliance and certification are higher and may completely lock out small-and-medium-sized farmers and enterprises from trading.

Nonetheless, these private standards provide guarantee for access to higher-priced markets and those who can meet them face less competition in markets; they have become the precursor for driving supply chain modernization and investments, faster upgrading of production systems and for correcting underlying hygienic problems.

Conclusion and Recommendation

In conclusion, the presenter opined that in order to meet the EU standards, upgrading of EAC standards would be important through value-addition by producers, manufacturers and exporters. Notably, the global value chain cannot allow EAC traders to keep off from meeting standards so the EAC partner states must participate in standards setting because as long as they are going to export to the world, they must participate at one or many levels of the global value chain which demands that standards be observed from 'farm to fork', i.e., throughout the production value-chain. Finally, the presenter recognised that although the majority of standards are not legal, they are nevertheless

beneficial as they guarantee market entry and higher prices so the nature of EAC exports should change to meet them however much stringent they may be. There is need for authorities that regulates standards in EAC to adopt and use the EU's "farm to fork approach".

3.6 Implications of EAC-EC SPS Agreement for EAC Trade

By Ely Twineyo Kamugisha, Executive Director, ACTADE, Uganda

In a synopsis, the WTO SPS Agreement emphasizes the right of member countries to install measures which may restrict trade in order to implement national laws protecting human, animal or plant life or health. In line with the national treatment and MFN principles of the GATT, such measures should apply to domestically-produced food or to local animal and plant diseases requirements, as well as to products coming from other countries, without unjustified discrimination among foreign sources of supply. The SPS Agreement recognizes, however, that the animal and plant disease status may differ among supplying countries, and this must be taken into consideration in the trade measures applied.

The General Food Law 178/02

This is one of the statements under the EU General Principles of food law and could be looked at as an *umbrella* under which all other legislation comes. The Regulation reinforces the concept of Farm to Fork (Traceability); drives traceability requirements down throughout the chain of supply by imposing responsibility for unsafe food imports directly on the importer; and establishes the concept of "equivalence" whereby third countries are allowed to demonstrate that their control systems provide the required level of food safety although different (from the EU) systems are employed to achieve this objective.

On private sector influence on SPS,

One of the main problems that private SPS standards pose is that they do not give stakeholders outside of the membership group a formal avenue to feed in their concerns to the standard-setting process. This poses a serious concern when the private standard setters have marketing control over the sector they are setting the standards for as they can use their market power to pass on the costs and risks of production to producers using strict quality standards.

Conclusion and Recommendations:

- Agree a special package of support to develop internal capacity to meet the SPS standards and generally all EU standard requirements. This is because capacity to comply with standards has been identified as the single most hindrance to EAC access to the EU market under previous preferences schemes (Lome, Cotonou, EBA);
- Agree to develop a mechanism for coordination, consultation and exchange of information as regards notification and application of planned new SPS measures, whenever these measures might affect EAC's interests. EAC should insist on EU to recognise equivalence in safety and safe use of agrochemicals, rather than insisting on it from EAC members as exporting partners to EU. The EAC should work together until the EAC have reached a level of equivalence that can be plausible.
- Agree on only those measures that are commensurate with internationally agreed standards or which have otherwise been proven to be justified. A pro forma policy of 'zero tolerance' based on

the precautionary principle contradicts the WTO rules, as it would remove the need for scientific evidence.

- Request both a reasonable length of time for adaptation and for the supply of all relevant assistance necessary to comply by the end of the implementation period. This would give EAC exporters/suppliers time to build the capacity to comply with EU traceability requirements and thus effectively penetrate the EU market.
- Agree a facility which focuses on cooperation on SPS issues and other standards: e.g. through harmonisation of standards; equivalence agreements/setting-up detailed equivalence procedures; mutual recognition agreements; joint SPS management committees; and exchange of information.
- Related to the above, there should be a moratorium on SPS bans and other restrictions, unless there has been an early notification of a respective intent of the EU, followed by extensive consultations including all key EAC trade stakeholders possibly affected by such measure; and a presentation of comprehensive scientific evidence justifying the measure as well as compliance with all other provisions of the SPS Agreement.

