



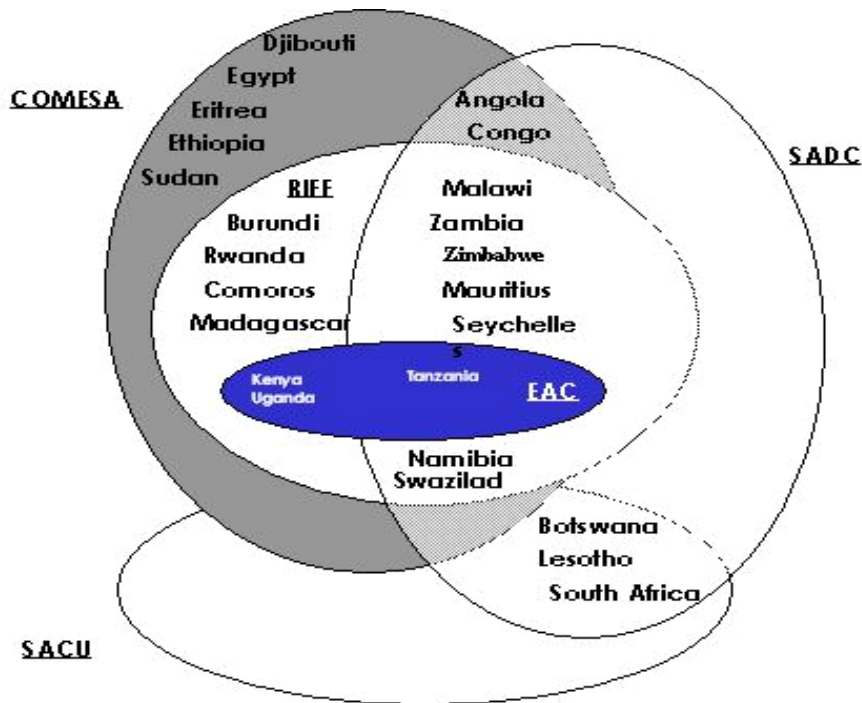
## Strengthening Africa in World Trade

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# THE ECONOMIC PARTNERSHIP AGREEMENTS. IMPLICATIONS AND WAY FORWARD. A CASE FOR UGANDA.



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## Abbreviations

ACP	Africa Caribbean and Pacific countries
AGOA	African Growth and Opportunities Act
AU	African Union
CAP	Common Agricultural Policy
COMESA	Common Market for Eastern and Southern Africa
CSO	Civil Society Organisation
CTA	Chief Technical Advisor
EAC	East African Community
EBA	Everything But Arms
EC	European Commission
EDF	European Development Fund
EEC	European Economic Community
EPAs	Economic Partnership Agreements
ESA	East and Southern Africa
EU	European Union
FTA	Free Trade Area
GSP	Generalised System of Preferences
IGAD	Inter Governmental Authority on Development
IITC	Inter Institutional Trade Committee
IMF	International Monetary Fund
IOC	Indian Ocean Commission
IRCC	Inter Regional Co-ordination Committee
JPA	Joint Parliamentary Assembly
MFN	Most Favoured Nation
MoU	Memorandum of Understanding
NGO	Non Governmental Organisation
NDTPF	National Development Trade Policy Forum
NSA	Non State Actors
PDMT	Processing Distribution Marketing and Transport
PMU	Project Management Unit
REPAs	Regional Economic Partnership Agreements
RNF	Regional Negotiating Forum
RTAs	Regional Trading Arrangements
RTPF	Regional Trade Policy Forum
SADC	Southern African Development Community
SAPs	Structural Adjustment Programmes
S&D	Special and Differential Treatment
SEATINI	Southern and Eastern African Trade, Information and Negotiations Institute
SPS	Sanitary and Phytosanitary Standards
SSM	Special Safeguard Mechanisms
TNCs	Transnational Corporations
WTO	World Trade Organisation

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## **ii. Introduction:**

*The Economic Partnership Agreement (EPA) negotiations between the ACP Countries and the EU have emerged as one of the most formidable challenges for ACP countries.*

Since 1975, the cooperation between the ACP countries and the EU has been governed by four successive Lome Conventions with their hallmark of unilateral trade preferences to ACP countries. The Cotonou Agreement intends to reverse this relationship by providing for the negotiation of reciprocal trade arrangements between the ACP countries and the EU. The negotiations started with an all-ACP–EU phase in September 2002–September 2003. The second phase, at regional level has been launched at different times by different regions. The EPA negotiations which are supposed to end by 31<sup>st</sup> December 2007 are complex due to a number of factors that are discussed in this booklet. The booklet situates the negotiations against the backdrop of the Lome conventions and the current global trading system; and drawing heavily on Uganda’s experience in the negotiations, and discusses the challenges facing the Eastern and Southern African (ESA) Region in these negotiations. Some recommendations as to what needs to be done for ESA countries to negotiate effectively with the EU are briefly discussed.

## **Chapter 1 From Lome to Cotonou.**

### **1.1 The Lome Conventions: A historical perspective of the EPAs**

The co-operation between the ACP countries and the EU dates back to the Treaty of Rome of 1957 that established the European Economic Community (EEC)<sup>1</sup>. The 1<sup>st</sup> agreements between the ACP and the EEC countries were the Yaoundé I (1963-69) and the Yaoundé II (1969-75) which were signed between the French speaking countries and the EEC. In 1973 when the United Kingdom joined the EEC, Lome I (1975-80) was signed between 46 ACP countries and 9 EEC<sup>2</sup> members' states. The ACP Group was also effectively created. Lome I was a precursor of three more consecutive Convention i.e. Lome II-1980-1985, Lome III-1985-1990, Lome IV-1990-1995. The stated objectives of the Lome Convention was to foster the development of the colonies and the overseas territories.

The Lome conventions should be viewed against the backdrop of the prevailing cold war and the relative geopolitical power of the the ACP countries. It was important for the imperial powers to maintain the apron strings with the ACP countries in the post colonial era.

Updated every 5 years form 1975, the Lome conventions were to govern the cooperation between the ACP countries and EEC for the next 25 years .

Under the 4 successive Lome conventions, the EU granted a preferential trade regime to ACP countries through trade preferences, commodity protocols and other instruments of trade cooperation i.e. financial and technical aid. There were two main pillars of ACP-EU co-operation; these were economic and trade co-operation; and aid. Under the aid component, Lome cooperation provided predictable aid flows over a 5-year period.

### **1.2 Objectives and Provisions of the Lome conventions:**

The major purpose of the trade co-operation was to promote trade between the parties taking into account their respective levels of development, and in particular the need to secure additional benefits for the trade of ACP states, in order to accelerate the rate of growth of their trade and improve conditions of access of their products to the EU market, so as to ensure a better balance in the trade of the contracting parties (Art.1)<sup>3</sup>. Therefore products originating in the ACP states were to be imported into the Community duty free. This treatment was subjected to qualification.

The products 'originating' from the ACP were subjected to stringent definition stipulated in Protocol No. 1, which set out the definition of the concept of 'originating products'. Products that had undergone processing and which contained not less than 50% value-

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<sup>1</sup> The EEC members were Germany, France, Italy, Belgium, Netherlands and Luxembourg

<sup>2</sup> Denmark, Ireland also joined

<sup>3</sup> The Lome Convention, Article 1

added within the ACP countries would be excluded. This restricted ACP countries from purchasing parts of products from third countries other than EEC countries. The outcome was serious limitation of ACP products exported to EEC countries, discouraging the growth of manufacturing and processing industries as well as undermining of the development of integrated economies within the ACP states.

The convention also provided that the Community shall be entitled to take the necessary safeguard measures if as a result of the application of these provisions 'serious disturbances occur in a sector of the economy of the Community' or of one or more Member States 'or which 'jeopardise their external financial stability' or 'difficulties arise which may result in a deterioration in a sector of the economy of a region of the Community' Thus under the safeguard clause, all agricultural products competing with EEC farmers' products were not accorded duty free status.

