

# Facilitating Equitable Agriculture Development

An Analysis of the EC-EAC Economic  
Partnership Agreement

# Facilitating Equitable Agriculture Development in sub-Saharan Africa

An Analysis of the EC-EAC Economic Partnership Agreement

*By Adeline Sozanski*

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CUTS International, Geneva  
37-39, Rue de Vermont,  
1202 Geneva, Switzerland  
Tel: +41.22.734.6080  
Fax: +41.22.734.3914  
E-mail: [geneva@cuts.org](mailto:geneva@cuts.org)  
Website: [www.cuts-grc.org](http://www.cuts-grc.org)

Adeline Sozanski is pursuing a Bachelors' degree in Comparative and European Law at the Hanse Law School, University of Bremen, Germany. She also holds a Certificate in Transnational Law of the Faculty of Law, University of Geneva, Switzerland. Adeline was an Intern at CUTS International Geneva from July to October 2011.

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# Table of Contents

LIST OF ACRONYMS	ii
INTRODUCTION	3
1.1 The Agricultural Sector in the EAC	4
1.2 Evolution of the Economic Relations between EU and EAC	8
STATE OF PLAY OF THE EU-EAC EPA NEGOTIATIONS	11
2.1 Outcomes to date	11
2.2 Overview of Agriculture Related Provisions in the FEPA	12
2.2.1 Markets Access	12
2.2.2 Rules of Origin	14
2.2.3 Export taxes	14
2.2.4 The Most Favoured Nation	15
2.2.5 Non-Tariff Measures	16
2.2.6 Trade Remedies	16
2.2.7 Fisheries	17
2.2.8 Development Cooperation	18
IMPLICATIONS FOR EQUITABLE AGRICULTURE DEVELOPMENT	20
3.1 Potential to increase investment leading to improved productivity	20
3.2 Reforming agricultural disciplines: strengthening regional integration	21
3.3 Redress of agriculture-related trade facilitation constraints	22
3.4 Contribution to capacity building of small and medium sized farms	23
3.5 Involvement of multi-stakeholders in negotiations	23
CONCLUSION AND RECOMMENDATIONS	25
REFERENCES	26





# List of Acronyms

EAC	East African Community
EU	European Union
EPA	Economic Partnership Agreement
FEPA	Framework Economic Partnership Agreement
ACP	Africa Caribbean and Pacific
CPA	Cotonou Partnership Agreement
EPAs	Economic Partnership Agreements
SPS	Sanitary and Phyto-Sanitary
CET	common external tariff
RoO	Rules of Origin
EABC	East African Business Council
TBT	Technical Barriers to Trade
DFQF	duty free quota free
CET	common external tariff
SME	Small and Medium Enterprise



# 1. Introduction

In the East African Community (EAC), that comprises five member countries Burundi (2007), Kenya (2001), Rwanda (2007), Tanzania (2001) and Uganda (2001)<sup>1</sup>, majority of the population is dependent on agriculture, which predominantly provides employment and livelihood to farmers, traders and investors among other stakeholders, such as wholesale and retail input suppliers, seasonal finance suppliers, produce buyers and processors, in the sector. Agriculture therefore has the potential to facilitate inclusive and equitable economic and social development in the region.

International trade agreements provide opportunities through which this potential can be harnessed by creating the necessary incentives to improve competitiveness and productivity in the agriculture sector and thereby improving the livelihood for majority of the population in the EAC.<sup>2</sup> For this to happen there is need to promote an enabling environment for positive interaction and equitable terms of trade among all stakeholders including farmers, investors and traders, which would lead to inclusive development, hence the concept equitable agriculture development. A recent study<sup>3</sup> found that such development would require certain

interventions. These set the benchmark upon which this paper will analyse the implications of the proposed Economic Partnership Agreement between the EAC and the European Union (EU-EAC EPA). They are the following:

- Increased investment to improved productivity
- Reformed international and regional trade disciplines in agriculture (the EPA should strengthen and not undermine the gains achieved through regional trade integration and contribute to effective participation of the region into the international trade arena)
- Redress of agriculture related trade facilitation constraints
- Capacity building of small and medium sized farmers
- Multi-stakeholders consultation and coordination

The proposed EPA between the EU and the EAC will significantly impact on the agriculture sector in the EAC, since agricultural products constitute the bulk of the regions exports to the EU. But the impact will not only be visible in the agricultural sector as such but go beyond this since agriculture is closely linked to food and livelihood security and rural development.

Building on the five points elaborated within the framework of the CUTS International Geneva FEAD Study, this paper will analyse the potential of the EU-EAC Framework Economic Partnership Agreement (FEPA) on fostering equitable agricultural development in the EAC.

The negotiated FEPA does not include an agricultural chapter which remains to be negotiated under Article 37, the so called Rendez-vous clause. However, the provisions on trade in goods already included have a significant relevance for the EAC agricultural sector because they deal with market access for products whereas the agricultural negotiations will focus on cooperation and technical assistance in order to enhance the

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<sup>1</sup>Expansion of the EAC is favoured by current member countries. The presidents of Kenya and Rwanda invited the Autonomous Government of South Sudan to apply for membership upon the independence of South Sudan in 2011, and South Sudan is reportedly an applicant country as of mid-July 2011. The Republic of Sudan has however applied for membership before South Sudan. In 2010, Tanzanian officials expressed interest in inviting Malawi, the Democratic Republic of Congo and Zambia to join the EAC. Ethiopia and the Democratic Republic of Congo (DRC) have applied for observer status.

<sup>2</sup> See Agriculture in Development of Select African Countries: Linkages with Trade, Productivity, Livelihood and Food Security

<sup>3</sup>CUTS International Geneva Resource Centre. 2011. Agriculture in Development of Select African Countries - Linkages with Trade, Productivity, Livelihood and Food Security.

EAC agricultural sector as proposed by the EAC draft text on agriculture.<sup>4</sup>

## 1.1 The Agricultural Sector in the EAC

The East African Community covers an area of 1.82 million kilometres with a population estimated at 133.5 million persons and growth of 2.5 per cent in 2009. The regional GDP in 2009 was at US\$ 74.5 billion with a per capita GDP of US\$ 558.<sup>5</sup> Within the region Kenya has the largest economy and Burundi's is the least developed in the region. Agro-ecological conditions differ extremely. Three quarters of Kenya's land is semi-arid and not suitable for agricultural production mostly depending on rainfall. Tanzania's mountainous regions are highly suitable however the centre is semi-arid as well. Excellent farming conditions are to be found in Uganda and Rwanda.<sup>6</sup>

Figure 1 shows the percentage of agricultural land in each member country and the cultivated percentage thereof. Burundi and Rwanda both have more than 80 per cent of the land area suitable for agricultural production and Tanzania is bottom of the league with less than 40 per cent of the area suitable for agriculture. Data for cultivated areas is only available for Tanzania, Uganda and Rwanda which cultivated 19 per cent, 60 per cent and 75 per cent of total agricultural land respectively.<sup>7</sup>

**Figure 1: Agricultural land in per cent of total land area and percentage of agricultural land cultivated in 2008**

Country	Agricultural land (% of total land area)	percentage of agricultural land cultivated
Burundi	85.3	—
Tanzania	39.5	19
Uganda	66	60
Kenya	47.6	—
Rwanda	81.9	75

Source: *The World Bank Website and East African Community - Facts and Figures 2010.*

<sup>4</sup>Participatory Ecological Land Use Management (PELUM) – Networking for a greener Africa. 2009. Ensuring the protection of Agricultural and Small Scale Farmers in the EPA Negotiations – The Case of Special Safeguard Mechanism (SSM), p. 19.

<sup>5</sup>East African Community. 2010. East African Community - Facts and Figures 2010, pp. 13, 33.