Policy Points from the Discussions on the Presentations:

- *Harmonization of standards.* In the EAC region, over 800 standards have been harmonized since 2001. Development cooperation should enhance harmonization of standards, evaluating them, capacity building for institutions so as to adopt standards easily.
- *Standards should focus and extend to environment.* Resources should be put up to meet the standards for exporters and farmers as relevant stakeholders.
- *EAC lack a competitive edge in standards.* Underpinning standards within the EAC region under EPA arrangement through mutual cooperation would spur the development of standards in EAC.
- *SPS remain a problem.* SPS standards may pose a challenge but they have to be met in order to access the niche market in the EU. In order to meet the organic market in the EU, there is need to involve the private sector and employ experts who could help in meeting these standards.
- *Settlement mechanisms in SPS.* Voluntary standards are necessary if exporters are exporting in a group. Mandatory standards have to be backed by scientific measures if they are to meet the niche markets of the EU.
- There should be a *mutual recognition arrangement* under the EPA between the standards setting bodies of both the exporting and importing countries. They too should conduct a conformity assessment considering their levels of technologies in their laboratories which is possible under the EPA development chapter.
- There is need for EAC to invest in standard certification schemes and participate in standards setting bodies as well.
- *Wealth creation* is the first stage towards poverty alleviation. The presenter stressed the need to make the assets and resources more productive by creating employment to generate incomes.
- *Liberalisation* should have regulatory measures termed as safety nets. This calls for government authorities to intervene and interventions to respond to the effects of liberalisation.
- *Food safety needs* ought to be observed. In the process of standardization, measures such as National food safety strategic plan should be initiated at national level before being taken to the international standardization processes. Other measures such as capacity building including infrastructure like laboratories ought to be take in.
- *The private sector* should be included in standard setting since they are the key producers and exporters as well as impose these measures. This should be enhanced by the development of intra-EAC trade.

- Under the article 5.7 of the SPS, it allows members to go beyond available sound science but obliges the relevant member to collect the scientific justification within a reasonable period.
- There is need for studies to show EU commitment on effects of liberalization (in terms of resources) especially on binding commitments.

3.7 Trade in Services and EPAs: What is at stake for the East African Community?

By Victor Ogalo, CUTS Africa Resource Centre, Nairobi.

The Importance of Services Sector in the EAC Region

Since independence, trade policy of EAC countries has focused on agriculture, mining and industry but trade in services has been protected for different sensitive considerations. However, services sector has been the most important sector since independence in creating new jobs (57% in Kenya, 2006), spurring GDP growth (48% share in Uganda, 2007), strategic for backward and forward linkages with other sectors, foreign exchange earner (exports and remittances), attracting FDI, and is seen as the major enabler for achievement of development goals such as MDGs. Services activities have also become primary creators of new jobs² and play a critical role in economic growth by anchoring and supporting the entire goods production process and are also essential in improvements in social service provision.

Services in EPAs and GATS Architecture

While WTO-compatibility of EAC-EU trade does not require liberalisation of services trade, the two parties have agreed to include services in their talks, so the GATS should provide the architecture within which to hold such talks:

- Article V of GATS demands that such liberalisation should entail “substantial sectoral coverage” regarding the number of sectors included for liberalisation, the modes of supply and the volume of trade affected.
- The objective of GATS is progressive liberalisation of international trade in services through successive rounds of negotiations and development of rules³.
- The most important principles of GATS include non-discrimination, (i.e. most favoured nation (Article II), national treatment (Article XVII) and transparency in market access (Article III)) and it also provides rules on domestic regulation (Article VI), mutual recognition (Article VII), general exceptions (Article XIV), guiding principles on progressive liberalisation (Article XIX), specific commitments in schedules (Article XX), compensatory adjustment in cases of withdrawal of concessions (Article XXI), dispute settlement provisions (Article XXIII), denial of benefits (Article XXVII).
- But developing countries, particularly least-developed ones, have some flexibility not to comply entirely with Article V since GATS Article XX allows them to: select the sectors in which they wish to undertake commitments; take fewer commitments than developed countries; and progressively extend market access in line with their development situation.

² 90% of new jobs globally are created in the services sector

³ See Article XIX on progressive liberalization, and X, XIII, XV and VI: 4, which set mandates for negotiations on emergency safeguard measures, government procurement, subsidies and domestic regulation.

