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The Common Market for Eastern and Southern Africa (COMESA) is the principal agency for facilitating the negotiations for an Economic Partnership Agreement (EPA) between the twenty-five members of the European Union (EU) and sixteen countries in the eastern and southern African region (ESA). These 16 countries are: Burundi, Comoros, DR Congo, Djibouti, Eritrea, Ethiopia, Kenya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Uganda, Zambia and Zimbabwe.

The EU negotiates as a bloc. It has legal status, institutional structure (including the Council of Ministers and the European Parliament), a powerful functioning bureaucracy that sits in Brussels, and a team of skilled negotiators under the authority of a single negotiator, Pascal Lamy, the EC Trade Commissioner. Although of course there are contradictions and divisions amongst EU members, these are carefully sorted out before the EU chief negotiator faces the outside world with a single voice.

The 16 African countries negotiating with the EU do not have legal status as a bloc. Nor do they have a formal structure of

decision-making, nor an operational bureaucracy. Excluded from the negotiations under COMESA, for example, are three of its members - namely, Angola, Egypt and Swaziland. In other words, when COMESA meets (as it recently did in Kampala in June 2004), present in the meeting are delegates from the above three countries, but they have no *locus standi* when the matter of negotiations with the EU as ESA comes on the agenda. On the other hand, Tanzania is a member of the East African Community (EAC), but since it has withdrawn from COMESA, it is not part of the ESA negotiating group. Namibia used to be a member of COMESA, but it pulled out after the launch of the ESA group - one of the "casualties" of the EPA negotiations process. Tanzania and Namibia are parts of the "SADC" group that seeks to negotiate an EPA with the EU, but this "new SADC" does not contain four of its original members - namely, Zimbabwe, Zambia, Mauritius and Malawi. Furthermore, South Africa sits in the "SADC" negotiations with the EU only as an observer.

Here is a peculiar geographic re-configuration of eastern and southern Africa. This re-configuration has taken place at the exercise of the sovereign decisions of the various countries. Nobody put them where they are as a result of

overt or evidential pressure from anybody outside. For example, Tanzania withdrew from COMESA some years ago, and Namibia on the eve of the EPA negotiations. Their withdrawal was their own affair. Nonetheless, what we have on the ground is a mish-mash of countries grouped incongruously without economic or political logic. They do not have even historical logic any more. SADC, for example, was founded in the 1980s, above all, to support the struggle for South Africa's liberation from apartheid. Now in the "SADC" that is negotiating with the EU, four of the original members are not there. What happened? Did they exclude themselves, or were they kept out by some external forces? Tanzania is a member of the East African community, but has decided that its interests are best served within the "SADC" configuration, rather than within the ESA, even though it is a long-standing historical member of the East African Community. Namibia left COMESA, but Swaziland is still there negotiating both in the ESA and in the "SADC" configuration. Nothing seems to make sense any more. Everything is higgledy-piggledy. Old regional boundaries are torn away. Years of regional integration efforts under bodies such as SADC and EAC are under strain, and indeed in peril. Is Africa back again to 1884 when Europe sat around a table in Berlin carving out Africa's borders? Is 2004-07 a repeat of 1884?

It is in this context that COMESA (which effectively means its Secretariat) provides programmatic and logistics support to the 16 countries that constitute the ESA negotiating group. It faces a formidable challenge of giving the much needed unity of purpose and at least some sense of direction to the 16 countries. Under the circumstances, the COMESA Secretariat is doing a commendable and heroic job. We know this to be the case from close observation. It may be that at the end of the process each of the sixteen countries end up making a separate bilateral agreement with the EU (since there is no real legal basis to ESA). Nonetheless, if in the meantime, COMESA can provide even a meeting point where the sixteen can

discuss common (and divergent) interests, it would be invaluable help to a part of regional Africa already reconfigured and disfigured by contingent circumstances that have to do more with the economic and political interests of the EU than of Africa.