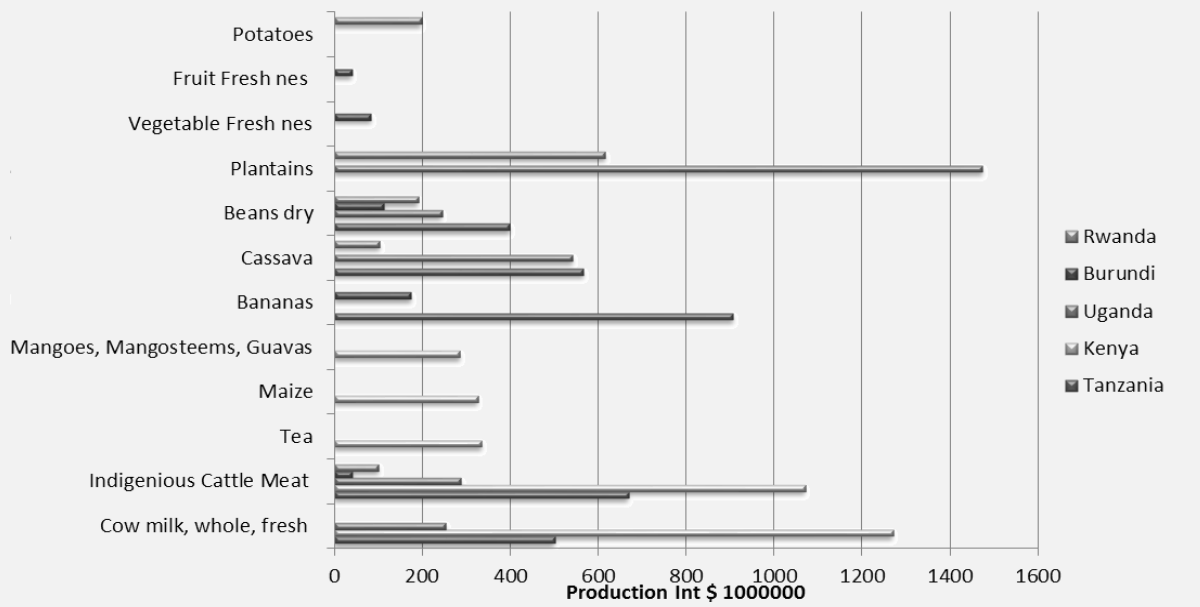
<sup>6</sup>Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ). 2010. Regional Agricultural Trade in East Africa- A Focus on Kenya, Tanzania and Uganda, p. 1.

<sup>7</sup>East African Community. 2010. East African Community - Facts and Figures 2010, p. 10; The World Bank's Website.

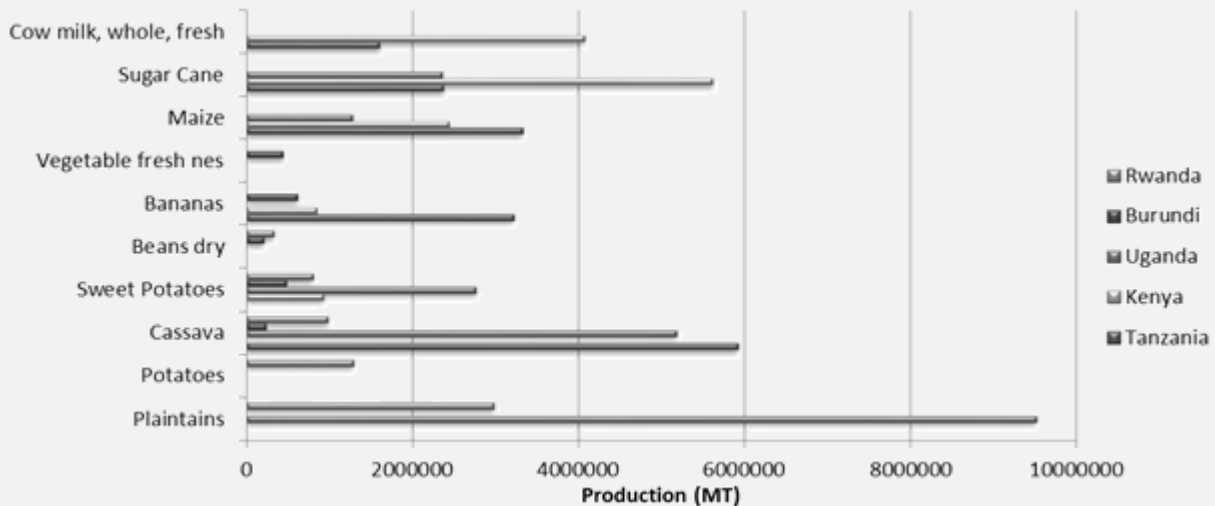
Figures 2 and 3 give an overview of the main agricultural products produced in the region by value and quantity. Sweet potatoes and cassava have a high quantity production in 4 of the 5 member countries followed by sugar cane, maize and bananas which are produced in relatively high quantity in 3 of the 5 countries. With regard to production measured by value indigenous cattle meat is of greatest importance produced in each of the 5 member countries followed by dry beans

produced in 4 countries and cow milk in 3 countries. Interestingly, plantains produced in Uganda and Rwanda figure as an important product both in terms of value as well as quantity. Kenya, Tanzania and Uganda have a relatively high value and quantity production in each of the products, whereas Rwanda features relatively high value and quantity only for some products and Burundi relatively low value and quantity for all products illustrated.

**Figure 2: Production of main agricultural products in EAC Member States in U.S. Dollars**



Source: [www.faostat.fao.org](http://www.faostat.fao.org)

**Figure 3: Production of main agricultural products in EAC Member States by Quantity (2009)**


Source: [www.faostat.fao.org](http://www.faostat.fao.org)

Of the 133.5 million population in the EAC, 81.94 per cent live in rural areas (2009/10).<sup>8</sup> Agriculture is the leading economic sector in the EAC and provides a livelihood for majority of population with 93.6 per cent (2002) of Burundi's, 75 per cent (2007) of Kenya's, 90 per cent (2000) of Rwanda's, 80 per cent (2002) of Tanzania's and 82 per cent (1999) of Uganda's labour force located in agriculture.<sup>9</sup> In Burundi agriculture accounted for 31.6 per cent of total GDP in 2010, in Tanzania for 28.4 per cent, in Rwanda for 42.1 per cent, in Uganda for 23.6 per cent and for 22 per cent in Kenya.<sup>10</sup>

The sector is dominated by smallholder farmers who provide for about 75 per cent of the labour force in East Africa. But farmers have to face a non-exhaustive list of growth constraints such as

limited access to markets, credit, technology as well as volatile food and energy prices, the global financial crisis etc.<sup>11</sup> The sector represents a considerable amount of private sector activity. Most of the agricultural commodities are produced by smallholder farmers. However large scale commercial farming exists in Kenya as well as to a much lesser extent in Tanzania and Uganda. Due to restructuring and privatization initiatives the existence of large-scale public sector producers has diminished. The majority of crop processing and marketing of food crops lies in the hands of the private sector whereas livestock processing and marketing is located almost entirely in the private sector. The agricultural sector still remains a traditional commodity market with a very small ratio of value addition and the demand-driven public-private partnership and the identification of

<sup>8</sup>The World Bank. 2011. The Little Data Book on Africa 2011.

<sup>9</sup>CIA World Fact Book, accessed on September 18, 2011.

<sup>10</sup>CIA World Fact Book, accessed on September 18, 2011.

<sup>11</sup> Secretariat of Uganda Coalition for Sustainable Development (UCSD). 2011. East Africa's food crisis: The answer is to promote smallholder farmers, UCDS Monthly News Bulletin, July 2011, p. 1.



new value adding products as well as new market opportunities remain insufficient.<sup>12</sup>

Additionally the eastern African region covers some of the largest freshwater lakes in the world which contain substantial resources for fishery. The fisheries sector in the EAC accounted in 2009 for about 4% of the regional GDP and supports about 5 million people. Fishing, fish farming, fish processing and fish by-product processing can be carried out in the region.<sup>13</sup> Fishing is carried out mostly by the private sector through small operators as well as large-scale trawlers mostly operated by foreign companies.<sup>14</sup>

Internally the EAC agricultural sector faces many challenges. The land tenure system in place constitutes one of these challenges. Even though the region is endowed with 69 million hectares of high potential agricultural land, most of it is still communally owned. This as a matter of fact impedes the use of land as collateral in order to access necessary financial services. Additionally land holdings are fragmented, thus making large scale undertakings in the sector unviable. Poor infrastructure also undermines exploitation of the sector's potential. Lack of all year round accessibility of motorized rural roads, high transport costs, poor irrigation storage, unsatisfactory marketing, poor communication

<sup>12</sup>East African Community. 2006. East African Community (EAC) Private Sector Development (PSD) Strategy – Final Report, p. 15.

