

WTO AGRICULTURE NEGOTIATIONS

SECURING EAC COUNTRIES' INTERESTS

By Edwin Laurent

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Table of Contents

Acronyms	3
Acknowledgements	4
Executive Summary	5
Introduction.....	8
The Agriculture Negotiations Modalities	10
Domestic Support	11
Market Access	16
Export Competition	20
Interests of the EAC in the WTO Agricultural Negotiations	23
Defensive Interests	23
Offensive Interests.....	24
Institutional Issues and Challenges	26
Addressing Negotiating Capacity	29
Pre-requisites for Successful Negotiations.....	29
Defining interests	29
Information and Intelligence Gathering	30
Effective two-way communication	30
Face to face negotiations:	31
Implementation	31
Bridging capacity gaps	32
Defining interests and negotiating goals	32
Support during negotiations.....	33
Communication.....	35
Participation at meetings abroad.....	35
Staff Development	36
Summary of Recommendations.....	37
The Agriculture Work Programme.....	37
Other Policy recommendations	38
Strengthening Capacity	38
Conclusion.....	40
References	41

Acronyms

ACP	African Caribbean and Pacific Group of States
AMS	Aggregate Measurement of Support
AQSIQ	Administration of Quality Supervision, Inspection and Quarantine. (China)
CAADP	Comprehensive Africa Agriculture Development Programme
CAP	Common Agriculture Policy (EU)
CET	Common External Tariff
CTA	Technical Centre for Agricultural and Rural Cooperation (ACP-EU)
CUTS	Consumer Unity & Trust Society
CUTS-CITEE	CUTS Centre for International Trade, Economics & Environment
DDA	Doha Development Agenda
DFQF	Duty free quota free
EAC	East African Community
EPA	Economic Partnership Agreement
GATT	General Agreement on Tariffs and Trade
ICTSD	International Centre for Trade and Sustainable Development
ITAC	International Trade Administration Commission (South Africa)
KPL	Kilombero Plantations Limited
LDC	Least Developed Country
MFN	Most favoured Nation
OECD	Organisation for Economic Co-operation and Development
SAGCOT	Southern Agriculture Growth Corridor of Tanzania
SPS	Sanitary and Phytosanitary (measures)
SSM	Special Safeguard Mechanism
STE	State Trading Enterprise
TMEA	TradeMark East Africa
TRQ	Tariff-rate quota
TTIP	Transatlantic Trade and Investment Partnership
WTO	World Trade Organisation

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Executive Summary

The five member countries of the East Africa Community (EAC) are predominantly dependent on agriculture, and therefore wish to ensure that the WTO work programme on agriculture to be defined by the Trade Negotiations Committee takes their interests into account. The negotiations will determine the global rules that govern the agro-food sector, notably tariffs and other restrictions on market access for agricultural products as well as government support provided to farmers. All of these elements impact the costs, the nature and intensity of competition and ultimately the profitability of farming. When they are positive, they help the country's agriculture to flourish providing a boost to the food security of local communities and to expanding exports. However if the changes are inappropriate they can potentially have disastrous effect; local production can be wiped out by import surges; the development of local value added processing can be inhibited and export markets can be lost.

The outcome of the negotiations is therefore important not just for the profitability and viability of farming and the performance of the sector, but also for EAC economic growth and development, food security and the alleviation of poverty. The EAC has a lot at stake in these negotiations, so it is imperative that its negotiators are effective and can help secure outcomes that support their countries' interests.

The study notes that the EAC grouping is mixed, comprising four least developed and one developing country member, Kenya. This creates a complication since Kenya will have to undertake tariff reduction commitments whereas the other four EAC countries being LDCs will not. However the EAC is a common market so the unified external tariff schedules are to be shared by all.

The EAC region has an export interest in a number of agricultural commodities, including tea, coffee, cotton, fruit and vegetables and floriculture products. However the study has identified the rice, sugar, dairy and poultry sectors as the most vulnerable to flooding of imports. It also explores the general interests of the EAC in the ongoing WTO negotiations on agriculture and provides inputs for both the preparatory phase of the work programme and the ensuing negotiations.

The study reviews the 2008 agriculture modalities to establish whether they have been overtaken by time, especially in the light of changing US and EU agricultural policies and the circumstances and needs of EAC countries.

Bearing in mind the changes that have taken place since 2008, as well as the offensive and defensive interests of EAC countries, the note has drawn up proposals that EAC negotiators might seek to get accommodated in the **Work Programme on Agriculture**. These include:

- **Green Box:** 1) Support amendment to the rules to ensure that shifting domestic support to the 'green box' does not retain a negative impact on international competition and 2) that EAC Members are able to maintain national and regional policy space to respond to increased imports which undermine national agro-food sector development strategies.
- Ensure that provisions for **safeguard mechanisms** are structured in a manner that they are simple to apply by EAC countries and can speedily be deployed to address problems generated by import surges.
- Urge the creation of effective consultation mechanisms on the disposal of accumulated food stocks.
- Ensure that any new WTO disciplines on domestic support applied to developing countries and LDCs allow EAC governments to retain their flexibility in granting and expanding domestic financial support programmes.
- Ensuring that **DFQF access for LDCs** is accompanied by:
 - a) Permissive rules of origin, including regional 'cumulation' provisions which allow greater use of non-LDC originating inputs
 - b) The 'fast-tracking' of negotiations and the conclusion of the SPS and food safety protocols.

- Promote the establishment of effective consultative mechanisms for preventing and resolving SPS and food safety disputes
- Adopts a comprehensive response to preference erosion

The note also makes other policy recommendations in particular that EAC governments:

- Monitor the specific impacts of changing patterns of domestic agricultural support in developed countries and the utilisation of newly agreed dispensations in advanced developing countries, on the specific sectors where EAC producers have production and trade interests.
- Explore how the negative effects of moves towards full cost recovery for official SPS and food safety controls on imports from EAC countries can be minimised.
- Broaden the debate on cotton issues at the WTO to accommodate the critical role now being played by Chinese cotton sector policies, to ensure that future policy change is managed in ways that minimise negative impacts on global cotton prices.

Strengthening Capacity

EAC countries, for whom securing beneficial outcomes in agriculture is of vital importance, are determined to play an active role in shaping the outcomes. For this though their missions in Geneva must be properly equipped and empowered, in order that they can be full and effective participants in the negotiations. Their situation was assessed and capacity gaps that impede full effectiveness have been identified.

Whilst the recommendations are addressed to the EAC countries themselves, it is appreciated that their severe limitations of finance and personnel would preclude them from implementing many of them. In such cases recommendations for seeking external assistance have also been made.

- It was recognised that there is an inadequacy of essential specialist and qualified technical staff. The note proposes 1) that the EAC Secretariat, possibly with initial external funding, engages an agricultural trade specialist located in headquarters to monitor, analyse and report on regulatory, policy and commercial developments relevant to the region's interests in the WTO agriculture negotiations. 2) Also with external support, the EAC engages an agricultural trade specialist to assist representatives in Geneva with information and intelligence gathering, technical analysis and research and the preparation of collective briefs, monitoring regulatory and other developments, prepare regular and comprehensive analytical updates on the negotiations, briefs and reports and help train and develop mission staff engaged in the agricultural trade negotiations
- EAC Missions pursue a collaborative approach so as to maximize the value of the current staff. This could entail sharing of tasks where such an approach is feasible and agreed by the Missions.
- The Missions, Ministries in capital and the EAC Secretariat should review their communication procedures and guidelines to ensure that they are both adequate and are being properly implemented, and if necessary they be appropriately upgraded. They also assess the equipment required for satisfactory communication and seek external support for upgrading electronic and other equipment.
- Given the highly technical nature of the discussions, appropriate short-term training of staff engaged in the agriculture negotiations in the Missions and in capitals
- A representative from capital of the four LDC members be invited to the Geneva Week to participate as an observer. This will provide a valuable overview and improve their understanding of the

Agriculture and the rest of the DDA negotiations, as well as the functioning of the WTO system and its processes.

With their woefully limited resources, EAC negotiators face a particularly difficult challenge securing the results that their countries require from the talks. But their outcome will influence the profitability and viability of farming as well as the prospects for their countries' economic growth and development, food security and the alleviation of poverty. It is therefore absolutely vital that the negotiators succeed.

This note has sought to contribute to that objective by making proposals for the WTO Work Programme on Agriculture as well as related agro-trade policy.

Whilst EAC negotiators face enormous challenges, they can be better positioned for success. The paper recommends innovative approaches and measures that might be taken by the missions themselves to enhance and strengthen their effectiveness; including working collectively. However even if the negotiators and the staff in capital and the Secretariat in Arusha, do the best that they can, EAC countries suffer from severe shortages of financial and human and institutional capacity. They therefore need fuller external support to help overcome the capacity constraints impeding the more effective pursuit of their interests in the negotiations.

Introduction

The five Member States of the East African Community¹ depend heavily on agriculture which in all of them is a major contributor to national income and the largest employer. The success of this sector is vital not just to their economic growth and development but for food security and the alleviation of poverty, particularly in rural areas. The trade in agricultural products, both domestically and internationally affects the performance of the sector and the profitability and viability of farming. Hence the nature of the rules and any changes affecting importing and exporting can have a major impact on the overall economic performance of these countries.

From the launch of the Doha Development Agenda (DDA)² in 2001, agriculture was a key target. The earlier Rounds of multilateral trade negotiations had made considerable progress in liberalizing global trade, particularly in non-agricultural products and subjecting it to GATT and WTO disciplines, but not in agriculture which was perceived as the most distorted sector. Liberalization here was therefore considered as essential if maximum economic benefit from the Round was to be secured.

The agriculture negotiations have three key objectives; substantially improving market access; substantially reducing trade distorting domestic support and reducing, with a view to phasing out of export subsidies. The latest revision of the negotiation modalities were drawn up in 2008 by the Chairman of the Special Session of the Committee on Agriculture.

Since then however, the global environment has undergone considerable transformation. Major trading partners like the EU and the US have implemented or are preparing for significant adjustments in their agricultural policies that could affect EAC countries, whether directly or indirectly. Agro-food sector trade relations could well be further complicated by the provisions of mega-FTA arrangements such as the Transatlantic Trade and Investment Partnership (TTIP), which may establish new standards for the placing of products on the market that become generalized across all sources of imports.

Another significant change since 2008 is the Economic Partnership Agreement (EPA) between the EAC and the EU that will completely change the character of the trading relationship between the two blocks. EAC exports will immediately enjoy duty free quota free entry to the EU market, whilst EU exporters will get similar reciprocal access, though phased over 25 years. These and other regulatory, policy and economic changes influence the access conditions for EAC exports to international markets and the nature of the competition that they face as well as the access that foreign suppliers will have to EAC markets. The changes offer new opportunities for EAC countries, but also generate new threats that need to be safeguarded against. In the interval since 2008, production and trading conditions in EAC countries have also been changing and leading to revisions of government priorities and policy. These factors could well combine to suggest that negotiating goals that were acceptable seven and a half years ago might no longer be appropriate.

The DDA negotiations will inevitably result in adjustments to the rules governing agricultural trade. EAC countries are therefore keen to ensure that the changes that are finally agreed on will be those that can help them to capitalize on the new opportunities and safeguard and advance their interests and deal with emerging threats.

With the agreement on Trade Facilitation reached at the WTO Bali Ministerial of 2014 and the more recent agreements on food security reached in negotiations between India and the US, there has been

¹ The Treaty establishing the East African Community was signed on 30 November 1999 by the three original members, Kenya, Tanzania, Uganda and following its ratification entered into force on 7 July 2000. The Republic of Burundi and the Republic of Rwanda acceded to the EAC Treaty on 18 June 2007 and became full Members of the Community with effect from 1 July 2007. The EAC Secretariat is located in Arusha Tanzania.