- Article IV further obligates developed WTO Members to increase the participation of developing economies in the world trade by: strengthening the capacity, efficiency and competitiveness of their domestic services; improving their access to distribution channels and information networks; and recognising their right to liberalise only sectors/activities that are of export interest to them.

GATS and EAC Commitments in other negotiations

Before the coming into being of the WTO, EAC countries had implemented during 1980-90s autonomous liberalisation of some key services sectors under the auspices of the WB/IMF's structural adjustment programmes. The GATS commitments of 1994/98/99 proceeded to multilateralise this liberalisation and followed with a demand for further offers. Currently, EAC countries have received requests to bind more open their regulatory regimes under the Doha trade talks and it talks towards its common market, under the tripartite negotiations involving SADC and COMESA, and in the EPAs.

Under the GATS, Kenya took specific commitments in the telecommunication, financial, tourism and travel-related, and transport services. In their own negotiations of the Common Market, EAC countries have committed to liberalise their transport services except Marine and Railways services; Business services; Financial services; Telecommunication services; Tourism; Distribution; and, Education services; all the commitments are expected to be ready by end of August 2009. On this note, the presenter posed the question as to whether EAC would wish to offer the same sectors committed under the Common market to the EU under the EPA arrangement. EU's interests in the EAC market are in the movement of natural persons, mainly mode 3 and 4; Computer services; Postal and Courier services; Telecommunication services; Financial services; Maritime transport services; Electronic commerce; and Technical cooperation.

The important restriction to keep in mind is that once a sector has been bound it is not cheap/possible to retract the commitment (lose policy space) because of the costly compensation involved. EAC countries must thus, before making any offers, undertake deeper study of the sector they are interested in offering for liberalization. They would also have to configure their offers to balance between what they offer each other under the EAC, what they offer to African countries such as those in COMESA and SADC and to other WTO members where the EU is included.

Preparedness of EAC for Services Liberalisation in EPAs

The presenter explained the regulatory gaps still existing in EAC and competitiveness weaknesses of their services sectors. He recommended that EAC should move forward cautiously and only gradually in liberalising any services sectors with EU. He further proposed that EAC should not be lured by the CARIFORUM EPA since the region is currently not in a position to agree the kind of reciprocal services commitments made by CARIFORUM in their EPA. But, he warned that EAC should be aware that the EC will most likely insist on having a standstill clause or guarantee that EAC will not introduce new barriers in sectors that have not been committed or opened in the EAC EPA and would also push EAC to go beyond their WTO commitments. It is clear that EC is interested in large infrastructural services; its requests to Kenya include a wide range of business services, telecoms, transport, maritime, financial, construction, distribution, etc. So, whatever EAC countries offer, EC will insist on securing offers that can be defended to meet the definition or concept of "substantial sectoral coverage", notwithstanding EAC's flexibilities provided by GATS Article XX.

His presentation of the preparedness of EAC to liberalise services sector reached the conclusion that EAC countries are not well prepared for services liberalisation at present and significant investments would be required upfront to improve regulatory regimes and develop competitiveness of services activities and further liberalisation may need to be deferred. EAC face the following challenges:

- competition law nearly nonexistent;
- low competitiveness of sub-sectors;
- Lack of or weak domestic regulations/enforcement in some areas e.g., e-commerce;
- Supply capacity constraints, mainly infrastructural and human capacity/skills;
- Lack of knowledge of services trade in each country and in the region as well, made worse by inadequate human resources knowledgeable on services;

Conclusions

Above all, EU is the most competitive services exporter in the global economy and agreeing terms on services are high up on their agenda, yet, EAC services sectors are still weak and their share of global exports are less than in goods. Besides, past liberalisation under SAPs meant reduced government investment in some sectors, which has led to institutional decay in some cases and further opening of those sectors under the EPAs may worsen what is already a worse situation.