SEATINI has been asked by the COMESA Secretariat to join in the ESA Regional Negotiating Team. As member of the civil society, SEATINI has its own mandate and constituency. It has its own unique perspective that is different, and may be in some ways complementary, to that of the COMESA Secretariat. Furthermore its views may not agree with those of some of the governments of the 16 countries. Nonetheless, whilst not pretending to speak on behalf of the wider civil society, SEATINI can help bring on to the table the voices of the people otherwise not represented in the official negotiations. Besides civil society, these include the parliamentarians, the trade unions, the private sector, and the popular media. All these are weakly organised, and lack both the institutional and technical capacity to take part in the negotiations in a meaningful and effective manner. SEATINI too has limited capacity, and is indeed challenged by other demands on its resources, such as the continuing negotiations under the WTO. It hopes more NGOs – such as MWENGO based in Harare and Econews based in Nairobi – are also brought onto to the negotiating forum. It is better to be inside the negotiating process than outside. A small voice of conscience can, at times, restraint the mighty. If nothing else, SEATINI can at least blow the whistle if things go wrong. Above all, it can help the COMESA Secretariat to look for potholes on the roadmap to integration through negotiations with the EU. As any driver on African roads would know, driving along a potholed road is never a straight trajectory.

It is in this spirit that this leader in the Bulletin makes the following observations and recommendations.

Analysis and Some Recommendations to COMESA

One suggestion is for COMESA and the 16 countries to recognise that *African countries (and ACP generally) are put on the defensive* by Europe. Europe has taken advantage of the evolving global trade “regime change” to alter the terms of engagement between itself and the ACP countries. There is not a single country in Africa (leaving out South Africa that has a separate and independently negotiated free trade agreement with the EU), that would want to negotiate an EPA under Cotonou. None of them would wish to lose the Lome preferences, and get into a reciprocal arrangement with the EU knowing fully well that it is an asymmetrical relationship. Even neo-liberal economists, (generally proven wrong in their support for structural adjustment programmes and trade liberalisation) would have to admit that reciprocal trade among asymmetrical partners works to the detriment of the weaker partner. It is like a law of nature.

Why, then, are the ACP countries negotiating Cotonou? An honest answer is that they are forced to do so. They are forced on the one hand by the evolving and seemingly unstoppable stampede to liberalise trade regimes, and on the other by the European Union that is seeking to end preferences to their former colonies. The ACP countries are faced with a *bevy of hopeless options* in which negotiating an EPA with the EU appears to be the *least undesirable* option. You make the best of a bad situation. Other options are even worse.

For the LDC countries (and most African countries fall in this category) the EPA negotiations bring no net benefit over and above what they already have under the Everything But Arms (EBA) regime. For the non-LDC countries (such as Kenya, Mauritius and Zimbabwe), not to negotiate means falling back on the old GSP regime, which means the end of Lome preferences, in any case. By the end of 2007 all preferences will end as ordained by the WTO. At Doha, the ACP countries

secured a waiver for Cotonou, but at the time nobody seriously examined the date when the waiver would lapse – December 2007, that is, in the next two and half years. It took Europe nearly five decades since the European Coal and Steel Community (ECSC) was created in 1957 to get to where they now are, and the process is still problematic. How can the ACP countries dismantle trade preferences they have had over the last fifty years in a matter of thirty months?

It is not sufficiently acknowledged among ACP countries (including organisations such as SADC and COMESA) that this “*bevy of hopeless options*” is forced on them by the changing needs of Europe. Take agriculture, for example. Here, the main objective of the old Common Agricultural Policy (CAP) was to ensure food security for EU countries in the context of the cold war. Within Europe itself the policy was to sustain high-cost and market-inefficient (market-distorting) producers through minimum grower prices guaranteed by subsidies, and dumping incidental surpluses in the world market with export rebates. Outside Europe, it was through giving preferences to producers in the colonies (later independent countries but still tied to Europe), so that they produced essential foodstuffs for Europe at guaranteed prices that were higher than artificially sustained low world market prices. Sugar is a classic case, where world prices were artificially kept low, and yet a country like Mauritius, for example, could export 100% of its sugar to Europe at higher than world prices. How can Mauritius adjust to a new regime so quickly when its sugar export dependence is still high?

