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Eastern and Southern Africa (ESA) Economic Partnership Agreements (EPA) Third meeting of the Regional Negotiating Forum (RNF) 18th – 20th October 2004, Antananarivo, Madagascar

Jane Nalunga

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The 3rd RNF met in Antananarivo (18th – 20th October, 2004) to chart a way forward for the negotiations between the ESA region and the EU given the fact that as per the Roadmap, substantive negotiations began September 2004. All the 16 member countries were represented apart from

Rwanda. The meeting considered the following issues:

- Progress Reports from the National Development Trade Policy Forum (NDTPFs).
- Minutes of the 1st Regional Preparatory Task Force (RPTF)
- Minutes of the 1st Ambassadors and Senior Officials meeting
- Progress report of the recruitment of a Chief Technical Advisor (CTA) and establishment of a permanent office in Brussels
- The coordination mechanism among the African regions

A number of papers were also presented i.e. on Regional integration (the EC tool box), on Rules of Origin, Adjustment facility, Infrastructure Fund, Intellectual Property as a development tool, funding

arrangements, on WTO compatibility; and a presentation by Egypt on how they negotiated their FTA with the EU.

This paper gives an overview and insights into the discussions that took place.

Level of preparedness:

Although substantive negotiations began in September 2004, the 3rd RNF meeting indicated that the ESA region is far from ready to negotiate with the EU. It was agreed by the ESA members that Impact Assessment Studies (IAS) would be done before negotiations began to guide the negotiations. So far only 5 IAS have been completed but the findings of these studies have not been synthesized to guide the negotiations. There is no indication so far of what the studies came up with and how this will alter the way the ESA countries will negotiate.

Revenue loss and no Development

It is only Mauritius, which pointed out that their studies indicated that Mauritius will lose revenue up to 1.1 billion Rupees, if it partially opens up to the EU; and 1.6 billion Rupees if it is a full EPA. The Mauritius delegation urged other members that the first step in the negotiations should be to ensure that the EU makes a firm commitment to address issues of building the competitiveness of the ESA economies. They further pointed out that unless this is done, then the EPA will not lead to development as anticipated but to increased poverty. A representative from the UNECA also emphasized this point that it will be the poor to carry this additional burden.

A number of ESA countries are still awaiting funds from the EU to undertake the studies. As regards the NDTPF, which are supposed to come up with national positions, a number of member countries are still looking for funding to undertake activities.

Negotiations despite readiness

Despite this lack of readiness, at the 1st meeting of the ESA- EC Regional Preparatory Task force held in Brussels on the 27th July 2004, the ESA Group “presented their proposal to discuss the following negotiating issues from **July 2004 –March 2005: Fisheries, development issues and market access**. Yet the minutes of the meeting of the ESA ambassadors and EC senior officials which sat on the 30th July 2004 in Brussels agreed that the ESA-EU EPA negotiating process would address issues of: **fisheries, market access, development and agriculture**. This lack of coherence raises a number of issues.

Lack of Coordination

Firstly there are overlapping structures and lack of coordination. In the 2nd RNF meeting in Entebbe, it was **proposed** that the ESA Group could begin to formulate negotiating positions in ‘those clusters, such as fisheries, where the Group has made some progress. Other clusters may include Development, Rules of Origin, and Sanitary and phytosanitary (SPS) measures. This was a proposal. No agreement was reached. Yet in the 1st meetings of the RPTF and ESA-EC officials, other areas were being proposed.

The RPTF has a controversial negotiating structure. It is supposed to be composed of the Chief Technical Advisor (who has not yet been

appointed) supported by officials from the embassies whose ambassadors have been nominated as lead Spokespersons, a representative of the ACP secretariat and technical experts who are to be selected by the RNF on the side of the ESA Group. On the side of the EC the members are composed of representatives from the EU Directorate of Trade. The main objectives (among others) of this body is to “prepare for the meetings of the Lead ambassadors and the EC senior officials, including preparations of a schedule of meetings, agreeing on locations and preparing agendas”. It should be noted that negotiations at a technical level are supposed to be carried out by the Lead ambassadors and the EC senior officials, yet their agenda is determined by an informal body (RPTF). The other very interesting objective of the RPTF is to “exchange information on issues pertaining to the negotiations with an informal exchange of views on negotiating positions so that areas of divergence and convergence are known to both sides enabling each side to be able to prepare for meaningful negotiations at the Ambassadorial/Senior officials and Ministerial/Commissioner levels.”