The convention also dealt with the issue of the stabilisation of export earnings through the introduction of the Stabex scheme to help stabilise export earnings on a wide number of agricultural products such as cocoa, coffee, groundnuts and tea. Lome II created a similar mechanism (Sysmin) for countries that were heavily dependent on mineral resources

Specific Protocols were also agreed on with provisions guaranteeing prices and specific quantities of cane sugar, beef, veal, bananas and rum. Under the sugar protocol, a fixed quantity at guaranteed price each year was allocated to different countries. Uganda was given 5,000 metric tons; but did not utilise this quota while countries like Mauritius, Fiji, Guyana, were able to transform their economies by utilising their quotas.

The Lome convention recognised the inequality of the contracting parties despite the declaration in the Preamble to the Convention that states that the parties are 'anxious to establish, on the basis of complete equality between partners, close and continuing cooperation, in the spirit of international solidarity.' Throughout the negotiations leading to the signing of the Lome convention, the ACP states emphasised it that they were not equal to the EEC. In the inaugural meeting, the Guyanese Minister of Foreign Affairs, Ramphal, stated that:

"Reciprocity between those who are unequal in economic strength is a contradiction in terms. In contemporary international economic relations, Aristotle's dictum that 'justice requires equality between equals must surely mean between those who are unequal in economic strength. Equity itself demands non-reciprocity"<sup>4</sup>

It is against this background that Article 7 of the Convention provided that, for the duration of the convention, the ACP states shall not be required to offer market access to products originating from the Community.

### **1.3 Performance of ACP countries under the Lome Conventions:**

Despite receiving preferences for more than 25 years, ACP exports have in general performed poorly. The share of ACP exports to the EU fell for example by more than a half, from 8% in 1975 to 2.8% in 2000.

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<sup>4</sup> Quoted from D .Wadada Nabudere : Essays on the theory and practice of imperialism , Onyx press , London 1979

Judging from the composition of aggregate ACP exports, trade preferences have in general also failed to promote diversification. The bulk of the ACP products exported to the EEC comprised mainly of primary products i.e 95% while manufactured goods accounted for a mere 3-4%. In any case most of these primary products were restricted to one or two products from particular countries. Although the Stabex scheme had a number of shortcomings, most ACP countries that benefited under this scheme failed to use the funds properly. Instead of supporting the producers and address supply capacity constraints, it was used to as budget support by governments. Thus the objectives of the Lome conventions were not attained in most ACP countries.

The reasons for the failure to use the trade preferences can be attributed to factors both within the ACP and the EU countries; and within the Convention itself. As a result of the questionable development impact of the Lome conventions, and other reasons like incompatibility with the WTO rules, there were calls to reassess the ACP-EU cooperation. The linchpin of the reassessment would be to make the trade regime 'compatible' with the requirements of the WTO through the introduction of reciprocal trade arrangements between the ACP countries and the EU.

In 1998 negotiations for a successor agreement to the Lome conventions were launched and these culminated into the signing of the Cotonou agreement in 2000. The Cotonou Agreement provides for the negotiations of a set of reciprocal Economic Partnership Agreements (EPAs) between the ACP countries and the EU.

#### **1.4 The Cotonou Agreement**

The ACP/EU Partnership Agreement is a comprehensive aid and trade agreement concluded between 77 ACP (African, Caribbean and Pacific) countries and the European Union. It was signed in June 2000 in Cotonou (Benin) and is therefore commonly referred to as "the Cotonou Agreement". The Cotonou Agreement builds on twenty-five years of ACP-EU co-operation under 4 successive Lome Conventions. The agreement lasts for 20 years and contains a clause allowing it to be revised every 5 years. There are two main pillars of ACP-EU co-operation; these are economic and trade co-operation; and aid.

Chapter 1, Article 1& 2 of the ACP-EU Partnership Agreement provides for the objectives and the fundamental principles of the partnership. The Central objective of the partnership is to reduce and eventually eradicate poverty while contributing to sustainable development and to the gradual integration of ACP countries into the world economy.

The Principles governing the partnership are:

- ✓ **Equality of partners and ownership of development strategies:** In principle, the ACP states should determine and own the development strategies for their economies.
- ✓ **Participation:** Participation in the implementation of the Agreement has been extended to other actors apart from the central government. The new actors

include: civil society, private sector, local government/ authorities and the members of parliament through the Joint Parliamentary Association.

- ✓ **Dialogue and mutual obligations:** The partners assumed mutual obligations i.e. respect for human rights, the protection of fundamental freedoms, accountable governance...these were to be monitored through dialogue.
- ✓ **Differentiation and regionalisation:** As with the principle of Special and Differential treatment in the WTO, the Agreement recognized that Countries are at different levels of development; and therefore have different needs and priorities. Cooperation arrangement was to vary accordingly with special treatment being given to the Least Developed Countries (LDCs) and landlocked and island countries.

Under the trade cooperation pillar, the ACP –EU Partnership Agreement in Chapter 2, Article 37 provides for the negotiations of new trading arrangements between the ACP countries and the EU:

“Economic partnership agreements shall be negotiated during the preparatory period which shall end by 31<sup>st</sup> December 2007 at the latest. Formal negotiations of the new trading arrangements shall start in September 2002 and the new trading arrangements shall enter into force by 1<sup>st</sup> January 2008, unless earlier dates are agreed between the parties.”<sup>5</sup>

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<sup>5</sup> The ACP-EU Partnership Agreement pg. 26.

## Chapter 2

### **The larger picture: EPA negotiations within the global trading system**

The 2 cities of Lome and Cotonou might be capitals of neighboring countries, but the 2 agreements i.e. the Lome conventions and the Cotonou agreement are fundamentally different. From non-reciprocal trade preferences enshrined in the Lome conventions, the Cotonou Agreement provides for negotiations, which will usher in reciprocal trade arrangements between the ACP countries and the EU by January 1<sup>st</sup> 2008.

In order to appreciate this profound departure, it is important to situate the ACP-EU relations within the global geopolitical and economic situation.

The Lome convention reflected the relative geopolitical power of the ACP countries in the context of the cold war. With the end of the cold war the ACP countries are low on the EU's priority list in terms of geopolitical economic and security reasons.

Today global trade is dominated by Trans National Corporations (TNCs) who are competing for investment opportunities, markets, cheap sources of raw materials and labour; in brief the competition is all about making profits. The Governments of the industrialised countries, the International Financial Institutions (IMF / WB) and the WTO have all been co-opted in this crusade to further the interests of their TNCs by ensuring an enabling environment for their operations. Therefore, the policies of free trade, capital mobility, deregulation, privatisations espoused by the IMF/WB and formalised through the WTO agreements, are all geared towards facilitating the operations of the TNCs.

There is a discernable scramble for markets among the developed countries; especially between the EU and the USA. The proliferation of Free Trade Agreements (FTA)<sup>6</sup> of which the EPA negotiations are a part; and the various initiatives like The African Growth and Opportunity Act (AGOA) should be viewed against this background. Therefore the EU trade agreement first and foremost serve European economic interests in the global competition on access to the markets of the so called "high performance economies" in the South. The EU has already signed Free Trade Agreements with such countries as South Africa, Morocco, Egypt and the Mediterranean countries (Euromed).

Therefore behind the rhetoric to support regional integration efforts in ACP countries lurks EU's aggressive search for markets and investment opportunities.

Although developed countries are anxious to open up markets for their products, they are jealously protecting their markets. Even under the Lome conventions, the EEC was more concerned about protecting their farmers as guaranteed under the Common Agricultural Policy (CAP) of the Treaty of Rome, than offering genuine market access to products from the ACP countries. Today the increasingly strict Sanitary and Phytosanitary (SPS) standards and the introduction of stricter food safety regulations in the EU and other developed countries, makes market access to these markets untenable.