Food security for Europe in the dangerous times of the cold war was thus a *strategic* objective. The cost in financial terms was heavy, but it was considered justified under circumstances then prevailing. The cost in terms of creating dependence in ACP countries was also high, but at the time it looked like a welcome “concession” to the commodity producers of those countries. When the cold war was over by 1991, the high cost of storage and

export refund payments were no longer justified at the domestic (that is, EU) level. Nor were the “concessions” to the ACP countries defensible. These considerations, and the impending conclusion of the Uruguay Round Agreements (URAs), were the reason for the CAP reform.

In 1992 a fundamental shift was made in CAP from the system of price support to one of direct aid to farmers. The aim was to reduce domestic price of agricultural products, without eroding farm incomes. This was seen as WTO compatible, since they were (are) deemed *less* trade distorting under “green” or “blue” box measures. Furthermore, price reduction and closing the gap between EU and world market prices provided an incentive to EU processors of agricultural products to produce for export. Indeed this is one of the main objectives of the new CAP. Under pressure from food processing industries, the objective is to provide primary agricultural inputs into the European food industry targeted towards capturing a share of the world market in processed foods.

However, the EU had to overcome two hurdles. One was the liberalisation of agriculture under the WTO. Agriculture for the first time became a subject for an institutional trade regime (it was not a subject under the old GATT). Europe had succeeded all these years to keep agriculture out. Now, under the WTO, the CAP was widely viewed as market distorting. The EU had to deal with the problem. However, it was necessary for Europe to delay trade liberalisation in agriculture for as long as possible, that is, until the European food industry had reorganised itself under CAP reform and captured a significant share of the world market in processed foods. The EU Trade Division adroitly managed to carry out this dilatory action by stalling negotiations in the WTO, and by using the flexibilities provided by the “green” and “blue” boxes. This story has still not ended, for the EU continues to delay agricultural trade liberalisation.

The second problem was the agreement with the former colonies (first under Yaounde and then Lome) that secured for them high prices for several agricultural products and a guaranteed market in Europe. This had to end. The former colonies had served the European purpose during the cold war years. That strategic need had become irrelevant. Also, the high prices were a disincentive to industrial food processors in Europe. Furthermore, the tariff walls of the ACP countries had to be torn down in order to provide a market for European industrial food products. The chosen instrument for this was to shift from non-reciprocal to reciprocal relations. Europe and its former colonies were now to deal “on equal terms”. This was deemed to be the requirement under the WTO, and therefore binding.

This little bit of history is missed in the general discourse in the haste to join the EPA negotiations under Cotonou simply because it is deemed as the less undesirable than all other options available to the ACP. However, the story has significant lessons for COMESA and the 16 countries in ESA. One is that Europe knows exactly what it wants, and it goes to great lengths to secure those interests. The second lesson is to recognise that Europe has confronted the ACP countries with this “bevy of hopeless options”, legitimised by claims that it is a requirement of the WTO, whilst it has itself carefully skirted around the liberalising disciplines of the WTO. And clearly the third lesson is that the COMESA and the 16 countries should also find ways in which they too can skirt around the WTO regime, including in this particular case, around the limitation placed by the Doha waiver which ends non-reciprocity on the critical day of 31 December 2007.