² The WTO's Fourth Ministerial Conference in November of 2001 mandated a new round of negotiations The Doha Development Agenda (DDA) that commenced the following year.

renewed impetus for concluding the DDA. EAC countries, for whom securing benefits in agriculture is of vital importance, are determined to play an active role in shaping the outcomes. For this though their missions in Geneva must be properly equipped and empowered, in order that they could be full and effective participants in the negotiations. This paper assesses their situation and seeks to identify capacity gaps that impede full effectiveness.

As has been mentioned, it is over seven years since these particular modalities for securing change were put forward. This paper will consider whether they are still adequate for addressing the needs as currently foreseen; or alternatively, have been overtaken by changing circumstances.

It will review the nature of the interests of the EAC in the Agriculture negotiations, identifying potential export opportunities and threats that the proposed liberalization would give rise to, and seek to identify the EAC agricultural products that are potentially at risk, and the nature of any threats.

Based on those insights, the paper will review underlying defensive and offensive interests of the EAC; noting in particular that the grouping is mixed, comprising least developed and one developing country member, Kenya. This creates a complication for the region. Kenya would have to undertake tariff reduction commitments whereas the other four EAC countries being LDCs would not. However the EAC is a Common Market so the external tariff schedules are to be shared by all. According to the current WTO approach, since the four LDCs cannot have different tariffs from Kenya, they too would be obliged to reduce tariffs in line with Kenya's obligations.

Subsequent sections of the paper will address the capacity needs of the EAC missions. It will first identify what would be required for the EAC to be able to advance and secure its interests in the agriculture negotiations. Next it will assess existing capacity in order to get an appreciation of the existing situation and its shortcomings.

The paper will then make recommendations to facilitate the actual conduct of negotiations as well as more effective monitoring, oversight, coordination, preparation of briefs, submissions and speaking notes and providing other support for negotiators.

Recommendations are addressed to the EAC countries themselves, though their severe limitations of finance and personnel would preclude them from implementing all of them on their own. In such cases recommendations for seeking external assistance have also been made.

The Agriculture Negotiations Modalities

The DDA talks had initially made progress, slowing down however as they ran into sticking points; and by 2008 they were floundering. In an attempt to revitalize the Round a Special Ministerial meeting was called in July, but it collapsed; in part over disagreement surrounding the Special Safeguard Mechanism. After that the Chairman of the Special Session of the Committee on Agriculture issued a new revision of the Modalities, the fourth that was set out in TN/AG/W/4/Rev.4 of December 2008. The revision kept the three key objectives; to substantially improve market access; substantially reduce trade distorting domestic support; and reduce, with a view to phasing out export subsidies.

Though it contained several contentious issues, the 2008 text still remains on the table, possibly because it is viewed as being able to serve as the foundation for continuing negotiations and points to where consensus might eventually evolve.

According to Bellmann *et al*³ “a number of Members want to use it as a frame of reference, while certain Members wish to embark with flexibility in relation to this text.”

Stuart Harbinson wrote that “It is clearly a very valuable document although it was never agreed as a whole. Some developed countries now feel that a different approach is required while others, notably many developing countries, remain adherents to the Rev.4 text. Small and Vulnerable Economies (SVEs) generally see the Rev.4 text as covering their main concerns, although in some respects they would wish for more flexibilities.”⁴

One EAC representative expressed the view that “The 2008 modalities text should be the basis for finalizing modalities since it has a number of elements such as the flexibilities, special products and special safeguard mechanism which the EAC supports”.

With the renewed impetus for advancing the DDA negotiations, the question facing the EAC and indeed all other WTO members is whether changes in their circumstances since 2008 that have influenced their underlying offensive and the defensive interests have rendered the modalities obsolete. In considering this question, this section will consider in particular how shifts in US and EU policy have impacted the international regulatory and commercial environment for agro-food products.

The impact of these policy changes must not be underestimated, since in many cases they have led to radical transformation of certain international agro- markets. For instance, the reform of the EU’s Common Agriculture Policy (CAP) that was aimed, among other things, at enhancing the competitiveness of EU agro-food sector exports, has seen the EU transformed from a net agro-food sector importer to a net agro-food sector exporter, with an agro-food sector trade surplus growing from € 2.58 billion in 2010 to €18.59 billion in 2013. At the EAC level between 2009 and 2013, the value of agro-food sector imports from the EU grew at a rate four-times faster than the value of agro-food sector exports to the EU.

Another policy development, which closely relates to the foregoing, is the reciprocal preferential EAC-EU Economic Partnership Agreement (EPA)⁵. Admittedly the tariff preferences extended by the EAC to EU agro-food sector products are limited, (with many agro-food products excluded from tariff elimination

³ Christophe Bellmann, Jonathan Hepburn and Ricardo Meléndez-Ortiz page 16 “Tackling Agriculture in the Post-Bali Context - A collection of short essays”. ICTSD October 2014

⁴ Issues of Strategic Interest for Small States and LDCs in the WTO Agriculture and Non-Agricultural Market Access (NAMA) Negotiations: Stuart Harbinson. Page 4. Commonwealth Secretariat (unpublished) June 2014

⁵ The Ministerial EPA meeting held in January 2014 was a key step towards conclusion of the negotiations between the EAC and the EU. In three subsequent rounds Senior Officials resolved the outstanding issues to bring the deal to conclusion on 16 October 2014. Both sides will now legally “scrub” the agreement to prepare signature and subsequent ratification. *Source* European Commission OVERVIEW OF EPA NEGOTIATIONS January 2015.

commitments or back-loaded to the end of the 25 year phase-in period). However, the EPA includes a range of provisions which from the date of entry into force of the agreement will restrict EAC countries' flexibility to select and use policy tools to manage their agro-food sector imports. The policy tools whose utilisation could be affected include: export taxes, levies whose effects are equivalent to those of a tariff and quantitative restrictions on imports.

Domestic Support

Trends in domestic support and continued relevance of the 2008 Modalities

The Modalities are aimed at substantially reducing trade distorting domestic support. However the harmful support is not a stationary target. Since 2008 the character of the measures implemented in both developed and advanced developing has been undergoing transformation.

The EU, like most major OECD players, has been systematically shifting domestic support to 'green box' measures, thereby shielding them from reduction commitments. This has been a key element of the EU process of CAP reform, which is now virtually completed. Since the reformed CAP instruments are fully consistent with the 2008 modalities, any new WTO disciplines on trade distorting support and 'blue box' support, is likely to have minimal impact.

The restructuring of domestic support can however still have a negative impact on international competition and the trade of other countries. This 'box shifting' has therefore led to calls for "the green box to be amended so as to better reflect developing countries' concerns", since "green box programmes may be causing more than minimal distortion to production and trade".⁶

By passing its 2014 Farm Bill, the US however appears to be reversing this trend. According to analysis compiled by ICTSD in its Post Bali reader, there are concerns that if price trends for major grains retreat from current high levels back towards the long term trend, then the provisions of the Farm Bill could give rise to even larger subsidies for US cereal producers than the schemes they replace. It has been argued that under the 2014 US Farm Bill it is difficult to envisage that the United States would regularly be able to stay below a Total Bound AMS cap of \$7.64 billion, without the extensive use of AMS *de minimis* exemptions. This situation arises from the US abandoning the direct payment programmes of the 2008-2013 period which were essentially decoupled green/blue box programmes, in favour of counter-cyclical income insurance programmes, which are essentially 'amber box' measures.

A reduction in the current *de minimis* limit from 5% to 2.5% would ensure that at least in some years the US would exceed its AMS cap. In addition the provisions of the 2014 Bill might well give rise to trade disputes under the Subsidies and Countervailing Measures Agreement, since the 2014 Bill provides counter-cyclical payments.

Against this background other major WTO players such as the EU, are unlikely to be willing to make WTO commitments which move beyond their existing agricultural reform commitments. This is particularly the case since existing planned reforms will even see EU 'green box' support spending fall by between 9.4% and 13% (depending on the baseline used) from 2014 to 2020⁷. In contrast in the case of the US, even the existing 2008 modalities proposals could give rise to compliance challenges and trade disputes.

Looking beyond OECD countries non-green box support extended by advanced developing country agricultural producers and exporters, such as Brazil, China, India and Indonesia, has been increasing,

⁶ ICTSD, 'Agricultural subsidies in the WTO green box: Ensuring coherence with sustainable development goals', Information Note, No. 16, September 2009: <http://ictsd.net/downloads/2009/10/green-box-web-1.pdf>

⁷ For one illustration of these estimates see, EP, 'European Council conclusions on the multi-annual financial framework 2014-2020 and the CAP', 2013, [http://www.europarl.europa.eu/RegData/etudes/note/join/2013/495846/IPOL-AGRI_NT\(2013\)495846_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/note/join/2013/495846/IPOL-AGRI_NT(2013)495846_EN.pdf)

with levels of support which overlap those of OECD countries. There is a danger that this increased agricultural support in some advanced developing countries could begin to distort agricultural trade in some sectors where EAC producers have production and trade interests (e.g. the rice sector).

This suggests a need for EAC governments to closely monitor the specific impacts of rising levels of domestic agricultural support in developed as well as in advanced developing countries, on the specific sectors where EAC producers have production and trade interests.

Evolution of EAC-EU Agri-food Sector trade 2009-2013 ('000 €)

	2009	2010	2011	2012	2013	Growth 2009-13
EAC Exports	1,495,927	1,541,152	1,796,199	1,694,570	1,633,438	+9.2%
EAC Imports	193,159	203,772	242,181	233,457	275,381	+42.6%
EAC trade surplus	1,302,768	1,337,380	1,554,018	1,461,113	1,358,057	+4.2%

Fortunately the trade distorting effects of EU agricultural support are currently not a major issue for the EAC agro-food sector, with growth rates in the value of imports from the EU far lower than the ACP and global averages (+ 42.6% compared to + 64.8% and + 69% respectively). However, this could change in the coming years with the completion of EU CAP reform that will enhance the competitiveness of agro-food sector exports on international markets. Also, EU agro-food exporters are showing a growing interest in certain EAC markets⁸ and will be greatly assisted by the commencement of the EU-EAC EPA that will restrict the EAC's use of the range of non-tariff trade tools and phase out some of its tariffs on imports from the EU.

While safeguard measures included in the EPA could be used to address import surges that may arise, these will still be based on WTO principles, with the EU retaining the right to resort to the WTO for dispute settlement.

In terms of trade with the US, the EAC is not currently a significant destination for US agro-food sector exports. The effects of US policies are largely felt through their impact on global market prices (where they can exacerbate downward price movements). However the only area where this could seriously impact on EAC export interests is in the cotton sector, although even here other developments could play a more fundamental role.

Since the 2008 food price crisis EAC governments have renewed their commitment to expanding food production aimed not only at the international market, but also to reduce import dependency. Market access negotiations are therefore relevant not only to the terms under which EAC agro-food exports can enter other markets but also EAC governments own tariff reduction commitments and the scope for them to utilise trade policy tools such as safeguards.

EAC market integration has given a boost to intra-regional trade in agro-food products and efforts to expand agro-food value added processing for the regional markets. This dual benefit reinforces the need for the active use of agricultural trade policy tools in support of agro-food sector development objectives.

