

## ***EAC-EU Trade Negotiations: Bringing Equitable Agriculture Development to the Forefront***

*Exploiting the opportunities presented by the EAC-EU EPA is vital to the agriculture sector of the EAC. While the stated objective of the Framework EPA is to contribute to development, it can achieve truly equitable agricultural development in the region only if smallholder farmers who form the bulk of the labour force benefit from it. However, the window of opportunity presented by the EPA for small-scale farmers has barely been opened so far. This policy brief is an analysis of the agriculture related provisions of the Framework EPA and provides recommendations to be taken into account in the ongoing negotiations for the EPA to become a true developmental instrument.*

### ***Key messages***

1. EU and EAC have to improve the agreement to include binding commitments for development targeting in particular small and medium sized farmers;
2. Development aid granted under the Agreement needs to go beyond traditional technical assistance and include real transfer of technology and know-how as well as target especially the areas of infrastructure that can enable the agricultural sector to harness the granted market access for agricultural products;
3. The agricultural chapter still under negotiation has to provide separate specific provisions for market access of agricultural products and not focus on the development of the sector only;
4. Development provisions in the chapter on agriculture and the chapter on economic and development cooperation should be harmonised. Nonetheless specific agricultural development provisions should not be neglected by following this approach.

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## Background

The EU has been EAC's major single trading partner for a number of decades and even gained more importance in 2009 accounting for 19.9 per cent of EAC exports. The value of total trade flows between the two partners was € 4.3 billion in 2008.

The main exports of EAC to EU are agricultural products. Through developing cooperation, by improving EAC's infrastructure and enhancing the agricultural production in the region the EPA provides a greater market for EAC agricultural products, thus promoting employment, food security and eventually poverty eradication for the majority of the population mostly located in rural areas.

The current Framework Economic Partnership Agreement (FEPA) does not include an agricultural chapter which remains to be negotiated, the provisions on trade in goods have nonetheless a significant relevance for the EAC agricultural sector because they deal with market access for products whereas the scheduled negotiations on agriculture will focus on cooperation and technical assistance in order to enhance the EAC agricultural sector.

## Potential to Increase Investment Leading to Productivity

### Reciprocal Liberalisation

The FEPA provides for duty free quota free (DFQF) market access for all EAC exports to EU, with a transition period for sugar and rice which expired in 2009 and 2010 respectively. However, special safeguard provisions will apply to sugar until 2015. On their part the EAC will liberalise about 82 percent of the EU imports in its market over a 25 year period. Agricultural products are among the goods to be excluded from liberalisation hence affording the EAC, in combination with other conditions that must be in place, the policy space required to promote the sector and thereby facilitate its contribution towards equitable development.

DFQF market access will create incentives for increased investment leading to improved productivity in the agricultural sector thereby contributing to diversification and development of the EAC agricultural sector because it provides the EAC with a larger market area thus making it interesting for investors. Increased investment will also result in more imports of capital goods and spill-over of technology. The liberalization schedule provides a good road map for EAC's national governments to promote domestic public and private investment opportunities making systematic investment possible and should target specific areas of the agricultural sector, small and medium sized farmers in particular.

Trade liberalisation may have an impact on EAC because additional costs are expected by the duty-free entrance of EU products on the EAC market that may be above world market prices and thus detrimental to EAC consumers and governments. A parallel liberalisation towards non-EU WTO members could limit these negative effects.

### Rules of Origin

Under the Cotonou Agreement agricultural products benefited from tariff reductions but were nonetheless subject to a quota. Under the Framework EPA, applied Rules of Origin (RoO) are being simplified with due regard to the development needs of the EAC, and now allow cumulation that will enable the development of technologies and production processes in the region. This is an opportunity to move up the value chain and to diversify the production base by engaging in processing of goods. Cumulation with Algeria, Egypt, Libya, Morocco and Tunisia is possible since they are included in neighbouring developing countries belonging to a coherent geographical entity definition. Simplified RoO together with the possibility of cumulation have the potential to increase export activity in agricultural products to the EU thus presenting a fruitful investment opportunity.