EAC should always study EC's requests alongside the 'Global Europe' agenda which outlines how and what EU will be pursuing in any bilateral and regional free trade agreement. The agenda is solely to secure new and profitable markets for EU companies and it is clear in that agenda that top priority is given to pushing for stronger intellectual property rights, reduced non-tariff barriers in its trading partners, and services. This strategy bears a threat that any country not ready to offer what EU wants will find it difficult to access EU market for their products. EAC should, therefore, not be chided that EPA is about their development as it is about EU getting what they have envisioned in their 'Global Europe' agenda.

Given the state of development of the services sectors in the EAC countries, the **competitiveness** of the EU in services, the extensive commitments a services agreement will involve and the limited value of concessions they can hope to extract in services, the EAC need to approach these negotiations very carefully. For these reasons the EU also need to show maximum flexibility to the EAC in any services negotiations that occur.

Recommendations

For the EAC:

- explore all options available, including the option of an agreement simply on development cooperation and not rules;
- scale-up efforts of assessing capacity and competitiveness of services sectors, understand the potential legal implications and opportunities in signing a services agreement with the EC,
- focus on what you want from EC first then define your market access requests and prioritise your requests;
- do not make offers in a vacuum as offers should be linked to requests but be entirely sure what you want from the EC and what EC wants from you, then hold out on offers in areas of interest to EC until they get you clear concessions of what you are interested in;

- whatever you request and whatever EC requests that you may offer, there would be need to relate all that to all national and regional development plans or policy statements and sectoral plans; this is supposed to drive EAC's approach in trade, in EPA negotiations and in other negotiations;
- take care not to schedule an entire sub-sector unless you are entirely sure of your preparedness to open to competition any new services that may evolve in that sub-sector;
- ensure that scheduling of commitments is not done only on a defensive basis; some sectors may need to be offered if they have high export potential but require foreign investment (mode 3) or exposure to competition in order to increase their efficiency or lower cost of inputs; some sectors may be non-sensitive and with relatively low export potential and so may be dangled for liberalisation but this should be in exchange for better concessions from EC; and, yet, some sectors/activities may need to be excluded completely if they are sensitive to government provisioning of basic services, national security, or are better retained for domestic labour;
- diligently use the detailed CPC when scheduling commitments and check no commitment has been scheduled at the two-digit level as they need to be as specific as possible;
- undertake exhaustive review of country and regional laws to ensure that you find and understand all or any restrictions on market access or national treatment that exist;
- should any country chose to open a sector in which there is no domestic legislation or regulations or inadequate regulations, it would need to set the date for liberalisation of that service in the future with the aim of getting the regulatory regime effectively in place by then. Such offers would need to be complemented by getting firm commitment from EC that they will provide funding to support the development of regulatory regimes as may be required; and,
- demand that the EC makes clear and accountable their commitments on development assistance;
- finally, remain united in demanding maximum flexibility as provided by GATS Article XX in all aspects of any sector/activity that may be offered to EC; do not allow any room for EC to manoeuvre you.

For the EU:

- ensure that development and poverty reduction objectives of EPAs stay central to the negotiations, as demanded by the Cotonou Partnership Agreement;
- extend maximum flexibilities to the EAC in relation to services, in recognition of the terms of GATS article V and Article XX considering the limited levels of development of these countries;
- allow the EAC sufficient time frames to explore the implications of a services agreement for their economies, develop suitable strategies and negotiate terms that will promote their development;
- offer clear and accountable commitments in relation to development assistance and cooperation in any services agreement; and,
- allow EAC, should they consider it appropriate not to negotiate a full services agreement, to conclude an EPA without such terms and access development assistance to support the development of their services sector.

Points from Discussions on the Paper:

- EAC as a region should undertake more studies in trade in services so as to assess their impacts in the negotiations as well as come up with comprehensive data to back them up in the negotiations.
- EAC regulatory institutions should be strengthened where they exist or established where they don't exist. However, having a regulatory institution is one thing; a strong regulator would also be needed.