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<sup>6</sup> A Free Trade area is a group of countries that have agreed to eliminate tariffs, quotas and preferences on most goods between them. Unlike a customs Union, members of a Free Trade Area do not have the same policies with respect to non-members.

## Chapter 3

### **The Economic Partnership Agreement s (EPA) negotiations:**

The EPA negotiations were formally launched in September 2002. Negotiations were to be carried out in 2 phases; at the pan- ACP-EU level to agree on principles and approaches to be adopted, the structure and the modalities for the negotiation and cross cutting issues of common interest for the ACP; and from September 2003 negotiations on specific regional EPAs.

EPAs have to be seen in the context of the overall objective of the Cotonou Agreement, ensuring sustainable development and economic growth in ACP countries that will contribute to poverty eradication. However there are four overriding EPA principles:

- ✓ **Reciprocity:** ACP countries will progressively open their markets to European products.
- ✓ **Regionalism:** Although explicit reference to Regional Economic Partnership Agreements (REPAs) are excluded from the final text of the Cotonou Agreement, the EC has always operated on the assumption that the EPA negotiations would be concluded on a regional basis with those regions which have functioning regional integration processes and mechanisms. This approach was motivated by practical considerations of the greater efficiency of conducting complex trade and aid negotiations with groups of quite closely related countries rather than with all 77 ACP states together; and also by an officially declared intention to support the processes of regional cooperation and integration being undertaken between various groupings of ACP countries.
- ✓ **Special treatment for Least Developed Countries (LDCs):** LDCs are not obliged to sign an EPA in order to retain their present level of access to the EU.
- ✓ **WTO compatibility:** One of the challenges, which the Lome Conventions faced, was that it was incompatible with the WTO principle of Most Favoured Nation (MFN) treatment. The EU had 2 options i.e. either to negotiate with the ACP countries new trading arrangements that are compatible with the WTO rules under Article XXIV of GATT, or extend the preferential treatment to all developing countries. The first option was chosen. Both parties i.e. ACP and EU had to seek waiver from the WTO, which was granted in the WTO Ministerial Conference in Doha in November 2001. The waiver lasts up to December 31<sup>st</sup> 2007.

The EPAs therefore are intended to achieve a wide range of objectives i.e. to strengthen integration between the ACP and EU, to promote the economic liberalization of ACP economies, to deepen their regional integration process and to increase access for European companies to ACP markets.

## 3.1 The Negotiating Phases

### 3.1.1 The 1<sup>st</sup> Phase

The 1<sup>st</sup> phase of the negotiations was launched in Brussels on September 27<sup>th</sup> 2002. It was agreed between the ACP and EU that negotiations are carried out at two levels i.e. the first phase at the pan ACP –EU level dealing with substantive issues of common concern; and a second phase which would deal with tariff negotiations and specific sectoral issues at national and regional level. The ACP group wanted the first phase to run from September 2002 to 2004. This was because a number of events with a bearing to the negotiations would have been concluded; the Doha work Programme was to end in 2004, the review of the EU Generalised System of Preferences (GSP) and the enlargement of the EU were also expected to take place in 2004. The ACP Group decided that negotiations at the All-ACP level would be conducted on issues of common interest including<sup>7</sup>:

- Compatibility with the WTO
- Dispute Settlement
- Non-execution clause
- Definition of the parties to the EPA
- Procedures for entry into force of the EPAs
- Trade related areas
- Rules of origin
- Safeguard measures
- Commodity protocols
- All-ACP/EU framework agreement on fishing
- SPS issues
- Additional Resources
- Mechanisms for the implementation of the EPAs
- Regular, formal and comprehensive reviews of the EPA preparations and negotiations

In insisting on a protracted first phase, the ACP countries were guided by the overriding principle of unity and solidarity in their approach to the EPA negotiations; and the realisation that it is easier for them to secure a better deal from the EU if they negotiate collectively than if they negotiate individually, regionally or at a sub-regional level. It is important therefore for the ACP countries to ensure that the EPA negotiations and their resultant Free Trade Agreements (FTAs) will protect and promote the cohesiveness of the ACP region.

The EU on the other hand wanted the first phase to last only three months (September – December 2002 including the Christmas recess); with the second phase being launched in January 2003. It was eventually agreed that the first phase would last up to September 2003, with the second phase commencing soon after.

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<sup>7</sup> DECISION No. 1/03 OF THE SPECIAL SESSION OF THE ACP COUNCIL OF MINISTERS HELD IN BRUSSELS ON THE 1<sup>ST</sup> OCTOBER 2003

The ACP countries wanted the 1<sup>st</sup> phase to result in a binding agreement but the EU considered it a session of clarification of negotiation issues and not a negotiating phase. To date, this phase has not been concluded; nevertheless it was agreed by the ACP Group to let those regional groupings, which considered themselves ready to start the 2<sup>nd</sup> phase of the negotiations at the regional level to do so. It was also further agreed that the 1<sup>st</sup> and 2<sup>nd</sup> phase would run concurrently until the 1<sup>st</sup> phase are completed 'not later than the 1<sup>st</sup> quarter of 2004'<sup>8</sup>. Central Africa and Western Africa were the first to launch phase 2 negotiations on 4th and 6th October 2003 respectively.

### **3.2 The ESA- EPA Negotiations:**

On 7<sup>th</sup> February 2004 the ESA countries comprising of Burundi, Comoros, DR Congo, Djibouti, Eritrea, Ethiopia, Kenya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Uganda, Zambia and Zimbabwe agreed to launch the 2<sup>nd</sup> phase of the EPA negotiations with the EU.

In preparation for the negotiations, the ESA Group came up with a Roadmap<sup>9</sup> to guide the negotiations. The Roadmap includes issues regarding the preparations for the negotiations, the negotiating structures, coordination of the negotiations and indicative schedule for the negotiations.

#### **3.2.1 Preparation for the negotiations:**

In preparation for the negotiations, it was agreed that three main sets of activities be undertaken, these being:

- ✓ At the national level, national impact assessment studies and the establishment of National Development and Trade Policy Forums, with work programmes and agenda.
- ✓ At the regional level, a series of regional studies upon which the negotiating briefs for the negotiating teams will be based, and the establishment of the Regional Negotiating Forum; and
- ✓ At the regional level, capacity building and training in trade negotiations.

### **3.3 Indicative schedule for the negotiations:**

The ESA agreed to have 3 phases.

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<sup>8</sup> Draft Joint Report on the all ACP-EC phase of EPA negotiations (ACP/00/118/03 Rev.1 2<sup>nd</sup> October 2003

<sup>9</sup> Eastern and Southern African Region : ROADMAP FOR EPA NEGOTIATIONS , 5<sup>th</sup> February 2004

### **3.3.1 Phase I: Setting of priorities and negotiating procedures (March – August 2004)**

This was supposed to be the preparatory period for the negotiations as provided for by the Cotonou Agreement that:

“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”<sup>10</sup>.

There is no evidence that capacity building in the above areas was carried out. This might have been due to the limited time and funding.

This phase was also to be used by each ESA member to constitute the National Development and Trade Policy Forum (NDTPF) with clear rules of procedures, terms of reference, work programmes and funding mechanisms. The Regional Negotiating Forum (RNF) was also to meet during this period to agree on rules of procedure, prepare the work programme, agree on the composition of the technical teams to support the lead Ambassadorial Spokespersons; and also carry out a number of studies in preparation for phase II negotiations.

### **3.3.2 Phase II: Substantive negotiations (September 2004 – December 2005)**

Substantive negotiations in the six clusters (Development issues, Market Access, Agriculture, Fisheries, Trade in Services and Trade-related Issues) are to take place. It is envisaged that by the end of this period, an outline EPA will have been agreed on.