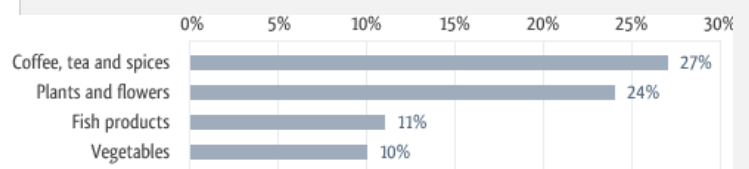
<sup>13</sup>East African Community Website. 2011. Agriculture and Livestock, 'The EAC Livestock & Fisheries Sector: Overview'. Available at [http://www.eac.int/agriculture/index.php?option=com\\_content&view=article&id=77&Itemid=108](http://www.eac.int/agriculture/index.php?option=com_content&view=article&id=77&Itemid=108), accessed on August, 09, 2011; East African Community Website. 2009. Investment, 'Fisheries'. Available at [http://www.eac.int/invest/index.php?option=com\\_content&view=article&id=75&Itemid=95](http://www.eac.int/invest/index.php?option=com_content&view=article&id=75&Itemid=95), accessed on August, 09, 2011.

<sup>14</sup>East African Community. 2006. East African Community (EAC) Private Sector Development (PSD) Strategy – Final Report, p. 16.

and unreliable energy supply represent only some of the constraints in the sector.<sup>15</sup>

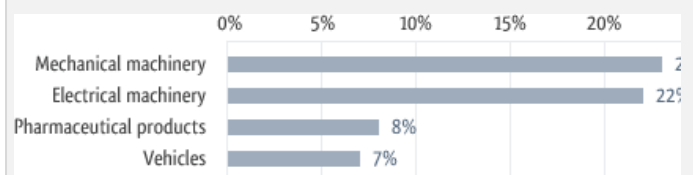
The EU has been EAC's major single trading partner for a number of decades and even gained more importance in 2009 accounting for 19.9 per cent of EAC exports. The value of total trade flows between the two partners was € 4.3 billion in 2008.<sup>16</sup> Agricultural products such as coffee, tea, spices, plants and flowers, fish and fish products, and horticulture constitute the main exports of EAC to the EU accounting for 72 per cent of total exports to the EU originating in the EAC. EAC's imports from the EU comprise machinery, pharmaceuticals and vehicles.<sup>17</sup>

**Figure 4: EAC main exports of total trade to the EU in 2008 as percentage of total exports**



Source: European Commission DG Trade available

**Figure 5: EAC main imports from the EU in 2008 as percentage of total imports**



Source: European Commission DG Trade available

<sup>15</sup>CUTS International Geneva Resource Centre. 2009. Briefing Paper, Leveraging the Agriculture Sector Through Trade: Opportunities and Challenges in the EC-EAC EPA. BIEAC No. 4/2009, pp. 2-3.

<sup>16</sup>European Commission DG Trade. 2009. Fact Sheet on the Interim Economic Partnership Agreements - The Eastern African Community (EAC), p. 2.

<sup>17</sup>East African Community Website. Undated. Briefing on EAC-EC EPA.

## 1.2 Evolution of the Economic Relations between EU and EAC

EAC member countries are part of the African, Caribbean and Pacific Group of States (ACP), whose economic relations with their former colonial masters go back to the Yaoundé Agreements signed in 1963 and renewed in 1969 (Yaoundé II). With the United Kingdom joining the EU in 1973, its Anglophone ex-colonies became part of the Yaoundé Agreements and the ACP group was formed. Subsequently, in the period from 1975 to 2000 the Lomé Agreements (I to IV) became the basis of these relations.<sup>18</sup> These Agreements granted unilateral preferences to ACP exports to the EU, they also established a fund to stabilize export revenues for the ACP member countries in cases of declining world market prices or crop failure.

The Lomé Agreements faced several challenges: first, the system created did not foster diversification of the ACP Countries' export structure; second, agricultural products for which ACP Countries had a comparative advantage were excluded from free market access; third, funds for industrial cooperation were sparse; and fourth, the underdevelopment in the majority of ACP Countries did not activate great interest for cooperation on the side of EU Governments nor the private sector.<sup>19</sup> However, the importance of the Lomé Agreements for the ACP countries was a financial one, since a great percentage of the development funds did not have to be paid back and presented a guaranteed financial income for

ACP countries, it also provided incentives for regional cooperation between developing states.<sup>20</sup>

The non-reciprocal preferences under the Lomé Conventions and later the Cotonou Agreement necessitated a waiver under GATT in order for the parties to be in conformity with their obligations under the multilateral trading system.

Under GATT the guiding principle is the Most-Favoured-Nation according to which, equal and no worse preferences have to be granted to all member countries as are granted to the most favoured trading partner. WTO rules provide three exemptions from this requirement. Article XXIV, Paragraph 5 GATT allows for preferences to be granted in the framework of a (1a) free trade area or a (1b) customs union and countries can request a (2) waiver from the WTO under Article XXV, Paragraph 5 GATT if their trade regimes are not compatible with WTO rules, that dispenses them from their obligations under the Agreement for a specific period of time. (3) The enabling clause<sup>21</sup> dispenses countries from the MFN obligation with regard to developing countries and LDCs by allowing them to lower tariffs for developing countries and LDCs without extending these preferences to rich countries. The EC and the ACP countries eventually requested a waiver from Article I, Paragraph 1 GATT in October 1994, which was approved until February 2000.

It was clear that trade regimes between the EC and the ACP countries could not rest on waivers for eternity, given that other WTO members were disgruntled with the unilateral preferences, as

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<sup>18</sup>Roza Vincent. 2006. Adjusting to the effects of the ACP-EU Economic Partnership Agreements – The application of Special and Differential Treatment. Master Thesis, pp. 7-8.

<sup>19</sup> Siegmund Schmidt. 2002. Aktuelle Aspekte der EU-Entwicklungspolitik – Aufbruch zu neuen Ufern?, *Aus Politik und Zeitgeschichte*, B 19-20/2002. Available at [http://www.bpb.de/publikationen/TMLGO6,2,0,Aktuelle\\_Aspekte\\_der\\_EUEntwicklungspolitik.html#art2](http://www.bpb.de/publikationen/TMLGO6,2,0,Aktuelle_Aspekte_der_EUEntwicklungspolitik.html#art2).

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<sup>20</sup> IBID

<sup>21</sup> WTO Document - Differential and More Favourable Treatment Reciprocity and Fuller Participation of Developing Countries, Decision of 28 November 1979, L/4903.

evidenced in the WTO Banana disputes.<sup>22</sup> Hence in 1996 the European Commission published a 'Green Paper' as the first step towards a process of reshaping the ACP-EU relationship which was envisaged to be an incentive for debate and presented different alternatives to the current regime.<sup>23</sup> Negotiations between the two parties started in 1998 and led to the conclusion of the Cotonou Partnership Agreement (CPA), which replaced the Lomé Agreements in 2000 and marked a significant change with regard to EU Development Cooperation Policy.<sup>24</sup> However, another waiver had to be sought after the conclusion of the CPA as well, to facilitate progressive creation of reciprocal arrangements between the EC and the ACP countries.<sup>25</sup>

These trade arrangements are referred to as Economic Partnership Agreements (EPAs) and were to be concluded with the ACP member countries within regional groupings and not as a single group, as was the case previously. Until these EPA's came into force the trade regime created under Lomé was still applicable, thus the need for a second waiver, which allowed the continuation of non-reciprocal preferences of the EC to the ACP countries until December, 31, 2007. Delays in

concluding the EPAs by the expiration of the WTO waiver on December, 31, 2007 necessitated the initialling of interim or framework agreements to facilitate continued trading relations between the EU and ACP countries by making use of Article XXIV, Paragraph 5 (c) GATT, which allows for interim agreements for the establishment of free trade areas with the condition that a plan and a liberalisation schedule for the formation of the FTA is included in the agreement and will be completed within a reasonable period of time.<sup>26</sup> To-date only the EU-CARIFORUM EPA has been fully concluded, while several outstanding issues remain unresolved in other regions.

Most of the interim and framework EPAs provide for trade in goods, with a commitment from the parties to negotiate and later include other issues towards more comprehensive agreements. The CPA that forms the basis for the EPA negotiations is in force for a period of 20 years with regular reviews provided every 5 years. Cooperation is based on strengthening political cooperation, making efforts towards poverty reduction and its eventual elimination, involvement of civil society, private sector and NGOs, reform of the economic and financial cooperation in conformity with WTO rules as well as reform of financing and program implementation to ensure more efficiency.<sup>27</sup>

The trade chapter of the CPA spells out the main objectives of the EPAs and these include enhancing economic development in order to fully integrate the ACP Countries into the world economy. The agreement recognizes the role of stakeholders such

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<sup>22</sup> Appellate Body Report, European Communities – Regime for the Importation, Sale and Distribution of Bananas, WT/DS27/AB/R, adopted 25 September 1997, DSR 1997:II, 591; a summary of the case is available at: [http://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds27\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds27_e.htm); the one page summary of the case is available at: [http://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/1pagesum\\_e/ds27sum\\_e.pdf](http://www.wto.org/english/tratop_e/dispu_e/cases_e/1pagesum_e/ds27sum_e.pdf).

