



EAST AFRICAN COMMUNITY
EAST AFRICAN LEGISLATIVE ASSEMBLY

**REPORT OF THE COMMITTEE ON
COMMUNICATIONS, TRADE AND INVESTMENTS
ON THE CONSULTATIVE WORKSHOP BETWEEN EALA,
CIVIL SOCIETY AND THE PRIVATE SECTOR ON
ECONOMIC PARTNERSHIP AGREEMENTS (EPAs)**

December 9th - 11th, 2012, Laico Hotel, Nairobi - Kenya

**Clerk's Chambers
EALA Wing
EAC Headquarters
Arusha, Tanzania**

January, 2013

1.0 BACKGROUND

Rt. Hon Speaker, The East African Legislative Assembly (EALA) is a legislative organ of the East African Community (EAC). Under the Provisions of Article 49 of the Treaty for the Establishment of the East African Community, it is mandated to exercise both legislative and oversight functions on all matters within the scope of the EAC through meetings, studies, workshops; tours, on spot assessment activities, to mention but a few.

Articles 2, 5 and 74 of the Treaty for the Establishment of East African Community (EAC) place trade at the centre of the integration process. Thus, the EAC Partner States shall develop and adopt an East African Trade Regime and cooperate in trade liberalization and development among themselves and their other trading partners.

In view of the above legal basis, the EAC partner states initiated an agreement in November 2007, to establish a Framework for an Economic Partnership Agreement (FEPA) with the European Union (EU) pending negotiation and the conclusion of the Comprehensive Economic Partnership Agreement (EPAs). The EALA Committee on Communications, Trade and Investment therefore held a two-day consultative workshop between Civil Society and Private Sector on Economic Partnership Agreement (EPA) in December 9-11, 2012, Nairobi Kenya.

1.2 OBJECTIVES OF THE WORKSHOP

Madam Speaker, The overall objective of the interactive workshop was to sensitize and build the capacity of EALA's Committee on Communications, Trade and Investment on various issues pertaining to the EAC EU Economic Partnership Agreements. The specific objectives include:-

- i) To update Members of EALA on the current status of EPA Negotiations and how they will impact on EAC;
- ii) To inform Members on Opportunities and Challenges associated with EPAs;
- iii) Coming up with possible recommendations on the way forward for EAC-EU EPA Negotiations.

1.3 PARTICIPANTS

The participants at this workshop included the EALA Members on the Committee on Communications, Trade and Investment, representatives from Civil Society, the Private sector in the EAC Partner States, and the Media.

2.0 FINDINGS

Hon. Speaker, from the discussions at the workshop, the committee took stock of the following:-

2.1 Concept of Economic Partnership Agreement (EPAs)

EPAs are a continuation and improvement of the Lome Conventions that date back to 1975. The Lome Conventions and its successor Cotonou Partnerships Agreement afforded the African, Caribbean and Pacific (ACP) countries preferential market access to the European Union (EU) market for a period of 25 years. Under this arrangement, most agricultural products and raw materials entered the EU market on duty-free basis up to the year 2007, when the Cotonou Trade regime expired.

The trade arrangements under Lome Conventions and the Cotonou Partnership Agreement were not compatible with the WTO rules. Some aspects of these trade arrangements faced a number of challenges at the WTO level as it was perceived by non-beneficiary countries as a discriminatory arrangement. As a result ACP countries and the EU undertook, during the signing of Cotonou Partnership Agreement in 2000 in Cotonou, Benin to negotiate a new trade arrangement that would be compatible with WTO rules. This new trade arrangement is referred to as Economic Partnership Agreements (EPAs)

2.2 EAC-EU EPA Overview

EAC-EU FEPA was initialled in November 2007, in Kampala, Uganda in the following areas; - Trade in Goods, Fisheries, Development Clause and Rendezvous clause. However, the EAC-EU Comprehensive EPA scope includes;

- (i) Customs and trade facilitation;
- (ii) Outstanding trade and market access issues including Rules of Origin;
- (iii) Technical barriers to trade and sanitary and phytosanitary measures;

- (iv) Trade in services;
- (v) Trade related issues namely Competition policy, Investment and private sector development, Trade, environment and sustainable development, Intellectual property rights, Transparency in public procurement;
- (vi) Agriculture;
- (vii) An elaborated dispute settlement mechanism and institutional arrangements;
- (viii) Economic and Development Co-operation; and any other areas that the Parties find necessary.

However, both Parties agreed to negotiate Trade in Services and Trade Related Issues at a later stage to be agreed by both Parties, therefore they are not part of the current Comprehensive EPA negotiations.

2.3 Completed work under FEPA

Negotiations in the following areas have been concluded and the various texts have been migrated to the Consolidated EPA text: -

- (i) Trade in Goods,
- (ii) Fisheries,
- (iii) Customs and Trade Facilitation,
- (iv) Sanitary and Phytosanitary (SPS) and Technical Barriers to Trade (TBT).