However, RoO are still under negotiation and need to be refined in order to be simple, more transparent and easy to apply. RoO should not increase the cost of doing business and be used as protection. They rather should focus on development and promoting regional integration by allowing the use of regional raw materials not only from the EAC but also other Regional Economic Communities (RECs). Under the FEPA there are restrictions to the cumulation provisions as for example with ACP countries who have not initialled EPAs or certain products from South Africa. These restrictions should be reviewed especially with regard to South African products because South Africa is for some EAC countries a major trading partner and can evolve to a very important one in the future.

### European Development Fund

The EAC-EU FEPA provisions on development include an undertaking by the EU to continue providing development resources required under the 10th European Development Fund Regional Indicative Programme, Aid for Trade and the EU Budget. This reflects an avowal to already established commitments of the EU but does not include new specific commitments under the EPA. The clause includes recognition of the development needs of the EAC and the parties agree to define and address EAC development needs in order to promote objectives such as sustained growth, strengthen regional integration and foster structural transformation and competitiveness to increase production, supply capacity and value addition in the region. Further consideration of development cooperation is provided for in the next phase of the negotiations. Yet, shortcomings still exist with regard to development cooperation.

The EAC has drafted texts for the negotiations on Agriculture (2009) as well as on Economic and Development Cooperation (2011). The areas of development cooperation in both texts need to be harmonised since the agricultural sector is of greatest importance with regard to development cooperation. This approach has already been taken by the EAC since it first submitted the draft texts to the EU. Even though the Cotonou Partnership Agreement (CPA) as the EU argues includes development cooperation provisions these only have a moral value and are meant to guide the negotiation of EPAs and to be reflected in each provision. Specific commitments for development cooperation within the EPA need to be included. As stated in Article 36 of the FEPA both negotiating parties recognize the development needs of the EAC region and their commitment to ensure that the EPA is a tool for development, promotes the regional integration of the EAC as well as its integration in the world economy. In order to fulfil these goals it is necessary to allow for the retention of mechanisms favourable to development (e.g. export taxes, full exhaustion of WTO enabling clause) and inclusion of mechanisms to advance development (e.g. commitments additional to 10th EDF and Aft). Additionally the revenue loss incurred by EAC countries due to binding liberalisation should be compensated by commensurate binding development support in order for the EPA to truly be a tool for development.

Enhanced development cooperation if provided for under the Agreement will enable the EAC overcome challenges such as poor infrastructure, supply side constraints, technological and research inputs which will facilitate increased investment and productivity in the agricultural sector in which the region has high potential.

By addressing the country's infrastructure and providing for enhanced production technology through development cooperation, incentives for investment in agriculture can be created.

The comments of the EU on the Draft Agriculture Chapter submitted by the EAC are worrisome in so far as the EU proposes to discuss all development cooperation related provisions under the chapter for Economic and Development Cooperation. A harmonisation of development provisions of both chapters is desirable but a generalization is fatal because it would undermine specific development of the promising agriculture sector. The Chapter on Economic and Development Cooperation includes the area of agriculture and livestock. However, in the current state of negotiations the provisions remain merely objectives rather than truly binding commitments.

## ***Reforming Trade disciplines: Strengthening Regional Integration***

### ***Opportunities: Prohibition of Export Taxes***

Duties and taxes on exports are prohibited under the FEPA, with the exception being where they are required to foster development of domestic industry or to maintain currency value stability, when the increase in world prices of an export commodity creates the risk of a currency value surge, or the development of infant industries and the protection of the environment.

The process of using the exceptions stated is however time consuming and renders the necessary rapid reaction character of exceptions futile by requiring the authorization of the EPA council as well as requiring the country imposing export taxes to show that such taxes are justified and appropriate to achieve the goal set. The EAC EPA Experts Strategy Meeting on the EAC-EU FEPA Negotiations of August 2011 however proposes to rephrase paragraph 3 of Article 15 of the EAC-EU FEPA so as to allow the imposition of temporary duties or taxes in connection with the exportation of goods concerned and to notify the EC Party rather than to consult the EC before any imposition of duty.