The context in which the EAC operates and conducts WTO and other trade negotiations, poses challenges given that:

⁸ See, Reuters, 'French group Danone buys 40% stake in Brookside', 18 July 2014, <http://www.businessdailyafrica.com/Corporate-News/-/539550/2388592/-/vuvphfz/-/index.html>

- Member states still apply divergent import tariffs in the agro-food sector, despite the customs union requiring common external tariffs;
- The WTO rights and obligations of EAC members diverge given the existence within the EAC of four LDCs and one non-LDC.

This regional context, along with shifting patterns of global demand (towards Asian and African economies) and changes in agricultural policies and the evolution of trade strategies in both OECD countries and advanced developing country agro-food exporters, provide the backdrop for any review of the appropriateness of the WTO's 2008 agricultural negotiations modalities.

Overview of Concerns

In terms of WTO rules on domestic support, EAC governments have interests at two levels. Firstly they need to safeguard their right to deploy adequate domestic support to their own agricultural producers. Secondly they need to secure a reduction in those domestic support measures applied by major agricultural exporters that result in excessive volumes of exports which depress or destabilise prices, thereby undermining domestic production.

Currently fiscal constraints rather than WTO ceilings are the main factor limiting the ability of EAC countries' to provide support for domestic agriculture. However, that is not necessarily a permanent situation. Economic growth in the region and the discovery of major oil deposits in Uganda and large natural gas fields in Tanzania could in the future assist in alleviating this fiscal constraint on the countries' ability to fund the required agricultural support measures⁹. Equally the impact of mineral based growth on the exchange rate could make increased levels of domestic agricultural support necessary. **Consequently EAC countries should therefore not rule out negotiating to retain their flexibility in granting domestic support.**

Food Security

A new dimension of domestic support that is potentially of concern to the EAC regards the transitional rights granted to developing countries for public stockholdings for food security purposes. A G33 submission to the Bali Ministerial proposed enlarging the scope for government support in developing countries to include food purchases from smallholder farmers to be held in stock for food security purposes. The Bali WTO Ministerial meeting established an interim measure, which would allow such programmes to go unchallenged, providing transparency and notification requirements were met.

However when substantial accumulated stocks are disposed of they can have a depressing impact on global markets. For the EAC this is particularly relevant in the rice sector. Thai authorities' rice sector policy measures since mid-2013 have exacerbated the declining trend in global rice prices and given rise to trade flows which have disrupted local rice sales on national and regional markets in the EAC, with this adversely affecting the Tanzanian rice sector (see box) and potentially that of Rwanda.

Under the Bali Agreement on Public Stockholding for Food Security, governments making use of provisions on public stockholding for food security purposes are required to "ensure that stocks procured under such programmes do not distort trade or adversely affect the food security of other Members", and are required to consult where problems could arise.

This requirement and the related issue of the rising levels of domestic support being provided by advanced developing countries, need to be viewed against the background of the shifting patterns of agro-food sector trade. Advanced developing countries are becoming increasingly dominant in global

⁹ KPMG, 'Oil and Gas in Africa: Africa's Reserves, Potential and prospects', <https://www.kpmg.com/Africa/en/IssuesAndInsights/Articles-Publications/Documents/Oil%20and%20Gas%20in%20Africa.pdf>

agricultural exports (up from 26.9% to 36.9% between 1970s and 2010s). Brazil, Thailand and Argentina are now amongst the top five agricultural exporters. China is also playing an increasingly significant role as an exporter; though it is even more important as an importer, having moved from being a net exporter in the 1990s to the largest net importer after Japan. Meanwhile, despite the focus of negotiations largely being on its defensive interests, India has become the main global exporter of rice and the second most important exporter of both beef and cotton. This is giving India an increasingly important presence in global agricultural export markets.

Disciplining domestic support measures and the stock disposal programmes of these advanced developing countries could potentially take on more significance in the coming years. This is particularly the case for sectors such as rice, cotton, poultry meat and even fruit and vegetables.

It is noteworthy that current options for moving beyond the Bali “peace clause” on Public Stockholding for Food Security largely focus on how developing country programmes of support to farmers through public stockholding programmes can be maintained within WTO rules¹⁰. These proposals do not focus on how to proactively avoid unduly distorting markets to the detriment of other developing country producers (e.g. Tanzanian rice producers).

Recent Rice Market Disruptions Arising from Increased Low priced Imports From Asian Suppliers

In mid-2013 the Thai government sought to dispose of rice stocks accumulated as part of an earlier high rice price policy, designed to boost rural incomes. This led to a surge in Thai rice exports and a rapid decline in Thai rice prices (-23.6% to -41.5% from July 2013 to May 2014, depending on variety and quality). By May 2014 Thai rice prices were between 29.6% and 39% below average rice prices in 2012. This reinforced the downward cycle in global rice prices.

In April 2014 the CEO of the Southern Agriculture Growth Corridor of Tanzania (SAGCOT), Geoffrey Kirenga complained that local farmers were confronting lower prices for rice and were struggling to sell their rice on regional markets in the face of competition from cheap Asian rice. The CEO of Kilombero Plantations Limited (KPL), which along with SAGCOT supports the development of smallholder rice production in Tanzania, maintained KPL had suffered “a whopping 4 billion shilling loss [about €1.8m] as a result of Asian rice imports”. It was maintained KPL had “1,000 tonnes of rice from the 2012 season and another 5,000 tonnes from [the 2013 harvest], which cannot be sold at a profitable price due to a saturated local market”.

The halting of Thai stock disposal programmes in May 2014 pending a review of the national rice situation by the new military government reversed this price trend. This highlights the important role public policy decisions on stock-holdings can play on market price developments.

Table: Rice Monthly Price - US Dollars per Metric Ton

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec
2012	540.06	547.48	577.05	585.95	612.43	606.14	578.36	582.87	590.50	584.74	590.73	565.52
2013	573.39	574.07	564.52	553.73	552.09	546.25	538.26	503.82	470.00	453.26	448.81	447.55
2014	441.04	447.00	434.14	409.94	403.59	414.67	428.00	440.38	436.50	432.70		

Source: Indexmundi <http://www.indexmundi.com/commodities/?commodity=rice&months=60>

¹⁰ See “Market price support in large Developing Countries” in the ICTSD compilation of essays “Tackling Agriculture in the post-Bali Context”.

Cotton Sector Issues and the EAC

WTO cotton sector issues are relevant to the EAC given efforts to promote cotton production in Tanzania (which reached 354,000 tonnes in 2012 before falling to 240,000 tonnes in 2013), and in Uganda. There have been long standing efforts in the WTO to bring about a rapid reduction of domestic support in the cotton sector, focussed on US support programmes. Early analysis suggested that “reform of cotton subsidies and tariffs in the Doha Round could potentially have significant impacts on price, production and trade patterns and ultimately contribute to economic development in the global south”¹¹. Such an outcome will depend on the depth of domestic policy reforms adopted by the US and EU. However it was felt at the time, that reforms introduced have largely left OECD cotton farmers’ production decisions unaffected.

More recently it has become apparent that the functioning of the global cotton economy has changed dramatically. The depressed state of cotton prices is increasingly attributed to the growing adoption of GM cotton in China and India and the Chinese government’s pricing and state purchasing policies, which have had an important bearing on the functioning of global cotton markets. Since 2009/10 China, rather than the US, has been the largest provider of cotton subsidies, with Chinese support for the cotton sector having increased more than fivefold between 2007/08 and 2012/13.

While the current Chinese policy of keeping its huge surplus off world markets has been supportive of global cotton market prices, such a policy appears unsustainable in the long term. In this context the timing and nature of Chinese policy change overhangs the global cotton market, with a shift from price support to direct aid payments to cotton producers now pending. This suggests a need to broaden out the debate on cotton issues at the WTO to accommodate the critical role now being played by Chinese cotton sector policies.

Proposed Agenda for Re-igniting Progress on Cotton Sector Issues at the WTO

A paper entitled “How to Reinvigorate the Cotton Issue at the WTO” included in the ICTSD compilation of essays “Tackling Agriculture in the post-Bali Context” proposed that the LDC Group should submit an updated proposal in the WTO which addresses cotton sector issues arising from the policies of all major cotton producing countries, including advanced developing countries. It was proposed that all the concerned parties should take on commitments of real economic interest to LDCs. Specifically with regard to the policies of advanced developing countries it was proposed that the Chinese government should:

- Grant full DFQF access to cotton from LDCs (removing the duty on imports from LDCs of between 5% and 40% imposed outside of the annual 894,000 ton quota);
- Limit its subsidies in the light of their market effects; not the nominal permitted levels under a formula which no longer corresponds to market realities;

With regard to India it proposed the Indian government should:

- Limit “its cotton subsidies to the amount given to other competing crops so as to ensure that cotton is not substituted for less economically competitive crops”;
- Place a ceiling on the “maximum amount of cotton subsidies based on the last five years before the conclusion of the Doha Round”;

¹¹ ICTSD, ‘How would a trade deal on cotton affect exporting and importing countries?’, 12 November 2009, <http://ictsd.org/downloads/2009/11/jales-draft.pdf>

- Refrain from “imposing export restrictions for its cotton that might disrupt the international cotton market.

It was argued all other developing country governments providing significant levels of support to their cotton sectors (e.g. Turkey and Pakistan) should commit themselves to:

- “Granting DFQF market access for cotton produced in the LDCs”;
- “Limiting their internal subsidies to the average amount given in the last five years before the conclusion of the Doha Round”.

Market Access

Overview

The market access issues of concern to EAC countries in the WTO are multi-faceted. They include:

- Impact of tariff reduction commitments on the levels of domestic agro-food sector protection;
- The scope for effective safeguards against import surges and for safeguarding the commercial space for the development of agricultural production and broader agro-food sector development;
- The scope for securing improved market access for EAC exports to non-traditional markets;
- The scope for limiting or deferring the erosion of the margins of EAC tariff preferences on traditionally high value markets (notably the EU);

However there is a market access issue of growing concern to EAC exporters which is not part of the 2008 modalities, namely: the establishment of mechanisms for consultation and arbitration where changes in SPS and food safety regulations and their application can undermine the commercial viability of agro-food sector exports.

This issue of the design and application of SPS and food safety controls, is playing an increasingly important commercial role in the EAC’s agro-food sector trade relations with the EU, its principal agro-food sector export destination. This is an issue of such major importance that EAC countries might wish to consider, along with other interested groupings, seeking, to get it addressed in the work programme.

There have in addition been three developments since 2008 that need to be borne in mind in considering the market access issues confronting EAC members. The first of these increasing global agricultural commodity price volatility, within the generally rising price trend. This means specific sector development strategies (e.g. the Tanzanian rice sector strategy) can be undermined not only by the internal production and distribution challenges faced, but also by sudden and dramatic declines in world market prices, which greatly exacerbate the competitive challenge posed by imports. This requires the maintenance of the policy space to be able to effectively deal with the local and regional market consequences of global price volatility.

The second of these developments is the virtual completion of the EU process of CAP reform, which through enhancing the competitiveness of EU agro-food sector exports has resulted in the EU being transformed from a net agro-food sector **importer** to a net agro-food sector **exporter**.

The third development, which in terms of future policy closely relates to the foregoing development, is the conclusion of the reciprocal preferential EAC-EU Economic Partnership Agreement. Many of its provisions go beyond the commitments undertaken by EAC Members in the WTO context and potentially impact not only on trade with the EU, but also trade with other third countries. This could greatly complicate EAC regional agro-food sector policy formulation.

In addition given agro-food sector demand growth trends in Africa and ongoing regional market integration initiatives, EAC defensive interests relate not only to the EAC market, but also wider Eastern, Central and Southern Africa markets, where considerable export potential exists.