<sup>23</sup> Roza Vincent. 2006. Adjusting to the effects of the ACP-EU Economic Partnership Agreements – The Application of Special and Differential Treatment. Master Thesis, pp. 7-8.

<sup>24</sup> Siegmund Schmidt. 2002. Aktuelle Aspekte der EU-Entwicklungspolitik – Aufbruch zu neuen Ufern?, Aus Politik und Zeitgeschichte, B 19-20/2002. Available at [http://www.bpb.de/publikationen/TMLGO6,1,0,Aktuelle\\_Aspekte\\_der\\_EUEntwicklungspolitik.html#art1](http://www.bpb.de/publikationen/TMLGO6,1,0,Aktuelle_Aspekte_der_EUEntwicklungspolitik.html#art1)

<sup>25</sup> Jürgen Huber. 2000. The Past, Present and Future ACP-EC Trade Regime and the WTO, European Journal of International Law, Issue Vol. 11 (2000), No. 2: 427-438, p. 433-434.

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<sup>26</sup> Jürgen Huber. 2000. The Past, Present and Future ACP-EC Trade Regime and the WTO, European Journal of International Law, Issue Vol. 11 (2000), No. 2: 427-438, p. 434.

<sup>27</sup> Siegmund Schmidt. 2002. Aktuelle Aspekte der EU-Entwicklungspolitik – Aufbruch zu neuen Ufern?, Aus Politik und Zeitgeschichte, B 19-20/2002. Available at [http://www.bpb.de/publikationen/TMLGO6,2,0,Aktuelle\\_Aspekte\\_der\\_EUEntwicklungspolitik.html#art2](http://www.bpb.de/publikationen/TMLGO6,2,0,Aktuelle_Aspekte_der_EUEntwicklungspolitik.html#art2).

as national parliaments, local authorities, civil society and the private sector in attaining this aim.<sup>28</sup>

Regional integration is assumed to be a key instrument for the integration of the ACP countries into the world economy; hence the formation of regional groups, which then negotiate individual EPAs with the EU.<sup>29</sup> The negotiations towards EPAs were conducted in two phases. The first phase dealt with substantive issues that were of common concern to all ACP countries, while in the second (current) phase, negotiations are conducted at national and regional level, relating to specific issues such as tariffs and duties.

The impact of EPAs cannot be assessed entirely and will differ in each country even within the same regional group. The economic structure, the regional context and the initial conditions as well as market structures and EU policies and other global factors such as prices will have a great influence on the outcome.<sup>30</sup>

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<sup>28</sup> European Commission, Development and Cooperation – EuropeAid. 2011. The Cotonou Agreement. Available at [http://ec.europa.eu/europeaid/where/acp/overview/cotonou-agreement/index\\_en.htm#background](http://ec.europa.eu/europeaid/where/acp/overview/cotonou-agreement/index_en.htm#background), accessed on August 09, 2011.

<sup>29</sup> Center for the Study of International Development Strategies (CSIDS). Undated. The ACP Countries — the EU and the Cotonou Agreement: Deepening Development. Available at <http://www.grips.ac.jp/csids/subject/subject02.pdf>, accessed on August 09, 2011.

<sup>30</sup> Alice Sindzingre. 2008. The European Union Economic Partnership Agreements with Sub-Saharan Africa. UNU-CRIS Working Papers, W-2008/5, p. 44. Available at <http://www.cris.unu.edu/fileadmin/workingpapers/W-2008-5.pdf>, accessed on August 09, 2011.

## 2. State of Play of the EU-EAC EPA Negotiations

The EU-EAC EPA negotiations are based on the initialled Framework Economic Partnership Agreement (FEPA) of November 2007 that covers the following areas: trade in goods; fisheries; economic and development cooperation; as well as areas for future negotiations in the so called Rendez-vous clause of Article 37. It also contains annexes and protocols on customs duties, rules of origin and administrative matters. A road map was agreed towards conclusion of the full EPA; however several deadlines were missed, with the negotiations at times suspended for lengthy periods.

### 2.1 Outcomes to date

According to the European Commission's Trade Fact Sheet on the Interim Economic Partnership Agreements, several rounds of negotiations were conducted since the beginning of 2008, with the following outcomes:

- Provisions on Sanitary and Phyto-Sanitary (SPS) Standards, customs and trade facilitation were finalised, while negotiations on Technical Barriers to Trade (TBT) were moving towards conclusion.
- Contentious issues such as the 'stand still' clause, antidumping and countervailing measures and safeguards measures, were resolved except for the non-discrimination ('MFN') clause and export taxes.
- In the development chapter, EAC's proposal suggests that the language in relation to additional funding should be strengthened to reflect specific funding for the development issues under the EPA. The EU on the other hand argues that the 10<sup>th</sup> European Development Fund is already available and should be given due attention and that identification of EPA needs should remain consistent with the regional development cooperation already provided for. Further that it's ready to support the regional economic integration endeavours by redressing the specific needs through interventions in the framework of the EU Aid for Trade Initiative. The EU therefore asserts that there is no need for a provision on additional funding in the EPA.
- On trade and sustainable development, the EAC wants certain social and environmental aspects of sustainable development to be dealt with in the text of the EPA, while the EU argues that these are already addressed in the Cotonou Agreement, to which the EPA is a part, and that the EPA text should specifically build on the trade related aspects of those provisions rather than duplicate the general provisions. The Cotonou Agreement includes general commitments with reference to social, economic and environmental aspects of sustainability and according to the EU these general commitments need not to be restated in the final EPA and regards the sole inclusion of the trade related aspects of these provisions as sufficient.
- It is agreed that agriculture will be covered under a separate chapter in the EPA and it is among the issues to be negotiated in the next round, along with: outstanding market access

issues; economic development cooperation; trade and sustainable development; trade in services; competition policy; intellectual property rights; and transparency in public procurement.

- “Good Governance in the Tax area” is also one new area being put on the table for negotiations by the EU. The EU’s interest is to fight against illogical financial activities.

## 2.2 Overview of Agriculture Related Provisions in the FEPA

Chapter 1 of the EU-EAC EPA sets out its objectives among which are those that would greatly promote equitable agriculture development, if achieved and these include:

- Contributing to economic growth through establishment of strategic trade and development partnership consistent with sustainable development
- Promoting gradual integration of the EAC into the world economy, in conformity with its development priorities, would enable the region to fully harness its potential in the agriculture sector thereby improving the livelihoods of majority of its population dependent on it
- Fostering structural transformation of EAC economies, and their diversification and competitiveness by enhancing their production, supply and trading capacity, would positively impact on the agriculture sector by improving productivity and the capacity to competitively trade outputs

- Improving EAC capacity in trade policy and trade-related issues would ensure an enabling environment for equitable agriculture development in the region
- Establishing and implementing an effective, predictable and transparent regional regulatory framework for trade and investment in EAC would enhance investment in the agriculture sector, and also attract more private sector initiatives.
- Mentioning the importance of sustainable agricultural technology. It is a technology designed with the special contribution to its environmental, social and, economic impacts.
- Pointing out the significance of food and nutrition security, as it means all people at all times have both physical and economic access to safe, sufficient, and nutritious food to meet their needs for a productive and healthy life.

### 2.2.1 Markets Access

The FEPA provides for duty free quota free (DFQF) market access for all EAC exports to EU, with a transition period for rice and sugar which expired in 2010 and 2009 respectively. However, special safeguard provisions will apply to sugar until 2015. On their part the EAC will liberalise about 82 per cent of the EU imports in their market over a 25 year period. Agricultural products are among the goods to be excluded from liberalisation hence affording the EAC, in combination with other conditions that must be in place, the policy space required to promote the sector and thereby facilitate its equitable development. Figure 6 gives an overview of the liberalisation schedule of the EAC.

**Figure 6: EAC's liberalisation schedule**

Phase of liberalisation	Percentage of total trade liberalisation	Goods liberalised
2008 – 2010	64 %	Raw materials and capital goods (CET 0%)
2015 – 2023	16 %	Intermediate goods used in the production process (CET 10%)
2020 – 2033	2 %	Finished goods (CET 25%)
Total liberalisation	82 %	
Excluded from liberalisation	18%	Mostly agricultural products but also some industrial goods

Source: *Participatory Ecological Land Use Management (PELUM) – Networking for a greener Africa. 2009. Ensuring the protection of Agricultural and Small Scale Farmers in the EPA Negotiations – The Case of Special Safeguard Mechanism (SSM), p. 21.*

The common external tariff (CET) currently applied to the products liberalized in the first phase is already at zero per cent but due to the standstill clause they are prohibited from any prospective tariff protection. Although this will secure cheap inputs in industries, it will bring insecurity to some small scale farmers who produce key agricultural products included in this group, like seeds. The gains from such agricultural production will be low and without prospective protection farmers might not be able to compete with imported goods thus endangering key agricultural production.

