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RESEARCH Paper

Standards and Market Access Under EPAs

Implications and Way Forward for EAC

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CUTS International Geneva Resource Centre

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By Gloria Otieno & Victor Ogalo
CUTS Geneva Resource Centre

ABBREVIATIONS

ACP	African Carribean and Pacific
BSE	Bovine Spongiform Encephalopathy
BRC	British Retail Consortium
CAC	Codex Alimentarius Commission
DFQF	Duty Free Quota Free
EAC	East African Community
EPA	Economic Partnership Agreements
ETI	Ethical Trading Initiative
EU	European Union
EUREPGAP	European Retailers Protocol for Good Agricultural Practices
FFV	Fresh Fruits and Vegetables
FLP	Flower Labelling Program
FPEAK	Fresh Produce Association of Kenya
GAP	Good Agricultural Practices
GDP	Gross Domestic Product
GNP	Gross National Product
GVC	Global value Chains
HACCP	Hazard Critical Control Points
HCDA	Horticultural Crops Development Authority
HS	Harmonized System
LDC	Least Developed Country
MRL	Maximum Residue Limits
NEP	National Enquiry Points
NGO	Non Governmental Organization
NTB	Non Technical Barrier
QCD	Quality Cost Delivery
SPS	Sanitary and Phyto Sanitary
TBS	Tanzania Bureau of Standards

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1. Introduction

If developing countries were to increase their range of exports of processed agricultural products into developed country markets their export growth rates would significantly rise. However, attempts to fully exploit this potential have not been successful for reasons that developing countries exporters face many supply-side and demand-side challenges. In particular, they have little capacity to meet increasingly more stringent food safety standards and other private standards as well as consumer preferences in the developed countries.

Yet, given advances in knowledge about health hazards, advances in food processing technologies, increased awareness about environmental protection, strict observance of human rights, and rises in consumers' incomes, it is expected that more demand will continuously be placed on food safety standards, technical requirements and production techniques which would require that food safety standards would have to be complied with along the entire production and distribution chains. Although such changes in standards are to be expected, a range of some of the observed changes in standards in recent years have provoked strong suspicions that both public and private standards are increasingly being used as a non-transparent, trade impeding protectionist tools, mostly, by developed countries. Many standards have emerged in the global trading arena that have no bearing with the legitimate aim of protecting animal welfare and human and plant health.

Ideally, the World Trade Organization (WTO) through its Sanitary and Phyto-sanitary (SPS) Agreement, Technical Barriers to Trade (TBT) and its Dispute Settlement Mechanism could help resolve some of the observed abuses and protectionist tendencies in the usage of trade standards. In practice, however, developing countries are constantly at a disadvantage point when it comes to making use of available WTO procedures to even seek redress for any misnomer. What is more, the WTO allows its members to have own justifiable national standards which oft times are stricter than those negotiated under its Authority.

Developing countries' prospects of exploiting the potentials in the developed countries is thus hampered. They face onerous imposition of standards in the developed countries and have limited capacity to access and absorb best practice technology and information that would enable them even to meet the genuine standards. Furthermore, they are constrained by inadequate resources to adapt to the ever-changing standards and also to challenge any perceived protectionist measures. Yet, food safety standards, being a 'luxury good', are expected to

continue rising with increases in consumers' income levels (*Athukorala et al 2003*), and more importantly, stricter food safety standards are to be excepted because as traditional trade barriers come down, countries with protectionist interests would most likely shift to use of standards to block trade even more. As a result, standards-related issues will forever remain a source of major tension and sharp friction in international trade negotiations.

1.1 Objectives and Terms of Reference

Since 2002, the European Commission (EC) has been negotiating economic partnership agreement (EPAs) with East African Community (EAC) countries aimed at establishing an EAC-EU free trade area. The EPA represents a change in the EAC-EU trade relations from that which had traditionally granted nearly all EAC exports non-reciprocal preferential entry into the EU market to that which will continue with the condition that EAC countries also reciprocate the EU generosity by granting EU exporter free entry into their own market. Certainly, this change is expected to bring benefits and costs as well as create winners and losers. But, of interest in this study, is to examine what implications it will have for the growth and development of trade and improvement of livelihood activities in EAC, considering the stringency, and sometimes punitive tendencies, with which EU governments and private sector bodies will continuously demand adherence among EAC traders to standards in order to be able to place exports in the EU market.

Other than merely presenting this analysis, the main aim of doing this research is to present the information to the attention and action of the EAC EPA negotiators, the regional trading community as well as to the non-trading groups, mostly civil society organizations and government personnel, concerned with socio-economic development in a region whose citizens might be badly impacted by the introduction of EPAs.

The paper reviews the fact that, as is consistent with historical political and economic realities, there is no guarantee that mere preferential tariff treatment in the EU market under EPA will stimulate export growth in EAC or will present a new opportunity to EAC traders since the EU market has been almost fully open to EAC traders over the last four decades. The paper has reviewed the particular restrictions in the EU market arising from its punitive imposition of stringent SPS standards and technical requirements, and, the compliance capacity gaps existing among EAC traders that impede their efforts to meeting standards and hence bar their entry into the EU market.

The sub-sectors covered in the study are tea, coffee, horticulture (fruits, vegetables, and flowers), and fish and fishery products traded between EAC and EU. Above all, the consideration for selecting these sub-sectors is that they represent the main exports of EAC into Europe; their total contribution to GDP and employment in the region

is huge; and the products are closely linked to smallholders' sources of livelihood; hence, their impact on mass poverty would be huge depending on the direction of EPA impacts on EAC value-added exports. Lastly, these products represent the potential sectors for regional economic growth.

Individually, tea and coffee were selected because they represent the important traditional exports that have dominated the economies of all EAC countries and that analysis of their market access conditions suggest that while they do not have a problem accessing the EU market their main barrier is standards, particularly, those that concern quality, which affect export earnings.

The horticultural sub-sector (fruits, vegetables, and flowers) was also selected on the basis that it is a sector where rapid growth has been witnessed in the recent past but where a number of issues on standards, particularly concerns on SPS and consequences on market access, which have implications for the future performance of this sub-sector, have become important. The fisheries industry is included in the analysis because likewise to the horticultural sector, it provides a case in which the requirements of the SPS Agreement have affected exports from the region in varying degrees.

The analytical problem posed for this paper is, thus, one of minimizing risks while maximizing the long term development impact of EPAs on the identified sub-sectors by agreeing SPS and TBT measures that would support the growth and development of the sub-sectors. The questions posed for this study which are also its terms of reference are as follows:

a) What are the issues under EPAs with respect to market access and, more specifically, standards in the EU?
b) How are the international standards set, and what effect does this have on those required to comply with the standards?
c) What are the types and nature of SPS standards that EAC exporters are facing in order to access the EU market? How do some of these standards distort trade between the EU and EAC economies?
d) How do EU SPS and TBT standards compare with the WTO's SPS and TBT agreements?
e) How capable are the EAC countries in terms of technical and human resources in meeting these standards?
f) What are the major difficulties and implications for EAC trade under EPAs in their attempt to comply with the EU standards in the selected sub-sectors?
g) If the onerous EU standards barriers were to be adequately addressed, what would the relevant provisions in an EPA agreement look like that would give the assurance that EAC countries would be able to add value to and export their agricultural and fisheries products to the EU market competitively.

h) What is the way forward, recommendations and proposal on EPA negotiations?

Structure of the Paper

This paper is organized in seven sections. Section one is the foregoing and is an introduction to this paper; section two provides an overview of EPA negotiations and progress on negotiations and key constraints to trade between EAC and the EU. Section three has been dedicated to the discussing the nature and scope of EU standards and Regulatory measures vs WTO standards. Section four looks at the Implications of EU standards for different sectors and cross country experiences. Section five will wrap up and give the way forward while section six and seven are the references and appendices respectively.

2. EAC-EC EPA AND NEGOTIATIONS ON STANDARDS

2.1 OVERVIEW OF OBJECTIVE AND PROGRESS IN THE EAC EPA NEGOTIATIONS

2.1.1 Objectives of the EAC EPA Negotiations

The general objectives of the EPA are broad and are defined in the Article 34 of the Cotonou Partnership Agreement with specific principles given in Article 35. However, the specific objectives of the EPA being negotiated between the EAC and the EC are stipulated in the Article 2 of their interim EPA and seeks to: *establish strong trade and development partnership to contribute to development; promote regional integration between EAC and EU and its integration with the global economy; promote economic cooperation and good governance; help build trade policy capacity; develop EAC's production and trade capacity; establish a transparent regulatory system that will attract investment; and strengthen relations that exist between the EU and the EAC.* Among the objectives, regional integration is key to achieving other objectives; the aim is to remove, progressively, trade barriers and establish a free trade area with the EU, and facilitate EAC's integration with the rest of the world economy. Pursuit of this goal is expected to elaborate certain supply-side development measures that should eventually contribute to trade development, poverty reduction and sustainable development in EAC.

2.1.2 PROGRESS IN THE EPA NEGOTIATIONS

Out of the 77 ACP countries that began EPA negotiations since 2002, only less than half (37countries), EAC countries included, have so far initialled/signed interim or full agreements. Most (40) countries have not initialled

any agreements. EAC countries are therefore among other ACP countries that now export to the EU under the EPA provisions while the rest that have not initialled EPAs export to EU under the terms of the EU's Everything But Arms (EBA) Initiative if they are least-developed countries (LDCs) and under its Generalized System of Preferences (GSP) terms if they are non-LDCs.