### **3.3.3 Phase III: Continuation and finalisation (January 2006 – December 2007)**

Substantive negotiations will continue if necessary and areas of disagreement will be revisited and compromises reached. The EPA agreement is expected to be finalised, ratified and any necessary legislation enacted in order to allow the EPA to be in place on 1st January 2008 at the latest.

## **3.4 Negotiating Clusters and Lead Spokespersons:**

The ESA region opted to negotiate in (6) six clusters i.e. Development Issues, Market access, Agriculture, Fisheries, Trade in Services, and Trade –related Issues. Negotiations were to be carried out at 2 levels i.e. at Ministerial and Ambassadorial levels. Six Ambassadors based in Brussels and six ministers were chosen to be the lead

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<sup>10</sup> The ACP-EU Partnership Agreement Chapter2, Article 37(3)

spokespersons with alternates. The respective clusters and the lead and alternates are indicated below.

**Negotiating areas/ clusters:**

**Ministerial Level**

<b>Cluster/area</b>	<b>Ministerial Lead Spokespersons</b>	<b>Ministerial Alternate Spokespersons</b>
Development Issues	Sudan	DR Congo
Market Access	Mauritius / Rwanda	Burundi and Zambia
Agriculture	Malawi	Uganda and Ethiopia
Fisheries	Madagascar	Seychelles and Djibouti
Trade in Services	Zimbabwe	Rwanda and Djibouti
Trade related areas	Kenya	Djibouti

**Ambassadorial Level**

<b>Cluster /area</b>	<b>Ambassadorial Lead Spokespersons</b>	<b>Ambassadorial Alternate Spokespersons</b>
Development issues	Ethiopia	Zambia and Burundi
Market access	Kenya	Zimbabwe and Uganda
Agriculture	Mauritius	Zimbabwe and Madagascar
Fisheries	Eritrea	Seychelles and Madagascar
Trade in Services	Malawi	Rwanda and Uganda
Trade related areas	Sudan	DR Cong and Burundi

**3.5 Negotiating areas: Principle and issues for negotiations**

**1. Development issues:**

**This issue is the linchpin of the EPA negotiations, as it will determine whether the EPAs are truly developmental or they are just like any other FTA. It is also cross cutting in all other areas.**

Principles:

- ✓ EPAs should not be seen as an end in themselves but as a means to achieving broader objectives.

- ✓ EPAs should take into account the capacity of ACP economies to adjust to the introduction of free trade with the EU.
- ✓ EPAs should contribute to the development of ACP countries and be mainstreamed into development cooperation policies.
- ✓ EPAs should be accompanied by capacity building programs and support for industrial development of ACP states.
- ✓ EPAs should be consistent with and should support regional integration.

Areas for negotiations should include:

- ✓ The preparations, which were agreed upon in the Cotonou Agreement to be done before substantive negotiations, were to begin. Article 37(3) states that:

**“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”<sup>11</sup>**

**This is the litmus test of EU’s commitment to making EPAs really developmental.**

- ✓ Additional funding (with simpler and swifter deployment procedures) to finance the many programmes required meeting the challenges of reciprocal trade arrangements with the EU. While ACP countries do not want to divert the existing resources away from existing development priorities, the EU insists 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<sup>12</sup>
- ✓ Restructuring assistance, which should be made available, and programs implemented before the EPAs are signed so that ESA countries can meet the challenges of free trade with the EU. It should be noted that there is a fundamental disagreement between the ACP and the EU on the issue of sequencing of restructuring assistance, with the EU insisting that the EPAs have to be signed first before designing and implementing restructuring programmes.
- ✓ Addressing the issues of both fiscal and economic restructuring through the formation of specific instruments and programs.

There are 2 major challenges facing ESA negotiators in this area: how to come up with specific negotiating positions to address the above issues, especially that of upfront

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<sup>11</sup> ibid

<sup>12</sup> Minutes of the First Meeting of the ESA-EC Regional Preparatory Task Force , 27<sup>th</sup> July 2004, ACP Secretariat, Brussels.

funding and implementation of fiscal and economic restructuring programmes; and also how to ensure that the above principles are streamlined within the other negotiating areas.

## **2. Market Access:**

In phase 1, the ACP and EU agreed on the objectives and principles of market access. These are:

- ✓ No ACP state should be left worse than it is currently.
- ✓ EPA negotiations should build on and improve the Lome acquis as well as take into account the Special & Differential principle.
- ✓ EPAs should build on regional integration as spelt out in Article 35(2) of the Cotonou Agreement, and since EPAs are meant to build markets, both parties agree on sequencing of liberalisation.

Some issues for negotiations under Phase II:

- ✓ Product coverage of EPAs (taking into account the level of development of the ESA country, socio-economic constraints, capacity of the economy to adapt to the liberalisation process).
- ✓ Rules of Origin that will recognise the increasingly global nature of input procurement, and which will support value addition. The EU is in favour of Rules of Origin that are harmonised across different agreements and does not favour asymmetrical rules for ACP countries
- ✓ The beginning of tariff dismantlement/reductions and its linkage to the attainment of predefined development indicators. EU is of the view that tariff reductions should be linked to clearly defined timetables.
- ✓ The nature and scope of safeguards.

The challenges here are: how to sequence liberalisation, and also how to ensure that no country is worse off given the process of CAP reform which is eroding the value of ACP preferences by reducing the prices paid on the EU market which ACP export to the EU; and also the process of preference erosion resulting from multilateral trade liberalisation under the WTO.

## **3. Agriculture and Fisheries:**

Under Phase 1, agriculture and fisheries were handled together. Both parties were in agreement as to the central role that agriculture and fisheries play in the economies of most ACP countries. They also agreed on the following:

- ✓ The negotiations in the area of agriculture will build on the Lome aquis.
- ✓ Processing, Marketing, Distribution and Transport (PMDT) is essential for value -addition.
- ✓ EPAs should address SPS, as they constitute barriers to trade.
- ✓ EU to offer assistance to ACP countries to build their capacities to meet SPS standards

- ✓ Impact of CAP reforms to be addressed during EPA negotiations.
- ✓ Export refunds agreements to be concluded in accordance with Art. 54 of the Cotonou agreement

The ESA –EU negotiations should build on to the 1<sup>st</sup> phase; and also consider the following issues:

- ✓ Putting in place PMDT programmes before the phasing in of the EPAs. The EU is of the view that PMDT programmes should be established once the implementation of EPAs is underway.
- ✓ New SPS measures and how to meet genuine EU health standards. In the 1<sup>st</sup> phase, ACP countries were of the view that there should be a standstill on new SPS measures while EU insisted that it has a sovereign right to establish its health rules through SPS measures.
- ✓ Addressing the export refunds, and the production and distorting outcomes of the CAP reforms
- ✓ Nature of assistance to build capacities to meet SPS standards.
- ✓ On the fisheries area, a conclusion of fisheries agreement which includes fundamental principles on responsible and sustainable fisheries management and measures to promote local fisheries sector.
- ✓

#### **4. Trade in Services:**

In the 1<sup>st</sup> phase of the negotiations, the parties agreed on the following:

- ✓ Support, in the context of the EPAs, be provided by the EU for the development of services sectors in the ACP countries, and should target the specific needs of ACP countries and regions.
- ✓ The importance of establishing a regulatory framework for service sector development
- ✓ Should liberalisation be undertaken, they should be underpinned by principles of
  - Special and Differential treatment
  - Asymmetry
  - Positive regional discrimination.
  - Progressive liberalisation based on the ‘positive list’ approach and adapted to the development level of ACP countries and regions.
- ✓ How the Special Safeguard Mechanism could be established.