In terms of EAC offensive interests in the agro-food sector in non-traditional export markets in Asia, SPS, food safety and associated accreditation and verification procedures are likely to be as important a market access barrier as tariffs. If export opportunities in these non-traditional markets are to be exploited, then establishing rules to facilitate SPS and food safety based access can be an important objective for EAC members, particularly in the light of developing transportation links, which will play an important role in opening up these markets.

EAC Tariff Reduction commitments and the 2008 Modalities

Currently the starting point of tariff reduction commitments and obligations undertaken under any WTO agreement remains the country's bound tariffs. Since 2005 an EAC CET has nominally been in operation for Kenya, Tanzania and Uganda, while since January 2009 Burundi and Rwanda have commenced the implementation of the EAC CET. However, as the May 2013 WTO Trade Policy Review of the EAC pointed out, despite the nominal creation of a common external tariff the duties actually applied by EAC member across a range of agro-food products vary widely (although efforts to move towards a harmonized approach continue at a product specific level)¹².

With EAC members having diverse bound rates for agro-food sector tariffs the question arises: from which point should tariff reductions commence? This question is complicated by the large scale dependence of three of the four EAC LDCs on the trans-shipment of goods through Kenya, the only non-LDC member of the EAC, and the introduction of systems of customs duty collection at the first point of entry to the EAC territory. It is still further complicated by the different tariff reduction obligations which would be placed on LDC and non-LDC members of the EAC under any WTO agreement.

While the current WTO negotiations have largely been touted as providing a 'round for free' for LDCs; requiring reductions to the common EAC tariff would violate this broadly accepted principle and de facto deprive the LDCs of their important DDA exemption from the obligation to make tariff reductions.

Particular problems arise in sensitive agricultural sectors such as **sugar** (highly sensitive for Kenya) and **rice** (highly sensitive for Tanzania). In both these sectors situations can emerge where even the currently applied MFN tariffs are in excess of bound rate commitments. In this context the taking on of any tariff reduction commitments as part of a WTO Round could compound the difficulties faced in implementing current sugar and rice sector policies in certain EAC members leaving them with an inadequate level of protection from imports under certain global market conditions.

This highlights the importance of considering tariff reduction commitments alongside the effectiveness of safeguard measures in guarding against import surges

EAC and Agricultural Safeguards

Analysis in the Estey Centre Journal of International Law and Trade Policy¹³ suggests that in many developing countries "applied and bound tariffs are very similar, which makes it almost impossible not to exceed pre-Doha bound tariffs when the SSM is triggered". In addition it was noted "least developed countries that are not making tariff cuts and have even larger gaps between bound and applied tariffs will gain a lot of policy flexibility with the SSM". This would appear to suggest that current modalities

¹² WTO, 'East African Community: Trade Policy Review', 31 May 2013, http://www.wto.org/english/tratop_e/tpr_e/tp371_e.htm

¹³ The Estey Centre Journal of International Law and Trade Policy, Vol. 10, No. 1, 2009, http://www.acp-eu-trade.org/library/files/Jason%20&%20Karl_EN_0109_Estey%20Centre%20Journal_Triggers.%20Remedies%20and%20Tariff%20cuts%20Impact%20of%20SSM%20for%20developing%20countries.pdf

would be permissive of EAC LDCs making effective use of special safeguard measures to guard against import surges of sensitive products.

However the Estey Centre Journal analysis went on to note that the final outcome of the WTO negotiations will depend on hard negotiations which are still ongoing, on issues like the flexibilities to be allowed LDCs, particularly where they form part of a customs union with a non-LDC member. In this context it should be noted that granting such flexibilities could have only minimal trade distorting effects, while bringing significant benefits to the countries concerned. EAC negotiators can forcefully make this point.

Against this background, ICTSD¹⁴ suggested that the design of special safeguard mechanisms will have a critical bearing on their effectiveness in addressing import surges that disrupt the functioning of local supply chains in ways that have implications for the commercial viability of domestic agricultural production. Particular importance is attached to the choice of trigger mechanism, with some analysts suggesting consideration should be given to using different trigger mechanisms for different groups of countries

Improving access to non-traditional markets

Since 2008 the trend towards major shifts in the composition of global demand for agro-food sector products has continued. Demand growth for agro-food exports produced in the EAC is increasing both in Asia and elsewhere in Africa.

Against the background of improvement in direct transportation links between East Africa and major Asian markets such as China and India, securing the reduction of tariff barriers on EAC agro-food exports to these markets would appear to be a high priority.

While the principle of advanced developing countries extending duty free-quota free (DFQF) access to LDCs has been accepted, the debate over the extent to which this principle should be qualified continues. This needs to be seen in a context where the exclusion of even a handful of tariff lines (e.g. limiting coverage to 97% of tariff lines), if carefully selected, could largely undermine the benefits of DFQF access.

However for tariff elimination on non-traditional markets to bring real benefits, a number of other issues will need to be addressed. The first of these, which is currently subject to discussion in the WTO, relates to the rules of origin to be applied under any DFQF regime for LDCs. A second issue which needs to be addressed if tariff reductions/elimination by non-traditional partners will actually give rise to new trade flows, relates to the negotiation of SPS and food safety protocols.

This can be a difficult process given the capacity constraints faced on both sides, yet no new trade in basic agro-food sector products can take place without such protocols being in place. In terms of capacity constraints it is reported that the Chinese Administration of Quality Supervision, Inspection and Quarantine (AQSIQ) is facing human resource constraints in responding to all the pending requests for negotiation of SPS and food safety protocol.¹⁵ In this context priority is being accorded to those negotiations where China has significant agro-food sector export interests. This can see smaller trading blocs such as the EAC facing difficulties in concluding such agreements.

¹⁴ ICTSD compilation of essays "Tackling Agriculture in the post-Bali Context".

¹⁵ See 'Good progress reported in South Africa–China SPS dialogue in citrus and apple sector', 21 October 2013
<http://agritrade.cta.int/en/layout/set/print/Agriculture/Commodities/Horticulture/Good-progress-reported-in-South-Africa-China-SPS-dialogue-in-citrus-and-apple-sector>

It would therefore appear to be essential that within the WTO, attention is paid to supporting fast tracking the negotiation and conclusion of SPS and food safety protocols, alongside any moves towards opening up of agro-food sector trade with non-traditional partners.

EAC and Preference Erosion

Preference erosion is most acutely felt in trade relations with the EU for products such as sugar, bananas, rice and beef, products in which EAC countries do not currently have substantial export interest. However, proposals have been advanced to extend the coverage of preference erosion products to exports such as cut flowers. These preference erosion products would be subjected to less extensive and/or deferred tariff cuts by traditional importing countries. While such a move could benefit EAC countries this is a highly contentious proposal.

It should be noted that since 2008 the conclusion of bilateral trade agreements by the EU has accelerated the process of erosion of margins of tariff preference traditionally enjoyed by the EAC exporters, while the continuation of CAP reforms has further reduced the value of traditional tariff preferences (notably for sugar). These non-WTO causes have been the main drivers of preference erosion in the EU market to date, with this process likely to intensify given the major bilateral EU trade negotiations which are ongoing or which have been completed and are now entering the implementation phase (e.g. EU- USA, EU-Mercosur, EU-India, EU Canada, EU-Andean Pact, the EU-Central American agreements). **There remains in this context the need for a comprehensive response to preference erosion.**

The adoption of such a comprehensive approach could carry benefits for EAC exporters if it included assistance in getting to grips with minimising the cost increasing effects of changes to the implementation of SPS and food safety controls for non-traditional exports.

SPS and food safety standards

It is increasingly being recognized that aspects of developed country policies in the agro-food sector can constrain the ability of developing countries to beneficially participate in international trade. An August 2013 UNCTAD analysis argued that while it may be unintentional, the “restrictive and distortionary effects of non-tariff measures may be systematically biased...against developing countries and more so against low-income and least developed countries”¹⁶. Given the consolidation of full duty free quota free access for EAC exporters, SPS and food safety measures are increasingly the principal trade obstacle to EAC agro-food sector exports to the EU market.

In addition moves towards full cost recovery for official SPS inspections of imports into some EU member states (notably the UK) are compounding the competitiveness challenges arising from the stricter application of SPS (and food safety) standards. While affected exporters’ associations and national governments in the EAC have complained and sought bilateral consultations to resolve the specific SPS/food safety issues faced, to date they have achieved limited success. This is in part attributable to the absence of:

- Clearly defined structures for the exchange of information on planned changes
- Effective consultative structures on the scientific basis for such changes;
- A binding arbitration mechanisms for SPS and food safety related trade disputes.

¹⁶ UNCTAD, ‘Non-Tariff Measures to Trade: Economic and policy issues for Developing Countries, August 2013, http://unctad.org/en/PublicationsLibrary/ditctab20121_en.pdf

The Recent Experience of EAC Horticultural and Floriculture Exports

During 2013 the EU unilaterally increased the rate and duration of inspections of certain Kenyan horticultural exports following increased 'interceptions' of non-compliant products after a 90% reduction in the EU's permitted level of pesticide residues. This led to considerable delays in delivery to supermarkets, reducing the shelf life and commercial value of exported products. It further required major investments at both the private and public sector levels to improve compliance and reduce inspection levels.

In the floriculture sector meanwhile the UK government, in the face of fiscal pressures, has moved towards full cost recovery for all official controls carried out on floriculture imports. From April 2012 to April 2014 this saw inspection charges increase 238%. While this had the most important impact on Kenyan exporters, given the volume of trade involved, proportionally it can fall most heavily on non-traditional EAC flower exporters. New exporters with no established track record (a minimum of 200 consignments per year over the previous three years) are subject to much more frequent and intense inspections (therefore more expensive). This can give rise to a situation where a non-traditional exporter faces a frequency of SPS inspections up to 20 times higher than an established exporter, at a cost for each inspection which is 20 times higher than for an established exporter¹⁷. This can act as a major disincentive to the development of non-traditional exports in a context of moves to full costs recovery for all inspections carried out.

Export Competition

Export Subsidies and Export Credits

Export subsidies have primarily been used by the EU and were for many years an important driver of agro-food exports. Initially export refunds were introduced to bridge the gap between high EU prices and lower world market prices. However, since 2008 the EU has continued with a process of reform of agricultural support measures that is doing away with the need for export subsidies (shifting farm price guarantees to direct aid to farmers thereby allowing EU market prices to fall towards world market prices levels without undermining the financial viability of EU agricultural production). This process of reform aimed at doing away with the need for export refunds, has been assisted by a trend towards higher global food prices.

This has seen the reduced use of export refunds by the EU, which in July 2013 announced that all remaining export refunds would be set at zero. While this falls short of full abolition of export refunds (since the system remains in place), it means the EU's use of export refunds will be limited to exceptional circumstances (i.e. will only be deployed in the context of the EU's new extended "safety net measures" policy, designed to deal with exceptional market crisis situations). While this leaves the EU with some discretion in the use of export refunds it is a long way from the routine use of export refunds which characterised the earlier period and drove trade flows in the affected commodities.

While in the case of export refunds the EU has thus moved beyond its WTO commitments, it should be noted that in practice other forms of EU support can provide significant benefits to EU exporters. (For examples, see later section 'Continued Tariff Protection, Direct Aid Payments and Cross Subsidisation of Exports').

¹⁷ Source: Agritrade 'Financing EU Food and Feed Controls: Recent Developments and Implications for the ACP'. Forthcoming

Beyond the EU progress remains much more limited with respect to the elimination of other forms of export support, with the US continuing to make extensive use of export credits. The Bali WTO Ministerial meeting limited itself to a declaration recognising the highly trade-distorting and protectionist nature of various forms of export support and the importance of addressing this issue within the overall negotiations.