Given that EAC countries depend on primary industries, export taxes are a tool that could add value to raw commodities and thus encourage producers to add value to their unprocessed goods. By raising the price for exporting unprocessed goods export taxes have the potential to increase the local supply of inputs and thus lower domestic prices. Export taxes therefore would play the same role as subsidies in this sense. Export taxes can also be used to foster diversification if governments apply them in such a way as to discriminate against traditional exports and thus induce producers to expand in other areas of industry. One possibility to avoid the use of export taxes and thus to gradually eliminate its use is to introduce binding commitments for the EU to compensate revenue loss through foreign aid or FDI if an export tax is a revenue measure and by scientific and technical assistance if the export tax is a research and development measure. In any case export taxes grant EAC governments a policy space and this flexibility should be retained with regard to the development needs of the region.

### ***Most-Favoured-Nation Rule***

According to the MFN rule contained in the FEPA the EAC will be required to extend the most favourable treatment under any free trade agreement entered into with developed or high-income developing countries or organisations, to the EU. Similarly, EU on becoming a party to a free trade agreement with any third

party has to extend the more favourable treatment to the EAC as well. Agreements in place at the time of signature and preferential agreements with other ACP or African countries are not covered by this provision. The provision ensures that more favourable treatment granted by the EU to other countries will be granted to the EAC as well and it also facilitates the conclusion of more favourable FTAs among ACP countries.

However, the definition of high-income developing countries includes certain southern regional trade arrangements in Latin America, Asia, and the Gulf and countries such as Brazil, China and India, thus limiting or even impeding South-South trade. The EAC Experts Meeting of August 2011 has steered its position toward a consultation approach which has been already negotiated by the EU under EPAs with other ACP countries providing that where there is substantially more favourable treatment under the free trade agreement with major trading economies than under the EPAs, the better treatment will not be automatically given to the EU countries but consultations will take place.

### *Prohibition of Non-Tariff Measures*

The FEPA prohibits the imposition of non-tariff measures including quotas and import or export licenses except in cases where such measures are applied to prevent or relieve critical shortages of foodstuffs or restrictions necessary to the application of standards or regulations in international trade. This provision will ensure transparency in accessing the EC market and may result in increased access for EAC agricultural products in that market.

However, non-tariff measures can be imposed if they are necessary to the application of standards and regulations in international trade. This exception can be an obstacle for small and medium sized farmers in the EAC not having the capacity to comply with these regulations and standards. To make up for this disadvantage specific provisions need to be included in the FEPA providing for capacity building of small and medium sized farmers in this regard.

### *Safeguards and Subsidies*

Provision is made for trade defence measures through anti-dumping and countervailing measures, as well as safeguards through which the effect of subsidised products may be mitigated.

The FEPA allows for multilateral as well as for bilateral safeguards. Multilaterally it allows for the use of the Special Agricultural Safeguard of Article 5 of the WTO Agreement on Agriculture and for the adoption of safeguard measures in accordance with GATT Article XIX. Nonetheless, the EU has exempted EAC exports from the imposition of multilateral safeguards undertaken under GATT Article XIX and Article 5 of the Agreement on Agriculture for the first five years.

Bilateral safeguard measures can be taken only under certain conditions. Three different situations justify the use of safeguard measures: imports causing (1) serious injury to domestic industry; (2) disturbances in a sector of economy particularly producing major social problems or serious deterioration in the economic situation of the importing party; (3) disturbances in the markets of agricultural like or directly competitive products or mechanism regulating those markets. Safeguard measures that are allowed include the suspension of further reduction of the rate of import duty, increase in the customs duty of the product, and the introduction of tariff quotas. Special provisions apply to the protection of infant industries.