In addition to concretising on the above issues, the ESA negotiations would consider the following areas for negotiations:

- ✓ Additional funds to develop the services sector.
- ✓ Improvement in Mode 4 (movement of natural persons) of services suppliers. For the EU this is a very sensitive area.
- ✓ The scope of the negotiations; ESA should not go beyond what has been negotiated in a multilateral context although the EU favours a WTO-Plus approach.

## 5. Trade –Related Areas:

Both the ACP and EU agreed that trade related areas are important for ensuring smooth trade flows and the minimisation of transaction costs. They also recognised the need to have clearly defined and transparent regulatory frameworks and efficient and well functioning institutions for the design and implementation of measures in trade related areas.

Negotiations should consider the following areas:

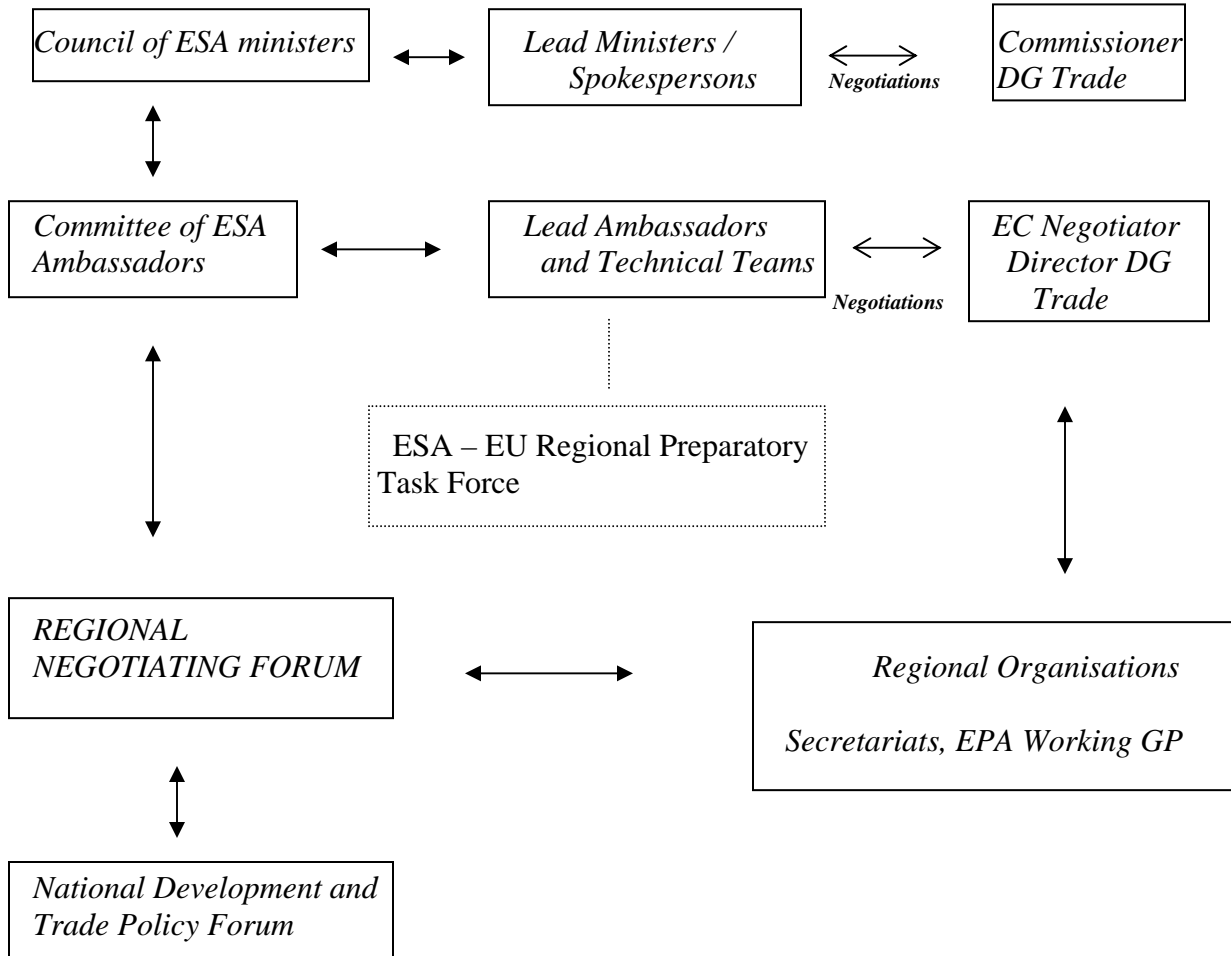
- ✓ Scope and coverage of issues to be addressed. The EU wants to go beyond the trade –Related areas listed in the Cotonou agreement<sup>13</sup> to include other areas i.e. government procurement and data collection.
- ✓ Commitments on trade related areas. Although the EU favours a WTO-Plus approach, ESA countries should not go beyond what is committed at the WTO level.
- ✓ Sequencing of the provision of capacity building support: capacity building support programs should be implemented before entering into negotiations, together with the development of specific services sector.

The challenge is at the national levels for the NTPDF to identify the sectors and the specific nature of support required.

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<sup>13</sup> Trade –Related Issues as in the Cotonou Agreement, Chapter 5 Art. 45-51 are: Competition policy, Intellectual Property Rights, Standardisation and certification, sanitary and phytosanitary measures, Trade and environment issues, trade and labour standards, consumer policy.

### 3.6 The negotiating structure



### **1. The National Development and Trade Policy Forum (NDTPF):**

Each ESA country was to establish a multi-sectoral NDTPF with representation from both the public and private sector. It is responsible for formulating a national position in each country that is then presented to the RNF.

### **2. The Regional Negotiating Forum (RNF):**

The RNF is the body that prepares negotiating briefs for use by the Lead Ambassadorial spokespersons. It is Composed of three representatives of each NDTPF (NDTPF chair, a representative from the public sector, and one from the NSA), the six lead spokespersons for each of the negotiating sectors at ambassadorial level from Brussels, one representative from the ACP secretariat, up to 2 representatives from the secretariats of the East African Community (EAC), the Indian Ocean Commission (IOC), the Inter-Governmental Authority on Development (IGAD), a representative from COMESA (secretariat), other participants and resource persons were to be authorised by the chairperson. In order to ensure the active participation of NGOs and non-State sector, it was agreed that selected NGOs in the trade and development arenas be invited to the RNF. So far SEATINI has been invited and has attended the 2 RNF meetings. In their statement to the 2<sup>nd</sup> RNF meeting held in Entebbe, Uganda (19<sup>th</sup> –21<sup>st</sup> July 2004), the Civil Society Organizations called for more NGOs to be substantive members of the RNF.

The chairperson of the RNF is the most senior delegate of the NDTPF of the country holding the chair of COMESA at the time of the meeting. The secretariats of the Regional Organisations involved in the ESA EPA negotiations i.e. COMESA, EAC, IOC, and IGAD act as the secretariat for the RNF, with COMESA taking the overall coordinating role.

### **3. ESA- EU Regional Preparatory Task Force:**

This body was created to ensure coordination between the ESA Group and the EC at the technical level. It is not a decision making body but one which supports the negotiations through the official negotiating structures.

Its main objective is to exchange information on issues pertaining to the negotiations so that areas of divergence and convergence are known to both sides so that negotiations at the Ambassadorial/Senior officials and Ministerial/Commissioner level can concentrate on those areas where there is divergence.<sup>14</sup> The task force is also charged with exchanging views on a number of issues i.e. opportunities for debt cancellation, Rules of Origin, how to improve SDT, and preserve/improve market access into EU.

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<sup>14</sup> ESA-EU Regional Preparatory Task Force: Terms of Reference and Rules of Procedure

The task force includes: representative of Director General Trade and a representative from the Embassy accredited to Belgium of the country that holds the COMESA chair. These co-chair the Task Force. Other members depend on the topic to be discussed but will the 2 chairpersons invite either from other directorates of the EC or from the RNF or specialists. Membership should not be more than 10 people. COMESA acts as the secretariat for this body.