State Trading Enterprises

As part of the data gathering exercise linked to the Bali WTO Ministerial commitment to improving transparency in export competition, 20 WTO members reported 77 agricultural exporting state trading enterprises (STEs), with nearly 1/3 of these Chinese, 18% Indian and 18% Colombian. Some 14 of these operated in the fruit and vegetable sector, an area of potential concern for the EAC in terms of export competition.

It has been argued that under the WTO 2008 modalities the provisions dealing with STEs may need adjusting given the growing role which a number of advanced developing countries are playing in global agricultural trade¹⁸. Currently the modalities allow developing country STEs to maintain monopoly powers “to preserve domestic consumer price stability and to ensure food security”, if their “share of the world’s exports of the agricultural product(s) involved was less than 5% for three consecutive years”.

The percentage allowed is significant as is the notion ‘commercial’ used to assess the operation of the STE. Currently these provisions allow a STE to engage in certain practices that are not conducted on “commercial terms” and still be in compliance with WTO obligations.

Overall with the growing role of developing countries in both the export and import of agro-food products, it has been argued that the treatment of STEs should require stricter disciplines than those envisaged in the 2008 Modalities. This could become an issue of interest to EAC governments in the rice sector and potentially the fruit and vegetable sector where member states have a production interest and some operate STEs.

Continued Tariff Protection, Direct Aid Payments and Cross Subsidisation of Exports

Increasingly the concerns regarding export competition are moving beyond the use of export refunds towards the impact of residual tariff protection and direct aid payments on the global price competitiveness of major agro-food exporters such as the EU.

In terms of residual tariff protection in the EU there is evidence that in the poultry sector this allows EU producers to pass on cost increases to domestic consumers without any significant risk of market loss to imports of competing poultry products. This enables EU poultry producers to maintain competitive prices on export markets even when domestic poultry production costs are increasing. This, along with the residual nature of the EU’s trade in poultry parts, has seen the share of the African countries in total EU poultry exports increase dramatically (from 23.8% of total extra-EU poultry exports in 2008 to 35.8% in 2013).

While in some African regions (notably West Africa) this poses serious challenges to domestic producers it has yet to become an issue in EU-EAC trade (although there has been a ten-fold increase in EAC poultry meat imports from the EU, this occurred from a very low base). The poultry sector experience is however illustrative of the process of cross-subsidisation of exports which arises on the back of ongoing tariff protection in major OECD producers.

¹⁸ “Export Subsidies and export credits”, in the 2014 ICTSD compilation of essays “Tackling Agriculture in the post-Bali Context”

Direct aid payments mean that at any given market price level EU farmers can afford to and are therefore willing to produce more than they would have done in the absence of such payments. This can give rise to levels of production and exports in excess of what would otherwise have been the case. The reforms based on the move over to the exclusive use of direct aid payments are now approaching completion in the EU sugar and dairy sector. In the dairy sector, the final abolition of EU milk production quotas is projected by 2023 to see milk deliveries to EU dairies some 12.7% higher than was the case prior to the announcement of plans to abolish EU milk production quotas. The bulk of this increased production will need to be exported in one form or another, if EU markets for fresh dairy products are not to be undermined.

While Chinese and other Asian markets remain of major interest, competition on these markets from New Zealand and US producers is intensifying. African markets are thus increasingly attractive to EU dairy companies preparing for the consequences of the final stages of EU milk sector reforms. While in the short term the greatest interest lies in West African markets for milk powders and Southern African dairy markets (where new dairy sector tariff concessions have been granted to EU exporters as part of the SADC-EU EPA), there is growing EU dairy sector corporate interest in EAC dairy markets.

The dairy sector provides a further concrete example of the commercial impact of other forms of support. The support for private storage of milk takes surpluses out of the domestic market thereby helping prop-up domestic EU prices. This by extension, assists producers maintain the export price competitiveness of their value added dairy exports, since they can as a result accept lower prices on their sales on the export market by cross subsidising.

Against this background, in sectors such as the dairy sector, the issue of the trade consequences of EU domestic support measures could take on increasing significance. **This underlines the importance to EAC members of WTO rules on the use of safeguard mechanisms**, since the safeguard provisions included in the EU-EAC EPA in no way compromise or negate the rights that the parties retain under WTO rules.

Interests of the EAC in the WTO Agricultural Negotiations

Defensive Interests

The 'defensive' interests of the EAC in the agro-food sector emanate from the need to promote increased agricultural production and value added agro-food processing aimed at national and regional markets, and enhancing overall food security. This is particularly important given the long term trend towards higher food prices. Any revision of the rules should facilitate increasing domestic production and enable EAC governments to pursue policies aimed at furthering those goals.

This needs to be seen in the context of the 'offensive' agro-food trade interests of other trading partners, which are being pursued simultaneously, both at the multilateral level in the WTO and other international bodies dealing with trade related issues, and bilaterally/inter-regionally through trade agreements (e.g. the EAC-EU EPA).

A critical short term challenge however is managing price volatility and import surges arising from policy decisions of global agro-food sector trading partners (e.g. recent decisions of the Thai government on the disposal of rice stocks) or production and market developments impacting on the direction of trade of global agro food sector partners (e.g. the August 2014 Russian import restrictions on EU agro-food products).

Against this background EAC governments have 'defensive' interests in the following areas.

- Broadening out the debate on the trade effects of "green box" measures with a view to maintaining national and regional policy space to respond to increased imports which undermine national agro-food sector development strategies. This could be undertaken, even without the expectation of any substantive movement from OECD WTO members on 'green box' issues, but as a 'gambit' to create a more permissive environment for the use of trade management tools (TRQs, quantitative restrictions, and special levies, - the use of which has been brought into question by EPA provisions which go beyond WTO requirements), special safeguard measures and anti-dumping measures.
- Ensuring that safeguard mechanisms at both the WTO and EPA levels are simple to apply and can speedily be deployed to address problems generated by import surges.
- Making sure effective consultation mechanisms are created regarding the disposal of accumulated food stocks and that EAC governments retain the right to take immediate remedial measures where increased trade flows arising from stock disposal programmes threaten to undermine local markets (including through the continued use of fixed tariff floors, which provide more effective protection for local producers at times of dramatic price declines).
- Ensuring any new WTO disciplines on domestic support applied to developing countries and LDCs allow EAC governments to expand financial support programmes (even if current fiscal constraints might preclude EAC governments from being able to afford agricultural support programmes, economic growth and future developments in the energy sector in some member states might well permit these constraints to be removed). EAC countries should therefore seek to retain the right to expand support in line with CAADP19 commitments.

¹⁹ The Comprehensive Africa Agriculture Development Programme (CAADP) was established as part of NEPAD in July 2003 and focuses on improving and promoting agriculture across Africa. It aims to eliminate hunger and reduce poverty through agriculture. CAADP brings together key players - at the continental, regional and national levels - to improve co-ordination, share knowledge, successes and failures, to encourage one another, and to promote joint and separate efforts to achieve the CAADP goals. Source NEPAD.

- Promoting a political initiative by African cotton producers towards China on cotton issues, to ensure future policy change is managed in ways that minimise negative impacts on global cotton prices, on which EAC cotton exporters depend.

Offensive Interests

The underlying 'offensive' interests of the EAC in the agro-food sector stem from the desire and need to expand exports. Specific interests in the negotiations include seeking:

- The minimisation of non-tariff barriers faced by their exports to traditional EU markets where premium prices can still be attained (with the changing implementation modalities for official food safety and SPS controls being a particular source of concern);
- The removal of tariffs and minimisation of non-tariff barriers faced by their exports to non-traditional markets that have strong demand growth and favourable price trends;
- The removal of barriers faced by their exports of value added agro-food sector products.

This needs to be seen in the context of the 'defensive' interests of both traditional and non-traditional trade partners in the agro-food sector, which may be pursued in a multiplicity of innovative ways (e.g. through the EU's Agricultural Product Quality Policy, which closely relates to the EU policy on official standards, private standards and food safety standards).

The 'defensive' strategies in the agro-food sector of major EAC trade partners such as the EU, gives rise to a range of concerns that have not to date been effectively addressed in the WTO negotiations. While certain aspects of routine WTO processes do provide scope for getting to grips with these issues, a new debate and new initiatives are required to rebalance the rights and obligations of least developed countries. This has been most clearly articulated by Joseph Stiglitz and Andrew Charlton through their concepts of the 'right to development' and the 'right to trade' (see box below).

The 'Right to Development' and the 'Right to Trade'

In a 2013 paper Joseph Stiglitz and Andrew Charlton argued for a 'right to trade' and a 'right to development' to be "enshrined in WTO rules and enforced through its dispute settlement mechanism". The proposal for a 'right to trade' would seek to address "the trade barriers facing exporters from developing countries" by granting them the right to "bring action against an advanced country on the basis that a specific policy materially impedes the development of an identified community in a poor country by restricting their ability to trade". The EAC experience in 2012/13 of the EU's changing application of previously agreed SPS and food safety measures highlights the importance of the debate around the 'right to trade'.

The proposals for a 'right to development' would seek to address the challenges arising "when developing countries implement multilateral trade rules", by limiting the "applicability of WTO obligations when the enforcement of such obligations would have a significant adverse effect on development". The proposal to enshrine a 'right to development' in WTO rules, with this taking precedence over other trade policy commitments, can be seen as directly relevant to a number of the contentious issues which were faced in the EAC-EU EPA negotiations. In the EPA context provisions have been included which would require the abandonment of the use of long established agricultural trade policy tools (e.g. import licensing to manage national markets).

Promoting in-depth discussions of different aspects of the 'right to trade' and 'right to development' which should be subject to some form of international arbitration, can be seen as particularly relevant to EAC countries.

"The Right to Trade: rethinking the Aid for Trade Agenda", Commonwealth Secretariat, June 2013.

Against this background EAC governments might wish to seek progress in the following areas, which would be of particular benefit to the EAC's LDC members.

- Ensuring that DFQF access for LDCs is accompanied by initiatives to ensure resources are mobilised and proper attention is paid to the 'fast-tracking' of negotiations and the conclusion of the SPS and food security protocols which are a pre-requisite for trade in many agro-food products.
- Ensuring any granting of full DFQF access is accompanied by permissive rules of origin, including regional 'cumulation' provisions which allow greater use of non-LDC originating inputs than the final level agreed upon from all non-LDC sources (e.g. more than the proposed 75% utilisation of non-nationally originating inputs).
- Given the geographical realities of the EAC, explore how value could be added in Kenya to LDC originating inputs for export, without losing the benefits of preferential market access on the finished products exported to overseas markets (e.g. toll-refining of LDC sugar by Kenyan mills for export).
- Directly approaching the authorities in countries such as China, that have quantitative restrictions on cotton imports, to secure duty free-quota free access to their markets through quota expansion, a reduction of out-of-quota tariffs, or through the inclusion of cotton in China's duty free-quota free access programme.
- Focussing lobbying efforts on individual WTO members whose markets are of greatest export interest to get them to move beyond the current "best endeavour" commitments undertaken by advanced developing countries in regard to granting full duty free-quota free (DFQF) access to LDCs,
- Promoting through both the WTO and bilateral/regional processes such as the EPA, the establishment of effective consultative mechanisms for preventing and resolving SPS and food safety disputes, including through:
 - a) The establishment of clearly defined structures for the exchange of information on planned changes;
 - b) The establishment of consultative structures on the scientific basis of such changes;
 - c) The creation of a binding mechanism for the resolution of SPS and food safety related disputes.