The EAC-EC initialled EPA in November 2007 as an interim agreement containing provisions for trade in goods only, which was considered necessary to step into line with WTO rules by the start of January 2008. It was considered that merely having an agreement on trade in goods was safe enough to secure WTO-compatibility of EAC-EC trade relations.

The interim EAC-EC EPA provides the framework for further negotiations towards a comprehensive agreement by July 2009 which will contain agreements on a number of contentious issues contained in its Rendezvous clause (Article 37): *customs and trade facilitation; rules of origin; most-favoured-nation (MFN); standstill agreement; export taxes; TBT and SPS measures; trade in services; trade related issues (namely: competition policy, investment and private sector development, trade, environment and sustainable development, intellectual property rights, and transparency in public procurement); agriculture; dispute settlement mechanism and institutional arrangements; and economic and development co-operation.*

It is evident in the interim EPAs, that both EAC and EC have offered to substantially liberalise (an average of 91.3%of) trade between them. The EU market will allow in duty-free and quota-free all EAC exports, except arms, and EAC will on a reciprocal condition allow in 82.6% of all imports from EU. These liberalization limits imply that some small degree of asymmetry has been granted to EAC to exclude 17.3% of sensitive trade from liberalisation even though, in practice, EAC could exclude a maximum of 20% of trade from such liberalisation arrangements. Some of the criteria used for eliminating products from liberalization are the following:

- revenue contribution of a product;
- export earnings from a product;
- food security linkages of a product;
- the potential of the product/sector to economic development;
- social, health, environmental, cultural and religious reasons; and
- whether the products enjoys domestic support

Given that there is a general agreement about these exclusion criterions, and that they could rake-in a substantial amount of EAC trade, it should be investigated what criterions were followed and what trade-offs were made so that only 17.3% of trade, as opposed to 20%, was excluded. Since these criterions could cover more than 20% of EAC trade, it casts into doubt whether the EPA has provided the EAC with protective flexibility for excluding all their sensitive sectors/products from liberalisation given that 20% exclusion is a lower protection threshold than would an objective exclusion based purely on the agreed criterions and not on percentage conditions.

2.1.2 Progress on SPS Negotiations in the EAC

In line with article 37 of the Framework EPA, EAC and EC have embarked on negotiations for a comprehensive EPA. In March 2008, they adopted a broad road map to enable them conclude negotiations of the Comprehensive EPA as scheduled. It was agreed that the broad road map shall take into account the progress of the negotiations and can be adapted accordingly. Based on this roadmap, EAC and EC met at technical level in April 2008, and considered, among others, SPS and TBT measures.

In the area of SPS, the parties agreed to cooperate with the aim of safeguarding human, animal and plant health or life, ensuring transparency in application of SPS measures to trade, promoting technology transfer and more fundamentally establish and enhance the EAC member states' capacity to implement and monitor SPS standards in accordance with international best practice. In this regard, the EAC and EC agreed to cooperate in helping and facilitating the compliance of EAC products with formal standards of the EU and other markets. This will include support for harmonization of SPS standards, promoting capacity in both public and private sector for sanitary control through development and implementation of quality programmes, technical assistance, harmonizing appropriate regulatory frameworks and policies between and within the parties, training and information exchange. The EAC and EC have agreed to identify and prioritise the necessary technical infrastructure, but the issue of providing such infrastructure is still subject to further negotiations.

As regards TBT, the EAC and EC agreed to cooperate and EC to provide support for capacity building in the fields of standardisation, technical regulations, conformity assessment and metrology, quality management and assurance in selected sectors of importance to the EAC promotion of greater use of international standards in technical regulations and conformity assessments, including sector specific measures, in the Parties' territories. As at April 17th 2009, a joint EAC-EC text on SPS and TBT is complete. It is now time for development commentators to review it and help in refining it into a development tool.

3.0 Standards and Regulations for Agricultural and Food Sector

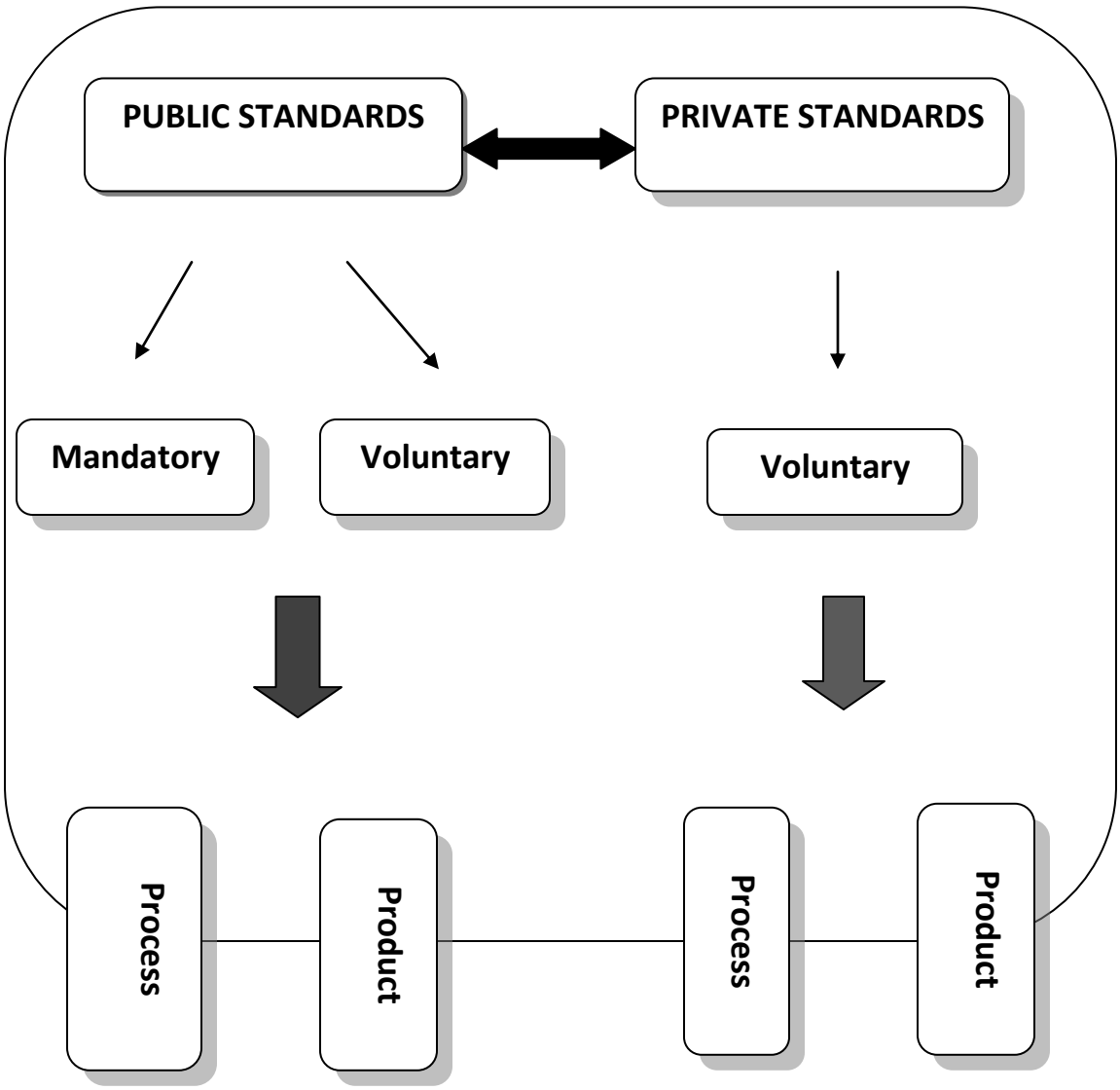
3.1 Standards and Regulatory Measures

3.1.1 Definition and Classification of Standards

Standards are the language of trade. Standards have many roles and functions. Not only do they establish a common trading language between buyers and sellers, but they also ensure public safety and the protection of the environment within and outside national borders. Moreover, in today's globalized production systems, standards ensure that parts produced across borders fit and that networks are compatible. To ensure the competitiveness of developing country producers it is imperative that systems for affordable access and credible implementation of these standards are established. Emerging standards are both complex and dynamic, incorporating features that go beyond simple quality, to less apparent characteristics of product safety, environmental management, and human Rights. More recently, standards have also been driven by a philosophy which integrates profitability with continual improvement in environmental and social performance in everyday business practices.

Standards can be classified into several categories depending on their function or the way standards originate as summarized in the figure below. The first distinction made in figure 1.1 is between public and private standards. This classification refers to the way standards originate. Whether the ***market*** responsible for their development or if it is a ***government*** initiative. A ***private standard*** is a standard which primarily focuses on the interests of the private stakeholders that develop the standards. These stakeholders will only take the interests of consumers into account to the extent that it benefits their own interests (den Butter et al., 2007). Private standards are therefore voluntary in that there is no legal recourse for failure to comply. However ***public standards*** are government initiatives and the government has the ability to make the standards ***mandatory*** through the introduction of legislation (Ibid). This is in contrast to ***voluntary standards***. The following distinction of figure 1 is that between standards that are related to products and those related to production processes. ***Product standards*** are requirements with respect to some characteristics of the product itself, they are verified through quality control of finished products. ***Process standards*** are standards that prescribe how certain steps in the production process should take place and most often are enforced through regular inspections of the processes. Producers in developing countries thus have to comply with both public and privates standards as will be distinguished below:

Fig 3.1: Classification of Standards



Source: den Butter et al., 2007

3.1.2 Functions of Standards in International Trade

Standards in many cases are public goods. In this case, they must serve to solve common problems, generating joint consumption benefits for the public. Standards facilitate comparisons by consumers across products with common essential characteristics (Maskus & Wilson, 2000). Product and process standards are required because they contribute to ***the provision of public*** *goods* for which people have preferences. Standards can also improve information flows between suppliers and consumers about characteristics and quality of products, thereby facilitating market transactions. In this regard, standards *are* ***designed to facilitate information exchange, ensure quality***. For example, sanitary standards contribute to public health. Sanitary and phyto-sanitary requirements can improve health and quality of life with spillover benefits into higher productivity, as well as expanded export opportunities (Wilson, 2001).