Most of the products liberalised during the second phase have a CET of ten per cent and the products to be liberalised in the third phase will have a CET of 25 per cent. The radical liberalisation to zero per cent in only a few years' time can only be prevented from negative effects if there is strong governmental commitment to prepare the products and the small scale farmers producing the products for liberalisation. The products excluded from liberalization take into account the regional production structure and thus help to ensure food and livelihood security. However, the standstill clause indirectly applies to these sensitive products as well. More flexibility with regard to the addition

or exclusion of sensitive products on the list is thus necessary.<sup>31</sup>

The implications of trade liberalisation on the EAC countries and especially on the agricultural sector cannot be entirely assessed yet. Trade liberalisation will certainly have an impact on the fiscal balance because of the dependence of the countries' revenue structure on external trade, since trade taxes are the easiest to collect given the weakness of institutions and civil services.<sup>32</sup> This loss increases the adjustment costs of the EAC and it is necessary to find other sources of government revenue. Additional costs are expected from imports of EU products duty-free to the EAC market that may be above world market prices and thus detrimental to EAC consumers and governments. A parallel liberalisation towards non-EU WTO members could limit these negative effects.<sup>33</sup> However, the

<sup>31</sup>Participatory Ecological Land Use Management (PELUM) – Networking for a greener Africa. 2009. Ensuring the protection of Agricultural and Small Scale Farmers in the EPA Negotiations – The Case of Special Safeguard Mechanism (SSM), pp. 21, 23.

<sup>32</sup>Alice Sindzingre. 2008. The European Union Economic Partnership Agreements with Sub-Saharan Africa. UNU-CRIS Working Papers, W-2008/5, p. 8. Available at <http://www.cris.unu.edu/fileadmin/workingpapers/W-2008-5.pdf>, accessed on August 09, 2011.

<sup>33</sup>Alice Sindzingre. 2008. The European Union Economic Partnership Agreements with Sub-Saharan Africa. UNU-CRIS

MFN clause included in the EPA might hinder this approach. This is due to the fact that the provisions under the MFN clause make the EAC less attractive as a trading partner since other potential trading partners would not enter into an agreement with a clause that would take away their preferences.

### 2.2.2 Rules of Origin

With regard to agricultural products the tariff improvements which have been obtained under the FEPA can promote the sector. Under Cotonou, agricultural products benefited from tariff reductions but were nonetheless subject to a quota, which is not the case under FEPA that additionally includes the possibility to cumulate in the area of Rules of Origin (RoO) which gives an opportunity to move up the value chain and to diversify the production base by engaging in processing of goods.<sup>34</sup> A specific provision allows also for cumulation with Egypt and the Maghreb countries (Algeria, Egypt, Libya, Morocco and Tunisia) who are defined as neighbouring developing countries belonging to a coherent geographical entity.

The FEPA provides for further simplification of RoO with due regard to the development needs of the EAC and the development of technologies and production processes in the region. This is a positive provision given that RoO account for some of the hindrances that have prevented the region from optimally utilising its preferences in the EU market. However, RoO are still under negotiation and need to be refined in order to be simple, transparent and easy to apply. RoO should not increase the cost of doing business and be used as protection, they should rather focus on development and promote regional integration by

allowing the use of regional raw materials not only from the EAC but also other RECs.<sup>35</sup> Under the FEPA there are restrictions to the cumulation provisions as for example with ACP countries who have not initialled EPAs or certain products from South Africa. These restrictions should be reviewed especially with regard to South African products because South Africa is for some EAC countries a major trading partner and can evolve to an even more important one in the near future further strengthening regional cooperation within Africa.

### 2.2.3 Export taxes

Duties and taxes on exports are prohibited under the FEPA, with the exception being where they are required to foster development of domestic industry or to maintain currency value stability, when the increase in world prices of an export commodity creates the risk of a currency value surge; however, the authorization by the EPA council is required rendering the process more time consuming and depriving it of its necessary rapid reaction character. The EU argues that export taxes restrict the supply of raw materials to its industries. In addition the EU argues that the elimination of export taxes and restrictions is necessary for the Agreements to comply with Article XXIV GATT which requires the elimination of barriers on substantially all trade covering imports as well as exports. It has also been argued that export taxes are counter-productive since ACP countries should instead implement policies that should increase their exports.<sup>36</sup>

The EU has granted some flexibility in this area by allowing the retention of existing export taxes as

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Working Papers, W-2008/5, p. 45. Available at <http://www.cris.unu.edu/fileadmin/workingpapers/W-2008-5.pdf>, accessed on August 09, 2011.

<sup>34</sup>Isabelle Ramdoo and Aurelie Walker. 2010. Implementing the EPA in the EAC and the CARIFOPRUM regions: What is in it for the private sector?. European Centre for Development Policy Management, Discussion Paper No. 104, p. 21.

<sup>35</sup>East African Community. 2011. EAC EPA Experts Strategy Meeting on the EAC-EU EPA Negotiations, 15th – 16th August 2011, Lemigo Hotel, Kigali, Rwanda. Report of the Meeting (Ref. No. EAC/TF/152/2011), p. 7.

<sup>36</sup>Dan Lui and Sanoussi Bilal. 2009. Contentious issues in the interim EPAs- Potential flexibility in the negotiations, European Centre for Development Policy Management, Discussion Paper No. 89, pp. 13-14.



well as for new export taxes in so-called grandfather clauses if the country imposing taxes demonstrates that the respective taxes are necessary for currency stability or the development of infant industries and the protection of the environment. The country imposing export taxes must show that the taxes are justified and appropriate to achieve the goal set. Sometimes the EU approval and joint monitoring is required and the exceptions will sometimes be very difficult to apply.<sup>37</sup> The EAC EPA Experts Strategy Meeting on the EAC-EU FEPA Negotiations of August 2011 however has decided to rephrase paragraph 3 of Article 15 of the EAC-EU FEPA so as to allow the imposition of temporary duties or taxes in connection with the exportation of goods concerned and to notify the EC Party rather than to consult the EC before any imposition of duty.<sup>38</sup>

In the last decades the use of export taxes has been declining. However, within the EAC Burundi still relies on export taxes in terms of government revenue. For the natural resource sector it is also more convenient to impose export taxes because they are easier to administer by border authorities and also more transparent than other alternatives.

A secondary effect of export taxes is also the management of resources and the possible protection of the environment. As most EAC countries depend on primary industries, export taxes are a way to add value to raw commodities and thus encourage producers to add value to their unprocessed goods. By raising the price for exporting unprocessed goods export taxes have the potential to increase the local supply of inputs and

thus lower domestic prices. Export taxes therefore would play the same role as subsidies in this sense which are usually not affordable in poor countries.

Export taxes can also be used to foster diversification if governments apply them in such a way as to discriminate against traditional exports and thus induce producers to expand in other areas of industry.<sup>39</sup> One possibility to avoid the use of export taxes and thus to gradually eliminate its use is to introduce binding commitments for the EU to replace revenue loss by foreign aid or FDI if an export tax is a revenue measure and by scientific and technical assistance if the export tax is a research and development measure.<sup>40</sup>

#### 2.2.4 The Most Favoured Nation

Article 16 of the FEPA contains the controversial MFN rule according to which parties will be required to extend the most favourable treatment under any free trade agreement entered into with developed or high-income developing countries or organisations on the part of EAC and for all more favourable treatment as a result of EU becoming a party to a free trade agreement with third parties after the signing of the EPA. Agreements in place at the time of signature and preferential agreements with other ACP or African countries are not covered by this provision. Thus, the provision includes free trade agreements with high-income developing countries, as well as with certain south regional trade arrangements in Latin America, Asia, and the Gulf.

Other EPAs like the Pacific, CARIFORUM and SADC include an exception stating that where

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<sup>37</sup>Dan Lui and Sanoussi Bilal.2009. Contentious issues in the interim EPAs- Potential flexibility in the negotiations, European Centre for Development Policy Management, Discussion Paper No. 89, p. 14.