- Health care services should be prioritised; quests for mode 4 and increased brain drain may end up taking away the best health experts and leaving EAC countries with quacks.
- There is need to harmonise education qualifications in the EAC and focus on setting higher standards to compete favourably.
- Under the horizontal commitments, EAC should request the EC to: take commitments for elimination of the application of any economic needs test (ENT) under mode 4; make commitments for recognition of academic and professional qualifications for persons with university degrees or equivalent technical qualification as well as the right to practice; and, eliminate any restrictions on intra-corporate transfers.
- Mode 4 under GATS. The mode does not cover people seeking access to a labour market in general, brain drain, or those seeking citizenship, asylum or permanent residence. In this regard brain drain needs to be brought back within the confines of definition of mode 4 so that we don't lose our best human resources to developed worlds without accruing benefits to us.
- Since it is so costly and almost impossible to withdraw an offer in the context of the current GATS provisions, either this provision should be provisions, either this provision should be revised to consider health issues or EAC should take their time and offer only what they have understood well after comprehensive research.

3.8 Export Taxes and EPAs: Another Trade Policy Tool under Threat from the EU?

By Julian Mukiibi, CUTS Geneva Resource Centre

An export tax is simply a duty applied by countries on products before they are exported, although it can take several forms. Export taxes can be introduced at a standard rate and can fluctuate depending on world prices and can also take the form of a complete ban on exports. Developing countries have tended to use them on exports of primary products, due to the volatility and decline in relative prices in world markets (WTO paper), to increase government revenue, and to alter income distribution.

The current state of play of Export taxes and EPAs in the EAC region

All countries in the EAC except Rwanda employ export taxes as part of their trade policy. When looking at the implementation of export taxes in the EAC, none of the nations has a sufficient market share to cause price increases in the world market (the highest being Kenya, which produces 14% of worlds tea), but use export taxes on a variety of commodities other than tea, for a varying number of reasons. The reason why Europe is trying to ban use of export taxes in the EPAs is clear. In January 2009 it was stated that “removing trade barriers like export taxes must be a cornerstone of EU trade policy.” This is a message that has been carried throughout the EPA negotiations with the previous trade commissioner, Peter Mandelson, so an understanding of the reasons why the EU has this position is important.

Export taxes are quite difficult trade policy tools to use effectively, but they have been used successfully to meet a number of objectives by a range of developing countries and EAC should be provided with the flexibility to make national decisions in using export taxes effectively as may suit their development strategies or objectives. The categorisation of export taxes by the EC as “policy sledgehammers” is, therefore, unfair, as used in the right way they can be “scalpels”.

The negotiations towards the conclusion of the EPA negotiations should provide an opportunity for the terms on export taxes already agreed in the interim EPA to be reviewed in order to ensure that

flexibilities are in place to allow the EAC to use export taxes for the full range of developmental needs which they may require. It can be seen from many examples that the EAC are using export taxes for a number of legitimate reasons. Although the success and effectiveness of these measures has not been measured or proven, the EU is not basing its position on this information either and therefore their opposition to usage of such tools by the EC could be said to be ideological, polemical and not based on any developmental assessment.

Points from Discussions on the Paper:

- The advocacy aspects include the flexibility that EAC wish to retain in EPA to retain export taxes; (export taxes are applied on minerals, flowers and fruits)
- The first angle of attack over export taxes is the argument of they are a trade *policy sledgehammer* leading to a ‘beggar thy-neighbour’ approach in the sense that they discourage global trade on goods on which they are applied. However, this argument is overstated given that export taxes on raw materials are primarily meant to reduce their exploitation and encourage value-addition but not to discourage global trade.
- Exporting by land locked countries is generally more expensive, especially bulk products; hence use of export taxes could be justified to support their technical capacity and to promote value addition so that light but high-value products are exported and transportation cost are reduced.
- Other reasons why exported taxes have been used are to control production or extraction of commodities or raw materials and to protect environment, for instance in the case of minerals.
- EPA should be GATT compatible but the GATT does not prohibit the use of export taxes, hence the policy tool should not be brought within the confines of such compatibility and should remain a national decision by EAC countries.
- Uganda does not charge export taxes but charges cess on goods in domestic circulation. However, the new understanding of the EC of on export taxes lumps together even the cess and transshipment charges as export taxes which, according to them should be abolished.