The role of standards in the value chain has been discussed as important in improving efficiency through quality cost and delivery (QCD), but also through meeting demands of high-income economies who are largely the "drivers" of these standards (Kaplinsky, 2006). These result in firms demanding performance of their suppliers and the threat of exclusion for non-performance but also this raises costs for firms complying. Standards therefore play a vital role ***in the regulation of food production and trade and improves market access*** by creating a framework for communication between different actors at each end of the value chain. When products and processes become more standardized, transparency increases and trade becomes more predictable and easy to control, thus reducing costs involved in of transactions (Kaplinsky, 2006; Tander & Tilburg 2007; Busch, 2000). Implementing standards can therefore improve operational and managerial efficiency.

Standards also have technologically and innovative features embedded in them and hence the process of complying ***to standards lies in the transfer of advanced production capabilities to low-wage economies*** who in turn gain by acquiring knowledge through spill-overs and 'learning by doing' (Grossman & Helpman, 1989). This process enables small firms/farmers to *upgrade* their production, there by resulting in increased incomes.

On the other hand however, with emerging and increasingly demanding health and safety standards over and above the governmental standards imposed by the EU, private sectors are imposing additional standards in order to protect their safety reputation and also to ***differentiate themselves from competitors*** (Dever, 2007). Buyers have also imposed many requirements informally through individual supply chains (Jaffe & Henson, 2004; Dever, 2007) and hence exporters became concerned about the cost of monitoring a large number of smallholders for

compliance with increasingly strict regulations. These safety standards have thus created immense constraints for existing exporters/suppliers while raising the bar for new entrants into the market. Therefore as standards increase in number, complexity and stringency they have a direct impact on competition and market access and hence those firms that are unable to fulfill all requirements are faced with export supply constraints and risk exclusion (Tander & van Tilburg 2007).

Some Authors (Wilson, 2001; Wilson & Abiola 2003) have also pointed out that ***countries use regulation for protectionist purposes***. Technical regulations may discriminate against foreign suppliers, both in their construction and in their outcomes. They may be used to gain strategic trade advantages for domestic firms over foreign competitors. Standards are often non-transparent and in some cases needlessly force firms to duplicate testing and certification costs. Regulations may be drafted to exclude both domestic and foreign entrants into a particular market, which then serves to support entrenched monopolies.

Standards—particularly those that require independent certification—intrinsically fulfil many of the broader requirements for producers to participate in global supply chains or compete in high-value products. For example, detailed record keeping of production inputs, traceability, and third-party monitoring that are part of organics are also useful to improve chain competitiveness and more effectively participate in lucrative markets. ***Sustainability-oriented standards*** appear to have some additional benefits for farmers. For example, several recommend diversification away from dependence on a single cash crop, thereby reducing a producer's risk of crop failure. Environmental standards also help to ensure sustainable production and are beneficial to farmers (Okello, 2005).

More recently ***ethical standards like fair trade*** have also been used to promote social justice. Fair trade standards resulted from developed country consumers concerns over the progress of development through global trade. It is therefore a market based mechanism to improve lives of producers in developing countries. Fair trade has been seen as a mechanism through which producer's needs can be addressed. It incorporates equity in supply chains by addressing market failures and their social impacts at source (Nicholls & Opal, 2004). Other recent ethical standards have also included labor standards that ensure conducive and humane working conditions, fair wages and non-exploitation of children in farms.

In view of this, EAC producers and exporters operate in an environment full of uncertainties. Concerns related to food quality and safety; resource use, land degradation and pollution of the environment as well as labour and

worker welfare continue to dog the sector in many ways. While standards may at the same time pass knowledge and information necessary for producers to participate in global chains, they may also act as "barriers" to trade and increase transaction costs for exporting firms.

3.2 WTO Regulations and Standards

3.2.1 SPS Measures and the WTO

Sanitary and Phyto-Sanitary (SPS) measures are applied to protect human, animal and plant life or health from risks arising from the introduction and spread of pests and diseases and from risks arising from additives, toxins and contaminants in foods and feedstuffs.
SPS measures are subject to rules set under the World Trade Organization (WTO). In particular, the use of SPS measures is governed by the provisions of the WTO **Agreement on the Application of Sanitary and Phytosanitary Measures** (the SPS Agreement). Therefore all countries that are signatories of WTO[1] ascribe to principles of the WTO and have to meet WTO requirements including SPS Measures. These requirements are basically on food safety and health standards also)[2] as well as Codex Alimentarius[3] standards and Hazard and Critical Control Points (HACCP)[4] standards. All the mentioned standards are strictly with respect to food safety and health and mostly product standards.

Principles of the SPS Agreement

The SPS Agreement provides a framework of rules to guide WTO Member countries in the development, adoption and enforcement of sanitary (human and animal health) and phytosanitary (plant health) measures. All WTO Member countries are signatories to the SPS Agreement, under which they have both rights and obligations. The SPS Agreement provides WTO Member countries with the right to use SPS measures to protect human, animal and plant life or health. Each WTO Member country is entitled to maintain a level of protection it considers appropriate to protect life or health within its territory. This is called the appropriate level of protection (ALOP).

[1] Kenya is a signatory of the WTO and joined in 1995.

[2] The Agreement on the Application of SPS Measures sets out the basic rules for food safety and animal and plant health standards. It allows countries to set their own standards. But it also says regulations must be based on science. They should be applied only to the extent necessary to protect human, animal or plant life or health. And they should not arbitrarily or unjustifiably discriminate between countries where identical or similar conditions prevail. (WTO, 1998)

[3] The Codex Alimentarius Commission (CAC) is an intergovernmental body to implement the Joint FAO/WHO Food Standards Programme which was established by an FAO Conference resolution in 1961 and a World Health Assembly resolution, (WHA) 16.42, in 1963. Its principle objective is to protect the health of consumers and to facilitate the trade of food by setting international standards on foods (i.e. Codex Standards) and other texts which can be recommended to governments for acceptance.

[4] HACCP standards on the other hand are standards that are developed in order to prevent hazards that could introduce potentially dangerous food-born illnesses in food by applying science-based controls that cover all aspects from raw resources through preparation to final product

The SPS Agreement applies to all SPS measures which may directly or indirectly affect international trade. The right to adopt SPS measures is accompanied by obligations aimed at minimizing negative impacts of SPS measures on international trade. The basic obligations are that SPS measures must:

- be applied only to the extent necessary to protect life or health and not be more trade restrictive than required
- be based on scientific principles and not maintained without sufficient scientific evidence, and
- not constitute arbitrary or unjustifiable treatment or a disguised restriction on trade.

The Agreement stipulates that each member country will demonstrate openness of their domestic rulemaking process which affects trade by publishing its requirements and providing advanced notification of any changes in SPS requirements that may affect trade. It also requires countries to make available the scientific basis for the proposed action and allow countries an opportunity to comment on the proposed action. An exception exists to this advance notification for emergency disease or pest situations. The SPS Agreement also contains 14 articles covering various human, animal and plant health considerations that arise from international trade, including, inter alia:

- the use of international standards (harmonisation)
- risk assessment
- transparency
- technical assistance for developing countries and
- dispute settlement

The SPS Agreement identifies 3 sister organization which are responsible for setting the various standards

- *Codex Alimentarius* – responsible for protecting the health of consumers and ensuring fair practices in the food trade. This requires all countries to harmonize their food regulations and adopt internationally agreed standards.
- *International office of Epizooties* – responsible for the establishment of standards, guidelines and recommendations pertaining to animal health
- *International Plant Protection Convention* - is a multilateral treaty for international cooperation in plant protection The Convention makes provision for the application of measures by governments to protect their plant resources from harmful pests (phytosanitary measures).

However, Article 3 and Article 5 of the SPS Agreement give provisions where members are permitted to adopt SPS measures which are more stringent than the relevant international standards or adopt SPS measures when international standards do not exist, provided the measures are based on scientific risk assessment; consistently

applied; and not more trade restrictive than necessary. These provisions have hence led to many developments in the standards arena has seen an introduction of a myriad of other standards not related to food safety and health but equally important for producers to access consumer markets.

3.2.2 The TBT Agreement

According to the TBT Agreement, a standard is a set of rules, guidelines or characteristics for products or related processes and production methods (provided for common and repeated use) approved by a recognized body with *which compliance is not mandatory*. It may also include or deal exclusively with terminology, symbols, packaging, marking or labeling requirements as they apply to a product, process or production method The Scope of the Agreement covers all products both industrial and agricultural except services, SPS measures and purchasing specifications for consumption by governments. The agreement therefore provides for both mandatory and voluntary standards.