<sup>38</sup>East African Community. 2011. EAC EPA Experts Strategy Meeting on the EAC-EU EPA Negotiations, 15<sup>th</sup> – 16<sup>th</sup> August 2011, Lemigo Hotel, Kigali, Rwanda. Report of the Meeting (Ref. No. EAC/TF/152/2011), p. 5.

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<sup>39</sup>Dan Lui and Sanoussi Bilal.2009. Contentious issues in the interim EPAs - Potential flexibility in the negotiations, European Centre for Development Policy Management, Discussion Paper No. 89, pp. 14-15.

<sup>40</sup> CUTS International Geneva Resource Centre. 2010. Taking East African Regional Integration Forward – A Civil Society Perspective. p. 68.

there is substantially more favourable treatment under the free trade agreement with major trading economies than under the EPAs, the better treatment will not be automatically given to the EU countries but consultations will take place. This exception is not included in the EAC FEPA but should be negotiated in the future because it would probably hinder the EAC to engage in negotiations with economies such as Brazil, China or India whose imports are on the increase in the EAC and undermines in fact the decision of ACP countries and thus the EAC to make their own decision on opening their markets because any treatment given to a major trading partner has to be granted also to the EU.<sup>41</sup>

The MFN clause has the potential to undermine one of the exemptions to the GATT rules, namely the enabling clause which allows for trade preferences to be exclusively granted to developing countries. Given the fact that South-South trade is steadily increasing and can enhance the inclusion of developing countries into the world trade economy the MFN rule is depriving the enabling clause of its purpose by limiting economic cooperation to the least economically successful of developing states.<sup>42</sup> The Experts Meeting of August 2011 has with reference to the texts of other interim and concluded EPAs steered its position toward the consultation approach.<sup>43</sup>

### 2.2.5 Non-Tariff Measures

Article 17 of the FEPA prohibits the imposition of non-tariff measures including quotas, import or export licenses except in cases where such

measures are applied to prevent or relieve critical shortages of foodstuffs or restrictions necessary to the application of standards or regulations in international trade. This provision will ensure transparency in accessing the EC market and may result in increased access for EAC agricultural products in that market.

Despite the negative effects that subsidies have had on international trade, Article 18(4) of the FEPA, allows for them, and since the EC is the party in position to implement such subsidies, these could have negative effects on EAC products that may not be able to compete favourably with subsidised products.

### 2.2.6 Trade Remedies

Provision is also made for trade defence measures through anti-dumping and countervailing measures, as well as safeguards through which the effect of subsidised products may be mitigated. However these safeguard clauses are accompanied by cumbersome procedures and have a time limit after which clear elements are required that will lead to the elimination of the measure.<sup>44</sup>

The FEPA allows for multilateral safeguards in Article 20 as well as for bilateral safeguards in Article 21. Article 20 allows for the use of the Special Agricultural Safeguard of Article 5 of the WTO Agreement on Agriculture and for the adoption of safeguard measures in accordance with GATT Article XIX. Nonetheless, the EU has exempted EAC exports from the imposition of multilateral safeguards undertaken under GATT Article XIX and Article 5 of the Agreement on Agriculture for the first five years. The FEPA allows for an extension of this exception after review by the EPA Council. The reference to WTO SSG is however not very useful for the EAC since the conditions under which a measure can be

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<sup>41</sup>Oxfam International. 2007. Oxfam International Concerns with Initialled 'Interim EPA' Texts, p. 3.

<sup>42</sup> See Communication from Brazil to the WTO General Council Meeting, WT/GC/W/585, February 2008.

<sup>43</sup>East African Community. 2011. EAC EPA Experts Strategy Meeting on the EAC-EU EPA Negotiations, 15<sup>th</sup> – 16<sup>th</sup> August 2011, Lemigo Hotel, Kigali, Rwanda. Report of the Meeting (Ref. No. EAC/TF/152/2011), p. 6.

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<sup>44</sup>Oxfam International. 2007. Oxfam International Concerns with Initialled 'Interim EPA' Texts, p. 3.

applied are in general within the WTO very difficult to meet from a developing country's point of view facing difficulties in institutional capacity and procedural requirements.

Bilateral safeguard measures can be taken only under the conditions laid out in Article 21 of the FEPA. Three different situations justify the use of safeguard measures: imports causing (1) serious injury to domestic industry; (2) disturbances in a sector of economy particularly producing major social problems or serious deterioration in the economic situation of the importing party; (3) disturbances in the markets of agricultural like or directly competitive products or mechanism regulating those markets. Safeguard measures that are allowed include the suspension of further reduction of the rate of import duty, increase in the customs duty of the product, and the introduction of tariff quotas.

Special provisions apply to the protection of infant industries. They are extremely restricted and limited to the mitigation of the damage caused by import surges for existing sectors but not for the building up of new sectors and additionally they exclude the protection of products excluded from duty reduction and are difficult to use. Also the time limitation of two years is not proportionate to the time it takes an industry to develop even if a measure can be extended to up to eight years under certain circumstances. Additionally the application of this provision is prohibited after ten years have passed since the entry into force of the Agreement.<sup>45</sup>

Special safeguards for agriculture are not included in the FEPA except of a reference in terms of conditions that justify the application of safeguard measures. This poses a problem in so far as only temporary distortions are addressed by the

safeguard measures included in the Agreement hitherto but distortions in agricultural trade are rather of structural nature and need to be addressed as such.<sup>46</sup>

### 2.2.7 Fisheries

The FEPA includes a special chapter on fisheries; originally the EU intended to treat fisheries under market access, without consideration of the development aspects of the sector. However Article 26 and Article 29 now include objectives such as the promotion of sustainable development and management of fisheries, development of regional and international trade based on best practices, the assistance of industrial small scale fisheries in coping with market requirements, support for competitiveness and productivity within the sector, and the establishment of links with other sectors. EPAs aim to generate financial and other support to improve competitiveness and production capacity of processing factories, diversification and improvement of port facilities in the EAC.<sup>47</sup>

The objectives of cooperation in inland fisheries and aquaculture development are stated in Article 34 and include promoting sustainable exploitation of inland fisheries resources, enhancing aquaculture production, removing supply side constraints, improving fish and fish products quality to meet SPS standards of the EU market, improving access to the EU market, addressing intra-regional trade barriers, attracting capital inflows and investment into the sector, building capacity and enhancing access to financial support

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<sup>46</sup>Participatory Ecological Land Use Management (PELUM) – Networking for a greener Africa. 2009. Ensuring the protection of Agricultural and Small Scale Farmers in the EPA Negotiations – The Case of Special Safeguard Mechanism (SSM), pp. 32-33.

<sup>47</sup>Economic Commission for Africa, undated, North-South FTAs After all? A Comprehensive and Critical Analysis of the Interim Economic Partnership Agreements, p. 57.

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<sup>45</sup>Oxfam International. 2007. Oxfam International Concerns with Initialled 'Interim EPA' Texts, pp. 3-4.

for the private investors for inland fisheries and aquaculture development.<sup>48</sup>

### 2.2.8 Development Cooperation

The EAC-EU FEPA has the briefest provisions on development, namely only Article 36. It includes a confirmation by the EU to continue to contribute towards the resources required under the 10<sup>th</sup> EDF Regional Indicative Programme, Aid for Trade and the EU Budget. This reflects and avowal to already established commitments of the EU but does not include new specific commitments under the EPA.

The clause includes recognition of the development needs of the EAC and the parties agree to define and address EAC development needs in order to promote sustained growth, strengthen regional integration and foster structural transformation and competitiveness to increase production, supply capacity and value addition in the region. It recognises that further work is required on the two clauses and provides for further consideration of development cooperation in the next phase of the negotiations.<sup>49</sup>

The EAC has drafted texts on Agriculture (2009) as well as on Economic and Development Cooperation (2011). The areas of development cooperation in both texts need to be harmonised since the agricultural sector is of greatest importance with regard to development cooperation. This approach has already been taken by the EAC since it first submitted the draft texts to the EC. But the comments of the EU on the Draft Agriculture Chapter submitted by the EAC are worrisome in so far as the EU proposes to discuss all development cooperation related provisions under the chapter for Economic and Development

Cooperation. Harmonisation of Development provisions of both chapters is desirable but a generalization is fatal because it would undermine specific development of the promising agriculture sector.

The Chapter on Economic and Development Cooperation includes the area of agriculture and livestock. However, in the current state of negotiations the provisions remain to be objectives rather than truly cooperation provisions comprising binding commitments. Even though the CPA, as the EU argues, includes development cooperation provision these only have a moral value and are meant to guide the negotiation of EPAs and be reflected in each provision. Specific commitments to development cooperation within the EPA need nonetheless to be included.