4.0 CONCLUDING REMARKS:

A plenary session was conducted by Victor Ogalo of CUTS Nairobi. He briefly read a draft outline of what the report will look like and highlighted key messages. After which, he sought reactions from the participants about what they had learnt, about the outcome of the workshop, and their ideas on how the BIEAC project could be tailored to help create an inclusive EAC. The following is a gist of remarks both from Victor and other participants:

- There should be more engagements in the CSOs meetings so as to strengthen and influence the negotiations processes. These could be extended to address the plight of small-scale traders, farmers, producers and traders.
- The BIEAC project outputs such as the research papers, workshops, should be well disseminated to the stakeholder to be used as key reference and influence policies in the EAC.
- Phase 2 of the project should increase the scope of its coverage and include more government officials, chambers of commerce, farmer groups and small-scale traders
- In determining what research themes for phase-II of the BIEAC project, it would be important to take a visit to EAC Secretariat and explain to them what you are doing and ways in which you could help them with some of the areas where they need research to be done; this way, you avoid

duplication of duties but more importantly get the Secretariat to readily buy-in into what you are doing.

- CSOs have to get better organised to provide meaningful contribution to the EAC integration process and respond to challenges facing it.
- Civil Society Organisations working on trade and integration matters are so many and can not have a common podium with the EAC policy makers, so they could form an apex CSO body representing them, say at the EAC Secretariat.
- An opportunity for creating an apex CSO body for EPAs exists through BIEAC project, but check whether such a body exists already; that umbrella body could help change a lot including the terms of EPA negotiations if necessary for the region and accommodate concerns of grassroots people, farmers, small traders ignored.
- BIEAC project has the technical capacity and it must use this capacity to involve the government negotiators in the region. Its outcomes should also influence change in the processes. So, CSOs should not talk to themselves, you do good work but you should make more efforts to involve more than the Trade Ministry officials and bring on board other sector-specific stakeholders and organisations.
- ESRF presentation on state of play:
 - Studies need to be carried out to face the challenges highlighted better in the presentation, it should be determined whether the BIEAC project is fulfilling part of the needs, and ways should be suggested how the studies can be disseminated better.
 - regional integration is a casualty of the FEPA, the process has to be streamlined in light of the fact that Article 34 of the Cotonou Agreement states that we have to negotiate as a region; so far, there are more than 20 issues of concern in the interim EPA, with development being the shortest chapter and thus equivalent to a post-dated cheque.
 - it is important to note that the negotiators have agreed not to sign on binding rules but only on capacity building and on cooperation.
 - in Tanzania, the government speaks CSOs' language as CSOs and grassroots are involved in the consultations.
- Revenue and development implications paper:
 - It will be good to have GDP growth grounded model; if trade diversion effects are also included, are we getting into more serious trouble than by what comes out from the current assessment based on trade creation?
 - Uganda study also showed losses in revenue and that consumer choice on cheap imports from EU may actually get restricted.
 - In the last 10 years, government income has increased 20 times but money flowing into development has increased only 5 times, this means that aid dependence will increase; and if no development happens, unemployment will increase which will mean more social unrest in the region.
 - There is no idea how the EPAs will affect positively EAC trade relations with China, India etc.
 - Issues relating to trade in services liberalisation and on TRIPS will only add to the woes, revenue loses can be mitigated by consumer taxes/VAT and better revenue management Consumer taxes are already high, there are many hindrances to efficient tax administration in EAC where huge informal trade that should be the source of more revenue is yet to be captured in official trade figures.
- Agricultural Safeguards:
 - The presenter should take note of the fact that safeguards do not apply to sensitive products as they are already protected by tariffs and we do not have the capacity to determine serious