Principles of the Agreement include: non-discrimination; avoidance of unnecessary obstacles; harmonization; equivalence; mutual recognition and transparency. However, the agreement also recognizes countries' rights to adopt the standards they consider appropriate — for example, for human, animal or plant life or health, for the protection of the environment or to meet other consumer interests. Harmonization as outlined in article 5.5 requires members to have National Enquiry Points (NEP) to act as national reference points for harmonization and notification of new standards.

Through the TBT Agreement, Members have expressly accepted a number of obligations in relations to conduct of *non-governmental bodies*[5] . Article 4 lays down obligations in relation to the preparation, adoption and application of standards by non-governmental bodies. The type of requirements in Article 4 partly mirrors those in Article 13 of the SPS Agreement where members must "take such reasonable measures as may be available to them to ensure" that non-governmental bodies comply with obligations that are largely similar to those set forth by the TBT Agreement for governmental measures; and "not take measures which have the effect of … requiring or encouraging" non-governmental bodies to act in a manner inconsistent with those obligations. Article 4 further specifies that the "obligations of Members with respect to compliance of standardizing bodies with the provisions of the Code of Good Practice shall apply irrespective of whether or not a standardizing body has accepted the Code of Good Practice".

[5] **Defined as bodies "other than a central government body or a local government body"** TBT Agreement, Annex 1,

Further provisions of the TBT Agreement lay down obligations for Members with regard to acts of non-governmental entities. For example, in Articles 8 and 9 Members have accepted obligations relating to the assessment of conformity with standards by non-governmental bodies. Moreover, Article 14 of the TBT Agreement provides that the WTO dispute settlement provisions "can be invoked in cases where a Member considers that another Member has not achieved satisfactory *results* and its trade interests are significantly affected. In this respect, such results shall be equivalent to those as if the body in question were a Member".

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

3.3 The Nature and Extent of EU Standards

In the EU, consumer concerns about food safety, resulting largely from food safety failures in the 1980s and 1990s has been one of the key drivers for standards and regulations (Dolan & Humphrey, 2002). These two decades were marked by a series of food-borne disease outbreaks in Europe linked to produce originating from developing countries; these include a Salmonella outbreak in the UK in 1989, an E. coli outbreak in fast food hamburgers in the United States in 1993, and Dioxin contamination of animal feed in Belgium in 1999 (World Bank, 2005). Importing countries have also become concerned about the introduction of pests through imports from developing countries. The EU, for instance, formulated and implemented Council Directive 2000/29/EC to control the introduction of pests and diseases harmful to plants and plant products. This directive requires that imported produce be accompanied by phyto-sanitary certificates declaring them free of pests and disease. Likewise, supermarkets in developed countries have responded to changing regulatory and demand conditions by seeking to meet consumer demands for all products (Dolan & Humphrey, 2002). Consumer pressure, protection of brand image, stricter food regulation in the EU during the 1990s, and the need for access to a due diligence defense drove retailers to develop strict commercial standards which encompass both food safety and quality as well as environmental, and ethical concerns as will be discussed below.

3.3.1 EU Food and Safety Regulations

In the aftermath of the BSE crisis and several other food scandals, the EU published its *White Paper on Food Safety* setting out a legislative action plan for a pro-active new food policy. Key elements in the new approach were the establishment of a framework regulation, the establishment of an independent body providing scientific advise to the legislators, the development of specific food and feed safety legislation including a major overhaul of the existing hygiene legislation, and the creation of a framework for harmonized food controls. As a result of this, in January 2002 the European Parliament together with the council of the European Union passed the EC Regulation number 178/2002 laying down the general principles and requirements of food law and establishing the European Food Safety Authority and laying down procedures in matters of food safety.

The new legislation adapted an integrated approach to food safety (*"from farm to fork"*), which lays the primary responsibility of food safety on producers and retailers and encompasses traceability – as the basic principle; transparency; risk analysis and risk assessment using best scientific evidence and precautionary principle. This legislation also gave responsibility to the European Food safety authority for scientific and technical advice as well information to the community members. Implementation of the legislation therefore resulted in frequent import checks as well as inspection in third countries exporting to the EU.

The white paper on food safety outlines a radical revision of EU food hygiene rules. It developed a "hygiene package" with an aim of merging, harmonizing and simplifying very detailed and complex hygiene requirements scattered over 17 directives. The overall aim was to create a single hygiene regime covering food and food operators in all sectors, together with effective instruments to manage food safety and any possible food crises, throughout the food chain. Food producers would bear primary responsibility for the safety of food through the use of a "Hazard Analysis and Critical Control Points" system (HACCP). It also had requirements for food establishments to be registered or to be approved by the competent authorities which should have control systems in place in order to verify with food law in general and with food hygiene in particular. These requirements came into force on January 1st 2006.

3.3.2 Voluntary and Private Standards in the EU

Consumer pressure, protection of brand image and stricter food regulation in the EU, and the need for access to a due diligence defence drove retailers to develop strict commercial standards. Governments tended to respond by

adopting stricter legislation placing the liability for food contamination on the industry and retailers (e.g. the 'due diligence' requirements in the United Kingdom). In turn, retailers and food manufacturers sought to make their suppliers responsible for the safety of their products, notably through the development of standards for good agricultural practices and good manufacturing practices and the requirement that suppliers be certified. In some cases, firms have developed standards individually (e.g. Carrefour's "filière qualité"), while in others they have acted collectively (e.g. the Sustainable Agriculture Initiative was created by leading global agri-food firms such as Nestlé and Danone to pursue mutual sustainability interests and some European supermarket chains formed the Euro-retailer Produce Group to develop the EurepGAP standard).

(i) The EurepGap (GlobalGap) Standard

The EurepGAP code for production of fresh fruits and vegetables was first introduced in 1996 by a group of 11 British and Dutch retailers, with the objective of creating a single private sector standard. EurepGAP certification can be given either to individual grower or to a marketing organization attached to an exporter (Okello, 2005). Some of these regulations included Phytosanitary measures; conformity to quality standards, labeling & traceability requirements; Maximum Residue Limits (MRLs); new organic inspection requirements.

More recently, the EUREPGAP standards have been changed to GLOBALGAP[6], a key reference for Good Agricultural Practices in the global market that translates consumer requirements in agricultural production with an aim to establish one standard for Good Agricultural Practice (GAP). These requirements reflect both the technical regulations laid down by governments and the private standards of major supermarket chains, the latter of which are employed both to manage regulatory and liability risks and as the basis of product differentiation. Existing national or regional farm assurance schemes are required to benchmark their processes as an equivalent to GLOBALGAP (GLOBALGAP website, 2009). Studies in a number of countries illustrate the considerable operational changes and costs required to comply with food safety and quality requirements that are *not only stricter, but also subject to on-going change*, and the associated risks for small-scale producers (Dolan & Humphrey, 2000).

GLOBALGAP is a single integrated standard with modular applications for different product groups, ranging from plant and livestock production to plant propagation materials and compound feed manufacturing. It integrates all agricultural Products into a single audit (Globalgap website, 2009). It encompasses standards on labor rights and worker welfare; environmental standards; requirements for record keeping & auditing; traceability and generally

[6] GLOABALGAP is a pre-farm gate standard which covers the process of certified product from farm inputs, the process of production and inspection and the quality of the final products. It is subject to three year revision cycle to take into account technological and market developments.

Good Agricultural Practices among others. The principles of Globalgap through the Integrated farm Assurance and include general regulations; critical control points and compliance criteria; provisions for benchmarking and National interpretation guidelines. Globalgap is actively involved in harmonization of standards and provides and facilitates a benchmarking process whereby standards that are in line with the vision and objectives of Globalgap standards are evaluated for equivalence. Before developing a standard, Globalgap evaluates other existing standards to see if there can be mutual cooperation between countries. A number of country governments have joined with private sector producers' associations to create their own countries' Good Agricultural Practice standards for fruits and vegetables and have submitted them to Globalgap for certification. Mexico, Chile, Kenya, Japan, a number of European counties, and New Zealand have all had their local standards certified or provisionally certified by Globalgap as equivalent (Globalgap website, 2009).

(ii) The British Retail Consortium (BRC) Standard

The BRC standard is a private voluntary standard developed by the British Retail Consortium (BRC). The main objective of this standard is to protect consumers' health and to enable British retailers to comply with the United Kingdom Food Safety Act. This standard works on the principles of HACCP standards and hence requires certification by a third party. Firms supplying to any British retailer therefore has to comply with this standards.

(iii) Other private voluntary standards which producers have to meet include:

1. ***Organic Standards*** – are particularly process standards whereby certification covers several important areas of agriculture and more recently of aquaculture as well. There are preliminary conversion requirements that help to ensure that the cultivation medium and the area are reasonably free of contaminants or synthetic agrochemicals. Then certification addresses the processes of cultivation, particularly issues of fertilization, crop protection and risks of contamination. Within the EU it encompasses such standards as EU organic, a standard for labeling of all organic foods sold in the EU.

2. Social/Human Rights standards

   a. ***Fair Trade*** – standards for socially conscious product labeling, mainly dealing with human and worker rights. They guarantee minimum prices considered as fair to producers. They provide a Fairtrade Premium that the producer must invest in projects enhancing its social, economic and environmental development. They strive for mutually beneficial long term trading relationships. They set clear minimum and developmental criteria and objectives for social, economic and environmental sustainability.

b. ***SA 8000*** – a voluntary universal standard auditable by third party, and are voluntarily adopted by companies that adhere to specific standards for working conditions and labor rights. SA8000 is based on the principles of international human rights norms as described in International Labour Organisation conventions, the United Nations Convention on the Rights of the Child and the Universal Declaration of Human Rights. It measures the performance of companies in eight key areas: child labour, forced labour, health and safety, free association and collective bargaining, discrimination, disciplinary practices, working hours and compensation. SA8000 also provides for a social accountability management system to demonstrate ongoing conformance with the standard.