At the Ambassadorial and Ministerial levels, there are lead spokespersons as indicated in the tables above. The formal discussions/negotiations, which are to take place at the Ambassadorial/Senior official and Ministerial/Commissioner levels, are to be supported by an informal body of experts headed by a chief technical advisor.

### **Coordination:**

In order to maintain the cohesiveness and solidarity of the ACP group in general, and Africa in particular, it was agreed that the ESA Group would liaise continuously with the rest of the ACP region through the all-ACP follow up mechanism and with the AU. The regional economic bodies i.e. COMESA, EAC, IOC, and IGAD would also work closely together through the IRCC. Coordination with SADC would be through the SADC-COMESA Task Force Mechanism.

### **3.7 The state of Play of the negotiations: the 1<sup>st</sup> and 2<sup>nd</sup> RNF meetings:**

The RNF has so far held 2 meetings; the first RNF meeting was held in Mombasa Kenya from 19<sup>th</sup> –22<sup>nd</sup> April 2004. The purpose of the meeting was to chart out a way forward as far as the ESA-EPA negotiations are concerned. The meeting received progressive reports from member countries regarding the establishment of NDTPFs and the implementation of Impact Assessment Studies. Some member countries had as yet not established the NDTPFs and most of them had not carried out the Impact assessment studies. The meeting also approved the terms of reference and rules of procedures for the establishment of the RNF.

The 2<sup>nd</sup> RNF took place in Entebbe Uganda from the 19<sup>th</sup>-22<sup>nd</sup> July 2004. Members reported that the NDTPFs were in place but there were complaints about delays in funding the studies, the selection of consultants and the execution of the studies. There were some complaints that the completed studies were below expectations as they were too academic and did not take full account of national interests. The EU through the Project Management Unit (PMU) funds the Impact Assessment studies. Most member countries had not as yet carried out any sectoral studies to guide them in formulating positions in specific areas. The Entebbe meeting also approved the terms of reference of the RTPF and discussed the Memorandum of Understanding (MoU) proposed by the AU for collaboration with the Regional Economic bodies in order to ensure the coordination and solidarity of the Africa region in the EPA negotiations. The meeting recommended

that a Chief Technical Advisor (CTA) be recruited to give technical backup to the RNF but especially to the ambassadors and ministers.

Given the agreed upon Road Map between the EU and ESA countries, it was proposed that the ESA Group could begin to formulate negotiating positions in clusters where some progress had been made. These were: Ocean Fisheries, Development, Rules of Origin, and Sanitary and Phytosanitary (SPS) Measures.

## **Chapter 4**

### **Uganda and the EPA negotiations:**

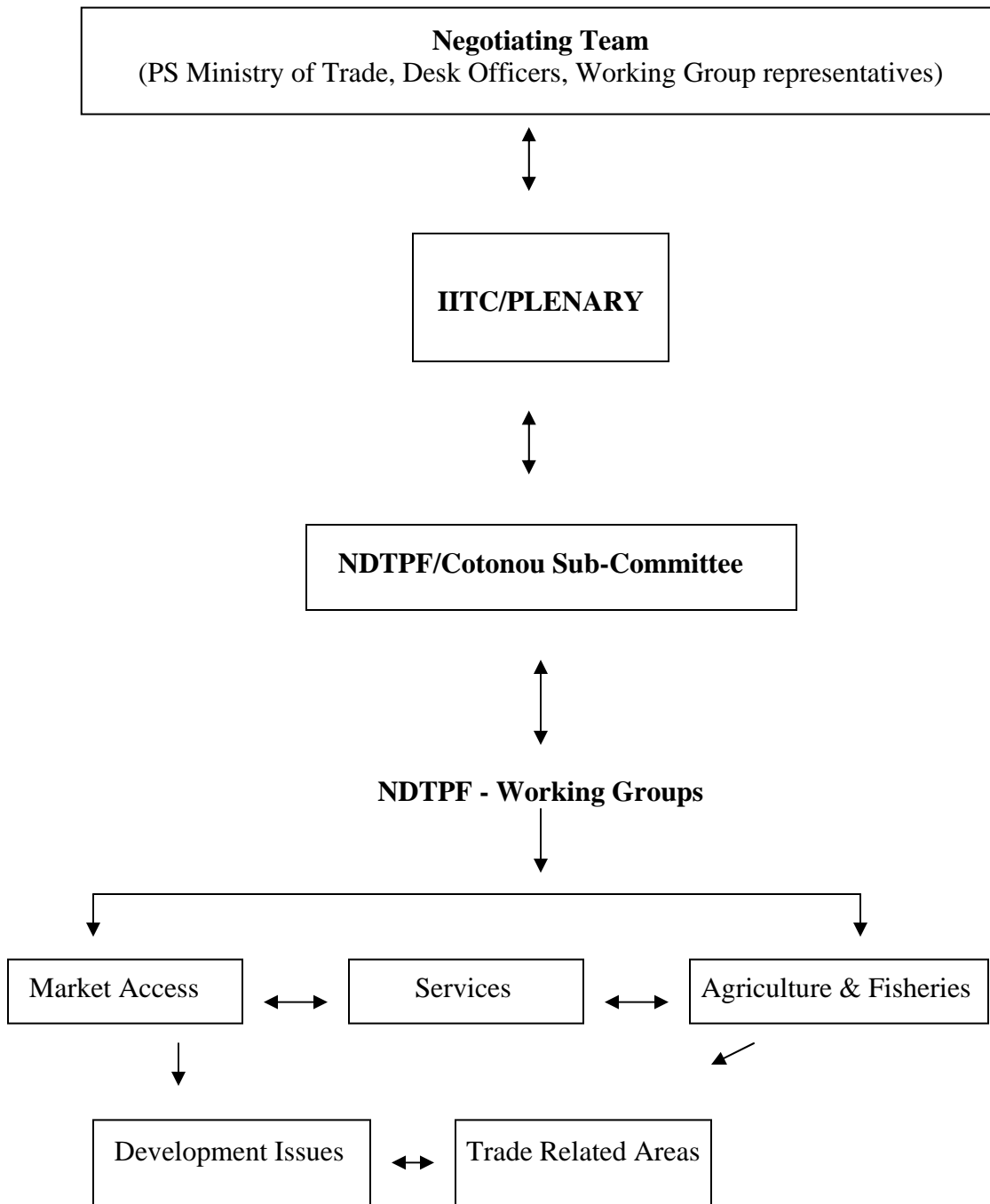
Uganda is a member of the ACP group and also part of the ESA bloc, which launched the 2<sup>nd</sup> phase of the EPA negotiations on the 7<sup>th</sup> February 2004. Apparently the EU is our largest single exports destination in the world. Uganda should therefore view the negotiations of EPAs with a lot of concern. The desire to utilize the market access extended to Uganda's export products and the need to control erosion of preferences are therefore of paramount interest among other economic, political and social considerations.

As per the ESA roadmap each ESA country was to establish a National Development and Trade Policy Forum (NDTPF). To avoid duplication of efforts, Uganda formed a committee on Cotonou under the Inter Institutional Trade Committee (IITC) to become the NDTPF. The IITC is a multi-sectoral committee, which was formed in 1998, to advise government on trade issues especially on the WTO negotiations. The committee on Cotonou/NDTPF is tasked with developing a work programme for the EPA negotiations, as well as monitoring the impact of the negotiations at all levels.

The national capacity building programmes on trade policy under the Cotonou Agreement are supposed to be formulated and implemented by this committee. The committee is also responsible for organizing national workshops at which results from studies are disseminated and country positions can be debated by all stakeholders.