As stated in Article 36 of the FEPA both negotiating parties recognize the development needs of the EAC region and their commitment to ensure that the EPA is a tool for development, promotes the regional integration of the EAC as well as its inclusion into the world economy. In order to fulfil these goals it is necessary to allow for the retention of mechanisms favourable to development (export taxes, full exhaustion of WTO enabling clause) and for the exclusion of such that hinder development (subsidies) as well as the inclusion of mechanisms to advance development (commitments additional to 10<sup>th</sup> EDF and AfT). Additionally the revenue loss incurred by EAC countries due to binding liberalisation should be caught by commensurate binding development support in order for the EPA to truly be a tool for development.

Development cooperation provisions need to be improved during further negotiations on the comprehensive EPA because in order for trade to assist in poverty eradication and social economic development, it necessitates the fullest possible market access to regional and global markets, as well as adequate financial and technical resources

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<sup>48</sup>Economic Commission for Africa, undated, North-South FTAs After all? A Comprehensive and Critical Analysis of the Interim Economic Partnership Agreements, p. 58.

<sup>49</sup>Economic Commission for Africa. Undated, North-South FTAs After all? A Comprehensive and Critical Analysis of the Interim Economic Partnership Agreements, p. 37.

to address production and supply constraints including infrastructure.<sup>50</sup> The comprehensive EPA should include definite commitments and make development one of the key issues of the Agreement influencing the remaining provisions and provide for commitments to allocate adequate resources and specify the areas of cooperation and intervention such as regional integration, infrastructure competitiveness, diversification, value addition, and investment.<sup>51</sup>

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<sup>50</sup>Economic Commission for Africa. Undated, North-South FTAs After all? A Comprehensive and Critical Analysis of the Interim Economic Partnership Agreements, pp. 36-37.

<sup>51</sup>Economic Commission for Africa. Undated, North-South FTAs After all? A Comprehensive and Critical Analysis of the Interim Economic Partnership Agreements, pp. 38-39.

# Implications for Equitable Agriculture Development

Although the EPA is yet to provide for the agriculture sector in detail, going by the agriculture related provisions so far included, the implications that the agreement will have in creating an enabling environment towards equitable development are discussed below, taking into account the five conditions that were framed during the FEATS study.

## 3.1 Potential to increase investment leading to improved productivity

One of the EPA objectives is to establish and implement a regulatory framework for trade and investment aimed at increasing private sector investment activity. This objective is reflected in the Agreement through the DFQF market access that will create incentives for increased investment leading to both improved productivity and diversification in the agricultural sector. The DFQF market access will enable growth in the agricultural sector and attract domestic as well as foreign investment leading to the importation of capital goods to boost production and which in turn may result in spill-over of technology and further enhance the productivity within the agricultural sector.<sup>52</sup>

The liberalization schedule provides a good roadmap for EAC's national governments to promote domestic public and private investment opportunities making systematic investment possible and giving the opportunity to target

specific areas of the agricultural sector, small and medium sized farmers in particular. The simplification of RoO which provides for more certainty as well as the possibility of cumulation which will facilitate value addition and diversification have the potential to increase export activity in agricultural products to the EU thus presenting a fruitful investment opportunity.

Nonetheless the Chapter on Agriculture under negotiation should further improve the DFQF provisions by not only focussing on development cooperation but by including separate specific advanced provisions for market access of agricultural products.

The fishery chapter comprises special provisions on investment aiming at promoting joint ventures and mixed investments in general as well as facilitating the access to credit facilities for small and medium sized enterprises. Similar provisions have to be included in the special chapter on agriculture which should be further strengthened by commitments for supplementary negotiations outside the framework of EPAs on investment related issues.

Further, the development cooperation provided for under the Agreement will enable the EAC to overcome challenges such as poor infrastructure, supply side constraints, technological and research inputs which will facilitate increased investment and productivity in the agricultural sector in which the region has high potential. However, the special chapter on development cooperation that has yet to be negotiated has to comprise binding commitments to achieve a better infrastructure and better technological inputs. By addressing the country's infrastructure and providing for enhanced production technology through

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<sup>52</sup> CUTS International Geneva Resource Centre. 2010. Taking East African Regional Integration Forward – A Civil Society Perspective. p. 48.

development cooperation growth of the agriculture sector can be seized and thereby present an incentive for investment thus providing an enabling environment for equitable agriculture development.

Development support under the EPA should also take into account the unequal economic strength of the negotiating parties and hence that liberalisation on the part of the EAC involves significant government revenue loss. Binding commitments should be made so as to compensate revenue loss as a result of liberalisation under the EPA through development support.<sup>53</sup>

### 3.2 Reforming agricultural disciplines: strengthening regional integration

The EAC is negotiating the EPA as a bloc which has strengthened its integration process. It contains various provisions which refer to regional integration. Some provide for the harmonisation of customs legislation and standards at the regional level, others preserve the preferential treatment among members to the regional economic community and exclude the EU from benefiting from it whereas others require that any better preferential treatment accorded to the EU by third parties accrues to the community.<sup>54</sup> Additionally better treatment accorded to the EAC by other African countries does not accrue to the EU party. The

EPA has great potential to foster intraregional integration. A common regional liberalisation schedule harmonises important elements of trade policy and can strengthen regional integration. Sharing revenue, protecting sensitive industries and trade facilitation by simplifying border controls are only some of the reforms at the international and regional level in trade disciplines that can foster an enabling environment towards an equitable agriculture development in the region. The strengthened regional integration by the EPA creates larger markets and creates the incentive for small and medium sized farmers to produce more which in turn will result in the expansion of their businesses.

Regional integration also improves food security by allowing the movement from surplus to deficit areas within but also outside the region.<sup>55</sup> Further simplification of RoO and a wider pool of cumulation countries, including South Africa, will allow for more value addition and diversification leading to more productivity. The EAC has the potential to be a food provider for the whole eastern African region if trade disciplines will be further simplified and tailored to the regions needs with respect to food security.

The provisions on safeguards under the FEPA are part of the trade disciplines that will promote an enabling environment towards equitable agricultural development by taking specific needs of the EAC such as the necessary protection of infant industries into account. Even though safeguard provisions address most of the essential issues, they fail to do this effectively by imposing time limitations and procedures that are difficult to comply with for the EAC. Thus room for improvement remains.

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<sup>53</sup> CUTS International Geneva Resource Centre. 2010. Taking East African Regional Integration Forward – A Civil Society Perspective. p. 49.

<sup>54</sup> Economic Commission for Africa. Undated, North-South FTAs After all? A Comprehensive and Critical Analysis of the Interim Economic Partnership Agreements, p. 90.

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<sup>55</sup> CUTS International Geneva Resource Centre. 2011. How Can Agriculture and Trade Lead to Livelihoods, Food Security and Development? – Evidence from Eastern and Southern Africa. Monograph, p. 14.

The FEPA fails to discipline subsidies which is an area of great concern since the potential of the EAC's agriculture sector might be hindered due to provisions that still allow for subsidies to be granted. This can endanger the ability of small and medium sized farmers to compete with EU agricultural products, both on the domestic and foreign market. The use of subsidies should be confined for example by limiting the number and sort of products or by specifying certain circumstances when subsidies are allowed as is done with the use of export taxes in Article 15 of the FEPA. The Draft Chapter on Agriculture includes provisions referring to export subsidies and domestic support. While the EAC suggested including a provision stating that the EC will phase out all form of export subsidies and reduce trade distorting domestic support provided to EC farmers on products of export interest to the EAC, the EU is unlikely to accept an inclusion of domestic support provisions in the EPA considering it an issue under discussion under the DDA. With respect to export subsidies the EU has proposed a "double zero" approach meaning that the EC will eliminate export subsidies on products from eligible destinations for fully liberalized EAC products.

### 3.3 Redress of agriculture-related trade facilitation constraints

Redress of the agriculture related trade facilitation constraints is anticipated in the EPA under development cooperation where the EC undertakes to foster structural transformation and competitiveness of the EAC. However, there is need for a specific development fund under EPA so as to realize this objective as opposed to EIF and Aid for Trade initiatives. Binding commitments specifically aiming at improving the agricultural private sector have to be included. These

commitments should go beyond traditional technical assistance and include real transfer of technology. Development funds should aim to remove government corruption, improve customs administration, building a better infrastructure in the form of roads, railways, energy, water, telecommunication, irrigation system and rural infrastructure networks<sup>56</sup>, and include export marketing and promotion as well as information of small and medium sized farmers on how to use trade opportunities, compliance with environment and health standards in particular, and how to access financial and technical assistance in order to improve productivity and efficiency of their agricultural activity.