A number of ESA delegates in both the 1st RNF (Mombasa) and 2nd RNF (Entebbe) meetings questioned the efficacy of this body. But since it was the decision of the ESA ministers of Trade taken in Mauritius in Feb. 2004, the RNF has no powers to remove it from the negotiating structure. In an attempt to bring order in the negotiations, in Madagascar, the RNF directed the secretariat that in future, it will be the RNF to decide what should be discussed in the RPTF.

Secondly, the RNF had proposed to start substantive negotiations with the

EC in a number of areas between July 2004 and March 2005. The question which arises is: “What is to be negotiated under the proposed areas since the NDPTFs have not come up as yet with national position as they are still grappling with undertaking studies?” The time factor is also important since there is only 5 months remaining to the proposed date of March 2005.

Thirdly is the lack of coordination in the negotiations. This was exhibited by the insistence of the ESA members interested in the Ocean fisheries that they were ready to negotiate a Fisheries Framework Agreement with the EU while the members interested in the Inland fisheries insisted that they were not. The representative from the ACP secretariat advised that there was no hurry to sign a fisheries agreement; and the Deputy Secretary General of COMESA also cautioned against signing a fisheries agreement in a hurry as it was a delicate issue given the way the Northern countries have over fished their waters. These words of caution did not deter the ESA countries interested in the Ocean fisheries.

Lack of Technical Capacities

The technical capacity in the COMESA secretariat is inadequate given the complexity of the negotiations. Most ESA members lack both the technical and financial capacities to undertake the EPA negotiations. The Brussels ambassadors, who will be negotiating with the EC on the technical level, have little experience in trade negotiations. It was proposed and agreed that a Chief Technical Advisor (CTA) be appointed to assist with the negotiations; but so far he/she has not yet been appointed. The major

challenge today facing the ESA Group is how to put the wonderful sentiments expressed in the meetings; and the issues arising from the studies into clear negotiating positions.

In fact there is a need to recruit not only a CTA but also a number of technical people. The challenge is the funding since at the moment it is the EU, which is footing most (if not all) the costs of the negotiations.

Regional Markets should have been 1st priority

A number of delegates emphasized the need to prioritise issues in the negotiation process. That the starting point should be the building up of the South –South integration process and the creation of a regional market, a necessary stage in promoting the smooth and gradual integration of African economies into the global economy. This was decided in Article 37.3 of the Cotonou Agreement.

“ The preparatory period shall also be used for capacity –building in the public and private sectors of ACP countries, including measures to enhance competitiveness, for strengthening of regional organizations and for support to regional trade integration initiatives, where appropriate with assistance to budgetary adjustment and fiscal reform as well as for infrastructure upgrading and development, and for investment promotion”

Increasing the EU competitiveness and African poverty

The delegates pointed out that this should be the litmus test of the EU’s commitment to make the EPAs true developmental. Some delegates observed that if this Article is not fulfilled, then the EPAs will not add

any value to the region, other than increasing the competitiveness of EU products in the region, leading to unemployment and increased poverty.

The Deputy Secretary General of COMESA urged members not to rush into signing agreements; and that the RNF has the sovereign right to decide whether the ESA region is ready or not to negotiate. That if the ESA region is not careful, they might find themselves in a situation of a horse and a rider in this economic partnership. That the EU knows what they want yet the ESA Group is not sure.

EU-Egypt: 40 rounds of negotiations

A representative from Egypt shared their experience of how they negotiated an FTA with the EU. He explained that there were more than 40 rounds of negotiations between the Egyptian negotiating team and the European Commission for about four and a half years and there were 10 drafts of the agreement.

He advised the ESA members that there is a need to negotiate safeguards to limit the adverse effects of opening up to the EU and that they must be convinced that the EPAs are a tool for development. There are 3 years remaining to the conclusion of the EPAs (up to December 2007), what chances does the ESA group, which is comprised of 16 countries, has to come up with a balanced agreement with the EU?