2.4 Outstanding work under the Comprehensive EPA Negotiations

EPA negotiations are at different levels of completion. The status on the different subject for negotiations is as follows:

1. Economic and Development Cooperation

The text on economic cooperation and development has been completed. The outstanding work relates to completion of the development matrix and development benchmarks to be annexed to the text. The EAC would also like a revisiting of the text to ensure committal language on funding of EPA development projects. The outstanding work on development is due for finalization during the technical session between the EAC and the EU in February 2013.

2. Rules of Origin

Negotiations of the EAC-EU EPA Rules of Origin are about 90% complete. The outstanding work relates to Senior Officials guidance on the divergence between the EU and the EAC positions with regard to: -

- (i) Definition of other ACP States for purposes of cumulation,
- (ii) Rules of Origin on marine fisheries,
- (iii) Cumulating with South Africa, and
- (iv) EU position that the proposed rules of origin are transitory and that after five years, EU would like to be accorded same rules as the rules it accords the EAC exports to the EU.

3. Agriculture

Negotiations of Agriculture text are about 98% complete. The pending work relates to domestic support and export subsidy. Both parties are in consensus that the two issues would better be addressed at the WTO. However EAC is seeking to press for ways of addressing the unfair competition in the EU market due to subsidies given to EU farmers.

4. Institutional Arrangement, Dispute Settlement and Final Provisions

Negotiations of this chapter are about 80% complete with the pending areas being classified as policy issues requiring guidance by Senior Officials during their meeting of February 2012, for example linking the EPA to certain provisions in Cotonou Agreement particularly those provisions on Human Rights, and good governance.

5. Market Access Issues

Negotiations of market access issues are about 90% complete

2.5 EAC-EU-EPA CONCERNS RAISED AND MITIGATING STRATEGIES

1. Revenue Loss. It is projected that there will be government loss after the implementation of EPAs, however, there will also be revenue gain from expanded trade to emanate from domestic taxes (direct and indirect) which has potential to offset the revenue loss, especially if EAC countries exploit the new market opportunities that have been realized under the EPA.

European Commission (EC) Offer as provided in EAC-EU FEPA initialled in 2007, indicate that Customs duties in EC will be entirely eliminated on all products of Chapters 1 to 97 of the Harmonized System, except: -

- (i) Those of Chapter 93 (Arms and Ammunition and parts thereof), where MFN duties will apply,
- (ii) Rice and sugar, which are to be liberalized gradually as follows: rice –by 1st January 2010 and sugar by 30th September 2015 Rice has already been liberalised from 1st January 2010.

The Implication EU Offer for EAC

1. New opportunity for increasing exports to the EU for over 1000 tariff lines whose tariffs were reduced to zero with effect from 1st January 2008 following the initialled EAC-EU FEPA e.g. Beef products, dairy products, and other agricultural products that were subjected to seasonal tariffs in the EU, and the market size for these products in the EU is quite huge.
2. **Food Security**, EPAs may not have adverse effects on food security and rural livelihoods because this has been shielded through the sensitive list and provision for review and safeguard clauses whenever threats emerge during the implementation of the EPA.
3. **Regional Integration**, Regional integration is safeguarded through the sensitive list, whose development was informed by identification of products of EAC countries export interest in the EAC market. All stakeholders including the Private sector Associations were involved in ensuring that the industry's regional market interest was safeguarded through this list.
4. **Contentious Issues in FEPA and EAC Response**, the contentious issues in FEPA, which include Export taxes and Most Favoured Nation (MFN) clause are being negotiated under the comprehensive EPA process;-

(i) Export Taxes

The FEPA preserves EAC's right to continue to levy existing export-related taxes, while allowing the introduction of new export-related taxes in order to foster the development of domestic industry (i.e. value addition) or for foreign exchange stability. The decision on whether to allow the use of export tax on the conditions specified is to be made by the EPA Council, which will also review its effects after 24 months.

The EAC's concern with this article is the impact that this restriction will have on its policy space in the use of export taxes as a trade policy instrument. The EAC Customs Management Act, 2004 provides for prohibited and restricted goods and it is to this effect that export of certain goods may be prohibited or restricted under the Act. Currently, some EAC Partner States apply export taxes. Under the WTO, there are no rules prohibiting the use of export taxes.

(ii) Most Favoured Nation Clause

Article 16 of the FEPA provides that for future free trade agreements:-

- (1) If the EC gives better treatment to a third country, they have to give it to the EAC as well;
- (2) If EAC gives better treatment (i.e. deeper market access) to a developed country or any country accounting for more than 1% or regional entities (such as a customs union) accounting for over 1.5% of world merchandise trade, EAC has to extend the same treatment to EU; and
- (3) Members of the ACP group and other African countries are not covered by the MFN provisions covered in (2) above.

EAC's concern is that the current provision would have an impact on EAC Partner States' possible bilateral negotiations, since any preference would be automatically extended to the EC. The WTO rules allow for bilateral preferences between developing countries in promoting South-South trade.

EAC adopted cautious approach to the Singapore issues/Trade Related Issues - (Government Procurement and Competition Policy, Intellectual Property Rights and Investments) and other related issues under the EPAs. These issues will be negotiated at later stage.