- injury or prove possible threats of injury on products or sectors where safeguards may be applied.
- The four bullets in slide 27 of the presentation should be elaborated into texts for helping the negotiators⁴.
 - Standards:
 - 800 standards have been harmonised in EAC since 2001; but our traders may still find it impossible to export to EU since they keep changing goalposts in their standards and sometimes they apply standards selectively.
 - On the issue of selective application of standards, take the case of exports of fish from Lake Victoria in the late 90s being allowed entry when they were exported from Uganda while denied entry when exported from Kenya, yet the fish exported by Uganda is born in Kenya where the waters are shallow and simply migrate to Uganda.
 - The problem with shifting goalposts and frequent changes in EU private standards is mainly that it is not easy for us to invest appropriately in the standards infrastructure because you don't know when that infrastructure you have built is going to be obsolete as a emerging new standards will require you to establish different infrastructure; this is particularly a major challenge to small farmers/producers.
 - EAC looks forward to diversifying its markets to export the same product to different markets, but different markets require different standards, the US may require a different standard on our flowers than would the EU or Japan, so how should we invest in infrastructure and be able to comply with such an array of different standards? May be CSOs could demand that all standards in the world be harmonised or measures of equivalence be easily recognised so that we are not allowed entry as long as we can prove that our compliancy measures are good enough or equivalent to meet the required standards.
 - SPS remains a major market access issue with or without EPAs, so we should encourage (a) organic farming, (b) private sector development, (c) better knowledge of dispute settlement options like using ACWL, and (d) MRAs.
 - DANIDA-supported public sector standards facility coming up in Uganda should be used to replicate similar institutional strengthening in other EAC countries..
 - On reading of the draft report:
 - the workshop opened my eyes on how we will be trading with others, and am wondering why Kenya has no trade policy so on what basis is it negotiating EPAs?
 - Since Kenyan trade policy is not yet put together, it is important to gather the entire dispersed policy documents and compile a single National Trade Policy.
 - I learnt a lot but since interim EPAs are here with us, the comprehensive EPA will necessarily follow so we should continue working to make sure that the comprehensive EPA contains our aspirations but should it fail to do so, our governments must seek for plan B, which is GSP+ .
 - Continue inviting government representative, the BIEAC is a promising project for us to face the challenges better.
 - research inputs to governments on EPAs is essential, CUTS should continue the good work .
 - we should be practical and accept domestic rigidities and solve them before we can liberalise our markets.

⁴ Information contained in the slide under reference reads as follows: *The best ways and means of safeguarding the agriculture sector within the EPA context are:* (a) strong safeguard measures in the EPA agriculture text; (b) putting in place a financing mechanism specifically for agricultural related activities, such as, an Agricultural Fund; (c) the development cooperation chapter of the EPA must clearly include agriculture among the priority areas; and (d) ensuring the effective implementation of the provisions of the agriculture chapter in the EPA text.

- the level of papers presented was very high, so it is important that somehow the results of research get into the hands of negotiators.
- Am glad that the workshop gave us as the negotiators an opportunity to acquire the technical competence to understand the intricate issues from the perspective of CSOs which we in government may not have. There is a misconstrued perception that governments do not take CSO positions on board. Some times we agree to disagree but we do not ignore these positions.
- There have been innuendoes that there is too much 'seminologies' going on which wastes a lot of money but experience with time has proved that some sense and crucial lessons have been drawn from these speeches that have changed the development landscape; take for instance, the debate about gender mainstreaming that started in the 70s and was initially stereotyped as a women's affair has now led to recognition of gender in all development policies; these workshops are, therefore, critical in producing a groundswell of informed CSO positions that will bring big changes; CUTS has produced very useful objective analysis and that is empowering.
- The time to plant a tree was 20 years ago and time to plant another tree is also now; it is important to keep narrowing down our margin of ignorance.
- Let us push our governments towards a proper solution for the situation being created by the EPAs.

5.0 CLOSING REMARKS:

The closing remarks were made by Mr. Atul Kaushik, Director, CUTS Geneva Resource Centre. He thanked all the participants, GTZ, and CUTS Nairobi Resource Centre for making the workshop a success. He urged the outreach partners in the region to prepare advocacy documents and address them to government officials involved in the negotiations. Importantly, he called on them to give more input to the research papers presented in the workshop in an email network which will be set up by CUTS for the BIEAC project. A report on the workshop will be posted on the CUTS website. He also advised them to send their inputs to email addresses of Victor Ogalo and Julian Mukiibi (both are respectively from CUTS Nairobi and Geneva). Finally, he informed the participants that in the second phase of the BIEAC project, 'Regional Integration' would be the main focus and urged them to give their views on areas where CUTS should base their research.

6.0 APPENDICES

6.1 Programme Outline

DAY 1: Monday 27 April 2009

08:30 – 09:30 Opening Session

Welcome Remarks by Clement Onyango, Centre Manager, CUTS NRC
Remarks by Clarisse Bukeyeneza, Civil Society Co-operation Officer, GTZ-EAC Secretariat.
Brief Response and Clarifications

Reflections and Evaluation

PLENARY SESSIONS 1: Overview of Building of Inclusive East Africa Community Project .