Both the safety and the ethical dimension of food depend to a large extent on the production and trade processes. Since buyers cannot monitor directly these processes, private companies and NGOs have developed certification programmes to accompany their standards. Certification allows buyers to verify that the certified supplier complies with the standard through its control by an independent third party.

From the fore-going, the typology of standards in the EU can be summarized using the following criterion (see also table 3.1 below)

- Scope – process and product
- Geographical reach- national, regional, global
- Function – social, labor, health and environmental, quality, ethical
- Key drivers – public, private (NGOs, supermarkets) and a mix of public and private
- Forms – management, public codes, labels
- Coverage – generic, sector specific, value chain specific
- Regulatory implications- legally binding, mandatory, voluntary

Table 3.1 Typology of EU standards

Field of Application	*Quality assurance; Environmental; Health; Labor; Social; Ethical*
Form	Codes of Conduct; Label; Standards
Coverage	Firm/Value chain Specific; Sector specific; Generic
Key Drivers	Lead Firms; International NGOs; International organizations
Certification process	First party; Second party; Third party; Private sector; NGOs; Government
Regulatory Implications	Mandatory; Voluntary; Market Competition Requirement

Source: Nadvi & Waltring, 2002

3.4 EU STANDARDS VS. WTO REQUIREMENTS – CONVERGENCE OR DIVERGENCE?

Many developing countries are concerned about the proliferation of private Standards in the EU especially in the context of the SPS Agreement. This is partly because under the SPS Agreement,

measures can be taken only if necessary for health protection, with scientific evidence required to demonstrate this "necessity" (except for emergency situations when temporary actions may be taken). Justification requirement is through the use of internationally developed food safety, plant and animal health protection standards which must be no more trade restrictive than required to achieve the desired level of health protection.

On the other hand, the EU standards as already demonstrated in the previous section, address a mix of SPS, TBT and other objectives – including social and environmental concerns that are not related to food safety or plant/animal health protection. These private requirements may have no scientific justification, but may address consumer perceptions of what is safe or unsafe, or may reflect production practices common in developed countries but unknown and perhaps unsuitable for developing country producers. Certification is implemented by private companies, at much greater expense than governmental schemes, which, at most, seek to recover costs. Certification must also be renewed regularly, whether or not the production conditions have changed and most often, the costs of compliance and certification are borne by the developing country producers.

Provisions of the SPS and TBT Agreements require consideration of the special needs of developing countries, through the provision of special and differential treatment. They also require that there be no unjustified costs in testing, certification or approval procedures, to ensure that these do not become barriers to trade. Conversely private standard bodies have apparently not taken the effects of their standards on developing countries or the degree of their trade restrictiveness into account. Developing countries are hence facing difficulties in meeting these standards and in gaining access to these markets.

Private retailers in the EU have often imposed and modified their requirements without any advance notice, the standards are set without any consultations from producers and with no opportunity for them to comment or complain. However, compared to the disciplines that the

WTO standards place on government regulations, there is little transparency in the development of private standards, and there is no forum for challenging private standards comparable to the SPS Committee or the dispute settlement mechanism of the WTO.

4.0 Nature of EAC Exports and Experiences with EU Standards

4.1 EAC Exports and Standards Requirements

4.1.1 The Nature of EAC Exports to the EU

EAC exports are mainly agricultural in nature (see appendices). Kenya's top exports to the EU include Horticulture, tea, coffee whose, Kenya also exports a substantial amount of fish to the EU. In Uganda fish is the main export to the EU followed by coffee and most recently also roses and cut flowers are increasingly becoming an important commodity in the Ugandan export basket. Tanzania's main exports include tea, cashew nuts and cloves. Rwanda and Burundi enjoy preferential treatment in the EU and mainly export tea and coffee which comprise 70 percent of their exports (Table 3.1). Horticulture is considered a priority sector with great potential especially in Uganda, Rwanda and Burundi.

Table 4.1 Main EAC exports to the EU by Country and Commodity (2007)

Country	***Commodity Exports as % of Total Exports***			
	Coffee	***Tea***	***Horticulture***	***Fish***
Kenya	3.8%	17.03%	20.66%	1.5%
Tanzania	20.8%	11.3%	*Potential*	25.7%
Uganda	23%	4.2%	2.1%	10.8%
Rwanda	70%	5.9%	*Potential*	-
Burundi	73.3 %	7.0 %	*Potential*	-

Consequently, EAC exports to the EU are subject to a number of standards both SPS related as well as private standards. Therefore despite the duty free and quota free access of EAC goods into the EU as negotiated in the EPAs, EAC exports will still face restrictions in accessing the EU market. This is further exacerbated by the fact that standards are constantly changing and therefore require constant upgrading of both skills and premises and might prove to add to transaction costs of EAC exporters.

4.1.2 Compliance Requirements of EU standards for EAC Exports

Over the years, each of the EU member states has developed its own arrangements for phytosanitary inspection and imposed different requirements for certificates for different products/sectors. There has been some convergence which has occurred with the determination of a number of 'notifiable' pests and diseases and a system for rapid alert communications among member state agencies. With regard to food safety, the main issues are the adoption of HACCP systems by supplier/exporters, the implementation of arrangements for product traceability, and the conduct of microbiological tests on products entering the EU. However Compliance to additional standards such as EUREPGAP/GLOBALGAP, FLO and Organic standards requires third party certifications and auditing. The costs for auditing and certification are borne by the EAC producers and exporters and often are

costly. These additional standards are often complex especially to small scale farmers who require training. Table 3.2 below summarizes the standards requirements for EAC exporters, their legal mandate and

Table 4.1: Compliance Requirements and Legal Status for EAC Exports

Compliance Requirement	**Legally Mandated**		**Not Legally Mandated**	
	Strict Enforcement	***Spot/Sample Enforcement***	***Required for Commercial Purposes***	***Not Required but beneficial***
Phytosanitary Certificate	**√**			
MRL Tolerances		**√**		
HACCP				**√**
Traceability			**√**	
GAP/Environmental				**√**
Social Welfare				**√**
Packaging Specificity			**√**	
Product Conformity			**√**	

From the above table it is evident that only two out of the eight standards are legally mandated requirements for EAC exports into the EU, the rest of the standards are not legally mandated but are equally important in order for the exports to access the particular markets.

4.1.3 Sectoral Aspects of Standards

1. *Tea Sector*

Most tea exports to the EU are in Raw/semi-processed from. Tea exports into the EU have to be free of pesticide residues as well as sanitary and phytosanitary standards. In July 2000, the European Union (EU) released new pesticide standards on tea imports, expanding the number from seven to 134. In 2001, the list expanded to 193 pesticides and fertilizers. These “green barriers" -- or higher import thresholds in terms of pesticide and fertilizer residues are very strictly followed. For products entering the EU the traceability standard applies and hence to be approved as a registered estate, the applicant must establish proper procedures and keep clear records on pesticide purchasing, preparation and application, and also needs to allocate qualified in-house overseers. Besides these, other additional standards include organic tea where farmers and exporters have to receive third party certification. For some particular brands, social and welfare standards for labor also apply. In order to penetrate some specialized markets the FLO standard also applies in some cases. For EAC exporters therefore it is crucial that they meet additional and consequently costly standards in order to penetrate the EU market.

2. *Coffee Sector*

Over the last two decades, exports, mainly of coffee, have declined or stagnated due to non-SPS factors such as falling international prices, large production losses, growing international competition and various supply-side factors. Kenyan coffee exports, for instance, declined over past two decades from about US$320m (1985) to US$110m (2004). For many EAC producers, coffee is still one of the most important traditional cash crops for export. World conventional coffee markets are highly competitive and typically cyclical with recurring patterns of oversupply that make prices volatile and producer incomes very insecure.

Coffee exports like many other agricultural exports have to meet requirements of SPS and MRLs as well as HACCP and ISO 65. In addition to this EUREPGAP standards are also applicable in the coffee industry and all coffee exports to the EU have to meet the Coffee EUREPGAP code. Social and environmental certification has created a fast-growing niche market that offers an advantage to coffee growers that can produce quality certified products. Certified coffees are commonly defined as those that include the three pillars of sustainability (economic, environmental and social) and are certified by independent third parties. Certified coffees include Fairtrade coffee, Utz Coffee and Organic Coffee.

UTZ Certified Coffee

UTZ CERTIFIED is an industry-led coffee certification program launched in 2002 which claims to be the largest coffee certifier in the world. Formerly was known as **Utz Kapeh**. On the 7th of March, 2007, the Utz Kapeh Foundation officially changed its name and logo to UTZ CERTIFIED 'Good Inside'. UTZ CERTIFIED is a foundation for

the world-wide implementation of a baseline standard for responsible coffee growing and sourcing. UTZ-certified cooperatives, estate farms and producer groups comply with the UTZ CERTIFIED Code of Conduct. This Code is an internationally recognized set of criteria for professional coffee growing, which includes socially and environmentally appropriate coffee growing practices, and efficient farm management. UTZ also encompasses the web traceability system and is hence costly to small scale producers. UTZ requires third party certification with ISO 65 accreditation and inspections are done annually.