Production before opening up

The Egyptian representative also emphasized the importance of building production and trade capacity in areas of comparative advantage, and that this should precede trade liberalization, and that the EU support in this area is

crucial. The ESA countries have as yet not built up their production and trade capacities; and on the issue of additional funding (with simpler and swifter deployment procedures) to finance the many programmes required to meet the challenges of reciprocal trade arrangements with the EU; the

EU has been insisting that there's no need for additional funding as long as there are EDF funds. On the issue of the procedures, the EC has reiterated that EDF procedures fall outside the scope of the EPA negotiations.

WTO Compatibility

A paper on this issue clarified that the ACP Group in Geneva had submitted a position paper to the Negotiating Group on Rules seeking for amendments to Article XXIV of GATT 1994 to take into account the needs of developing countries. Since Article XXIV is under debate, the question arises as to what kind of EPAs are to be negotiated. There is still no indication whether this development in Geneva would substantively alter the nature of the EPA negotiations.

Recommendations for CSOs:

1. There is a need to engage at 2 different but interconnected levels; The "NO to EPA Campaign" must be built on concretely negative effects of the EPAs on the ACP economies and peoples livelihoods. This information can be obtained by analyzing the studies already carried out i.e. by the ACP countries and other organizations. At another level, we need to feed directly into the negotiations by giving technical backup to the negotiators at both national and regional levels through the

submission of technical papers and active participation in the NDTPF and the RNF. There is space at these two levels for CSOs engagement; and it is important that we effectively utilize it.

2. SEATINI has been organizing technical workshops for the trade officials in the Eastern and Southern African region, CSOs, private sector and the Geneva missions in preparation for WTO Ministerial Conferences. These meetings have been contributing a lot in the strengthening of the regions' negotiating capacity in the WTO through effective dialogue and coordination among the stakeholders. There is an urgent need to do the same for the EPA negotiations.
3. Information sharing and strategizing at regional, Africa and ACP levels, and also between Africa and its partners in the North, is important and should be intensified.

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ESA-EPA negotiations still lack substance and direction

Richard Kamidza

The third Regional Negotiating Forum (RNF) meeting to define the future of Eastern and Southern Africa (ESA)-the European Union (EU) trade regime was held in Antananarivo, Madagascar from 18th to 20th October this year. This meeting followed hard on the heels of the Dedicated Session on Fisheries, in which the ESA coastal or island member-states had agreed on a compromise on Marine Fisheries Rules of Origin. *But more of this later.*

The progress of the National Development Policy Trade Forums (NDPTFs) remains almost the same as reported in the Entebbe meeting. The Secretariat reported that it had not received any written reports on the activities of NDPTFs and that only five countries had submitted copies of their impact assessment studies. SEATINI's presentation further exposed inherent weak consultations and involvement of all key stakeholders in the process. For example, the failure to respect the ESA-EPA roadmap guidelines such as submission of written progress reports to the meeting. It was further argued by SEATINI that anything short of written reports makes it very difficult for interested parties to assess the level of consultations and involvement in each ESA member-state.

Unfortunately, some members feel it is not important to reveal the weaknesses being observed. This is really a major worry to those keen to see a fair and just EPA outcome in this configuration. We feel it is high time governments officials understand that as long as the laid down criteria is not followed, particularly on effective engagements, then the process will go nowhere. In the subsequent discussions, SEATINI also queried why ESA institutions (governments and regional secretariat) seem to be afraid of close scrutiny by stakeholders, particularly civil society. Interestingly in an effort to exonerate themselves from their own incompetence, some delegates went on to inform the meeting that so and so was from the non-state actor as well as quoting the invitation letter as in line with the spirit of ensuring that countries delegation include non-state actors. Close observations noted that some delegations only included the private sector without the civil society

organisations, non-governmental organisations and some social movements, which was the central thesis of SEATINI's presentation. However, SEATINI is mindful of the fact that such countries like Kenya, Uganda, Zambia and Zimbabwe had included members of the civil society in their delegations. In fact, Kenya had a member of parliament in their delegation. It is imperative in future for delegations to inform the RNF meeting of their composition, especially given lack of written progress reports that inform national activities, processes and developments.