09:30 – 10:30

Presenters: Victor Ogalo, Programme Officer, CUTS, NRC

11:00-13:00 Paper 1: Status of EAC-EC Economic Partnership Agreements (EPAs) and Assessment of Revenue and Development Implications: Tanzanian Case

- What has been initialled? What progress has been made in the negotiations of other issues, other than goods trade?
- What is the focus, objectives and scope of discussions on Singapore Issues?
- What have been the key achievements, setbacks/shortcomings and challenges during these negotiations? What strategy is the government pursuing to make the negotiations an inclusive process that incorporates civil society interests and positions?
- What strategies are (will be) embodied in these EPAs to ensure that they support poverty reduction and sustainable development, and EAC-ACP and EAC-Asia-Latin America regional integration?
- What if the EPAs turn out to be undesirable for EAC? Is there a plan B?

*Presenter: Monica Hangi, Economic and Social Research Foundation (ESRF), Tanzania
Dr. Beatrice Mkennda, University of Dar es Salaam, Tanzania*

13:00 – 14:00 LUNCH BREAK

14:00–15:30 Paper 2: Safeguarding the EAC Agricultural sector in relation to the EAC–EU Economic Partnership Agreement (EPA): Case study of Rwanda

Presenter: John B. Kanyogoga/Rwanda

Issues to be addressed:

- Potential implications of the proposed EPA framework on agriculture and agro-based processing.
- Interventions and policies to support economic and social adjustments to trade reforms in the sectors of agriculture and agro-processing.
- Opportunities for small farmers and ordinary citizens in the proposed EPA framework.
- NTB's and their potential to handicap the future trade relations with the EC.
- Trade defence measures related to agriculture.
- Recommendations.

16:00–17:30 Paper 3: A Critical Analysis of Implications of the Most Favoured-Nation provision in the EC-EAC Economic Partnership Agreement

Presenter: Julian Mukiibi, CUTS Geneva Resource Centre

Issues to be discussed:

- The MFN principle in general.
- Overview of MFN provision in free trade agreements and other EPA's.
- Implication of the MFN clause in the EC-EAC EPA.
- Recommendations.

DAY 2: Tuesday 28 April 2009

9:00 – 10:30 Paper 4: Standards and Market Access under the EPAs: Implications and Way Forward for EAC

Presenters: Gloria Otieno, Institute of Social Studies (ISS), Netherlands

Issues to be addressed:

- Standards and market access issues in the EPA.
- Types and nature of SPS standards that EAC exporters face in order to access EC markets.
- Who are the most affected/impacted by Standards in EAC?
- EAC countries' technical and human resources capabilities in meeting EC SPS standards.
- Way forward, recommendations and proposals on standards in the EPA negotiations.

11:00–12:30 Paper 5: Analysis of EAC-EC SPS Agreement: What are the Challenges and Opportunities for EAC Trade and Value-Additions?

Presenter: Elly Twineiyu, African Centre for Trade and Development (ACTADE):

12:30 – 13:30 Paper 6: Trade in Services and EPAs: What is at stake for the East African Community?

Presenter: Victor Ogalo, CUTS Africa Resource Centre, Nairobi

Issues to be addressed:

- Importance of services sector in the EAC.
- EC concessions regarding opening the services sector.
- State of play in the EC-EAC services negotiations.
- Recommendations.

13:30 – 14:30 LUNCH BREAK

14:30 – 15:30 Paper 7: Export taxes and EPAs: Another trade policy tool under threat from the EU?

Presenter: Julian Mukibi, CUTS Geneva Resource Centre

Issues to be addressed:

- Export taxes and their current application by the EAC member states.
- EC's stance on application of Export taxes.
- Merits/demerits of applying export taxes.
- Recommendations

Discussant:

16:00-17:00: Reading of Draft Report of the Summary Discussions

Presenter: Rapporteur

17:00-17:30: Discussion of Next Steps and Closing Remarks

Presenters: Atul Kanshik, CUTS Geneva Resource Centre (GRC)

All Advocacy Partners

17:30: Free time and Departures

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