Fair trade Coffee

Fair trade is an organized social movement and market-based approach that aims to help producers in developing countries and promote sustainability. The movement advocates the payment of a "fair price" as well as social and environmental standards in areas related to the production of a wide variety of goods. For a product to carry either the International Fair trade Certification Mark or the Fair Trade Certified Mark, it must come from FLO-CERT inspected and certified producer organizations. The crops must be grown and harvested in accordance with the international Fair trade standards set by FLO International. The supply chain must also have been monitored by FLO-CERT, to ensure the integrity of labeled products. The Fair trade certification system also promotes long-term business relationships between buyers and sellers, crop pre-financing, and greater transparency throughout the supply chain and more. This also requires third party certifications and yearly renewal of certificates which may also prove costly. Besides producers and exporters have to be trained on the codes of conduct.

Organic Coffee Standards

In the case of coffee, producers cannot use synthetic substances such as most pesticides, herbicides and fertilizers. If coffee is labelled "organic," at least 95 percent of the beans must have been grown under organic conditions. Certification includes inspections of farm fields and processing facilities, detailed record keeping, and periodic testing of soil and water to ensure that growers and handlers are meeting the standards which have been set.

3. Horticulture

The horticulture sector is not only the largest market category, but also have one of the most diverse ranges of countries of origin and the highest levels of consumer interest in the major markets. Kenya is the third largest supplier of cut flowers worldwide (after Columbia and Ecuador), mainly to Europe. Cut flowers, and fruit and vegetables are the second and third largest export commodity (after tea) for Kenya, with 60% of Kenyan fruits and (fresh) vegetable exports going to Europe. Majority of horticultural export products are sourced from large estate farms, employing many laborers. Overall, the sector directly supports about half a million workers, small farmers and families. There are various factors being seen to contribute to the success of the sector: competitive supply chain (off-season producer), vibrant private sector (including associations such as KFC and FPEAK), "light" regulation and taxation, support by KEPHIS, existence of Task Force, etc. Growth opportunities exist for further export of fruit and vegetables, currently only a small share is exported to the EU market while the US market

remains almost unexplored; there are also opportunities for value addition, for instance, in producing semi-prepared and ready-to-eat combinations. In the region, Kenyan cut flower sector faces increasing competition from other African countries putting pressure on profit margins.

In Uganda, flower export is dominated by sweetheart roses and goes to EU. There are efforts to diversify into chrysanthemum cuttings and tropical flowers. Most companies comply with commercial standard schemes, however, the country experienced slight decline in export in 2005-06 which was attributed to power shortages, storm damage and poor cold chain management. Fruit and vegetable production is dominated by smallholder farmers who produce mainly commodities such as hot pepper, matooke, okra and selected other commodities. A lot of trade seems to be directed towards EU (especially to UK) wholesale markets. Cross-border trade in banana (and smaller amounts of pineapple and melon) are mainly directed to Kenya. Small-holders also supply local markets, including hotels, restaurants, and supermarkets. But the country also imports products garlic/asparagus which could be produced locally.

In Tanzania, the horticulture sector exhibits good growth potential. There are few companies exporting cut flowers and specialty vegetables to Europe from medium and large scale farms, mostly through Kenyan marketing channels. Integration of smallholders into marketing chain (following Kenyan model) may raise SPS compliance issues currently not encountered, in particular, certification to private standards. Diversification is possible into niche markets, notably cuttings, seeds and soft fruit, but, regional trade (mostly to Kenya) in oranges, onions, tomatoes and potatoes has been growing with opportunities to expand mango trade to Middle East and Asian markets. Key constraints for the sector include climate, airfreight, investment incentives, pesticide registration, shortage of skilled middle management and little momentum to integrate smallholders into supply chains. The horticultural industry is organized in Tanzania Horticulture Association (TAHA) and Association of Mango Growers (AMG).

EAC exporters in this sector face major challenges especially when it comes to compliance to standards which are constantly changing and are numerous in number. EAC producers and exporters have to comply with stringent SPS and MRL standards as well as HACCP and GLOBALGAP standards. In recent years a proliferation of quality standards, including codes of practice as well as quality assurance schemes, have emerged from governments, private standards associations, industry groups, and individual firms in the EU. Many of these initiatives are top-down approaches, mostly driven by large retailers. These include EUREPGAP now GLOBALGAP; the Ethical Trading Initiative, and Fair trade initiative; organic certification among others.

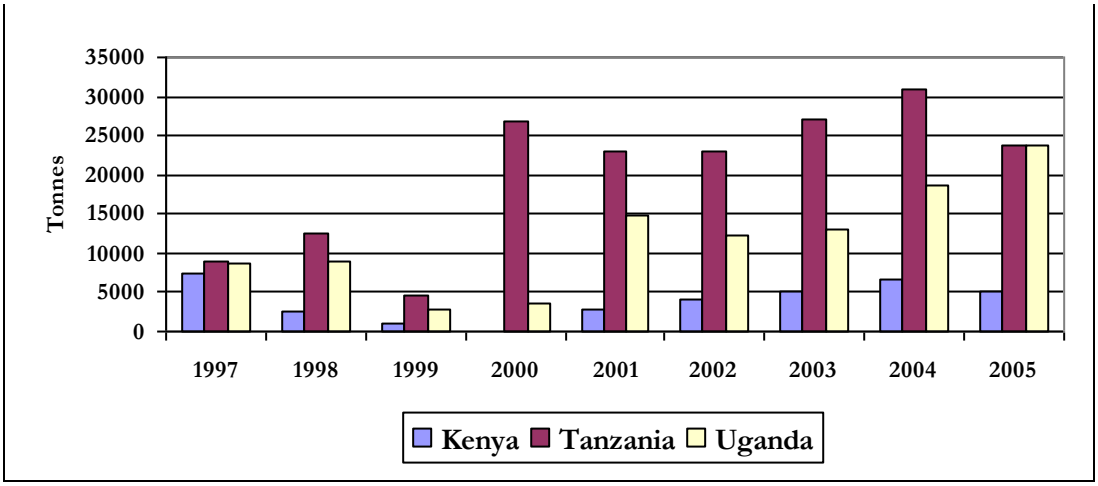
The GLOBALGAP standard not only encompasses safety and health standards but also covers Good Agricultural Practices, Traceability and farm management. It is a holistic type of standard which requires third party certification, yearly renewal and training and capacity building of exporters and producers. There are also labour standards as well as environmental and social standards which are voluntary but none-the less very important to access the particular markets. Traceability and labelling requirements are also very necessary in this sector due to the perishable nature of the produce. The compliance costs in this sector are therefore very high due to the fact that at farm level, farmers have to invest in GAP and yearly certification as well as capacity building initiatives in order to stay abreast with the ever changing standards.

4. Fisheries Sector

Kenyan and Tanzanian fish products are sourced from inland and coastal fisheries, and aquaculture; Uganda's main source is inland fisheries (mainly Lake Victoria as well as other lakes and rivers). The sector is estimated to employ about 300,000 people directly or indirectly (2004) in Kenya, about 250,000 people directly (processing sector about 5,000) in Uganda; and an overwhelming 2 million people either directly and indirectly in Tanzania.

Marine products include shrimp, prawns, octopus, tuna, sardines, squid, lobster and crab but the main export by the region is Nile perch (approximately, 80% by value in 2005), followed by tilapia for Kenya and Uganda and 'omena' for Kenya which is meant for local consumption/feed. As illustrated in Figure **4.1**, the volume of Nile perch exports by the three EAC countries has been greatest for Tanzania, Uganda and Kenya respectively since 1997 to 2005. Fishing activity in Uganda is rather artisanal and is based on traditional small vessels, canoes and "collector boats". The total production for Kenya in 2005 reached 140,000 metric tones (MT) where 90% of the fish was sourced from Lake Victoria. Major market for the region is the EU, followed by the US and UAE for Uganda, followed by East Asia for Tanzania and to Israel, Singapore, Japan and Australia for Kenya.

Fig 4.1 Volume of Nile perch exports to the European Union, 1997-2005:



Source: Josupeit (2006)

Unlike Uganda, processing sector in Tanzania is expanding into value-added food preparation processes and new fish farming techniques and there is significant potential for development of coastal fisheries (including Zanzibar) and aquaculture in shallow waters surrounding offshore islands and in Zanzibar (seaweed). The industry organizations that have been instrumental in enhancing hygiene controls and promoting best practice are TFPA and LVFPAT which have merged to form the Tanzania Fish Processors Association (TIFPA); and, the Association of Fish Processors Kenya (AFIPEK) which has an MoU with the Fisheries Department.

Food safety in this sector is particularly important because fish are particularly prone to rapid pathogenic contamination. The main safety concerns are unhygienic handling during and after fish harvest, insufficient refrigeration, substandard processing, and poor packaging. In 1997 Kenya and Uganda suffered tremendous losses due to fish bans in the EU, first as a result of Salmonella contamination; in 1998 again as a result of cholera outbreaks along the beaches of Lake Victoria and in 1999 again as a result of pesticide residues in fish.

However, the most significant regulations for the fisheries sector are those of the EU, specifically EU directives 91/493/EEC and 98/83/EEC. These standards are enforced through “the competent authority” approved by the EU (in this case, the Fisheries Department) with periodic audits by EU inspectors. In summary, the EU Directive 91/493/EEC lays down the requirements for handling and marketing fishery products. The directive is based on HACCP principles, and it defines the practices governing fish production, handling, processing, packaging, and transporting

of fishery products destined for the EU. It also imposes strict standards regarding construction of buildings, equipment, purification tanks, and storage tanks intended for holding fish prior to export. On-premise laboratories, strict record keeping, and accurate labeling are other requirements. EU conditions also require that fish processors and exporters organize an industry association to ensure self-monitoring on matters of fish quality.