The above clearly show weak preparedness on the ESA member-states to begin to meaningfully talk of the configuration's positions. As argued above, only five countries – namely - Madagascar, Mauritius, Seychelles, Uganda and Zimbabwe have submitted their National Impact Assessment (NIA) studies. Indications are that the rest of the countries need at least two months to finalise their studies assuming that all the logistical problems, particularly the finalisation of the terms of reference and the disbursement of funds receive urgent attention. This development has profound impact on sequencing of negotiating positions of the configuration. Despite this major setback, which is largely of the EU making, the newly established Regional Preparatory Task Force (RPTF) during its July meeting went on to prioritise fisheries, development issues and market access for the period July 2004 and March 2005. The RPTF is an informal body of experts, which allows each side to get better technical understanding of the other side's position so as to smoothen negotiations. This illustrates why the ESA configuration process, if not checked, may result in a bad deal.

Interestingly it was reported that even the European Commission (EC) felt the need to further discuss how to prepare discussions and negotiations in each cluster in detail bearing the need to focus on region's integration efforts. Some delegates wondered why already agreeing to sequence cluster negotiations when NIA studies are yet to be completed as well as wondered who prioritises the sequencing of cluster negotiations. "We are hearing this for the first time. ...," remarked the Zambian delegation. Agriculture is at the pinnacle of negotiations under the Doha Development Agenda, and such, should be treated with the importance it deserves. This prompted others to wonder why agriculture, which is also the backbone of many ESA economies is not being prioritised? This emerged again as a potential area not only to confuse the process, but may also create divisions within the configuration, a development that may result in a bad EPA outcome. In addition, one of the Ambassadors argued that RPTF should be more organised for the EU could not wait for ESA to prepare its positions. A critical reflection of this leads to the question "why are our ambassadors eager to negotiate when the capitals are not ready?" All these developments leave one pondering, "who is really in charge of this process?" Is this another repeat of the fisheries cluster?

A review of the roadmap allows ESA member-states to build markets first for themselves, a development that cements the South – South trade cooperation leading to stronger economic ties and deeper regional economic integration. This is a political leverage, which ESA can use to slow down the process with the view to adequately prepare itself for an "EPA" with a human face that will

address the needs of the people. Only if ESA players proceed with this route can the EPA process minimise negative implications to the economies and the socio-political ramifications to its citizens. A focus on South-South first will also enable the process to take care of specific situations of island member-states as well as issues of competitiveness and proper sequencing of clusters as advised by studies. Failure to heed this may lead to frustration, as EU is likely to adopt a near abroad strategy, which invariably benefits its new member-states than the ESA region.

The process now seems to be firmly under the directions of the COMESA secretariat and Ambassadors in Brussels with governments and private sector to some extent guessing what to do. Other non-state actors – civil society, media and MPs are still restricted to the periphery of engagement. This is despite the South African and Egyptian experiences, which were shared to the participants in Entebbe and Antananarivo, respectively. In Entebbe, ESA was advised to effectively use the civic bodies in this process both at the national and regional levels. Similarly in Antananarivo, the Egyptian Ambassador presented some lessons including:

- The complexity of the process which resulted in 40 rounds of negotiations and 10 draft position documents that were concluded after four and half years. The lesson for ESA is to ensure more time is needed in order to reach some agreements within the configuration so as to aim for a win-win situation;
- ESA should refuse political conditionalities on any particular issue, which may

end-up compromising the process. It is thus imperative for the configuration to clearly define and understand its defensive and offensive interests;

- ESA was reminded that negotiating with such a powerful economic block is very difficult, and thus it becomes imperative to identify certain issues, which are not subject to negotiations. In difficult situations, it is even beneficial to the configuration to suspend the negotiations as a strategy to refocus the process;
- It is imperative to have one chief negotiator supported by different cluster negotiators with adequate backing from the capitals. It is also imperative for ESA to prepare adequately for these negotiations while at the same time ensuring good relationships between and/or among Brussels, Geneva, capitals, COMESA and ACP Secretariat. In this way, ESA should always follow up issues as well as coordinate various efforts employed in this process. It is also imperative for the configuration to understand one another. In addition, the configuration should intensify training courses for negotiators as well as blending this with experience;
- ESA should ensure that the transitional period of opening up their industries to EU products is not too short, a development that protects jobs while avoiding social unrest and political instability. In the same vein, ESA should ensure that the process adequately address the supply-side

constraints currently inhibiting ESA member-states from enjoying the EU market;

- ESA to ensure that adequate provisions of financial support are guaranteed in the new trade pact well before reaching the final agreement; and
- ESA should ensure that the rules of the origin are identical across the region as well as monitoring the gap between exports and imports between ESA and EU. This indicates the direction of benefits and losses to the configuration. Other issues to consider include safe guards measures and non-trade barriers.