How should they do this? First of all, what COMESA needs is to engage a few bright international trade lawyers to find loopholes in the whole legal superstructure of the WTO and the Cotonou Agreement. Lawyers can play marvellous tricks with legal texts, provided they are motivated. Secondly, COMESA and the sixteen

countries should demand that they need to carry out proper studies on a number of issues that are crying out for clarification and analysis. Some of these are, for example:

1. What are the costs and benefits of the various options available to the 16 ESA countries individually?
2. What will these options, and the currently configured (disfigured) geographic division within the EPA context, do to the existing efforts at regional integration, including COMESA, SADC, the EAC and IGAD?
3. How much of the existing trade preferences can be retained, by whom, and for how long?
4. What does “reciprocity” really mean in concrete terms?
5. What are the costs of adjustment, and who will bear these costs, how, and in what form? For example, would Europe make binding commitments in a fair distribution of costs and rewards?
6. How exactly does EPA take on board and resolve the supply side constraints of the 16 countries when these have not been seriously addressed over the last forty years? Uganda, for example, became independent in 1962, and has little to show by way of industrial development.
7. The European CAP reform is working against the interests of agro-processing industries in Africa. How exactly is the EPA going to protect the 16 countries from the perils of CAP reform?
8. What are the fiscal implications of the proposed tariff reductions for each of the 16 countries? And what mechanisms are to be put in place for making good revenue losses resulting from these measures?

The above are only a sample of the kinds of issues that have to be studied and clarified before hard negotiations take place. The EU has conceded, within the context of preserving the Lome *aquis*, that

existing regional integration efforts must not be jeopardised by the EPAs. That’s fine. In that case, what major policy challenges face the East African Community, for example, as it seeks to deepen the process of regional integration and establish a fair and equitable basis for its trade relations with the EU? How should the EAC move towards free trade with the EU in ways which will accommodate the requirements of its non-LDC member, namely Kenya, with those of Uganda and Tanzania?

These questions are only the tip of a deep iceberg. The fact of the matter is that nobody among the ACP countries really knows what the future holds for them in relation to Europe. They are swimming like dead fish with the powerful current set in motion by the EU and the so-called gravitational pull of globalisation. To question globalisation is like questioning the laws of gravity. And so everybody drifts in the current. Like dead fish.

What should COMESA do under these circumstances? First it should refuse to drift in the current. Globalisation is not like gravity. Globalisation is the *policy* of the transnational mega corporations to control the global movement of goods, services and capital in order to maximise their profits and fight against the persistent downward pressure on their profits. It is backed by the most powerful states on earth (EU including), and the multilateralised trading system. If a date has to be put to the present phase of globalization, one would say that it began when, faced with threat of recession in the 1980s, the United States and the UK (under Reagan and Thatcher respectively) were forced to liberalise. It was a solution to *national* problems. Their first action was deregulation; then, privatisation and taxation policies in the 1980s; and then in 1990s the coming together of national stock exchanges. Then, at the international level, a rapid move towards trade liberalisation followed by the demand for removing all restrictions on the movement of capital, and “national treatment” for the owners of capital - the demand that they be given the same treatment as nationals in

the third countries. Cotonou and the replacement of the principle of non-reciprocity with that of reciprocity in the context of the Euro-ACP relations is part of this policy initiative of Europe in the post cold war era. There is no mystery about it.

So there is much that needs to be done at the COMESA level. It owes it to the sixteen countries of the ESA grouping that it does not lead them into either a blind alley or a tunnel of illusions. It bears a great responsibility. No country should be forced to sign on the dotted lines if it does not understand the full implications of what it is signing. Besides hiring lawyers to critically look at the WTO and Cotonou regimes (as suggested above), COMESA should initiate studies on the above raised questions, and more. The 31 December 2007 is not a deadline cast in stone. There are literally hundreds of deadlines under the WTO regime that have passed their due dates, such as for example, the various deadlines on TRIPS. The industrialised countries have missed many deadlines,

such as on the implementation issues to which they had committed at Marrakesh in 1994. Indeed, COMESA and the sixteen ESA countries should try to replace time-based deadlines with *target-based deadlines* – agree to make commitments when certain targeted development goals are achieved. The EPAs may be the least undesirable option among those visibly placed on the table by the EU, but EPAs and the GSP (now under review) are not the only options in town. There are other options that a creative mind can reveal. It requires a bit of imagination laced with a little bit of will power.

As long as it has life the trout in the rivers of Zimbabwe dare to swim against the current. Neither COMESA nor the 16 ESA countries are dead fish. Nor indeed the ACP countries.

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