

AFRICAN UNION

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NAIROBI DECLARATION ON
ECONOMIC PARTNERSHIP AGREEMENTS

NAIROBI DECLARATION ON ECONOMIC PARTNERSHIP AGREEMENTS (EPAs)

We, the Ministers responsible for Trade, of the Member States of the African Union, meeting in our Fourth Ordinary Session in Nairobi Kenya on 14 April 2006:

1. **Re-affirm** our AU Mauritius and Cairo Ministerial Declarations on EPA Negotiations under the Cotonou Agreement, which our Heads of State and Government endorsed. In light of the critical stage the negotiations have reached, we underscore the EPA negotiating objectives.

2. **Re-iterate** that economic partnership agreements with the European Union should be tools for the economic development of Africa. We express our profound disappointment at the stance taken by negotiators of the European Commission in so far as it does not adequately address the development concerns that must be the basis of relations with Africa. We urge our negotiating partners to clearly demonstrate the development content of the proposed agreements, and adequately address supply side constraints, infrastructure bottlenecks, and adjustment costs, bearing in mind that trade liberalisation together with the accompanying liberal policies, may not by itself deliver economic development. In this regard, we emphasise that the development content should include, inter alia, adequate financial and technical resources; full market access to the European markets for African goods and service providers; and policy space and flexibility for implementation of development programmes in Africa.

3. **Note** that the programming exercise for the 10th EDF has commenced at country and regional levels. We therefore call for enhanced coordination between trade, finance and development officials, with a view to ensuring that financing of EPA related costs are integrated in the National and Regional Indicative Programmes, without impeding other development needs that are to be funded under the 10th EDF. We further call for the urgent establishment of an additional EPA Financing Facility at national and regional levels as provided for in Declaration XIV of the revised Cotonou Agreement, to address the adjustment costs and support the EPA process and implementation over time. In addition we call for a binding commitment from the European Union for additional resources beyond the 10th EDF to cover EPA related costs. This commitment shall be factored into the legal text of each EPA. We emphasise the need for the Regional Preparatory Task Forces (RPTFs) to play a more effective role in support of the EPA negotiations.

4. **Further note** that market access openings have been significantly undermined by health, sanitary and phytosanitary, technical and market standards maintained by the EU partners. In this regard, we urge our trading partners to robustly support our countries with adequate financial and technical resources to enable our exporters meet the standards, and our countries to fully participate in international standard setting. We note that many of the EU standards go beyond what would legitimately be appropriate. In this regard, we urge our trading partners to introduce appropriate control over standard setting undertaken by market-based non-governmental organisations including in the border enforcement of those standards.

5. **Have further consistently stressed** that the agreements should be consistent with the objectives and process of economic integration in Africa in accordance with the Constitutive Act of the African Union and the Treaty Establishing the African Economic Community. We urge our development partners to fully respect our fundamental concerns in this regard and to refrain from pursuing negotiating objectives that would adversely affect these existing programmes and process for economic integration in Africa. In this regard, we stress that the Regional Economic Communities recognised as building blocs for the African Economic Community shall continue to pursue their economic integration programmes, seeking to achieve wider and deeper integration among the Member States. Recalling the coordination and monitoring mandate given to the Commission of the African Union by our Heads of State and Government at the Maputo Summit, we underscore the absolute importance of regular and consistent meetings and sharing of information among the negotiating groups and with the Commission. In this regard, we direct the Commission to adopt a definite programme and implement it, relating specifically to co-ordination meetings and the regular and consistent sharing of information. The Commission is further directed to mobilise available resources to enhance its role and functions relating to EPA negotiations.

6. **Call upon** the Regional Economic Communities to work closely among themselves in pursuance of the objectives we have set out in our declarations. In particular, we urge the regional economic communities as building blocs for the African Economic Community to ensure that economic partnership agreements with the European Community do not constitute any obstacles to the coordination and harmonisation of their programmes and activities including for the progressive formation among themselves of free trade areas and customs unions on a priority basis and ahead of any similar agreements with the EC.

7. **Endorse** the approach that no African country should be worse off under the new trade regime. We endorse the maintenance of duty free and quota free treatment for least developed countries. We urge our negotiating partners to extend the same treatment to African non-least developed countries. We believe that any apparent technical difficulties to this under WTO rules are amenable to an appropriate solution. We urge the European Commission to consider the conclusion of binding agreements in the framework of the Cotonou Agreement that elaborate and put on a lasting basis any unilateral and preferential market access regimes they adopt, including under the Enabling Clause, in a manner that fully addresses the uncertainties associated with unilateral initiatives.