Promoting a mechanism to explore how the negative effects of moves towards full cost recovery for official SPS and food safety controls on imports from EAC countries can be minimised. This can for instance be done through establishing transitional mechanisms for easing the financial burden on non-traditional exports of horticulture products originating in LDCs while a track record for safe trade is being built up (i.e. 'capping' the fees charged by cross subsidising from aid for trade programmes). This may also require modification of the basis for establishing a track record for risk assessment. Currently for countries with only limited export volumes and regular, but less frequent freight transportation links, it is often difficult to meet the minimum requirement for a risk assessment of 200 consignments per year for three successive years. Lowering the annual consignment requirement, while maintaining the same standard for compliance would make it possible for smaller exporters who are able to maintain the requisite standards of compliance to face far lower charges for inspections. Currently regardless of their track record smaller exporters will always face higher inspection charges since no risk assessment can be carried out.

Institutional Issues and Challenges

Many of the issues in the agro-food sector facing EAC governments straddle a multiplicity of institutional fora and frameworks. This requires the adoption of a coordinated approach in the pursuit of EAC 'offensive' and 'defensive' interests.

Thus many of the agro-food sector trade issues faced in relation to the EAC's major agro-food sector trading partner, the EU, straddle the WTO and EPA institutional frameworks. The experience of South Africa in seeking to raise tariffs on poultry meat imports within WTO 'bound' ceilings, in order to safeguard the interests of domestic poultry producers is illustrative of the complex interactions which arise between the WTO and bilaterally/regionally established trade frameworks. (See box below).

Many of the issues faced by the EAC in the agro-food sector will require approaches in both multilateral institutions and bilaterally to specific trading partners.

This will require EAC governments to foster close collaboration between their missions to the WTO, their missions to the EU and their bilateral missions elsewhere, in promoting and defending EAC agro-food sector trade interests. They will need clear channels for confidential communication to allow regular consultations and coordinated action at the multilateral, inter-regional and bilateral levels, with the coordinated engagement of the concerned line Ministries including those responsible for agricultural policy, trade policy, foreign policy, food safety policy, SPS policy and standards policy.

The South African Experience of the Complex Inter-action of EPA and WTO Rules in the Poultry Sector²⁰

In the face of a rapid increase in poultry meat imports, which threatened to undermine the local poultry sector, the South African government raised applied tariffs within WTO bound ceilings. However, under the terms of their trade agreement with the EU, these tariff increases could not be applied to imports from EU member states. This saw a rapid increase in poultry meat imports from the EU, which replaced poultry meat imports from other sources. South Africa therefore sought to invoke the anti-dumping provisions of the bilateral trade agreement with the EU, with a ruling of South Africa's International Trade Administration Commission (ITAC) seeing anti-dumping duties on EU imports imposed in July 2014. The EU may now use either the dispute settlement provisions of the bilateral agreement (the Cooperation Council) or WTO procedures to challenge this South African decision.

Most Vulnerable EAC Agro-products

Whilst EAC countries have interests in a range of agricultural exports, such as tea, coffee, horticultural products, cotton, fruit and vegetables and many more, certain commodities being produced for the domestic and regional markets are particularly vulnerable at two levels. The first relates to those specific sectors where existing sector development or sector reform programmes are underway. This includes a number of commodity areas, wheat and maize for instance but more importantly:

²⁰ 'South Africa's experience of managing poultry sector trade policy', 05 September 2014, <http://agritrade.cta.int/Agriculture/Commodities/Poultry/South-Africa-s-experience-of-managing-poultry-sector-trade-policy>

- The **rice** sector, where the disposal of accumulated stocks linked to food security programmes by major rice producer/exporters can exacerbate declines in global prices and increase the existing competitive challenge arising for EAC rice producers from imports.
- The **sugar** sector, where new patterns of trade are likely to arise in the light of the completion of EU sugar sector reforms in October 2017 and shifting patterns of global demand for sugar.
- The **dairy** sector, where EU reforms in 2015, market disruptions (the Russian import embargo) and Chinese dairy sector development strategies, could see intensified commercial interest in EAC dairy markets, with this possibly giving rise to the disruption of efforts to develop local milk-to-dairy supply chains.
- The **poultry** sector, where African markets are of growing interest to EU, US and Brazilian poultry exporters and where the trade in residual poultry parts poses particular competitive challenges which could undermine local poultry sector development.

The second level of vulnerability relates to the aspirations in the EAC to increase and indeed maximise local value added processing of agro-food sector products for national, regional and international markets. These aspirations need to be seen in a context of:

- Agricultural policy reforms in OECD countries (particularly in the EU) aimed explicitly at raising the competitiveness of EU value added agro-food products on international markets; and
- Trade policy initiatives aimed at systematically reducing and eliminating the most important tariff and non-tariff barriers to EU agro-food sector exports.

This generates particular challenges given the relative size of the EAC and EU agro-food sectors and the massive imbalance in the policy tools which the two sides can deploy in support of agro-food sector policies. While getting to grips with this level of vulnerability is particularly challenging, it is nevertheless vital if efforts to structurally transform the basis of engagement of EAC agro-food sectors with the global economy are to be successful.

Tweaking the Work Programme

Given the offensive and defensive interests outlined above, EAC negotiators should seek to have the following incorporated into the work programme on Agriculture:

- A broadening out the debate on the trade effects of “green box’ measures with a view to maintaining national and regional policy space to respond to increased imports which undermine national agro-food sector development strategies.
- The establishment of safeguard mechanisms are simple to apply and can speedily be deployed to address problems generated by import surges.
- The creation of effective consultation mechanisms on the disposal of accumulated food stocks and that EAC governments can retain the right to take immediate remedial measures where the trade flows arising from stock disposal programmes threaten to undermine local markets.
- Ensuring that any new WTO disciplines on domestic support applied to developing countries and LDCs allow EAC governments to expand financial support programmes;
- The formulation of rules of origin which permit value addition in Kenya to LDC originating inputs for export, without losing the benefits of preferential market access when exported to overseas markets (e.g. toll-refining of LDC sugar by Kenyan mills for export).
- Ensuring that DFQF access for LDCs is accompanied by:

- a) Permissive rules of origin, including regional 'cumulation' provisions which allow greater use of non-LDC originating inputs than the final level agreed upon from all non-LDC sources (e.g. more than the proposed 75% utilisation of non-nationally originating inputs);
- b) Initiatives to ensure resources are mobilised and proper attention is paid to the 'fast-tracking' of negotiations and the conclusion of the SPS and food security protocols which are a pre-requisite for trade in many agro-food products.
- Promoting the establishment of effective consultative mechanisms for preventing and resolving SPS and food safety disputes, including through:
 - a) The establishment of clearly defined structures for the exchange of information on planned changes;
 - b) The establishment of consultative structures on the scientific basis of such changes;
 - c) The creation of a binding mechanism for the resolution of SPS and food safety related disputes.

Addressing Negotiating Capacity

The earlier portion of this study presented and discussed the modalities and issues in the Agriculture negotiations. However, EAC countries face real challenges in actually manoeuvring to ensure that their concerns are satisfactorily reflected in the work programme and their interests are safeguarded in the Agriculture negotiations. To ensure adequate beneficial results, EAC countries have to negotiate them for themselves. But do they have the required capacity?

This section will explore what precisely the EAC requires to be better able to advance and secure its interests through more effective participation in the agriculture negotiations. Secondly it will provide benchmarks for assessing the adequacy of existing capacity and organization in EAC headquarters in Arusha, Geneva Missions, and national capitals. Finally it will consider changes that could help the EAC more effectively monitor, assess and analyse developments in the negotiations and in the trading environment and generate reports, briefs, submissions and speaking notes in support of effective interventions in on-going negotiations. Recommendations will be made for external support to help the EAC enhance and strengthen its ability to pursue its negotiation objectives and address and alleviate the shortcomings.

Pre-requisites for Successful Negotiations

In order to be in a position to succeed, EAC countries evidently must have adequate negotiating capacity. This though extends beyond effective engagement across the negotiating table or in WTO meetings. Four distinct components can be identified that relate to the countries' and the region's ability to:

- Arrive at a precise appreciation and understanding of national and regional interests
- Undertake adequate information gathering, research, preparation and ensure timely communication to the lead negotiators in the relevant fora
- Convincingly present and advance the case in all appropriate fora to secure desired results
- Satisfactorily monitor and follow up negotiating outcomes to ensure that any achievements are not reversed; but are implemented.

Defining interests

The ability to define and have a precise appreciation and understanding of national and regional interests is an essential prerequisite for success in negotiations. Having this clear knowledge permits the negotiators to formulate and convincingly articulate demands, determine what concessions are acceptable and where "red-lines" are to be drawn. It also enables a more methodical assessment of the implications for the negotiator's own position of external developments and negotiating partners' changing demands, concessions and positions. Having clarity of national interests on particular issues in particular sectors, the negotiator can more rapidly and appropriately adapt to changing circumstances.

The Agriculture Modalities and the dynamic context of the negotiations will evidently influence the definition of negotiating objectives. However, they cannot themselves be the starting point for working out national and regional interests. Instead that requires the assessment of what would be the optimal outcomes for the advancement East Africa's farming, consumer and food-security interests and what would best contribute to its economic growth, development and poverty reduction. These are the principles on which strong negotiating positions can be constructed.

The identification of the national and regional interest has therefore to be informed both by what suits the country and region, and by an appreciation of the dynamic global environment in which EAC countries operate. It is the responsibility of the national policy-makers, to engage with the various national stakeholders and consider all of the information available. This enables policy makers to determine the interests, goals and objectives that their negotiators should be pursuing and for which they would enjoy national backing.

Of course these interests have to be pursued in the context of constantly changing economic, commercial and negotiating realities. Market conditions are dynamic and can sometimes be volatile whilst positions of negotiating partners shift over time as their interests change along with national and global circumstances. It can be that countries enter into regional trading arrangements that give them marketing advantages over competitors; introduce new SPS and other requirements; and adopt various climate change adaptation and mitigation measures. Some of these can well have consequences for the trade of EAC countries; whether providing new opportunities or creating threats and challenges.

A new level of complexity is added at the regional level; here working out objectives also entails reconciling the various national interests and the positions of the five EAC members. This can be particularly challenging when, as is sometimes inevitable, national interests diverge.

Information and Intelligence Gathering

Essential for effective negotiation is good intelligence gathering, research, analysis and reporting, which themselves contribute to the definition of interests as described above. However, once the negotiations are underway, information is also crucial for deducing changing positions and interests of partners whilst optimally adapting one's own.

The information gathering is to be conducted in Geneva, at home, and internationally. The Mission in Geneva monitors developments in the WTO including on positions advanced by national representatives at formal and informal meetings or otherwise deduced from encounters with diplomatic and other agents. The mission therefore needs the capacity and manpower to monitor relevant developments that arise in the WTO and elsewhere, as well as to analyse and regularly report on them.

This though is just one element of a much bigger and complex information gathering and analysing operation. The information that the Mission supplies will complement what is secured from other international sources and most importantly from the home base. It will come from the domestic agriculture sector, line ministries and other relevant stakeholders. The material needs to be regularly updated and analysed in conjunction with intelligence gleaned from Geneva and elsewhere on the changing commercial, regulatory and policy environment.

It is worth stressing that the analysis of all the national and international data and information, cannot adequately be undertaken by the Mission in Geneva but rather by experts in capital and at the EAC Secretariat.

Effective two-way communication

The speed, clarity, precision and thoroughness of two way communication between capitals and the missions in Geneva, is absolutely essential for effective negotiation in today's world. Information that contributes to the development of national/regional positions is required on a timely basis as is information on market and policy developments.