It is important for ESA therefore to understand that it is dealing with a very strong, powerful, united and more integrated region, which is already aware of its defensive and offensive interests. Moreover, ESA economies are vertically linked to the EU and for centuries have remained providers of raw materials and consumers of their finished goods. All this suggests taking into account the political dynamics of this process, which unfortunately is missing at the moment. It also suggests a strong spirit of consulting and involving widely.

Is ESA process going to achieve a common goal? It is important to note that unity of purpose which is largely a product of proper coordination between and/or among capitals, ambassadors and regional secretariat; clear roles and respect of governments as the main driving force in the process; wide consultations and involvement of all non-state actors; and slowing the process if ESA toolbox is lacking vital instruments such as studies. Only if the above is obtained will ESA become firm and

well focused to negotiate an EPA as a formidable force. Most economic policies and paradigms including trade regimes (both bilateral and multilateral) in the past have failed to extricate ESA economies from the colonial economic bondage that has continued to subject its citizens to abject poverty.

Marine Fisheries Framework Agreement

The Dedicated Session on Fisheries attended by ESA coastal or island member-states on the 15th October in Madagascar agreed on a compromise on Marine Fisheries Rules of Origin. This gave birth to the final version of the Marine Fisheries Framework Agreement, ready to be used by those countries wishing to negotiate a national Fisheries Framework Agreement with the EU. "The Marine Fisheries Framework Agreement is available in both English and French", the COMESA secretariat informed the participants.

While this framework excluded the ESA inland countries, the new agenda also excluded the 'inland fisheries' their only hope to ensure that the process in this cluster addresses the interests of all member-states of this configuration. This exclusion did not go well with such countries like Zimbabwe, which had come well prepared, with all the intellectual support to engage on this issue. "Mr Chairman, my delegation strongly urged the meeting to bring back the inland fisheries back on the agenda because we have already brought an expert on fisheries to lead us in engaging this meeting," the leader of the Zimbabwean delegation said. Subsequently, Malawi and Zimbabwe presented a paper entitled "The need for inland fisheries industry to form an

effective and reciprocal trade between ESA and EU" which then formed the basis for discussing this issue. However, the above development left some participants wondering as to who between the ESA governments and the COMESA secretariat is driving the negotiating process. Rightly so, the Ugandan delegation during the plenary session queried why the COMESA Secretariat seemed to be creating some 'green rooms' in this process. "Already Mr Chairman, the coastal countries have developed and agreed on the fisheries agreement framework while the inland fisheries studies are still underway," remarked the leader of the Ugandan delegation. What is more worrying so far in this process is the emerging divisions on arriving at an ESA-EPA cluster outcome within a month of substantive preparations to negotiate as a block with the powerful EU partner. This illustrates ESA's failure to consult and involve widely all key stakeholders, particularly civil society, media and members of parliament (MP) in the process. Adequate checks and balances are thus crucial to avoid such a dual development of positions. Even the African-Caribbean-Pacific (ACP) delegate advised that ESA should not hurry to negotiate and sign any cluster positions, for once signed, it becomes very difficult to get out of it.

The RNF meeting then agreed to hold the Dedicated Session on inland fisheries in January 2005 in Malawi. It is thus hoped that the progress of this meeting will give indications and directions as to when the common position on fisheries cluster between the marine and inland countries would merge. Until then, it remains a guess to some religious followers of this process if the outcome of the inland fisheries will have any bearing (positive or negative) of the new

Marine Fisheries Framework Agreement.

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Editorial: Beyond Why No to EPAS

Chandrakant Patel

Recent issues of the SEATINI Bulletin have drawn attention to the risks facing Eastern and Southern African countries engaged in EPAS negotiations under the Cotonou Agreement. The series of articles in this (and forthcoming) issue of the Bulletin will continue to draw attention to the complex, resource intensive and, ultimately, disastrous consequences for countries in our region. Whereas the rallying cry of “No to EPAS” has resonated with many in the civil society and among trade negotiators, the political establishments in the region appear so far to be lagging behind.