The provided safeguard clauses are accompanied by cumbersome procedures and have a time limit after which clear elements are required that will lead to the elimination of the measure. The reference to WTO safeguard provisions is however not very useful for the EAC since the conditions under which such a measure can be applied are in general very difficult to meet by a developing country due to limited institutional capacity and procedural requirements.

The safeguard measures are extremely restricted and limited to the mitigation of the damage caused by import surges for existing sectors but not for the building up of new sectors and additionally they exclude the protection of products excluded from duty reduction and are difficult to use. Also the time limitation of two years is not proportionate to the time it takes an industry to develop even if a measure can be extended to up to eight years under certain circumstances. Additionally the application of this provision is prohibited after ten years have passed since the entry into force of the Agreement.

Despite the negative effects that subsidies have had on international trade the FEPA still allows for them.

The EU is the party in position to implement subsidies; this could have negative effects on EAC products that may not be able to compete favourably with subsidised products. The use of subsidies should be confined for example by limiting the number and type of products or by specifying certain circumstances when subsidies are allowed as is done with the use of export taxes within the FEPA. The Draft Chapter on Agriculture includes provisions referring to export subsidies and domestic support. While the EAC suggested including a provision stating that the EC will phase out all form of export subsidies and reduce trade distorting domestic support provided to EC farmers on products of export interest to the EAC the EU is unlikely to accept an inclusion of domestic support provisions in the EPA considering it an issue under discussion under the WTO Doha Round Negotiations. With respect to export subsidies the EU has proposed a "double zero" approach meaning that the EC will eliminate export subsidies on products from eligible destinations for fully liberalized EAC products.

## ***Redress of Agriculture Related Trade Facilitation Constraints***

### ***Development Cooperation: An Opportunity?***

Redress of the agriculture related trade facilitation constraints is anticipated in the EPA under development cooperation where the EU undertakes to foster structural transformation and competitiveness of the EAC.

There is therefore need for a specific development fund under EPA as opposed to EDF and Aid for Trade initiatives to realize this objective. Binding commitments specifically aiming at improving the agricultural private sector have to be included. These commitments should go beyond traditional technical assistance and include real transfer of know-how, techniques and technology. Development funds should aim to remove government corruption, improve customs administration, building a better infrastructure, especially roads, railways, energy, water, telecommunication, irrigation system and rural infrastructure networks, and include export marketing and promotion as well as information for small and medium sized farmers on how to use trade opportunities, comply with environment and health standards, and how to access financial and technical assistance in order to improve productivity and efficiency of their agricultural activity. Development cooperation should also include support for already established projects, in particular those aiming at establishing and improving trade corridors between the EAC, SADC and COMESA, since the three regional blocs intend to enter into a Free Trade Agreement, as well as technical and financial support to harmonise the regulatory framework of the EAC agricultural sector, such as reform of land tenure system and strengthening of farmers' organisations. The Draft Chapter on Agriculture includes a provision referring to production and marketing of agricultural commodities including assistance in compliance with commodity standards as well as rural development addressing small scale farmers in particular and financing services for agriculture aiming at creating a Common Agricultural and Rural Development Fund. The EU proposed to discuss these provisions under the chapter on economic and development cooperation thus care has to be exercised not to omit the specific reference made to the agricultural sector and small scale farmers.

### ***Capacity Building of Small and Medium Sized Farmers***

Capacity building of small and medium sized farmers is not explicitly

included in the FEPA. However, they should be addressed in the EPA provisions in order to enhance their participation into the global value chain by ensuring the access to production technologies, product quality enhancements and direct linkages to the market. Capacity building should also include providing information to small and medium sized farmers not only aimed at training them to acquire a more business-oriented approach to agriculture but also to understand and use the opportunities for agricultural trade, and technical, scientific and financial assistance provided for under the Agreement.

By connecting provisions under the development chapter and the chapter on agriculture capacity building can be achieved. Nonetheless, given that capacity building involves efficient information flows between government, farmers, traders and CSOs it is mostly the task of EAC governments to allocate resources efficiently and to endorse projects aiming at training and teaching small and medium sized farmers to use the opportunities negotiated.