However, when the country's mission in Geneva submits reports and information, they have to be in a form that is readily understandable and useable by policy analysts and decision makers if they are to be of maximum use.

The representatives might have to report on policy announcements or important changes in regulations. These though can sometimes be deeply embedded in formal presentations or reports by countries,

documents from regional or international agencies or the WTO Secretariat for instance. The specialized language used and the enormous quantity of material generated in the negotiations can pose a challenge to officials and others in capital who have to decipher and extract the key messages and their implications.

Therefore to be of full value the mission might have to first appropriately distill its reports to capital before submitting them in a format that is succinct whilst conveying their precise meaning and import. This is key if the pressed policy makers who read them are to be able to rapidly appreciate what is crucial, important and needs to be acted upon. If the mission does not first analyze the material, extracting and interpreting, its meaning and significance, there can be the danger that vital elements and messages will be missed. Relevant material that should have been taken into account might be overlooked, thereby weakening decision making.

Communication though has to flow both ways. Missions must send timely reports and analysis to capitals to inform and contribute to policy and decision making; however the reverse information flow is also vital. Timely feedback on the Mission's reports is essential not just to provide reaction to what has been conveyed, but also guidance and the government's perspective on the issues raised in the reports.

In addition the countries' Missions in Geneva need clear updates and briefings from capitals to guide and instruct them on changing national and regional interests and positions. The Government in capital receives reports from its diplomatic and other representatives elsewhere. Some of this intelligence and information gathered from other sources can well be relevant to the negotiations in Geneva. Sharing it with the countries' WTO negotiators can therefore contribute to their work. This though requires satisfactorily qualified staff to be assigned in capital to undertake the task of gathering and analysing relevant material and the preparation as appropriate of briefs, updates or instructions.

Face to face negotiations:

Convincingly presenting and advancing the case to secure desired results is the most obvious part of the negotiating process. Representatives debate in the Council, committees, working groups and in other encounters, and this might be complemented by lectures, press statements and similar outreach. Success at the negotiating table and in such events is of course influenced by their technical skills and effectiveness. But they are not enough on their own, the negotiator's skills and efforts need to be supported and complemented. As has been explained above, the adequacy of arrangements for clearly identifying and understanding national and regional interests as well as for information gathering, research, preparation and timely communication are critical to success.

Implementation

Even if a favorable decision is secured at the negotiating table, success is not assured; this will come at the end of a process that culminates with implementation. It might be necessary for instance to ensure correct reflection of the decision in the minutes and maybe even ratification at a subsequent meeting. The decision might also need to be piloted through other fora or agencies that have a role in giving it effect. Decisions can also be unintentionally or even deliberately nullified or reversed by subsequent conclusions of the same or some other agency or entity.

Attention therefore needs to be placed on monitoring and follow up of achievements in negotiations to ensure that any decisions that are favorable to EAC interests, are not reversed or negated and can be implemented. Having the resources to undertake follow up and monitoring is therefore an essential complement to the actual engagement in negotiations.

Bridging capacity gaps

The countries of East Africa have for many years been active participants in WTO negotiations and have certainly achieved successes. However, was this down simply to the calibre, experience and skill of their representatives? If the support structures discussed in the forgoing section had been more fully available to them, would that have even more effective in the negotiations?

Whilst each mission should critically assess the extent to which, individually it and its support framework have the pre-requisites for success, this section attempts a general overview of the degree to which the institutional capability to support EAC negotiators, is fully in place. The three areas to be measured can be summarized as the capacity to:

- Precisely identify national and regional negotiating aims
- Both in capitals and in the missions, to research and analyse issues and developments and prepare briefs, reports and speaking notes.
- Monitor and safeguard any advances won at the negotiating table.

Defining interests and negotiating goals

Having precision on what is being sought in negotiations is essential not only for monitoring performance and results, but most importantly for effectiveness in the negotiations themselves. Guidance though has to come from government which has national responsibility for policy. As has been mentioned before, the Permanent Representation in Geneva is not in a position to, nor has the mandate on its own to define negotiating goals.

The survey of Geneva based representatives indicates that instructions and guidance are provided on general issues and Ministerial positions regarding specific negotiating issues. However it was not possible to find compelling evidence that most missions receive, sufficiently detailed, clear and comprehensive information on national objectives and positions on the range of specific precise subjects being negotiated. In some cases there were concerns that briefings were to an extent ad hoc and delays were experienced in getting information from capital. This deficiency impedes the effectiveness of the negotiator and creates uncertainty about what concessions can be safely offered or demanded. The representative needs to negotiate for a specific outcome, so in practice, if the precise and detailed instructions are not provided he can sometimes be obliged to attempt to work out the objectives on his own. This is not ideal and can place him in a weak and exposed position in the negotiations.

The underlying cause of this problem is the inadequacy of qualified technical staff in capital for undertaking the information gathering, research and analysis coordination and briefing. Representatives in the Missions have stressed that this places them at a disadvantage vis-à-vis negotiating partners who are supplied with full and timely information and briefing. Some seek by various means to overcome the information deficit; at least one relies on TradeMark East Africa (TMEA)²¹ for commercial information. Several mentioned the value of the information support and analysis from CUTS.

²¹ TradeMark East Africa (TMEA) is an East African not-for profit Company established in 2010 to support the growth of trade - both regional and international - in East Africa. TMEA is focused on ensuring gains from trade result in tangible gains for East Africans.

Remedy: The solution to this difficulty lies in the hands of the Government which has to gather and analyse all relevant information and engage with the various national stakeholders, reconciling their sectoral interests. Given that the EAC is a Common Market, each government also has to take the regional dimension and concerns into account before determining and communicating negotiating goals, and positions.

It is recommended that EAC Governments consider strengthening intra-Ministerial coordination of WTO agricultural trade policy and also consider increasing the trained staff assigned to following this issue at home, if current levels are inadequate.

To undertake an effective coordination and support role, the EAC Secretariat would need dedicated staff conversant with WTO issues who engage directly with the countries' negotiators in the Agriculture talks. But it does not have the personnel and is currently overwhelmed with other negotiations within the region and beyond.

Having a specialist officer assigned to monitor, analyse and report on regulatory, policy and commercial developments relevant to the region's interests in the WTO agriculture negotiations would help both the Member States and the Secretariat. This officer, based in the Secretariat in Arusha, would be expected to liaise with the authorities in the capitals of the five member states gathering information and providing reports relevant to the regional dimension of the negotiations. This information and the reports would be transmitted by the national governments to their representatives in Geneva or directly if the authorities decide.

The EAC Secretariat would require initial funding assistance for this position.

Support during negotiations

A survey of officials identified the need among others for more support for research and analysis of issues and developments, which would not only provide valuable information, but also feed into the preparation of briefs, reports and speaking notes.

This is by no means surprising, the EAC Missions are short-staffed. None has a dedicated officer for agricultural trade negotiations. In general that responsibility is part of the wider WTO and UN agencies' portfolio of the single officer who is sometimes also responsible for commercial and investment matters. Just one officer cannot meaningfully prepare for, actively participate in and report on all of the relevant WTO meetings, as well as reading and digesting the considerable volume of complex material. Nor can he/she adequately monitor other relevant and important developments, conduct research and analysis and prepare briefs, speaking notes and reports for capital.

The challenges of the shortage of staff were exacerbated in 2013-14 by the volume of negotiations surrounding Trade Facilitation. The workload of the single WTO officer expanded dramatically, who as a result had to divert considerable time and effort to Trade Facilitation, leaving so much less for other negotiating areas including agriculture.

An obvious solution would be to recruit specialist staff. However in all of these countries, candidates with the required expertise are scarce and even if they could be found the Governments are operating under exceedingly tight fiscal pressures that limit their ability to engage diplomatic staff particularly in expensive locations like Geneva.

Remedy: If the EAC adopts a collective approach it can at least maximize the value of the currently available staff. Indeed the EAC is a Common Market, and as one representative put it, is "therefore expected to have a harmonised trade policy". Governments are committed to collaboration and there is already ongoing consultation and coordination among the Missions. This can be boosted by sharing of tasks where such an approach is feasible and agreed by all the Missions.

The collaborative approach could include the following possible day-to-day operational arrangements:

- Where there are meeting clashes, representatives who were able attend particular meetings share factual reports and updates with colleagues from other EAC Missions who were not able to attend.
- When officers in the mission prepare technical assessments, reports or briefs on issues that are of a non-sensitive nature and are not country-specific, they may be circulated to the other EAC representatives.
- In cases where the group decides on having one country representative present a submission or make an intervention on behalf of the EAC, they will collaborate in drafting the brief or speaking notes or designate one or more officers to undertake the task.

For this arrangement to be sustainable it is important that all Missions contribute fairly, otherwise some could be seen as free-riders and the arrangement would not be sustainable in the long term.

These and similar initiatives that include pooling and sharing, maximize the value of the limited human resources available and will certainly help. They will permit each of the missions to improve their effectiveness; ability to prepare for and report on meetings; improve their access to analysis of issues etc. However even if this approach were to be fully adopted, it still will not ensure that representatives have all the technical backup they need for effective negotiation. Even pooled, the technical resources still remain grossly inadequate.

External support: It is recommended that an agricultural trade specialist is engaged to assist the EAC representatives in Geneva to help meet the severe deficit of expertise. This expert will not be a national negotiator, but would:

- Monitor relevant developments in the WTO; attending its and other relevant meetings where issues that have an impact on EAC agricultural trading interests are being addressed
- Undertake comprehensive information and intelligence gathering, technical analysis and research and the preparation of collective briefs
- Satisfactorily monitor regulatory and other developments that impact on EAC's interests in the agriculture negotiations.
- Prepare and circulate regular and comprehensive updates on the agriculture negotiations for circulation to the Missions and the EAC Secretariat. The former could use them as a contribution to their own reporting to capital.
- Work along with and help train and develop mission staff engaged in the agricultural trade negotiations.

This expert would report to the Permanent Representative or the officer designated by each mission. In order to be able to attend required meetings of WTO, UNCTAD and other relevant inter-governmental bodies, it would be necessary for the expert to be included on the delegation of a member state. He /she may be housed in a country Mission or with an institution like CUTS.

Persons with the specialist knowledge, experience and expertise, required to be able to fulfill these demanding roles are both rare and costly to engage. **It is therefore proposed that funding for three years be sought for meeting the costs of this expert.**

During the three years, the EAC Secretariat should work on developing its own in-house capacity in the monitoring and coordination of the agricultural negotiations and recruiting the required specialists. At the end of that period, the staff handling the agriculture negotiations should have been developed and/or specialist/s recruited by the EAC Secretariat.

A requirement that was consistently identified by negotiators as being paramount, was for backup research and analysis of the issues under negotiations. This recommendation would help address that need.

Communication

Speedy and comprehensive two way communication is vital as has already been discussed. The negotiator who does not have all relevant information is at a disadvantage and policy makers need to be fully aware of what is happening in the negotiations to be able to optimally adapt positions.

Improving communication entails action on two fronts. First the interpersonal and interactive dimension. Here improved practices structures and fuller commitment to exchanging information and intelligence are required. Also of importance is having appropriate attitudes to ensure that information and intelligence will be shared with those who need it, for analysis, decision and policy making or negotiation.

The Missions, Ministries in capital and the EAC Secretariat therefore should review their communication procedures and guidelines to ensure that they are both adequate and are being properly implemented, and if necessary they should be appropriately upgraded.