The implications for these regulations are that the costs to fish-processing factories of restructuring their facilities and production lines are significant. In addition fishermen have to

invest in newer, cleaner boats and preservation facilities, while fish transporters must increase spending on refrigerated trucks. Private and public costs are incurred in retraining fishermen and other workers on hygienic fish-handling practices. Governments also must pay to set up laboratories to monitor fish quality and to inspect fish production systems (Abila, 2003).To meet the EU safety requirements, Kenya and Uganda have implemented these requirements over the years and this has seen a marked improvement in terms of increasing volumes of fish exports to the EU.

4.2 Cross Country Experiences in Meeting Standards

4.2.1 Kenya: Conformity to International Standards and Institutional changes

Kenya has undergone some significant changes in the area of standards since it joined the WTO in 1995. Kenyan standards are relevant to TBT and SPS are notified to the WTO by KEBS through the Ministry of Trade. KEBS is the secretariat for the National codex committee. On the other hand Kenyan standards on plant and animal health including SPS measure are notified by the Kenya Plant Health Inspectorate Services (KEPHIS) and Department of Veterinary Services (DVS) which are both under the Ministry of Agriculture. KEBS, KEPHIS and DVS also notify Kenyan producers and exporters about standards and any changes in standards. Agricultural commodity organizations such as Coffee Board of Kenya, Kenya Tea Development Authority, Horticultural Crops Development Authority are also involved in dissemination of information on standards to various stakeholders in their respective sectors.

On the other hand private sector standards in the sector which often require third party certification are often handled by private standardization companies such as AFRICERT, CMI, SGF and SGS[7]. These private companies

[7] SGS is an international organization whose role is to audit for certification under the ISO 9000X Series, ISO 4000, HACCP and the code of Practice.

often offer training services, auditing services and certification to producers and exporters at a fee. Yearly auditing and renewal of certification is also done by these private companies at a fee, which is borne by the exporters/producers.

There have also been efforts to support ACP countries to harmonize their standards using funding from the EU by organizations such as COLECACP, PEP amongst others. There has also been a "successful" attempt by the FPEAK to benchmark KenyaGap to EurepGap standards. However there are a lot of other standards that still have to be met and might require further harmonization/localization. Kenyan producers and exporters still experience a lot of constraints in meeting these standards especially for small scale producers and exporters, the costs of transactions, coupled with lack of technical capacity exacerbates the situation in Kenya. Therefore there is an urgent need for support for capacity building programs as well as a consideration for harmonization of the standards.

4.2.2 Uganda: Establishment of Regulatory and Institutional Frameworks for standardization

The responsibility for setting and enforcing standards is handled by different ministries, whereas the implementation of SPS measures is the responsibility of the crop protection department and the fisheries department under the Ministry of Agriculture Animal husbandry and Fisheries (MAAIF), standards under manufacturing are implemented by the Uganda National Bureau of Standards (UNBS). SPS measures are implemented by Sanitary and Phyto-Sanitary Inspectorate Services (SPIS) which is charged with the responsibility of inspecting and regulating plant products for import and export. The Uganda National Bureau of Statistics (UNBIS) on the other hand is mandated to promote standardization in health and safety activities, determination, review, modification or amending standards. The Total Quality Management U limited (TQM) is a private company affiliated with International Quality Media and whose main functions include training corporate bodies and other organizations in the Total Quality Management concept per ISO certification standards.

In Uganda different sectors also have their standardization bodies for instance the coffee sector is governed by the Uganda Coffee Development Authority (UCDA), complemented by the code of regulations developed by the Uganda Coffee Trade Federation (UCTF). Standards in the flower industry are managed by Uganda Flower Exporters Association (UFEA) and HORTEXA which developed a code of practice providing guidelines for flower exporters and producers to comply with international standards. The fish sector is mainly managed by the MAAIF and the Department of Fisheries Resources (DFR). After Uganda suffered fish bans both in 1998 and 1999, the EU

demanded improvements in standards in the Fish sector and since then a major overhaul of the standards and requirements in the fish sector has seen marked improvements.

Despite improvements with issues of standardization in Uganda's fish sector, there still exists a gap in terms of capacity of small scale producers to comply with various standards in terms of transaction costs and technical capacity, Uganda still relies on a lot of donors and foreign private companies for training and capacity building for various standards in different sectors.

4.2.3 Tanzania: Experience with Standards and Institutional Constraints

The Tanzanian experience with standards is no different from those of other EAC countries namely Kenya and Uganda. The Tanzanian Bureau of Standards (TBS) enforces the standards of the International Organization for Standardization (ISO). Sanitary and phytosanitary standards are regulated by the Ministry of Agriculture and Cooperatives, which also performs inspections and runs certification programmes. The TBS conducts the implementation of standards through certification schemes, inspection and testing and quality management system registration (ISO 9000). TBS is also the National Enquiry point (NEP) on SPS and TBT agreements of the WTO.

On the issues of plant health, the Plant Health Services (PHS) is responsible for the management of pest outbreaks, promotion of integrated pest management and other training, awareness-building and surveillance activities related to plant health. The PHS has some 165 inspectors based at 28 entry points, including the international airports at Dar-es- Salaam and Kilimanjaro, major sea and lake ports and selected border posts. Other institutions involved in the standardization process include the Tanzania Food and Drugs Authority (TFDA), within the Ministry of Health whose mandate centres on protecting domestic consumers, and whose main functions are to:

- Regulate the importation, manufacture, labelling, marking, identification, storage, sale, and distribution of food.
- Test or facilitate the analysis of food and/or food products to ensure safety for human consumption.
- Prescribe minimum quality standards for imported and locally manufactured food.
- Enforce the regulations and apply penalties for non-compliance, and
- Address consumer complaints.

The institutional and regulatory framework does not seem to be well coordinated in Tanzania with different institutions handling different aspects of standards. There is also a lack of technical and financial resource base to enable producers and exporters to adopt various EU standards.

4.2.4 Towards Harmonization of Standards within the EAC

While some elaborate work related to standards did take place in EAC in the 1970s, more concerted efforts to harmonize standards among EAC members began in the mid-1990s. Convening in 1995, the Permanent Tripartite Commission (PTC) for East African Co-operation agreed that the harmonization of standards in goods and services would facilitate trade and investment within the region. An East African Standards Committee was formed with representatives from the member states, including some private sector participation. This facilitated the establishment of the Standardization, Quality Assurance, Metrology and Testing (SQMT) program in 1998. The aim of the program was to facilitate sustainable modernisation in areas of quality assurance, develop and apply a common policy to standardization for goods traded in the region and synchronize and improve the relationship amongst the standardization bodies in the EAC as well as with the international organizations. More recently the EAC group of countries is negotiating with the EU on issues of standards through a joint text which will see harmonization of EU standards with those in the EAC.

In 2001, members of the EAC signed the Protocol on Standardization, Quality Assurance, Metrology and Testing (EA-SQMT) as part of a broader trade agreement signed by the three countries two years earlier. Under this protocol, the countries agreed to apply a common policy on standardization, metrology and conformity assessment of goods produced and traded with the Community. The protocol laid down the principles for cooperation among the three member states and defined their obligations in various spheres. Under the protocol the three countries committed to, among other things:

- Applying uniform rules and procedures for the formulation of national standards.
- Adopting and implementing East African standards as national standards (EA standards would be drawn from those adopted by the African Regional Organization for Standardization and, where these are not available, suitable international standards).
- Developing and harmonizing environmental standards within the Community.
- Harmonizing procedures, sampling and testing of products for conformity with quality standards.
- Developing adequate capacities for assuring the quality of goods produced and traded within the Community.
- Adopting common rules and procedures for the use of certification marks and providing mutual recognition of each other's national certification marks.

- Adopting a harmonized system for legal, scientific, and industrial metrology.
- Establishing an East African accreditation body to promote the recognition of certification and test laboratories within and outside the region.

Following the signing of the SQMT protocol, the drive for harmonization of standards gathered some momentum and the EASC proceeded to develop a large number of 'harmonized' standards between the three member states. By the end of 2003, some 490 'harmonized' standards had been agreed to, of which 160 related to food products. With respect to harmonization of EAC standards with EC, progress is being made and so far a joint text has been developed and is yet to be debated upon.

5.0 Conclusions and Way forward

5.1 Concerns in Meeting Standards

The economic costs associated with meeting high hygiene standards when a country has only a limited volume of production is particularly important for developing countries where limited production runs can greatly increase the unit costs of processing to a standard that will allow access to the EU market. This could come to constitute an important barrier to trade. In this context derogation provisions will need to be developed which allow greater use to be made of non-originating raw materials, where this allows the unit costs of SPS-compliance in the countries concerned to be reduced to an economically viable level.

A further concern is the growing burden of compliance with the increasingly strict standards being applied by private-sector-based bodies in the EU. These standards often go beyond the formal legal requirement, since the legal obligation to ensure the safety of food imported into the EU market is placed on the importer. If importers are not able to prove that they took all possible precautions to prevent unsafe food entering the EU market they can be fined around €40,000 per consignment and could face imprisonment for up to two years.

This is leading to increased pressure on EAC suppliers from EU importers to ensure that all foodstuffs exported to the EU market are safe and subject to traceability requirements. This includes insistence on the adoption of 'good practices' from field to embarkation, with this being certified by independent organizations. Substantial new administrative burdens are thus being imposed on ACP exporters (along with the associated costs), burdens which fall particularly onerously on small-scale producers. It is also leading to EU importers refusing to deal with suppliers who cannot guarantee both the traceability and food safety of the consignments supplied.