Development cooperation should also include support for already established projects, in particular those aiming at establishing and improving trade corridors between the EAC, SADC and COMESA, since the three regional blocs have signed a declaration to enter into a FTA, as well as technical and financial support to harmonise the regulatory framework of the EAC agricultural sector, such as reform of land tenure system and strengthening of farmers' organisations.<sup>57</sup> The Draft Chapter on Agriculture includes a provision referring to production and marketing of agricultural commodities including assistance in compliance with commodity standards as well as rural development addressing small scale farmers in particular and financing services for agriculture aiming at creating a Common Agricultural and Rural Development Fund.

The EU proposed to discuss these provisions under the chapter on economic and development

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<sup>56</sup> CUTS International Geneva Resource Centre. 2010. Taking East African Regional Integration Forward – A Civil Society Perspective. pp. 75-76.

<sup>57</sup> CUTS International Geneva Resource Centre. 2010. Taking East African Regional Integration Forward – A Civil Society Perspective. p. 76.



cooperation. Thus care has to be exercised not to omit the specific reference made to the agricultural sector and small scale farmers in further negotiations.

### 3.4 Contribution to capacity building of small and medium sized farms

With regard to capacity building of small and medium sized farms the chapter on fisheries includes commitments to further strengthen this economic sector by building capacity in industrial and artisanal production, processing and product diversification that strengthen the competitiveness of the region's inland fisheries and aquaculture. Provision is also made for building capacity for managing export market chains including value addition and reduction in post-harvest losses. Similar initiatives would be required in the other agricultural sectors and should be included in the negotiation on the agriculture chapter.

Small holder farmers need to be addressed in the EPA provisions in order to enhance their participation into the global value chain by ensuring the access to production technologies, product quality enhancements and direct linkages to the market.<sup>58</sup> Capacity building should also include providing information to small and medium sized farmers not only aiming at training them to acquire a more business-oriented approach to agriculture but also to understand and use the opportunities for agricultural trade, technical, scientific and financial assistance provided for under the Agreement on economic and development provisions. By connecting provisions under the development chapter and the

chapter on agriculture, capacity building can be achieved.

Nonetheless, given that capacity building involves efficient information flows between government, farmers, traders and CSOs it is mostly the task of EAC governments to allocate resources efficiently and to endorse projects aiming at training and teaching small and medium sized farmers to use the opportunities negotiated.

### 3.5 Involvement of multi-stakeholders in negotiations

The FEATS Study undertaken by CUTS GRC in 2009 highlighted the role of consultative mechanisms that bring together all stakeholders in formulating and implementing trade policies. The involvement of all relevant stakeholders in the development and implementation of trade and agriculture policies and strategies is important because it ensures that policy making and implementation takes the interests of all relevant stakeholders as well as the challenges they face into account.

CUTS' FEATS Study carried out in Uganda, Kenya, Tanzania, Malawi and Zambia found that the private sector at that time has organized itself in several umbrella organisations in order to play a role in the negotiation process. The CSO scene has been described by the study as vibrant focusing mainly on research and analysis. Its outputs are used by the private as well as public sector and CSOs have organised themselves in either issue-specific or general networks.

In Uganda, Tanzania and Kenya, the private sector has been found to lack technical analysis and advocacy capacities, ability to balance interests and follow trade policy developments. CSOs lack training and capacity building to understand trade policy complexities, linkages with the public sector and capacity to use consultation mechanisms.

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<sup>58</sup> CUTS International Geneva Resource Centre. 2010. Taking East African Regional Integration Forward – A Civil Society Perspective. p. 51.

Other challenges faced by CSOs include lack of cooperation among them and with the private sector, limited outreach to rural areas, lack of funding, lack of legal framework for non-state actors, and lack of government efforts to involve them.<sup>59</sup>

All these are issues that have to be considered given the fact that the Cotonou Agreement, upon which the EPA is based, explicitly promotes the greater involvement of the private sector and CSOs and even provides for the granting of financial funds to non-state actors. The EPA negotiations process has to some extent involved multi-stakeholder consultation including government agencies, private sector and CSO representatives.

Outcomes have been transmitted to the regional level. However, the role of the private sector, of CSO and of farmers' organisations in particular in the negotiations has not been of great importance. There is a need to foster development of the private sector and CSOs and their possibilities to argue their case including by improving public services provision. Most farmers in the EAC do not know about the possibilities to engage in external trade and about the positive effects EPAs could have for their activity.

Smallholder farmers often view agriculture activity as a way of life and engage in agricultural activity mostly for their own consumption. Their mentality needs to be shifted to recognizing that agriculture has as high a potential as commercial and business activity. For this to happen a satisfactory information flow between ministries of trade, business councils and small holder farmers is needed.

Consultations, through either direct or indirect means via farmers associations and cooperatives,

with the private sector and small and medium sized farmers are important in order for the EPA to enable equitable agriculture. All EAC member countries have established consultative fora with memberships including the public sector, the private sector and the civil society. However, there is no mechanism that ensures neither the taking into account of the views of these stakeholders nor the information of stakeholders of final outcomes. Moreover parliamentarians, consumer associations, trade unions, small business, informal sector, and farmers are not always members of these fora. There is also a multiplicity of consultative mechanisms as well as ad hoc mechanisms that are established which render the regular participation of stakeholders rather difficult and not efficient.

The East African Business Council (EABC) is very active on the regional level to ensure the participation of the private sector in trade related negotiations. Activities include the development of a private sector strategy, the development of a common competition policy and legislation to promote free and fair competition and efforts to increase the participation of SMEs.<sup>60</sup> Some members of the EABC are carrying out activities in the agricultural sector as well as the informal sector which is mostly dominated by agricultural activity however most members are active in other sectors. The EABC has potential to influence policy-making on the regional level but smallholder farmers are not well represented thus they lack the ability to contribute to policy making let alone owning policy outcomes.

The informal sector should also be recognized as a stakeholder and its participation in negotiations should be included. Agriculture has a significant

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<sup>59</sup> CUTS International Geneva Resource Centre. 2009. Towards More Inclusive Trade Policy Making: Process and Role of Stakeholders in Select African Countries.

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<sup>60</sup> Isabelle Ramdoo and Aurelie Walker. 2010. Implementing the EPA in the EAC and the CARIFOPRUM regions: What is in it for the private sector?, European Centre for Development Policy Management, Discussion Paper No. 104.

share in the informal sector, however, numbers are difficult to assess. Including the informal sector as a stakeholder into the EPA negotiations would eventually transform informal activity to formal activity, increase government revenues and enhance the agricultural sector by making technology and finance available for a greater number of beneficiaries.

During the National Dialogues that took place in October 2011 in Kenya, Uganda and Tanzania stakeholders expressed their lack of information about the on-going negotiations regarding the EPA. The private sector, NGOs, Farmers' Organisations as well as the public sector have raised the issue of flawed information flows and difficult access to information on negotiation outcomes during discussions. This is an unambiguous signal that the negotiation and

implementation process has to be made more transparent not only for CSOs, private sector, and farmers' organisations but also for the public sector at large. Negotiation and implementation should not be undertaken only in the relevant ministries but the views and experiences of public institutions at lower administrative levels should also be considered. National governments need to provide stakeholders with information on how they can effectively harness opportunities provided for under the EPA, they need to establish channels through which all stakeholders can participate in consultations on the on-going negotiations and be informed about final outcomes, harmonise regional and national strategies and allocate resources to sectors that are likely to benefit most from the EPA. But also stakeholders need to seize the opportunities of actively engaging in negotiating and implementation of the EPA.

## Conclusion and Recommendations

For the agriculture sector in the EAC, the FEPA provides plenty of opportunities, although further refinement is necessary for them to be effectively harnessed. EAC governments and their stakeholders play a significant role in this process. In order to respond to the essential needs of the actors within the sector EAC governments and stakeholders have to actively engage in negotiations between themselves and with the EU to ensure that their needs and interests are included in the final outcome. Specifically the following are among some of the recommendations that would ensure a useful outcome towards equitable agriculture development in the region:

- National governments need to provide stakeholders with information on how they can

effectively harness opportunities provided for under the EPA;

- National governments need to establish channels through which all stakeholders can participate in consultations on the on-going negotiations and be informed about final outcomes;
- National governments need to harmonise regional and national agriculture and related development strategies to enhance effectiveness of implementation;
- National governments need to allocate resources to sectors that are likely to benefit most from the EPA;
- Stakeholders need to seize the opportunities of actively engaging in negotiating and implementation of the EPA.

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