### ***Multi-Stakeholder Involvement in Trade Negotiations***

The involvement of all relevant stakeholders in the development and implementation of trade and agriculture policies and strategies is important because it ensures that policy making and implementation takes into account the interests of all relevant stakeholders as well as the challenges they face. The Cotonou Agreement, upon which the EPA is based, explicitly promotes the greater involvement of the private sector and CSOs and even provides for the granting of financial funds to non-state actors. The EPA negotiations process has to some extent involved multi-stakeholder consultation including government agencies, private sector and CSO representatives. Outcomes have been transmitted to the regional level. However, the role of the private sector, of CSO and of farmers' organisations in particular in the negotiations has not been of great importance.

There is need to foster the development of the private sector and CSOs and their possibilities to argue their case also by improving services rendered by public authorities such as sensitisation campaigns. Most farmers in the EAC do not know about the possibilities to engage in external trade and about the positive effects EPAs could have for their activity. Smallholder farmers often view agriculture activity as a way of life and engage in it mostly for self-consumption. Their mentality needs to be shifted to recognizing that agriculture has a high potential as commercial and business activity. For this to take place a satisfactory information flow between ministries of trade, business councils and small holder farmers needs to be put in place. Consultations with the private sector and small and medium sized farmers are important in order for the EPA to enable equitable agricultural development. All EAC member countries have established consultative fora initially also funded by the EU.

Members of these fora include the public sector, the private sector and the civil society. However, there is no mechanism that ensures the taking into account of the views of these stakeholders in the final outcomes. Moreover parliamentarians, consumer associations, trade unions, small business, informal sector, and farmers are not always members of these fora. There is also a multiplicity of consultative mechanisms as well as ad hoc mechanisms that are established which render the regular participation of stakeholders rather difficult and not efficient.

The East African Business Council (EABC) is very active at the regional level to ensure the participation of the private sector in trade related negotiations. Some members of the EABC are carrying out activities in the agricultural sector as well as the informal sector which is mostly dominated by agricultural activity however most members are active in other sectors thus rendering representation uneven. The EABC has the potential to influence policy-making on the regional level but smallholder farmers are not well represented thus they lack the ability to own policy-making let alone policy implementation.

The informal sector should also be recognized as a stakeholder and its participation in negotiations should be included. Agriculture has a significant share in the informal sector, however, numbers are difficult to assess. Including the informal sector as a stakeholder into the EPA negotiations would eventually transform informal activity to formal activity, increase government revenues and enhance the agricultural sector by making technology and finance available for a greater number of beneficiaries.

In general the negotiation and implementation process has to be made more transparent not only for CSOs, private sector, and farmers' organisations but also for the public at large. Negotiation and implementation should not be undertaken only in the relevant ministries but the views and experiences of public institutions of lower administrative levels should also be considered.

## Recommendations

Opportunities provided for under the FEPA are plenty, but further refinement is necessary. EAC governments and their stakeholders play a significant role in this process. In order to respond to the essential needs of the actors within the agriculture sector EAC governments and stakeholders have to actively engage in negotiations between themselves and with the EU.

- National governments need to provide stakeholders with information on how they can effectively harness opportunities provided for under the EPA;
- National governments need to establish channels through

which all stakeholders can participate in consultations on the ongoing negotiations and to be informed about final outcomes;

- National governments need to allocate resources to sectors that are likely to be affected most from the EPA;
- Stakeholders need to seize the opportunities of actively engaging in negotiating and implementation of the EPA.
- EU and EAC have to improve the agreement to include binding commitments for development targeting in particular small and medium sized farmers.
- Development aid granted under the Agreement needs to go beyond traditional technical assistance and include real transfer of technology and know-how as well as target especially the areas of infrastructure that can enable the agricultural sector to harness the granted market access for agricultural products;
- The agricultural chapter still under negotiation has to provide separate specific provisions for market access of agricultural products and not focus on the development of the sector only;
- Development provisions in the chapter on agriculture and the chapter on economic and development cooperation should be harmonised. Nonetheless specific agricultural development provisions should not be neglected by following this approach.