Under the auspices of the committee, one Impact Assessment Study has been undertaken with funding from the EU. Due to lack of funds, no more studies have been undertaken although the terms of reference for all the necessary studies are in place

#### 4.1 Uganda's Negotiating Structure



## **4.2 Challenges Faced by Uganda under the EPA negotiations**

Many of these challenges are peculiar to other ACP countries as well.

### **1. Staffing and Skills**

The Ministries of Trade and Foreign Affairs, which are responsible for the EPA negotiations and other trade negotiations both at the national and international levels, are understaffed. The few officers at the Ministries are in many cases overwhelmed by the workload, as it is the same people who travel to the Mission to attend meetings and at the same time ensure that country positions are formulated back home.

This problem is compounded by the inadequate skills that some officers in the Ministries possess in trade negotiations. This is often attributable to the few or no institutions in the country at the moment to offer courses in diplomacy and trade negotiations.

2. The IITC, the body in Uganda responsible for overseeing the Cotonou negotiation processes and coming up with the country's position in the negotiations is faced with a number of obstacles which include:
  - ✓ Lack of a legal standing: The IITC still awaits a Statute that will see it acquire the legal status. This problem casts doubts on the authority of policy and positions the committee adopts, and whether its programmes can be considered national programmes.
  - ✓ Funding for the IITC is in no different state. Currently being funded under JITAP, the next funding source remains unclear when the JITAP programme expires.

The Committee continues to face an insufficient pool of experts to carry out its activities. The Cotonou Agreement and the scope of other trade negotiations at multilateral, bilateral and regional levels definitely require that a substantial number of experts and resource persons are available.

### **3. Low awareness levels**

The levels of awareness among the public as regards the EPA negotiations are still very low and yet the EPA negotiations promise to be even more challenging to the economy and on people's livelihood than the WTO Agreement.

### **4. Overlapping Negotiations**

Uganda faces a challenge of overlapping negotiations at different levels i.e. at the multilateral level (the WTO negotiations), at the bilateral level and at the regional level. Most of these negotiation processes are interlinked, as the issues are similar. The parallel negotiations are overstressing and straining the limited capacity available.

## Chapter 5

### General Challenges faced by the ESA Group; and way forward

1. The most fundamental challenge facing the ESA Group in these negotiations is to ensure that the EPAs fulfill all the anticipated objectives. The major objective of the EPAs as stated in the Cotonou Agreement **is to reduce and eventually eradicate poverty while contributing to sustainable development and to the gradual integration of ACP countries into the world economy.** The ACP countries highlighted the need to structurally transform ACP economies and the basis of their integration into the world economy if this objective is to be achieved. The ESA countries have therefore to negotiate the EPAs in such a way that they (EPAs) lead to the transformation of their economies.
2. **Reconciling LDC and non-LDC interests:** In the ESA configuration, there are 12 LDCs out of the 16 countries, making up 86.4% of the total population. LDCs enjoy the right to non-reciprocal trade preferences under the WTO rules, a right recognized by the EU through the EBA initiative. This raises a major policy challenge of how the future trade arrangement between the EU and ESA countries will be structured so as to fully accommodate the needs and rights of LDCs. The LDCs have an option not to negotiate an EPA, but LDCs in the ESA configuration believe that they are better off with the EPAs than the EBA since EBA is unilaterally and can be withdrawn any time, while the EPAs are negotiated and contain a development component. The challenge is how to entrench the development component into the resultant EPAs.

There is a need for more thorough studies to enable the LDCs to make an informed decision as far as EBA and EPAs are concerned. Even for non-LDCs, the Cotonou Agreement provides that:

*“In 2004, the community will assess the situation of the non- LDC which, if after consultations with the Community decide that they are not in a position to enter into economic partnership agreements, will examine all alternative possibilities, in order to provide to these countries with a new framework for trade which is equivalent to their existing situation and in conformity with WTO rules”<sup>15</sup>*

Unfortunately both the ESA countries and the EU seem not to be exploring other alternatives to EPAs. The ESA-EU Roadmap does not provide for any other alternatives. The ESA countries should invest some resources in assessing other alternative trading arrangement between the ESA countries and the EU so that they can decide from an informed point of view.

3. **Promoting Regional Integration:** Another important objective of the EPAs is to support regional integration. The Cotonou Agreement states that:

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<sup>15</sup> ACP-EU Partnership Agreement, Chapter 2 Article 37(6)

*“ Economic and trade cooperation shall build on regional integration initiatives of ACP states, bearing in mind that regional integration is a key instrument for the integration of ACP countries into the world economy”<sup>16</sup>*

The ESA configuration is for negotiating purpose only. The EU will eventually sign an EPA with a customs union. The ESA configuration strides five (5) overlapping economic regional groups i.e. SADC, COMESA, EAC, IGAD and IOC. (See Annex 1). The ESA countries have not as yet confronted the issue of how they are eventually going to sign and how this might affect the current regional integration efforts. For example Uganda, Kenya and Tanzania belong to the EAC; yet Kenya and Uganda belong to the ESA group while Tanzania belongs to SADC.

4. **Meeting the challenges of reciprocity:** The EPA negotiations are basically about the introduction of reciprocal trade between the EU and the ACP countries. Reciprocity will have far reaching economic and fiscal implications on the ESA countries depending on the extent and asymmetry of product coverage and the timetable for phasing in of tariff elimination. Individual ESA countries need to urgently carry out thorough studies regarding the treatment of different products in the negotiations depending on their contribution to government revenue, domestic industries, and food security. This will assist the ESA Group in drawing up a defensive and offensive strategy as far as Agriculture and Market access areas are concerned. ESA countries should also start planning as to how they are to address the challenges, which will arise from an EPA with the EU. For example the Impact Assessment Study for Uganda indicates that an EPA with the EU will lead to (among other things), loss of revenue due to elimination of tariffs on EU imports and unemployment due to the shrinking of the local manufacturing sector as a result of competition from EU products. Most ACP countries for example Uganda have not effectively utilized the preferences offered by the EU as a result of supply capacity constraints. If these preferences are phased out, it will be doubly harder for countries like Uganda to access the EU market under the new arrangements. ESA countries like Uganda should therefore put strategies in place to address these challenges.
  
5. **WTO Compatibility:** The EPAs are supposed to be compatible to the WTO provisions of Article XXIV of GATT 1994 with such issues as transitional periods, product and trade coverage and tariff reduction approaches. The ACP group has been arguing that the current provisions were formulated to cater for RTAs between developed countries; not between developed and developing countries. The ACP Group in Geneva have therefore submitted a position paper<sup>17</sup> to the Negotiating Group on Rules seeking for amendments to Article XXIV of GATT 1994 to take into account the needs of developing countries. The challenge facing ACP states

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<sup>16</sup> ACP-EU Partnership Agreement, Chapter1, Article 35 (2)

<sup>17</sup> World Trade Organisation: Negotiating Group on Rules: Submission on Regional Trade Agreements: A paper by the ACP Group of States ; 28<sup>th</sup> April 2004 TN/RL/W/155

negotiating EPAs with the EU is what kind of EPAs are to be negotiated since Article XXIV is still under debate.