8. **Re-iterate** that Article XXIV of GATT needs to be appropriately amended to allow for necessary special and differential treatment, less than full reciprocity principle and explicit flexibilities that are consistent with the asymmetry required to make EPAs pro-development. Conclusions of the market access aspects of the EPAs should take place upon completion of the amendment.

9. **Endorse** the proposal of the Africa Caribbean and Pacific Group of States to the WTO Negotiating Group on Rules, calling for modification of Article XXIV of the General Agreement on Tariffs and Trade 1994. The flexibility currently available under Article V of GATS is constrained. ACP countries will require greater flexibility

if they negotiate Trade in Services under the EPAs. We urge our negotiating partners to fully support the proposal on Article XXIV of GATT 1994. We are determined to ensure that this proposal is fully taken into account in the outcome of the Doha Work Programme.

10. On negotiations in services, **we have noted the intention** of the European Community to seek extensive opening of African services sectors. We re-commit ourselves to pursuing the architecture under the WTO General Agreement on Trade in Services, of a positive-list approach, and underscore the absolute need for a carefully managed sequencing of services liberalisation in line with establishment of strong regulatory frameworks. We therefore shall not make services commitments in the EPAs that go beyond our WTO commitments and we urge our EU partners not to push our countries to do so. We expect and call upon the European Community to open up its services sectors in favour of African countries to satisfy, as the barest minimum, the requirements under Article V of GATS of substantial sectoral coverage and elimination of substantially all discrimination.

11. **Underscore** the important role played by agriculture in the economic and social development of African countries. We have noted the positions adopted by the EU and other developed countries in WTO negotiations, which do not make it possible for African countries to benefit from the export of their agricultural products to the international markets including the European market. We call on the EU to adopt positions in WTO negotiations that are consistent with the development objectives of EPA negotiations.

12. **Welcome** the progress that has been made on clarification of the flexibility available under the WTO Agreement on Trade-related Aspects of Intellectual Property Rights, including the amendment to the Agreement's provisions on compulsory licensing. We urge our negotiating partners to fully respect this progress in the context of EPA negotiations and to refrain from seeking obligations that exceed those under the TRIPS Agreement. We urge the EU to expeditiously complete the procedures necessary for the amendment to be implemented and utilised by their producers and exporters of pharmaceutical products as part of the community regime. We also reject any attempt to introduce any TRIPS plus provisions on any intellectual property rights issues in the EPA negotiations.

13. **Underscore** the importance of building the competitiveness of African countries, in order to utilise and benefit from market access opportunities and ensure the economic development of our countries. In this regard, we urge our negotiating partners to appropriately prioritise this component of the negotiations, including in terms of ensuring that resources in the required critical amounts are efficiently and effectively deployed in technical cooperation programmes with our countries. We specifically call upon the EU to put in place technology transfer and sharing partnerships, facilitated including through incentives, that would directly link up technology producers and owners in EU with users in African countries.

14. On the issues of investment policy, competition policy and government procurement, **we re-iterate** the concerns we have raised at the World Trade Organisation, leading to their being removed from the Doha Work Programme. We reaffirm that these issues be kept outside the ambit of EPA negotiations. We stress

the importance of maintaining consistency in our negotiating objectives and positions in the various fora. We appeal to regional groupings, so that in dealing with these issues, they ensure the coherence of our negotiating objectives and positions adopted in various fora. We specify that regional instruments can be developed for the sole mutual benefit of Member States of regional groupings.

15. **Welcome** the assessment and evaluation due this year 2006 of EPA negotiations, and direct our negotiators to ensure that it is fully undertaken and should be formal. The review should be all inclusive and consultative with all stakeholders including civil society and parliamentarians and should be conducted at national, regional, continental and ACP levels and should include, inter alia, the structure, process and substance of the negotiations in the trade and development dimensions, as well as the capacity and preparedness to conclude EPAs. In particular, alternatives to EPAs should be fully explored. We request the AU Commission and the ACP Secretariat to commission and coordinate independent prior assessments. Development benchmarks should be developed to assist the exercise and in the negotiations as a whole.

16. In view of the cross cutting nature of UNCTAD's programmes and activities for capacity building, **we are concerned** with recent proposals by some developed countries to erode the mandate or even the institutional continuance of UNCTAD in the context of the UN reform process. We reaffirm that the UN reform process should not result in an erosion or diminution of the mandate or activities of UNCTAD. Instead, the reform process should enhance the role and activities of UNCTAD as the focal point in the UN system for the integrated treatment of trade and development and related issues. UNCTAD should continue its assistance to African countries regarding trade negotiations and development policies.

17. Thank the Government and People of Kenya for the hospitality extended to us and for hosting this Conference.

Done at Nairobi, in the Republic of Kenya, this 14 April 2006