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## This Policy Brief is produced as part of the project entitled “Facilitating Equitable Agriculture Development in sub-Saharan Africa (FEAD).”

For agricultural development in Africa to substantially contribute to its overall growth, development and poverty reduction, three conditions need to be met: there should be increase in productivity and production to generate “marketable surplus”; the infrastructure should be in place, including trade facilitation measures, to transform the “marketable surplus” into “marketed surplus”; and there should be a healthy interaction between farmers, the private sector investors and traders. While the first two are getting the attention of both national governments and their development partners, the third is still neglected. Productivity-enhancing initiatives are certainly important but in order to make use of them, both “**better infrastructure for better marketing**” and “**positive terms of trade between the farmers, and investors and traders**” need to be provided. This project aims to address this third critical aspect for the development of African agriculture, focusing on countries in the East African Community (EAC).

The enabling environment is also a function of international policies and agreements, most important being the international trade agreements. The efforts on the ground may not bear fruit if the provisions in international trade agreements (e.g. under the WTO and the Economic Partnership Agreements (EPAs) with the EU) are not in harmony with these efforts and vice versa. Hence, this project also aims to **link the national and international actions** through research and analysis, advocacy and dissemination and networking. It will also strengthen the pro-trade and pro-equity credible Southern NGO voice in Geneva.

### ← PUBLICATIONS

» *Boosting Development in Kenya: better participation of smallholders in agri-business.* Policy Brief N°1, November 2011

» *Towards Equitable Agriculture Development in Uganda: A look at the Terms of Trade amongst Stakeholders.* Policy Brief N°2, November 2011

» *Equitable Development through Agriculture: Policy Options for Tanzania.* Policy Brief N°3, November 2011

» *Sowing Multilaterally, Reaping Locally: Can the WTO promote Equitable Agriculture Development in the East African Community?* Policy Brief N°4, November 2011

» *EAC-EU Trade Negotiations: Bringing Equitable Agriculture Development to the Forefront.* Policy Brief N°5, November 2011

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### **Agriculture in Development of Select African Countries**

After 15 months investigating the importance of agricultural trade for food security and poverty reduction in five countries of Eastern and Southern Africa, this research underscores limitations faced in boosting agricultural productivity and ensuring food security, due to physical, legal, economic, social and cultural factors, and outlines how the promotion of regional trade and effective trade facilitation policies can provide effective solutions.



### **How Can Agriculture and Trade Lead to Livelihoods, Food Security and Development?**

This monograph summarises analysis around ten themes of importance to development in Eastern and Southern Africa. The themes range from the role of agriculture to that of governments, donors and CSOs, and also include international and regional trade, education and capacity building needs, and multi-stakeholder consultations and coordination. It offers comprehensive and yet concrete suggestions for action.



### **Taking East African Regional Integration Forward: A Civil Society Perspective**

Through this research, the East African civil society offers to join hands as equal partners of policy makers, researchers and businesses in the process of regional integration and takes on some of the difficult issues of making markets work in the region. For example, it makes a case for facilitating easy movement of people, and suggests ways to attract, retain and spread skills across the region.



### **Towards More Inclusive Trade Policy Making**

This research looks into trade policy making processes in five Eastern and Southern African countries. A number of governmental initiatives have opened up these processes to a larger group of stakeholders who are now eager to play an active role in trade policy making. This publication discusses the remaining constraints to their effective participation and ways to improve consultative mechanisms.



### **Improving Ownership through Inclusive Trade Policy Making Processes: Lessons from Africa**

This advocacy monograph looks into trade policy making processes and role of main stakeholders in five countries of Eastern and Southern Africa. Although stakeholders are eager to play an active role in trade policy making, and despite efforts of governments to open up these processes, their effective participation requires strengthened capacity, improved and more consistently used consultative mechanisms, and promotion of a culture of dialogue.

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