Richard Kamidza and Jane Nalunga examine the reasons why the civil society now strongly questions the underlying logic of the EU-driven concept and process in their contributions. It is the EU and not the ESA countries that is building the regional markets under the umbrella of the EPA negotiations and preparing the region for reciprocity. The EU is consciously leading the internal regional integration process and working out the rules of origin for the regions. Evidently, the EU does not have to negotiate free trade and new issues: it is already building them into the regions.

Less clear, on the other hand, are strategies to thwart the process. The strong pressures now building up in the region to conform to the provisions of Cotonou give the impression that the

negotiating train has already left the station. This impression is reinforced by the various deadlines and institutions created to underpin the negotiations. In support of this, a highly bureaucratic structure has been created to sustain the process: the top-heavy apparatus includes, for example, an ESA Council of Ministers, a Committee of Ambassadors, an ESA-EU Regional Preparatory Task Force, a Regional Negotiating Forum, a National Development and Trade Policy Forum. In turn, they all backed by a plethora of regional secretariats, inter-regional task forces, working groups and the like. That this elaborate process has acquired its own life and momentum is illustrated by the RNF II's response to a call by the civil society to slow the process so as to allow for adequate preparation. This seemingly straightforward view, shared by many delegations, was brusquely rejected with the RNF maintaining that the EU will not renegotiate the established timelines and therefore it was mandatory that the ESA states proceed with negotiation on a piece-meal manner. In this respect it was suggested that come September 2004, negotiation on Fisheries Rules of Origin and development issues would go on as ESA concludes positions in the other clusters.

Setting aside for the moment questions of the effectiveness of the structures that have been created (see the analysis by Kamidza and Nalunga on this point) or their consequences on the overall capacity of the trade negotiators to contribute substantively to the negotiations, the question arises: what further role should the civil society play in this process? This is a difficult question and answers will no doubt vary from one organization to the next. But it is worth spelling out the dilemma: if the civil society is to

participate in the process (as it has been doing, albeit without much enthusiasm), does it not risk legitimizing EPAS and in the bargain limit its own role? How can we say “NO to EPAS” and at the same time continue to be part of it? Then again, do we not risk being marginalized even further from the policy-making bodies in our region if we were to disengage from the seemingly inevitable outcome?

On one point, however, there is near-complete consensus: in as much as the studies and analysis of the implications of EPAS for each participating country are not yet in place, the participants have every right, in their own self-interest, to say NO until such time as the issues and their implications are thoroughly examined, understood and supported by the public at large. An important component of this analysis surely must include the impact of the on-going efforts by South Africa and SACU to strike separate and yet parallel arrangements with EU, USA and EFTA.

SACU-EFTA negotiations, which started in May 2003 and are reported to be heading for a conclusion next year, form part of SACU's strategy to consolidate a trade relationship between SACU and EFTA. Despite an undertaking to confine the agreement to goods, agriculture and industrial products, the SACU-EFTA negotiations have also considered investment, intellectual property, government procurement and competition. Similar negotiations with the EU and the USA reportedly at advanced stage, will have major consequences for the ESA region and

the effectiveness of its own arrangements with the EU and indirectly, in trade relations with the US, SACU and EFTA. Equally important is the certain impact of the Doha negotiations on the EPAS process: the July package that was adopted in Geneva envisages significant progress in the stalled Doha negotiations by the end of next year. Are countries in the ESA region sufficiently confident about the as yet unknown range of commitments they will be required to make in critical areas of NAMA, Services, Agriculture and WTO Rules to engage in the EPAS process?

Clearly, there are substantial reasons for saying NO to EPAS. But to do so in an effective manner requires considerable political mobilization and, if necessary, for the civil society to take a lead and disengage from the formal work of the process. But this also suggests that the civil society continues to contribute, outside the official framework, to provide analysis, briefings and studies to mobilize the political establishments in the region to also disengage from the process for now. The recent collapse in the EU-Mercosur negotiations must encourage the civil society in our region to continue to press our Governments to withdraw from the negotiations and start afresh when they are ready on their own terms.

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