6. **Mind-shift:** ACP countries in general and ESA countries and Uganda in particular are negotiating from a weak psychological, economic and political position. The ACP countries were former colonies of the EU, have benefited from the aid support under the 25 years of Lome and most of them still depend on EU donor support to augment their budgets and also to participate in the negotiations.
7. **Reconciling / harmonizing differing national interest:** Each ESA government in the ESA configuration has to decide on its negotiating position based on its development objectives after carrying out studies and consultations with the stakeholders. Ideally these positions have to be harmonized at the ESA level before negotiations with the EU begin. Due to a number of factors including limited time and resources, the studies and consultations at the national levels have not been adequate; and at the ESA level members decided to start negotiations with the EU in such areas as Ocean fisheries, Rules of Origin and Sanitary and Phytosanitary (SPS) measures, before getting and harmonizing national positions. This might affect the outcomes of the negotiations.
8. **Financial Resources:**

The EPA negotiations require funds, both at the national and ESA level to carry out studies, raise awareness, and organise meetings among other things. The ESA Group has been highlighting the need for additional resources from the EDF envelope to finance the negotiations. The ESA members also highlighted the bureaucratic and cumbersome procedures of accessing EDF funds and requested that more flexible procedures to accessing the already allocated funds be put in place. The EC, on the other hand has been insisting that the financial requirements for ACP countries under the EPAs were already covered under the EDF and that no additional funding was envisaged.<sup>18</sup> There has been an over dependence on EU funding as far as the negotiations are concerned. Despite the limited funds at the national levels, ESA countries should try to use national resources to prepare for the negotiations as this will ensure them some measure of independence and objectivity in coming up with negotiating positions.
9. **Human resources:** Most ESA countries lack the human resources to effectively engage in the EPA negotiations. There are a number of trade negotiations going on at the same time at the multilateral (WTO), regional and bilateral levels. Most ESA countries reduced extensively their civil service under the Structural Adjustment Programmes (SAPs) leading to thin staff on the ground.

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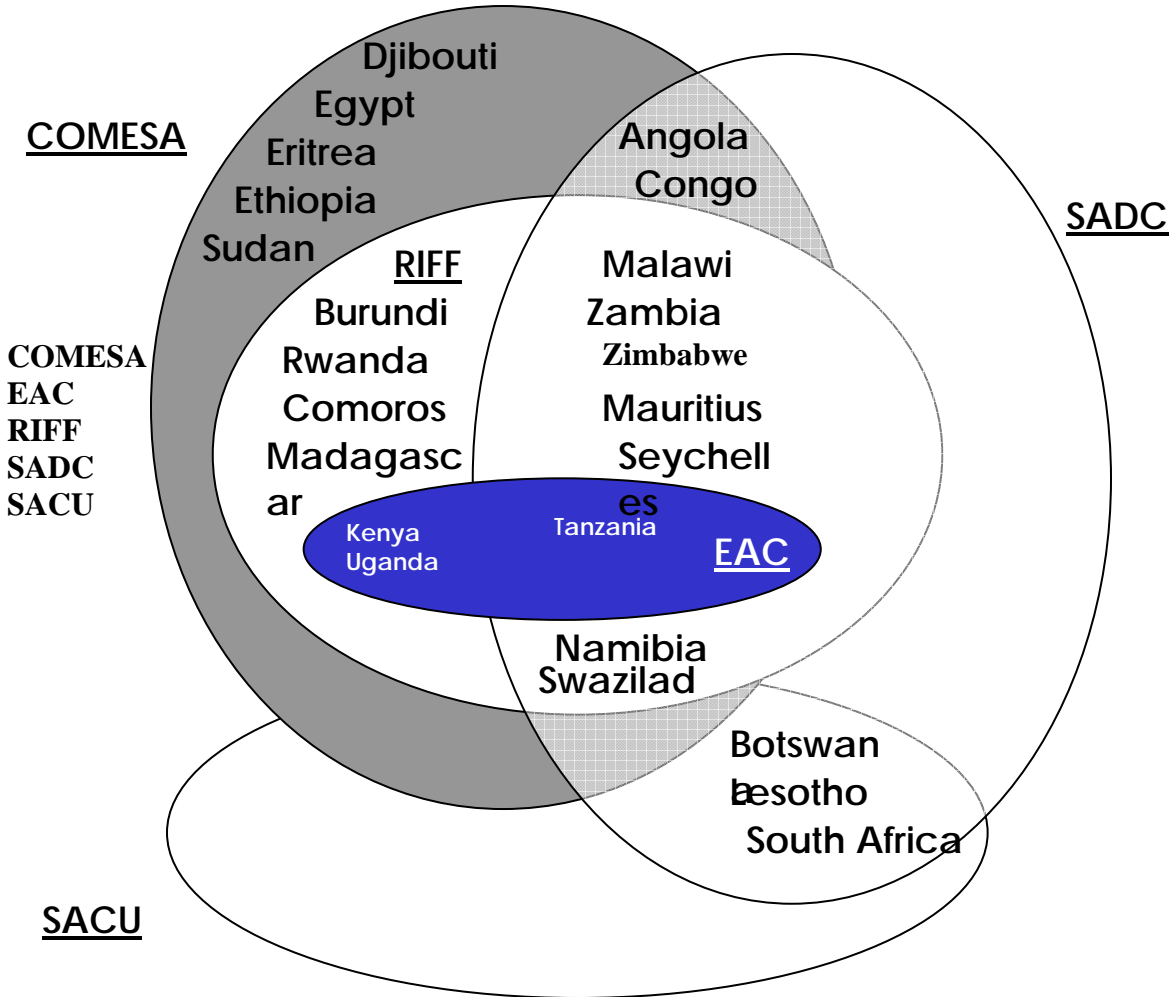
<sup>18</sup> Report of the official launch of negotiations for an Economic Partnership Agreement between the Eastern and Southern African Region and the European Commission ; and the Joint ESA-EC meeting between ESA ministers and the European Commission , 7<sup>th</sup> February 2004 , Grand Bay , Mauritius

## **Recommendations and way forward:**

- 1. Mobilisation of human and financial resources:** The ESA countries, as individuals and as a group should mobilize financial and human resources in order to effectively prepare and engage in the negotiations. For example ESA countries need to carry out independent and thorough research and analysis, which require funding. Mobilisation of resources will necessitate the prioritization of the EPA negotiations in national development policies and plans. Most ESA countries have not as yet appreciated the importance of the EPA negotiations. This is evidenced by lack of national allocations of funds for the negotiations and by the lack of awareness among key stakeholders.
- 2. Awareness raising and mobilization of stakeholders:** In most ESA countries, awareness about the EPA negotiations and its implication is still very low. There is a need for ESA governments (especially the Ministry of Trade) to raise awareness, mobilize stakeholders i.e. the members of Parliament (at both national and regional levels), the civil society, the higher institutions of learning ...to ensure that all concerns are taken on board in the national positions.
- 3. Capacity building for the NDTPF and the RNF:** These Forums have a central role to play in the negotiations and should therefore have adequate knowledge and skills to come up with appropriate negotiating positions.
- 4. The ESA governments should give greater priority to the EPA negotiations by committing national funds to this process instead of depending wholly on EU funding.**
- 5. There is a need to link the EPA and the WTO negotiations by ensuring that the Brussels and Geneva ambassadors work closely together.** This is because the issues negotiated are similar and it will ensure that the EPA negotiations do not go beyond what has been agreed on in the WTO negotiations. The Brussels Ambassadors should also be actively involved in the WTO negotiations especially on the issue of amending Article XXIV of GATT 1994.
- 6. Anticipation of the implication of free trade with the EU:** A number of Impact assessment Studies carried out in the region suggest that the ESA countries will have to under go some adjustments as a result of the implementation of the EPAs. This is the time for the ESA countries to put plans and strategies in place of how to mitigate the negative effects of the EPAs. Although the ESA countries have been negotiating for funds from the EU for adjustment programs, there has to be a plan “B” I place in case the funds do not materialize or they are inadequate. For all ESA countries, the participation in the EPA negotiations should be the results of a conscious and informed political and socio-economic decision, corresponding to well identified strategic objectives within a coherent trade and development strategy.

Annex A:

Regional Trading Arrangements in Eastern and Southern Africa



- COMESA** Common Market for Eastern and Southern Africa
- EAC** East African Community
- RIFI** Regional Integration Facilitation Forum
- SADC** Southern Africa Development Community
- SACU** Southern African Customs Union

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