On the other hand, compliance with strict market food safety and quality standards may, however, serve as a stimulus for developing country investments in supply chain modernization, while providing incentives for the adoption of better safety and quality control practices in agriculture and food manufacturing[8]. Additionally, opportunities may be provided for clarifying the appropriate and necessary roles of both public and private sectors in food safety and agricultural health management. Rather than degrading the comparative advantage of developing countries, the compliance process can result in new forms of competitive advantage and contribute to more sustainable and profitable trade over the long term. There are numerous benefits associated with compliance with market food safety and quality standards at grower, industry and country levels (See below). So far in Kenya, some EUREPGAP-compliant smallholders have already realized benefits such as: improved quality of produce, both for the local and export markets; increases in numbers of employees and acreage under export and local market vegetables; better environmental conservation and management; marketing contracts with major exporters as well as considerable savings on the pesticide use.

Thus, the advantages of compliance have been outlined as:

- Stimulating new investments
- Modernisation of export supply and regulatory systems
- Enhancing the sustainability of production systems
- Improving worker and consumer welfare
- Fostering improved public-private collaboration
- Adoption of safer production and processing systems
- Improve domestic food safety and agricultural productivity
- Can form the basis of an overall competitive strategy - a strategy to
- position industries for long-term competitiveness
- Maintain and improve market access - assured regularity of demand;
- Conversely, the costs of non-compliance involve losses in trade, income and
- Employment creation.

5.2 State of Play in the EAC and Way Forward

From the foregoing it is apparent that EAC countries face numerous constraints with regards to compliance with standards including:

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

The major challenges with private standards are that:

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

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

The main cross-cutting issue is how to get to grips with the challenges arising from the EU's increased preoccupation with SPS and food-safety issues. A strong case exists for establishing a structured ACP-EU dialogue for addressing the challenges posed by stricter EU SPS standards. This will need to address four areas i.e., the setting of standards; the costs of technical compliance; the costs of verification and transitional arrangements.

But compliance with standards remains a major problem for small scale farmers. While looking at the compliance with EU standards it is important to realize the fact that most agricultural and fisheries production activities in the region is carried out by small scale producer. There are concerns that these standards can have a negative impact on equity and livelihoods if they are not designed carefully to integrate the views and concerns of these small producers and even to localize the standards to their understanding.

In this light, it is important to always be updated about the rapidly changing market requirements. Information flow is therefore very critical in this sense, constant training and upgrading to keep up with the changes is also necessary, most important is the technical and financial resource base to carry out these activities.

As this paper concludes, some questions to be addressed and considerations for further EPA negotiations include:

- What can we do in the negotiations to ensure that we receive enough support for technical and capacity building of our exporters and producers as well as institutional support?
- How can we harmonize our standards first of all within the EAC and secondly with those of the EU in order to reduce costs of transactions and impact positively on competitiveness?
- Can we include small producers in standard setting or is it only about helping them comply with externally imposed standards? Can they be assisted in the process to set their own standards?
- How can we ensure that capacity building programs are all inclusive and they reach the grassroots especially to small scale producers?
- What are the opportunities for public private partnerships in assisting smallholders to meet standards? Can there be a possibility for the following services offered by both public and private sector players?
    - Extension and information services
    - Infrastructure development including laboratories and other infrastructure
    - Certification grades and standards – including establishment of certification agencies locally but accredited so as to reduce costs of certification for producers and exporters
    - Coordination mechanisms where public sector bodies oversee regulation and contract enforcement where as private sector oversee logistical issues and effective governance of values chains.
- How do we develop non-exclusionary[9] standards?
- Can we have supportive groups of actors (NGOs, Chambers of Commerce, etc) that can act as advocates and watchdogs to make sure there are fair deals between the producers and the retailers?

[9] Standards that meet the needs of the large distribution networks such as supermarket chains and the buyers, and at the same time, help and support the small producers.

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www.acp-eu-trade.org

WWW.UNCTAD.ORG/TRADE_ENV/MEETING.ASP?MEETINGID=217

HTTP://WWW.WTO.ORG/ENGLISH/DOCS_E/LEGAL_E/10-24_E.HTM

HTTP://EC.EUROPA.EU/TRADE

APPENDICES

Table 1– Percentage Composition of Exports 2001-2007 Kenya

	2001	2002	2003	2004	2005	2006	2007
Horticulture	*13.63*	*16.74*	*19.92*	*18.41*	*17.71*	*19.45*	*20.66*
Tea	*23.67*	*20.31*	*18.02*	*16.79*	*17.04*	*18.86*	*17.03*
Textile	*0.41*	*0.42*	*0.58*	*0.59*	*5.71*	*6.60*	*5.89*
Coffee	*5.12*	*3.86*	*3.43*	*3.23*	*3.48*	*3.64*	*3.80*
Tobacco and Tobacco manufactures	*1.98*	*2.04*	*1.63*	*1.37*	*1.97*	*3.14*	*3.11*
Iron and Steel	*2.52*	*2.43*	*2.21*	*3.51*	*3.40*	*3.60*	*2.99*
Petroleum Products	*8.47*	*2.30*	*0.04*	*0.51*	*2.48*	*1.71*	*2.81*
Soda Ash	*1.37*	*1.26*	*1.31*	*2.49*	*1.48*	*1.58*	*1.97*
Cement	*0.71*	*0.87*	*1.08*	*0.91*	*1.10*	*1.53*	*1.68*
Articles of Plastics	*1.77*	*1.77*	*1.42*	*1.46*	*1.68*	*1.97*	*1.62*
Medicinal and Pharmaceutical Products	*1.08*	*1.00*	*1.18*	*1.06*	*1.02*	*1.19*	*1.62*
Essential Oils	*1.70*	*1.45*	*1.55*	*1.45*	*2.26*	*1.51*	*1.61*
Fish and Fish Products	*2.65*	*2.48*	*2.19*	*1.95*	*1.77*	*1.58*	*1.50*
Animal and Vegetables Oils	*0.89*	*1.35*	*1.32*	*1.17*	*0.98*	*0.98*	*1.26*
Sugar Confectionary	*1.08*	*1.11*	*1.00*	*0.93*	*1.00*	*1.07*	*1.11*
Leather	*0.40*	*0.36*	*0.56*	*0.52*	*0.62*	*0.79*	*1.11*
All Other	*32.13*	*39.69*	*42.35*	*43.32*	*36.71*	*30.68*	*30.25*
Total exports	**100.00**	**100.00**	**100.00**	**100.00**	**100.00**	**100.00**	**100.00**

Table 2 – Value and Volume of Major Exports Over Time Uganda

		Coffee	Cotton	Tea	Tobacco	Fish and Fish Products	Roses and Cut Flowers	Fruits	Cattle hides
2002	Value (000US$)	96,626	9,519	31,293	45,262	87,945	17,828	670	9,810
	Vol (MT)	201,591	12,322	30,400	23,266	25,525	4,504	708	20,049
2003	Value (000US$)	100,233	17,755	38,314	43,042	88,113	22,080	436	4,925
	Vol (MT)	146,299	16,762	36,669	24,669	26,422	5,636	425	18,565
2004	Value (000US$)	124,237	42,758	37,258	40,702	103,309	26,424	917	5,409
	Vol (MT)	159,983	29,293	36,874	27,843	31,808	6,092	1,297	18,502
2005	Value (000US$)	172,942	28,821	34,274	31,482	142,691	24,128	1,158	7,064
	Vol (MT)	142,513	30,403	36,532	23,730	39,201	6,162	3,061	25,349
2006	Value (000US$)	189,830	20,474	50,873	26,964	145,837	20,987	1,167	8,032
	Vol (MT)	126,887	18,480	30,584	15,794	36,461	4,989	7,821	22,214
2007	Value (000US$)	265,853	19,571	47,629	66,301	124,711	22,782	1,976	18,114
	Vol (MT)	164,540	16,230	44,015	26,384	31,681	5,267	7,361	20,942

Table 3 – Major Exports Over Time (million US$) Tanzania

Year	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
Cotton	47.63	28.5	38	33.7	28.63	41.3	74.6	111.5	55.8	66.4
Sisal	6.78	7.3	5.6	6.7	6.55	6.8	7.2	7.3	6.1	6.8
Tea	30.43	24.6	32.7	29	29.6	25	30.1	25.6	31	28.7
Tobacco	55.39	43.4	38.4	35.7	55.52	46	57.6	80.8	65.2	72.9
Cashew nuts	107.32	100.9	84.4	56.6	46.59	44.2	68.1	46.6	30.4	13.2
Cloves	-	19.9	10	12.3	3.96	10.3	10.3	8.5	8.2	4.2
Sub-total	247.55	224.6	292.8	231.1	206.07	223.4	297.7	354.6	258.1	192.2

Table 4: Major ACP Countries Exports of Fish to the EU (2007)

Country	Metric Tonnes
Namibia	222,158,844
Seychelles	218,992,291
Senegal	192,088,183
Madagascar	159,614,294
Côte d'Ivoire	155,642,557
Mauritania	125,739,953
Tanzania	114,546,683
Ghana	98,995,850
Cuba	75,323,427
Mauritius	72,321,918
Mozambique	65,714,551
Uganda	60,791,121
Nigeria	55,330,192
Kenya	38,027,565
Angola	37,268,054
Bahamas	31,216,922

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