4.0 EMERGING ISSUES

4.1 Introduction of New Issues

Hon. Speaker, The EU has introduced new issues which they want to be part of the comprehensive EPA negotiations, namely: -

(i) Good Governance in the Tax Area

The issue was not part of the Rendezvous Clause (Article 37) of FEPA on issues agreed for comprehensive EPA negotiations. Although any new issues introduced to Article 37 needs to be mutually agreed by both parties, the EU has unilaterally introduced this issue for negotiations. However the EAC has strongly objected to this introduction of new issues.

(ii) Trade, Environment and Sustainable Development

Both parties had agreed that trade related issues will be negotiated at a later stage. However, the EU has introduced and insisted that Trade, Environment and Sustainable Development be negotiated in the on-going negotiations.

(iii) Obligations/consequences from Customs Union Agreements the EU concluded with Third Parties.

In view of this, EAC has strongly objected to the subject being negotiated now and has clearly told EU that introduction of new issues in EPA negotiations will delay completion of negotiations.

4.2 EC Regulation 1528/2007

This Regulation is an interim measure that allows ACP Countries which initialled EPA Agreement to export to EU market duty free quota free pending conclusion of the comprehensive EPA agreement. The Republic of Kenya and other EAC countries are currently exporting to the EU on duty free quota free as a result of the EC Regulation 1528 of December 2007.

The EU has proposed to amend this regulation so that countries that will not have concluded and ratified the EPA by January 2014 will be denied duty free and quota free market access in the EU. EU Parliamentary Committee on International Trade had voted for this deadline to be extended to January 2016. However, the EU Council has rejected the proposal to extend the deadline. This underscores the need and pressure for the Republic of Kenya and other EAC countries to conclude the EPA on time to allow for ratification and domestication.

EAC Position. EAC is committed to conclusion of the negotiations. However, EAC does not agree with proposed deadline to conclude the negotiations since it will put pressure on the negotiation process. EAC Sectoral Council of Ministers agreed to elevate the contentious issues and proposed deadline issue to political level to lobby like the EU Member States and EU Parliament. EAC Ambassadors in Brussels also continue to lobby the EU Parliament to drop the proposed deadline to amend Regulation 1528/2007.

4.3 EAC-EU EPA Negotiation Road Map

Joint Ministerial meeting held in June 2010 had directed that the negotiations to be concluded by December 2010 but the deadline was missed due to funding constraints. Road map developed in December 2011 has been reviewed and both parties agreed on a new joint roadmap that runs up to July 2012 when the EPA negotiations were targeted to be concluded in line with the EAC Council of Ministers Directive to conclude the negotiations by July 2012. However this deadline has been missed due to more outstanding work in the Rules of Origin and other areas. Negotiation meetings at technical and senior officials' levels have been scheduled for February 2013.

5.0 RECOMMENDATIONS

Madam Speaker, the committee recommends as follows;-

1. EAC should insist that the EU maintains the Regulation 1528/2007 until full EPAs have been signed and implemented because the withdrawal thereof

would run counter to the primary aim of the EPAs, which is to provide stable and increased market access for ACP exports covered by the EPAs.

2. The EAC EU EPA Negotiators should maintain the need to have policy space/flexibility on issues of export taxes and Most Favoured Nation (MFN) to allow value addition and industrial development.
3. Trade policy and trade negotiations have to be aligned with the industrial policy requirements and potential trade-offs need to be made explicit.
4. The European Union to support EAC to develop infrastructure such as energy, roads and railways so as to address the region's supply side constraints and create trade predictability and sustainability.
5. The EAC ensures that the EPA process must take into account the regional integration agenda so that agreements reached can contribute to deepening the regional integration process as well as foster economic growth and development.
6. The EAC Council of Ministers provides regular briefs to EALA on the progress of EPAs.
7. The EAC Partner States continue as a bloc to negotiate and conclude the Economic Partner Agreement.

6.0 CONCLUSION

Madam Speaker, the EAC and EU Commitment to EPAs was made in good faith and the in-built promise was that EPAs will be tools for economic development. The unilateral setting of deadlines by EU for concluding the negotiations will not spur on the EAC region, because it is only the substance of the issues under consideration that will drive the negotiation process, and not an arbitrarily determined schedule which does not take into account the institutional constraints of the EAC countries. However, with political will on both sides of EU and EAC, a mutually acceptable approach to address legitimate concerns such as contentious issues including the export taxes and MFN should be found to successfully complete the EPA negotiations.

7.0 ACKNOWLEDGEMENTS

1. The committee wishes to express its utmost appreciation to the Rt. Hon. Speaker of EALA for the commitment and support offered to successfully hold this workshop.
2. Special thanks go to the office of the Clerk of EALA for the tireless efforts portrayed in all logistical arrangements to make this workshop a reality.
3. The committee is also indebted to the Permanent Secretary Ministry of Trade Kenya and his technical officers including the private sector and civil society stakeholders for having spared their precious time to participate in this workshop.

Hon. Speaker, I beg to move

MEMBERS OF THE COMMITTEE ON COMMUNICATIONS, TRADE AND INVESTMENT

(Report on EPAs Workshop)

December 9th – 11th 2012, Laico Hotel, Nairobi - Kenya

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1.	Hon. Angela Charles Kizigha	-	-----
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