The other aspect of communication is the technological. Up to date technology is vital for both the speed and ease of communication. Nowadays without the use of iPads, Skype etc. the negotiator is at a disadvantage to those who are in easy contact with capital for briefings, analysis, guidance and reporting. To varying degrees, EAC missions already use modern communication measures, however there is scope for enhancement, both in the Missions and in capital.

An assessment of the equipment needs to enable satisfactory communication in the context of the agricultural negotiations should be conducted. This will provide the basis for deciding on upgraded equipment needs both in the WTO Missions and in the reporting ministry in capital. **External support should be sought for upgrading electronic and other equipment** (e.g. iPads for the Geneva based officials and possibly desktop computers for capital).

Participation at meetings abroad

Missions can often find it difficult to participate in all meetings, conferences and other events relating to the agricultural negotiations even where they might be essential and offer an opportunity to advance their countries' interests in the negotiations or obtain important information. The reasons tend generally to be a shortage of staff and the severe lack of financial resources.

Given that no major expansion of staff complement is envisaged in the near future, EAC country missions might seek to capitalize on the actual, albeit limited resources that they have available (as has already been proposed on the preceding page). Situations can be envisaged where an important event is being held abroad in which there is shared regional interests but most EAC Missions are unable to attend. In such cases the Missions should wherever feasible consider collaborating in preparing and briefing whichever representative/s from the region who will be attending. The representative/s will also share the report with other EAC missions that could not participate.

This approach will help, but for certain events Governments might wish to have their individual national representatives attend. Further, even in cases where just one or two representatives of the EAC countries would suffice, there can still be problems of staff availability, overlapping commitments and financial constraints. These can make it difficult and sometimes impossible to send even a single representative of the region.

It could be contended that participating in those events that are not directly part of the negotiations might be missed if the Missions' resources are stretched. True, often there could be other ways of making inputs into the deliberations to convey national positions, interests or proposals, such as through written submissions. Also, it might be possible to be briefed on the proceedings including through study of the report and documents that emerge. However in cases where actual physical participation is essential to safeguard and advance the negotiating interests of the EAC countries, then, funding support to enable attendance would be needed.

It is therefore recommended that the EAC establishes a fund to support participation by representatives of the WTO missions at important and relevant technical meetings, conferences and events held abroad and seeks external donor contributions.

Staff Development

Given that the diplomat at the EAC Mission who is assigned responsibility for WTO agriculture negotiations also has an extensive range of other responsibilities both within and beyond the WTO, he/she tends not to be an agricultural trade specialist.

In view however of the importance of agriculture to EAC countries and the highly technical nature of the discussions, appropriate short-term training of staff engaged in the agriculture negotiations in the Missions is recommended as well as of staff in capital directly involved with oversight, monitoring and providing support in the negotiations.

For home based staff, it could be helpful if one is invited to the **Geneva Week** to participate as an observer. This would be beneficial to provide an understanding and overview not just of Agriculture negotiations and the DDA but also of the functioning of the WTO system and its processes. This will help the officer place the negotiations and the specific episodes in context.

Summary of Recommendations

The following are the key recommendations.

The Agriculture Work Programme

EAC negotiators should seek to have the following incorporated into the work programme:

- Support amendment to the rules governing the green box to accommodate developing countries' concerns that the restructuring of domestic support via shifting to the 'green box' does not retain a negative impact on international competition and the trade of other countries.
- Broaden out the debate on the 'green box' with a view to EAC Members being able to maintain national and regional policy space to respond to increased imports which undermine national agro-food sector development strategies.
- Ensure that safeguard mechanisms are structured in a manner that they are simple to apply by EAC countries and can speedily be deployed to address problems generated by import surges.
- Urge the creation of effective consultation mechanisms on the disposal of accumulated food stocks and the retention of the right of EAC governments to take immediate remedial measures where the trade flows arising from stock disposal programmes threaten to undermine local markets.
- Ensure that any new WTO disciplines on domestic support allow EAC governments to retain their flexibility in granting and expanding domestic financial support programmes.
- Ensuring any granting of DFQF access for LDCs is accompanied by: (i) permissive rules of origin, including regional 'cumulation' provisions which allow greater use of non-LDC originating inputs than the final level agreed upon from all non-LDC sources (e.g. more than the proposed 75% utilisation of non-nationally originating inputs); (ii) initiatives to ensure resources are mobilised and proper attention is paid to the 'fast-tracking' of negotiations and the conclusion of the SPS and food security protocols which are a pre-requisite for trade in many agro-food products.
- Seek the introduction of arrangements permitting value addition in Kenya to LDC originating inputs for export, without losing the benefits of preferential market access when exported to overseas markets (e.g. toll-refining of LDC sugar by Kenyan mills for export).
- Promote the establishment of effective consultative mechanisms for preventing and resolving SPS and food safety disputes, including through:
 - a) The establishment of clearly defined structures for the exchange of information on planned changes;
 - b) The establishment of consultative structures on the scientific basis of such changes;
 - c) The creation of a binding mechanism for the resolution of SPS and food safety related disputes. (This initiative at the WTO level will need to be complemented by parallel processes in bilateral/regional arrangements such as the EPA).
- Pursue a comprehensive response to preference erosion that could for instance seek benefits for EAC exporters including assistance in minimising the cost-increasing effects of changes to the implementation of SPS and food safety controls for non-traditional exports.

Other Policy recommendations

- EAC governments monitor the specific impacts of changing patterns of domestic agricultural support in developed countries and the utilisation of newly agreed dispensations in advanced developing countries, on the specific sectors where EAC producers have production and trade interests.
- Move beyond the current “best endeavour” commitments placed on advanced developing countries in regard to granting full duty free-quota free (DFQF) access to LDCs, by focussing lobbying efforts on individual WTO members whose markets are of greatest export interest.
- Explore how the negative effects of moves towards full cost recovery for official SPS and food safety controls on imports from EAC countries can be minimised.
- In order to improve access to overseas cotton markets, directly engage developed countries and advanced developing countries such as China that have quantitative restrictions on cotton imports to seek, quota expansion, a reduction of out-of-quota tariffs or the inclusion of cotton in the DFQF access programme for LDCs and to ensure that their future policy changes are managed in ways that minimise negative impacts on global cotton prices.
- Simultaneously broaden out the debate on cotton issues at the WTO to accommodate the critical role now being played by Chinese cotton sector policies.

Strengthening Capacity

- EAC Governments assess the adequacy of staff assigned to WTO agricultural trade policy issues and if found to be inadequate, consider increasing the staff assigned to this subject.
- Given the shortage of specialist and qualified technical staff, an agricultural trade specialist be engaged by and located in the EAC Secretariat to monitor, analyse and report on regulatory, policy and commercial developments relevant to the region’s interests in the WTO agriculture negotiations. This officer would also liaise with the authorities in the capitals of the five member states gathering information and providing reports on the regional dimension of the negotiations. These would be transmitted by the national governments to their representatives in Geneva.
- EAC Missions to the WTO adopt a collaborative approach so as to maximize the value of the current staff. This could entail sharing of tasks and where such an approach is feasible and agreed by all the Missions, could include the following:
 - a) Where there are meeting clashes, representatives who were able attend particular meetings share factual reports and updates with colleagues from other EAC Missions who could not attend;
 - b) When officers in the mission prepare technical assessments, reports or briefs on issues that are of a non-sensitive nature and are not country specific, they may be circulated to the other regional representatives;
 - c) In cases where the group decides on having one country representative to present a submission or make an intervention on behalf of the member states, they will collaborate in drafting the brief or speaking notes or select one or more officers to undertake the task.
- Since even with pooling, human resources will still remain grossly inadequate, the EAC seeks external support for engaging an agricultural trade specialist to assist representatives in Geneva. This expert will not be a national negotiator, but would:

- a) Monitor relevant developments in the WTO attending its and other relevant meetings where issues that have implications for EAC agricultural trading interests are being addressed
 - b) Undertake comprehensive information and intelligence gathering, technical analysis and research and the preparation of collective briefs
 - c) Monitor regulatory and other developments that impact on the EAC's interests in the agriculture negotiations.
 - d) Prepare and circulate regular and comprehensive updates on the Agriculture negotiations for circulation to the EAC Secretariat and the Missions. The latter could use them as a contribution to their own reporting to capital.
 - e) Work along with and help train and develop mission staff engaged in the agricultural trade negotiations.
- It is proposed that funding for three years be sought for meeting the costs of the expert. During the three years, the EAC Secretariat should work on developing its own in-house capacity in the monitoring and coordination of the agricultural negotiations and recruiting the required specialists.
 - The Missions, Ministries in capital and the EAC Secretariat should review their communication procedures and guidelines to ensure that they are both adequate and are being properly implemented, and if necessary they should be appropriately upgraded and managed.
 - Conduct of an assessment of the equipment needs to enable satisfactory communication in the context of the agricultural negotiations. This will provide the basis for deciding on upgraded equipment needs both in the WTO Missions and in the reporting ministry in capital. External support be sought for upgrading electronic and other equipment.
 - Given the importance of agriculture to EAC countries and the highly technical nature of the discussions, appropriate short-term training of staff engaged in the agriculture negotiations in the Missions is recommended as well as of staff in capital directly involved with oversight, monitoring and support of the negotiations.
 - A representative of the home based staff of the four LDC members be invited to the Geneva Week to participate as an observer in order to get an overview and obtain a better understanding of the Agriculture negotiations and the DDA as well as the functioning of the WTO system and its processes.

Conclusion

As the pace of the DDA negotiations in agriculture increases, the 2008 modalities are still seen by many as providing a reasonable basis for moving forward. However, account must be taken of subsequent relevant developments and changes to regulatory and commercial realities and the needs and interests of EAC countries.

The negotiations will inevitably result in changes to the rules that influence tariffs and other restrictions on market access as well as state support provided to farmers. All of these factors, singly or combined, can impact costs, the nature and intensity of competition and ultimately the profitability of farming. When they are positive, the result can be that a country's production will boom providing a boost to the food security of local communities or expanded exports. However if the changes are inappropriate they can potentially have disastrous effect; local production can be wiped out by flooded imports; export markets can be lost. The five members of the EAC have a lot at stake in these negotiations.

With their woefully limited resources, the negotiators face a particularly difficult challenge to secure the outcomes that their countries require from the talks. Even if they and the staff in capital and the Secretariat in Arusha, do the best that they can, the EAC countries would still be unable to participate satisfactorily in the negotiations. They need therefore to review the arrangements that they have in place and provide fuller support for the negotiators on the "frontline". Also they need innovative approaches to working collectively and strategically with allies.

Recognising the capacity constraints of EAC Missions, this paper has outlined requirements for effectiveness. It would be for each Mission to compare itself with the standards necessary and for the national authorities themselves to explore measures, including those recommended in this paper for addressing the capacity gaps.

A series of recommendations have been made for external support that will help the EAC countries better define and pursue their interests in the negotiations. This note has sought to contribute to that objective by making proposals for the WTO Work Programme on Agriculture as well as related agro-trade policy. It also recommends measures that might be taken by the Missions themselves to enhance and strengthen their effectiveness; including innovative approaches to working collectively.

The WTO Agriculture negotiations will have far-reaching consequences for the economic growth and development, food security and the reduction poverty in EAC countries. It is therefore imperative that EAC negotiators are effective and can help secure outcomes that support their countries' interests.

Although there should be no illusions as to the scale of the challenges and the enormity of the task; success can be achieved. To be well positioned, the full commitment of negotiators and those who support them is paramount. However reforms and innovative approaches that will enhance and strengthen performance are needed. But the EAC cannot do it all on its own. There must be external support to help the countries overcome the impediments that they face due to their severe shortages of financial, human and institutional capacity.

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